MISSISSAUGA **Corporate Report**

COUNCIL AGENDA
30 SEP 2009

Clerk's Files

Originator's Files

IN CAMERA

DATE: September 24, 2009

TO: Mayor and Members of Council
Meeting Date: September 30, 2009

FROM: Mary Ellen Bench, BA, LLB, CS
City Solicitor

SUBJECT: **Response to Issues Raised by Council - Proposed or Pending Acquisition or Disposition by the Municipality or a Local Board - Agreement of Purchase and Sale - Lands within the City Centre**

RECOMMENDATION: That the report dated September 24, 2009, entitled "Response to Issues Raised by Council - Proposed or Pending Acquisition or Disposition by the Municipality or a Local Board - Agreement of Purchase and Sale - Lands within the City Centre" by the City Solicitor be received for information.

BACKGROUND: On September 16, 2009 the City Manager's report dated September 11, 2009 with respect to this matter was considered. At that time Council also considered the City Solicitor's report dated September 8, 2009, which dealt specifically with the issue of the litigation between Oxford/OMERS and World Class Developments (WCD). Council deferred consideration of this matter to its meeting of September 30, 2009 and requested that staff seek a two-week extension of the closing date. Council deferred consideration of this matter so that staff could report back on the following matters:

(i) There is a perception of conflict of interest with respect to the negotiations with the owners, Oxford properties given information contained in the affidavits filed in Court relating to World Class Developments Limited's (WCD) claim for this property – the City Solicitor was requested to obtain an external legal opinion on

whether a conflict of interest exists for the Mayor and Council or for staff;

(ii) The City Solicitor was also requested to obtain an outside legal opinion to address whether staff negotiated the appropriate agreements to protect the City of Mississauga, including Council and staff, from any future claims by WCD, Sheridan College, or by a third party who might also have an interest in acquiring the property (known or unknown) as it relates to the Agreement of Purchase and Sale to acquire the above property;

(iii) That staff provide Council with the independent written property appraisals obtained to date. Staff were also requested to obtain a new appraisal which would take into account the WCD site plan for a hotel, the planned Sheridan College use and the impact on property value given the recession.

(iv) That staff provide Council with information concerning the quotes from independent consultants to clean up and remove the contaminated soil from the site, and the appropriate standard of clean-up as determined by the consultant, whether or not consistent with MOE guidelines.

Additionally, staff were asked to provide all members of Council with the Purchase and Sale Agreement and court documents pertaining to the litigation between World Class Developments and Oxford Properties/OMERS. This includes both the affidavits filed and the Mutual Release executed by the parties. As well, the City Solicitor was requested to make a further request of Council for Oxford Properties/OMERS respecting the settlement costs being paid to World Class Developments and a summary of the costs incurred to that date respecting the aforementioned purchase and sale.

The City Clerk provided Members of Council with copies of the requested documentation in the City's possession on September 18, 2009, except for the two appraisal reports which were attached to the City Solicitor's e-mailed memorandum of September 17, 2009.

COMMENTS:

Conflict of Interest

When this matter was presented at the meeting of Council, Council noted that there is a perception of a conflict of interest with respect to the negotiations of OMERS given information contained in the affidavits filed in court relating to World Class Developments (WCD) claim for this property. The affidavits filed in court recognized that a conditional Agreement of Purchase and Sale dated January 31, 2007 was entered into between OMERS and WCD. As detailed in the City Solicitor's report dated September 8, 2009, evidence filed in support of a counter-application filed by WCD included affidavits of two individuals identified as its principals, namely Peter McCallion and Tony DeCicco, as well as an affidavit from a hotelier. These affidavits reference meetings with City staff and Mayor McCallion to discuss the hotel but do not suggest impropriety on the part of the City, its staff or elected officials.

The law firm of McLean & Kerr was retained to respond to Council's request for an external legal opinion respecting whether a conflict of interest exists. Appendix 1 hereto is the legal opinion dated September 24, 2009 as prepared by Sharon Addison, a litigation specialist at the law firm McLean & Kerr.

The Agreement of Purchase and Sale between OMERS and the City of Mississauga

At its meeting of September 16, 2009 Council expressed concern respecting the beryllium contamination. Questions were also raised given the purchase price and unfortunately, staff were unable to provide satisfactory answers to these questions at that time. Questions concerned the appraisals done for this property, copies of which were not provided to Council for the meeting, and the conditions restricting development on the site into the future.

Beryllium Contamination

In order to assess the risk to the City, as soon as the beryllium issue surfaced, staff retained a specialist in environmental law as well as the services of Golder Associates to perform the necessary environmental studies. Golder Associates has prepared a short report dated

September 24, 2009, appended as Appendix 2, respecting the contamination.

Council did not approve the remediation option whereby the contaminated soil would be moved to Oxford's abutting 3rd parcel, and insisted that the soil be disposed of at a proper disposal site. Accordingly, the City must insist on the 2nd remediation option with Oxford which involves the following: the Vendor will complete within 10 days following Closing, the removal of the beryllium impacted soil from that part of the Lands delineated on a site plan to be prepared by the Purchaser's consultant and under the direction and supervision of Purchaser's consultant. The Vendor will be responsible for the cost of the removal and disposal of up to 5,000 cubic metres (5,000 m3) of such impacted soil and the Purchaser will be responsible for the cost of removal and disposal of all soil in excess of 5,000 cubic metres (5,000 m3). It is not anticipated that the contaminated soil will exceed this volume. The removal of the impacted soil will be confirmed by lab testing by Purchaser's consultant and will continue until such lab testing confirms complete removal of the impacted soil. The Vendor will be responsible for the cost of the Purchaser's consultant except to the extent the Purchaser's consultant is supervising the removal of impacted soil in excess of 5,000 cubic metres (5,000 m3) which supervision costs will be paid by the Purchaser.

Restrictions on Title

A restrictive covenant agreement was negotiated as part of this transaction, recognizing the intended use of the property by the City for the development of a downtown Mississauga campus of Sheridan College in accordance with a Memorandum of Understanding entered into by the City on June 10, 2009 and to address the concerns of OMERS/Oxford respecting retail development on the site that could compete with Square One. The provisions of the restrictive covenant agreement apply for 25 years. The 4th Restrictive Covenant in the Restrictive Covenant Agreement includes a Right in favour of Oxford to Make a First Offer to purchase if any portion of the lands are declared surplus. It states "In the event the Development Property or any portion thereof is declared surplus in the future by the Covenantor (acting in its capacity as a municipality), then within sixty (60) days of such surplus declaration the Covenantee shall have the right to submit a signed unconditional offer on such lands, declared surplus in priority

to any other prospective purchaser, provided all of the Covenantor's conditions relating to the sale of the lands are fully met and the purchase price for the lands reflects fair market value for highest and best use, as established by the Covenantor."

Oxford does not have a hard right to buy the property, rather, only 60 days to negotiate an agreement of purchase and sale that is considered suitable for the City. The value of the land is to be determined on the basis of highest and best use, as established by the City. This will ensure the City obtains the highest possible value for the property, regardless of the restrictive covenants or what the zoning might be for the lands.

Appraisal

Council at its meeting of September 16, 2009 directed that a new independent written property appraisal be obtained that would take into account the WCD site plan for a hotel, the planned Sheridan College use, and the impact on property value of the current recession. Staff have retained GSI Real Estate & Planning Advisors Inc. and Kenneth F. Stroud and Mark G. Penney to prepare a new appraisal report based on the factors requested. At the time of writing, the appraisal report is not yet available, however it is expected to be available for distribution to Members of Council prior to the September 30, 2009 meeting.

Legal Opinion Respecting the Agreement of Purchase and Sale

Council has requested that the City Solicitor obtain an independent legal opinion to address whether staff negotiated the appropriate provisions in the Agreement of Purchase and Sale to protect the City of Mississauga, including Members of Council and staff, from any future claims by WCD, Sheridan College, or by any other third party who could have an interest in acquiring this property, whether known or unknown to the City.

Todd Davidson of the law firm McLean & Kerr, a commercial real estate specialist, was retained in this respect. Appendix 3 is Mr. Davidson's report dated September 24, 2009. Please note that both legal opinions (Appendix 1 and Appendix 3) contain the identical Schedule A – the Facts; and Schedule B – the Documents Reviewed.

For this reason alone, given the size of the report, Schedules A and B have been removed from Appendix 3. Complete copies will be available at the meeting if Members of Council wish to review.

Costs

In respect of the negotiation of the Agreement of Purchase and Sale, the costs of retaining outside environmental legal counsel were $22,152.38 while the costs of retaining Golder Associates to peer review the environmental testing done by Oxford on the subject property and complete its own report, totalled $9.600.00. The two land appraisal reports commissioned prior to the City entering into the Agreement of Purchase and Sale were obtained at a cost of $18,951.45. Consequently, the total cost of outside consultants associated with the negotiation of the Agreement of Purchase and Sale is $50,703.83.

Oxford/OMERS Settlement with WCD

Finally, regarding the settlement reached between Oxford/OMERS and WCD, the Releases executed by the parties were discussed at the September 16, 2009 Council meeting and copies were distributed to Members of Council by the City Clerk on September 17, 2009. As instructed by Council, the City Solicitor made a new request for the terms of the settlement, and was advised as follows:

> As you know, we and our co-owner have legal obligations to WCD in connection with the settlement and the request asks us to breach those obligations. Therefore, we respectfully decline the request to provide a copy of the terms of the settlement.
>
> We can, however, confirm that the former transaction with WDC and the settlement thereof is independent of (and not related to) any transaction with any other party, including the City of Mississauga. We can also confirm, as requested, that the settlement is for cash and for no other consideration.

Current Status of the Agreement of Purchase and Sale

As directed by Council on September 16, 2009, Legal Services requested a two-week extension of the transaction closing, to allow staff to report back to Council on the concerns raised at that meeting. As the City Solicitor advised, the agreement to purchase the property was scheduled to close on September 17, 2009 and the Owners refused to grant the extension. Discussions with OMERS' counsel continue however, and at the time of writing the City Solicitor has been advised that a decision on the extension will be communicated to the City by Monday, September 28, 2009. OMERS is not the sole owner of the property in question and approval must also be obtained from their partner in Alberta.

FINANCIAL IMPACT: N/A

CONCLUSION: This report responds to the concerns raised by Members of Council at the meeting of September 16, 2009 regarding the proposed purchase of a parcel of land comprised of 8.55 acres located in the City Centre, from OMERS Realty Management Corporation and 156 Square One Limited. The opinions of the various experts retained are attached.

ATTACHMENTS:

Appendix 1: Legal Opinion by Sharon Addison, McLean & Kerr, dated September 24, 2009.
Appendix 2: Soil Quality Report prepared by Golder Associates, dated September 24, 2009.
Appendix 3: Legal Report by Todd Davidson, McLean & Kerr, dated September 24, 2009 (except Schedules A and B which are set out in Appendix 1.)

Mary Ellen Bench, BA, LLB, CS
City Solicitor

Prepared By: Mary Ellen Bench, City Solicitor

APPENDIX 1

McLEAN & KERR LLP

Barristers & Solicitors

SUITE 2800
130 ADELAIDE STREET WEST
TORONTO, CANADA M5H 3P5

TELEPHONE: 416 364 5371
FAX: 416 366 8571
EMAIL: mail@mcleankerr.com
WEBSITE: www.mcleankerr.com

September 24, 2009

File No. 09-6167

The Corporation of the City of Mississauga
300 City Centre Drive
Mississauga, Ontario
L5B 3C1

Attention: **Mary Ellen Bench, City Solicitor**

Dear Mary Ellen:

Re: Municipal Conflict of Interest Opinion - Prospective Purchase of Lands located at 4255 Living Arts Drive (et al), Mississauga, Ontario, for the development of the Sheridan Mississauga Campus

We act as litigation counsel for the City.

As you know, McLean & Kerr LLP is a Toronto law firm established in 1921 and has the highest "AV" peer review rating in Martindale-Hubbell (being a "Legal Ability Rating" of "Very High to Pre-eminent" and a "General Ethical Standards Rating" of "Very High"). We provide specialized and sophisticated legal counsel to a diverse clientele that includes independent entrepreneurs, governmental, quasi-governmental and public sector institutions, pension funds, national landlords and national tenants, lenders, insurance companies, title insurance companies and major national and international corporations. We are widely recognized as having one of the pre-eminent real estate and commercial leasing groups in Canada with a strong commercial litigation practice. Our real estate practice group has structured and completed purchases, sales, financings, leasing and the development of many large scale commercial businesses and properties in Canada and abroad, including shopping centres, hotels, office complexes, "big box" retail centres and airport terminals.

You have advised that the City entered into an agreement of purchase and sale dated as of July 20, 2009 (the "**City Purchase Agreement**") with OMERS Realty Management Corporation and 156 Square One Limited, as vendor, and the City, as purchaser, for the purchase by the City (the "**Purchase Transaction**") of certain lands which we have called the "**Property**" (as defined in Schedule "A"). Subsequent to the acquisition of the Property by the City, the Property was to be leased by the City to Sheridan Institute of Technology & Advanced Learning ("**Sheridan**") for the development of the Sheridan Mississauga Campus, as provided in the Memorandum of

Understanding dated June 10, 2009 (the "**MOU**") between the City and Sheridan. The City Purchase Agreement had a contractual completion date of September 17, 2009 (the "**Closing Date**").

You have further advised that at a closed meeting of City Council on September 16, 2009, a number of concerns were raised with respect to the Purchase Transaction given various facts surrounding the Property, including concerns regarding the involvement of World Class Developments Limited ("**WCD**") with the Property.

At that meeting, City staff were instructed not to complete the Purchase Transaction on the Closing Date and to seek a two week extension of the closing.

A concern has been raised regarding a conflict of interest that may exist for Mayor McCallion, members of Council and/or City staff relating to the City Purchase Agreement and/or WCD's involvement in the Property.

The question to be opined is therefore stated as follows:

Did the Mayor, any member of Council or City staff contravene section 5 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50 (the "MCIA") with respect to their involvement in matters relating to the City Purchase Agreement and/or WCD's involvement in the Property?

In providing the opinions contained in this letter, we have:

(i) based our opinions on the facts as set out in Schedule "A" hereto (the "**Facts**"). Please note that the opinions contained in this letter and the opinions contained in our separate opinion letter respecting the proposed real estate transaction are both based upon the Facts set out in Schedule "A";

(ii) reviewed the affidavits, agreements, correspondence, emails, reports and other documents as listed in Schedule "B" hereto (the "**Documents Reviewed**");

(iii) included our analysis of the law and general discussion of these matters in Schedule "C" hereto ("**Discussion and Legal Analysis**"); and

(iv) reviewed such other laws and documents as we have deemed necessary in order to give the opinions contained herein.

OUR OPINIONS

Based strictly upon the foregoing and subject to the assumptions and qualifications set out below, we are of the opinion that:

1. The MCIA does not apply to City staff. Therefore, there has been no a contravention of section 5 of the MCIA by City staff.

2. No member of Council contravened section 5 of the MCIA with respect to his or her involvement in matters relating to the City Purchase Agreement.

3. No member of Council, other than Mayor McCallion, contravened section 5 of the MCIA with respect to his or her involvement in matters relating to the WCD's involvement in the Property.

4. As the WCD application to remove the "H" designation from the zoning of the Property was listed as Unfinished Business Item 1 on the Agenda for the May 21, 2008 meeting of Council, it is characterized as substantive in nature and therefore Mayor McCallion contravened section 5 of the MCIA at that meeting by not disclosing her pecuniary interest in WCD's involvement in the Property and the nature of that interest.

5. If the contravention of section 5 of the MCIA by Mayor McCallion on May 21, 2008 was a result of an honest error in judgment or committed through inadvertence, the Mayor would not be subject to the penalties set out in the MCIA.

6. If we are incorrect in our opinion #4 above and the WCD application to remove the "H" designation from the zoning of the Property listed as Unfinished Business Item 1 on the Agenda for the May 21, 2008 meeting of Council is characterized as procedural in nature because no substantive matter concerning WCD's application was discussed at the meeting, then Mayor McCallion did not contravene section 5 of the MCIA.

ASSUMPTIONS AND QUALIFICATIONS

The opinions expressed above are subject to the following assumptions and qualifications:

(a) in expressing the opinions herein, we have considered such questions of law and have examined such records and certificates of public officials and others and originals, copies or facsimiles of such other agreements, instruments, certificates and documents as we have deemed necessary or advisable as a basis for the opinions expressed above. We have not participated in the preparation and settlement of any of the Documents Reviewed or any negotiations or discussions concerning the transactions contemplated thereby (including, without limitation, the Purchase Transaction) and we have assumed that there are no facts, documents, agreements, understandings or arrangements other than the Facts and the Documents Reviewed that are relevant to the subject matter of this opinion letter;

(b) we have assumed:

(i) the accuracy, authenticity and completeness of the copies of the Documents Reviewed and all other documents provided to us;

(ii) that each of the parties to the relevant agreements included in the Documents Reviewed was and continues to be incorporated and duly organized under all applicable laws and each such party is a subsisting

corporation with all requisite power, authority, legal right and capacity to create, execute, deliver and perform its obligations under the relevant agreements in the Documents Reviewed;

(iii) that each of the agreements included in the Documents Reviewed,

(A) has been properly authorized by all necessary corporate action of each of the parties hereto and by all other necessary parties and has been duly executed and delivered by each of the parties thereto; and

(B) accurately sets out the financial and business terms agreed between the parties thereto.

(iv) that the execution and delivery by each party of each of the agreements included in the Documents Reviewed to which it is a party and the performance by it of its obligations thereunder have not and will not contravene, conflict with, result in a breach of or constitute a default under: (i) the articles, by-laws or other constating documents of such party, (ii) any laws or (iii) any resolutions of the directors (or any committee of directors) or shareholders of such party;

(v) each of the agreements included in the Documents Reviewed has been duly executed and delivered by each party thereto;

(vi) each of the agreements referred to in Part 1 of Schedule "A" constitutes a legal, valid and binding obligation of each of the parties, enforceable against each of such parties in accordance with its terms;

(c) no opinion or certification is made or expressed by us in respect of the quality of title to the Property;

(d) no opinion or certification is made or expressed by us on the legal validity of the purported tender by the Landowner upon the City of the Landowner's closing deliveries pursuant to Section 10.1 of the City Purchase Agreement, which occurred on September 17, 2009;

(e) no opinion or certification is made or expressed by us in connection with the environmental condition of the Property, the legal or professional advice received by the City in connection with the environmental condition of the Property or the sufficiency of specific provisions and agreements entered into in connection with the environmental condition of the Property;

(f) no opinion or certification is made or expressed by us regarding the market value of the Property or the quality or sufficiency of the appraisals received by the City;

(g) that our opinions are subject to all legal and equitable limitations and other laws affecting the enforcement of rights and remedies from time to time in effect and

limitations imposed upon the enforcement of the rights and remedies in the discretion of a court of competent jurisdiction.

We are solicitors practising in the Province of Ontario and as such we restrict our opinions to the laws of the Province of Ontario and Canadian federal laws having application in the Province of Ontario as of the date hereof.

The opinions expressed above are given only to the party to whom this opinion is addressed and only in connection with the City's prospective purchase of the Property and may not be assigned to and may not be relied on by any other person or for any other purpose.

Yours very truly,

McLean & Kerr LLP

SCHEDULE "A" – THE FACTS

PART 1 – DEFINED TERMS

"**City**" means The Corporation of the City of Mississauga.

"**City Purchase Agreement**" means the agreement of purchase and sale in respect of the Property dated as of July 20, 2009 between the Landowner, as vendor, and the City, as purchaser.

"**DeCicco Affidavit**" means the affidavit of Tony DeCicco sworn August 27, 2009 obtained from Court files from the Ontario Superior Court of Justice at Toronto, Commercial List in respect of Court File No. CV-09-8270-00CL.

"**Environmental Agreement**" means the Environmental Agreement dated as of September 17, 2009 between the Landowner and the City.

"**First Filipetti Affidavit**" means the affidavit of John Filipetti sworn July 16, 2009 and obtained from Court files from the Ontario Superior Court of Justice at Toronto, Commercial List in respect of Court File No. CV-09-8270-00CL.

"**First McCallion Affidavit**" means the affidavit of Peter McCallion sworn August 24, 2009 and obtained from Court files from the Ontario Superior Court of Justice at Toronto, Commercial List in respect of Court File No. CV-09-8270-00CL.

"**IF Appraisal**" means the appraisal of the Property dated July 31, 2009 prepared by International Forensic & Litigation Appraisal Services Inc.

"**Indemnification and Hold Harmless Agreement**" means the Indemnification and Hold Harmless Agreement dated July 20, 2009 between the Landowner, as indemnifier, and the City and Sheridan, as indemnified parties.

"**Landowner**" means collectively OMERS Realty Management Corporation and 156 Square One Limited (formerly 1331430 Ontario Inc.), being the registered owner of the Property.

"**Landowner/WCD Litigation**" means the Application and Counter Application for judicial determination of the termination of the WCD Purchase Agreement between the Landowner, as applicant, and WCD, as respondent, in the Ontario Superior Court of Justice at Toronto, Commercial List under Court File No. CV-09-8270-00CL.

"**MOU**" means the Memorandum of Understanding dated June 10, 2009 between the City and Sheridan.

"**Mutual Release**" means the Mutual Release dated September 15, 2009 between the Landowner and WCD.

"**OAC Appraisal**" means the appraisal of the Property dated July 19, 2009 prepared by Ontario Appraisal Corporation.

"**OMB**" means Ontario Municipal Board.

"**OMB Appeal**" means the appeal to the OMB by WCD of WCD's site plan approval application and "H" designation removal application, indentified by OMB Case Numbers PL090145 and PL090146.

"**Property**" means approximately 8.55 acres of undeveloped land owned by the Landowner located adjacent to the Square One shopping centre in Mississauga, Ontario, legally described as:

PIN 13141-0214 (LT) being Block 29, Plan 43M-1010

PIN 13141-0216 (LT) being Block 9, Plan 43M-1010, Mississauga.

"**Release Agreement**" means the Release Agreement dated July 21, 2009 between Sheridan, as releasor, and the City, as releasee.

"**Requisition Letter**" means the letter of requisitions dated September 2, 2009 from the City to McCarthy Tétrault LLP, as legal counsel for the Landowner.

"**Second Filipetti Affidavit**" means the affidavit of John Filipetti sworn August 28, 2009 and obtained from the Ontario Municipal Board in respect of Case Number PL090145

"**Second McCallion Affidavit**" means the affidavit of Peter McCallion sworn September 15, 2009, which has not been filed in Court.

"**Sheridan**" means Sheridan Institute of Technology and Advanced Leaning.

"**Sheridan Mississauga Campus**" means the educational facility intended to be developed on the Property by Sheridan pursuant to the MOU.

"**Vendor**" means the Landowner.

"**WCD**" means World Class Development Limited.

"**WCD Purchase Agreement**" means the agreement of purchase and sale in respect of the Property dated as of January 31, 2007 between the Landowner, as vendor, and WCD, as purchaser, as amended.

"**WCD Release**" means the Release dated September 15, 2009 by WCD, as releasor, in favour of the City and Sheridan.

PART 2 – WCD'S INVOLVEMENT IN THE PROPERTY

1. On January 31, 2007, the Landowner and WCD entered into the WCD Purchase Agreement for the sale of the Property by the Landowner, as vendor, to WCD, as purchaser, for a purchase price of $14,492,500 plus GST, for the construction and development of a hotel and convention centre on the Property. [1]

2. The WCD Purchase Agreement contained a number of conditions that WCD was to satisfy prior to the completion of the purchase and sale transaction. [2]

3. One of those conditions was that WCD had to satisfy the Landowner that WCD had entered into a management agreement for a "Hotel" (as defined in the WCD Purchase Agreement) with a four star or better operator. [3]

4. On July 31, 2007, WCD submitted its application for site plan approval to the City and applied to the City for removal of the "H" (Holding) designation in respect of the zoning of the Property. [4]

5. City Council dealt with WCD's request for removal of the "H" designation at the following meetings of Council:

   (a) April 23, 2008 – the matter was deferred to a Special Council on April 30, 2008 upon the request of WCD as WCD was not able to have all of the agreements and requirements to support its application in place. Mayor Hazel McCallion declared Conflict of Interest in the matter given her son's involvement with WCD. [5]

   (b) April 30, 2008 – the matter was rescheduled to May 21, 2008 on the request of WCD. Mayor McCallion was absent from this meeting. [6]

   (c) May 7, 2008 – the Minutes of the April 23, 2008 and April 30, 2008 meetings were adopted as presented. Mayor McCallion restated her Conflict of Interest. [7]

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[1] See the WCD Purchase Agreement.

[2] Note Article 4 of the WCD Purchase Agreement.

[3] See S. 4.1(e) (iii) of the WCD Purchase Agreement.

[4] See Application for Site Plan Removal File No. SP 07/197 dated July 31, 2007.

[5] See Council Minutes of April 23, 2008, including Deputation 5(i) and Resolution 0096-2008.

[6] See Council Minutes of April 30, 2008, including Correspondence 3(i) and Resolution 018-2008.

[7] See Council Minutes of May 7, 2008, including 3(a) and (b) and DVD Recording.

(d) May 21, 2008 – the matter was deferred again as WCD was still working on its application. Although the minutes of Council provide that Mayor McCallion declared Conflict of Interest in the matter given her son's involvement in WCD, a review of the DVD Recording does not indicate that that Mayor McCallion declared a Conflict of Interest. [8]

(e) June 4, 2008 – the Minutes of the May 21, 2008 meeting were adopted as presented. [9]

6. The First McCallion Affidavit and the DeCicco Affidavit identify a number of meetings over the period from approximately 2006 to 2008 among representatives of the Landowner, WCD and City staff in respect of the proposed hotel and convention centre project. Mayor McCallion is specifically identified as having attended meetings on March 18, 2008[10] and December 15, 2008. [11] Councillor Frank Dale is specifically identified as having attended a meeting on March 31, 2008. [12]

7. By December, 2008, WCD's application for site plan approval and removal of the "H" designation from the zoning of the Property had not been approved by the City because WCD had not satisfied the City's requirements. [13]

8. On December 18, 2008, WCD appealed its site plan approval application and "H" designation removal application to the OMB. [14]

9. In September, 2009, the OMB Appeal was adjourned sine die by agreement of WCD and the Landowner pending final determination of the Landowner/WCD Litigation. [15]

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[8] See Council Minutes of May 21, 2008, including 9, Unfinished Business, UB-1, and DVD Recording.

[9] See Council Minutes of June 4, 2008, including 3(a).

[10] See paragraph 30 of the DeCicco Affidavit.

[11] See paragraph 69 of the DeCicco Affidavit.

[12] See paragraph 32 of the DeCicco Affidavit.

[13] See paragraph 55 of the DeCicco Affidavit.

[14] See Notices of Appeal of WCD to Ontario Municipal Board Case Nos. PL090145 and PL090146.

[15] See Letters to the OMB dated September 4, 2009 from Parente, Borean LLP (counsel for WCD) and September 8, 2009 from Goodmans LLP (counsel for Landowner).

10. The exchange of correspondence between McCarthy Tétrault LLP (legal counsel to the Landowner) and Minden Gross LLP (legal counsel to WCD) in 2008 demonstrates a growing concern by the Landowner throughout 2008 that WCD would not be able to satisfy the conditions contained in the WCD Purchase Agreement, and in particular, the inability of WCD to obtain a four star hotel operator for the Property. [16]

11. By way of letter dated January 9, 2009 from McCarthy Tétrault LLP (legal counsel for the Landowner) to Minden Gross LLP (legal counsel for WCD), the Landowner provided written notice to WCD of termination of the WCD Purchase Agreement pursuant to the terms of the WCD Purchase Agreement. [17]

12. WCD did not accept the termination by the Landowner of the WCD Purchase Agreement and in the early months of 2009 WCD carried on with the OMB Appeal, and refused to accept a return of its refundable deposit money from the Landowner. [18]

13. On July 16, 2009, the Landowner brought an Application at the Ontario Superior Court of Justice (Commercial Court) at Toronto for, among other things, a judicial determination that the WCD Purchase Agreement was terminated effective January 9, 2009 and that it was null and void and of no further force or effect and that WCD has no right or claim to the Property. [19]

14. By September 15, 2009, the Landowner/WCD Litigation appeared to have been settled. The Landowner and WCD executed the Mutual Release wherein each released the other for, among other things, claims related to the Landowner/WCD Litigation and WCD released all claims which were made or could have been made in connection with the Property. [20]

15. WCD also provided the WCD Release to and in favour of the City and Sheridan wherein WCD released, among other things, all claims which were or could have been made in connection with the WCD Purchase Agreement and the Property. [21]

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[16] See Exhibits G through Q of the Second Filipetti Affidavit.

[17] See Exhibit Q of the Second Filipetti Affidavit.

[18] See Exhibit R of the Second Filipetti Affidavit.

[19] See Application Record of the Landowner under Court File No. CV-09-8270-00CL.

[20] See Mutual Release dated September 15, 2009 between the Landowner and WCD.

[21] See WCD Release dated September 15, 2009 by WCD in favour of the City and Sheridan.

PART 3 – PETER McCALLION AND WCD

16. In paragraph 1 of the First McCallion Affidavit, Peter McCallion stated that *"I am one of the principals of World Class Developments Limited".* [22]

17. In paragraph 2 of the Second McCallion Affidavit, Mr. McCallion stated that the reference to his being a principal of WCD in the First McCallion Affidavit was not true and that he is *"not a principal of WCD."* [23] The Second McCallion Affidavit has not been filed in any Court proceeding.

18. In paragraph 8 of the DeCicco Affidavit, Tony DeCicco, in his capacity as General Manager of WCD, stated, in part, that *"Mr. McCallion was involved with WCD from the beginning..."* [24]

19. In paragraph 4 of the First McCallion Affidavit, Mr. McCallion stated that in 2004-2005 he became interested in developing the Property *"on behalf of one of my clients, Leo Couprie."* [25]

20. During the meeting of Council on April 23, 2008, Mayor McCallion stated that her son represented one of the investors in WCD. [26]

21. The Corporation Profile Report of WCD shows that:

    (a) WCD is an active Ontario Business Corporation which was incorporated on February 22, 2005 and has Ontario Corporation Number 1651052;

    (b) the registered office is *"Leo Couprie, 14 Michael Court, Thornhill, Ontario, Canada, L4J 3A9"*;

    (c) Leo Couprie is the President and sole Director of WCD. [27]

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[22] See paragraph 1 of the First McCallion Affidavit.

[23] See paragraph 1 of the Second McCallion Affidavit.

[24] See paragraph 8 of the DeCicco Affidavit.

[25] See paragraph 4 of the First McCallion Affidavit.

[26] See Council Minutes of April 23, 2008 and DVD Recording.

[27] See Corporation Profile Report of WCD, appended as Exhibit "C" to the Second Filipetti Affidavit.

22. The property formerly owned by Mr. McCallion and legally described as the whole of PIN 13197-0076 (LT), being Parcel 137-7, Section 43M-721, Lot 137, Plan 43M-721, City of Mississauga and municipally known as 5405 Durie Road, Mississauga, Ontario was sold by Mr. McCallion to Leo Couprie on March 7, 2008 by Transfer/Deed of Land registered that day in the Land Registry Office for the Land Titles Division of Peel as Instrument No. PR1426103. [28]

PART 4 – AGREEMENT OF PURCHASE AND SALE WITH THE CITY

23. Pursuant to By-Law Number 0182-2009, the execution of the MOU was authorized as of June 10, 2009 to further the development of the Sheridan Mississauga Campus. City staff were also authorized to negotiate and execute all necessary agreements to facilitate the development of the Sheridan Mississauga Campus.[29] The Minutes of the June 10, 2009 Council meeting do not show any declaration of Conflict of Interest by any member of Council.

