OMB File No. LC120027

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF the *Expropriations Act*,
R.S.O. 1990, c. E.26, and IN THE MATTER OF AN ARBITRATION

B E T W E E N :

1353837 ONTARIO INC.

CLAIMANT

and

THE CORPORATION OF THE CITY OF STRATFORD

RESPONDENT

FRESH AS AMENDED NOTICE OF ARBITRATION & STATEMENT OF CLAIM (PER OMB DECISION OF JUNE 21, 2013)

August 2, 2013

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1. Take notice that the Claimant, 1353837 Ontario Inc. ("135" or "Claimant", as required), requires the compensation claimed herein from the Respondent, the Corporation of the City of Stratford ("City" or "Respondent", as required), with respect to the land described below, be determined by the Ontario Municipal Board.

2. The Claimant seeks compensation pursuant to the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended, and pursuant to an agreement with the Respondent for its interest as owner in the following lands acquired by the Respondent:

> The lands shown as Parts 13, 16, and 17 on Registered Plan 44R-3154 and also shown as Parts 1, 2, 3, and 4 on Registered Plan PC71878 ("Undisputed Lands" or

"Expropriated Lands" or "Ryan's Railway Centre" as required).

3. Registered Plans 44R-3154, PC71878, and 44R-3977 are appended as Schedules "A", "B", and "C" respectively.

4. The lengthy history between the Claimant and the City includes an outstanding issue of rights, title and interests relating to the lands shown as Parts 3, 4, 5, 6, 7, 8, and 12 and a right of way over the lands shown as Part 14 ("Disputed Lands") in the Land Registry Office for the Land Titles Division of Perth (No. 44), which is the subject of outstanding Superior Court proceedings (Court File No. 02-726) (the "2002 Action"). The Disputed Lands are adjacent to the Expropriated Lands (collectively the "Lands").

5. The transfer of the Expropriated Lands occurred on June 15, 2009 following litigation arising from a long-standing history of conflict and litigation by the City against the Claimant and other predecessors in title with respect to the Lands.

6. In the 2002 Action, in the event that the Claimant is determined not to be the legal owner of the Disputed Lands, the Claimant asserts (in the 2002 Action) there are various easements for access, egress, servicing, and other uses (collectively the "Easements"), which were owned and used together with the Expropriated Lands as of the date of expropriation, including but not limited to easements across Parts 2, 3, 10, 12, 14, 24, 25, 27, 37, 38, and 39, as shown on Registered Plan 44R-3977.

7. The subject matter of the 2002 Action is discussed in this Notice of Arbitration and Statement of Claim because the City's interference with the Disputed Lands is part of its campaign of interference with Expropriated Lands; however, the Claimant does not request any determinations by the Board with respect to its rights, title and / or interests in the Disputed Lands, and will rely upon the Superior Court of Justice's findings and direction prior to seeking compensation in this matter in relation to those lands. The Claimant will, pursuant to the Board's order herein, seek determination by the Superior Court of Justice as to its "rights, title and / or interests in the Disputed Lands" which findings are directly related to the determination of compensation under the Act. The Claimant states that its costs in determining that issue are compensable pursuant to s. 32(1) of the Act, and / or as the natural and reasonable consequences of the expropriation pursuant to s. 13(2)(b) and s. 18(1) of the Act.

FRESH AS AMENDED STATEMENT OF CLAIM

(PER OMB DECISION OF JUNE 21, 2013)

OVERVIEW

8. The history of the lands, which culminated in the expropriation, spans more than 20 years. Beginning in the early 1990's the City purchased the lands and carried out environmental clean up of the lands and buildings for the purpose of offering the lands for sale for a rail heritage mixed-used development. In 1995, the City sold the lands (Expropriated and Disputed) to the Claimant (via a predecessor in title) through a series of related agreements by which they first conveyed on February 23, 1996 the Expropriated Lands, approved a whole block site plan and issued building permits in March and April 1996 under which site work and restoration of the buildings began, but shortly thereafter the City reversed its position by refusing to complete their remaining obligations, including the transfer of title to the Disputed Lands.

9. The City then embarked upon a campaign of obstruction of the approved Project and use of the Lands through numerous administrative and litigation proceedings initiated against the Claimant that continue past the expropriation in June 2009 to the present. Throughout this period, the Claimant persevered with its Project and attempts to use the lands so as to recoup and to realize on its investment, but was driven to the brink of financial collapse, and is now left without its lands, its investment, the heritage restoration project or a means of relocating it.

10. Despite the Claimant's willingness in 2006 to locate the University on the Lands within the approved Project, the City initiated expropriation proceedings on the basis that the Claimant had failed to proceed with the Project. The City later purported to rely upon a plan to assemble the Claimant's lands with the City and YMCA lands to create a new whole block development and to transfer the lands to the University of Waterloo for their intended Institute. At present, the City has transferred to the University only 1.3 acres of the Disputed Lands, none of the Expropriated Lands, and the City has no plan for re-development.

11. The Claimant was the owner of the Expropriated Lands from December 19, 2001 through to the expropriation on June 15, 2009, and also claims through its predecessors in title, 1101644 Ontario Limited (110) and 1221025 Ontario Limited (122), who initiated the Project. Lawrence Ryan is the president of 135, and was retained as the project manager for 110 and 122 based upon his knowledge and experience as a contractor in the construction industry. Mr. Ryan entered into a contract with 110 and its principal, Ray Jacobs, on April 5, 1996 as project manager at the rate of $10,000 per month, and a lump sum of $750,000 payable upon construction of the Stratford Resort and Spa. In or about September 24, 1999, Mr. Ryan acquired the controlling shares in 110 and 122.

12. The City's expropriation is the culmination of a lengthy pattern and campaign from approximately 1996 through to the expropriation in 2009, of City interference, with efforts by the Claimant and its predecessors in title to restore and renovate the buildings on the Expropriated Lands to accommodate an adaptive reuse with a broad range of commercial and residential uses, including

a hotel and conference facility, along with associated commercial uses initially described as the Stratford Resort and Spa (the "Project"). The Project was approved by the City in 1995 and confirmed through the issuance of two building permits in March and April 1996 for the Project. The Project included use of both the Expropriated and Disputed Lands.

13. Since 1988, the Lands have been zoned for Mixed Use Development (C3-4), and the highest and best use thereof permits a broad range of residential and non-residential uses, including hotel, inn, auditorium, apartment, bus station, church, private club, restaurant, amusement park, theatre, retail, school, fitness club, recreational entertainment establishment, warehouse, industrial and public uses. The 1988 re-zoning was approved with the provision that the railway heritage buildings ("Shops") would be restored first to incorporate a rail heritage theme.

14. Prior to and during the City's ownership and occupation of the Lands from 1992 to 1995, the City promoted the highest and best use of the Lands to include redevelopment of the lands as part of the whole City Block of 18 acres with a rail heritage theme comprising multiple uses and with the use of the existing heritage buildings on the Expropriated Lands.

15. In an effort to encourage the adaptive re-use of Lands and to spur downtown economic activity in the Downtown core, from approximately 1992 the City commenced remediation of the lands and buildings and marketed the Lands as a heritage themed site for mix-used development. The City terms of Reference provided that:

"Since the entire property is one of heritage value and represents the very reason for Stratford's existence as a City ... Every effort is to be made to incorporate a 'theme' (e.g. railway turntable, locomotive, possible museum facility or local historical attraction.)"

No re-zoning of the Lands was required to accommodate the Project uses.

16. The Project included:

a) the exchange of lands owned by the YMCA (Parts 5, 6, 7 for Parts 10,11);

b) co-ordination of traffic routes with driveway easements for the YMCA, City and 110;

c) agreement by the predecessors in title not to lien for the costs to remove the girder cranes and other City assets from the Shops to accommodate the adaptive reuse thereof;

d) surface parking for 867 vehicles, including a new tiered parking structure on the Disputed Lands and additional surface parking to be made available with the removal of the annex, former offices, tube shop, ash pan shop and three out buildings and 132 feet of the east end of the main shops on the Expropriated Lands;

e) historical access from St. Patrick St. and Downie Street, and frontage on St. Patrick Street, Downie Street and Cooper Street, with visual frontage along St. David Street;

f) adaptive reuse of the remaining main heritage shops to include a 260 room hotel, a conference centre, spa, heritage cityscape atrium, soundstage dinner theatre, office space, retail space,

g) events space, restaurants, a Pub, and Fitness Centre.

THE FEASIBILITY OF THE PROJECT

17. Commencing in or about 1995, the Claimant and the predecessor owners of the Expropriated Lands retained various professionals including architects, engineers, designers, financial consultants, marketers, lawyers, accountants and operation managers to renovate and restore the buildings and prepare construction drawings for the Project, whose services now represent costs thrown away for which compensation is claimed as either disturbance damages and / or business losses.

18. Tenants were secured. In addition, interest from numerous prospective tenants was expressed, including brand name tier one tenants. The campaign of interference by the City as described in detail below prevented the Claimant from entering into leases.

19. Following the City's failure to provide a Phase III Environmental Report, as required pursuant to the Sale Agreements as described below, and refusal to

transfer the Disputed Lands and numerous other interferences as described in detail below, the Claimant and the predecessor owners attempted to mitigate losses through interim uses; including, but not limited to, storage, filming / photo shoots, paid parking, country market, events, industrial uses (equipment repair / pallet repair), paintball, army manoeuvres and trading space for property maintenance and repair, which efforts were blocked by the City.

20. The Project commenced in 1995, but shortly after issuing the initial building permits, in March and April 1996, thereby confirming the Project could continue, the City continually interfered with and blocked all progress of the Project and use of the Lands, to reserve the Lands for its own uses (the "Scheme"), including what has now become the University of Waterloo Stratford Campus on a small portion of the Disputed Lands, thereby usurping the Claimant's Project.

21. As a result of the City's interference, effective use of the site was lost and continued to be lost until the eventual expropriation. As such, the Claimant claims delay, disturbance and business losses from late 1996. Due to this campaign of City interference as described in detail below, the Claimant and its predecessors in title were never in a position to complete the Project, spent millions of dollars in costs thrown away and suffered severe business losses for which the Claimant should be fully indemnified.

22. The market value of the Expropriated Lands must be valued on an objective basis with all the attributes and potentialities of this unique property, including:

    a) a central location in the heart of downtown Stratford;

b) being located in the only parcel of 14-18 acres in the Downtown core that was suitable for development as a block, and in 1995 was sold by the City for that purpose;

c) strong heritage / tourist interest in the former railway use;

d) an existing tourist population in excess of approximately 500,000 persons per year;

e) a superstructure capable of carrying 200 ton railway engines along its length, with a 200,000 square foot floor plate providing approximately 9 million cubic feet of space, with a replacement value of $18 million, and a contributory value / equity of $10 million;

f) a floor to roof clear span up to 65 feet that can accommodate adaptive re-use, including installation of towers;

g) a 40-foot wide mezzanine along the north side of the shops (760 feet long), 20 feet above grade, creating the ideal space for a heritage street scape;

h) a roof with capabilities for adaptation for solar and green technologies;

i) operational services for water, sewer, hydro and natural gas;

j) fully operational standpipe (fire hose) system and sprinkler system;

k) fully operational stormwater system;

l) substantial existing parking with sufficient land base for additional parking to meet municipal parking requirements;

m) road dedication as part of the approved Project, the City provided for an 8 foot road widening along the St. Patrick Street and Downie Street frontage to accommodate any potential increased traffic as a result of the Project and the City's soon to be built Downie St. parking lot, thereby precluding any requirement for a road dedication;

n) mature landscaping with a park setting on the east end of the Expropriated Lands;

o) adjacent to municipal parking lot(s) (the Downie St. Parking Lot and, the Disputed Lands (the northern part of the St. Patrick St. Parking Lot));

p) a number of floors could be readily installed within the superstructure;

q) the Expropriated Lands had in place foundations and concrete floors covering 100,000 sq/ft from removed structures upon which buildings could be constructed without further council approval;

r) the Lands are the only lands within the City limits with an exemption for towers capable of occupancy;

s) these Expropriated Lands have the right to compensation for the loss / replacement of the spur line measured by the costs to have the City

replace the removed sections of its rail spur line to make the rail spur operational;

t) the Expropriated Lands had good frontage on several roads and / or as of right easements for access and servicing from St. Patrick Street and other City roadways;

u) the Expropriated Lands could be cost effectively remediated through risk assessment for residential / parkland or commercial / industrial uses, as permitted by the zoning, and did not require a Record of Site Condition as at the date of expropriation;

v) any owner of the Expropriated Lands could, if required, recoup remediation costs through the City's Brownfield Community Improvement Plan, which provided tax incremental financing incentives, and other Brownfield remediation incentive programs;

w) the owner of the Expropriated Lands could, if required, also recoup remediation costs from abutting landowners, including the City and Festival Hydro, whose lands caused or contributed to environmental contamination of the expropriated Lands and who provided their undertaking to the Claimant and MOE in this regard, and became obligated pursuant to the sale agreements and environmental laws;

x) an aquifer providing a private source of water for drinking and ground source heating and cooling;

y) a private well and capabilities for additional wells;

z) a railway spur line;

aa) a railway turntable; and

bb) an artesian well and road frontage on all sides.

23. The Claimant states that pursuant to s. 14(4)(b) of the *Act*, the determination of fair market value herein must be assessed absent the Scheme which includes the lengthy campaign of municipal and related agency powers initiated by the City and aimed at the Claimant and its predecessor in title, interfering with the Project and restricting the restoration and use of the Expropriated Lands or completion of the approved Project with a view to acquiring the Expropriated Lands for its own use at less than market value.

24. Following from this campaign of interference, on December 8, 2008, the City passed a resolution without notice authorizing the expropriation which stated the purpose for the expropriation was that,

> "*by restrictive covenant and a development agreement with 1101644 Ontario Limited the City anticipated the development of the Lands .... such development has not occurred and the site remains undeveloped with existing structures .....in a state of ongoing deterioration and Council of the City of Stratford deems it necessary and in the public interest to reacquire the lands*".