24. Section 1 of the MOU provides, in part, that the City would purchase the Property for a price not to exceed $15,000,000.00 for the purpose of developing the Sheridan Mississauga Campus and that the City would enter into a long term lease of the Property with Sheridan for nominal rent. Section 2 of the MOU provides, in part, an acknowledgement by the parties that significant funding for Phase One of the project would come from the Federal/Provincial Infrastructure Fund and that construction must begin as soon as possible to meet infrastructure funding timelines committed to by Sheridan. The parties agreed to work in partnership to expedite all necessary approvals for the construction of Phase One. [30]

25. The Landowner and the City executed the City Purchase Agreement as of July 20, 2009. The Landowner, City and Sheridan also executed the Indemnification and Hold Harmless Agreement as of that date.

26. On July 21, 2009 the City and Sheridan entered into the Release Agreement in which Sheridan released the City from any claims, costs and damages arising in connection with the failure to receive anticipated Infrastructure money previously committed by the Federal/Provincial government to assist with the construction of the Sheridan Mississauga Campus. [31]

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[28] See Instrument No. PR1426103 being the Transfer/Deed of Land from Peter McCallion to Leo Couprie for the property municipally known as 5405 Durie Road, Mississauga, Ontario.

[29] See By-Law No. 0182-2009 and Council Minutes of June 10, 2009.

[30] See Memorandum of Understanding, Sections 1 and 2.

[31] See Release Agreement, Section 1.

27. The City Purchase Agreement provided for the sale of the Property by the Landowner, as vendor, to the City, as purchaser, for a purchase price of $14,908,902.00 plus applicable taxes, which was based upon a price of $1,743,731.22 per acre. [32] The closing date for the transaction was to be September 17, 2009. [33]

28. The City obtained two independent appraisals concerning the market value of the Property. The OAC Appraisal concluded that the Property had an estimated fee simple market value of $26,630,000.00 to $28,350,000.00 (being $3,100,000.00 to $3,300,000.00 per acre). [34] The IF Appraisal concluded that the Property had an estimated "as is" fee simple market value of $17,180,000.00 (being $2,000,000.00 per acre). [35] The City's confidential Commercial And Industrial Appraisal Review Form provides that in the view of City staff, the IF Appraisal failed to consider recent property transactions in the City Centre area and concluded that a more realistic market value price range for the Property was $2,500,000 to $2,700,000 per acre [36]

29. WCD's claim regarding an ongoing interest in the Property were specifically addressed in Section 6.1 of the City Purchase Agreement and Schedule "C" appended thereto (being the form of Indemnification and Hold Harmless Agreement). In the Indemnification and Hold Harmless Agreement, the Landowner agreed to indemnify and hold the City and Sheridan harmless from any "*Indemnified Claims*" (as defined therein) arising out of the terminated WCD Purchase Agreement. Further, reference to claims of WCD as having an ongoing interest in the Property appear at Recital 4 of the Release Agreement given by Sheridan College in favour of the City. [37]

30. The Landowner had disclosed environmental reports regarding the Property to the City, which reports raised some concerns regarding beryllium content in certain soils at the Property. [38]

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[32] See S. 1 of City Purchase Agreement.

[33] See S. 3.1 of the City Purchase Agreement.

[34] See page 2 of the OAC Appraisal.

[35] See page 4 of the IF Appraisal.

[36] See Commercial And Industrial Appraisal Review Form, section 9, Conclusions

[37] See City Purchase Agreement, S. 6.1, the Indemnification and Hold Harmless Agreement and the Release Agreement.

[38] See Phase I Environmental Site Assessment, Vacant Lands, Square One Shopping Centre, Mississauga, Ontario prepared by Pinchin Environmental Ltd. dated June 29, 2009 and the reliance letter in favour of the City and Sheridan dated June 30, 2009 from Pinchin Environmental Ltd.

31. The City retained the services of MacLeod Dixon LLP to provide legal advice regarding the environmental issues in respect of the Property and assistance with the environmental documentation including certain clauses of the City Purchase Agreement. As well, the City retained Golder Associates Ltd. to advise it regarding environmental issues in respect of the Property and to peer review the environmental reports that had been earlier provided by the Landowner to the City. [39]

32. Environmental matters with respect to the Property are specifically addressed in Section 9 of the City Purchase Agreement and in the Environmental Agreement. [40]

33. The Landowner's obligation to deliver to the City good and marketable title to the Property on the closing date is found at Section 5 of the City Purchase Agreement. [41]

34. The permitted encumbrances to title of the Property are identified at Schedule "B" of the City Purchase Agreement. [42]

35. On September 2, 2009 the City submitted its Requisition Letter to the solicitors for the Landowner pursuant to Section 4.1 of the City Purchase Agreement. [43]

36. On September 15, 2009 the City received the WCD Release in favour of the City and Sheridan and a copy of the Mutual Release between WCD and the Landowner.

37. On September 16, 2009 City Council instructed staff:

    (a) not to complete the purchase of the Property on September 17, 2009 and to request a two week extension of the closing date;

    (b) obtain an external legal opinion whether a conflict of interest exists for the Mayor and Council or for City staff;

    (c) obtain an external legal opinion to address whether staff negotiated the appropriate agreements to protect the City, including Council and staff, from any future claims by WCD, Sheridan or by a third party (known or unknown) who might also have an interest in acquiring the Property; and

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[39] See Peer Review dated August 20, 2009 from Golder Associates Ltd.

[40] See S. 9 of the City Purchase Agreement. See the Environmental Agreement.

[41] See S. 5 of the City Purchase Agreement.

[42] See Schedule "B" to the City Purchase Agreement.

[43] See Requisition Letter.

(d) obtain a new appraisal to verify whether the City's purchase price reflects the fair market value of the Property.

38. The Landowner did not grant the City's request for an extension of the closing date of the City Purchase Agreement and took steps to document a tender on September 17, 2009. The City disputed the validity of the tender. The City has had continuing discussions with the Landowner and Sheridan regarding the City Purchase Transaction since September 17, 2009.[44]

[44] As advised by Mary Ellen Bench, City Solicitor, on September 23, 2009.

SCHEDULE "B" – DOCUMENTS REVIEWED

DOCUMENTS RELATED TO CITY PURCHASE OF LANDS FOR SHERIDAN MISSISSAUGA CAMPUS:

1. By-Law 0182-2009 enacted June 10, 2009

2. Memorandum of Understanding between the City and Sheridan Institute of Technology and Advanced Learning ("**Sheridan**") dated June 10, 2009

3. Agreement of Purchase and Sale made as of July 20, 2009 between OMERS Realty Management Corporation and 156 Square One Limited (formerly 1331430 Ontario Inc.) (the "**Landowner**"), as vendor, and the City, as purchaser, as amended

4. Indemnification and Hold Harmless Agreement made as of July 20, 2009 between the Landowner, as indemnifier, and the City and Sheridan, as Indemnified parties

5. Release Agreement effective as of July 21, 2009 between Sheridan, as releasor, and the City, as releasee

6. Environmental Agreement made as of September 17, 2009 between the Landowner and the City

7. Release dated September 15, 2009 by World Class Developments Limited (the "**WCD**") in favour of the City and Sheridan

8. Mutual Release between the Landowner and WCD dated September 15, 2009

9. Email dated September 16, 2009 at 9:36 p.m. from Abraham Costin, counsel to the Landowner, to Domenic Tudino, advising that the Landowner would not consent to an extension of the closing date

10. Letter dated September 2, 2009 from Domenic Tudino to McCarthy Tétrault LLP containing the City's requisitions

11. Email dated September 16, 2009 at 5:42 p.m. from Karam Daljit of Sheridan to Bruce Carr

12. Confidential Email from David Smyth dated August 24, 2009 (11:20 a.m.) re Cost Estimate for Off-Site Disposal of Be-Impacted Soil; Vacant Lands

13. Letter of Reliance – Pinchin Environmental dated June 30, 2009 re Vacant Lands

14. Confidential Peer Review Report, Existing Reports & Supplementary Investigations – Golder Associates dated August 20, 2009 re Pre-Purchase Evaluation of Vacant Lands

15. Chemical Analysis Results – McClymont & Rak Engineers, Inc. dated September 1, 2009 re Sheridan College

16. Scope for Excavation of Be-Impacted Soil – Golder Associates dated September 14, 2009

17. Human Risk Assessment, Rathburn Lands - AGRA Earth & Environmental Engineering Global Solutions dated December, 1998

18. Geotechnical Report prepared for Sheridan College – McClymont & Rak Engineers, Inc. dated September, 2009

19. Test Pitting Program Report re Square One Lands - Pinchin Environmental dated August 20, 2009

20. Update Phase I Environmental Site Assessment Vacant Lands, Square One – Pinchin Environmental dated June 29, 2009

21. Phase I Environmental Site Assessment, Square One Shopping Center and Square One Rathburn Lands – Pinchin Environmental dated October 29, 2007

22. Subsurface Soil Quality Investigation, Rathburn Lands – AGRA Earth & Environmental Engineering Global Solutions dated December, 1998

23. Appraisal dated July 19, 2009 – Ontario Appraisal Corporation

24. Appraisal dated July 29, 2009 – International Forensic & Litigation Appraisal Services Inc.

25. City of Mississauga Commercial And Industrial Appraisal Review Form dated August 10, 2009, being the confidential document prepared for internal use by City staff in respect of the IF Appraisal.

DOCUMENTS RE LANDOWNER/WCD LITIGATION – COURT FILE No. CV-09-8270-00CL:

26. Application Record of the Landowner, as applicant, including:
    (a) Notice of Application
    (b) Affidavit of John Filipetti sworn July 16, 2009, with Exhibits

27. Application Record of the Respondent, including:
    (a) Affidavit of Peter McCallion sworn August 24, 2009, with Exhibits
    (b) Affidavit of Tony DeCicco sworn August 27, 2009, with Exhibits
    (c) Affidavit of Suresh (Steve) Gupta sworn August 27, 2009, with Exhibits

DOCUMENTS RE WCD/OMB APPEAL – CASE No. PL090145/PL090146:

28. Ontario Municipal Board Case Summary

29. Letter dated September 4, 2009 from Parente Borean LLP

30. Letter dated September 8, 2009 from OMB

31. Letter dated September 8, 2009 from Goodmans LLP

32. Confirmation of Hearing Room Arrangements dated August 6, 2009

33. Letter from OMB dated August 10, 2009

34. Appeal Application materials submitted by WCD

35. Motion Record of OMERS, including:

    (a) Affidavit of John Filipetti sworn August 28, 2009, with Exhibits

CITY COUNCIL MINUTES/BY-LAWS AND DVD RECORDINGS:

36. Resolution No. 0108-2008A dated April 30, 2008

37. Letter from N. Barry Lyon Consultants Limited dated April 29, 2008

38. By-Law No. 0141-2008A

39. Council Minutes – April 23, 2008 and DVD Recording

40. Council Minutes – April 30, 2008 and DVD Recording

41. Council Minutes – May 7, 2008 and DVD Recording

42. Council Minutes – May 21, 2008 and DVD Recording

43. Council Minutes – June 4, 2008

44. City of Mississauga Corporate Report dated April 9, 2008

45. Council Minutes – June 10, 2009

46. Resolution No. 0096-2008 dated April 23, 2008

47. City Corporate Policy and Procedure, Conflict of Interest Policy for Staff Effective 2006 0705

48. Council Agenda – April 30, 2008

49. Council Agenda – May 21, 2008

50. City Corporate Report – R-7 – dated April 9, 2008 re removal of "H" holding symbol for zoning of the Property

51. Planning & Development Committee Report 8-2008 dated May 12, 2008

OTHER:

52. Affidavit of Peter McCallion sworn September 15, 2009

53. Copy of Parcel Register of 5405 Durie Road, Mississauga (PIN 13197-0076 (LT)), including the following documents:

- Instrument No. PR257594 registered June 7, 2002, being a Transfer to Peter McCallion
- Instrument No. PR257595 registered June 7, 2002, being a Charge/Mortgage of Land given by Peter McCallion to the Toronto-Dominion Bank in the original principal amount of $275,000
- Instrument No. PR257596 registered June 7, 2000, being a Charge/Mortgage of Land given by Peter McCallion to Edelgard Von Zittwitz in the original principal amount of $100,000
- Instrument No. PR433321 registered May 13, 2003, being a Charge/Mortgage of Land from Peter McCallion in favour of MacDonald & Partners LLP in the original principal amount of $30,000
- Instrument No. PR839694 registered April 27, 2005, being a Charge/Mortgage of Land from Peter McCallion in favour of Leo Couprie, Sam Singal and Joe Pasternak in the original principal amount of $450,000
- Instrument No. PR848959 registered May 12, 2005, being a Transfer by Sam Signal and Joe Pasternak of their interest in Mortgage No. PR839694 to and in favour of Leo Couprie
- Instrument No. PR1355366 registered October 17, 2007, being a Lien in favour of Canada Revenue Agency in the amount of $26,801.92 regarding Peter McCallion
- Instrument No. PR1358564 registered October 23, 2007, being a Lien in favour of Canada Revenue Agency in the amount of $10,074.49 regarding Peter McCallion
- Instrument No. PR1426103 registered March 7, 2008, being a Transfer from Peter McCallion to Leo Couprie

54. Article in September 18, 2009 edition of the Toronto Star, page GT1, entitled "*McCallion joined meetings on son's land deal, files show*"

55. Article in September 19, 2009 edition of the Toronto Star, page GT2, entitled "*McCallion should know better*"

56. Article in September 19-20, 2009 edition of Mississauga News, page 1, entitled *"College Campus Plan in Peril"*

57. Article in September 24, 2009 edition of the Toronto Star, page GT1, entitled "*Video Contradicts McCallion"*

SCHEDULE "C" – DISCUSSION AND LEGAL ANALYSIS

1. PURPOSE OF THE MCIA

The underlying purpose of the MCIA has been considered in numerous Ontario decisions and can best be derived from the often quoted decision of Justice Krever of Ontario High Court of Justice, Divisional Court in the 1979 in *Moll v. Fisher*:[45]

> *"The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute.*
>
> *[...]*
>
> *This enactment, like all conflict-of-interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And the Act, by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty. The public's confidence in its elected representatives demands no less.*
>
> *Legislation of this nature must, it is clear, be construed broadly and in a manner consistent with its purpose."*[46]

2. STATUTORY INTERPRETATION

Several Ontario courts have also discussed the punitive or penal nature of the MCIA. Section 10(1) of the MCIA provides that if a judge determines that there has been a contravention of the Act, the judge shall declare the member seat vacant, may disqualify the member from being a

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[45] [1979] 96 D.L.R. (3d) 506 (Ont. H.C. Div. Ct.).

[46] *Ibid.* at 508-509.

member for a period of not more than seven years and may require the member to make restitution if there was a personal financial gain.

As a result of the potential consequences of a finding of a contravention of the MCIA, the courts apply a strict interpretation to its applicable sections. Mr. Justice Mossop stated in *Re Verdun and Rupnow*[47] that the legislation *"being punitive in nature must be strictly construed and I therefore cannot insert into the statute words which do no appear therein".*[48] In *Sharp v. McGregor,*[49] the Divisional Court stated that *"if there is a reasonable interpretation which will avoid a penalty in any particular case, we must adopt that construction."*[50] Mr. Justice Kozak stated in *Audziss v. Santa,*[51] *"the Municipal Conflict of Interest Act was also found to be a penal statute in that any adverse finding may deprive an individual of his right to sit on council. That being so, any ambiguity must be interpreted in as favourably a manner possible to the individual liable to the penalty."*[52]

3. SECTION 5 OF THE MCIA

Section 5 of the MCIA clearly sets out the procedure to be followed by a member, as defined by the MCIA, should there be a conflict of interest.

Section 5(1) of the MCIA states:

> *"5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,*
>
> > *(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;*
> >
> > *(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and*
> >
> > *(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question."*

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[47] (1980), 117 D.L.R. (3d) 128 (Ont. Co. Ct.).

[48] *Ibid.* at 133.

[49] (1988), 50 D.L.R. (4th) 183 (Ont. H.C.J.).

[50] *Ibid.* at 187.

[51] [2003] 124 A.C.W.S. (3d) 1164 (Ont. S. C.J.).

[52] *Ibid.* at 39.

4. "MEMBER"

The MCIA applies to the conduct of "*members*".

A *"member"* as defined in section 1 of the MCIA *"means a member of a council or of a local board"*.

City staff are not "*members*" as defined by the MCIA. The MCIA does not apply to City staff and therefore, City staff did not contravene section 5 of the MCIA.

Mayor McCallion and all Council Members are "*members*" as defined by the MCIA. Their possible contravention of section 5 shall be discussed below.

The Facts make specific reference to Mayor McCallion and to Councillor Frank Dale. We are unaware of any other member who was or is involved in matters relating to the City Purchase Agreement and/or matters relating to the WCD's involvement in the Property.

5. "PECUNIARY INTEREST" – COUNCILLOR DALE

If a member has any "*pecuniary interest*" in any matter which is the subject of consideration his or her conduct is governed by section 5 of the MCIA.

"*Pecuniary*" has been defined as "*of, belonging to, or having relation to money*".[53]

Councillor Dale attended a meeting on March 31, 2008 with City staff, representatives of WCD and representatives of the Developers. There are no facts presented to support a proposition that Councillor Dale had a pecuniary interest in WCD's involvement in the Property or the City Purchase Agreement.

We are of the opinion that Councillor Dale did not contravene section 5 of the MCIA in relation to WCD's involvement with the Property or the City Purchase Agreement.

6. "PECUNIARY INTEREST" IN WCD'S INVOLVEMENT IN THE PROPERTY – MAYOR McCALLION

Peter McCallion stated in the First McCallion Affidavit that "I am one of the principals of World Class Development Limited". In the second McCallion Affidavit, which does not appear to have been filed with the court, he stated that this statement was not true. Mayor McCallion disclosed at the April 23, 2009 meeting of Council that he was a representative of an investor of WCD. Despite whether Peter McCallion was a principal of WCD or not, the First McCallion Affidavit, the DeCicco Affidavit and Mayor McCallion's disclosure during the April 23, 2009 meeting of Council present sufficient statements to support the conclusion that Peter McCallion had a pecuniary interest in WCD's involvement in the Property.

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[53] See *Campbell v. Dowdall*, [1992] O.J. No. 1841 (Ont. Ct. J. (Gen. Div.)) at 19 citing *City of Edmonton v. Purves* (1982) M.P.L.R. 221 at 232.

Peter McCallion is Mayor McCallion's son. Section 3 of the MCIA states:

> *"3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member."*

We are of the opinion that Mayor McCallion had a pecuniary interest in WCD's involvement in the Property. The Facts relating to the Mayor's involvement and activities will be reviewed to determine whether there has been a contravention of section 5 of the MCIA.

7. "PECUNIARY INTEREST" - CITY PURCHASE AGREEMENT – MAYOR McCALLION

As at June 10, 2009, the WCD Purchase Agreement was no longer in force. The WCD Purchase Agreement had been terminated by the Landowner five months earlier on January 9, 2009.

WCD initially disputed the termination of the WCD Purchase Agreement and maintained its right to continue with a pre-existing application to the OMB. Although WCD maintained that it continued to have a legal interest in the Property, the Landowner initiated a court application on July 16, 2009 for a judicial determination that the WCD Purchase Agreement was terminated effective January 9, 2009. The Landowner and WCD executed a Mutual Release dated September 15, 2009 wherein WCD released all claims which were made or could have been made in connection with the Property.

There is no ruling or finding of a court that the WCD Purchase Agreement was legally binding subsequent to January 9, 2009. The terms of the resolution between the Landowner and WCD are not known. The entitlement to the return of any deposit monies was established in the WCD Purchase Agreement.

The City Purchase Agreement contained covenants for the Landowner to satisfy the City that WCD, as well as any other third party, had no legal interest in the Property. Specifically,

(1) WCD was not a party to the City Purchase Agreement;

(2) WCD had no legal rights to enforce any terms of the City Purchase Agreement;

(3) the City Purchase Agreement did not grant any financial benefit to or determine any financial loss to WCD.

Any entitlement to financial benefit or determination of financial loss to WCD, and thereby to Peter McCallion, was governed by the WCD Purchase Agreement, and not the City Purchase Agreement.

We are of the opinion that Peter McCallion did not have a pecuniary interest in the City Purchase Agreement.

We are of the opinion that Mayor McCallion did not have a pecuniary interest in the City Purchase Agreement.

If we are incorrect and Mayor McCallion had a pecuniary interest in the City Purchase Agreement, we are of the opinion that any failure by Mayor McCallion to disclose her interest and the nature of that interest may be an inadvertence or error in judgment as contemplated by section 10(2) of the MCIA.

If we are incorrect and Mayor McCallion had a pecuniary interest in the City Purchase Agreement, the pecuniary interest may also be so remote and insignificant that section 5 of the MCIA would not apply. Section 4(k) of the MCIA states: "[s]ection 5 does not apply to a pecuniary interest in any matter that a member may have, ... by reason only of an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member."

According to *Re Lastman,*[54] to determine whether or not section 4(k) of the MCIA applies, the following must be considered:

> *"Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence that councillor's action and decision on the question? In answering the question set out in such test, such elector might consider whether there was any present or prospective financial benefit or detriment, financial or otherwise, that could result depending on the manner in which the member disposed of the subject matter before him or her."*[55]

Applying the test above, the question would be whether a reasonable elector apprised of these circumstances would be more likely than not to regard any interest of either Mayor McCallion or her son as likely to influence the Mayor's actions or decisions regarding the City Purchase Agreement.[56]

8. DISCLOSURE OF PECUNIARY INTEREST IN WCD'S INVOLVEMENT IN THE PROPERTY

Pursuant to section 5(1) of the MCIA, where a member has a direct or indirect pecuniary interest in any matter and *"is present at a meeting of the council"* or local board at which *"the matter is the subject of consideration"*, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

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[54] (2000), 47 O.R. (3d) 177 (Ont. S.C.J.).

[55] *Ibid.* at 14.

[56] See *ibid.* at 16.

(b) shall not take part in the discussion of, or vote on any question in respect of the matter.

Section 5(2) of the MCIA states that, "where the meeting referred to in subsection (1) is not open to the public, **in addition to complying with the requirements of that subsection**, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration."

Section 5(3) states that, "where the interest was not disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, **the member shall disclose** the interest and otherwise comply with subsection (1) **at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1).**"

We have reviewed the Minutes of the meetings and the DVD Recordings of those meetings, and in particular those portions of those meetings relating to WCD'S involvement in the Property. Where we refer to the word "Matter" below, we refer to the application by WCD to Council for the removal of "H" Holding designation from the zoning of the Property. Our quotations of the words spoken are not to be construed as a legal transcript of the Council meetings as taken from the DVD Recordings but are instead our interpretation and opinion of the words spoken based upon our review of the DVD Recordings of such meetings.

April 23, 2008 – GENERAL MEETING OF COUNCIL

The Minutes of the Meeting reflect that

(1) Mayor McCallion disclosed her conflict of interest with respect to the Matter "by virtue of her son being involved with the World Class Development application";

(2) N. Barry Lyons Consultants Ltd. addressed Council to request a deferral;

(3) Councillor Dale made comments relating to the development application;

(4) a resolution to defer the Matter to a Special Council Meeting on April 30, 2008 was voted on and carried.

The DVD Recording of April 23, 2008 reflects that

(1) Mayor McCallion was not present when the meeting commenced;

(2) when Mayor McCallion arrived and after the Council moved to a new matter on the agenda, the Mayor stated:

> "First of all, I would like to declare a conflict, Madam Clerk, on the World Com. My son represents one of the investors."

(3) Three and a half hours into the meeting, Mayor McCallion stated:

"Okay. We'll go on with the next deputation - removal of the H-Holding zone World Class Developments of which I declared a conflict.....[inaudible name] – would you like to take over the meeting? I would love to go up and make a phone call. Councillor Saito as Acting Mayor."

(4) Mayor McCallion then left the meeting;

(5) Barry Lyons addressed Council by providing an updated, referenced specific correspondence relating to a special meeting with council within a week's time;

(6) Councillor Dale made comments relating to the development proposal including Council's desire to see this as a destination for the city centre, his disappointment that there is a request for Council to call a special Council meeting, that the date for regional development charges had been extended and that a lot of staff tme had been taken up;

(7) motions were made and carried to

(i) call a special meeting on April 30, 2009,

(ii) adopt the report dated April 9, 2008,

(iii) authorize the Planning and Building Department to prepare the necessary by-law.

Q: ***Was the Matter the subject of consideration at the meeting of Council?***

A: ***Yes.***

Q: ***Did Mayor McCallion disclose a Conflict of Interest?***

A: ***Yes.*** Mayor McCallion disclosed her Conflict of Interest after the first matter on the agenda was heard and prior to the discussion of the Matter.

Q: ***Did Mayor McCallion disclose the general nature of the pecuniary interest?***

A: ***Yes.*** Mayor McCallion stated that her son represented one of the investors of WCD.

Q: ***Did Mayor McCallion otherwise comply with her obligations under section 5 of the MCIA at the meeting of Council?***

A: ***Yes.*** In addition to the above, Mayor McCallion removed herself from the meeting while the Matter was discussed.

April 30, 2008 – SPECIAL MEETING OF COUNCIL

The Minutes of the Meeting reflect that there was no disclosure of direct or indirect pecuniary interest.

The DVD Recording of the April 30, 2008 reflects that

(1) at the commencement of the Meeting Acting Mayor Saito stated:

"Ladies and Gentlemen, I'm going to call to order the meeting of council. We have a special council meeting this morning. My understanding is that Mayor McCallion had declared last week a conflict of interest on this item so, as Acting Mayor, I will call the meeting to order and deal with this.

Are there any disclosures or direct or indirect pecuniary interests on the item of today's council meeting?

Seeing none, we have... Yes. We will accept the Mayor's previously disclosed conflict of interest if she comes before the meeting is over."

(2) a motion to refer the matter to the May 21, 2008 council meeting was carried.

Q: ***Was the Matter the subject of consideration at the meeting of Council?***

A: ***Yes.*** The purpose of the Special Meeting of Council was to discuss WCD's involvement in the Property.

Q: ***Did Mayor McCallion disclose a Conflict of Interest?***

A: Mayor McCallion was absent from this meeting.

Q: ***Did Mayor McCallion disclose the general nature of the pecuniary interest?***

A: Mayor McCallion was absent from this meeting.

Q: ***Did Mayor McCallion otherwise comply with her obligations under section 5 of the MCIA at the council meeting of Council?***

A: ***Yes.*** Mayor McCallion was absent from this meeting.

May 7, 2008 – GENERAL MEETING OF COUNCIL

The Minutes of the Meeting state:

2. DISCLOSURES OF DIRECT OR INDIRECT PECUNIARY INTEREST – Nil

3. MINUTES OF PREVIOUS COUNCIL MEETINGS

(a) April 23, 2008 – Session 7 – Adopted as presented

(b) April 30, 2008 – Session 8 – Adopted as presented

The DVD Recording of the May 7, 2008 meeting reflects that Mayor McCallion asked for disclosure of direct or indirect pecuniary interest and received no reply. The Mayor then asked for the minutes of the April 23, 2009 and April 30, 2008 meetings to be carried. At that time, the Mayor stated

> "April the 30th Session 8. Is that the special council meeting? I think I declared a conflict on the item that was dealt with."

Q: ***Was the Matter the subject of consideration at the meeting of Council?***

A: ***Yes.*** Mayor McCallion had an obligation to disclose her interest in the Matter discussed at the special council meeting on April 30, 2008 and the general nature of the conflict of interest at this meeting of May 7, 2008.

Q: ***Did Mayor McCallion disclose a Conflict of Interest?***

A: ***Yes.***

Q: ***Did Mayor McCallion disclose the general nature of the pecuniary interest?***

A: ***No.***

Q: ***Did Mayor McCallion otherwise comply with her obligations under section 5 of the MCIA at the council meeting of Council?***

A: ***Yes.***

May 21, 2008 – GENERAL MEETING OF COUNCIL

The Minutes of the Meeting state:

2. DISCLOSURES OF DIRECT OR INDIRECT PECUNIARY INTEREST

Mayor Hazel McCallion declared Conflict of Interest with respect to the Unfinished Business matter by virtue of her son being involved with the World Class Development application.

9. UNFINISHED BUSINESS

UB-1 Removal of the "H" Holding Symbol – World Class Developments Limited (Agreement of Purchase of Sale) 4225 Living Arts Drive, 4200 Duke of York Boulevard and 285 Prince of Wales Drive, H-OZ 07/004 W4, Ward 4

Correspondence dated April 29, 2008 from Barry Lyon Consultants Ltd., with respect to the removal of the "H" Holding

symbol – World Class Developments Limited (Agreement of Purchase and Sale) 4225 Living Arts Drive, 4200 Duke of York Boulevard and 285 Prince of Wales Drive.

A Special Council meet was held on April 30, 2008 with respect to the above matter and since WCD was unable to fulfill the approval requirements in time for the Special Council meeting, the matter was deferred to May 21, 2008.

Mayor Hazel McCallion declared Conflict of Interest with respect to the above Corporate Report by virtue of her son being involved with the World Class Development application.

Ed Sajecki, Commissioner, and Planning & Building advised that the applicant was still working on the application and requested that it be deferred again.

The DVD Recording of the May 21 2008 meeting reflects that:

(1) when asked by Mayor McCallion for Disclosure of Direct or Indirect Pecuniary Interests, no one responded;

(2) when Unfinished Business was discussed, the dialogue proceeded as follows:

"Mayor:

Unfinished business. It's been deferred has it? Mr. Sajecki? UB-1?

Commissioner Sajecki:

That's deferred today. The applicant has said that they are working toward fulfilling the conditions and working out with OMERS whatever issues they still have, so just simply deferred today.

Mayor:

Deferred? All? Councillor Dale?

Councillor Dale:

Mayor, I was going to refer it to staff for future consideration.

Mayor:

Your motion is to refer?

Councillor Dale:

... refer it to staff."

(3) the motion to refer the Matter to City staff was carried;

(4) this dialogue was 37 seconds long.

Q: ***Was the Matter the subject of consideration at the meeting of Council?***

A: ***Yes.*** The Matter was on the Agenda as Unfinished Business and was to be considered by Council at the meeting.

Q: ***Did Mayor McCallion disclose a Conflict of Interest?***

A: ***No.***

Q: ***Did Mayor McCallion disclose the general nature of the pecuniary interest?***

A: ***No.***

Q: ***Did Mayor McCallion otherwise comply with her obligations under section 5 of the MCIA at the meeting of Council?***

A: Mayor McCallion ought not to have participated in any discussion and/or vote in respect of the Matter. However, the discussion at the meeting of Council was procedural in nature and lasted 37 seconds. No substantive discussions occurred.

8. PROCEDURAL VS. SUBSTANTIVE IN NATURE

If we are incorrect and the Matter before Council on May 21, 2008 was procedural in nature and not substantive, section 5 of the MCIA may not apply. The courts have held that members of Council will not be in violation of section 5 of the MCIA where the subject matter of the discussion relating to the pecuniary interest is merely procedural and not substantive.

In *Audziss v. Santa* ("*Audziss*"),[57] the Ontario Court of Justice considered a situation in which five electors applied for a compliance audit of the respondent councillor's election campaign finances. At a council meeting held on April 23, 2001, the city clerk presented a request that a special meeting be held on May 7, 2001 to debate the application. The May 7, 2001 date was approved. At the April 23, 2001 meeting, the respondent councillor spoke in respect of the procedural aspect of the application filed against him.[58] Various councillors participated in a discussion in respect of the procedural fairness of the meeting to be held on May 7, 2001. The

[57] [2003] 124 A.C.W.S. (3d) 1164 (Ont. S.C.J.).