25. Following an objection from the Claimant to the Superior Court of Justice in Action No. 02-726, the City, on December 15, 2008, expanded their stated purpose for the expropriation to be *"for municipal / public purposes including but not limited to economic development".*

26. On December 24, 2008, the Claimant wrote a letter to the Honourable Justice Heeney of the Superior Court of Justice and provided a copy to the City setting out status of the Project, including:

a) Negotiations with prospective tenants/lessees by DTZ Barnicke of London, ON;

b) Arrangements with Sotheby's International Realty to sell a portion of the project as condominiums, which was to generate over $4 million net capital immediately and a yearly income of several hundred thousand;

c) The preparation of reports by Morrison Hershfield regarding the repair of the Tube Shop;

d) The commencement of work by Rosati Construction and its preparation for the completion of tenant improvements;

e) The organization of a condominium application by the Claimant's lawyer, Peter Quigley;

f) Arrangements with Interstate Hotel regarding the Management of the Hotel of the Project; and

g) The preparation of architectural drawings for the construction of a hotel and for renovations of the floor space for tenant improvements.

27. Still later, Ron Shaw, Chief Administrative Officer for the City stated in his affidavit sworn February 13, 2009 in opposition to the Claimant's motion to prevent the expropriation on the basis of municipal bad faith:

a) "the City takes an active role in heritage conservation in the Downtown Core";

b) "the St. Patrick St. Parking Lot and the Cooper Site combined offer the ideal and optimal location for the University Campus";

c) "The St. Patrick St. parking lot consists of parts 3, 4, 5, 10, 11, 12, 14 and 15";

d) "... it is the only single site of sufficient size in the Downtown core that can accommodate UW's needs";

e) "the university Campus is projected to generate ... a total estimated economic benefit of $42.9 million dollars annually"; and

f) "It is the City's intention, once the Cooper Site is acquired ... to transfer lands to the University."

28. Mr. Shaw's affidavit and the study by Deloitte & Touche LLP confirmed the University campus was "The Stratford Institute".

29. In part, as a result of these statements regarding the City's intentions, the Claimant withdrew his motion to oppose the expropriation.

30. The City, however, has only transferred 1.3 acres, half of the Disputed Lands for the University of Waterloo Stratford Campus (the "Stratford Campus"), which no longer includes the Stratford Institute, which now is a non-share capital corporation whose registered directors are Mayor Dan Mathieson, Ken Coates and Eugene Roman. To date, the agreement by the City with the University is that at any time during the next 20 years, the University can, without penalty, walk away from the University Campus upon transferring the same lands back to the City.

31. To date, the City has no current plan for a public economic development use for the expropriated site, and is considering demolishing the buildings thus failing to maintain the heritage features of the Cooper Site while the University of Waterloo has no plans for the expropriated Lands nor the other half of the Expropriated Lands and is not the owner of the Stratford Institute.

32. Further, absent a Community Improvement Plan passed pursuant to s. 28 of the *Planning Act* prior to the expropriation, which the City did not do with respect to the Expropriated Lands or any part of the Cooper Site, the City lacks authority to use or transfer the lands for a private use or to transfer the Lands to a private developer.

33. As a result of the extensive campaign of interference conducted by the City for many years, as further detailed herein, the City has cast a shadow over the

value, attributes and potential of the Expropriated Lands, historical railway buildings thereon, and the Project, by reason of which the Claimant should be indemnified for the losses, disturbance, delays and damages it has suffered. Pursuant to s. 14(4)(b) of the *Act*, the Scheme, including the campaign of interference described below, including the shadow effect, must be ignored in determining market value.

BACKGROUND

DESCRIPTION OF THE LANDS

34. The Lands are municipally known as 105 St. Patrick Street, Stratford, Ontario and comprise approximately 14 acres of land, forming the largest part of what is commonly referred to today as the Cooper Site in Stratford, Ontario.

35. In total, the Cooper Site consists of approximately 18.4 acres of land located in downtown Stratford. A plan of the Cooper Site and Lands is appended as Schedule "D" depicting the relevant parcels.

36. The Expropriated Lands are an 11.421 acre portion of the Cooper Site upon which the remaining Grand Trunk Railroad ("GTR") repair shop buildings are located. These buildings are unique in size, of significant historical and heritage value and date from 1882, 1888, 1904, 1907, and 1949.

37. The Disputed Lands are a 2.75 acre portion of the Cooper site that includes a parking lot that fronts onto St. Patrick St. ("St. Patrick St. Lot"), some lands of the Stratford-Perth YMCA ("YMCA Site") abutting the site, and a right-of-way for access from Downie Street, also abutting the YMCA site.

38. The Cooper Site also includes a 2.54 acre parking lot fronting onto Downie Street built by the City in 1998 ("Downie St. Lot") to replace the Disputed Lands parking spaces, pursuant to the contractual obligations between the City and purchaser in the City's terms of sale.

39. The Cooper Site also included the 1.24 acres belonging to the YMCA, part of which is included in the Disputed Lands (parts 5, 6, 7) as stated above and driveway easements for the City, 110 and the YMCA.

40. The Expropriated Lands are unique in that they are the only contiguous lands of such size and significance located within Stratford's downtown core.

41. Since 1988, the Expropriated Lands have had special site specific zoning of C3-4 (Mixed Use Development), which permits a broad range of residential and non-residential uses, including hotel, inn, auditorium, apartment, bus station, church, private club, restaurant, amusement park, theatre, retail, school, fitness club, recreational entertainment establishment, warehouse, industrial and public uses.

THE COOPER SITE

42. The name "Cooper Site" references the ownership and use of approximately 17 acres of the 18.4 acre site by Cooper-Bessemer of Canada Limited ("Cooper-Bessemer") during the period from 1964 to 1988 for turbine manufacturing. However, the Cooper Site had a much earlier role in Stratford life as the site of the GTR (and later CN Rail) repair shops.

THE RAILWAY REPAIR SHOPS (1870-1964)

43. The Cooper Site was first assembled as a contiguous land holding by the GTR in 1880.

44. The GTR had established a railway line through Stratford by 1856 and by 1870, due to the railway's continued expansion, needed new repair shop facilities to be located somewhere in south western Ontario.

45. In 1880, the GTR expanded its contiguous land holdings in Stratford to include all 18.4 acres of the Cooper Site, thereby setting the stage for further expansions of the railway repair shops which occurred in 1882, 1888, 1904, 1907, and 1949, which created the largest railway site in Canada.

46. The main repair shop buildings were designed and built as girder crane runs. Three of the buildings were interconnected and were up to 800 feet long, creating a total building area of around 200,000 square feet, which was structurally sound at the effective date. The building has a height of 67 feet containing approximately 9 million cubic feet of space.

47. These superstructures were constructed out of riveted heavy steel and were designed to support the lifting of locomotives weighing up to 200 tons by the girder cranes travelling the length of the shops.

48. These superstructures were also constructed in such a way as to be suitable for adaptive reuse, utilizing original design features which today are commonly referred to as green building technologies and strategies. These features include:

a) the existing structures, parking and landscaping on the Lands represents and house "immense embodied energy", including the use of reclaimed and reusable materials from the site, such as timbers, brick, concrete and windows;

b) south facing buildings which can be modified to incorporate solar wall technology;

c) 70% of the exterior shell of the main buildings has operational sky lighting and windows, which provides for day lighting and natural ventilation;

d) an elaborate steam heating system, both above ground and below ground;

e) a cooler system which can be converted to operate as a snow melting machine to capture and reuse snowfall for watering internal gardens;

f) a superstructure capable of accommodating a green roof and a solar roof;

g) chimneys;

h) interior pits, which could be converted into gardens;

i) private 6" well with rights to drill additional wells of larger diameter;

j) aquifer, which provides for ground source heating and cooling;

k) artesian well;

l) a 50 foot high steel muffler that could be converted to a fuel tank or water tank;

m) interior open space which permits for easy change in use;

n) sufficient height to leverage generation of wind power;

o) roof drainage system for easy capture of storm water for use for watering gardens and grounds, and

p) railway locomotive turntable, which was to be used in part for hydro generation and a platform for various events while all the time fully restored for original use.

49. All of the above could be utilized in obtaining a LEED certified project.

50. A further financial benefit of the Green Technology is increased accessibility to government grants and financing.

51. At the date of transfer on June 15, 2009, the following historical GTR repair shop buildings were still present at Ryan's Railway Center, totalling approximately 200,000 square feet:

a) 1888 tube shop with 1,344 m^2 (14,467 sq. ft.);

b) 1907-1909 machine and boiler shop with 4,716 m^2 (50,763 sq. ft.);

c) 1907-1909 erecting shop with 5,078 m^2 (54,659 sq. ft.);

d) 1907-1909 tooling shop with 2,289 m^2 (24,639 sq. ft.);

e) 1907-1909 mezzanine level with 3,035 m^2 (32,668 sq. ft.);

f) 1949 annex building with 2,712 m^2 (29,192 sq. ft.);

g) 1949 annex washroom building with 212 m^2 (2,282 sq. ft.);

h) undated concrete washroom / hospital building (1,200 sq. ft.);

i) undated steel shed (900 sq. ft.);

j) undated garbage shed (300 sq. ft.), and

k) foundations and concrete floor slabs for another 100,000 sq. ft. from several buildings removed prior to and after the City selling the Expropriated Lands in 1995.

52. Until October 11, 2003, the buildings also included the 1904 tender shop building with 3,033 m^2 (32,647 sq. ft.) and the sandblasting shop with 160 m^2 (1,722 sq. ft.). However, these buildings were damaged by a fire on October 11, 2003, following which the City's Chief Building Official ("CBO") ordered their demolition. Although not damaged by the fire, 3 former 1882 office buildings with (18,000 sq/ft) were also identified by the CBO to be demolished. All five buildings were removed down to their foundations, leaving the foundations and concrete floor slabs intact.

CITY OF STRATFORD OWNERSHIP (OCTOBER 16, 1991)

Cooper Development Committee (1991)

53. In late-1991, the City purchased the Cooper Site and formed the "Cooper Development Committee" to market the site to prospective developers.

54. The general concept plan advanced by the Cooper Development Committee in 1992 involved mixed commercial, residential, tourism and industrial related uses. The City requested to have incorporated a rail heritage theme, stating the entire property is one of heritage value and if phased, the first phase should incorporate the existing buildings. Consideration was to be given for inclusion of municipal uses into the redevelopment, such as relocating the transit terminal from Market Square to the Cooper Site in order to support the establishment of a pedestrian zone in the Market Square area.

55. In 1992, in an effort to facilitate the sale of the Cooper Site lands, the City remediated the Lands. The City completed Phase I and Phase II ESA Reports The Phase II ESA Reports identified various remediation activities carried out by the City on the Lands and buildings, including the removal of asbestos and several hundred tonnes of contaminated soil. The removed soil was replaced with clean fill.

56. The City continued remediating the Lands up to and beyond its agreement to sell part of the Cooper Site in 1995, which actions and agreements contractually obligated the City to provide a Phase III ESA Report, verifying completion of a satisfactory site decommissioning / cleanup under the applicable environmental legislation.

The McLellan Group Agreement

57. In the Summer of 1995, The City began negotiations in earnest with a group brought together by Archie McLellan ("McLellan Group").

58. The McLellan Group determined to proceed with the purchase and adaptively reuse the Cooper Site after receiving written confirmation on June 15, 1995 from David Hunt (then Mayor of Stratford), which stated:

> The City of Stratford is prepared to sell city owned land known as the Cooper Property to your group for one dollar ($1.00) for the erection of a hotel / convention centre complex.

59. On November 17, 1995, Stratford City Council passed a resolution, which stated in part:

> That the City agrees, in principle, to a transfer of title to the Developer as soon as possible after appraisals for the property are received subject to:
>
> a) Agreement on the purchase price and other terms of sale
>
> ...
>
> c) The Developer agreeing that before a building permit can be issued, a site plan and development agreement must be entered into by the City and Developer dealing with the City's servicing and other concerns.

60. To authorize the Project and transfer of the Lands, City Council passed Resolution 95-601 on November 27, 1995 declaring the 14 acres constituting the Lands surplus to the City's requirements. The City proposed to:

a) retain only the 2.54 acre Downie St. land so they could construct a parking lot to replace the lost parking spaces from the St. Patrick St. parking lot being sold to the McLellan Group; and

b) an exchange of lands with the YMCA to accommodate the approved parking layout and driveways.

61. On November 27, 1995, City Council passed a resolution declaring "the 'Cooper Site' surplus to the needs of the Corporation..."

62. On November 27, 1995, Ray Jacobs of the McLellan Group paid the City a $100,000 deposit to secure the purchase and permit site work to start immediately for the approved adaptive reuse Project. Workforces mobilized immediately and, with City consent and approval, started site work on December 4, 1995, prior to formal sale documents being drafted, approved and executed by Council.

63. After site work started, the City and the McLellan Group, acting through a numbered company, 1142063 Ontario Inc. ("114"), finalized and executed an agreement of purchase and sale, with an anticipated transfer date of December 15, 1995 ("McLellan Agreement"). The Sale Agreements were based on the approved Site Plan.

64. The McLellan Agreement, in effect, implemented the City's offer to sell 14 acres of the Cooper Site to the McLellan Group for $1.00. The key provisions were as follows:

a) the City would transfer a total of 14 acres of land to the McLellan Group (specifically the entirety of the Lands both Disputed and Expropriated); and

b) the purchase price for the Lands would be $1 million. However, the agreed upon net cost to the McLellan Group was still to be only nominal (*i.e.*, $1.00), as the deal was structured so that the entire purchase price was to be recouped through the removal of and sale of girder cranes and other assets located within the main buildings and annex.

65. On December 11, 1995, the City passed a series of By-laws formally authorizing the sale to the McLellan Group.

66. A new reference plan (Plan 44R-3154) was drawn up on or about December 15, 1995 and deposited on title on or about December 18, 1995 in order to give effect to the sale and the adaptive reuse Project set out in the McLellan Agreement.