[58] *Ibid.* at 14.

respondent councillor did not participate in the Special Meeting held on May 7, 2001. After considering various case law, Justice Kozak stated:

> *"It is my finding that councillor Santa did not violate section 5(1) of the Municipal Conflict of Interest Act. In my view a reasonable interpretation of the provisions of section 5(1) presents an ambiguity that must be interpreted in as favourable a manner as possible to the person liable to the penalty. Section 5(1) contemplates that where a member has any pecuniary interest in any matter and is present at a meeting of the council at which the matter is the subject of consideration, the member shall prior to consideration of the matter at the meeting disclose his interest, not take part in the discussion or vote on any question in respect of the matter, shall leave the meeting and shall not attempt in any way whether before, during or after the meeting to influence the voting on such question.*
>
> *On April 23, 2001 the issue as to whether or not to order an audit was not the subject of consideration. This was reserved for May 7, 2001. The subject of consideration on April 23, 2001 was the matter of procedure which existed in the confused minds of the councillors present at the meeting. The distinction between procedure and substance creates ambiguity as to at what point in time a member is to declare his interest, leave the meeting and not participate in any further discussions. At the meeting of April 23, 2001 Mr. Santa did not declare a financial interest, leave the meeting and not participate in the discussions because he did not feel compelled to do so, as his input was sought out when the matter of process or procedure was discussed. When the substance of the matter, as to whether to order an audit came on for debate on May 7, 2001, councillor Santa declared his financial interest, left the meeting, did not return until the meeting was over and did not participate in the vote.*[59]"

Audziss can be distinguished from the Facts. The matter put forward at the April 23, 2001 meeting in *Audziss* was a matter of new business and was introduced to schedule the Special Meeting of Council. At the May 21, 2008 meeting of Council, the matter was on the Agenda to be discussed by Council.

In the Nova Scotia case of *Stubbs v. Greenough*[60] ("*Stubbs*"), a councillor had a pecuniary interest in a matter before council. It was alleged that the councillor contravened the Nova

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[59] *Ibid.* at 58 and 59.

[60] [1984] 25 A.C.W.S. (2d) 26 (N.S. S.C.).

Scotia *Municipal Conflict of Interest Act* by, among other things, participating in a meeting held on June 21, 1983. The meeting in question was allegedly a continuation of the meeting held on June 14, 1983 at which time the councillor had a conflict of interest.

The items not finished at the June 14 meeting of Council were placed on the agenda for the June 21 meeting.[61] A notice of motion was brought by two councillors in respect of a motion for the reconsideration of the changed administrative policy in question. The councillor challenged the notice of motion on a procedural basis. A debate ensued. The evidence suggested that the debate was limited to procedure and not the subject matter of the policy in question.

A vote was held on the notice of motion which was a procedural matter. The councillor participated in that vote. Another vote was held on the substantive portion of the motion. The councillor did not participate in this vote.

The court found that the issue on which the councillor voted was a procedural matter. The discussion related to the procedure and not the subject-matter of the issue. There, the defendant's participation and vote was not in violation of the Act.[62] The judge stated that even if it had been a violation of the Act, it would have been an error in judgment.

Having reviewed the DVD Recording of the May 21, 2008 meeting and considering the nature and/or length of discussions, we are of the opinion that the discussions before Council on May 21, 2008 were procedural in nature. There were no substantive discussions on WCD's application to remove the "H" designation from zoning which took place at the May 21, 2008 meeting.

9. SAVING PROVISIONS – SECTION 10(2) OF THE MCIA

We are of the opinion that the contravention of the MCIA on May 21, 2008 may have been committed through inadvertence or by reason of an error in judgment as contemplated by section 10(2) of the MCIA.

Section 10(2) of the MCIA provides that if a contravention of subsection 5(1), (2) or (3) was committed through "*inadvertence*" or by reason of "*an error in judgment,*" the member is not subject to having his or her seat declared vacant and is not subject to being disqualified.

(a) "Inadvertence"

The courts have held that "*inadvertence*" involves oversight, inattention and carelessness.[63]

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[61] *Ibid.* at 36.

[62] *Ibid.* at 64.

[63] See *e.g. Campbell v. Dowdall* [1992] O.J. No. 1841 (Ont. Ct. J. (Gen. Div.)).

In *Re Verdun and Rupnow*[64], a councillor had declared his conflict of interest but then answered certain questions about the matter in question during a council meeting. The court made the following comments:

> *"I have already indicated that I am satisfied that Mr. Rupnow, when participating in the deliberations on both occasions, did so inadvertently in that he did not realize he may have been in contravention of the [MCIA]....I cannot find that Mr. Rupnow acted mala fides in such participation."*[65]

The contravention of section 5 of the MCIA by Mayor McCallion at the meeting held on May 21, 2008 for failure to disclose the interest and the nature of the interest may have been done inadvertently as a result of oversight or inattention. The matter took 37 seconds of Council's time. Nothing of substance to do with WCD's application to remove the "H" designation from the zoning of the Property was discussed.

(b) ***"Error in Judgment"***

In *Re Graham and McCallion,*[66] it was found that Mayor McCallion had made a *bona fide* error in judgment in respect of her actions of contravening the MCIA. The appeal court judge stated:

> *"Considering the matter objectively, and looking at all of the circumstances as outlined in the evidence and by the trial judge, there was and is ample evidence to support the finding of a bona fide error in judgment .... in effect, the trial judge has found that Mayor McCallion made an honest error in judgment and with no improper motive. Motive is not relevant on the issue of conflict of interest, but in our opinion it is relevant on the issue of bona fide error in judgment. We therefore dismiss the appeal of the applicant Graham."*[67]

If the contravention of section 5 of the MCIA by Mayor McCallion on May 21, 2008 was a result of an honest error in judgment, section 10(2) of the MCIA would apply.

10. ATTEMPT TO INFLUENCE THE VOTING BEFORE, DURING OR AFTER THE MEETING OF COUNCIL

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[64] [1980] 117 D.L.R. (3d) 128 (Ont. Co. Ct.).

[65] *Ibid.* at 136.

[66] (1982), 139 D.L.R. (3d) 508 (Ont. Div.Ct.).

[67] *Ibid.* at 18.

Pursuant to section 5(1)(c) of the MCIA, where a member has a pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, *the member shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.*

In the recent case of *Baillargeon v. Carroll,* ("*Carroll*"),[68] the Ontario Superior Court of Justice considered whether or not a School Trustee contravened sections 5(1)(b) and (c) of the MCIA. It was found that the School Trustee had contravened of the MCIA by committing several specific acts. These acts including the following:

(a) After the close of a Board's Administrative and Corporate Services meeting, the School Trustee approached another trustee to ask whether or not she had questioned a specific matter for the School Board. It was held that the member should not have spoken to anyone about certain motions before the Board given his conflict of interest;[69] and

(b) On May 15, 2008, the School Trustee sent an email to all of the trustees. It was held that this email was an attempt to influence others on which the School Trustee had the matters in which he had a conflict of interest.[70]

In the Nova Scotia case, *Stubbs,*[71] a member of council had made phone calls to other members of council before a vote was to be made on an issue on which he had declared a conflict. Chief Justice Glube stated that although the member did not intend to attempt to influence the vote,

> *"...the public perception of those telephone calls, and possibly the subconscious purpose of [the respondent] violated section 6.1 of the Act in that he failed to 'refrain from attempting in any way...before...the meeting to influence the decision of the council...with respect to the matter.*[72]*"*

There are no facts presented to support a conclusion that Mayor McCallion attempted to influence any vote before, during or after any meeting of Council relating to the application by WCD for the removal of the "H" designation from the zoning of the Property.

There are no facts presented to support a conclusion that there was a contravention of section 5(1)(c) of the MCIA by Mayor McCallion.

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[68] [2009] O.J. No. 502 (Ont. S.C.J.).

[69] *Ibid.* at 78(f).

[70] *Ibid.* at 78(g)

[71] [1984] N.S.J. No. 73 (N.S. S.C. [Trial Division]).

[72] *Ibid.* at 65

11. MEETINGS WITH THE LANDOWNER

Mayor McCallion attended meetings on March 18, 2008 with representatives of WCD, Easton's and City staff and on December 15, 2008 with representatives of WCD and the Landowner. There were no other members as defined by the MCIA at these meetings.

Subsection 5(1) provides that "where a member...has any pecuniary interest, direct or indirect, in any matter and is present at a **meeting of the council or local board** at which the matter is the subject of consideration," he or she must comply with a number of statutory obligations. Courts have considered the use of the word "meeting" in section 5(1).

In *Mangano v. Moscoe*[73] (*"Mangano"*), a councillor participated in a meeting of a sub-committee and did not disclose his pecuniary interest in the matter of discussion at the meeting. It was held that "meeting of a council or local board" as provided in section 5(1) did not include the sub-committee meeting in question (i.e. the City of Toronto Transportation Committee). Justice Farley stated:

> ***...I am of the view that the legislature specifically indicated in section 5(1) that the member had to be "present at a meeting of the council."*** *It would have been redundant to say "of the council" since section 1(h) includes meeting of the council (as well as a meeting of a committee of council) within the definition of "meeting."*
>
> *In light of the penal nature of the [MCIA], if the legislature wished to catch the activity of a level lower than a meeting of the council, then it clearly would have set out in section 5(1) that all levels of meeting including those sub-committees were to be caught and linked them individually to a member of such lower level entity."*[74]

The proposition put forth in the case of and cases citing *Mangano* has recently been questioned. In the decision of 2008 case, *Jaffary v. Greaves*[75] (***"Jaffary"***), Justice Wood of the Ontario Superior Court of Justice examined section 5(1) of the MCIA and determined that "meeting of council", as defined by the MCIA, includes committee meetings.[76]

Although section 5(1) may not be restricted to "a meetings of the council or local board", there are no decisions of the court finding that a meeting in which no other council members are

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[73] (1991), 28 A.C.W.S. (3d) 239 (Ont. Ct. (Gen. Div.)).

[74] *Ibid.* at 8-10; See also *Alcock v. McDougald*[2004] O.J. No. 4581 (Ont. S.C.J.) and *Woodcock v. Moore* [2006] O.J. No. 2835 which confirm the proposition of *Mangano*.

[75] [2008] Ontario Superior Court of Justice Court File No.: 56/08.

[76] *Ibid.* at 33-39.

present are "meetings" as contemplated by the MCIA. We are of the opinion that the "meeting" means a meeting in which decision-making or discussions amongst members influencing the final decision-making are conducted.

It is our opinion that the meetings held on March 18, 2008 with the representatives of WCD, Easton's and City Staff and on December 15, 2008 with representatives of WCD and the Landowner were not "meetings" as contemplated by section 5(1) of the MCIA.

There are no facts presented to support a conclusion that the Mayor attempted to influence any member with respect to a vote relating to the relating to WCD's involvement with the Property.

Golder Associates

September 24, 2009 Project No. 09-1113-0163

Mr. Domenic Tudino, B. A., LLB
City of Mississauga - Legal Division
300 City Centre Drive,
4th Floor
Mississauga, Ontario
L5B 3C1

RE: SOIL QUALITY IN OMERS VACANT LANDS

Dear Mr. Tudino:

This communication provides an overview summary of soil conditions of the vacant lands (Blocks 9 and 29 on Registered Plan 43M-1010 (Site) owned by OMERS Realty Management Corporation (OMERS). The summary is based on environmental site assessments conducted for the owner, which included a soil-sampling program by Pinchin Environmental (Pinchin) for OMERS in July and August 2009. Golder Associates (Golder) peer-reviewed Pinchin's reports and work program for the City of Mississauga (City), and conducted supplementary soil sampling at the Site in August 2009.

Soil Test Results

Soil and fill quality at the Site meets the Ontario Ministry of Environment (MOE) Table 3 Standards (Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act, March 9, 2004) for industrial/commercial/community use in a non-potable groundwater condition (Table 3), except for Beryllium (Be). These Standards are applicable under current regulations for re-development of the Site.

Beryllium has been found to **marginally** exceed its Table 3 Standard in soil at **four** of more than **30 sample** locations on the Site. The current Table 3 Standard for Beryllium is **1.2** micrograms Be per gram of soil (µg/g), which is equivalent to the common term of parts per million (ppm). A µg/g is equivalent to approximately 4 drops in a 45-gallon drum. The maximum concentration of Beryllium found in the soil at the Site is **1.5** µg/g.

The slightly elevated concentrations of Beryllium in soil are associated with soil fill material and appear to be bounded in a rectangular area approximately 100 m in length sub-parallel to Duke of York Boulevard and 40 m in width in the eastern part of the Site. Although documented records of fill placement at the Site are not available, the fill primarily consists of re-worked soil and rock fragments, and quite likely originated from the local area. Further, it is quite possible that the Beryllium in the Site soil reflects the natural or background concentrations where the soil or rock originated.

What is Beryllium

Beryllium is a naturally occurring element (number four on the Periodic Table of Elements). It is present in soil, rocks and minerals such as coal. Although it is not used extensively for industrial purposes, Beryllium does have uses as a hardening agent in metal alloys and has been used in the electronic and aerospace industries. Since

2390 Argentia Road, Mississauga, Ontario, Canada L5N 5Z7
Tel: +1 (905) 567 4444 Fax: +1 (905) 567 6561 www.golder.com
Golder Associates: Operations in Africa, Asia, Australasia, Europe, North America and South America

the MOE first established its Standards for metals in soil in 1996, site investigations across Ontario have indicated that it is not uncommon for Beryllium to occur naturally in Ontario soils and rocks at concentrations of more than 1.2 µg/g.

MOE Proposed New Standards

The MOE proposed revisions to the Soil, Ground Water and Sediment Standards in 2008. Based on the increased availability of data from across Ontario, the MOE has suggested that Beryllium concentrations of as much as **2.5 µg/g** will be considered acceptable for background soils. The MOE further proposes to make the Beryllium Standard less stringent (**10 µg/g**) for re-development ranging from residential-parkland to industrial-commercial-/community uses. The new proposed Standard was developed by the MOE with currently available toxicology data to be protective of human health.

Thus, if and when the new proposed MOE Standards are approved by the Ontario Legislature, as is generally anticipated, the soil at the Site would meet MOE Standards for Beryllium and other metals.

Why is Beryllium an Issue at the Site?

The exceedances of Beryllium relative to the current MOE Standard in soil at the Site is a waste-management cost issue. A human-health risk assessment for the Site completed by AGRA Earth and Environmental in 1998 concluded that adverse human health effects are not likely to result from contact, ingestion and inhalation of the Beryllium in soils at the Site. The less stringent revision to the Beryllium Standard proposed by MOE in 2008, which is protective of human health, supports this claim.

As part of the re-development, removal of soil and fill from the Site is planned. The soil containing the slightly elevated concentrations of Beryllium is not considered to be clean fill under current Ontario waste-management regulations. Disposal of the soil and fill containing slightly elevated concentrations of Beryllium in a licensed waste-management facility is required, and this has a strong influence on costs for preparation of the Site for re-development. Following the planned excavation of soil and fill, confirmation sampling will be conducted to ensure remaining soil meets the current MOE Standard.

Yours Truly

David Smyth, M. Sc., P. Geo
Associate

DS/sa

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APPENDIX 3

McLEAN & KERR LLP

Barristers & Solicitors

SUITE 2800
130 ADELAIDE STREET WEST
TORONTO, CANADA M5H 3P5

TELEPHONE: 416 364 5371
FAX: 416 366 8571
EMAIL: mail@mcleankerr.com
WEBSITE: www.mcleankerr.com

September 24, 2009

File No. 09-6157

The Corporation of the City of Mississauga
300 City Centre Drive
Mississauga, Ontario
L5B 3C1

Attention: **Mary Ellen Bench, City Solicitor**

Dear Mary Ellen:

Re: Real Estate Opinion - Prospective Purchase of Lands located at 4255 Living Arts Drive (et al), Mississauga, Ontario, for the development of the Sheridan Mississauga Campus

We act as real estate counsel for the City.

As you know, McLean & Kerr LLP is a Toronto law firm established in 1921 and has the highest "AV" peer review rating in Martindale-Hubbell (being a "Legal Ability Rating" of "Very High to Pre-eminent" and a "General Ethical Standards Rating" of "Very High"). We provide specialized and sophisticated legal counsel to a diverse clientele that includes independent entrepreneurs, governmental, quasi-governmental and public sector institutions, pension funds, national landlords and national tenants, lenders, insurance companies, title insurance companies and major national and international corporations. We are widely recognized as having one of the pre-eminent real estate and commercial leasing groups in Canada with a strong commercial litigation practice. Our real estate practice group has structured and completed purchases, sales, financings, leasing and the development of many large scale commercial businesses and properties in Canada and abroad, including shopping centres, hotels, office complexes, "big box" retail centres and airport terminals.

You have advised that the City entered into an agreement of purchase and sale dated as of July 20, 2009 (the "**City Purchase Agreement**") with OMERS Realty Management Corporation and 156 Square One Limited, as vendor, and the City, as purchaser, for the purchase by the City (the "**Purchase Transaction**") of certain lands which we have called the "**Property**" (as defined in Schedule "A"). Subsequent to the acquisition of the Property by the City, the Property was to be leased by the City to Sheridan Institute of Technology & Advanced Learning ("**Sheridan**") for the development of the Sheridan Mississauga Campus, as provided in the Memorandum of

Understanding dated June 10, 2009 (the "**MOU**") between the City and Sheridan. The City Purchase Agreement had a contractual completion date of September 17, 2009 (the "**Closing Date**").

You have further advised that at a closed meeting of City Council on September 16, 2009, a number of concerns were raised with respect to the Purchase Transaction given various facts surrounding the Property, including concerns regarding the involvement of World Class Developments Limited ("**WCD**") with the Property.

At that meeting, City staff were instructed not to complete the Purchase Transaction on the Closing Date and to seek a two week extension of the closing.

You have now asked for our opinion as to whether the documentation that was negotiated (and in some cases, signed and settled) in respect of the City Purchase Agreement was appropriate to protect the City, Council and staff, from any future claims by WCD or by Sheridan or by a third party who might have an interest in acquiring the Property.

In providing the opinions contained in this letter, we have:

(i) based our opinions on the facts as set out in Schedule "A" hereto (the "**Facts**"). Please note that the opinions contained in this letter and the opinions contained in our separate opinion letter respecting the municipal conflict of interest matter are both based upon the Facts set out in Schedule "A";

(ii) reviewed the affidavits, agreements, correspondence, emails, reports and other documents as listed in Schedule "B" hereto (the "**Documents Reviewed**");

(iii) included our analysis of the law and general discussion of these matters in Schedule "C" hereto ("**Discussion and Legal Analysis**"); and

(iv) reviewed such other laws and documents as we have deemed necessary in order to give the opinions contained herein.

OUR OPINIONS

Based strictly upon the foregoing and subject to the assumptions and qualifications set out below, we are of the opinion that:

City Purchase Agreement

1. The City Purchase Agreement is a sophisticated and comprehensive agreement for the purchase and sale of the Property and was negotiated between sophisticated parties who each received the benefit of legal advice.

2. The City Purchase Agreement contains the typical clauses and conditions ordinarily found in purchase and sale agreements of this type for the protection of the City as purchaser.

3. City legal staff exercised the proper standard of care in documenting the City Purchase Agreement and in documenting the issues unique to the Purchase Transaction.

[*Please see our Discussion and Legal Analysis at Part 2, Schedule "C" for a detailed discussion of the City Purchase Agreement.*]

Possible Interest of WCD in and to the Property and the Environmental Issue affecting the Property known prior to the execution of the City Purchase Agreement

4. It was reasonable and prudent for City legal staff to ensure that the City Purchase Agreement contained specific clauses and conditions to protect the City with respect to:

(a) the potential claim and interest of WCD in and to the Property and potentially as against the City as purchaser under the City Purchase Agreement; and

(b) environmental issues affecting the Property.

[*Please see our Discussion and Legal Analysis at Schedule "C" for a detailed analysis of potential claims by WCD (Part 2 (e) and Part 3) and the environmental issue affecting the Property (Part 2 (d).*]

Release Agreement

5. Sheridan secured Federal/Provincial infrastructure stimulus funding to assist in the construction costs of Phase I of the Sheridan Mississauga Campus on condition that construction be completed by March of 2011. In the circumstances, it was reasonable and prudent at the time the City entered into the City Purchase Agreement, for City legal staff to ensure that the City entered into the Release Agreement with Sheridan whereby Sheridan released the City from all damages, losses, costs and expenses suffered or incurred by Sheridan as a result of or in connection with Sheridan's failure to receive the anticipated infrastructure stimulus funding from the Federal and Provincial governments.

[*Please see our Discussion and Legal Analysis at Schedule "C" for a detailed analysis of potential liability of the City to Sheridan.*]

Appraisals

6. It was reasonable and prudent for the City to obtain two independent appraisals of the market value of the Property. The actual purchase price for the Property negotiated by the City and the Landowner and specified in the City Purchase Agreement is less than both independent market value appraisals of the Property obtained by the City.

[*Please see Discussion and Legal Analysis at Part 2 (b) of Schedule "C" concerning the Appraisals.*]

Environmental Advice

7. It was reasonable and prudent for the City to retain a specialized environmental lawyer to advise the City on those provisions of the City Purchase Agreement and those aspects of the Purchase Transaction which relate to environmental issues concerning the Property. The environmental lawyer retained by the City is certified as an expert in environmental law by the Law Society of Upper Canada. In the circumstances, it was reasonable and prudent for the City to rely upon the advice of its environmental lawyer.

8. It was reasonable and prudent for the City to retain an environmental consultant to complete a peer review of the environmental tests of the Property which had been prepared for the Landowner, and to advise the City generally regarding environmental issues concerning the Property. In the circumstances, it was reasonable and prudent for the City to rely upon the advice of its environmental consultant.

[Please see our Discussion and Legal Analysis at Part 2 (d) of Schedule "C" concerning the environmental issue at the Property.]

Liability of City to WCD

9. Pursuant to the Mutual Release and the WCD Release, WCD no longer has any claim or interest in or to the Property or against the City in connection with the Property.

10. In addition to the specific clauses and conditions contained in the City Purchase Agreement to protect the City with respect to any claims by WCD, it was reasonable and prudent for the City to obtain an indemnity from the Landowner with respect to potential claims by WCD, as provided in the Indemnification and Hold Harmless Agreement. The Indemnification and Hold Harmless Agreement is now moot as WCD no longer has any claim or interest in or to the Property.

[Please see our Discussion and Legal Analysis at Part 2 (e) and Part 3 of Schedule "C" concerning liability of the City to WCD.]

Liability of City to Landowner

11. The City, by failing to deliver the purchaser's closing deliveries on the Closing Date pursuant to Section 11.1 of the City Purchase Agreement may be in default of its obligation to complete the purchase of the Property pursuant to Section 11.1 of the City Purchase Agreement.

12. If it is determined that the City is in default under Section 11.1 of the City Purchase Agreement for failing to complete the purchase of the Property on the Closing Date, then the City may forfeit the deposit of $100,000 and, furthermore, the City may also be liable to the Landowner (subject to the Landowner's duty to mitigate) for all reasonably

foreseeable damages, losses, costs and expenses incurred by the Landowner as a result of the wrongful breach of the City Purchase Agreement by the City.

[***Please see our Discussion and Legal Analysis at Part 4 of Schedule "C" concerning liability of the City to the Landowner.***]

Liability of City to Sheridan

13. Each of the City and Sheridan is under an implied duty to act in good faith in the performance of its respect rights and obligations under the MOU.

14. By virtue of the express term of the MOU obligating the City to acquire the Property and also by virtue of the implied duty to act in good faith, the City is likely to be bound under the MOU to proceed within a reasonable time frame and to use commercially reasonable efforts to acquire the Property for a purchase price not to exceed $15,000,000 for the purpose of developing the Sheridan Mississauga Campus.

15. Should the City fail to acquire the Property within a reasonable time frame, the City may be liable to Sheridan for breach of contract and breach of the City's implied obligation to act in good faith. Subject to Sheridan's duty to mitigate, potential damages recoverable by Sheridan from the City, if supported by the facts, may include:

    (a) out-of-pocket costs, expenses, fees and charges incurred by Sheridan with respect to various consultants, lawyers, municipal planners, architects, engineers and surveyors retained by Sheridan in connection with receiving advice and preparing development and site plans with respect to the proposed Sheridan Campus development on the Property; and

    (b) additional, consequential and possibly punitive damages.

16. Damages recoverable by Sheridan will not include loss of infrastructure stimulus funds based upon the express terms of the Release Agreement.

[***Please see our Discussion and Legal Analysis at Part 5 of Schedule "C" concerning liability of the City to Sheridan.***]

Liability to Third Parties

17. The Facts and the Documents Reviewed do not indicate notice from any third party of any interest in or concerning the Property. In absence of notice to the City from any third party claiming an interest in or concerning the Property, it is unlikely that any valid third party claim in or concerning the Property exists. It is not customary practice to obtain a release or indemnity from a vendor of real property in respect of unknown claims from unknown third parties.

[***Please see our Discussion and Legal Analysis at Part 6 of Schedule "C" concerning liability of the City to third party claims.***]

ASSUMPTIONS AND QUALIFICATIONS

The opinions expressed above are subject to the following assumptions and qualifications:

(a) in expressing the opinions herein, we have considered such questions of law and have examined such records and certificates of public officials and others and originals, copies or facsimiles of such other agreements, instruments, certificates and documents as we have deemed necessary or advisable as a basis for the opinions expressed above. We have not participated in the preparation and settlement of any of the Documents Reviewed or any negotiations or discussions concerning the transactions contemplated thereby (including, without limitation, the Purchase Transaction) and we have assumed that there are no facts, documents, agreements, understandings or arrangements other than the Facts and the Documents Reviewed that are relevant to the subject matter of this opinion letter;

(b) we have assumed:

(i) the accuracy, authenticity and completeness of the copies of the Documents Reviewed and all other documents provided to us;

(ii) that each of the parties to the relevant agreements included in the Documents Reviewed was and continues to be incorporated and duly organized under all applicable laws and each such party is a subsisting corporation with all requisite power, authority, legal right and capacity to create, execute, deliver and perform its obligations under the relevant agreements in the Documents Reviewed;

(iii) that each of the agreements included in the Documents Reviewed,

(A) has been properly authorized by all necessary corporate action of each of the parties hereto and by all other necessary parties and has been duly executed and delivered by each of the parties thereto; and

(B) accurately sets out the financial and business terms agreed between the parties thereto.

(iv) that the execution and delivery by each party of each of the agreements included in the Documents Reviewed to which it is a party and the performance by it of its obligations thereunder have not and will not contravene, conflict with, result in a breach of or constitute a default under: (i) the articles, by-laws or other constating documents of such party, (ii) any laws or (iii) any resolutions of the directors (or any committee of directors) or shareholders of such party;

(v) each of the agreements included in the Documents Reviewed has been duly executed and delivered by each party thereto;

(vi) each of the agreements referred to in Part 1 of Schedule "A" constitutes a legal, valid and binding obligation of each of the parties, enforceable against each of such parties in accordance with its terms;

(c) no opinion or certification is made or expressed by us in respect of the quality of title to the Property;

(d) no opinion or certification is made or expressed by us on the legal validity of the purported tender by the Landowner upon the City of the Landowner's closing deliveries pursuant to Section 10.1 of the City Purchase Agreement, which occurred on September 17, 2009;

(e) no opinion or certification is made or expressed by us in connection with the environmental condition of the Property, the legal or professional advice received by the City in connection with the environmental condition of the Property or the sufficiency of specific provisions and agreements entered into in connection with the environmental condition of the Property;

(f) no opinion or certification is made or expressed by us regarding the market value of the Property or the quality or sufficiency of the appraisals received by the City;

(g) that our opinions are subject to all legal and equitable limitations and other laws affecting the enforcement of rights and remedies from time to time in effect and limitations imposed upon the enforcement of the rights and remedies in the discretion of a court of competent jurisdiction.

We are solicitors practising in the Province of Ontario and as such we restrict our opinions to the laws of the Province of Ontario and Canadian federal laws having application in the Province of Ontario as of the date hereof.

The opinions expressed above are given only to the party to whom this opinion is addressed and only in connection with the City's prospective purchase of the Property and may not be assigned to and may not be relied on by any other person or for any other purpose.

Yours very truly,

McLean & Kerr LLP

SCHEDULE "C" – DISCUSSION AND LEGAL ANALYSIS

The City has asked that we comment on the appropriateness of the documents and agreements that were negotiated (and in some cases, settled and executed by the parties) in connection with the Purchase Transaction to protect the City from any future claims by WCD, Sheridan or by a third party who might have an interest in acquiring the Property.

1. STANDARD OF CARE – REAL ESTATE PRACTICE

The standard of care owed by the solicitor to the client in the performance of work pertaining to a real estate transaction is founded in principles of both contract and in tort.

The standard of care expected of a real estate solicitor has been stated as follows: "*A solicitor is required to bring reasonable care, skill and knowledge to the performance of the professional service which he has undertaken...The requisite standard of care has been variously referred to as that of the reasonably competent solicitor, the ordinary competent solicitor and the ordinary prudent solicitor.*"[45] The difficulty lies in applying this standard of care to the facts of any particular case.

The courts have held that lawyers should be aware of what their clients intend to do and must perform what is necessary to accomplish that end, failing which the lawyer must notify the client of the client's inability to do so.[46] The courts have rejected the "prevailing practice" argument and stated that "*if the risk of harm from following prevailing practice is both foreseeable and readily avoidable, a solicitor is negligent in following that practice*".[47]

Errors in practice have occurred because a solicitor was unaware of legislation or case law which affected the transaction. Supreme Court of Canada has held that "*the solicitor must have sufficient knowledge of the fundamental issues or principles of law applicable to the particular work he has undertaken to enable him to perceive the need to ascertain the law on relevant points*".[48]

Providing negligent advice has also been the subject of jurisprudence. The courts have held that a solicitor has a duty to warn a client of the risk involved in a course of action, contemplated by the client or by his solicitor on his behalf, and to exercise reasonable care and skill in advising the client. If he fails to warn the client of the risk involved in the course of action and it appears

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[45] *Central Trust Company v. Refuse et al.*, [1986] 2. S.C.R. 147 ["Central Trust"]

[46] *120 Adelaide Leaseholds Inc. v. Thomson, Rogers* (1995) 43 R.P.R. (2d) 79 (Ont. Gen. Div)

[47] *Glivar v. Noble* (1985), 8 O.A.C. 60 (C.A.)

[48] *Central Trust*, supra, note 1

probable that the client would not have taken the risk if he had been so warned, the solicitor will be liable.[49]

The Facts demonstrate that City staff identified 5 broad areas of concern with respect to the Purchase Transaction which will be discussed in detail below:

(a) sufficiency of purchase price;

(b) title concerns and requisitions;

(c) environmental concerns;

(d) possible claims by WCD; and

(e) possible claims by Sheridan.

Based upon, the Facts and Documents Reviewed, it is our opinion that City legal staff acted with the appropriate standard of care in documenting the City Purchase Agreement, and the specific factual issues that were unique to the Purchase Transaction.

2. PURCHASE TRANSACTION

(a) General Matters

The City Purchase Agreement is a sophisticated and comprehensive agreement for the purchase and sale of the Property and was negotiated between sophisticated parties who each received the benefit of legal advice. It contains typical clauses and addresses typical concerns ordinarily found in purchase and sale agreements for vacant land or for commercial property with many usual protective clauses and conditions having been inserted for the benefit of the purchaser. It also contains specific clauses and provides for the execution of ancillary agreements to deal with specific factual matters of concern to the City, as purchaser, including matters connected with WCD's claims in the Property, and environmental issues raised in connection with the Property.

(b) Purchase Price

The City Purchase Agreement provided a purchase price of $14,908,902 plus applicable taxes, which was based upon a per acre price of $1,743,731.22 per acre.

While this price is $416,402 more than the purchase price that WCD had agreed in the WCD Purchase Agreement to pay for the Property two years earlier, the purchase price is less than the estimated market values provided in both the IF Appraisal and in the OAC Appraisal (being approximately $11,596,098 less than the OAC Appraisal; $2,191,098 less than the IF Appraisal; and $6,466,098 less than the City's confidential internal staff conclusion of the market value of the Property.)

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[49] *Major v. Buchanan et al.* (1975), 61 D.L.R. (3d) 46 (H.C.J.)

We are of the view that it was reasonable and prudent for City staff to obtain the two appraisals and that the purchase price is less than the estimated market value of the Property identified in those appraisals.

(c) **Title Matters - Requisitions**

It is usual for the purchaser in a real estate transaction to satisfy itself as to the quality of the title to the property held and to be conveyed by the vendor, and that the conveyance of good and marketable title to the property by the vendor to the purchaser be a condition of the closing of the real estate transaction.