67. To give further effect to the Project, the City registered on title those parts of the sale agreement that provided the City with the right to widen St. Patrick St. and Downie St. to accommodate any possible increase in traffic as a result of the Project and the City's soon to be built Downie St. Parking Lot.

68. The transfer date was extended with the City's consent first to December 18, 1995, then to December 22, 1995, then again to December 29, 1995, and once

more to January 15, 1996 during which time site work for the Project was ongoing.

69. The McLellan Group requested on or about January 8, 1996, that the City agree to a modification of the sale structure which would have enabled the transfer without the need for bridge financing.

70. The City initially rejected this approach and advised that the Project would be terminated if the $1 million was not paid on January 15, 1996.

71. Between January 11 and 15, 1996, the City altered its position and indicated a willingness to vary the agreements to create a two-phased transfer of the Lands with payments also phased. The City would, in consideration of the payment of $500,000.00, convey the Expropriated Lands and the Downie St. parcel (part 15). Transfer of this property would be on January 22, 1996. At the same time, the City would enter into a second sale agreement selling the St. Patrick St. parking Lot (Disputed Lands) for a further sum of $500,000.00 and the return of the Downie St. parcel to the City, which the City required to build their replacement lot. Transfer of the St. Patrick St. Parking Lot would occur upon issuance of a building permit for the approved Project, with no specific date set for the payment of the $500,000.

72. The agreed upon net cost to the McLellan Group continued to be only nominal (*i.e.*, $1.00), as the deal was still structured such that the entire purchase agreement price was to be recouped through the removal of and sale of girder cranes and other assets. The revised agreements permitted:

a) the City to use the existing parking spaces on St. Patrick St. until the City built their parking lot on Downie St.;

b) the City to stage the construction of the Downie St. parking lot until after the City issued a building permit for the approved Project; and

c) reduction in the amount of bridge financing required by the purchasers.

73. On or about January 16, 1996, the City provided the McLellan Group with revised agreements of purchase and sale, reflecting the City's proposed revisions, proposing a date of January 22, 1996 for the transfer of 14 acres with the Downie parcel. The transfer of the St. Patrick St. Parking Lot and return of the Downie Parcel Part 15, would follow the issuance of a building permit.

Substitution of 1101644 Ontario Limited (February 15, 1996)

74. On or about January 22, 1996, Ray Jacobs of the McLellan Group responded to the City's proposed revisions with a counteroffer, accepting the two-stage approach but proposed the following:

a) payment of $250,000 with immediate title transfer to 1101644 Ontario Limited of the Expropriated Lands; and

b) payment of $750,000 for the Disputed Lands to be paid as follows:

i) immediate payment of $100,000 cash;

ii) agreement not to lien for the costs incurred for the removal work to date (over $400,000); and

iii) the balance of approximately $250,000 to be paid from the further costs of removal and sale of assets.

75. The City agreed to these terms with the understanding that the transfer of the Disputed Lands would take place after the City built their replacement parking lot on Downie St. (part 15).

76. The City also insisted that the cranes and other assets being relied upon to pay for the Disputed Lands would be formally identified in the first Building Permit as City assets, with the City controlling the sale of those assets. The City was to provide a full accounting upon the completion of the sale of assets with any overpayment belonging to 110. If there was a shortfall, the City would at best have a money claim for the shortfall. As such, the sale documents included the terms of the first Building Permit.

77. The agreed upon net result and cost to 1101644 Ontario Limited was, as per the earlier agreement with the McLellan Group, only nominal (*i.e.*, $1.00), as the sale was still structured such that the entire purchase price for the Lands was to be recouped through the removal of and sale of the girder cranes and other assets to be removed from the buildings.

78. The City benefitted from these revised terms of sale with an immediate payment of $350,000 cash and avoided the risk of losing the lands or sale of the Lands in a lien action or having to pay cash for the cost of removal work to-date of approximately $400,000. The City also continued to retain the right to use the St.

Patrick St. parking lot until the City built its new parking lot on Downie St. (part 15).

79. On or about February 19, 1996, the sale documents were rewritten by the City between the City and 1101644 Ontario Limited ("110"), reflecting these new terms and contractual obligations of all 4 parties to the Project (the City, 110, the YMCA and Mikes Mobile Crane Service with its pending lien claim).

80. The City transferred the Expropriated Lands on February 23, 1996 to 110 in keeping with these new terms.

81. On March 11, 1996, the City issued the first Building Permit 96-65, which specified the payment arrangements for the Disputed Lands. The approved site plan was a critical component of this Building Permit. The Building Permit resulted from the approved site plan, that set out the required parking spaces and arrangement of those spaces of the three landowners (City / 110 / YMCA) to the sale, confirming the Disputed Lands were required for the Project, as the layout was based on the municipal parking requirements for the Project.

82. In April 1996, the City issued the second Building Permit dealing with removal of some of the crane girders within the buildings.

GENESIS OF THE EXPROPRIATION SCHEME

83. The expropriation scheme traces its origins to the Community Vision called Stratford Beyond.

84. From 1996, the City prepared a long-term vision document entitled *Stratford Beyond – A Community Vision for the 21st Century* ("Stratford Beyond"). In Stratford Beyond, released to the public in 1997, the City identified the following priorities and recommended actions:

> ***Priority***
>
> *A high tech distance education arts studio that utilizes the knowledge and abilities of master teachers and technicians in multi-media production facilities.*
>
> ***Do Now***
>
> *Arts-oriented satellite university and community college campuses on-site and via the Internet.*
>
> ***Champions***
>
> *Festival Executive, City Council, Perth Education Foundation, Boards of Education, local arts groups and media such as CJCS and TVO.*
>
> ***Priority***
>
> *An on-site world class studio/training centre/gallery for the arts, which attracts more than 1,000 students per year.*
>
> ***Do Now***
>
> *A powerful group of leaders in the arts to promote, develop, and coordinate the creation of the studio and training centre.*
>
> ***Champions***
>
> Economic Development Program and local arts reps

85. Since at least 1997, City leaders and affiliates have liaised with other leaders in government, educational institutions, and the private sector to secure public funding and partnership commitments for a Stratford campus initiative.

86. The City determined that the Stratford campus should be located in Stratford's downtown core.

87. Only the Lands offered all the features desired by the City.

CITY RESERVES LANDS THROUGH INTERFERENCE WITH THE APPROVED PROJECT

88. From in or about 1996, the City initiated steps to interfere with the use of and prevent any restoration work on the Lands with the result that the Lands were reserved to be available for the City's own use.

89. In 2006, the City made known its interest in locating the University's Institute on the Lands.

90. The City's interference has frustrated the Claimant's Project and use of Lands, as well as those of its predecessors in title, casting a shadow over the value to the Expropriated Lands, and has resulted in significant costs thrown away, substantial business losses and financial hardship to the Claimant and its principal, Lawrence Ryan.

91. In 1996 when the City transferred the Expropriated Lands to 110, it was understood and agreed by the City that the Expropriated and Disputed Lands would subsequently be merged, without which the Project as approved could not be built given the requirement for approximately 1,200 parking spaces, including those of the YMCA and the City.

92. 110 exercised the option to purchase the Disputed Lands under the Option Agreement. It paid $100,000 to the City on account of the option exercise, and the City issued the necessary Building Permit, confirming the Project had proceeded.

93. The balance of the option price of $650,000 was to be paid through removal and sale of the girder cranes, rails, equipment, permit deposits and other metals, as set out in the sales documents and Building Permit 96-65.

94. Contrary to the terms of the sale agreements with 110 and the understandings of the parties, the City improvidently sold the cranes for less than the price of scrap metal, although 110 had spent more than $400,000 on the removal of the cranes.

95. The City refused to provide a full accounting or offer any explanation for its actions in respect of the cranes, which had a replacement value well in excess of the option price. The City's lawyer, Mr. Skinner, indicated in a letter dated January 28, 1998 that the City had sold the cranes for what he characterized as "scrap value" and was said to have collected only $5,100.

96. In addition to refusing to recognize that the option had been validly exercised, the City also refused to account for the $100,000 deposit received by it and to fully account for the proceeds of sale of the cranes, rails, equipment, permit deposits and other metals removed from the buildings, or the cost of their removal, which exceeded $400,000.

97. The Claimant states that 110 validly exercised the option in 1996 and thereafter became the legal owner of the Disputed Lands. The City, however, has refused to recognize the valid exercise of the option and to comply with its obligations to transfer the Disputed Lands under the terms of the Option Agreement and other sale documents.

98. The Claimant states that the City transferred the Expropriated Lands to include the redevelopment of both the Expropriated and Disputed Lands as part of an 18 acre block development, preserving historical access from St. Patrick St. and Downie Street, with frontage on St. Patrick Street, Downie Street and Cooper Street, visual frontage along St. David Street, a multi-use rail heritage theme and the use of the existing heritage buildings on the Lands. The Claimant further states that restrictive covenants, that were part of the sale agreements, included the Disputed Lands.

City Refuses to Deliver Phase III Report (1996-Present)

99. The Agreement of Purchase and Sale with 110 approved and executed by David Hunt (then Mayor of Stratford) stated "the purchaser acknowledges receipt of the Phase I, Phase II and Phase III environmental reports prepared by Burnside Environmental with respect to the lands being conveyed..." which includes the Disputed Lands.

100. At the time of transfer of the Expropriated Lands, the Phase III report had not been delivered.

101. Requests were made that the Phase III report be provided in compliance with the sale agreements with 110. The Phase III report reference was intended to, and did represent, completion of a satisfactory decommissioning / site cleanup to the MOE requirements at that time for any of the intended uses.

102. In response to these requests, the City, through CAO Ron Shaw, and legal counsel, John Skinner, first claimed the Phase III report was given to Mr. Jacobs. Upon further demands for the report, the City much later admitted they never completed the Phase III Report.

103. In part, as a consequence of the City's interference with the Project and failure or refusal to carry out its obligations, 110 defaulted on its loan obligations and its interest in the Lands was sold to 1221025 Ontario Limited ("122") on February 25, 1997 pursuant to power of sale proceedings.

1221025 Ontario Limited Ownership (Feb. 25, 1997 - Dec. 19, 2001)

104. Following 110's default on its loan obligations and discussions with David Hunt (then Mayor), 122 purchased the Lands by Power of Sale, and continued on with the Project.

105. As the approved Project was contingent on the inclusion of the Disputed Lands, the removal of the annex, former offices, tube shop, the ash pan shop and three out buildings, plus 132 feet of the east end of the main shops was put on hold while efforts focused on finalizing the transfer of the Disputed lands and obtaining the Phase III report.

106. In March 1997, David Hunt (Mayor), on behalf of the City, agreed to rent the St. Patrick St. Parking lot from 122 for pubic skateboarding and parking. It was agreed that the rent would offset the property tax, requiring neither party to issue monthly payments, but rather a final accounting when the rental period was over.

107. The City in October 1997 offered to resolve the Phase III ESA Report issue by way of their undertaking to satisfy whatever requirements the MOE might have.

108. 122 accepted the City's environmental undertaking on the understanding that if any further environmental cleanup was required, the liability would rest with the City, and any agreement reached between the MOE and the City be provided to the Claimant and be registered on title, as this would be considered part of their Phase III obligation.

109. The City eventually entered into an agreement and / or undertaking with the MOE, but refused to provide a copy to the Claimant or register a copy on title.

City Interferes with Leasing Opportunities

110. To mitigate ongoing business losses and damages arising from the City's refusal and failure to carry out their obligations and campaign of interference, 122 sought to enter into short-term leases for indoor storage space as an interim source of revenue until the City interference was at an end.

111. When the City determined that 122 was seeking to enter into such leases, it sought to interfere with leasing opportunities claiming that storage was not an approved use, pursuant to the sale terms with 110. Although the City lacks

authority to prohibit existing uses, they continuously interfered with tenants and proposed tenants, making it impossible to generate income.

112. The Claimant states that the City's interference with leasing opportunities was intended to, and did in fact, frustrate and delay 122's ability to mitigate their losses.

City Refuses to provide Final Accounting as required by Sale Agreements and Building Permit 96-65

113. During 1997, Ray Jacobs and Lawrence Ryan requested the City carry out its obligations with respect to accounting for City assets being removed from the buildings, pursuant to the Sale Agreements and Building Permit 96-65.

114. The City refused and to date has never provided a full accounting or recognized the credits to be applied against the Option Price, which ought to have paid fully for the Disputed Lands, including but not limited to the cash payment of $100,000, costs of removal (worth approximately $400,000), fair market value of cranes, girders, equipment and other assets worth more than the Option Price.

115. The City claimed it sold some of the cranes for $5,100, collected partial payment of approximately $11,000 from the sale of scrap metals, and insisted it had no further obligations.

116. The City's refusal to provide a full accounting and to preserve the equity in assets removed from the buildings has frustrated the Claimant's use of lands and restoration efforts for the adaptive re-use Project, including those of its

predecessors in title, resulting in significant business losses and hardship to the Claimant.

City Removes Spur line (May 27, 1998)

117. The City sought to further restrict uses and limit access to the Lands by removing that part of the Claimant's railroad spur line crossing Downie St. and part 15, which connected the Lands to the adjacent rail networks. The removal work was carried out in a way that left the remainder of the spur line damaged and of no use.

118. Without notice or lawful authority, the City carried out the rail spur line removals on May 27, 1998. The City later advised that the rails were sold to help pay for the Downie St. replacement parking lot built by the City.

119. The City's removal of these sections of rail spur line compromised the approved Project and negatively impacted 122's ability to mitigate its losses during the delays occasioned by the City's interference with the Project. The removal of the rail spur line also limited potential future income, as access to the Lands was no longer available by rail.

120. The City's construction of the Downie St. Lot was the City's obligation, as set out in the sale terms with 110, that triggered their further obligation to transfer the Disputed Lands, which transfer they refused to carry out.