Article 4 of the City Purchase Agreement deals with title to the Property. It contains usual title clauses and permits the City, as purchaser, until 6:00 p.m. on Thursday, September 3, 2009 to examine the title to the Property and to submit any valid objections to title to the Property within that time.

We are advised that City staff completed a search of title to the Property. That title search identified a number of registered instruments which in the professional opinion of the City's legal staff did not adversely affect the marketability or quality of the Landowner's title to the Property. Those registered instruments are identified in Schedule "B" to the City Purchase Agreement as "Permitted Encumbrances".

The City Purchase Agreement contemplates that these "Permitted Encumbrances" will remain registered against the title to the Property after the conveyance of title to the City from the Landowner.

We are of the view that it is prudent practice in a sophisticated real estate transaction to negotiate a permitted encumbrance schedule, as was completed here.

We are advised that the City's search of title also revealed certain registered instruments which in the professional view of the City's legal staff did adversely affect or encumber the quality and marketability of the title to the Property. These instruments included two registered debentures, each in the original principal amount of $500,000,000.

A letter of requisitions dated September 2, 2009 was sent by the City's legal staff to counsel for the Landowner requiring that these mortgages be discharged as a requirement of the City's purchase.

We confirm that providing such a requisition letter is proper practice in the real estate bar and we confirm that the requisition letter was provided to the Landowner within the time period permitted in Section 4 of the City Purchase Agreement.

In our view, the conduct of City legal staff in settling the clauses in the City Purchase Agreement dealing with title matters and the identification and negotiation of permitted encumbrances of title and the delivery of a requisition letter prior to the agreed requisition date, all was appropriate and prudent and consistent with proper practice in the real estate bar for the protection of the client purchaser.

(d) **Environmental Matters**

A purchaser of real estate, in addition to searching the title to a property, will also complete due diligence inquiries concerning off-title matters, including the zoning of a property, status of work orders concerning the property, existence of any realty tax arrears and the environmental condition of the property, as a condition of, and prior to, the closing of the transaction.

It is not unusual to encounter environmental issues when dealing with vacant urban land in Ontario which is located within an otherwise developed area, as was the case with the Property.

During the due diligence phase of the Purchase Transaction, the Landowner provided the City with environmental reports that it had commissioned in respect of the Property. These reports identified a possible concern with elevated beryllium levels in certain areas of the Property.

The City retained an environmental consultant to act for the City and to peer review the environmental reports that had been prepared for the Landowner in respect of the Property and to advise the City generally on environmental matters in connection with the Property. City staff also retained a specialized environmental lawyer who provided advice on the environmental clauses contained within the City Purchase Agreement. These clauses are found at Article 9 of the City Purchase Agreement and in the Environmental Agreement between the City and the Landowner.

It is our view that it was reasonable and prudent for the City to investigate regarding the environmental condition of the Property, and having been made aware of the possible issues concerning elevated beryllium levels, to retain its own environmental consultant to complete the peer review and provide other advice and to retain specialized environmental legal counsel to specifically advise in respect of environmental issues in connection with the Purchase Transaction. It was also reasonable for the City to reply upon such advice obtained.

(e) **WCD Matters**

We are advised that during the negotiation of the City Purchase Agreement, the Landowner disclosed the potential of a claim by WCD that WCD had a continued interest in the Property.

Such a claim by WCD would, if proven, be a material adverse encumbrance on the title of the Property to be conveyed to the City.

Section 6.1 (b) of the City Purchase Agreement specifically deals with a possible claim by WCD and provides that, as a condition of closing, the Landowner must provide the City by 10:00 a.m. on the Closing Date with either: (i) a final signed settlement agreement with WCD, or (ii) a court order confirming termination of the WCD Purchase Agreement.

Schedule "C" to the City Purchase Agreement contains the Indemnification and Hold Harmless Agreement given by the Landowner in favour of the City and Sheridan. The Indemnification and Hold Harmless Agreement operated to indemnify the City and Sheridan from any costs or damages either incurred as a result of a claim by WCD in or to the Property and the WCD Purchase Agreement and termination thereof by the Landowner. At Section 6 of the

Indemnification and Hold Harmless Agreement, specific provision was also made in respect of legal fees that might be incurred by the City and by Sheridan.

In our view, it was reasonable and prudent for City legal staff to obtain the Indemnification and Hold Harmless Agreement given the uncertainties faced by the City at the time in proceeding with the Purchase Transaction without a final determination of WCD's rights in the Property, if any, having been made.

The Indemnification and Hold Harmless Agreement is now moot as WCD no longer has any claim or interest in or to the Property given the Mutual Release and the WCD Release.

It was reasonable and prudent for the City to specifically address a possible claim by WCD in the City Purchase Agreement, separate from the more general representations, warranties, covenants and agreements dealing with title matters, as the possibility of a WCD claim was specifically known to the Landowner and disclosed to the City.

(f) **Claims by Sheridan**

The Release Agreement dated as of July 21, 2009 from Sheridan in favour of the City provides a full release by Sheridan of any damages, losses and costs which are suffered, sustained or incurred by Sheridan as a result of a failure to receive the anticipated Federal/Provincial infrastructure monies.

Sheridan secured Federal/Provincial infrastructure stimulus funding to assist in the construction costs of Phase I of the Sheridan Mississauga Campus on condition that construction be completed by March of 2011.

In our view, it was reasonable and prudent in the circumstances for City legal staff to obtain the Release Agreement.

3. LIABILITY OF THE CITY TO WCD

The Landowner as vendor under the WCD Purchase Agreement terminated the WCD Purchase Agreement in accordance with its terms. WCD as purchaser under the WCD Purchase Agreement disputed the validity of the termination of the WCD Purchase Agreement by the Landowner and continued to claim an interest in the Property. Litigation ensued between the Landowner and WCD to determine the respective rights and obligations of the Landowner and WCD under the WCD Purchase Agreement and the rights and interest of WCD in the Property.

The litigation between the Landowner and WCD with respect to the WCD Purchase Agreement and the Property has been settled. WCD pursuant to the Mutual Release released the Landowner (including their successors and assigns) from any and all claims, demands, damages, actions and liabilities arising out of or in connection with the WCD Purchase Agreement, and furthermore, WCD has released any right, title or interest it may have in the Property.

The Mutual Release is expressly stated to be given voluntarily by WCD and by the Landowner for the purpose of making a full and final compromise, adjustment and settlement of all claims in respect of the WCD Purchase Agreement and the Property.

Pursuant to the WCD Release, WCD released and discharged the City from any and all claims, damages, demands, actions and liabilities arising out of or in connection with the WCD Purchase Agreement. In addition, WCD, pursuant to the WCD Release, also released any right, title or interest it may have in the Property.

Pursuant to the Mutual Release and the WCD Release, WCD no longer has any claim or interest in or to the Property or against the City in connection with the Property.

In addition to the clauses and conditions contained in the City Purchase Agreement to protect the City with respect to any claims by WCD, it was reasonable and prudent for the City to obtain an indemnity from the Landowner with respect to the claims by WCD as provided in the Indemnification and Hold Harmless Agreement. The Indemnification and Hold Harmless Agreement is now moot as WCD no longer has any claim or interest in or to the Property.

4. LIABILITY OF THE CITY TO THE LANDOWNER

We express no opinion upon the legal validity of the purported tender by the Landowner upon the City of the Landowner's closing deliveries pursuant to Section 10.1 of the City Purchase Agreement, which tender occurred on the scheduled Closing Date of September 17, 2009 pursuant to Section 3.1 of the City Purchase Agreement.

The City, by failing to deliver the purchaser's closing deliveries on the Closing Date pursuant to Section 11.1 of the City Purchase Agreement may be in default of its obligation to complete the purchase of the Property pursuant to Section 11.1 of the City Purchase Agreement.

If it is determined that the City is in default under Section 11.1 of the City Purchase Agreement for failing to complete the purchase of the Property on the Closing Date, then the City may forfeit the deposit of $100,000 and, furthermore, the City may also be liable to the Landowner (subject to the Landowner's duty to mitigate) for all reasonably foreseeable damages, losses, costs and expenses incurred by the Landowner as a result of the wrongful breach of the City Purchase Agreement by the City.

Although the Landowner purported to tender its closing deliveries pursuant to Section 10.1 of the City Purchase Agreement on the Closing Date, it has not yet notified the City of its position with respect to the purported failure of the City to deliver its closing deliveries on the Closing Date. Assuming the Landowner's tender of its closing deliveries was legally effective, then the Landowner may elect to terminate the City Purchase Agreement, retain the deposit and reserve the right to pursue a damage claim against the City for all reasonably foreseeable damages, losses, costs and expenses incurred by the Landowner as a result of the wrongful breach by the City and the resulting termination of the City Purchase Agreement by the Landowner.

The City may be unable to rely upon the condition set out in Section 6.1 (b) of the City Purchase Agreement to avoid and postpone its obligation to complete the purchase of the Property under Section 11.1 of the City Purchase Agreement.

Section 6.1 (b) of the City Purchase Agreement provides that the City's obligation to complete the purchase transaction is subject to the condition and requirement that the City be satisfied that the title to the Property was unencumbered by any claim or lien by WCD and delivery to the City of a final signed settlement agreement or court order between WCD and the Landowner whereby the WCD Purchase Agreement was terminated.

This condition may have been satisfied by the Landowner by delivering to the City the Mutual Release and the WCD Release. Furthermore, pursuant to Section 6.2 of the City Purchase Agreement, the condition in favour of the City under Section 6.1 (b) may be deemed to have been satisfied since the City did not give written notice terminating the City Purchase Agreement prior to 10:00 a.m. on the Closing Date. The City has disputed the validity of the Landowner's tender. Discussions between the City, the Landowner and Sheridan are continuing.

5. LIABILITY OF THE CITY TO SHERIDAN

Basic Questions and Issues:

1. Is the MOU a legally binding and enforceable agreement between the City and Sheridan or is it unenforceable and void at law on the basis that the MOU only constitutes a written agreement and understanding to negotiate subsequent contracts and agreements?

2. If the MOU is a legally binding and enforceable agreement, then what terms of the MOU are enforceable and what terms (essentially relating to the negotiation of further contracts and agreements) are unenforceable?

3. Are the parties to the MOU subject to a legal duty to act in good faith in the performance of the respective rights and obligations under the MOU?

4. Can the City rely upon the Release Agreement to avoid any damages and losses incurred by Sheridan as a result of Sheridan's failure to receive any anticipated stimulus funding from the Federal and Provincial governments to assist with the construction of Phase I of the Sheridan Campus to be built on the Property?

Basic Facts and Summary of the Essential Terms and Conditions of the MOU:

1. Pursuant to By-Law No. 0182-2009 dated June 10, 2009, the Council of the City authorized the City to execute (and affix the City's corporate seal to) the MOU between the City and Sheridan, which MOU outlines the basic terms and conditions relating to the development of Sheridan's Mississauga Campus upon the Property. The By-Law also authorizes City staff to enter into negotiations with Sheridan and third parties as required and to take all necessary action, to facilitate the development of the Sheridan Mississauga Campus, including but not

limited to the execution of any necessary contracts, leases, agreements and amending agreements with Sheridan and third parties as may be required.

2. The MOU was executed by the City and Sheridan on June 10, 2009. The parties entered into the MOU *"to establish the framework for agreement relative to the establish of a Sheridan campus in the City of Mississauga"*.

3. The essential terms of the MOU are as follows:

(a) Sheridan is to facilitate the process by which the City shall acquire the Property for a price not to exceed $15,000,000 for the purpose of developing the Campus.

(b) The City shall enter into a long term 99 year lease(s) at nominal rent through which the City shall make the Property available to Sheridan for the purpose of development of the Campus.

(c) Under the lease(s) Sheridan will be responsible for utilities and maintenance.

(d) Phase I of the Campus will consist of a business school to be contained in a single building of approximately 133,000 square feet plus additional floor space to accommodate street level retail as agreed to by the parties.

(e) The parties acknowledge that significant funding for Phase I will come from the Federal/Provincial Infrastructure Fund and that construction must begin as soon as possible to meet the infrastructure funding timelines committed to by Sheridan. The parties agreed to work in partnership to expedite all necessary approval for the construction of Phase I.

(f) The Sheridan Campus is to be fully built out over approximately 15-20 years and will be developed in accordance with a master plan to be agreed to by the parties.

(g) Phase II will include the expansion of the business school to a size required to accommodate the needs of 5,500 students. Further phases will be identified and the development agreed upon by the parties from time to time. Details of Phase II and all further phases of development will be identified in the master plan agreement to be entered into between the parties. Sheridan alone is responsible, at its own cost, for undertaking the construction of the Campus in accordance with the master plan.

(h) At no time during the term of the master plan will the City entertain selling the Property to anyone other than Sheridan or allowing another educational institution to develop the Property.

Legal Principles:

1. The general test for legally and binding enforceable contract is that all of the essential terms and conditions of the agreement must have been settled by the parties. If the written

agreement is incomplete because essential provisions intended to govern the contractual relationship have not been settled or it is too general or uncertain to be valid in itself, then the incomplete agreement or document will not be at law legally binding or enforceable by the parties.[50] In certain circumstances, the courts have stated that terms which are uncertain (and therefore not enforceable) may be excised from the contract, if the rest of the agreement is capable of being enforced.[51]

2. However, where the parties have executed a letter of intent or other preliminary agreement, the courts may determine that the parties are bound by the terms in such document if an intention by the parties to be bound can be found in the document or inferred from the relevant circumstances. The parties will more likely be bound by a letter of intent or preliminary agreement where the parties to the document have acted on the document for a period of time or have expended considerable sums of money in reliance upon the terms contained in the document.[52]

3. Under Canadian law the parties to a contract are obligated to perform in accordance with the express and implied terms of the contract. The duty to perform must be carried out precisely and exactly. The performance which falls short of what is required under the terms of the contract will constitute a breach of contract by such party.[53]

4. Once a contract has been entered into, it is now generally accepted under Canadian law that the parties to the contract are subject to an implied obligation to act in good faith in the exercise of their rights and the performance of their obligations under the contract.[54] The law requires that parties to a contract to exercise their rights and perform their obligations under that agreement honestly, fairly and in good faith.

The "good faith standard" while permitting a party to act self-interestedly, also positively requires that such party, in its decisions and actions, have regard to the legitimate interests of the other party to a contract.

Cases where duty of good faith has been implied have been viewed as falling into three broad categories:

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[50] *See eg Wilcox v. DeWolfe* (1994), 21 Alta. L.R. (3d) 160 (Alta. Q.B.)

[51] *Br. Amer. Timber Co. v. Elk River Timber Co.*, [1934] 2 W.W.R. 658 (B.C.C.A.); see also *Fridman*, "The Law of Contract", 4th ed., p. 21

[52] *Chitty on Contracts*, 28th ed., para 2-115; see also *Turriff Construction Ltd. v. Regalia Knitting Mills* (1971) 22 E.G. 169

[53] *Continental Securities v. McLeod (1995), 10 B.C.L.R. (3d) 307 (B.C.S.C.); see also* Fridman, *"The Law of Contract, 4th ed., p. 547*

[54] Canadian Encyclopedic Digest, 5A, Ch. 32, para 755

(i) those imposing a duty to co-operate in achieving the objectives of the agreement;[55]

(ii) those imposing limits on the exercise of discretionary power provided for in the contract;[56]

(iii) those precluding parties from evading contractual duties, such as engaging in conduct not strictly prohibited by the letter of their agreement, but that effectively defeats the other party's contractual rights.[57]

Essentially, the implied obligation to act in good faith supports the concept and legal principle that one party to a contract should not act in such a way as to deprive the other party of an anticipated benefit under the contract.

A duty of good faith may also arise from one party's representations or undertakings to the other party.[58] Whether or not a party under a duty of good faith has breached that duty will depend on all the circumstances of the case, including whether the party subject to a duty of good faith conducted itself fairly throughout the process.

Thus, an implied duty of co-operation in achieving the objectives of an agreement is one manifestation of an implied duty of good faith relating to performance of the agreement. Accordingly, the circumstances in which a contract arises may permit the court to imply a positive duty by one party to take such action as will permit the opposite party to be in a position to act to secure the benefits to which that party is entitled under the contract.[59]

Potential Liability of the City to Sheridan for Failure to Acquire the Property:

1. Certain provisions of the MOU are likely to be a legally binding upon and enforceable by each of the City and Sheridan in accordance with and subject to the terms and conditions thereof. The reasons in support of our opinion are as follows:

(a) The execution of the MOU was authorized by the Council of the City pursuant to By-Law 0182-2009 and the By-Law authorized the Commissioner of Corporate Services and Treasurer and the City Clerk to execute and affix the corporate seal to the MOU.

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[55] *CivicLife.com Inc. v. Canada (A.G.)* (2005), 2005 CanLII 36455 (Ont. S.C.)

[56] *Mesa Operating Ltd. Partnership v. Amoco Canada Resources Ltd.* (1994), 13 B.L.R. (2d) 310 (Alta. C.A.)

[57] *Canada Deposit Insurance Corp. v. Canadian Commercial Bank* (1998), 1998 CarswellAlta 1088 (Alta. Q.B.)

[58] *Markakis v. Yuck* (2003) 2003 ABQB 122

[59] *Dynamic Transport Ltd. v. O.K. Detailing Ltd.*, [1978] 2 S.C.R. 1072; see also Makowecki v. St. Martin (1990) 1990 CarswellAlta 433 (Alta. Q.B.)

(b) The parties did not include in the MOU any express provision stating that the MOU was not binding or that a legally binding relationship would only arise upon the execution of the subsequent agreements and lease(s) contemplated by the MOU.

(c) The words, "*I/we have authority to bind the Corporation*", was included in the MOU immediately below the execution spot for both the City and Sheridan.

Each of the City and Sheridan is under an implied contractual duty to act in good faith in the performance of its rights and obligations under the MOU.

By virtue of the express term of the MOU obligating the City to acquire the Property and also by virtue of the implied duty to act in good faith, the City is likely to be contractually bound under the MOU to proceed within a reasonable timeframe and to use commercially reasonable efforts to acquire the Property for a purchase price not to exceed $15,000,000 for the purpose of developing the Sheridan Mississauga Campus.

2. The MOU imposes upon the parties an implied obligation to act in good faith in the performance and fulfilment of all other terms and objectives under the MOU (which are in addition to the obligation of the City to use commercially reasonable efforts to acquire the Property), including the following:

(a) the negotiation and execution of one or more long term lease(s) for 99 years at a nominal rent through which the Property will be made available to Sheridan for the purposes of the development of the Sheridan Campus;

(b) working in partnership to expedite all necessary approvals of Phase I (i.e. a business school to be contained in a single building of approximately 133,000 square feet plus additional floor space to accommodate street level retail); and

(c) the negotiation of a master plan for the Sheridan Mississauga Campus applicable to Phase I, Phase II and future phases, as applicable.

If the parties, acting in good faith, are unable to resolve any new fundamental business issues (not otherwise specifically addressed in the MOU) during the negotiation of a subsequent lease, master plan or subsequent agreement, then each party may not be legally obligated to enter into such other lease or agreement and may be permitted upon notice to the other party to withdraw from further negotiations with respect to such agreement.

In this connection, we note the significant business issues with respect to the development of the Sheridan Mississauga Campus and land lease remain subject to negotiations between the parties. An email dated September 16, 2009 from Karam Daljit of Sheridan to Bruce Carr of the City (see item 11 in Schedule "B", Documents Reviewed) makes reference to various business issues to be negotiated and resolved by the parties in connection with the Phase I development of the Sheridan Mississauga Campus. Such business issues include the scope and cost of the City's work and Sheridan's work respecting the Phase 1 development, various business issues under the land lease and determining the party to assume responsibility to remove the H zoning.

3. Should the City fail to acquire the Property within a reasonable timeframe, the City may be liable to Sheridan for breach of contract and breach of the City's implied obligation to act in good faith. Subject to Sheridan's duty to mitigate, potential damages recoverable by Sheridan from the City, if supported by the facts, may include:

(a) out-of-pocket costs, expenses, fees and charges incurred by Sheridan with respect to various consultants, lawyers, municipal planners, architects, engineers and surveyors retained by Sheridan in connection with receiving advice and preparing development and site plans with respect to the proposed Sheridan Campus development on the Property; and

(b) additional, consequential and possibly punitive damages.

4. Damages recoverable by Sheridan will not include the loss of infrastructure stimulus funds based upon the express terms of the Release Agreement.

6. LIABILITY TO THIRD PARTIES

The Facts and Documents Reviewed do not indicate notice from any third party of any interest in or concerning the Property. In the absence of notice to the City from any third party claiming an interest in or concerning the Property it is unlikely that any valid third party claim in or concerning the Property exists. It is not customary practice to obtain a release or indemnity from a vendor of real property in respect of unknown claims from unknown parties.

CONFIDENTIAL

APPRAISAL REVIEW & CONSULTING REPORT

PREPARED FOR:

CITY OF MISSISSAUGA

FOR THE PROPERTY DESCRIBED AS:

BLOCKS 9 AND 29 IN PLAN 43M-1010
(APPROX. 8.59 ACRES OF VACANT LAND IN CITY CENTRE),
CITY OF MISSISSAUGA

September 29th, 2009

gsi Real Estate & Planning Advisors Inc.

- REAL ESTATE APPRAISAL
- LAND USE PLANNING
- FACILITIES PLANNING

8500 Leslie Street, Suite 200
Markham, Ontario, Canada
L3T 7M8

Telephone: 905.695.0357
Fax: 905.695.0363

GSI REAL ESTATE & PLANNING ADVISORS INC.
8500 LESLIE STREET, SUITE 200
MARKHAM, ON L3T 7M8
PHONE: 905.695.0357
FAX: 905.695.0363

LETTER OF TRANSMITTAL

CONFIDENTIAL

September 29th, 2009

City of Mississauga
Corporate Services Department
300 City Centre Drive
Mississauga, ON L5B 3C1
Attention: Mr. Domenic Tudino

RE: APPRAISAL REVIEW AND CONSULTING REPORT CONCERNING BLOCKS 9 AND 29 IN PLAN 43M-1010, CITY OF MISSISSAUGA

At your request, we provide this report describing our investigation and analysis of the above referenced property, as of September 29th, 2009. The specific intent of this report is to evaluate the market value of the subject site according to the proposed use and requirements (i.e. restrictive covenants) outlined in the *Agreement of Purchase and Sale* to the City of Mississauga (dated July 20th, 2009, and included in Appendix B). Further details concerning our analysis and conclusion are provided in the Executive Summary section of this report.

Overall, we are of the opinion that the market value of the subject site as encumbered by the proposed restrictive covenants, and based on the proposed college/institutional use, to be in the order of $1,700,000 to $2,000,000 per acre, or $14,600,000 to $17,000,000 in total (rounded).

This review and consulting report is provided in a format that is consistent with the Terms of Reference and in accordance with the Canadian Uniform Standards of Professional Appraisal Practice (C-USPAP) adopted by the Appraisal Institute of Canada.

Yours truly,
GSI REAL ESTATE & PLANNING ADVISORS INC.

Kenneth F. Stroud, P.App, AACI, PLE
Real Estate Appraiser & Advisor

Mark Penney, MA, RPP, MCIP, AACI, PLE
Real Estate Appraiser & Land Use Planner

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APPENDIX

EXECUTIVE SUMMARY

The specific intent of this report is to evaluate the market value of the subject site according to the proposed use and requirements (i.e. restrictive covenants) outlined in the *Agreement of Purchase and Sale* to the City of Mississauga (dated July 20th, 2009, and included in Appendix B). In short, the City of Mississauga intends to purchase the subject site and lease it to Sheridan College for the development of a 450,000 SF college campus.

Our analysis of the market value of the subject site, in accordance with the terms included in the City's *Agreement of Purchase and Sale* and the proposed use (Sheridan College), considers the purchase price and related terms included in a 2007 Agreement of Purchase and Sale to World Class Developments (WCD), who negotiated an agreement to purchase the site for approximately $1,700,000 per acre on the basis of developing the site with (primarily) high density residential development. The WCD Agreement included a restrictive covenant requiring that a hotel/conference centre be developed on a portion of the site prior to any other development of the site (specifically "substantial completion" of construction prior to any other development). A copy of the APS to WCD is included in Appendix A of this report.

Based on our analysis, it appears that the "unencumbered" market value of the subject site is approximately $2,000,000 per acre (i.e. without the influence of restrictive covenants). However, as a result of the immediate intrinsic benefits resulting from the development of the proposed Sheridan College campus, which include support to their existing and future retail product (stores, restaurants) and a potential increase in value to their vacant land holdings by reducing the total inventory of vacant land in City Centre, it appears that Oxford Properties is willing to dispose of the subject site (specifically to the City of Mississauga) at a discounted rate of approximately $1,700,000 per acre. This rate is consistent with the agreed to purchase price negotiated in the WCD Agreement in early-2007, which was based on the immediate development of a hotel and conference centre; a use that would have provided Oxford with similar intrinsic benefits as the proposed college (albeit less with the hotel/conference centre in the opinion of this appraiser/planner/land economist).

In conclusion, we are of the opinion that the opportunity to secure the subject site for $14,908,902, subject to the restrictive covenants, reflects a fair and equitable purchase price, and would be considered an advantageous acquisition for the City of Mississauga. **Clearly, the $32,000,000 in Infrastructure Grants that are distributed to the "shovel ready" status of proposed infrastructure projects and available to Sheridan College ensures both the imminence and viability of the new College campus in the City Centre.**

1. INTRODUCTION

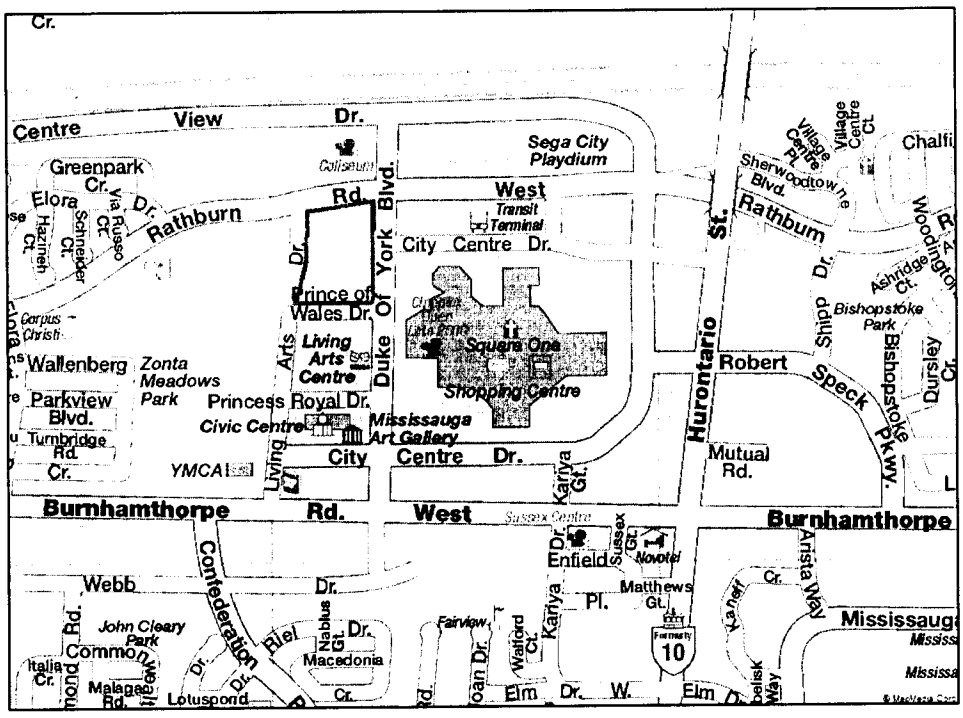
This appraisal review and consulting report concerns an 8.6 acre site located in Mississauga's City Centre area (herein referred to as the "subject site", "subject property", "subject lands"). The specific location of the subject site is highlighted below in Map 1.

The purpose of this report is to:

- review and evaluate two (2) appraisal reports pertaining to the subject property;
- provide an opinion regarding the market value of the subject site as "unencumbered" (i.e. without considering the influence of any restrictive covenants limiting the use/development of the site); and
- provide an opinion of market value with various restrictive covenants (specified in the Agreement of Purchase and Sale to World Class Developments (WCD) and the City of Mississauga), which limit the use of the site and/or encumber its optimal development.

The specific intent of this report is to evaluate the market value of the subject site according to the proposed use and requirements (i.e. restrictive covenants) outlined in the Agreement of Purchase and Sale to the City of Mississauga (dated July 20th, 2009, and included in Appendix B). In short, the City intends to lease the subject site to Sheridan College, for the development of a 450,000 SF college campus (full build-out).

MAP 1
Subject Property Location Map



Our analysis of the market value of the subject site, in accordance with the terms included in the City's Agreement of Purchase and Sale and the proposed use (Sheridan College), considers the purchase price and related terms included in a 2007 Agreement of Purchase and Sale to World Class Developments (WCD), who negotiated an agreement on the basis of developing the site with (primarily) high density residential development. The WCD Agreement included a restrictive covenant requiring that a hotel and conference centre be developed on a portion of the site prior to any other development of the site (specifically "substantial completion" of construction prior to any other development). A copy of the APS to WCD is included in Appendix A of this report.

Further details concerning our understanding to the subject assignment are included in Section 2 of this report. A summary of the terms and conditions of each APS is provided in Section 4.3.

1.1) Restrictive Covenants and their Impact on Market Value

Covenants are frequently found in contractual arrangements. A restrictive covenant is a clause in a deed or lease to real property that restricts what the owner of the land or the tenant can do with the property. Restrictive covenants allow the beneficiary of such covenants, usually an abutting property owner, with the right to enforce the terms of the covenants in a court of law.

Restrictive covenants are intended to enhance property values by controlling development.

A person who purchases a site with restrictive covenants must comply with the limitations. When the purchaser resells the land to a buyer, the new owner will take the property subject to the restrictive covenants, because the covenants are said to "run with the land."

The presence of a restrictive covenant can diminish the fair market value of real property by effectively encumbering the "bundle of rights" commonly associated with (fee simple) ownership.

The "bundle of rights" are summarized below:

1. Fee simple is the purest form of ownership, unencumbered by other interests or estates, subject only to the overworking governmental restrictions placed on all land.
2. The bundle of rights is the rights a person has when they own property and what they can do with it.
3. The bundle of rights are the right to sell an interest, lease an interest, mortgage the property, give an interest away, or the right to do none or all of these things.
4. Each right has some value and if one or more is removed, then a partial interest is created and will have to be valued.

A restrictive covenant specifically encumbers Point #3 by limiting or restricting what a property owner can do with their land/property.

Restrictive covenants can be time sensitive (i.e. exist only for a pre-determined period) and can effectively promote a specific use/development by restricting all others and/or requiring that a specific type of development/use occur before any other development or use of the site is permitted. Such is the case with the restrictive covenant included in the WCD agreement, which required the construction of a 220 room hotel and conference centre within a specific timeframe and prior to any other form of development on the subject site.

It is not uncommon for an agreement that includes a restrictive covenant – the purpose of which is to require a certain type of development by a certain date – to also include an "escape clause" that allows the Vendor to buy back the land at market value should the purchaser's development proposal fail. This "buy back" allowance protects the Vendor, who likely owns the adjacent land or additional lands in the area, and, therefore, does not wish to see the lands remain vacant for a lengthy period of time.

2. TERMS OF REFERENCE

Provided below are the agreed to Terms of Reference for this assignment –

The overall purpose of the assignment is to validate or invalidate the values opined in two (2) appraisal reports, as well as the offer price stipulated in two (2) separate agreements of purchase and sale. Specific reference and details concerning each report/agreement are provided below.

It is our understanding that Council has expressed concerns regarding the value quantum in an Agreement of Purchase and Sale (APS), which may be impacted by the restrictive covenant that the Vendor is imposing on the subject site (being Blocks 9 and 29 in Reference Plan 43M-1010, owned by OMERS/Oxford Properties). As such, this appraisal consulting report is required in order to confirm or invalidate the findings of two (2) appraisal reports, as well as assess the impact on value resulting from various restrictive covenants associated with two (2) separate agreements of purchase and sale (one to the City of Mississauga in June 2009, and the other to World Class Developments in 2007).

Based on the requirement(s) and overall purpose of the report, we have addressed the following four (4) items:

1. Peer Review of Two (2) Appraisal Reports –

We have completed a review of two (2) appraisal reports, each of which purport to estimate the market value of the subject lands without the imposition of any restrictive covenants. Given the wide disparity in value opined in each appraisal report, we have also provided our own assessment and conclusion of market value, without the influence of any restrictive covenants.

2. Assessment of the Impact on Value resulting from the Restrictive Covenant(s) associated with the City's Agreement of Purchase and Sale (APS) –

The City of Mississauga has entered into an APS with the Vender, based on developing the subject site under an "institutional" use (specifically as a "college"), and as part of this agreement the Vendor is imposing a restrictive covenant that would limit the use of the site to the City's proposed use in addition to several others (e.g. office use).

As a result of the preceding, we have analyzed the impact on value resulting from the proposed restrictive covenants, relative to the market value without any restrictive covenants as determined under Stage 1 (above).

3. Assessment of the Impact on Value resulting from the Restrictive Covenant(s) associated with a 2007 APS between the Vendor and World Class Developments (WCD) –

WCD negotiated an APS for the subject lands in 2007, and, as in the City's agreement referenced in #2, the Vendor sought to impose a restrictive covenant that required the Purchaser to build a "hotel and conference centre" prior to developing the lands with (primarily) high density residential development. As such, we have provided an assessment of the value of the subject site, as of the 2007 effective date, both with and without the influence of the specific restrictive covenant proposed at that time. It should be understood that an assessment of value as of 2007 is considered a "retrospective valuation" (considering market environs as at the 2007 effective date).

4. Brief Review of Market Changes over the 2007 to 2009 Period –

Given the 2+ year lapse between the 2007 APS to WCD and the 2009 APS to the City of Mississauga, we completed a brief assessment of the market change over this period, and incorporated this change (if any) when comparing the agreements and values included therein.

3. SCOPE OF WORK

The format of this report is that of a Review and Consulting Report as defined under the new Canadian Uniform Standards of Professional Appraisal Practice of the Appraisal Institute of Canada.

In the process of developing this Review and Consulting Report, GSI conducted the following research and investigation:

- Review of the narrative appraisal report completed by Tony Sevelka of International Forensic & Litigation Appraisal Services Incorporated, dated July 31st, 2009 (herein referred to as the "Sevelka" report);
- Review of the narrative appraisal report completed by David Jacobs of Ontario Appraisal Corporation, dated July 19th, 2009 (herein referred to as the "Jacobs" report);
- Review of the Agreement of Purchase and Sale to World Class Developments (WCD), dated January 31st, 2007;
- Review of the Agreement of Purchase and Sale to the City of Mississauga, dated July 20th, 2009;
- Review of the WCD proposal for the subject site;
- Review of site plans and artist renderings of the Sheridan College campus proposed for the subject site;
- Completed an inspection of the subject site on September 22nd, 2009;
- Completed an independent review of Official Plan and Zoning land use regulations affecting the subject site and surrounding lands;
- Conducted a search and review of comparable property sales, including sites acquired by governmental authorities and non-profit organization for "institutional" development;
- Completed a review of development in the City Centre area, including: inventory of vacant lands, inventory of existing high density residential development (amount of GFA, density), development under-construction, development proposals and recent approvals.
- Discussions with City of Mississauga Planning Staff, including Mr. Ben Philips.
- Review of aerial photographs, surveys, and property records for the subject site and comparable sales.
- Factual documentation was provided by the Legal Division and Realty Services Division.
- Prior to commencing this assignment, GSI signed a non-disclosure agreement at the request of the City's Legal Services Division.

4. BACKGROUND

This section of the report provides general background information on the 1) subject site, 2) subject area (City Centre), and 3) the pertinent Agreements of Purchase and Sale and development proposals (i.e. the WCD agreement and the City's agreement).

4.1) Description of the Subject Site

The subject site is comprised of two (2) parcels of land (4.19 acres and 4.40 acres, respectively), separated by a road allowance. The total area of the site is approximately 8.59 acres (source: GeoWarehouse / Land Registry dbase).

The subject site is located within the City Centre area. A comprehensive description of this area is provided in the following section.

The site is designated "Mixed-Use" in the City of Mississauga Official Plan. This designation permits a wide-array of commercial and residential uses.

The site is zoned H-CC2(1) – City Centre 2 Zone (Holding) – Exemption 1 in the City's prevailing zoning by-law. The Holding symbol is to be removed upon delivery of an executed Servicing Agreement and/or Development Agreement. It should be recognized that the H symbol is not land use and density related, but rather the satisfaction of a predetermined condition(s) for development. Furthermore, the "Exemption 1" provides a maximum FSI of 4.6x the lot area (in addition to various other min/max requirements concerning height, landscaped area, etc...). Despite the maximum FSI stipulated in the zoning by-law, at 4.6x the lot area, City Planning staff indicated that densities of 7 to 9 times FSI are considered permissible in the City Centre area, and are consistent with several existing high density residential developments in the area.

As illustrated in the profile of development sites in the subject area, as provided in Exhibit 2 in the following section, the subject site is one of the largest sites in the City Centre development.

4.2) Description of the Surrounding (City Centre) Area

As illustrated in Exhibit 1, below, the subject site is one of several remaining vacant blocks of land in the City Centre area. According to the City of Mississauga, 96 acres of land in the City Centre area remain vacant and available for development (54 acres vacant, 42 acres under development application).

EXHIBIT 1
Aerial Photograph of the Subject Property and Surrounding Area

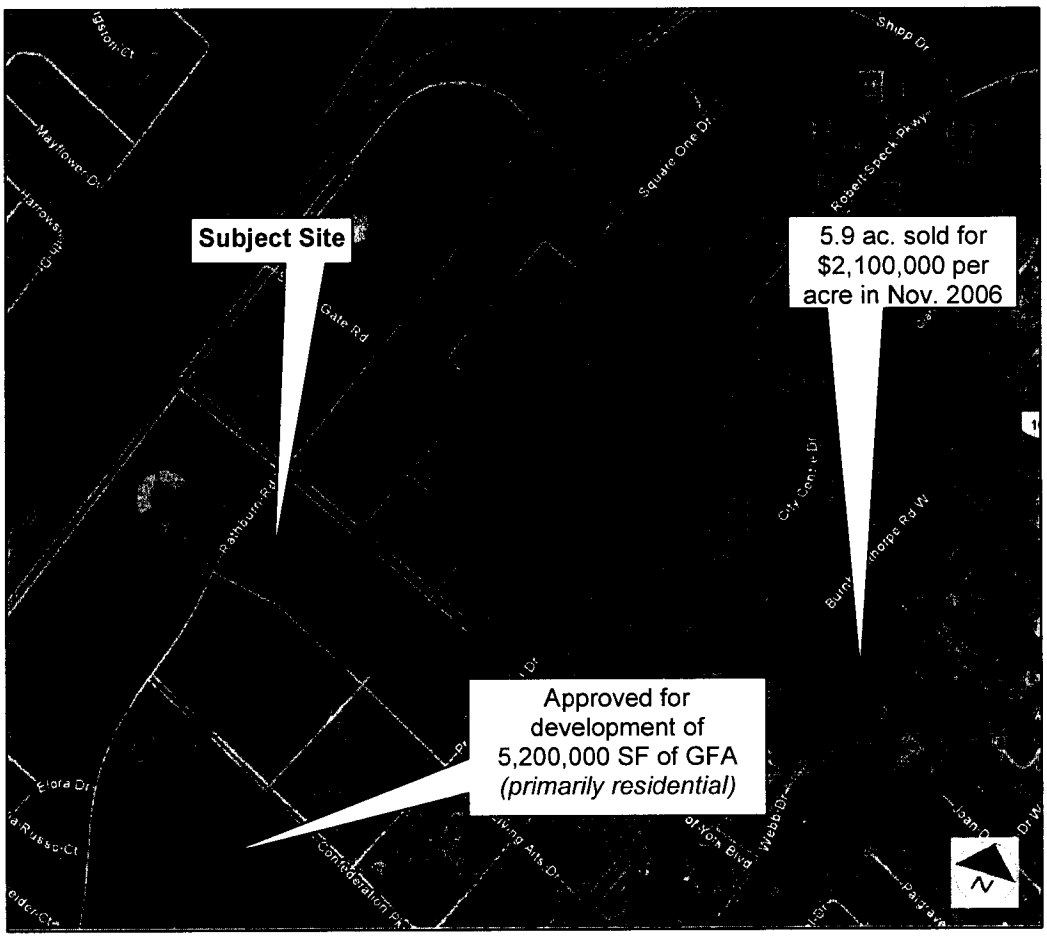
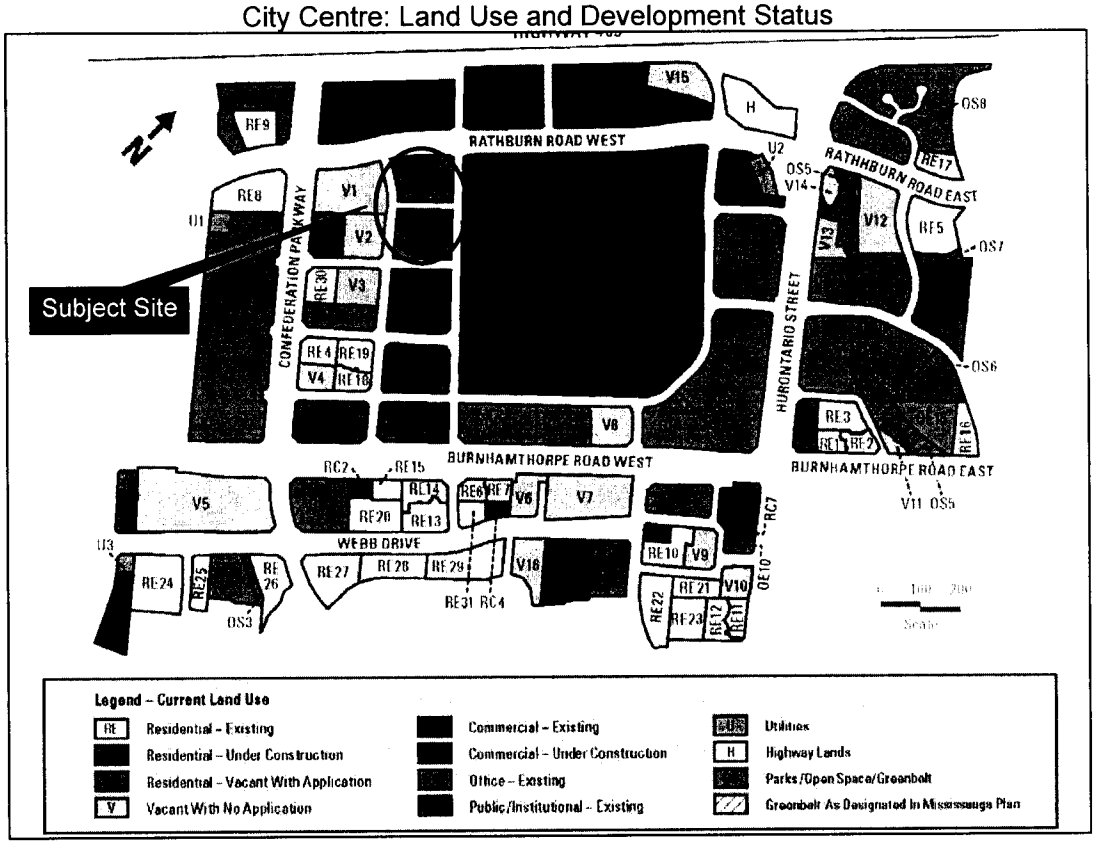


Exhibit 2, on the following page, highlights the existing and proposed land uses in City Centre, in addition to the location of vacant blocks of land (including vacant with and without development applications). Exhibits 3 and 4, provide details concerning the type and density of existing and proposed development.

As illustrated in Exhibit 2, much of the land at the south west border of City Centre remains vacant and available for high density development.

EXHIBIT 2
City Centre: Land Use and Development Status



According to the information presented in Exhibit 3 (following page), the existing residential development in City Centre includes approximately 11,000,000 SF of gross floor area (GFA), with an average overall development density of 3.8 FSI (floor space index).

Exhibit 4 provides details concerning residential developments in City Centre that are currently under construction or under development application. According to the information presented, 2,500,000 SF of residential GFA is under construction and an additional 6,500,000 SF is subject to development applications (excluding the 2,826,043 SF formerly proposed for the subject lands).

We note that AMACON has proposed and received Official Plan/zoning and draft plan approval for a 5,168,000 SF residential development on a 25 acre site situated just west of the subject site (4.68 FSI). This considerable amount of GFA, in addition to the other 1,400,000 SF under application, will certainly satisfy the demand for residential units in City Centre for quite some time (say 15+ years).

Between the developments under construction and under application, there is enough inventory of future GFA to almost double the size of the existing inventory of residential development in City Centre.

EXHIBIT 3
Profile of Existing Residential Development in the City Centre Area

Map ID	Project/Building Name	Municipal Address or General Location	Unit Type	Units	Site Area (ha)	Site Area (acre)	GFA (m²)	GFA (ft²)	# of Storeys	Total FSI [1]	Est. Pop. [2]	Comments [3]
RE1	Absolute Condominiums	70 Absolute Ave	Apartment	311	0.34	0.85	25,374	273,123	31	7.36	695	PSCP 869
RE2	Absolute Condominiums	80 Absolute Ave	Apartment	286	0.42	1.05	22,734	244,707	27	5.38	639	PSCP 807
RE3	Absolute Condominiums	80 Absolute Ave	Apartment	372	0.51	1.27	34,489	371,237	35	6.73	832	CDM-M08007
RE4	AMICA at City Centre	350 Princess Royal Dr	Apartment	146	0.20	0.50	15,135	162,912	17	7.44	326	PSCP 768
RE4	AMICA at City Centre	380 Princess Royal Dr	Apartment	113	0.41	1.01	11,220	120,771	7	2.75	253	Rental Retirement Facility, 25 beds in addition to 113 units
RE5	Anaheim Condominiums	4185 Shipp Dr	Apartment	175	0.82	2.03	20,986	225,891	21	2.56	391	PCP 341
RE5	Anaheim Condominiums	4205 Shipp Dr	Apartment	230	0.82	2.03	20,986	225,891	27	2.56	514	PCP 341
RE6	City Gate 1	3939 Duke of York Blvd	Apartment	326	0.35	0.86	30,840	331,959	34	8.90	729	PSCP 731, Retail units with GFA 190 m² (2,045 ft²)
RE7	City Gate 2	220 Burnhamthorpe Rd W	Apartment	343	0.36	0.90	31,211	335,952	34	8.60	767	PSCP 756, Retail units with GFA 110 m² (1,184 ft²)
RE8	Conservatory Condominiums	330 Rathburn Rd W	Apartment	224	0.81	2.01	27,140	292,133	23	3.34	501	PCP 417
RE8	Conservatory Condominiums	350 Rathburn Rd W	Apartment	184	0.81	2.01	22,420	241,377	19	2.76	411	PCP 417
RE9	Conservatory Condominiums	335 Rathburn Rd W	Apartment	296	0.77	1.90	26,326	283,371	22	3.42	662	CDM-M07010
RE10	Enfield Place	265, 285 Enfield Pl	Apartment	500	1.78	4.41	51,476	554,083	22	2.89	1118	PCP 383, Retail units with GFA 3,000 m² (32,293 ft²)
RE11	No. 1 City Centre	1 Elm Dr W	Apartment	356	0.45	1.11	29,868	321,496	31	6.64	796	PSCP 717, Ground floor retail with GFA 102 m² (1,098 ft²)
RE12	No. 1 City Centre	33 Elm Dr W	Apartment	361	0.65	1.61	27,969	301,056	29	4.30	807	PSCP 720
RE13	Ovation at City Centre	3880 Duke of York Blvd	Apartment	468	0.84	2.07	48,571	522,814	31	5.81	1046	PSCP 712
RE14	Ovation at City Centre	3883 Duke of York Blvd	Apartment	472	0.66	1.63	48,044	517,141	31	7.27	1055	PSCP 754
RE15	Ovation at City Centre-Phase III	310 Burnhamthorpe Rd W	Apartment	459	0.45	1.11	41,185	443,312	34	9.21	1026	PSCP 826
RE16	Shangate Tower	200 Robert Speck Pky	Apartment	161	0.65	1.61	20,188	217,302	21	3.09	360	PCP 240
RE17	Sherwood Place	4235 Sherwoodtowne Blvd	Apartment	170	0.69	1.71	20,400	219,584	18	2.94	380	PCP 253
RE18	The Capital	4080 Living Arts Dr	Apartment	371	0.49	1.21	32,208	346,684	30	6.57	830	PSCP 776, Ground floor retail with GLA 544 m² (5,856 ft²)
RE19	The Capital	4090 Living Arts Dr	Apartment	368	0.70	1.72	37,718	405,903	30	5.42	823	PSCP 771, Ground floor retail with GFA 544 m² (5,856 ft²)
RE20	The Monarchy (West Tower)	325 Webb Dr	Apartment	254	0.58	1.44	28,764	309,613	23	4.95	568	PCP 452
RE20	The Monarchy (East Tower)	335 Webb Dr	Apartment	260	0.58	1.44	28,764	309,613	23	4.95	581	PCP 452
RE21	The Tiara	156 Enfield Pl	Apartment	285	0.83	2.05	37,300	401,494	25	4.50	637	PSCP 628
RE22	The Towne	3605 Kariya Dr	Apartment	288	0.83	2.05	31,633	340,495	23	3.81	644	PCP 319
RE22	The Towne Townhouses	3567-3597 Kariya Dr	Townhouse	12	0.44	1.09	2,288	24,628	3	0.52	27	PCP 319
RE23	Towne 2	55 Elm Dr W	Apartment	322	0.77	1.91	32,350	348,213	23	4.18	720	PCP 386
RE23	Towne 2 Townhouses	57-67 Elm Dr W	Townhouse	6	0.23	0.57	1,345	14,477	2	0.58	13	PCP 386
RE24	The Phoenix	550 Webb Dr	Apartment	344	1.82	4.49	32,668	351,635	27	1.80	862	PCP 403
RE25	The Redmond	3655 Redmond Rd	Apartment	125	0.68	1.68	11,638	125,270	13	1.72	313	Rental-Paul Non-Profit
RE26	The Centre IV	400 Webb Dr	Apartment	274	1.08	2.67	25,800	277,709	23	2.39	562	PCP 446
RE27	The Platinum	350 Webb Dr	Apartment	256	1.40	3.45	29,871	320,991	22	2.13	642	PCP 419
RE28	Club One Condominiums	300 Webb Dr	Apartment	197	1.06	2.61	14,642	157,605	15	1.39	494	PCP 327
RE29	Odessy	250 Webb Dr	Apartment	265	1.44	3.55	28,100	308,924	15	2.00	664	PCP 412
RE30	One Park Tower	388 Prince of Wales Dr	Apartment	405	0.63	1.56	39,308	423,108	38	6.23	906	PSCP 834, Retail units with GFA 123 m² (1,324 ft²)
RE31	Solstice I	225 Webb Dr	Apartment	375	0.41	1.01	34,064	366,662	37	8.36	839	CDM-M07004, Retail and office units with GFA 995 m² (10,710 ft²)
	Total Existing			**10,310**	**26.76**	**66.13**	**1,025,573**	**11,039,176**			**23,441**	

EXHIBIT 4

Profile of Proposed and In-Progress Development in the City Centre Area

Residential Development – Under Construction

Map ID	Project/Building Name	Municipal Address or General Location	Unit Type	Units	Site Area (ha)	Site Area (acre)	GFA (m²)	GFA (ft²)	# of Storeys	Total FSI [1]	Est. Pop. [2]	Comments [3]
RC1	Absolute Condominiums	50 Absolute Ave	Apartment	434	0.36	0.90	36,521	393,109	50	10.03	970	
RC1	Absolute Condominiums	60 Absolute Ave	Apartment	438	0.36	0.90	42,038	452,493	56	11.54	979	Condominium Apartment Building with 430 apartment units and eight podium townhouse units
RC2	Ovation at City Centre Phase IV	330 Burnhamthorpe Rd W	Apartment	298	0.21	0.51	25,946	279,280	32	12.46	666	CDM M07015
RC3	Robert Speck Retirement Residence	100 Robert Speck Pky	Apartment	113	0.89	2.21	9,941	107,004	4	1.11	253	Retirement Facility
RC4	Solstice II	223 Webb Dr	Apartment	353	0.25	0.62	30,159	324,629	34	11.93	789	
RC5	Robert Speck Townhouses	4121-4157 Shipp Dr, 97-131 Robert Speck Pky	Townhouse	69	2.54	6.27	19,961	214,850	3	0.79	214	CDM M07017, CDM M07018
RC6	Daniels CCW Corporation Chicago Tower	383-385 Prince of Wales	Apartment	485	0.89	2.03	43,467	467,875	36	5.32	1084	Condominium Apartment Building with 453 apartment units, 32 podium townhouse units and retail uses at grade. Retail GFA 1,041 m² (11,205 ft²)
RC7	Tiara II	208 Enfield Place	Apartment	278	0.32	0.78	25,426	273,683	36	8.02	622	Condominium Apartment Building. Retail units with GFA 449 m² (4,833 ft²)
	Total Under Construction			**2,468**	**5.76**	**14.23**	**233,459**	**2,512,932**			**5,578**	

Residential Development – Under Development Application

Map ID	Project/Building Name	Municipal Address or General Location	Unit Type	Units	Site Area (ha)	Site Area (acre)	GFA (m²)	GFA (ft²)	# of Storeys	Total FSI [1]	Est. Pop. [2]	Comments [3]
RA1	The Conservatory Group Universal	339 Rathburn Rd W	Apartment	353	0.63	1.56	31,228	336,135	25	4.96	789	Phase II. SP 06/207 W4 In Process
RA1	The Conservatory Group Universal	349 Rathburn Rd W	Apartment	296	0.53	1.31	26,326	283,371	22	4.97	662	Phase III. SP 06/207 W4 In Process
RA1	The Conservatory Group Universal	North of Rathburn Rd W, West of Confederation Pky	Townhouse	30	0.91	2.25	1,387	47,221	2	0.48	93	Phase IV. SP 06/207 W4 In Process
RA2	AMACON Developments (City Centre) Corp.	North of Burnhamthorpe Rd W, West of Confederation Pky	Apartment	5,321	10.27	25.37	480,185	5,168,668	4-50	4.68	11898	OZ/OPA 04/013 W4 Approved. T-M04001 Draft Plan Approved. Grade related retail/commercial uses proposed. Site Area includes future roads and Open Space. SP 07/050 W4 (for a part of the subject land) In Process
RA3	Pinnacle International (Ontario) Limited	5975, 5985 Grand Park Dr	Apartment	324	0.68	1.68	67,720	728,932	4-45	9.97	1842	Proposed two residential apartment buildings with some retail uses. Retail GFA 1,020 m² (10,979 ft²). SP 08/085 W7 In Process
RA4	World Class Developments (Hotel and Mixed Use Development-City Centre)	285 Prince of Wales Dr, 4225 Living Arts Dr, 4200 Duke of York Blvd	Apartment	2,421	3.47	8.57	262,548	2,826,043	29-50	7.94	5413	H-OZ 07/004 W4 and Master SP 07/197 W4 In Process
	Total Under Construction			**9,245**	**16.49**	**40.74**	**872,394**	**9,390,371**			**20,698**	
	Total Residential Development (Existing, Under Construction and Under Development Applications)			**22,023**	**49.00**	**121.09**	**2,131,426**	**22,942,479**			**49,717**	

4.3) Summary of Agreements and Appraisals

Provided below is a summary of the pertinent agreements of purchase/sale and previous appraisals concerning the subject site

1) Agreement of Purchase and Sale to World Class Developments (WCD) – *(Included in Appendix A)*

Date of Agreement –	January 31st, 2007
Purchase Price –	**$14,492,250 in total, or $1,695,000 per acre**
Deposits –	$750,000 to $1,050,000
Letter of Credit –	$2,500,000 for 31 months
Development Proposal –	High Density Residential and Commercial *(2,800,000 SF of GFA, including a 215,000 SF Hotel and Convention Centre – as required by the restrictive covenant)*
Restrictive Covenant(s) –	Construction of a 4-star hotel and conference centre must be substantially completed prior to commencing any other development on the site. Construction of the hotel and conference centre to commence within 18 months after closing.
Penalties –	If construction of the hotel and conference centre is not substantially performed within 30 months from commencement of construction, the Vendor may cash (and retain) the letter of credit ($2,500,000). If construction of the hotel and conference centre is not substantially performed within 48 months from closing, the Vendor has the right to purchase the balance of Block 9 for $10.00.
Escape Clause –	None
GSI's Assessment of Risk/Feasibility –	High risk. Significant degree of uncertainty. Development proposal was highly speculative given vast amount of GFA proposed and associated absorption period (would compete against 5,200,000 SF proposed by AMACON). Hotel and conference centre would have had to compete against more established hotels and conference centres located in the Airport Corporate Centre. Given long-term nature of the development, the proposal is highly susceptible to changes in market environs.
Conclusion –	Deal fell apart due to the inability of purchaser to satisfy agreement terms and secure requirements for municipal approval in a timely manner. We also surmise that the purchaser was unable to secure an equity investor and operator for the hotel development.

2) Agreement of Purchase and Sale to the City of Mississauga –
(Included in Appendix B)

Date of Agreement –	July 20th, 2009
Purchase Price –	**$14,908,902** **($1,743,731 per acre as per the 8.55 acres referenced in the Agreement)**
Deposits –	$100,000
Letter of Credit –	None
Development Proposal –	Institutional – 450,000 SF Sheridan College (phased development, with 112,000 SF in the initial phase) to be paid for with $31.23m in Infrastructure Grants.
Restrictive Covenant(s) –	For the initial 25 years, the use shall be restricted to that of a college (along with accessory student housing), public park, or office tower. No requirement to build within a specified timeframe. No minimum/maximum floor area requirement.
Penalties –	None
Escape Clause –	City may declare lands as "surplus" (prior to, or after, the initial 25 year period) and sell back to Vendor at fair market value, based on highest and best use established by the City (including high density residential development). Note: Site would continue to be encumbered by restrictive covenants should the City attempt to sell to a third party, prior to the expiration of the initial 25 year period.
GSI's Assessment of Risk/Feasibility –	Low risk. Presence of infrastructure funding and continued demand for college level education results in certainty that the proposal is real and will occur immediately, with all associated economic impacts realized in the immediate to short-term.
Conclusion –	Risk of losing deal/proposal if delay results in withdrawal of Infrastructure Funding.

3) Appraisal Report by International Forensic and Litigation Appraisal Services (referred to as the "Sevelka" report) –

Dated –	July 31st, 2009
Effective Date of Valuation –	July 29th, 2009
Opinion of Market Value (unencumbered) –	$17,180,000 in total, or $2,000,000 per acre
Highest and Best Use –	"Speculative land holding for mixed-use development, incorporating both high-density residential and non-residential uses, as permitted under the prevailing land use controls".
Restrictive Covenants –	None
GSI's Assessment –	Opinion of market value is accurate.

4) Appraisal Report by Ontario Appraisal Corporation (referred to as the "Jacobs" report) –

Dated –	July 19th, 2009
Effective Date of Valuation –	June 23rd, 2009
Opinion of Market Value (unencumbered) –	$26,630,000 to $28,350,000 in total, or $3,100,000 to $3,300,000 per acre
Highest and Best Use –	"Mixed-use development that would generate the highest net revenue given the market demands at the time and the associated related costs to produce such revenue".
Restrictive Covenants –	None
GSI's Assessment –	Opinion of market value is incorrect – too high.

5. TECHNICAL REVIEW OF THE "SEVELKA" AND "JACOBS" APPRAISAL REPORTS

Provided on the following page is a summary of the Technical Review Standards of the Appraisal Institute of Canada. Given the brief nature of this review, and considerable time constraints, our review narrative is limited to address only those items of significance in each report under review. Items or issues of significance are considered those that are responsible for the wide disparity in value opined in each report, and impact the accuracy of the value determined to be "correct and accurate" in the opinion of the review appraiser.

This review section of the report is divided into the following relevant sub-sections:

5.1) Summary of each Appraisal Report
5.2) Review Appraiser's Opinion as to the Completeness of the Appraisals
5.3) Major Difference between each Appraisal Report
    5.3.1) Highest and Best Use Conclusion
    5.3.2) Comparable Sales Utilized
    5.3.3) Unit of Comparison
5.4) Conclusion

The appraisal reports under review include:

- The narrative appraisal report completed by Tony Sevelka of International Forensic & Litigation Appraisal Services Incorporated, dated July 31st, 2009 (referred to as the "Sevelka" report);

- The narrative appraisal report completed by David Jacobs of Ontario Appraisal Corporation, dated July 19th, 2009 (referred to as the "Jacobs" report).

Technical Review Standards of the Appraisal Institute of Canada:

As defined by the Canadian Uniform Standards of Professional Appraisal Practice ("CUSPAP"), a Technical Review is work performed by a third party appraiser in accordance with the Appraisal Institute of Canada's ("AIC") Review Standard, of an appraisal report prepared by another appraiser for the purpose of forming an opinion as to whether the analyses, opinions and conclusions in the report under review are appropriate and reasonable.

In a technical review report, the review appraiser must:

- identify the client and other intended users, by name;
- identify the intended use of the review appraiser's opinions and conclusions;
- identify the purpose of the appraisal review assignment;
- identify the report under review, the appraiser(s) that completed the report under review, the real estate and real property interest appraised, and the effective date of the opinion in the report under review;
- identify the date of the review;
- identify the scope of work of the review process that was conducted;
- identify all assumptions and limiting conditions;
- provide an opinion as to the completeness of the report under review within the scope of work applicable in the review assignment;
- provide an opinion as to the apparent adequacy and relevance of the data and the propriety of any adjustments to the data;
- provide an opinion as to the appropriateness and proper application of the appraisal methods and techniques used;
- provide an opinion as to whether the analyses, opinions and conclusions in the report under review are appropriate and reasonable;
- provide the reasons developed for any disagreement or agreement with the appraisal report being reviewed;

- include all known pertinent information; and,

- include a signed certification; a review appraiser who signs a certification accepts responsibility for the review and the contents of the review report.

Reasonable Appraiser Standard of the AIC:

In both the preparation of an appraisal report, and in the review of an appraisal report, the appraiser must perform these functions in a manner consistent with the "Reasonable Appraiser" standards of the AIC.

Reasonable Appraiser:

- one who maintains a level of performance that would be acceptable to the professional practice peer group;

- if reasonable appraisers conclude that there is no rational foundation for an analysis or opinion, then such analysis or opinion would not be justified.

A Member of the Appraisal Institute of Canada must also develop and communicate his/her analysis, opinions and advice in a manner that will be meaningful to the client, that will not be misleading in the market place, and that will be in compliance with the Standards of the AIC.

Value Opinions in an Appraisal Review Assignment:

The Canadian Uniform Standards, in the Practice Notes, under the heading of "***Value Opinions in Appraisal Review Assignments***", states that:

> *The Review Standard provides for a review appraiser to address* ***all or part*** *of the appraisal being reviewed. This includes addressing its completeness, relevance, appropriateness and reasonableness within the context of the Appraisal Standard under which the appraisal was prepared.*

The review appraiser's comments will be directed primarily towards those elements of each report with which the review appraiser disagrees, and which led to the disparity in value opined.