121. In late 1997, following discussion with Dave Hunt (Mayor at that time), 122 presented to Council a rendering of the site utilizing the Lands, including the

Downie St. parcel for the Project. This rendering incorporated towers, providing a possible interim solution to the City's refusal to transfer the Disputed Lands, refusal to provide the Phase III report and the resulting increased costs and losses being suffered. The shops / annex would provide indoor parking and multi-use space. Towers would sit above the shops / annex for the hotel, offices and residential. The Project would be phased with the shops being the first phase.

City Attempts to Downzone Lands to Prohibit Proposed Towers

122. In October 1999, the City took steps without any notice to 122 to downzone the Lands by deleting the right to the proposed towers which covered no more than 5% of the land or 10% of the existing roof as permitted by the Zoning By-Law.

123. In 2000, the City passed a new Zoning By-law 201-2000 ("By-law 201-2000"). By-law 201-2000, down zoned the Lands, such that the proposed towers would no longer be a permitted use in compliance with the Zoning By-Law.

124. In early 2001, 122 filed an appeal of By-law 201-2000 to the Ontario Municipal Board ("Tower Appeal").

125. The Tower Appeal was resolved at the opening of the hearing in February 2002, shortly after the Claimant became the registered owner following comments by the OMB that down zoning of the Lands was not legal. Accordingly, the City consented to reinstating the original wording of the By-Law which was being relied upon for the proposed towers to be built in compliance with the Zoning By-Law.

126. The Claimant states that the City's attempted down zoning with respect to the towers was intended to, and did in fact, frustrate and delay the Project.

127. Contrary to the settlement of the Tower Appeal, the City thereafter continued to take the position that the proposed towers were not in compliance with the Zoning By-law.

City Demands Site Plan Approval and Site Plan Agreement

128. As part of the City's campaign to frustrate and delay the approved Project and use of the Lands and existing buildings, the City demanded an application for site plan approval be submitted and approved by Council prior to any work on site or issuance of any further building permits.

129. As stated above, building permits were issued in 1996 based on an approved site plan. In any event, site plan approval is not required under the *Planning Act* to restore existing buildings or construct new buildings on existing foundations.

130. Site plan approval was granted prior to the issuance of the building permits in 1996, without any further matters which needed to be addressed by way of site plan agreement with respect to the approved Project.

131. In an attempt to mitigate or resolve this issue, in March 2001 122 filed a site plan application, without prejudice to argue, at the opening of the Hearing, that such an application or approval was not required.

132. The City refused to approve or properly process the site plan application. An appeal was filed with the Ontario Municipal Board ("Site Plan Appeal").

133. The Site Plan Appeal was resolved at the opening of the hearing in February 2003 on the basis that site plan approval was not required.

134. Following comments by the OMB that restoration / renovation of existing buildings does not require site plan approval under the *Planning Act*, the City stated they would not require site plan approval for work to take place on the existing buildings. On May 28, 2003, the City's Lawyer Josephine Matera stated in writing, "It has been brought to my attention by Ms. Dembek that you have interpreted the disposition of the Ontario Municipal Board at the hearing in February to confirm your entitlement to proceed with the renovation of the CNR Centre in accordance with by-law 111-2000 and the current zoning... this is fundamentally correct".

135. Since the Site Plan application included the Disputed Lands, the application was withdrawn without prejudice to bring it back, if necessary, after the ownership issue of the Disputed Lands was resolved. An order was issued accordingly. Although Mr Ryan insisted the OMB Order should note the full results of the Hearing, the Order did not state site plan approval was not required for the existing buildings, as the OMB stated this is the law and does not need to be stated.

136. The Claimant states that the City's demands for a site plan application for approval by Council was intended to, and did in fact, frustrate and delay 122's and the Claimant's Project and use of buildings.

137. Contrary to the settlement of the Site Plan Appeal, the City thereafter continued to take the position that site plan approval pursuant to the *Planning Act* was a requirement prior to use of the buildings or building permits being issued.

City Attempts Tax Sale of Lands

138. In September 1999, the City claimed years of outstanding property taxes gave them the right to sell the Lands unless the taxes were paid up.

139. As stated above, the taxes were paid by way of offset against monies owed by the City for the renting of the St. Patrick St. Parking Lot.

140. The City at this stage claimed they had not rented any land, even though:

a) the City's lawyer, Paul Parlee, prepared the rental agreement;

b) Mayor Hunt signed the rental agreement;

c) the signed agreement was provided to 122; and

d) the City used the rented lands.

141. The taxes claimed by the City were in error, as confirmed by the Assessment Review Board. The provincial assessment office had understood from the City that 17 acres, including the Disputed Lands, had been transferred, which recognized ownership of the Disputed Lands by 122.

142. To resolve this matter on an interim basis, the alleged taxes of $161,122.01 were paid to the City without prejudice and are now costs thrown away.

143. The Claimant states that the City's attempted sale of the Lands for unpaid taxes and refusal to correct the taxation of the Lands was intended to, and did in fact, frustrate and delay 122's and the Claimant's Project.

City Denies Electrical Service (2001-Present)

144. Since April 2001, the City and its officials wrongfully refused to reconnect permanent municipal hydro to the Lands following the preparation for the site removal work as called for by the purchase agreements and the issued building permits.

145. The denial of hydro was intended to and did in fact frustrate and delay 122's Project and use of the Lands and buildings.

City Campaigns against 122 through Building Department

146. In 2001, the City and City officials began using statutory enforcement powers to frustrate and delay 122's Project and efforts to use the Lands and buildings.

147. The City did not act reasonably in the exercise of their powers when they issued a series of unwarranted / unjustified and improper orders which either went too far or had no basis in fact to support them. These orders were issued under the *Building Code Act* against 122 and its principal, Lawrence Ryan, which were intended to, and did in fact, frustrate and delay 122's and the Claimant's Project and efforts to mitigate losses through interim uses.

148. At all material times, following the issuance of the first building permits, Chief Building Official David Carroll and others in the Building Department acting under

his direction, abused their authority under the *Building Code Act* and Building Code through the Orders they issued, refused to process building permit applications and conducted themselves contrary to their Code of Conduct.

City Blocks Accesses (Oct. 2001)

149. In October 2001, the City installed locks on various access gates to the Lands, including the ramp access fronting on St. Patrick St.

150. The Claimant states that the City's locking of gates, including the ramp access gate, was intended to, and did in fact, frustrate and delay 122's Project and use of lands.

City Charges Lawrence Ryan with Theft (Nov. 25, 2001)

151. The principal of 122, Lawrence Ryan, removed the locks and ramp access gate so as to regain access and prevent the City from relocking the ramp access gate.

152. The City contacted police and had Mr. Ryan charged with theft of the gate. The charges were later dropped by the Crown on or about July 22, 2002.

153. The Claimant states that the City's involvement of the police was intended to, and did in fact, frustrate Ryan and delay 122's Project and use of lands.

City Commences Court Proceedings Against 1221025 Ontario Limited claiming parking rights on the St Patrick St Parking lot (Dec. 11, 2001)

154. In December 2001, the City commenced a Court proceeding against 122 seeking:

a) a declaration that a Parking Agreement between the City and 110 was binding on 122; and

b) a declaration that 122 was bound to continue to allow free parking by the public on the Lands ("Parking Application").

155. The Parking Agreement relied upon by the City confirmed the Disputed Lands were to be transferred and thus owned by the Claimant.

156. After receiving a sworn affidavit from Lawrence Ryan in response to the City's application, the City abandoned their application.

157. The City's commencement of the Court proceeding was intended to, and did in fact, frustrate and delay 122's Project and confirms that the City acknowledged that the Disputed Lands were not owned by the City.

1353837 ONTARIO INC. OWNERSHIP

158. In part, as a consequence of the City's interference, 122 defaulted on its loan obligations. The Claimant, 1353837 Ontario Inc., was a creditor of 122 and commenced proceedings for foreclosure.

159. 122's interest in the Lands was acquired by the Claimant on December 19, 2001 through the foreclosure proceedings.

160. The Claimant continued the Project.

161. It was a condition of borrowing from its Lender, Republic Mortgage Corporation ("Republic"), who in turn pledged its charge over the Claimants lands as

collateral to St Willibord Credit Union (later to become Libro Credit Union) to provide evidence to show the environmental condition / status of the lands to their satisfaction.

162. In addition to providing this evidence, David Southen of Republic attended the MOE offices in London Ontario in July 2002 with Mr. Ryan to confirm the environmental status with the MOE.

163. The MOE confirmed they had read all of the environmental reports prepared by the City to date and had no outstanding orders, nor intended to issue any orders for removal of soil.

164. With the MOE's confirmation, as well as the written assurances provided to Mr. Ryan (122) from the City in October 1997 to deal with any MOE environmental requirements, both Republic and their lenders were sufficiently satisfied to advance funds.

165. When takeout financing was required, take out lenders were expected to subsequently require the same assurances with respect to the environmental status.

166. Following the advance of funds from Republic, the City publicly exaggerated claims of contamination creating a fear / concern / misconception with members of the general public, prospective tenants, potential lenders and, ultimately, Republic thereby casting a shadow over the property, its value and potential, limiting the borrowing power of the lands and interest from potential tenants.

167. The Claimant states that the City's failure and refusal to provide a Phase III report and subsequent exaggerations of the claims of environmental contaminations was intended to, and did in fact, delay the use of lands and the Project.

168. The Claimant states that, as a successor in title to 110, the extent of its legal interest in the Expropriated Lands and the environmental status and condition of the Expropriated Lands was adversely affected by the City's failure to provide a Phase III report to 110 in accordance with the terms of the Agreement of Purchase and Sale between 110 and the City.

City Commences Court Proceeding Claiming Ownership Of and Right to Restrict Access to the Disputed Lands by Claimant and Ryan (July, 2002)

169. In or about July 2002, the City blocked the historical accesses to the Expropriated Lands.

170. The City also commenced a Court action (Court file no. 02-726) against the Claimant and its principal, Lawrence Ryan, on July 15, 2002 seeking various relief, including:

a) a declaration that the City is the owner of the Disputed Lands, the Downie St. Lot, and a right of way over Part 16 on Reference Plan 44R-3154; and

b) an injunction restraining the Claimant and Mr. Ryan from entering onto the Disputed Lands and / or the Downie St. Lot ("2002 Action").

171. The transfer of the Disputed Lands to the Claimant was required for the City to have a right of way over Part 16 on Reference Plan 44R-3154 (part of the

Expropriated Lands), as this right of way was part of the whole block development approved in 1995.

172. The City brought a motion on August 1, 2002 without proper notice to the Claimant seeking an interlocutory injunction.

173. Upon the return of the motion before Justice Heeney on August 1, 2002, it was ordered that the *status quo* be maintained pending a trial of the facts.

174. The City sought to avoid the issuance of Justice Heeney's order (and, specifically, the effect it would have on the City's ability to interfere with accesses to the Disputed Lands) by purporting to "withdraw" the motion just before the Court issued its formal order. Justice Heeney refused the City's efforts in that regard.

175. Despite Justice Heeney's order, the City continued to interfere with the Claimant's accesses. Specifically, within a few days of August 2, 2002, City officials attended the St. Patrick St. Lot almost daily to place curbs and park their vehicles in such a way that accesses to the Expropriated Lands were blocked.

176. Each time this occurred, Mr. Ryan would remove and relocate the curbs so as to delineate and leave open the historical accesses.

177. On or about August 20, 2002, the Claimant determined that City Council had authorized and instructed City officials to immediately install a fence surrounding the Expropriated Lands in such a way as to block the accesses. Such a fence

would have rendered the loading dock lane and its overhead door inaccessible, as well as the north wing overhead door which were in regular use.

178. Due to the City's continuing threats to the Claimant's accesses, the Claimant brought a motion first returnable on August 23, 2002 before Justice Misener seeking to continue Justice Heeney's order to preserve the *status quo* and expressly preventing the City from interfering with historical rights of way across the Disputed Lands to the Expropriated Lands.

179. Justice Misener issued an interim injunction "restraining the plaintiff from in any way impeding [135 and Mr. Ryan] from exercising reasonable vehicular access to and egress from the [overhead door and loading dock situated on the north side of the most westerly building and from the overhead door on the east end of the main building on the north side of that building] from and to St. Patrick Street" with effect until August 30, 2002, unless further extended by the Court.

180. On August 29, 2002, the matter was returned a second time before Justice McGarry. Justice McGarry lifted the interim injunction on the basis of an undertaking given by the City to the Court not to erect a fence or block access to the Expropriated Lands until final return of the motion.

181. The 2002 Action remains outstanding. Following several days of discovery by the City of the Claimant in 2005 and 2007 the City informally stayed their action relying on their interest in mediation until they finally commenced expropriation.

182. The Claimant states that the City's interference with historical accesses to the Lands was intended to, and did in fact, frustrate and delay the Claimant's Project and use of the Lands.

City Denies Water Service (August 2002)

183. Municipal water was being supplied in the summer and fall of 2001, but was turned off for the winter since there was no hydro to prevent the line from freezing.

184. As stated above, the City and its officials refused to reconnect permanent hydro services to the Lands.

185. In addition, as of July 2002 the City and its officials refused to turn back on the municipal water supply.

City and Building Department expand their Campaign (now against 1353837 Ontario Inc) through the Fire Department and Ministry of Labour ("MOL")

186. In August 2002, David Carroll, the City's Chief Building Official, contacted the MOL and caused the MOL inspectors to issue a series of unwarranted / unjustified orders.

187. Immediately following, the City and the MOL commenced prosecutions under the *Provincial Offenses Act* for alleged violations of their orders.

188. In total, the City sought fines in excess of $2 million.

189. Fire Department officials refused to carry out their statutory obligations based on actual and intended use of the shops. In particular, officials refused to inspect the

premises for fire code compliance, despite knowing that the buildings were occupied.