5.1) Summary of each Appraisal Report

Provided below in Exhibit 5 is a summary of the salient points and value conclusions included in the Sevelka and Jacobs reports

EXHIBIT 5
Key Aspects of the Sevelka and Jacobs Appraisal Reports

ITEM	Sevelka Report	Jacobs Report
Date of Report	July 31, 2009	July 19, 2009
Effective Date	July 29, 2009	June 23, 2009
Area of Subject Site	8.59 acres	8.59 acres
Official Plan Desig.	Mixed Use	Mixed Use
Zoning	H-CC2(1) – City Centre 2 Zone (Holding) – Exemption 1	H-CC2(1) – City Centre 2 Zone (Holding) – Exemption 1
Exposure Time	6 months	3 to 6 months
Highest & Best Use	Speculative Land Holding for Mixed-Use Development	Any Mixed-Use Development that would generate the Highest Net Revenue
Valuation Method	Direct Comparison Approach	Direct Comparison Approach
Unit of Comparison	Price per Acre	Price per Acre
Quality of Comparable Sales	Poor	Good
Date of Sale of Comparable Properties	November 2007 to January 2009; Median = Spring to Fall 2008	May 2003 to June 2009; Median = January to December 2008
Sale Price of Comparable Property Sales	$1,000,000 to $2,720,000 per acre; Median = $1,340,000 per acre	$1,350,000 to $3,840,000 per acre; Median = $2,500,000 per acre
Value Adjustment	Qualified, not quantified	Qualified, not quantified
Time Adjustment	Not specified (not quantified)	Not specified (not quantified)
Adjusted Sale Price of Comparable Sales	$1,000,000 to $3,030,000 per acre; Median = $1,340,000 per acre	Not specified
Reconciled Final Value Estimate	**$17,180,000 ($2,000,000 per acre)**	**$26,630,000 to $28,350,000 ($3,100,000 to $3,300,000 per acre)**

5.2) Review Appraiser's Opinion as to the Completeness of the Appraisals

Each of the appraisal reports under review are considered "complete", and address all of the reporting requirements of a short narrative appraisal report.

We note that each of the reports refrains from applying specific value adjustments to the sale price of each comparable property sale in order to account for differences in size, location, time etc... (Sevelka does adjust for financing, although we were unable to ascertain the time adjustment factor applied).

Furthermore, each report lacks a detailed review of development trends and vacant land holdings in the City Centre area. Such a review, similar to one provided in this report, may have highlighted the market position of the subject site relative to competing sites in City Centre.

5.3) Major Difference between each Appraisal Report

The major difference in each report is the acknowledgement (or lack thereof) that the subject site reflects qualities of *"speculative development land"* as a result of its large size and ability to accommodate a significant amount of GFA. The Sevelka report acknowledges this "speculative investment" quality, but the Jacobs report does not. As a result, the value opined in the Jacobs report is too high.

5.3.1) Highest and Best Use Conclusion

Provided below is a summary of the Highest and Best Use conclusion stated in each report:

Sevelka Report –

> *...it has been concluded that the highest and best use of both properties is as a speculative land holding for mixed-use development, incorporating both high-density residential and non-residential uses.*

Jacobs Report –

> *...any mixed-use development that would generate the highest net revenue given the market demands at the time and the associated related costs to produce such revenue.*

As illustrated above, the Jacobs report fails to acknowledge the "speculative" and "long-term" development attributes of the subject site. This is the primary reason why the value opined in the Jacobs report is too high.

5.3.2) Comparable Sales Utilized

Provided in Table 1, on the following page, is a summary of the comparable sales utilized in each report, and GSI's assessment of the quality of each sale (as a comparable sale).

In assessing the quality of each sale, it is important to note that the Sevelka report opined a final value estimate of $2,000,000 per acre, while the Jacobs report opined a value of $3,100,000 to $3,300,000 per acre. As such, prudence dictates that the sale price of the comparable sales utilized in each valuation should be within 25% to 35% of the final value opined. If the margin is greater than 25% to 35%, it calls into question the quality and appropriateness of the comparable sale, and the analysis performed by the appraiser.

We note that the Sevelka report did not utilize the 2006 sale of a 5.9 acre parcel of vacant land located in the City Centre area (Comparable #8 in the Jacobs report, profiled in Appendix C of this report). Given the recent market decline, this comparable sale is certainly relevant despite the date of sale. Also, at a sale price of $2,100,000 per acre, this sale price is consistent with the final value estimate opined in the Sevelka report. Certainly, a sale of a similarly sized parcel, located in almost the exact same location as that of the subject site, with the same land use designations (Official Plan, zoning), makes for an excellent "comparable" property sale.

TABLE 1

Summary and Analysis of Comparable Sales

COMPARABLE SALES (Address & Description)		QUALITY OF COMPARABLE SALES	GSI REMARKS
SUBJECT PROPERTY			
Address:	Blocks 9 & 29, 43M1010		
Effective Date:	June/July 2009		
Site Area:	8.59		
Acreage Rate:	N/A		
SEVELKA COMPARABLES			
Comp.:	#1	Very Poor	Low FSI
Address:	2465 Argentia Road		
Date Sold:	November 19, 2007		
Site Area:	8.43		
Acreage Rate:	$1,001,542		
Comp.:	#2	Fair	Located in Richmond Hill
Address:	E/S Beaver Creek Road		
Date Sold:	October 31, 2008		
Site Area:	9.32		
Acreage Rate:	$2,000,429		
Comp.:	#3	Poor	Low FSI
Address:	59-007 John Street		
Date Sold:	December 2008 (listing)		
Site Area:	4.60		
Acreage Rate:	$1,413,043		
Comp.:	#4	Poor	Low FSI; Too Small
Address:	570 Lolita Gardens		
Date Sold:	November 3, 2008		
Site Area:	2.76		
Acreage Rate:	$1,268,116		
Comp.:	#5	Poor	Low FSI; Too Small
Address:	5990 Indian Line		
Date Sold:	March 27, 2008		
Site Area:	3.10		
Acreage Rate:	$1,227,419		
Comp.:	#6	Good	Large Size; Similar FSI
Address:	1 Valhalla Inn Road		
Date Sold:	June 10, 2009		
Site Area:	5.70		
Acreage Rate:	$2,719,298		
JACOBS COMPARABLES			
Comp.:	#1	Poor	Too Small
Address:	Princess Royal Drive		
Date Sold:	May 13, 2003		
Site Area:	1.70		
Acreage Rate:	$3,112,618		

COMPARABLE SALES (Address & Description)	QUALITY OF COMPARABLE SALES	GSI REMARKS
Comp.: #2 Address: Hazelton Place Date Sold: January 10, 2008 Site Area: 5.87 Acreage Rate: $1,352,300	Poor	Low FSI
Comp.: #3 Address: 1 Valhalla Inn Road Date Sold: June 10, 2009 Site Area: 5.70 Acreage Rate: $2,719,298	Good	See Previous Record
Comp.: #4 Address: Eglinton Avenue West Date Sold: December 16, 2008 Site Area: 5.0 Acreage Rate: $1,693,600	Poor	Similar FSI ("marketable" FSI)
Comp.: #5 Address: Webb Drive Date Sold: April 28, 2005 Site Area: 1.61 Acreage Rate: $2,726,146	Poor	Too Small
Comp.: #6 Address: 305 & 321 Lakeshore Rd. W. Date Sold: July/December 2008 Site Area: 2.48 Acreage Rate: $2,620,968	Poor	Too Small
Comp.: #7 Address: 5575 Bonnie Street Date Sold: May 15, 2009 Site Area: 1.70 Acreage Rate: $1,604,706	Poor	Too Small
Comp.: #8 Address: 152-180 Burnhamthorpe Rd. W. Date Sold: November 3, 2006 Site Area: 5.91 Acreage Rate: $2,115,059	Excellent	City Centre Location; Similar Size
Comp.: #9 Address: Grand Park Drive Date Sold: October 26, 2006 Site Area: 1.68 Acreage Rate: $2,380,952	Poor	May not be arm's length sale
Comp.: #10 Address: Grand Park Drive Date Sold: Sept. 28, 2007 Site Area: 1.68 Acreage Rate: $3,841,600	Poor	Too Small

5.3.3) Unit of Comparison

Each of the appraisal reports analyzes the comparable property sales on a price per acre basis. Given the speculative/long-term development attributes of the subject site, we agree with the application of this unit of comparison (as opposed to the sale price PSF of GFA).

5.4) Conclusion

In conclusion, based on our review of each report we tend to agree with the value opined in the Sevelka report, at $2,000,000 per acre. Although, we note that due to the poor quality of the comparable sales utilized and the lack of transparency concerning the value adjustments applied, the Sevelka report does not elicit any faith in the value opined (not convincing). Instead, our conclusion that the value opined by Sevelka is accurate is based on the analysis of several comparable sales utilized in the Jacobs report (not included in Sevelka report) in addition to our own independent review of comparable sales and general due diligence.

It appears that the value opined in the Jacobs report is too high as a result of Jacob's failure to adjust for the significant size of the subject site, and the associated speculative/long-term development attributes of the site.

6. GSI'S OPINION CONCERNING THE MARKET VALUE OF THE SUBJECT LANDS, WITHOUT THE INFLUENCE OF RESTRICTIVE COVENANTS

This section of the report presents our opinion of market value for the subject site, without the influence of any restrictive covenants.

As discussed in the previous section, we concur with the current market value opined by Mr. Tony Sevelka of International Forensic and Litigation Services Inc., at $2,000,000 per acre or approximately $17,180,000 in total.

While the value of vacant land is usually directly related to the amount of gross floor area (GFA) that one can build on the site, large sites - such as the subject - are often capable of accommodating a vast amount of GFA, the significant majority of which is not readily developable (and therefore marketable) given the influence of absorption (e.g. time). In this instance, such a large site is not considered an immediate or short-term development opportunity; instead, the long absorption period (development horizon) and associated uncertainty regarding future market environs requires that the site be classified as a "speculative investment and development land holding". Under this classification, while a portion of the site may reflect an immediate to short-term development opportunity, a significant portion of the site would take 15 to 20 years to develop.

Given the market environs of the City Centre area, the market driven highest and best use of the subject site is certainly for a "mixed-use development of primarily high density residential development". Again, given the significant size of the subject site and its potential to accommodate a vast amount of GFA, the site must be further classified (in its entirety) as a "speculative investment and development land holding".

As illustrated in Exhibit 4 in Section 4.2, AMACON has receive Official Plan and zoning approvals for a 5,200,000 SF residential development on a 25 acre block of land situated just west of the subject site. A similar type development on the subject site would compete with this vast amount of GFA in the development pipeline. As a result, the development horizon and overall absorption period for all residential development in City Centre is significant.

Large development sites trade at a much lower acreage rate and rate per square foot of GFA, in comparison to small development sites, due to their long development horizon and "speculative investment" nature. Hence, when appraising a large development site, consideration should only be given to comparable sales of sites of similar size/development horizon. Any values derived from the sale of smaller sites must be adjusted downward by considering the development horizon or absorption period of the subject site, as discounting accordingly.

However, adjusting the sale price of small development sites is difficult and susceptable to compound error.

Provided below is a brief overview of the development timing classifications and corresponding attributes, including the associated quantum of market value:

EXHIBIT 6

Development Timing Classifications

Classification	Quantum of Value *(on price per acre or PSF of GFA basis)*	Parcel Size
Immediate Development *(development to commence immediately)*	$$$$$ Current Value for Immediate Development (No discount for absorption)	Small Size *(say 0.5 to 2.0 acres)*
Imminent Development *(2 to 3 years from development)*	$$$ - $$$$ Discounted Value (Medium discount for absorption)	Mid-Size *(say 3 to 5 acres)*
Speculative Development *(small portion to commence immediately, but significant portion has long development horizon)*	$ - $$ Token or Nominal Value (Significant discount for timing and associated risk/ uncertainty)	Large Size *(5+ acres)*

When assessing the market value of the subject site, without the influence of any restrictive covenants, special consideration must be given to the following two (2) comparable sales:

- **152-180 Burnhamthorpe Road West, Mississauga**

  This 5.91 acre site sold in November 2006 for $12,500,000 in total, **or $2,115,060 per acre**. This comparable site is situated within the City Centre area (southeast area), and as such is influenced by the same (locational) market environs as those impacting the subject site. As a result of the economic downturn in late-2008, real estate values for development land appear to have regressed back to values reflected in 2006. Therefore, despite the lapse in time between this sale and the current effective date, the sale price of 152-180 Burnhamthorpe Road

West provides an excellent indication of value for the subject site. A comprehensive profile of this sale is provided in Appendix C of this report.

- **S/W Eglinton Avenue West, Mississauga**

  This 5.00 acre site sold in December 2008 for $8,468,155 in total, **or $1,693,600 per acre**. This comparable site is situated directly across from the Erin Mills Town Centre, on the southwest corner of Eglinton Avenue West and Erin Mills Parkway. Overall, the site is considered slightly inferior to the subject as a result of its slightly inferior location (as unencumbered by restrictive covenants).

As mentioned briefly under the summary provided by the comparable sale addressed as 152-180 Burnhamthorpe Road West, our analysis indicates that the current market has regressed back to 2006 levels. In short, world wide economic conditions began to deteriorate in the latter part of 2008. This was highlighted by the collapse of major Wall Street firms in August and September, and world wide pressure on major financial institutions and the immediate need for government bail outs within and outside the United States. In Canada our major financial institutions weathered the storm, but in Canada and particularly in Ontario, we still experienced significant contraction in Stock markets and other financial markets, especially credit markets, deteriorating conditions in the manufacturing, retail sectors and other important sectors of our economy. This led to an observed reduction in sales volume and increased listing to sales ratios as vendors and purchasers seemed unsure of market direction. While there have been limited non-residential sales, residential sales have shown a downward direction in sales prices since the height in the market in late-2008. Our analysis of paired sales of high density development land indicates a -15% decline in value from market highs in late-2008. As such, values have declined back to levels experienced in 2006. Hence, the Agreement of Purchase and Sale negotiated by WCD certainly provides some valuable insight into the current market value of the subject site, as encumbered by restrictive covenants limiting the use and development of the site.

Based on the offer negotiated by WCD (with restrictive covenants) and considering the value opined in the Sevelka report, in addition to the values indicated in the comparable sales profiled above, there appears to be substantial support to indicate a market value of $2,000,000 per acre, or $17,180,000 in total, for the subject site (as unencumbered by restrictive covenants).

7. ASSESSMENT OF THE AGREEMENTS OF PURCHASE AND SALE BETWEEN OXFORD PROPERTIES AND WCD AND THE CITY OF MISSISSAUGA

This section of the report presents a comparison of the agreements of purchase and sale to World Class Developments (WCD) and the City of Mississauga. Also provided is an assessment of the implications of each agreement, and the restrictive covenants included therein, on the market value of the subject site (as encumbered by the restrictive covenants).

7.1) Summary of each Agreement

A comparative summary of the terms and conditions included in the agreements of purchase and sale to WCD and the City is provided in Exhibit 7 on the following page.

While the agreements occurred approximately 2.5 years from one another, the value implications of the lapse in time are negligent given the impact of the economic downturn in late-2008. According to our analysis, current real estate values have returned to their previous levels from 2006. This market change is especially true of high density development land, which has suffered the greatest decline in value as a result of the longer absorption period and higher financing costs now associated with residential condominium developments.

Despite the differences in time and the type and density of the proposed development (residential condominium and hotel/conference centre versus college campus), each of the agreements included a purchase price in the order of approximately $1,700,000 per acre.

It is interesting to note that, as illustrated in the following Exhibit 7, the agreement to WCD included significantly more requirements, obligations, and potential penalties than those included in the agreement to the City. This disparity in terms/requirements serve to underscore the risk and uncertainty of the WCD agreement and their associated development proposal.

Of primary relevance is the restrictive covenant in the WCD agreement, which required that construction of a hotel and conference centre be substantially complete prior to commencing any other type of development on the subject site. Conversely, the City's agreement includes a restrictive covenant that restricts the use of the site over the initial 25 year period to (only) a college, office or park use.

An assessment of the market value of the subject site, including the influence of the restrictive covenants included in each of the agreements, is provided in the following section.

EXHIBIT 7

Key Aspects of the Agreement of Purchase and Sale (APS) to WCD and the City of Mississauga

ITEM	World Class Developments (WCD)	City of Mississauga
Date of Agreement	January 31st, 2007	July 20th, 2009
Closing Date	Uncertain	September 17th, 2009
Interest to be Conveyed	Fee Simple – Encumbered by Restrictive Covenants	Fee Simple – Encumbered by Rest. Covenants
Purchase Price	$14,492,250 ($1,695,000 per acre)	$14,908,902 ($1,743,731 per acre)
Deposits	1st Deposit = $250,000; 2nd Deposit = $500,000 Add. $300,000 upon extension ($2,500,000 letter of credit for 31 months)	$100,000
Development Proposal	High Density Residential (7.94 FSI)- 2,800,000 SF of GFA (Incl. 215,000 SF Hotel/ Conference)	Institutional - Sheridan College (450,000 SF of GFA)
Letter of Credit	$2,500,000 for 31 months. Vendor to cash and retain if construction of the hotel and conference centre is not substantially performed within 30 months from commencement of construction.	None
Restrictive Covenant(s)	• No (residential) development is to occur until the construction of a four star hotel (with convention centre and minimum 300 rooms) commences on the southern portion of Block 9 (the Hotel Site). • Construction of Hotel and Conference Centre must commence within 18 months of closing. If not, Vendor can re-purchase the site immediately thereafter (all 8.59 acres) for purchase price + 2% interest per annum. • If construction of the Hotel and Conference Centre is not substantially performed within 48 months from closing, the Vendor has the right to purchase the balance of Block 9 (other than the Hotel Site) for $10.00. • See Section 6.6 of Agreement for comprehensive list of restrictive covenants.	• For the initial 25 years, the use shall be restricted to that of a college (along with accessory student housing), public park, or office tower. • No requirement to build within a specified timeframe. No minimum/maximum floor area requirement. • See Schedule "D" for comprehensive list of covenants.

ITEM	World Class Developments (WCD)	City of Mississauga
Escape Clause	None	City may declare lands as "surplus" (prior to, or after, the initial 25 year period) and sell back to Vendor at fair market value, based on highest and best use established by the City. Note: Site would continue to be encumbered by restrictive covenants should the City attempt to sell to a third party, prior to the expiration of the initial 25 year period.

7.2) Assessment of WCD's Agreement of Purchase and Sale, Including the Influence of the Restrictive Covenants on Market Value

A comprehensive summary of the Agreement of Purchase and Sale to WCD is included in Section 4.3. A complete copy of the agreement is provided in Appendix A of this report.

Based on our assessment completed in Section 6, we are of the opinion that the market value of the subject site at the time the WCD agreement was negotiated (January 2007) – *without the influence of any restrictive covenants* – was in the order of $2,000,000 per acre. This value reflects the site's highest and best use as high density residential and commercial (mixed-use) development land with a long-term development horizon (say 15 to 20 years). The value also captures the speculative investment nature of the site – *in its entirety* – given the long-term development horizon and uncertainty regarding future market environs.

The purchase price stipulated in the WCD agreement, at $1,695,000 per acre, represents a discount of approximately -15% from the market value under the site's highest and best use as "unencumbered" (i.e. no restrictive covenants).

While the WCD proposal was generally consistent with the market driven highest and best use of the subject site, the purchase agreement included a restrictive covenant requiring WCD to commence and significantly complete a 4-star hotel and conference centre before developing the site with high density residential (condominium) units. It appears that this restrictive covenant resulted in the 15% discount, which seems logical given that:

- Competition from similar developments in the Airport Corporate Centre and around the airport itself, a hotel and conference centre on the subject site would likely generate a lower yield in comparison to other forms of commercial or residential development;
- The requirement to commence construction of the hotel and conference centre first would result in greater "front-end" cost to the development;
- The financing costs associated with the development of the hotel and conference centre would likely be greater than the cost of financing a less risky and more marketable form of development.

Overall, we are of the opinion that the WCD agreement to purchase the subject site for $1,695,000 per acre ($14,492,250) reflected the market value for the subject site <u>as encumbered</u> by the restrictive covenant, which required that development of a hotel and conference centre commence prior to the development of the balance of the site.

The WCD proposal for the development of a hotel and conference centre, in addition to the proposed high density residential development, may have succeeded (in commencing) in the

absence of the 2008 economic downturn, and with a stronger developer consortium. However, the economic downturn has had a profoundly negative impact on hotel/conference centre development. Furthermore, WCD's pockets may not have been deep enough to support the inherent risk and financial commitments associated with such a development project.

The development proposed by WCD would have taken 20+ years to complete given the size of the development and competition of AMACON's proposal for 5,200,000 SF of high density residential development to the west. As such, if WCD was successful in their proposal, much of the subject site would have remained vacant for years to come. This fact is highlighted by the quantum of the negotiated purchase price at $1,695,000 per acre.

7.3) Assessment of the City's Agreement of Purchase and Sale, Including the Influence of the Restrictive Covenants on Market Value

A comprehensive summary of the Agreement of Purchase and Sale to the City of Mississauga is included in Section 4.3. A complete copy of the agreement is provided in Appendix B of this report.

Based on our assessment completed in Section 6, we are of the opinion that the current market value of the subject site – *without the influence of any restrictive covenants* – is in the order of $2,000,000 per acre. This value reflects the site's highest and best use as high density residential and commercial (mixed-use) development land with a long-term development horizon (say 15 to 20 years). The value also captures the speculative investment nature of the site – *in its entirety* – given the long-term development horizon and uncertainty regarding future market environs.

The use proposed by the City of Mississauga includes a 450,000 SF college campus with on-site parking (see Exhibit 9 at the end of this section for artistic rendering). At full build-out, the proposed college would represent a density of approximately 1.2x FSI (floor space index). This proposed use is inconsistent with the "market driven" highest and best use, being a mixed-use development with a density of approximately 8x FSI. However, it is important to note that the proposed college is a "phased" development, with approximately 112,000 SF to be constructed in the initial phase on the southern portion of the subject site. Therefore, alterations to the development scheme of the remaining balance of the site may facilitate a higher overall development density.

It is quite common for "institutional uses" proposed by government authorities and non-profit organizations to reflect a development type/use that is considered inconsistent with the market driven highest and best use. Despite this, market environs and the Expropriations Act require government authorities to secure sites for institutional development at a price established by the alternative "market driven" highest and best use. Local school boards are an ideal example of a government authority that acquires land at a price set by the market driven highest and best use, which is typically low to medium density residential development. The sale record provided in Appendix D is a perfect example of a school board (Peel District School Board) acquiring a high density residential site – *at a price reflected by such a use* – for a new school site.

At the negotiated price of $1,743,731 per acre, it appears that Oxford Properties (the Vendor) is offering the subject site to the City at a similar price to what WCD was willing to pay. Instead of getting a hotel and conference centre in the short-term and residential condominiums over the long-term, Oxford Properties will secure the immediate construction of phase 1 of Sheridan College, which anticipates an enrolment of 10,000+ students for phase 1. Given the projected enrolment and significant attendance in the evening (as a result of the adult education programs

offered by Sheridan College), the college use will support Oxford's remaining interest in the area and may even increase the value of their remaining vacant land holdings by lowering the current inventory (supply) of vacant land in the City Centre area.

We note the presence of the restrictive covenant in the City's agreement, which limits the use/development of the subject site to that of a college, office or public park over the initial 25 year term. A direct comparison of the City's agreement versus the WCD agreement reveals that the latter did not prohibit residential development (until after commencement of hotel/conference centre). While the City's agreement places a greater restriction on use by prohibiting residential development in the initial 25 years, the value implications of this restriction are negated (null and void) by the presence of a Right to First Offer clause (see Schedule D 1(d) of Agreement in Appendix B) as well as the length of the 25 year term. The Right to First Offer clause provides Oxford the right, and the City an opportunity, to declare all or a portion of the subject site as "surplus" and have Oxford buy them back at a value established by a "market driven" highest and best use (which would include high density residential development). Oxford would be highly motivated to re-acquire the surplus lands, rather than allow them to remain vacant, and diminish the overall value of Oxford's holdings in the City Centre area.

Given the requirement for government authorities and non-profit organizations to acquire sites based on the value established by the "market driven" highest and best use, and considering the City's ability to sell the subject site back to Oxford based on the market driven highest and best use, we are of the opinion that the market value of the subject site under the City's Agreement of Purchase and Sale, in accordance with all of the terms included therein, is $1,700,000 to $2,000,000 per acre. It appears that Oxford is willing to sell the subject site at the low end of the value range as an acknowledgment of the intrinsic benefits that Sheridan College will provide to Oxford, which include: support to their existing and future retail product (stores, restaurants), and a potential increase in value of their vacant land holdings by reducing the total inventory of vacant land in City Centre.

The decision of where to locate institutional uses is usually motivated by "good planning" (function/service provided vis-à-vis location of clientele) and a cost/benefit analysis that considers the intrinsic benefits against the additional costs associated with locating the institutional use in a less optimal, albeit less expensive, area. For example, a decision to locate Sheridan College elsewhere must by weighed against the additional expense associated with expanding and/or increasing public transportation to a less optimal location.

The decision to locate the new Sheridan College campus in City Centre is based on the following elements of "good planning" and intrinsic benefits to the City of Mississauga, Sheridan College and Oxford Properties:

EXHIBIT 8

Summary of Intrinsic Benefits resulting from locating Sheridan College in the City Centre Area

Stakeholder	Intrinsic Benefits associated with Sheridan's Proposed City Centre Location
City of Mississauga	• A college in the City Centre would add to the mixed-use nature of the area and create a "real" downtown feel, and help City Centre avoid evolving into a "bedroom community with retail amenities". • College will utilize existing public transportation infrastructure (close to City Centre Transit Terminal), rather than require additional investment to extend or increase public transportation services. • College will support the City of Mississauga Central Library (located a short distance south of the subject site) and create a synergy of use and function. • College may create demand for student housing, which would motivate developers to construct more affordable housing in the City Centre area.
Sheridan College	• City Centre offers a highly visible location for Sheridan, which would help bolster enrolment. • Existing public transportation infrastructure serving City Centre will ensure ease of access to the campus for all residence of Mississauga (and Peel Region). • Sheridan will benefit from its close proximity to the Mississauga Central Library. • Close proximity to Highway 403 will encourage enrolment among students residing outside the City of Mississauga.
Oxford Properties	• Enrolment would create added demand for current and future retail product (during daytime and evening hours). • Removing the subject site from the inventory of vacant land in City Centre will bolster the value of Oxford's remaining vacant land holdings in the area.

When comparing the impact and overall desirability of the subject's development potential relative to the current proposal - *being the WCD mixed-use development of 2,800,000 SF of primarily high density residential development and a hotel/conference centre, versus the 450,000 SF Sheridan College development* - one must consider the following factors associated with each development/use scheme:

Sheridan College –

- IMMEDIATE AND CERTAIN DEVELOPMENT: Immediate development resulting from $32,000,000 in secured Infrastructure Fund Grants, in addition to growing demand for college education programs in highly urbanized areas;
- PRESENCE OF PUBLIC TRANSPORTATION INFRASTUCTURE: Opportunity to capitalize on the presence of the existing public transportation in City Centre;
- INVENTORY OF VACANT LAND IN CITY CENTRE: The remaining inventory of vacant land in City Centre (some 96 acres) will satisfy demand for high density residential development for many years to come, and will provide an ongoing opportunity for hotel and conference centre development once market environs improve;
- OPPORTUNITY FOR HIGHER DENSITY: An alternative massing plan for the latter phases of the College, to occur on the northern portion of the subject site, will result in an increase in density and more intensified use (additional office development);
- ESCAPE CLAUSE: According to the Agreement, should the City declare all or a portion of the land surplus, Oxford has the right to buy back the site at a value determined by "market driven" highest and best use (i.e. high density residential). Oxford would be highly motivated to buy back the site given the negative impact associated with leaving the site vacant and/or disposing the site to a competing developer.

WCD Proposal (i.e. large scale and long-term mixed-use development) –

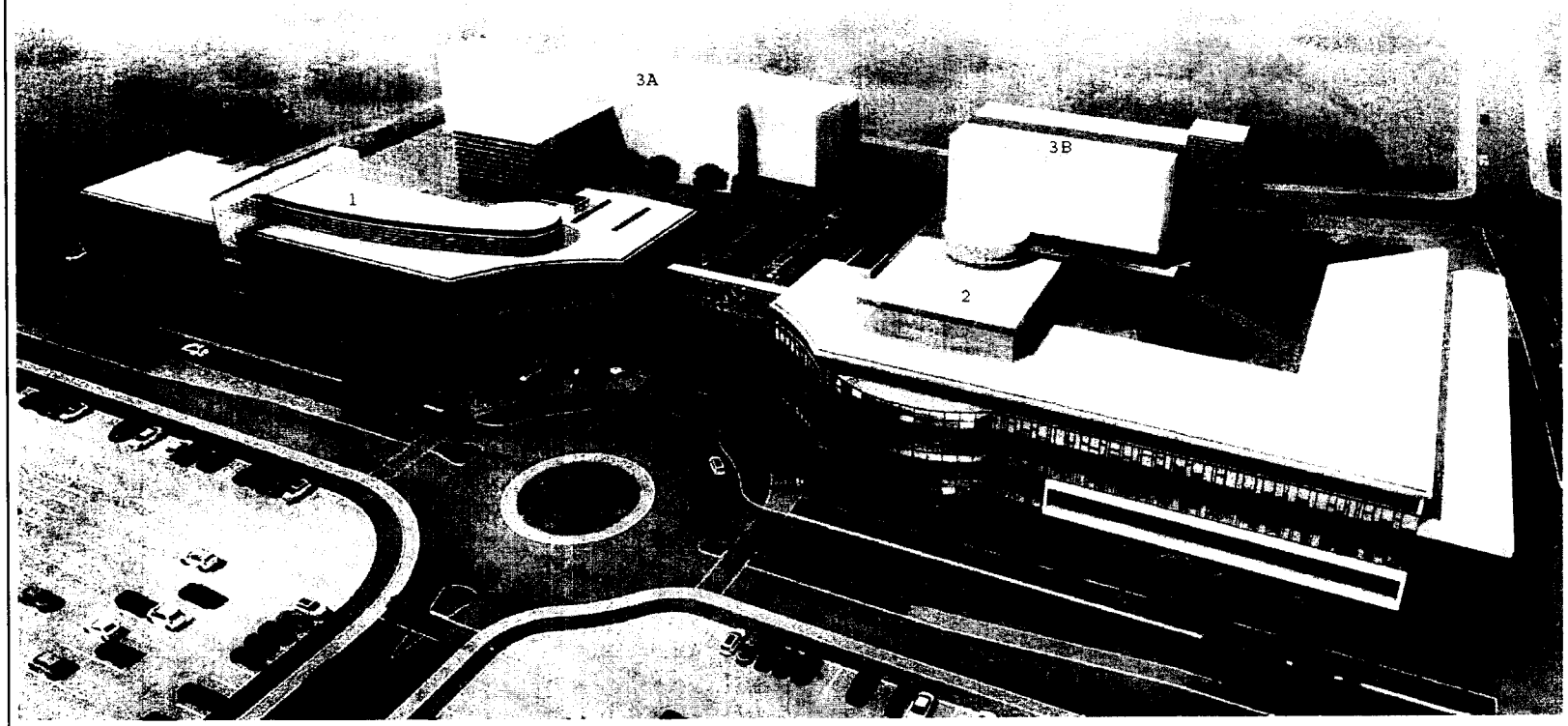
- HIGHLY UNCERTAIN AND SPECULATIVE DEVELOPMENT: A large-scale development, such as the one proposed by WCD, is considered a very long-term development opportunity given the influence of absorption and the presence of competing vacant land holdings in the City Centre area. As such, the WCD proposal is highly susceptible to changes in the marketplace. As a result, development of the subject lands according to market driven forces is highly speculative and uncertain. Under the WCD proposal, a significant portion of the subject site would have remained vacant for many years to come.
- MARKET FOR HOTEL AND CONFERENCE CENTRE IS AT AN "ALL TIME" LOW: The current market does not support the development of a hotel and conference centre in the City Centre area. However, the remaining availability of vacant lands in City Centre provide an opportunity for such a use once the overall economy and market for such a use improve.

EXHIBIT 9
Rendering of Proposed Sheridan College Campus

1 - PHASE 1 - SCHOOL OF BUSINESS

2 - PHASE 2

3 - PHASE 3A & 3B



MISSISSAUGA CAMPUS - SHERIDAN INSTITUTE OF TECHNOLOGY AND ADVANCED LEARNING

AERIAL VIEW LOOKING SOUTH AT THE PROPOSED NEW CAMPUS

George Friedman Architect

August 2009

8. CONCLUSION

Based on the analysis provided in this report, it appears that the unencumbered market value of the subject site is approximately $2,000,000 per acre (without the influence of restrictive covenants). However, as a result of the immediate intrinsic benefits resulting from the development of the proposed Sheridan College campus, it appears that Oxford Properties is willing to dispose of the subject site (to the City of Mississauga) at a discounted rate of approximately $1,700,000 per acre. This rate is consistent with the agreed to purchase price negotiated in the WCD Agreement in early-2007, which was based on the immediate development of a hotel and conference centre; a use that would have provided Oxford with similar intrinsic benefits as the proposed college (albeit less with the hotel/conference centre in the opinion of this appraiser/planner/land economist).

Our conclusions of market value and the associated influence of the proposed restrictive covenants are summarized below.

SUMMARY OF MARKET VALUE CONCLUSIONS
(with and without impact of restrictive covenants)

#	Scenario/Use	Estimated Market Value	Comments
1.	Current Market Value of Subject Site as "Unencumbered". ***(no restrictive covenants)***	$2,000,000 per acre	As a result of its large size, the majority of the subject site is considered "long-term mixed-use development land". The market value reflects the "speculative investment" nature of the long-term development opportunity.
2.	Market Value of the Subject Site under the WCD Agreement, with the restrictive covenant requiring the development of a hotel and conference centre. ***(with restrictive covenant)***	$1,700,000 per acre	Lower yield, higher investment risk and greater upfront development costs associated with hotel/conference development reduces the value of the site, relative to its market value as unencumbered (see #1, above).
3.	Market Value of the Subject Site under the City's Agreement, with the restrictive covenant limiting the use of the site to that of a college, office or public park over the initial 25 year period. ***(with restrictive covenant)***	$1,700,000 to $2,000,000 per acre	Institutional developers (i.e. government authorities) usually acquire sites at a price commensurate with the "market driven" highest and best use (see #1 above). Given limits on use over the initial 25 years, as well as the intrinsic benefits Oxford will reap from Sheridan College, a discount to $1,700,000 per acre has been provided.

9. CERTIFICATE OF THE APPRAISER

I/we certify that, to the best of my/our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my/our personal, unbiased professional analyses, opinions and conclusions.
- I/we have no present or prospective interest in the property that is the subject of this report, and I/we have no personal interest or bias with respect to the parties involved.
- I/we have no bias with respect to the property that is the subject of this report or to the parties included with this assignment.
- Our compensation is not contingent upon the reporting of a predetermined value or direction in value that favours the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- Our analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Canadian Uniform Standards.
- I/we have the knowledge and experience to complete the assignment competently.
- My/our attendance at the property that is the subject of this report is indicated beneath my/our signature.
- No one provided significant professional assistance to the person(s) signing this report.
- As of the date of this report, the undersigned has/have fulfilled the requirements of the Appraisal Institute of Canada mandatory recertification program for designated members.
- The certificate pertains to the property described as Blocks 9 and 29 in Reference Plan 43M-1010.

Yours truly,
GSI REAL ESTATE & PLANNING ADVISORS INC.

Kenneth F. Stroud, P.App, AACI, PLE
Real Estate Appraiser & Advisor

Mark Penney, MA, RPP, MCIP, AACI, PLE
Real Estate Appraiser & Land Use Planner

APPENDIX A:

Agreement of Purchase and Sale to World Class Developments

'13M-1010

BLKS 1 + 29

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(NOT

OMERS REALTY MANAGEMENT CORPORATION
and 1331430 ONTARIO INC.

VENDOR

- and -

WORLD CLASS DEVELOPMENTS LIMITED

PURCHASER

Blocks 9 and 29

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE made as of the 31st day of January, 2007.

BETWEEN:

OMERS REALTY MANAGEMENT CORPORATION and 1331430 ONTARIO INC.

(the "**Vendor**")

THE PARTY OF THE FIRST PART

- and -

WORLD CLASS DEVELOPMENTS LIMITED

(the "**Purchaser**")

THE PARTY OF THE SECOND PART

WHEREAS the Vendor is the owner of the Lands and the Vendor has agreed to sell, transfer, assign, set over and convey the Lands to the Purchaser and the Purchaser has agreed to purchase, acquire and assume the Lands from the Vendor on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Ten Dollars ($10.00) paid by the Vendor, and the Purchaser to the other and for good and other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

ARTICLE 1

INTERPRETATION

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

"**Additional Deposit**" means the additional deposit , if any, paid in accordance with subparagraph (b) of Section 4.5.

"**Adjustment Date**" means 11:59 p.m. on the day immediately preceding the Closing Date.

"**Adjustments**" means the adjustments to the Purchase Price provided for and determined pursuant to this Agreement, including, without limitation, section 3.2.

"**Agreement**" means this Agreement of Purchase and Sale and the Schedules attached hereto, as amended from time to time.

"**Article**", "**section**" and "**subsection**" mean and refer to the specified article, section and subsection of this Agreement.

"**Balance**" has the meaning ascribed thereto in section 3.1.

"**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in Ontario.

"**Closing**" means the closing of the transactions contemplated by this Agreement.

"**Closing Date**" means 10 o'clock in the morning (Toronto time) on the fifteenth (15th) Business Day after the Second Condition Date.

"**Closing Documents**" means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser's Solicitors pursuant to section 5.1 and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to section 5.2.

"**Deposit**" means, collectively, the First Deposit, the Second Deposit and any Additional Deposit.

"**Due Diligence Date**" means 5:00 p.m. on the 60th day after the date hereof.

"**Environmental Claim**" means, with respect to any person, any action, cause of action, investigation, suit, proceeding, judgment, award, fine, penalty, assessment or written notice or claim by any person or entity alleging potential liability (including, without limitation, potential liability for investigatory costs, clean-up costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, discharge, migration or release into the environment, of any Hazardous Material at any location, whether or not owned or operated by such person or (b) the generation, handling, use, treatment, recycling, storage, disposal or transport of any Hazardous Material; or (c) any violation of Environmental Laws.

"**Environmental Laws**" means any laws including written policies and guidelines and directives, administrative rulings or interpretations, that are in effect and applicable to the Vendor on the Closing Date, as well as the common law and any judicial or administrative order, consent decree or judgment that is in effect and applicable to the Vendor on the Closing Date, that relates to pollution or the protection of the environment, including, without limitation, the *Atomic Energy Control Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Pest Control Products Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act* (Ontario) and the *Occupational Health & Safety Act* (Ontario), and the regulations and guidelines promulgated pursuant thereto or issued by any Governmental Authority in respect thereof, and equivalent or

similar local and provincial ordinances and statutory programs and the regulations and guidelines promulgated pursuant thereto.

"**Extension Fees**" means, collectively, the payments made pursuant to subparagraph (a) of section 4.5.

"**First Condition Date**" means the one hundred and twentieth (120th) day after the Due Diligence Date, subject to such extensions as may be permitted in this Agreement.

"**First Deposit**" means Two Hundred and Fifty Thousand Dollars ($250,000) payable to McCarthy Tétrault LLP, in trust.

"**Governmental Authority**" means any federal, provincial or municipal government, parliament, legislature, or any regulatory authority, agency, ministry, department, commission or board or other representative thereof, or any political subdivision thereof, or any court or (without limitation to the foregoing) any other law, regulation or rule-making entity, having jurisdiction over the relevant circumstances, or any person acting under the authority of any of the foregoing (including, without limitation, any arbitrator).

"**GST**" means goods and services tax under the *Excise Tax Act* (Canada).

"**Hazardous Materials**" means any contaminant, pollutant, waste, hazardous material, toxic substance, radioactive substance, petroleum, its derivatives, by-products and other hydrocarbons, dangerous substance or dangerous goods all as defined or identified in or pursuant to any Environmental Laws.

"**Hotel**" is defined in Section 6.6(b)(iv).

"**Hotel Site**" means the southern portion of Block 9 approximately as designated on the Plan.

"**Lands**" means the lands and premises in the City of Mississauga, in the Province of Ontario described in Schedule A attached hereto.

"**Party**" means any one or more of the Vendor and the Purchaser, as the context requires.

"**Permitted Encumbrances**" means the encumbrances and other interests affecting the title to the Lands set forth in Schedule B.

"**Plan**" means the preliminary plan attached hereto as Schedule C.

"**Purchase Price**" means, exclusive of GST, Fourteen Million Four Hundred and Ninety-Two Thousand Two Hundred and Fifty Dollars ($14,492,250).

"**Purchaser's Solicitors**" means WeirFoulds LLP, Two First Canadian Place, Exchange Tower, Suite 1600, Box 480, 130 King Street West, Toronto, ON M5X 1J5 or such other firm or firms of

solicitors or agents as are appointed by the Purchaser from time to time and notice of which is provided to the Vendor.

"**Second Condition Date**" means the one hundred and eightieth (180th) day after satisfaction of the conditions to be satisfied on the First Condition Date in accordance with this Agreement, subject to such extensions as may be permitted in this Agreement.

"**Second Deposit**" means Five Hundred Thousand Dollars ($500,000) payable to McCarthy Tétrault LLP, in trust.

"**Severance**" is defined in Section 8.19.

"**Survey**" means the survey of the Lands, if any, in the possession or control of the Vendor.

"**Vendor's Solicitors**" means McCarthy Tétrault LLP, Suite 4700, Toronto Dominion Bank Tower, Toronto-Dominion Centre, Toronto, ON M5K 1E6, or such other firm or firms of solicitors or agents as are appointed by either Vendor from time to time and notice of which is provided to the Purchaser.

1.2 Schedules

A - Legal description of the Lands

B - Permitted Encumbrances

C - Plan

D – Dispute Resolution Process

ARTICLE 2

AGREEMENT OF PURCHASE AND SALE

2.1 Agreement of Purchase and Sale

The Vendor hereby agrees to sell, transfer, assign, set over and convey the Lands to the Purchaser and the Purchaser hereby agrees to purchase, acquire and assume the Lands from the Vendor at the Purchase Price on and subject to the terms and conditions of this Agreement.

2.2 Binding Agreement

The respective agreement of the Vendor with the Purchaser set forth in section 2.1 create and constitute a binding agreement of purchase and sale of the Lands on and subject to the provisions of this Agreement.

2.3 Initial Deliveries by Vendor

The Vendor shall deliver or cause the manager of the Lands to deliver or make available to the Purchaser, as the case may be, within five (5) days of execution of this Agreement:

(a) authorizations to governmental authorities necessary to permit the Purchaser to obtain information from their files but neither authorizing nor requesting governmental inspections with respect to the Lands;

(b) the Survey;

(c) a copy of any report or test result that has been obtained by or is in the possession or control of the Vendor with respect to environmental and engineering matters on the Lands including investigations, inspections and soil and/or ground water test;

(d) a copy of all permits, consents, licences, certificates, approvals, authorizations, registrations, notices or any item with similar effect issued or granted by any Governmental Authority respecting environmental matters concerning the Lands;

(e) a list of all continuing litigation affecting the Lands as of the date hereof; and

(f) information on all pending realty tax appeals for the Lands.

2.4 Statement of Adjustments

At least five (5) Business Days prior to Closing, the Vendor shall deliver a statement of adjustments to the Purchaser.

2.5 Access to Property

From and after the date of this Agreement, the Purchaser and its agents and employees shall have access to the Lands during normal business hours from time to time upon reasonable prior notice to the Vendor, which access shall be at the Purchaser's sole risk and expense for the purpose of making any of the Purchaser's inspections, including without limitation soil tests and environmental audits. Such access, if the Vendor requires, shall be in the company of a representative of the Vendor provided that the Vendor makes such representative available. The Vendor will be provided with evidence of reasonably adequate liability insurance by any one entering the Lands on behalf of Purchaser.

The Purchaser hereby indemnifies the Vendor against any and all claims arising out of any wrongful or negligent act or omission by the Purchaser or its agents or employees during and with respect to its utilization of such right of access and inspection. The Purchaser agrees forthwith to repair in a good and workmanlike manner any damage to the Lands arising from such access or inspection at the Purchaser's expense.

2.6 Confidentiality

(a) Subject to Section 2.6(c), until Closing or in the event this Agreement is terminated for any reason, the Purchaser and its agents and consultants shall keep in confidence all information obtained solely from the Vendor, its agents and consultants and the manager of the Lands with respect to the Lands in connection with the review by the Purchaser of the Lands. The Purchaser shall not use any confidential information obtained solely from the Vendor or its agents, consultants or the manager of the Lands in connection with this transaction for any purposes not related to this transaction.

Nothing herein contained shall restrict or prohibit the Purchaser from disclosing all such documentation, information and similar material to its professional advisors and prospective investors and lenders of the Purchaser and their respective professional advisors, provided they agree to be bound to the same extent as the Purchaser by this Section 2.6.

If this Agreement is terminated, the Purchaser shall forthwith return to the Vendor all documentation, written information and similar material provided to the Purchaser by or on behalf of the Vendor and all copies thereof made and/or distributed by the Purchaser.

(b) Subject to Section 2.6(c), until Closing, the Vendor and the Purchaser shall use reasonable best efforts to keep confidential, and to ensure that its agents and advisors keep confidential, this Agreement, provided it is acknowledged that the representatives of the Corporation of the City of Mississauga and representatives of international hotel chains shall be entitled to be made aware of this Agreement, but not the terms thereof.

(c) From and after Closing, the Vendor and the Purchaser and their agents and advisors shall use reasonable best efforts in the circumstances to keep confidential all information relating to the Lands.

(d) The confidential information referred to in this section shall not include:

(i) public information or information in the public domain at the time of receipt by the Purchaser or the Vendor or their respective agents and advisors;

(ii) information which becomes public through no fault or act of the Purchaser or the Vendor or their respective agents and advisors;

(iii) information in the possession of the Purchaser or Vendor not provided solely by the other party or its agents, consultants or the manager of the Lands (unless otherwise provided in confidence as well);

(iv) information required to be disclosed by law; and

(v) information received in good faith from a third party lawfully in possession of the information and not in breach of any confidentiality obligations.

ARTICLE 3

PURCHASE PRICE

3.1 Method of Payment of Purchase Price

The Purchase Price shall be satisfied by:

(a) the Purchaser paying the First Deposit by certified cheque or negotiable bank draft within one (1) Business Day after the date of execution of this Agreement by the Vendor;

(b) the Purchaser paying the Second Deposit by certified cheque or negotiable bank draft within one (1) Business Day after the Due Diligence Date;

(c) the Purchaser paying the Additional Deposit, if applicable, which by the terms of subparagraph (b) of section 4.5 is to be credited on account of the Purchase Price on Closing; and

(d) payment on Closing by the Purchaser to the Vendor or as the Vendor directs by wire transfer, certified cheque or negotiable bank draft of the balance of the Purchase Price as adjusted by the Adjustments (the "**Balance**").

3.2 Adjustments

Adjustments shall be made as of the Adjustment Date. The Vendor shall be responsible for all expenses and entitled to all revenue accrued from the Lands for that period ending on the Adjustment Date and thereafter the Purchaser shall be responsible for all expenses and shall be entitled to all revenue accruing from the Lands.

The adjustments (herein referred to as the "**Adjustments**") shall include all operating costs, realty taxes and other adjustments established by the usual practice in Ontario for the purchase and sale of vacant land. In addition, the Adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment.

If the final cost or amount of any item which is to be adjusted cannot be determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Vendor acting reasonably as of the Adjustment Date on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will be. In each

case when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within thirty (30) days of determination, provide a complete statement thereof to the other and within thirty (30) days thereafter the parties hereto shall make a final adjustment as of the Adjustment Date for the item in question. In the absence of agreement by the parties hereto, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser with the cost of such auditors' determination being shared equally between the parties hereto.

The Vendor will retain carriage of all pending tax appeals for 2007 and past years. Any reasonable costs of such appeals for 2007 appeals will be adjusted between Vendor and Purchaser, as aforesaid.

3.3 Deposit

The Deposit will be held by McCarthy Tétrault LLP as a deposit in trust pending completion or other termination of this agreement in an interest-bearing trust account with interest accruing to the Purchaser to be credited on account of the Purchase Price on Closing.

In the event this Agreement is not closed by reason of failure of the Purchaser to perform the covenants and agreements on the Purchaser's part to be performed hereunder, then the Deposit and accrued interest thereon shall be paid to the Vendor as liquidated damages as a contract termination fee and such payment shall constitute Vendor's sole remedy and a waiver, release and relinquishment of all of the other rights or remedies that the Vendor may have against the Purchaser by reason of this Agreement.

ARTICLE 4

CONDITIONS

4.1 Conditions for Vendor

The obligation of the Vendor to complete the agreement of purchase and sale constituted on the execution and delivery of this Agreement shall be subject to the following conditions:

(a) all of the terms, covenants and conditions of this Agreement to be complied or performed by the Purchaser shall have been complied with or performed in all material respects at the times contemplated herein;

(b) on Closing, the representations and warranties of the Purchaser set out in section 6.2 shall be true and accurate in all material respects;

(c) by the tenth (10^{th}) day after the date of execution of this Agreement and payment of the Deposit the investment committees of each entity comprising the Vendor shall have approved the transaction in their sole, absolute and unfettered discretion;

(d) by the First Condition Date the Purchaser shall have submitted to the City of Mississauga a complete and formal application for site plan approval for the Lands which complies with the provisions of this Agreement and which is acceptable to the Vendor in its sole and unfettered discretion; and

(e) by the Second Condition Date:

(i) the Purchaser shall have obtained site plan approval for the Lands pursuant to the application described in subparagraph (d);

(ii) the "H" designation on the Lands shall have been lifted in final and non-appealable form;

(iii) the Purchaser shall have provided evidence to the Vendor satisfactory to the Vendor acting reasonably that the Purchaser has entered into a management agreement for the Hotel with a four star or better operator; and

(iv) the Severance shall have been obtained in final and unappealable form with all conditions thereto having been satisfied (which Severance will be implemented on or before Closing).

The conditions set forth in section 4.1 are for the benefit of the Vendor and may be waived in whole or in part by the Vendor by notice to the Purchaser on or before the applicable date referred to above.

4.2 Conditions for Purchaser

The obligations of the Purchaser to complete the agreement of purchase and sale constituted on the execution and delivery of this Agreement shall be subject to the following conditions:

(a) by the Due Diligence Date, the Purchaser shall have conducted whatever searches the Purchaser, in its sole discretion, deems advisable with respect to the Lands including, without limitation, title to the Lands, physical and engineering inspections of the Lands; compliance with all applicable laws and regulations, development potential, any agreements with third parties affecting the Lands, environmental audits, soil tests, Permitted Encumbrances and any other matters of interest to the Purchaser with respect to the Lands and shall have been satisfied, in its sole discretion, with the results of all such searches;

(b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects at the times contemplated herein;

(c) on Closing, the representations or warranties of the Vendor set out in section 6.1 shall be true and accurate in all material respects;

(d) by the First Condition Date the Purchaser shall have submitted to the City of Mississauga a complete and formal application for site plan approval for the Lands which complies with the provisions of this Agreement and which is acceptable to the Vendor in its sole and unfettered discretion; and

(e) by the Second Condition Date:

(i) the Purchaser shall have obtained site plan approval for the Lands pursuant to the application described in subparagraph (d);

(ii) the "H" designation on the Lands shall have been lifted in final and non-appealable form;

(iii) the Purchaser shall have provided evidence to the Vendor satisfactory to the Vendor acting reasonably that the Purchaser has entered into a management agreement for the Hotel with a four star or better operator; and

(iv) the Severance shall have been obtained in final and unappealable form with all conditions thereto having been satisfied (which the Severance will be implemented on or before Closing).

The conditions set forth in section 4.2 are for the benefit of the Purchaser, and may be waived in whole or in part by the Purchaser by notice to the Vendor on or before the applicable date referred to above.

4.3 Non-Satisfaction of Conditions

In the event each of the conditions set forth in section 4.1 and section 4.2 is not satisfied or waived as therein provided on or before the applicable date referred to in section 4.1 and section 4.2, this Agreement shall be terminated, null and void and of no further force or effect whatsoever and no party to this Agreement shall have a claim against any other party hereto with respect to this Agreement other than the return of the Deposit to the Purchaser with interest accrued thereon. For greater certainty, the Additional Deposit and the Extension Fees are not refundable unless this Agreement does not close as a result of the default of the Vendor. If by 5:00 p.m. Toronto time on the applicable date referred to in section 4.1 and section 4.2, the party having the benefit of the condition has not given notice to the other that a condition has not been satisfied or has been satisfied or has been waived, such condition shall be deemed not to have been satisfied or waived. The time periods set out to satisfy each of the conditions in subsections 4.1(d), (e)(i), (e)(ii) and (e)(iv) and subsections 4.2(d), (e)(i), (e)(ii) and (e)(iv) shall be extended for delays caused by or in consequence of delays which would not have been avoidable with the exercise of commercially reasonable actions including, without limitation, delays caused by referrals to the Ontario Municipal Board and any related court applications.

4.4 Reasonable and Diligent Efforts to Satisfy Conditions

The Purchaser and the Vendor shall use reasonable and diligent efforts (which shall exclude, for greater certainty, resorting to litigation or paying material amounts of money to third parties which are not otherwise owing to such third parties) in the circumstances to satisfy or cause to be satisfied the conditions set forth in section 4.1 and section 4.2, respectively.

4.5 Extension

(a) (i) The Purchaser shall have the right on two occasions to extend the First Condition Date for thirty (30) days each by delivering notice to the Vendor not less than five (5) days prior to the First Condition Date, as it may have been extended with each such notice to be accompanied with a certified cheque or bank draft for Fifty Thousand Dollars ($50,000) payable to the Vendor's Solicitors in trust (the "**Extension Fees**") which Extension Fees shall not be applied to the Purchase Price on Closing and which may be retained by the Vendor as a condition date extension fee and not as a penalty so long as the Vendor has not exercised its right under subparagraph (d) of section 4.1 to disapprove the site plan application and in such event such Extension Fees shall be refundable to the Purchaser in accordance with the terms of section 4.3. The notices of extension as aforesaid shall not be valid unless accompanied by the applicable Extension Fees; and

(ii) To the extent the Purchaser does not use either or both of the rights to extend the First Condition Date set out in subparagraph (a)(i), it may exercise such unused extension rights to extend the Second Condition Date, in lieu of or in addition to the extension right set out in subparagraph (b), on the same terms and conditions including, without limitation, the requirement to pay Extension Fees, as aforesaid; and

(b) In addition to any extension right available under subparagraph (a)(ii), the Purchaser shall have the one time right to extend the Second Condition Date by one hundred and twenty (120) days by delivering notice to the Vendor not less than ten (10) days prior to the Second Condition Date which notice shall be accompanied with a certified cheque or bank draft for Three Hundred Thousand Dollars ($300,000) (the "**Additional Deposit**") payable to Vendor's Solicitors in trust which, if this Agreement closes, will be credited to the Purchase Price and, if this Agreement does not close for any reason other than the default of the Vendor, shall be retained by Vendor as a condition date extension fee and not as a penalty. The notice of extension as aforesaid shall not be valid unless accompanied by the Additional Deposit.

4.6 Title

The Vendor warrants that title to the Lands is and will on Closing be good and free from all encumbrances except for the Permitted Encumbrances (provided they are in good standing, it being the Purchaser's responsibility to determine the standing thereof with the Vendor having no responsibility to remedy any alleged defaults thereunder) and encumbrances to be discharged by the Vendor on Closing. The Purchaser agrees to submit its requisitions prior to the Due Diligence Date, subject to as hereinafter provided. If prior to the Due Diligence Date, any valid objection to title is made in writing to the Vendor or its solicitors which the Vendor is unable or, after reasonable and diligent efforts (which shall exclude, for greater certainty, resorting to litigation or paying material amounts of money to third parties which are not otherwise owing to such third parties), unwilling to remove, remedy or satisfy and which the Purchaser will not waive, then this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies therefor paid shall be returned with accrued interest and without deduction and neither party shall be liable for any costs or liabilities hereunder except such as are expressly stated to survive closing or termination. Save as to any valid objections so made within such period and except for any objection going to the root of the title or arising after the Due Diligence Date, the Purchaser shall be conclusively deemed to have accepted title to the Lands.

4.7 Vacant Possession

On Closing, vacant possession of the Lands shall be given to the Purchaser except only for the Permitted Encumbrances.

ARTICLE 5

CLOSING DOCUMENTS

5.1 Vendor's Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Vendor shall execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser's Solicitors the following:

(a) registerable transfers of the Lands in favour of the Purchaser or to whom it, in writing, directs with the *Planning Act* statements completed including a transfer to implement the Severance;

(b) a direction as to the payee or payees of the Balance;

(c) an undertaking by the Vendor to re-adjust the Adjustments as provided in section 3.2;

(d) registrable discharges of all encumbrances affecting the Lands which are not Permitted Encumbrances;

(e) the agreements provided for in Section 6.6(b); and

(f) all other conveyances and other documents which the Purchaser has reasonably requested and the Vendor has agreed to, acting reasonably on or before the Closing Date to give effect to the proper transfer, assignment and conveyance of the Lands by the Vendor to the Purchaser.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor, acting reasonably and in good faith.

The Purchaser and the Vendor agree that if GST is exigible on this transaction and subject as hereinafter provided, it is the Vendor's obligation to collect the GST, and the Purchaser's obligation to pay the GST on Closing. The Purchaser and the Vendor acknowledge and agree that the Purchase Price and all other amounts referenced herein are exclusive of GST.

The Purchaser covenants and agrees that it shall either:

(a) provide to the Vendor the instrument referred to in section 5.2(c) and indemnify the Vendor from and against all GST, penalties, costs and interest payable by or assessed against the Vendor in relation to the purchase of the Lands by the Purchaser; or

(b) on Closing, pay, in addition to the Purchase Price, by certified cheque payable to, or as directed by the Vendor, the GST which shall be calculated as six per cent (6%) of the Purchase Price.

5.2 Purchaser's Closing Documents

By the Closing Date, subject to the terms and conditions of this Agreement, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor's Solicitors the following:

(a) the Balance;

(b) an undertaking by the Purchaser to re-adjust the Adjustments as provided in section 3.2;

(c) an officer's certificate of the Purchaser given without personal liability as to the registration number of the Purchaser and/or the transferee of the Lands for purposes of the GST;

(d) the agreements provided for in Section 6.6(b); and

(e) all other documents which are required and which the Vendor has reasonably requested and the Purchaser has agreed to, acting reasonably, on or before the Closing Date to give effect to this transaction.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor, acting reasonably and in good faith.

5.3 Registration and Other Costs

The Vendor and the Purchaser shall be responsible for each of their respective costs in respect of this transaction.

5.4 Electronic Registration

Where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Vendor and the Purchaser acknowledge and agree that the delivery of the Closing Documents provided for in Article 5 and elsewhere in this Agreement (the "**Requisite Deliveries**") will: (a) not occur at the same time as the registration of the Transfer/Deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be held in escrow and not released except in accordance with the terms of the Document Registration Agreement. Unless otherwise agreed to by the lawyers, the exchange of the Requisite Deliveries will occur on Closing at the offices of Purchaser's Solicitors. Vendor's Solicitors agree to prepare and deliver the Document Registration Agreement to Purchaser's Solicitors at least five (5) Business Days before the day of Closing.

ARTICLE 6

REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Vendor Representations

The Vendor hereby represents and warrants to and in favour of the Purchaser, that, as of the date of this Agreement and as of the Closing Date (unless this Agreement is earlier terminated pursuant to the terms and conditions hereof):

(a) each Vendor is a corporation duly existing under the laws of its incorporation and has the necessary corporate authority, power and capacity to own the Lands and to enter into this Agreement and the documents and transactions contemplated herein and to carry out the agreement of purchase and sale constituted on the execution and delivery of this Agreement and the documents and transactions contemplated herein on the terms and conditions herein contained;

(b) each Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada);

(c) to the best of the knowledge and belief of the Vendor, there are no consents necessary to the transfer, assignment and conveyance of the Lands except as will be provided by the Vendor to the Purchaser on Closing; and

(d) the Vendor has no liability to any real estate agent for any fees or commissions in respect of the sale of the Lands to the Purchaser.

6.2 Purchaser's Representations and Covenant

The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date (unless this Agreement is earlier terminated pursuant to the terms and conditions hereof):

(a) the Purchaser is a corporation existing and governed by the laws of Ontario and has the necessary authority, power and capacity to own the Lands and to enter into this Agreement and to carry out the agreement of purchase and sale constituted on the execution and delivery of this Agreement and the documents and transactions contemplated herein on the terms and conditions herein contained;

(b) this Agreement and the obligations of the Purchaser hereunder and the documents and transactions contemplated herein have been duly and validly authorized by all requisite proceedings and constitute legal, valid and binding obligations of the Purchaser enforceable against the Purchaser in accordance with its terms; and

(c) the Purchaser has not incurred any liability to any real estate agent for fees and commissions in respect of the sale of the Lands to the Purchaser.

6.3 Survival of Representations

Neither party shall be liable to the other in respect of any inaccuracy or misrepresentation of any such representation or warranty after six (6) months after the Closing Date. The party which has received a representation or warranty shall give written notice to the other party of each breach of the representation or warranty, together with details thereof, promptly after becoming aware of the breach (whether before or after Closing) and in any event by no later than six (6) months after the Closing Date. The party which is alleged to have breached a representation or a warranty shall have carriage and control, at its option and at its sole cost and expense, of all legal proceedings with third parties relating to the breach.

6.4 As is, Where is

Except as set out herein, the Purchaser acknowledges it is acquiring the Lands on an "as is where is" basis. The term "as is where is" shall include, without limitation, the condition of the Lands, outstanding work orders and deficiency notices, compliance requests, the status of any Permitted Encumbrances and any outstanding requirements which have been or may in the future be issued by any Governmental Authority.

6.5 Covenants by Vendor

The Vendor covenants:

(a) that, if the Vendor has actual knowledge or information prior to Closing of matters then existing which affect the representations and warranties contained herein to the adverse position of the Purchaser, the Vendor will immediately communicate such information to the Purchaser by way of a notice specifically referring to the representation;

(b) that the Purchaser's right of inspection, access or examination shall not affect, lessen, reduce or mitigate any of the representations, warranties and covenants of the Vendor contained in this Agreement unless the Purchaser has, following the Purchaser's inspection and examination and prior to Closing, actual knowledge of a breach thereof, in which event the Purchaser shall not have any recourse to the Vendor in respect thereof; and

(c) not to object to a rezoning of the Lands after Closing for use for residential and/or hotel purposes with ancillary service retail and professional offices, subject to the provisions of the agreement described in Section 6.6(b). For greater certainty and without limiting any other remedies available to the Vendor, the Vendor may object to a rezoning that does not comply or will reasonably result in non-compliance with the Purchaser's obligations under the agreement described in Section 6.6(b).

6.6 Purchaser's Covenants

(a) The Purchaser agrees that if there are any commissions owing to any third party by reason of the Purchaser's actions, to pay all such commissions and to indemnify Vendor in respect thereof.

(b) The Purchaser agrees on Closing to enter into an agreement in registrable form binding on the Purchaser and its successors, successors-in-title and assigns (the provisions of which will be perpetual except where expressly limited by their terms) benefiting other lands of the Vendor within the Mississauga City Centre to be described therein (and confirmed by a restriction on transfer or charge under section 118 the *Land Titles Act*) which restriction will require the consent of the Vendor which shall be granted when any such successor, successor-in-title or assign enters into an agreement in favour of the Vendor assuming the Purchaser's obligations under such agreement (limited, in the case of a chargee, to the period of time it is in possession of (directly or through a receiver) or the owner of all or any part of the Lands):

(i) prohibiting the use of any part of:

A. Block 9 (other than Hotel Site) for or for the support of any retail, restaurant or service uses other than retail and restaurant uses with no single unit having an area in excess of 2,000 square feet except that there may be one restaurant on that part of Block 9 (other than the Hotel Site) having an area not exceeding 5,000 square feet provided that the aggregate area of such retail and restaurant uses, together with the area of any Integrated Retail Uses (as hereafter defined) on the Hotel Site, shall not exceed 20,000 square feet other than restaurant uses which are Integrated Retail Uses as defined below.