190. Fire Department officials, knowing the buildings were occupied, claimed the buildings were vacant and demanded that the buildings remain vacant until approvals were granted, but refused to identify any items of non-compliance with the fire code for the occupancy at the time.

191. The Claimant requested an order from the Fire Department be given to the City to turn on the water and hydro, which request was denied.

192. This expanded campaign was intended to, and did in fact, frustrate and delay the Claimant's Project and use of lands.

Tender Shop Fire (Oct 11, 2003)

193. The City's denial of services (hydro / water) and refusal to comply with statutory obligations under the *Building* and *Fire Code Act's* rendered the buildings' fire deterrent systems non-operational and, as a consequence, created a fire peril. The tender shop building was damaged by fire on October 11, 2003.

194. Subsequent to the fire, the City's Chief Building Official ordered the tender shop building and former offices demolished.

195. The order to demolish the tender shop was overbroad, resulted in the unnecessary loss of re-usable building area, and frustrated and delayed the Claimant's Project and use of the buildings.

196. Lawrence Ryan and the Claimant co-ordinated and carried out the ordered demolition work in compliance with all regulations.

197. The Claimant states that denial of services exposed the Lands and buildings to increased risk and peril from fire. This failure is the subject of related litigation in Action No. CV-09-00001119-0000 by 122 and 135 against the City, Festival Hydro Inc. and Festival Hydro Services Inc.

198. Prior to the fire, the Tender shop was being prepared for use as a Marriot Residence Inn. As the shell of this shop was now removed, the Claimant decided to rebuild the Tender Shop with an underground parking lot with expansion capabilities to supply parking for the other towers and event venue. The new foundation would be capable of carrying several additional floors, all of which could be built in phases. This provided a partial solution to the City's continued refusal to transfer the Disputed Lands, as access to the underground parking lot would be from Cooper Street.

Mayor Interferes with the Project and its Lenders

199. Following the fire in 2003, the Claimant became aware that Mayor Mathieson had improperly contacted and engaged in several discussions with the Claimant's lenders, the purpose and intent of which was to frustrate their relationship and directly or indirectly acquire the Lands at less than fair market value.

200. The Claimant made formal demands of the Mayor to stop his improper contact; and provide full explanation and details of his discussions. Mayor Mathieson had

the City lawyer, Josephine Matera, advise the Claimant that the Mayor would neither stop nor provide any explanation for his actions.

201. In addition, in July 2004 City officials, including Mayor Dan Mathieson, sought to interfere with the Claimant's efforts to establish private well service on site. Mayor Mathieson went so far as to send a letter to local MP, Mr. Wilkinson, requesting assistance in his efforts.

202. Later in March 2008, the Claimant again became aware that Mayor Mathieson was continuing to contact and engage in discussions with the Claimant's lenders, the purpose of which was to frustrate their relationship and cause the sale of the Lands.

203. The Claimant states that the Mayor's interference with the Project lenders was intended to prevent the Claimant from proceeding with the Project and to enable the City to obtain the Expropriated Lands for less than fair market value.

City Sues 135 for Tender Shop Fire (Jan. 16, 2004 – Present)

204. In January 2004, the City commenced a Court proceeding against the Claimant, seeking to confirm the City's emergency order (Fire) and also seeking to recover various costs exceeding $161,000.00 for environmental testing, structural reports and security that the City alleged it incurred to "terminate the danger" following the October 11, 2003 fire ("Emergency Order Action").

205. The Emergency Order Action resulted in a 20 day trial spread between August 2006 and November 2008. Justice Granger's decision following the trial varied

the City's emergency order, and denied the City's claim for damages on the basis that the City's expenses were not incurred to terminate the danger.

206. The City has appealed to the Court of Appeal for Ontario from Justice Granger's finding that its expenses were not incurred to terminate the danger. It has failed to diligently pursue the appeal, but the City is continuing to seek a Judgment for damages and costs against the Claimant.

207. The Claimant states that the City pursued the Emergency Order Action so as to exhaust the Claimant's resources, while frustrating and delaying the Claimant's Project and use of the Lands.

208. The Claimant further states that the City's continuing prosecution of the Emergency Order Action is unwarranted, given that the City has now expropriated the Claimant's Lands. As such, the Claimant states that the City's continuing litigation is intended to provide yet another forum to pursue the Claimant and to exhaust the Claimant's resources.

City and Building Department Further Expand their Campaign Against 135 Through, Perth District Health Unit, Ministry of Labour, and the Ministry of the Environment (January 2004 - Present)

209. In January 2004, Mr. Ryan discussed with David Carroll his intent to install three non-load bearing walls within the shops under the mezzanine to create a space for the General Store which would be used as a model for the Heritage Street and other leasable space. Upon Mr. Carroll's insistence that a Building Permit would be required for these walls, the Claimant filed permit drawings and an

application on March 11, 2005. Mr. Carroll refused to process the permit application.

210. Following many discussions with Mr. Carroll with respect to the General Store, a second application was submitted, which Mr. Carroll mailed back without consideration on August 5, 2005.

211. In or about July 11, 2004, the City mounted a co-ordinated and deliberate campaign against the Claimant through its Chief Building Official, the Perth District Health Unit, the Ministry of Labour, and the Ministry of the Environment.

212. At that time, the Claimant had been planning to stage an outdoor carnival on the Expropriated Lands as part of its events program. In response to this event, the City alleged that the Exprorpiated Lands presented a public health hazard and sought to involve representatives from the various aforementioned Ministries and agencies to support this allegation.

213. In a short span of time, the Claimant was subject to investigations, orders, and / or charges by each of the various aforementioned Ministries and agencies, yet the carnival was permitted to proceed.

214. On July 20, 2004, City officials again contacted officials at the Ministry of Labour and encouraged them to attend at the Lands for the purpose of investigating the Claimant and / or Mr. Ryan's activities.

215. Even though the 2001 MOL Orders were dealt with as part of the Building Permit for demolition of the tender shop following the fire, the Ministry of Labour officials,

after being called back in by City officials, sought and obtained without notice an injunction on July 29, 2004 which they immediately relied upon in their attempt to obtain a contempt order from the Ontario Superior Court of Justice against the Claimant and Mr. Ryan based on the 2001 MOL Orders.

216. The matters involving the Ministry of Labour, the Claimant, and Mr. Ryan continued for a total of eight years through litigation involving both the Ontario Superior Court of Justice, the Ontario Labour Relations Board and Provincial Offences Court.

217. The MOL matters were ultimately resolved before the Ontario Labour Relations Board on March 15, 2010 and the Ontario Superior Court of Justice on August 24, 2010. The appeal of the Ministry of Labour orders was allowed, and accordingly the injunction was set aside, the MOL's allegation of contempt was dismissed, and all charges pending at Provincial Offences Court were withdrawn.

218. The Perth District Health Unit, in or about 2004, pursued orders against 135 and commenced related *Provincial Offences Act* charges against Lawrence Ryan that remain outstanding and under appeal before the Health Services Review and Appeal Board and the Provincial Offences Court.

219. The City's involvement of the Ministry of Labour, Ministry of the Environment and Perth District Health Unit was intended to, and did in fact, frustrate and delay the Claimant's Project and use of the Lands.

220. It became clearer in the months and years to follow that the various agencies were relying on misinformation from David Carroll, the City's Chief Building Official, with respect to their basis for action.

221. The Claimant states that the City's campaign against the Claimant was intended to, and did in fact, frustrate and delay the Claimant in using the Lands and proceeding with its Project.

222. In an effort to mitigate against the refusal for permits for the General Store, the Claimant utilized the steel building situate in front of the main shops to open a Country Market in June 2004. The Market was operated by Wendy Ryan who, in addition to operating the market, spent countless hours meeting the public who would eventually become customers of the General Store and other venues of the Project, creating goodwill for the Project.

City Plugs Combination Storm /Sanitary Sewer Service (November 2004)

223. On or about November 2004, City officials without lawful reason blocked the 15 inch diameter sanitary / storm sewer line leading from Ryan's Railway Centre to the municipal sewers on St. Patrick St., thereby reducing the pipe from 15" diameter to 1" diameter.

224. The effect of the flow restrictor was to prevent storm and sanitary sewer discharge from Ryan's Railway Centre, which also put the underground services at risk.

225. The City's unjustified installation of the flow restrictor was intended to, and did in fact, delay the Claimant's Project in fully using the Lands and buildings.

City Councillor Keith Culliton Advises Claimant that Settlement of Litigation Contingent on Sale of its lands (September 2006)

226. On September 7, 2006, City Councillor Keith Culliton stated to Lawrence Ryan, Principal of the Claimant, that the litigation with the City could only be resolved by the Claimant agreeing to sell its Lands to the City. Councillor Culliton also stated *"I think that fellows like George Brown and Howard Famme would like to sit down with you and say 'Look it Lawrence. What do we have to do to get you the hell out of here?'"*

227. The Claimant states that, by engaging the Claimant in protracted litigation, the City intended to stall and deter the Project, exhaust the Claimant's resources, prevent the Claimant from having quiet enjoyment of the Expropriated Lands, make productive use of the Expropriated Lands, proceed with the approved Project and to enable the City to obtain the Expropriated Lands for less than fair market value.

City Interferes with Tenants and Marketing Efforts

228. Throughout the years, City officials interfered with existing and prospective tenants as part of their campaign using the various agencies, threatening litigation, attempting to create fear through exaggerated claims with respect to environmental and structural issues and alleging municipal approvals were required when they were not.

229. In addition, throughout the years, City officials misrepresented the condition of the Lands and Buildings to the general public, government agencies and various consultants retained by the Claimant to market the Project.

230. The City even refused to permit the Claimant the right to post its description of Ryan's Railway Centre / the Project on the City's website, which is a right afforded to all others in Stratford.

231. The Claimant states that the City's interference with the marketing efforts was intended to, and did in fact, frustrate and delay the Claimant's Project and use of lands.

Ryan's Railway Centre

232. Phase one of Ryan's Railway Centre was the approved project which provided for the restoration of the Shops ; a Heritage Street with shops / stores, a railway heritage museum, a Conference Centre, a Marriott Residence Inn, an indoor water park, a Dance Barn (theatre), a Farmers Market, restaurant, lounge, offices, indoor gardens, indoor / outdoor events, parking and an events centre.

233. In addition, invitations were provided by the Claimant to include the YMCA, the Stratford Library, the Stratford Archives and Stratford Police Station and in or about 2006, efforts were taken to include the University of Waterloo campus and student residence.

234. Once the Expropriated Lands were fully restored and operational, the naming rights for the site, as well as the individual venues / operations, was to take place.

235. Ryan's Railway Centre was to be a year round family destination, capable of holding hundreds of events each year with the lands and heritage shops wired for live televised events. Substantial income would have been generated.

236. 135 was to remain the owner of Ryan's Railway Centre, with the shares held by Lawrence Ryan and his family and remain in the Ryan family estate upon death.

Exclusion of 135 from Continued Discussions with University and Usurpation of the Claimant's Project (2006-Present)

237. In 2006, discussions commenced between the University of Waterloo and the Claimant with respect to their desire to locate a satellite campus in Stratford.

238. In December 2006, the Claimant had direct discussions and a site meeting with the University with a view to accommodating the University within Ryan's Railway Centre where the University would be a tenant.

239. In late 2007, Mayor Mathieson requested a meeting with Mr. Ryan on behalf of the Claimant to propose resolving the issue of the Disputed Lands and possible incorporation of the University into the Project. Mr. Ryan met with Mayor Mathieson at the Mayor's office. At this meeting, Mayor Mathieson proposed locating the University classrooms on the Disputed Lands and the Claimant / Ryan's Railway Centre would provide 400 student residences and a conference

centre to be located within the tower being built in place of the fire damaged tender shop as part of the Project. Mr. Ryan agreed in principle, provided the City would agree to transfer of the Downie Street Lot to the Claimant in exchange for the St. Patrick St. Lot, with all parties working together on designs and layouts to ensure the existing accesses remain.

240. Following these discussions and meetings, the University advised the Claimant that they were instructed by the City to not have any further direct discussions with the Claimant, as the City had agreed to provide the necessary land for the University for free. Unbeknownst to the Claimant, the City intended those free lands to be the Expropriated Lands.

241. The City's failure to involve the Claimant in discussions with the University is particularly concerning because the plans for the Stratford Campus are similar to aspects of the Project of the Claimant.

242. The net result for the University was to obtain land at no cost or rent, nor any financial obligation if the campus failed, as they would simply return the land without penalty.

243. On or about November 18, 2008, the Claimant specifically requested that it continue to be involved in the discussions with the University, but the City's lawyer responded that her only instructions were to *"... engage in negotiations with [the Claimant] for the purchase by the City of the whole of the lands owned by 1353837 Ontario Ltd."*

244. In response to this suggestion, the Claimant invited the City to present an offer to purchase and also offered to meet a City representative.

245. The City failed to meet with the Claimant and also failed to present any offer. Instead, the City proceeded directly to initiate the expropriation process on December 8, 2008, and as a consequence of the expropriation process, the Claimant was shut out of any further discussions with the University.

246. The plans for the Stratford Campus are, in part, similar to the Project of the Claimant, and confirm the special adaptability of the Lands for educational related uses.

247. Specifically, the Deloitte Economic Impact Study ("Deloitte Study") commissioned by the City indicates that the City's use of the expropriated Lands for the Stratford Institute will include not only academic facilities ("Academic Facilities"), but also a residence of up to 400 residence rooms and associated food service ("Residence") and conference and meeting facilities ("Conference Centre").

Secret Offer to Purchase the Lands (April 2008)

248. In April 2008, Siskinds LLP delivered an offer, as agent / trustee for an undisclosed party, to the Claimant's mortgagee to purchase the for $5 million without notice or consent by the Claimant to such communication.

249. The Claimant discovered that the offeror was, in fact, the City, which had chosen to act through an agent in an attempt to conceal its interest in acquiring the Claimant's Expropriated Lands.

250. It later became known to 135 that the City had involvement in several attempts over the years to acquire the Expropriated Lands through third parties.

City Establishes University of Stratford Advisory Committee (2004-Present)

251. At least as early as 2004, the City organized an official "University of Stratford Advisory Committee," which was liaising with community leaders and periodically reporting to City Council on progress.

252. The City initially focussed its efforts on a partnership with the University of Western Ontario, but in 2006 or earlier, City officials began to also canvass opportunities with leaders of the University of Waterloo.

Memorandum of Understanding Between City, University, and Stratford Festival (October 2006)

253. By late-2006, the City had made sufficient progress in its discussions with the University of Waterloo ("University") that it began to publicize its efforts to develop the Stratford Campus. In particular, it was disclosed that the City signed a Memorandum of Understanding ("MOU") with the University and the Stratford Shakespearean Festival of Canada ("Stratford Festival") on October 16, 2006.

254. The City also disclosed that the parties to the MOU were jointly exploring (i) the possibility of establishing a university campus in Stratford; (ii) opportunities to acquire land and to secure capital for construction; and (iii) opportunities to fund and mount academic programs.

255. The MOU expressly stated that any development of the Stratford Campus / Institute would be contingent on obtaining funding from the Federal and

Provincial governments, as well as from the City. The Stratford Institute required contributions of $10 million from each of the Federal and Provincial Governments and $10 million and the Stratford Campus lands for free from the City.

256. Mr. Ryan, on behalf of the Claimant, had provided Mayor Mathieson in the late fall of 2008 with a final opportunity to locate the University and relocate the YMCA, library, archives and / or police station within Ryan's Railway Centre. The Claimant was completing final construction drawings. Lawrence Ryan informed Mayor Mathieson that as the costs of preparing the drawings was substantial, the City needed to decide on participating in the Project as, once the drawings were started, no changes would be made.

City Pretends Interest in Purchase and Sale Negotiations (November 2008)

257. As noted above, prior to formally initiating the expropriation process, the City's lawyer represented that:

> *Mr. Shaw [the City's CAO] is authorized by Council to provide instructions to me throughout the course of the negotiations, with a view to bringing back to Council for its consideration any agreement of purchase and sale that may be agreed to at the staff level.*

258. The City's negotiation efforts were, however, nonexistent. The City's representatives did not present a single offer, nor did they follow through on their request for an in person meeting.

259. Immediately prior to December 8, 2008, Lawrence Ryan called Dan Mathieson and advised him that time was up and as the City had made no decision, Ryan's

Railway Centre would be going ahead with completing the construction drawings without the University or City.

260. In response, the City passed its resolution to make application for approval to expropriate on December 8, 2008 without any public discussion or advance notice to the Claimant

COSTS THROWN AWAY

261. The Claimant estimates the City spent in excess of $3 million in its campaign efforts over the years. The result of the City's campaign efforts amounted to fines totalling approximately $20,000.00 for alleged Provincial Offenses for opening the front door to the shops, sweeping the floor of the shops and not removing material after the fire, which material burnt up in the fire. These fines remain under appeal, and as a result of the expropriation, have now become a cost thrown away.

262. Other results achieved by the City's actions were delays to the Claimant's full use of the Expropriated Lands, shops and approved Project with millions of dollars spent by the Claimant, including interest financing costs that are now costs thrown away.

263. At no time did the City act fairly or in a helpful manner to permit or promote the lawful enjoyment or use of the Expropriated Lands and buildings or Ryan's Railway Centre

264. The Claimant had an arrangement on interim financing on preferred terms. Payments were permitted to accrue until takeout financing and Project income was available. The $5 million of the face amount of the mortgage financing provided by Republic was for Project costs, which are now costs thrown away.

265. At all material times, City officials were aware the Claimant and predecessors in title were incurring substantial costs and significant time was invested in their restoration efforts with respect to the Project, all with the intent to generate income and recoup all costs.

266. Prior to the City's decision to expropriate, and prior to the City registering their expropriation plan, City officials were notified of immediate losses that would be suffered as a result of not being able to proceed as a result of the expropriation.

267. The Claimant states that the City is liable for all costs thrown away and all future losses and profits, as the Claimant's opportunity to recoup such costs and generate income / profits has been taken away.

268. After obtaining the Claimant's consent to the expropriation, on the understanding all the Lands were being assembled to transfer to the University, the City subsequently announced plans to sell parts of the Expropriated Lands and/or Project to other private developers.

THE EXPROPRIATION

269. The City, without notice to the public or Claimant nor any discussion at Council, (the resolution was not even on the Council Meeting Agenda) unanimously

passed a resolution to make application to expropriate on December 8, 2008 ("Expropriation Resolution") based upon the alleged "failure to complete 110's project", as set forth in paragraph 20.

270. On or about December 9 2008, the Claimant notified the City that the expropriation was contrary to existing Court orders and the City's undertaking given to the Court to maintain the *status quo* in respect of the Lands until such time as the disputes between the City and the Claimant were decided by the Courts in the 2002 Action.

271. The Claimant brought an urgent motion seeking to enjoin the City's expropriation process due to illegality.

272. On December 15, 2008, City Council unanimously, and without discussion, passed By-law 166-2008 to authorize making application for approval to expropriate the Claimant's Lands ("Expropriation By-Law"), this time advancing municipal and economic development purposes, as previously noted in paragraph 16.

CLAIMANT GIVES CITY NOTICE OF CLAIMS AND HARDSHIPS (DECEMBER 2008-JANUARY 2009)

273. In late-December 2008, the Claimant wrote to the Court in relation to scheduling its motion. This correspondence was also directed to the City and put it on notice that the expropriation was derailing the Claimant's Project, and that the Claimant was continuing to incur costs and interest on the outstanding Project mortgages

and was suffering losses, past and future, as a result of the intent to expropriate, and if the expropriation took place.

274. At the Claimant's request, a meeting took place between representatives of the Claimant and the City on January 15, 2009 to discuss the Project, the Expropriation Resolution, Expropriation By-law and the damages being suffered.

275. At the meeting, City representatives (specifically Josephine Matera and Barbara Dembek) noted that until the City formally approved the expropriation, the expropriation was only tentative in that the City, as approval authority, could still not elect to approve the expropriation.

276. In this context, the City representatives confirmed the Claimant's right to attempt to continue with the Project pending final approval, but indicated that the City would oppose any efforts by the Claimant in that regard, and also that the City would not recognize a claim for costs thrown away on such efforts in the event the expropriation was eventually approved.

277. The City representatives also advised during the January 15, 2009 meeting that it would not pay for mortgage interest thrown away subsequent to December 8, 2008.

278. The Claimant also learned during the January 15, 2009 meeting that Council had not authorized any amount for an offer to purchase the Expropriated Lands, even though the City indicated that Ms. Matera was authorized to pursue such discussions since at least November 2008.

279. The Claimant wrote to City Council on January 16, 2009 and put it on notice that:

a) the City was carrying out the expropriation in bad faith;

b) the Claimant was proceeding with its Project;

c) the Claimant took issue with the City misrepresenting the environmental condition of the property in an attempt to lower the value; and

d) in order to end the continuous duress, frustration, and losses caused to it by the City, the Claimant was prepared to sell the Expropriated Lands to the City for $21.6 million.

CITY MOVES FOR SUMMARY JUDGMENT RE DISPUTED LANDS (FEBRUARY-MAY 2009)

280. On or about February 13, 2009, the City served a further motion for summary judgment with respect to the ownership dispute over the Disputed Lands.

281. In support of the motion, the City CAO, Ron Shaw, gave sworn evidence that the purpose of the expropriation was:

a) "the City takes an active role in heritage conservation in the Downtown Core";

b) "the St. Patrick St. Parking Lot and the Cooper Site combined offer the ideal and optimal location for the University Campus";

c) "The St. Patrick St. parking lot consists of parts 3, 4, 5, 10, 11, 12, 14 and 15";

d) "... it is the only single site of sufficient size in the Downtown core that can accommodate UW's needs";

e) "the university Campus is projected to generate... a total estimated economic benefit of 42.9 million dollars annually"; and

f) "It is the City's intention, once the Cooper Site is acquired... to transfer lands to the University."

282. Upon receiving this affidavit material, the Claimant immediately advised the City that the City's concern over ownership of the St. Patrick St. Parking Lot could be addressed by amending the City's formal notice regarding its intention to make application for approval to expropriate to include the Disputed Lands so that the ownership issue could be resolved as part of the expropriation process without prejudice to either party's position.

283. The Claimant suggested that the ownership dispute could also be addressed through appropriate provisions in a section 30 agreement.

284. The City gave notice on May 13, 2009 that it would not enter into a section 30 agreement with the Claimant. Shortly before the section 30 negotiations were terminated by the City, the City began seeking to advance its motion for summary judgment regarding the ownership dispute on an urgent basis, alleging that there was a "special urgency" to having the matter decided.

285. The Claimant's lawyers advised the City on May 13, 2009 that there was no urgency to have the motion heard as:

> *The City can simply acknowledge that there is an ongoing ownership dispute in respect of some of the Cooper Site lands and agree that it will compensate our client in accordance with the* Expropriation Act *for all right, title and interest in any disputed lands that should later be proven by final Court order. Subject to this requirement my client is prepared to execute a Quit Claim deed in favour of the City that will be registered by us following the registration of the expropriation plan.*

286. The City confirmed on May 20, 2009 that it would accept the Claimant's offer of a quit claim deed in respect of the Disputed Lands and the motion for summary judgment was withdrawn on that basis.

UNEXPLAINED DELAY BY CITY IN APPROVING EXPROPRIATION, REGISTERING EXPROPRIATION PLAN, AND MAKING SECTION 25 OFFER (DECEMBER 8, 2008-SEPTEMBER 11, 2009)

287. Despite the fact that the Claimant's Project had been derailed and that the Claimant was continuing to incur significant mortgage interest charges, the City continued to delay in advancing the expropriation.

288. The Claimant states that the City's delay was intended to exhaust the Claimant's resources and create hardship for the Claimant.

289. The City's Notice of Application for Approval to Expropriate under the *Act* was issued and served on or about January 23, 2009.

290. Under the *Act*, the City is not only the expropriating authority, but also the approval authority in respect of the expropriation. Accordingly, the City's application for approval to expropriate was directed to itself.

291. Given that City Council had unanimously voted to commence and continue expropriation proceedings, the Claimant states there were no grounds for the City to delay in approving its own application, registering the expropriation plan, and making the section 25 offer.

292. The Claimant was continuing to incur interest costs of approximately $1,500 per day due to its outstanding mortgages against the Expropriated Lands. It was also incurring various other carrying costs, such as taxes, maintenance, and security, at a time when the Expropriated Lands could not generate any income due to the expropriation, including the long term campaign by the City to restrict the Claimant's use of the Expropriated Lands so as to reserve the Expropriated Lands to itself.

293. The Claimant's lender, Republic Mortgage Investment Corporation ("Republic"), also held collateral and other security against other properties owned by the Claimant's principal, Mr. Ryan, including against his home and family farm properties.

294. The City's past interference with the Project and its conduct of the expropriation process rendered the Claimant unable to mitigate its losses by proceeding with the Project and tenanting its facility or through interim uses.

295. In addition, until the Claimant receives full payment from the City for the Expropriated Lands, Project, costs thrown away and other damages, the Claimant is not in position, nor able to relocate, its Project.

296. Even though the Expropriation Resolution and Expropriation By-Law were passed unanimously and without discussion, the City subsequently, and for many months, gave conflicting indications as to whether it would approve the expropriation and, if so, when the City's appraisal would be available.

297. In fact, the City delayed in finalizing and providing a valid section 25 appraisal and offer to the Claimant, with the intent and result of increasing the financial pressure on the Claimant through its mortgagee. The only appraisal provided was Mr. Bowers, which was not in compliance with applicable standards.

CLAIMANT'S REQUEST FOR COURT PROTECTION (APRIL-JUNE 2009)

298. On or about April 5, 2009, the Claimant served a notice of return of motion in respect of its motion to enjoin the expropriation due to concerns with the City's continuing delay.

299. The motion sought to have the Court exercise a supervisory role in setting terms for transfer of the expropriated Lands to the City, as the Claimant had by then consented to the expropriation and waived its right to request a hearing of necessity on the understanding that all the Lands (Expropriated / Disputed and the Downie St. Parking Lot) were being transferred to the University of Waterloo for a public education campus.

300. The motion was returned for scheduling on April 15, 2009, at which time the City's lawyer advised the Court that he *"could not provide a date"* as to when the appraisal would be complete, but still objected to the Claimant's request that the Court impose a timeline for the City to carry out further steps in the expropriation.

301. The motion was scheduled to be heard on June 22, 2009, or more than 6 months after the City had initiated the expropriation process. Prior to the hearing of the motion, the Claimant amended its motion materials to include the following requests for relief:

a) an order that the City's Application for Approval to Expropriate be placed on the agenda for approval at the Regular Council Meeting of the Corporation of the City of Stratford on July 6, 2009;

b) an order that, following approval of the expropriation, the period of time permitted to the City to register the plan of expropriation be decreased to one week;

c) an order that the period of time permitted to the City to serve a section 25 offer in full compensation for the registered owner's interest be reduced to four weeks;

d) an order that the City reimburse the Claimant for all interest accrued on its mortgage from December 8, 2008 to the date of the City's approval of the expropriation;

e) an order that the City be solely responsible for all interest and any prepayment penalty accruing on the mortgage from the date of approval;

f) an order that the interim payment to be made by the City be determined by an independent appraisal and, in any event, be not less than the $5 million previously offered by the City;

g) an order that in the event the City failed to proceed with the expropriation, the City forthwith provide an undertaking to the Court to compensate the Claimant for any resultant losses; and

h) an order that the Plaintiff not make any public disclosure of any appraisal or other expert investigation or report relating to the Defendants' Lands while title to those lands remains vested in the Defendants.

302. The Claimant's grounds for the motion were, *inter alia*, that the City was not carrying out its expropriation in a timely and good faith manner, that the Claimant was continuing to incur significant interest charges, and that the City had not provided any reasonable explanation for its delay.

303. The City opposed all the requests for relief set out in the motion.

304. Despite the City's opposition to the motion, the City nevertheless took steps to approve its application for approval to expropriate on May 25, 2009 before the motion was argued.

305. The City also took steps to register the plan of expropriation on June 15, 2009 before the motion was argued. Title to the Expropriated Lands vested in the City as of that date.

306. By the time the motion was heard on June 22, 2009, the City had not presented the Claimant with a single offer to purchase or a section 30 proposal, nor had it provided the Claimant with a valid appraisal report or section 25 offer, even

though more than 6 months had elapsed since the City's commencement of the expropriation process.

307. The City's delay in approving its own application, registering the expropriation plan, and making the section 25 offer was at odds with its CAO's representation that the expropriation was commenced with urgency and to avoid any delay in the City's acquisition of the Lands.

308. The Claimant states that, had the City proceeded with the expropriation promptly and in good faith, then the motion to seek the Court's intervention would not have been necessary, and represents costs thrown away.

RELOCATION DISPUTE (JUNE 2009)

309. On or about June 16, 2009, and after approving the expropriation and registering the plan of expropriation, the City served the Claimant with a Notice of Possession in which it specified that it required possession of the expropriated Lands on September 18, 2009.

310. The Claimant had advised the City on June 8, 2009 of the need to address relocation issues prior to the possession date set by the City.

311. The Claimant had significant quantities of materials stored on the Lands and in the buildings, including furniture, tools, heavy equipment, vehicles, 1,000 lb. limestone blocks, 2,000 tonnes of b-gravel, 85,000 reclaimed yellow bricks, and 50,000 board feet of antique pine timbers. The materials were for use in the restoration, landscaping and development of the Project.

312. In total, there were approximately 140 tractor trailer loads (48 foot trailers) of goods to be removed.

313. The sheer volume of material posed challenges as to where it could be accommodated.

314. The Claimant commenced relocation work in mid-June 2009, but when it submitted to the City an invoice for the work carried out, the invoice was not reimbursed.

315. The Claimant continued to seek confirmation from the City that it would fund the relocation costs as they were incurred.

316. In mid-July 2009, the City began to acknowledge an obligation to pay the costs of moving chattels, but objected to *"simply [making] payment of invoices received from [the Claimant]"* and therefore instead offered a broad commitment that:

> *... the City is willing to carry out an inventory of the chattels to be moved and to carry out the move.*

317. The Claimant confirmed on July 22, 2009 that it was agreeable to having the City carry out the relocation provided that appropriate safeguards were in place to insure the chattels while in transit.

318. Late in the afternoon of September 11, 2009, (6 days before the requested possession date) the City delivered its interim offer of compensation pursuant to section 25 of the *Act*.

319. The City offered only $500,000 for the Claimant's total interest in the Lands and project, which carried a mortgage in the face amount of $5 million prior to the expropriation. As such, the offer of interim compensation was not sufficient to provide the Claimant with any funds to carry out relocation work itself.

320. Despite the Claimant's repeated requests that relocation work commence, the City failed to take any steps to commence such work and failed to advance any funds for the Claimant to carry out relocation itself.

321. The relocation dispute was still outstanding when the City finally delivered the section 25 offer.

DEFECTIVE SECTION 25 OFFER (SEPTEMBER 11, 2009)

322. The City delayed until Friday, September 11, 2009 before presenting the section 25 offer required by the *Act*, just 6 days before their requested possession date.

323. The City's section 25 offer was based upon an appraisal report by Ray Bower.

324. The City has not explained why it delayed until September 11, 2009, given that the appraisal report could have been finalized in May 2009. The environmental reports upon which the appraiser relied were available to him at that time.

325. The appraiser valued the Expropriated Lands at $4.3 million if they were assumed to be free of any environmental contamination and ready for immediate development. However, on an "as is" basis, Mr. Bower was of the opinion that the Expropriated Lands had only speculative value of $500,000, as he was given to understand that remediation costs would be between $6.3 and $20.3 million

and the buildings are of no heritage or historical value nor structurally sound and should be demolished.

326. Upon reviewing these reports and the section 25 offer, the Claimant learned a number of important facts that the City had known for months but had chosen not to share, including that:

a) the City intended to demolish the remaining buildings and was not attributing any value to them, salvage or otherwise;

b) the City's section 25 offer of only $500,000 would not be sufficient to even address the Republic mortgage which represented only a portion of the costs thrown away, let alone provide additional funds to complete relocation work before the possession date of September 18, 2009;

c) the City's section 25 offer of only $500,000 would not be sufficient to allow the Claimant to purchase a property with comparable attributes so the Project could be relocated; and

d) the City planned to dump 56,000 cubic metres of what the City was alleging was contaminated soil from the Disputed Lands and YMCA lands to the Expropriated Lands.

327. In the circumstances, the Claimant had little time to take action to protect its interest in the Expropriated Lands and buildings' equity (and the evidence therein) and the Claimant's right to have its goods relocated.

328. The Claimant therefore brought a section 39 application in the Ontario Superior Court to extend the possession date beyond September 18, 2009 and to challenge the validity of the section 25 offer.

329. The Claims by the City through the appraisal report with respect to Environmental status of the Expropriated Lands and the structural soundness of the buildings were entirely unjustified.

330. Lawrence Ryan had spoken directly to the City appraiser, Mr. Bower, prior to completing his appraisal and made him aware of the numerous reports and facts with respect to the environmental status of the Lands and the structural soundness of the buildings and advised Mr. Bower the City had most, if not all, the same information. Lawrence Ryan also offered to provide whatever information the City might not provide Mr. Bower and offered access to Ryan's Railway Centre and its files, which Mr. Bower did not take advantage of.

331. The only common ground between the Claimant and Mr. Bower was with respect to the value of the replacement cost for the heritage buildings. Mr. Bower stated in his appraisal that he agreed with the Claimant's engineer that the replacement costs is $18 million for the building shells without the underlying land or servicing infrastructure.

THE HERITAGE SHOPS

332. The public also learned for the first time of the intended demolition of the Heritage Shops. Several interests groups immediately took action to save the Shops.

333. Robert Shipley who is the Director of the Heritage Resource Centre, at the University of Waterloo issued a report affirming the heritage value as of municipal, provincial and national interest.

334. Bowing to public pressure, the City requisitioned a heritage consultant to carry out a report on the Shops dealing with heritage and adaptive reuse. The report, dated June 20, 2012, affirms the historical and structural soundness of the buildings, yet the City continues to propose demolition of the Shops due to misleading and exaggerated claims with respect to the structural integrity of the roof deck and purlins. Both the roof deck and purlins were in good condition, capable of carrying out their intended functions, but for minor damage in very limited areas, up to and including the time the City took possession of the Expropriated Lands.

PROJECT LENDER BRINGS BANKRUPTCY APPLICATION AGAINST 135 (DECEMBER 2009-APRIL 21, 2010)

335. While the Claimant's application to vary the possession date and the City's counter-application were pending, the Claimant's lender, Republic, commenced a bankruptcy application against the Claimant, Mr. Ryan, and various of Mr. Ryan's other corporations, including 1459650 Ontario Inc., 1459651 Ontario Inc., and Sydenham Deer Corporation.

336. As noted above, Republic held collateral security and other security against other properties owned by the Claimant's principal, Mr. Ryan, including against his home and family farm properties.

337. Republic successfully used the bankruptcy process to pressure the Claimant to attempt to settle its application against the City on any terms that would see Republic paid in full, regardless of the relative advantages or disadvantages of such terms to the Claimant.

338. Prior to the Claimant consenting to the expropriation, one of the principals of Republic, advised the Claimant that, based upon his prior discussions with City representatives, (and his own mortgage financing appraisal) he believed that the City's section 25 offer would exceed the value of their secret offer of 5 million.

339. The Claimant and its principal, Mr. Ryan, were severely prejudiced by the City's failure to obtain a proper appraisal and to present a valid section 25 offer, as these steps, including the resulting delays and costs, also exposed them to bankruptcy proceedings by Republic which it had to fight as a consequence of the expropriation. The costs of those proceedings are claimed as disturbance damages and / or its costs herein.

340. The Claimant states that the City failed to comply with s. 25 of the *Act*, including:

a) as the amended joint offer of compensation of $4.5 million, as amended from the initial offer of $500,000 by Minutes of Settlement dated January 10, 2010 was outside the three months time limit set by the *Act;*

b) the amended offer stated "payment of the Advance Payment shall be without prejudice to the City's unfettered right to (i) argue at any compensation hearing or related court proceeding that the market value of

the Lands (as defined in paragraph 10 herein) is less than the Advance Payment; and (ii) rely upon all relevant factors relating to the Lands and buildings thereon, including, without limitation, environmental issues and costs of remediation";

c) neither offer included a full statement of compensation pursuant to s. 25(1)(a)(2);

d) the first purported section 25 offer did not include a valid appraisal in compliance with applicable standards of the Appraisal Institute of Canada; and

e) the purported amended section 25 offer for the amended payment of $4.5 million was not based on an appraisal, nor was one served,

and is therefore obligated to pay interest on all compensation amounts awarded by the OMB including market value, disturbance, special difficulties in relocation and business loss damages.

SETTLEMENT OF SECTION 39 APPLICATION & RELOCATION DISPUTE (JANUARY 2010)

341. During the section 39 Application proceeding, the parties discussed settlement and eventually agreed upon terms for settlement of the application and counter-application.

342. The terms of settlement addressed various matters, including resolution of the application and counter-application, the amount of an interim payment (including

payment to the lender, Republic to cover a portion of the costs thrown away), the amount of an interim costs payment, an agreed upon possession date, relocation of chattels, and a protocol for sharing of information and consultation on the Cities alleged environmental remediation issues.

343. The City resisted executing minutes of settlement and, therefore, the Claimant was forced to bring a motion, on the eve of the hearing date, seeking to enforce the terms of settlement.

344. The City finally agreed to conclude minutes of settlement on the eve of the hearing of the application and counter-application, which were therefore resolved on consent on that basis ("Interim Settlement").

345. The cash advance payment made pursuant to the Interim Settlement included the following:

a) $3,933,064.73 to Republic, plus interest calculated at 6%;

b) $566,935.27 to 135, plus interested calculated at 6%;

c) $150,000 for interim payment for 135's legal and consulting costs and disbursements in the expropriation proceeding to date and excluding any GST component, as it is an interim payment;

d) an undisclosed amount for Interest claims above 6% for Republic which was resolved directly between the City and Republic; and

e) Following the withdrawn Bankruptcy proceeding commenced by Republic the City made a payment to Republic for an undisclosed amount.

To date the City has not allocated nor paid any money for market value of the Expropriated Lands, and it reserved the right to argue that the market value of the lands is less than the advance payment provided for under the Minutes of Settlement.

RELOCATION OF CHATTELS

346. The Claimant's remaining chattels were relocated by the City and the Claimant as a joint effort to a temporary location in early 2011 in accordance with the Interim Settlement.

347. Certain of the chattels will have to be relocated upon determining their final use now that they are not able to be incorporated into the restoration of the shops.

348. The relocation costs incurred by the Claimant will be quantified and submitted to the City for payment and / or advance payment prior to the hearing.

DEFECTIVE SECTION 25 OFFER BASED ON FALSE PREMISES

349. The defective section 25 offer for all of the Claimant's interest in the Expropriated Lands was based on:

a) environmental contamination cleanup costs up to $20 million;

b) no heritage value in the shops; and

c) no structural integrity in the shops, and that the shops must therefore be demolished.

350. The Interim Settlement provided for the Claimant's participation in further environmental testing by the City, which the City later confirmed would be used in preparing the heritage report and the City's latest structural report.

351. Contrary to the City's claim that these reports would be completed in a timely manner, the issue dates of each are as follows:

a) Phase II Environmental Site Assessment, Part of 105 St. Patrick Street and 350 Downie Street, Stratford Ontario by R.J. Burnside & Associates Limited dated March 30, 2012;

b) The Cooper Site (locomotive repair sheds) Public Consultation Report by heritage consultants Goldman Borgal & Company Ltd. dated June 20, 2012; and

c) Building Condition Assessment Report, City of Stratford Cooper Site by Read Jones Christoffersen Ltd. dated June 25, 2012.

352. As explained previously, there are several issues that arose from accommodating the City so these reports could be completed.

353. The City and its consultants chose not to accept the Claimant's offer to provide access to its files including the 3D model of the building and Ryan with respect to structural integrity, cultural heritage and the approved adaptive re-use project

which was expropriated. In spite of this, the City's consultants' reports confirmed what the City had known for many years, as follows:

a) known contamination on the Expropriated Lands and surrounding lands can be risk assessed.

b) the shops are a landmark of heritage value, worthy of preservation and can be adaptively re-used; and

c) the shops are structurally sound and can be adaptively re-used.

354. The Claimant states the City ought to have satisfied itself with respect to these concerns prior to deciding to take the Expropriated Lands. There were reports on each concern contradicting the City's position when it made the defective $500,000.00 purported section 25 offer. The City's actions in this manner have greatly increased the Claimant's costs.

ENVIRONMENTAL STATUS

355. As set out above, the City, throughout their campaign to frustrate the Project and use of Lands, has refused to provide a Phase III Environmental Report prepared by Burnside Environmental as called for in the Sale Agreements.

356. In addition, throughout its campaign, the City has:

a) exaggerated and misrepresented the extent of the environmental contamination throughout the years;

b) ignored or understated the obligations / liabilities imposed on the City pursuant to the environmental laws created by their acknowledgement and cleanup of environmental hazards prior to their sale of the Expropriated Lands;

c) ignored or understated their obligations with respect to environmental remediation for both land and Shops, pursuant to the Sale Agreements;

d) ignored or understated their obligations pursuant to their undertaking to satisfy MOE requirements;

e) ignored or understated their liability to the Claimant resulting from contamination located on the Festival Hydro lands and City owned Downie St. parking lot abutting the lands taken; and

f) ignored or understated their liability as the prior owners.

357. The Claimant states the City's exaggerations and misrepresentations with respect to the environmental status of the Expropriated Lands and buildings was intended to, and did in fact, frustrate and delay the Claimant's Project and use of the Expropriated Lands.

358. The Claimant states the City's exaggerations and misrepresentations with respect to the environmental status of the Expropriated Lands and buildings was also intended to assist the City in obtaining the Expropriated Lands for a value far less than fair market value.

359. The City continued in their efforts to rely on their exaggerations and misrepresentations with respect to the environmental status of the Lands after approving their Expropriation Resolution.

360. The section 39 application was in part settled with a positive obligation for the City to disclose on an ongoing basis all remediation plans, contracts, data, and reports related to the Lands, so that 135 has advance knowledge of all remediation work to be undertaken and can be present while work is carried out. Despite this obligation, the City has continually failed to comply with this obligation.

361. Even though the City previously carried out substantial testing and investigations and had in excess of 20 environmental reports, all of which supplied sufficient data to determine that a risk assessment approach would adequately remediate the Lands, the City again retained Burnside to complete new investigation reports to support their claims.

362. The City has delayed the completion of these reports, even though in 2011 Burnside confirmed to the Claimant that a risk assessment approach would be adequate and the costs would be minimal.

363. The City received in December, 2011, grant approval of $350,000 from the Federation of Canadian Municipalities to assist in their latest Phase II environmental assessment and remedial action plan for the Cooper Site.

364. The City delayed in providing their latest assessment reports and other documentation required by the section 39 Minutes of Settlement, claiming for more than a year that the City's lawyers must approve of the reports prior to going out.

365. The Claimant states the City's further environmental investigations were for the most part entirely unnecessary, and resulted in little more than proving the Claimant's position on the environmental status of the Lands. Nevertheless, the Claimant has had to incur substantial environmental consulting fees as a direct result of this expropriation to monitor the City's on-site investigations, which took place not only on the Expropriated Lands but also the Disputed Lands and surrounding lands, and work to address the City's allegations of environmental contamination to the lands and other adjacent lands that they purport diminishes the market value of the Expropriated Lands by as much as $20 million.

CITY REDUCES LANDS REQUIRED FOR THE PURPOSE OF THE EXPROPRIATION (DECEMBER 2008-PRESENT)

366. As set out in the Overview herein, the City's purpose was firstly that the approved Project was not completed, then in response to the Claimant's motion to stop the expropriation, the City claimed they intended to assemble the Expropriated Lands with the Disputed Lands and the City's Downie Street parking lot, to transfer all lands to the University of Waterloo Stratford Institute.

367. When the terms of the Agreement between the University and the City ("University Agreement") were made public, it was also disclosed that the City was required to convey only 8 acres of land to the University.

368. After the expropriation, the City re-declared that part of the Disputed Lands being transferred immediately to the University was surplus to its needs and requirements, as the City similarly stated in 1995.

369. To date, the City has only transferred 1.3 acres (of the Disputed Lands) to the University with the condition that the University can, for any reason and without penalty, give the land back anytime within the next 20 years. The City approved the location of the new University Campus Building with their planned future addition within the same 1.3 acres such that the dedicated road widening allowance is of no use (see Schedule "E" attached).

370. The Claimant then learned that the City intends to sell or lease the approximately 9.5 acre balance of the Expropriated Lands to one or more private developers and / or relocate the YMCA or existing municipal organizations, such as the library, to these lands.

371. The Claimant also learned the University of Waterloo did not own the Institute. The Stratford Institute was incorporated in November 2010 with its directors consisting of Mayor Dan Mathieson, Ken Coates and Eugene Roman.

372. After objections were raised by the Claimant against this private Institute being located on the Lands, the University confirmed the Institute was privately owned,

not part of the University of Waterloo and was to remain at 6 Wellington Street, Stratford, Ontario while the public student campus only would be built on 1.3 acres of the lands taken, with a planned expansion within the same 1.3 acres.

373. As of the date of expropriation, the Claimant's accesses across the Disputed Lands to the Expropriated Lands were protected by existing court order issued by Justice Misener of the Superior Court of Justice and by the City's undertaking that it would not erect a fence or block the Claimant's right-of-ways across the Disputed Lands or access to the Expropriated Lands from the Disputed Lands.

374. The Claimant states that after the expropriation, and as part of the City's transfer of the 1.3 acres of the Disputed Lands to the University of Waterloo, historical accesses between the Expropriated and Disputed lands continued to exist and were kept in place by the transfers from the City to the University of Waterloo.

CONCLUSION RE CITY'S CONDUCT OF THE EXPROPRIATION

375. The City's conduct of the expropriation was intended to, and has resulted in, undue long term financial hardship to the Claimant, exacerbated the disturbance damages and business losses, and has increased the costs that the Claimant will incur for the purpose of determining the compensation payable as a result of the expropriation.

DAMAGES FOR DELAY & LOSS OF PROFITS

376. The City's consistent interference with the Project since 1996 has resulted in significant disturbance, delay, damages, loss of income, equity and profits to the Claimant.

377. The Claimant seeks compensation for the City's delay and interference with the Project in an amount to be ascertained.

378. The Claimant will quantify the claim for delay and loss of income, equity and profits in advance of the hearing of this matter.

MARKET VALUE OF THE EXPROPRIATED LANDS

379. The Claimant seeks compensation for the market value of the Expropriated Lands.

380. As of the date of expropriation, the Expropriated Lands were uniquely located and suited for adaptive reuse and redevelopment, particularly with reference to the combination of special attributes, which are included in paragraph 18.

381. The Claimant states that in the circumstances of this case, the highest and best use of the Expropriated Lands may include, in part, the use to which the City may put the Expropriated Lands, which is the same as or similar to some of the Claimant's intended uses regarding University classrooms, conference center and a student residence.

382. The Claimant states that the market value of the Expropriated Lands must be valued without reference to the Scheme for which the Lands were expropriated pursuant to s. 14(4)(b) of the *Act*, including the City campaign to prevent and block the approved Project originating in or about 1996, and which continued up to the expropriation in 2009. The Claimant states that but for that campaign, it would, on any reasonable and objective standard, have long ago been allowed to

complete its approved adaptive reuse project and to recoup its costs, make profits and grow equity in the operation of the Project.

REPLACEMENT COSTS FOR THE HERITAGE SHOPS

383. As it is the intent of the Claimant to relocate the project, the Claimant is entitled to replacement costs re-establishing the heritage railway shops Project, pursuant to s. 13(2)(d), s. 14(2) and / or s. 18(1)(b) and (c) of the *Act*. The City, through Mr. Bowers appraisal report, confirmed the replacement costs of $18 million for the building's shell alone. The amount of this claim will be dependent upon the final determination of the market value, which includes the Shops. The Claimant does not seek to be paid for the Shops twice, but rather indemnified for the full losses it has incurred.

DISTURBANCE

384. The Claimant claims compensation for disturbance pursuant to ss. 13 and 18 of the *Act*. In particular, the Claimant claims damages for delays arising from the City campaign to prevent use of the Lands and completion of the approved adaptive reuse Project.

385. The Claimant will quantify the claims for disturbance in advance of the hearing of this matter.

386. The Claimant seeks compensation for disturbance damages, including costs thrown away and special damages, including but not limited the following losses, pursuant to ss. 13(2)(b) and 18(1)(b) of the *Act*: heritage, tourism, naming rights, a non competition clause with Marriot Hotels, the railway spur line, the railway

turntable, 70 foot muffler, aquifer capacity for ground source heating and cooling, artesian well, private 6-inch well, limestone cut blocks and other materials the City refused to relocate.

387. Each of the above special damages may not be considered in the market value of a property, but in this case would have generated income and equity which is now lost as a direct result of the expropriation.

388. The Claimant will quantify the claim for disturbance damages in advance of the hearing of this matter.

BUSINESS LOSS

389. The Claimant seeks compensation for business loss pursuant to section 19 of the *Act*.

390. The Claimant will quantify the claim for business loss in advance of the hearing of this matter.

CONSTRUCTION INCOME / EQUITY LOSS

391. The approved adaptive reuse of the Shops would result in substantial savings on construction materials, thereby creating a substantial contributory value to the equity in the lands and Project, which value would be recognized by developers, financiers and bankers for the Project, but not necessarily reflected in, or subsumed by, the market value.

392. In addition, the construction work incorporated an income / profit / equity for 135 for general contractor services, which is now lost as a result of the expropriation

393. The Claimant will quantify the claim for construction income / equity loss in advance of the hearing of this matter.

394. The Claimant seeks compensation for construction income / equity loss pursuant to ss. 13(2)(b) and 18 of the *Act*.

EXECUTIVE TIME

395. In addition to the substantial time spent and now thrown away by executives and staff of the Claimant, including Lawrence Ryan and family members, prior to the expropriation, substantial time was spent responding to the City campaign against 135 and Ryan in numerous courts and tribunals, often without legal counsel, and to prepare and present this claim and address other related proceedings as a direct result of the expropriation.

396. The Claimant will quantify the claim for executive time in advance of the hearing of this matter.

DISTURBANCE / TAX COSTS

397. The Claimant never intended to sell the Lands or Project described herein and to structure the holding of the Lands and the Project so as to avoid the imposition of capital gains tax. As a result of the expropriation, the Claimant has been deemed to have sold the Lands and thus, to be potentially liable to capital gains tax. Given the unique nature of the combination of land, railway themed buildings, equipment and heritage associated therewith, the Claimant, however, may not be able to find a replacement property to relocate the Project, nor to avail itself of

the rollover provisions of the *Income Tax Act.* Accordingly, the Claimant seeks compensation for such capital gains tax or such other taxes as may be imposed by the Canada Revenue Agency arising as a result of the expropriation, as it may become liable for as disturbance damages pursuant to s. 13(2)(b), s. 18(1), special difficulties in relocation under s. 13(2)(d) or as business losses under s. 19 of the Act. Any other taxation that may be imposed by Revenue Canada as a direct result of the expropriation.

INTEREST

398. The Claimant states that the City's conduct of the expropriation and campaign to restrict use of the Lands and the Project culminating in the expropriation, merits an award of interest at the 12% maximum rate permitted by the *Act*, including on all compensation, and starting from the loss of productive use of the Lands in or about 1996 pursuant to ss. 25 and 33 of the *Act.*

COSTS

399. The Claimant seeks costs for:

a) its reasonable legal, appraisal and other costs and disbursements incurred to determine the compensation herein, including an order for interim costs and the costs of the numerous proceedings related to or incidental to the expropriation, including those referred to herein but not limited to:

i) the costs of the June 22, 2009 motion to seek the Court's intervention and protection in the expropriation process;

ii) the costs of the Claimant's section 39 application to vary the possession date and the City's counter-application;

iii) the costs of defending the bankruptcy proceedings brought by the Claimant's lender, Republic;

iv) the costs of refinancing the properties owned by Mr. Ryan and / or his corporations, over which Republic held collateral and other security;

v) costs arising in respect of related proceedings, including but not limited to *Provincial Offences Act* ("POA") attendances, numerous tribunals and Superior Court trials and appeals and in particular, the costs to determine its "rights, title or interest in the Disputed Lands";

vi) all other costs incurred in any other proceedings as a result of the expropriation; and

such further and other relief as the Claimant may advise and the Board deems just.

400. The City's conduct of the expropriation has increased the costs that the Claimant will incur for the purpose of determining the compensation payable as a result of the expropriation.

401. The Claimant states that interim advance payments to cover costs will be required to ensure a full and fair hearing. The Claimant, whose sole purpose was

the ownership, restoration and occupation of the lands for the Project, has no reasonable opportunity to borrow funds to pay costs as a direct result of the expropriation which left the Claimant without its lands and equity, without fair payment for those lands and without its approved project and income.

SUMMARY OF CLAIM

402. In summary, the Claimant claims:

a) $25 million for market value or such further amount as the Claimant may advise;

b) $9.5 million for contributory value of the building's shell or such further amount as the Claimant may advise;

c) $7.5 million for replacement cost of the building's shell, representing an amount that deducts contribution value;

d) $8 million for delay damages or such further amount as the Claimant may advise;

e) $14 million for disturbance damages, special damages including but not limited to, costs thrown away, or any such further amount as the Claimant may advise, to be quantified in advance of the hearing of this matter;

f) $15 million for business loss and loss of income, equity and profit with such amount to be quantified in advance of the hearing of this matter;

g) a sum for construction income / equity with such amount to be quantified in advance of the hearing of this matter;

h) $500,000 for special difficulties in relocation or such further amount as the Claimant may advise;

i) a sum for executive and staff time with such amount to be quantified in advance of this matter, based upon the project management contract of April 5, 1996;

j) disturbance damages for any capital gains tax liability or other tax liability incurred by the Claimant arising from the expropriation in an amount to be determined;

k) interest at 12% calculated from the date the owner ceased to make productive use of the land from 1996 or such other date as the Board may Order;

l) its reasonable legal, appraisal and other costs and disbursements incurred to determine the compensation herein, including an order for interim costs, and the costs of proceedings related to or incidental to the expropriation;

m) An Order that interest on fees carried for the long-term to be paid on all accounts at the various firm's prevailing rates up to 2 percent per month compounded monthly, and any associated financing costs and / or any other Order which may be required, to ensure experts can be retained to provide the Claimant with a full and fair hearing;

n) An Order that all evidence in this matter may be relied on in all Superior Court of Justice matters with respect to the Lands;

o) such further and other relief as the Claimant may advise and the Board deems just.

403. This Statement of Claim is served by Gowling Lafleur Henderson LLP, and the address at which documents may be served is c/o Gowling Lafleur Henderson LLP, 50 Queen Street North, Suite 1020, Kitchener, Ontario, N2H 6M2 to the attention of John S. Doherty.

August 2, 2013

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