B. the Hotel Site for or for the support of any retail, restaurant or service uses other than those which are fully integrated into the Hotel (which means retail, restaurant and service uses having common public access with the Hotel, provided that such common access shall not necessarily be the only access and sharing a common structure with the Hotel such that such retail, restaurant or service use appears to the general public to be part of the Hotel) ("**Integrated Retail Uses**"), subject to the inclusion of any Integrated Retail Uses (other than restaurant uses which are Integrated Retail Uses) in the overall Block 9 area limit of 20,000 square feet set out in subparagraph A;

C. Block 29 for or for the support of retail and restaurant uses other than retail and restaurant uses having an aggregate area not exceeding 25,000 square feet provided no single retail use will have an area exceeding 2,000 square feet (except for one grocery store having an area not exceeding 5000 square feet and one restaurant use which may have an area not exceeding 5,000 square feet, the areas of each of which will be included in such 25,000 square foot limit);

D. the Lands for or for the support of casino uses including all variations of gaming, betting, video lottery, charity gaming, off-track betting, card club and bingo hall (other than video lottery or other gaming permitted as ancillary to a restaurant or bar as permitted hereunder and other than gaming events in the Hotel on an occasional basis only for charitable or non-profit purposes);

(ii) prohibiting the making of any application to close or reduce the size of the road running through the Lands between Blocks 9 and 29 provided that nothing shall restrict below grade connections and parking as may be approved by any Government Authority;

(iii) prohibiting construction on the Lands other than in accordance with the site plan approved by the City of Mississauga with any changes thereto made

after the Second Condition Date to be approved from time to time by the Vendor, in accordance with the following terms:

A. the Vendor's approval to major changes within the first twenty (20) years after the Second Condition Date may be withheld by the Vendor in its sole and unfettered discretion;

B. the Vendor's approval to minor changes within the first twenty (20) years after the Second Condition Date may be withheld by the Vendor acting reasonably and without delay; and

C. the Vendor's approval to all changes requested twenty (20) years after the Second Condition Date may be withheld by the Vendor acting reasonably and without delay.

If there is any disagreement between the parties as to whether a proposed change is major or minor or whether an approval is being withheld unreasonably, the matter shall be referred to a binding dispute resolution process which requires a decision within sixty (60) days of submission with such process to be set out in the agreement to be entered into on Closing and in accordance with Schedule D;

(iv) prohibiting any other construction:

A. on Block 29 (other than a temporary sales office for the marketing of condominium units to be built thereon), until ninety (90) days after the bona fide commencement of construction of a four star hotel having convention facilities and having no fewer than 200 rooms and to be operated by an international hotel brand and having full service guest amenities including a full service restaurant, a fitness facility and room service on the Hotel Site (the "**Hotel**") of a type and in a manner to satisfy the conceptual requirements of the City of Mississauga for the city centre area; and

B. on Block 9 (other than the Hotel Site), prior to substantial performance of construction of the Hotel on the Hotel Site;

(v) obliging the Purchaser diligently to pursue all planning approvals and permits for the Hotel, promptly to commence construction thereafter (and, in any case, within eighteen (18) months after Closing), diligently to substantially perform construction of the Hotel by no later than thirty (30) months from the commencement of construction of the Hotel;

(vi) requiring the Purchaser, within two (2) days of commencement of construction of the Hotel, to deliver to the Vendor an irrevocable,

unconditional letter of credit from a Canadian chartered bank in the amount of Two Million Five Hundred Thousand Dollars ($2,500,000) in form acceptable to the Vendor acting reasonably. The letter of credit shall be kept in place for a period of thirty-one (31) months from commencement of construction of the Hotel (subject to extension for force majeure) and will be returned to the Purchaser when construction of the Hotel is substantially performed. The Vendor may cash the letter of credit if either the construction of the Hotel is not substantially performed within thirty (30) months from the commencement of construction of the Hotel (subject to extension for force majeure) (in which case the Vendor may retain the proceeds which the parties agree is a genuine pre-estimate of the damages the Vendor will suffer if the construction of the Hotel is not substantially performed within such period and is not a penalty) or if the Vendor receives notice that the letter of credit will not be renewed during any period of time it is to be kept in place (in which case the proceeds will be held by the Vendor in an interest bearing account with interest to be paid to the Purchaser in the place of the letter of credit and such funds shall be returned to the Purchaser when construction of the Hotel is substantially performed within the time period set out herein).

(vii) if construction of the Hotel has not bona fide commenced by eighteen (18) months from the Closing Date granting the Vendor the right to repurchase the Lands for the Purchase Price plus interest thereon at 2% per annum from Closing which right must be exercised by the Vendor within ninety (90) days after the end of such eighteen (18) month period with a closing to take place thirty (30) days after exercise;

(viii) granting the Vendor a right of first refusal on the Lands which will expire on the date construction of the Hotel is bona fide commenced;

(ix) if the construction of the Hotel is not substantially performed within 48 months from Closing granting the Vendor the right to purchase Block 9 (other than the Hotel Site) for Ten Dollars ($10.00) free and clear of all encumbrances and interests other than the encumbrances entered into by the Vendor prior to Closing; and

(x) when used in this Section and in the agreement to be entered into pursuant to the terms hereof, "**substantially performed**" has the meaning attributed to it under the *Construction Lien Act* (Ontario).

The Agreement entered into pursuant to this Section 6.6(b) shall contain a provision extending each time frame set out by reason of or in consequence of events of force majeure which shall include, without limitation, delays in obtaining necessary building materials, fixtures and equipment which would not have been avoidable

with the exercise of commercially reasonable actions and shall only be enforceable by parties who have agreed to be bound by the provisions of Section 6.5(c). The Agreement will also provide that if the Vendor acquires any part of the Lands in accordance with its terms, Purchaser will on such closing deliver to the Vendor all plans, specifications, studies, surveys and other materials in Purchaser's possession or control concerning such part of the Lands. The restriction on transfer and charge will be released 60 days after the construction of the Hotel has commenced and the letter of credit referred to in subparagraph (vi) is posted provided the Purchaser is proceeding diligently with construction of the Hotel and is not then in default under the agreement.

(c) Purchaser agrees not to object to any rezoning or other application for the development of Vendor's lands on the other side of Duke of York Boulevard or the lands designated as Block 10, Plan 43M-1010 which agreement will be contained in all declarations for condominiums on the Lands.

ARTICLE 7

OPERATION UNTIL CLOSING

7.1 Operation Before Closing

From the date hereof until Closing, the Vendor shall operate the Lands in accordance with sound business and management practices as would a prudent owner of comparable properties.

ARTICLE 8

GENERAL

8.1 Gender and Number

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

8.2 Captions and Table of Contents

The captions, headings and table of contents contained herein are for reference only and in no way effect this Agreement or its interpretation.

8.3 Obligations

Each agreement and obligation of any of the parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant. The obligations of each entity comprising the Vendor hereunder and under the Closing Documents shall be several each as to

its undivided interest in the Lands from time to time. No such entity shall be liable for a breach of a representation or warranty that relates to the other entity, in which event the other entity shall be wholly liable for such breach.

8.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.

8.5 Currency

All references to currency in this Agreement shall be deemed to be references to Canadian dollars. All cheques to be tendered shall be drawn from one of the major Canadian Chartered Banks.

8.6 Invalidity

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

8.7 Amendment of Agreement

No supplement, modification, waiver or termination (other than a termination pursuant to Article 4 of this Agreement shall be binding unless executed in writing by the parties hereto in the same manner as the execution of this Agreement.

8.8 Time of the Essence

Time shall be of the essence of this Agreement.

8.9 Further Assurances

Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

8.10 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the parties hereto constitute the entire agreement between

the parties hereto pertaining to the agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, including without limitation, those contained in a letter dated April 24, 2006 from the Purchaser to the Vendor and there are no other warranties or representations and no other agreements between the parties hereto in connection with the agreement of purchase and sale provided for herein except as specifically set forth in this Agreement or the Schedules attached hereto.

8.11 Waiver

No waiver of any of the provisions of this Agreement shall constitute or shall be deemed to constitute a waiver of any other provision (whether or not similar); nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

8.12 Effect of Termination of Agreement

Notwithstanding the termination of this Agreement for any reason, the Purchaser shall remain obligated to comply with its obligations to return documents (section 2.6), and repair and restore the Lands and to indemnify the Vendor (section 2.5) and both parties shall remain obligated to the confidentiality provisions herein.

8.13 Solicitors as Agents and Tender

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of Closing Documents and the Balance may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

8.14 Survival

This Agreement shall survive the delivery and registration, where necessary, of the Closing Documents on the Closing Date and shall remain in full force and effect thereafter in accordance with its terms.

8.15 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

8.16 Assignment

The Purchaser may assign its interest under this agreement to an affiliate of the Purchaser (as defined in the *Business Corporations Act*, Ontario) without the consent of the Vendor on delivery of

an assumption agreement in favour of the Vendor. Otherwise any assignment shall require the Vendor's consent. Upon such assignment the Purchaser shall not be released from its obligations hereunder until termination of this Agreement or Closing has taken place.

8.17 No Registration of Agreement

The Purchaser shall not register this Agreement or any notice of this Agreement on title to the Lands.

8.18 Notice

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication (hereinafter referred to as a "**Notice**") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery or by telecopier or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) Purchaser:

World Class Developments Limited
400 Brunel Road
Mississauga, ON
L4Z 2C2

Attention: Murray Cook
Facsimile: 905-507-4177

with a copy to:

R. Wayne Rosenman
WeirFoulds LLP
Suite 1600, The Exchange Tower
130 King Street West
Toronto, ON
M5X 1J5

Facsimile: 416-365-1876

(b) Vendor:

OMERS Realty Management Corporation
130 Adelaide Street West
Suite 1100, Oxford Tower
Toronto, ON
M5H 3P5

Attention: Ron Peddicord
Facsimile: 416-865-8371

1331430 Ontario Inc.
Atria II, Suite 901
2235 Sheppard Avenue East
Toronto, ON
M2J 5B5

Attention: Ken R. Lusk
Facsimile: 416-490-9141

with a copy to: Abraham Costin
McCarthy Tétrault LLP
Suite 4700, Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, ON M5K 1E6

Facsimile: 416-868-0673

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by telecopier or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was received. No email notice shall be validly given under this Agreement.

8.19 *Planning Act* of Ontario

This Agreement and the transactions reflected herein are subject to compliance with section 50 of the *Planning Act* of Ontario. As soon as reasonably possible after the date hereof the Purchaser shall apply for and diligently pursue an application for a consent under the Planning Act to sever the Hotel Site and the balance of Block 9 as designated on the Plan (the "**Severance**").

8.20 Expropriation

If the Lands or any material part thereof is condemned or expropriated by public or other lawful authority before the Closing, the Purchaser shall have the right to (i) elect by notice in writing to take the damages awarded or compensation, as the case may be, and complete this transaction; or (ii) cancel this Agreement by notice in writing, in which latter case the Purchaser shall be entitled to the return, with interest and without deduction, of the Deposit. In the event of a lesser condemnation or expropriation the Purchaser shall complete the Closing and shall be entitled to take the damages awarded or compensation, as the case may be.

8.21 Counterparts

This Agreement may be executed by the parties hereto or thereto separately in any number of counterparts (including by electronic mail or facsimile copy). Each such counterpart shall for all

purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under seal as evidenced by their properly authorized officers in that behalf as of the day and year first above written.

OMERS REALTY MANAGEMENT CORPORATION

Per: _____
Name:
Title:

Per: _____
Name: DEVON JONES
Title: VICE PRESIDENT, LEGAL

I/We have authority to bind the Corporation.

1331430 ONTARIO INC.

Per: _____
Name: Kenneth R. Lusk
Title: Director

~~Per:~~ _____
Name:
~~Title:~~

I/We have authority to bind the Corporation.

WORLD CLASS DEVELOPMENTS LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

PIN 13141-0214 (LT) being Block 29, Plan 43M-1010, Mississauga.

PIN 13141-0216 (LT) being Block 9, Plan 43M-1010, Mississauga.

SCHEDULE "B"

PERMITTED ENCUMBRANCES

1. The exceptions, restrictions and qualifications contained in the *Land Titles Act*.

2. Any encroachments, by-law infractions or discrepancies that would be revealed by an up-to-date plan of survey in existence prior to the Due Diligence Date.

3. Notice of agreement with The Corporation of the City of Mississauga registered as Instrument LT455992.

4. Notice of agreement with The Corporation of the City of Mississauga and the Regional Municipality of Peel registered as Instrument LT1280194.

5. Notice of agreement with The Corporation of the City of Mississauga and the Regional Municipality of Peel registered as Instrument LT1280195.

6. Notice of agreement with The Mississauga Hydro-Electric Commission registered as Instrument LT1280212.

7. Notice of agreement with The Corporation of the City of Mississauga registered as Instrument PR928973.

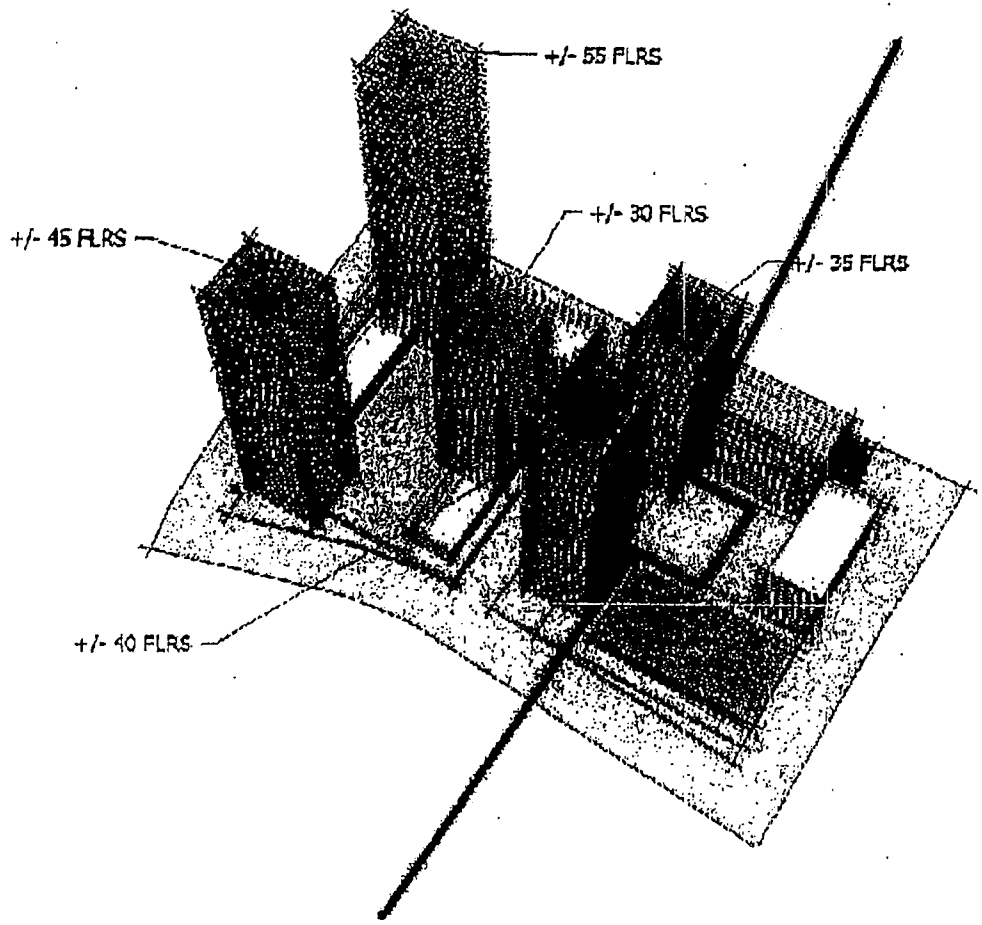
8. Easement in favour of The Corporation of the Town of Mississauga, The Hydro-Electric Commission of the Town of Mississauga, Bell Canada and The Consumer's Gas Company registered as Instrument VS288971.

9. Other agreements with and easements to any governmental or utility authority in existence prior to the Due Diligence Date..

10. The agreements to be entered into under Section 6.6(b) of this Agreement.

Concept Plan
Schedule C

Severance line for hotel
subject to final site plan



MISSISSAUGA CITY CENTRE
PRELIMINARY

Proposed
severance line

SCHEDULE "D"

DISPUTE RESOLUTION PROCESS

The dispute will be submitted to arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), or any successor act. The arbitration shall be conducted by a single arbitrator if agreed to by the Vendor and the Purchaser otherwise, each party shall appoint an arbitrator and the appointed arbitrators shall jointly choose a third arbitrator to create a board of three arbitrators, the majority decision of which shall be binding upon the parties. The arbitrators shall be experienced in the real estate planning and development industry. If either party shall refuse to appoint an arbitrator within ten (10) days of being served with written notice of arbitration by the other party, then the arbitrator first appointed shall, at the request of the party appointing him, proceed as if he were a single arbitrator appointed by both parties. In such cases the single arbitrator shall receive and consider written or oral submissions from both parties. If two arbitrators are appointed and they fail, within ten (10) days of the appointment of the second of them, to agree upon the appointment of the third arbitrator, then upon the application of either party the third arbitrator shall be appointed by a Judge of the Superior Court of Justice of Ontario. Each party shall pay the fees and expenses of the arbitrator appointed by it and one half of the fees and expenses of the third arbitrator. The arbitrators will be required to render a decision within 60 days of their appointment.

APPENDIX B:

Agreement of Purchase and Sale to City of Mississauga

AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (the "**Agreement**") made as of July 20, 2009 (the "**Effective Date**"),

between:

OMERS REALTY MANAGEMENT CORPORATION
and **156 SQUARE ONE LIMITED**

(collectively, the "**Vendor**")

of the first part,

- and -

THE CORPORATION OF THE CITY OF MISSISSAUGA

(the "**Purchaser**")

of the second part,

with respect to certain lands in the City of Mississauga, in the Regional Municipality of Peel, as more particularly described in *Schedule "A"* attached hereto (the "**Lands**"), comprised of **8.55 acres**, more or less, free and clear from all mortgages, charges, encumbrances and/or liens, save and except for Permitted Encumbrances, at a purchase price of **FOURTEEN MILLION NINE HUNDRED AND EIGHT THOUSAND NINE HUNDRED AND TWO ($14,908,902.00) DOLLARS** (the "**Purchase Price**"), subject to the adjustments as hereinafter set out.

1.0 PURCHASE PRICE

1.1 The Purchase Price shall be paid or satisfied by the Purchaser as follows:

(a) within two (2) days from mutual acceptance of this Agreement, the sum of **One Hundred Thousand Dollars ($100,000.00)** as a deposit, by negotiable cheque payable to the Vendor's solicitor to be held in trust, pending completion or other termination of this Agreement, and to be credited toward the Purchase Price on completion;

(b) the balance of the Purchase Price, being the sum of **Fourteen Million Eight Hundred and Eight Thousand Nine Hundred and Two Dollars ($14,808,902.00)**, together with any applicable taxes, including GST, shall be paid to the Vendor by negotiable cheque drawn on the account of The Corporation of the City of Mississauga on closing.

1.2 The Vendor hereby authorizes and directs its solicitors to invest the deposit funds in an interest bearing trust account or term certificate of a Canadian Schedule A chartered bank for the benefit of the Purchaser and all interest accrued thereon shall be paid or credited to the Purchaser on the Closing Date. If for any reason this transaction is not completed as a result of the Vendor's default herein, the deposit funds together with all interest accrued thereon without deduction shall be returned to the Purchaser. If the transaction is not completed as a result of the Purchaser's default herein, the deposit and interest shall be forfeited to the Vendor and the Vendor may exercise any additional remedy it may have at law as a result thereof.

1.3 Within forty-eight (48) hours of receipt of the deposit, the Vendor shall furnish the Purchaser's solicitor with evidence of the placement of the deposit funds in an interest bearing trust account or term certificate. On closing, the Vendor shall provide the Purchaser with a credit on the statement of adjustments representing interest earned on the deposits.

1.4 The Purchase Price is based on the Lands comprising an area of **8.55 acres**. If the area of the Lands is more or less than the said area, the Purchase Price shall be adjusted upward or downward, as the case may be, based upon **$1,743,731.22** per acre (to the nearest 1/1000th of an acre) upon delivery to the Purchaser by the Vendor of a certificate of Acreage for the Property prepared by a duly accredited Ontario Land Surveyor.

2.0 INTENTIONALLY DELETED

3.0 CLOSING DATE

3.1 Subject to Section 3.2, the transaction contemplated by this Agreement shall be completed by no later than 4:30pm on **September 17th, 2009** (the "**Closing Date**"), on which date vacant possession of the Lands shall be delivered to the Purchaser.

3.2 The parties may advance or postpone the Closing Date provided that an earlier or later date is mutually agreed upon and confirmed in writing by the parties or their respective solicitors.

4.0 TITLE

4.1 Title shall be examined by the Purchaser at its own expense and the Purchaser shall not call for the production of any title deeds, abstracts of title, surveys, or other proof or evidence of title to the Lands other than those in the Vendor's possession or under the Vendor's control. The Purchaser shall be allowed until 6:00 p.m. on the Inspection Date (as defined in section 6.1), to investigate title at its own expense and if within that time the Purchaser shall furnish to the Vendor any valid objection to title which the Vendor shall be unable or unwilling to remove, and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of such objections, be null and void and neither the Vendor nor the Purchaser shall have any further liability or obligation to the other (except as explicitly survive termination). Save as to any valid objection so made by such day and except for any objection going to the root of the title, which may be made up to the Closing Date, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the Lands.

4.2 The Vendor hereby consents to the release by governmental authorities to the Purchaser of details of all outstanding work orders or deficiency notices affecting the Lands and the Vendor agrees to execute and deliver to the Purchaser such further authorizations in this regard as the Purchaser may reasonably require. Nothing in this Agreement shall be deemed to authorize or permit the Purchaser to request any governmental or other inspections of the Lands, except as expressly provided for in this Agreement.

5.0 ENCUMBRANCES

5.1 Provided that on the Closing Date title to the Lands shall be good and free from all registered restrictions, charges, leases, liens and encumbrances except as otherwise specifically provided in this Agreement, save and except for the following:

(a) any registered agreements with a municipality and/or any registered agreements with publicly regulated utilities;

(b) any registered easements for drainage, storm or sanitary sewers, water mains, public utility lines, telephone lines, cable television lines, fibre optic cable or any other public or municipal services or utilities;

(c) any unregistered easements for public utility services;

(d) the encumbrances listed in Schedule B; and

(e) local by-laws, provincial and federal laws or governmental regulations, environmental, building and zoning laws, by-laws and regulations, now or hereafter in effect relating to the Lands and the ownership, use, development of and the right to operate or maintain the Lands,

(collectively, "**Permitted Encumbrances**").

5.2 In the event the Vendor is required to discharge a Charge/Mortgage held by a Chartered Bank, Trust Company, Credit Union, Caisse Populaire, Insurance Company or corporation incorporated pursuant to the *Trust and Loan Companies Act* (Canada) which is not to be assumed by the Purchaser on the Closing Date, and the discharge is not available in registerable form on the Closing Date, the Purchaser agrees to accept the personal undertaking of the Vendor's solicitors to obtain, out of the closing funds, a discharge in registerable form and to register same on title within a reasonable period of time after completion. Provided, however, that on or before completion the Vendor shall provide to the Purchaser a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, together with a direction executed by the Vendor directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion. The Vendor shall provide the Purchaser with registration particulars of the discharge forthwith following registration.

5.3 In the event the Vendor is required to discharge a Charge/Mortgage held by an entity other than one described in section 5.2 which is not to be assumed by the Purchaser on the Closing Date, the Vendor shall be required to register a good and valid discharge on or before the Closing Date.

6.0 CONDITIONS

6.1 The Purchaser's obligation to complete the transaction contemplated herein shall remain conditional upon each of the following:

(a) Until 4:00 p.m. on the day that is forty-five (45) days after the Effective Date (the "**Inspection Date**") in order to permit the Purchaser, including its employees, agents and contractors, to enter upon the Lands immediately at any time upon reasonable notice to the Vendor, for the following purposes:

(i) to review and be satisfied in its sole discretion with the Updated Phase II ESA referred to in section 9.3 below; and

(ii) to conduct such other inspections, investigations and tests as Purchaser deems necessary or appropriate.

The Purchaser shall indemnify and save harmless the Vendor, from and against any and all claims, demands, actions and suits, for damages, losses, costs, charges, expenses, including legal fees and disbursements, brought against, made upon or sustained, incurred, suffered or paid by or on behalf of the Vendor, its officers, directors, employees, agents and contractors, or any of them, or for which the Vendor, its officers, directors, employees, agents and contractors, or any of them, becomes liable as a result of personal injury, including personal injury causing death, or property damage suffered by any person arising out of anything done by or on behalf of the Purchaser, its officers, directors, employees, agents and contractors in the course of the exercise of the right of entry provided for above, save and except for any damage which is caused by the negligence or act or omission of the Vendor. The Purchaser shall restore the Lands to their former condition upon completion of its entry, inspection, investigations and/or tests. This indemnity and restoration obligation will survive termination of this Agreement.

(b) Until 10:00 a.m. on the day of closing to permit the Purchaser to satisfy itself that title to the Lands remain unencumbered by any form of registered or unregistered certificate, claim, action, lien, demand or notice by World Class Developments Limited, including its successors or assignees, whereby World Class Developments Limited has asserted or is attempting to assert an interest or claim to the Lands and either (i) a final signed settlement agreement or (b) a court order, between World Class Developments Limited and OMERS Realty Management Corporation & 156 Square One Limited, whereby the previous agreement of purchase and sale dated January 31, 2007, as amended (the "**WCD Agreement**")

between the said parties is terminated and of no further force and effect has been provided to the Purchaser.

(c) Until closing to agree with Vendor on the Environment Cap.

6.2 The conditions outlined in section 6.1 are for the benefit of the Purchaser and not the Vendor and may be waived by Purchaser. If any one or more of the conditions are not fulfilled to the complete satisfaction of the Purchaser within the time set out above, the Purchaser shall provide written notice to the Vendor declaring this Agreement at an end and of no further force and effect, in which case neither the Vendor nor the Purchaser shall have any further liability or obligation to the other (except such liabilities as survive termination of this Agreement), and the deposit shall be returned to the Purchaser within 2 Business Days, with earned interest and without deduction of any kind whatsoever. In the absence of such written notice by the Purchaser to the Vendor the applicable condition will be deemed to be satisfied.

6.3 The Vendor's obligation to complete the transaction herein shall remain conditional upon the following having occurred on or before the date specified below (or having been waived by the Vendor in the Vendor's sole and absolute discretion):

(a) until closing, to agree with Purchaser as to the amount of the Environment Cap; and

(b) until 5:00 p.m. on July 24, 2009 on the approval of this transaction by the board of directors of 156 Square One Limited.

6.4 The conditions in section 6.3 are for the benefit of Vendor and not Purchaser and may be waived by Vendor. If these conditions are not fulfilled within the time set out above, Vendor shall provide written notice to Purchaser declaring this Agreement at an end and of no further force and effect, in which case neither Vendor nor Purchaser shall have any further liability or obligation to the other (except such liabilities as survive termination of this Agreement) and the deposit shall be returned to Purchaser within 2 Business Days with earned interest and without deduction of any kind whatsoever. In the absence of such written notice by Purchaser to Vendor the applicable condition will be deemed to be satisfied.

7.0 RESTRICTIVE COVENANTS

7.1 Upon the Closing of the transaction contemplated herein, the Purchaser covenants and warrants that it shall abide by the restrictive covenant agreement ("**RCA**") attached hereto as Schedule "D", for the benefit of the Vendor's other lands, as more particularly described in the RCA. The said RCA shall be for the sole benefit of the Vendor and shall not merge but in fact survive the Closing and continue to bind the Purchaser in accordance with its terms.

8.0 VENDOR'S REPRESENTATIONS

8.1 The Vendor represents, warrants and covenants to the Purchaser as follows , and agrees that each of the following shall not merge with but survive the closing of this transaction:

(a) Save as hereinafter set forth in section 9.1 (i) no orders or directions relating to environmental matters have been issued by any governmental authorities and received by the Vendor pursuant to any environmental or health and safety legislation which would require any work, repairs, remediation, construction or capital expenditures with respect to the Lands nor is the Vendor aware of any existing condition of the Lands which may lead to any such potential orders or directions being issued in the future; (ii) to the Vendor's knowledge, the Lands are vacant and have only previously been used for agricultural purposes but for no industrial, commercial or community use on any part of the Lands; and (iii) The Pinchin Environmental Phase I Environmental Site Assessment Report, Vacant Lands, Square One Shopping Centre Mississauga, dated June 29, 2009, the Agra Earth & Environmental ("**Agra**") Subsurface Soil Quality Investigation, Rathburn

Lands, Mississauga report dated December 1998, and the Agra Human Health Risk Assessment Report, Rathburn Lands, Mississauga dated December 1998 (collectively, the "**Environmental Reports**") constitute all of the Environmental Reports in the Vendor's possession or control which, to the knowledge of the Vendor, are material in respect of the Lands and have been provided to the Purchaser prior to execution of this Agreement on a non-recourse basis;

(b) As of the date of this Agreement, the Vendor has not received any notice with respect to any by-law change, governmental proceedings or others affecting the Lands or the permitted uses thereof or relating to any threatened or pending condemnation or expropriation of the Lands from any governmental department, branch, agency, office or other authority;

(c) The Vendor has sole and absolute right and power to obtain and transfer good and marketable title to the Lands to the Purchaser free and clear of all liens, mortgages, interest, charges, registrations and encumbrances other than Permitted Encumbrances;

(d) Each entity comprising the Vendor is a corporation validly existing under the laws of the Province of Ontario and, subject to satisfaction of the condition as to board approval herein set out, has done all necessary corporate acts to execute and deliver this Agreement and will do such necessary corporate acts as may be required to give full effect to the matters set out in this Agreement;

(e) Each entity comprising the Vendor is not now and will not on closing be a "non-resident" of Canada assuming the meaning and intent of the Income Tax Act (Canada);

(f) There is no agreement, option or lease including any first right of refusal for the purchase of the Lands, other than this Agreement, the WCD Agreement and other than as may be disclosed by a review of the parcel register maintained in respect of the Lands at the applicable Land Registry Office. To that end, the Vendor shall provide a fully executed indemnity agreement, a copy of which is attached hereto as Schedule "C", to the Purchaser on the Effective Date. The said indemnity agreement shall not merge but in fact survive closing and continue to bind the parties in accordance with its terms;

(g) The Lands do not constitute family assets as defined by the *Family Law Act* (Ontario) (the "**Act**"), as more particularly defined in subsection 1(1) of that Act and the Lands are not held for the benefit of a spouse of an officer, director or member of the Vendor as anticipated in section 1(1) of that Act.

8.2 The Purchaser shall be entitled to rely upon these representations and warranties and the Vendor, provided that such representations and warranties will be updated and modified as a result of any knowledge obtained through Purchaser's independent investigations of the Lands, agrees that the Purchaser's reliance thereon shall not be adversely affected, diminished or diluted as a result of the Purchaser's independent investigation of the Lands. Each entity comprising the Vendor makes these representations and warranties on its own behalf and not on behalf of the other entity comprising the Vendor.

8.3 Other than the representations and warranties in this Agreement Vendor makes no further or other representations or warranties with respect to the Lands or this transaction.

8.4 In these representations and warranties "Vendor's knowledge" or the "awareness of the Vendor" means the knowledge or awareness of John Filipetti, Michael Kitt and Gawain Smart.

9.0 VENDOR'S ENVIRONMENTAL RESPONSIBILITY

9.1 The parties acknowledge that the Vendor has provided the Purchaser with certain Environmental Reports which disclose that the Lands contain elevated levels of beryllium in the soil that exceed the currently applicable Soil, Groundwater and Sediment Standards

for Use under Part XV.1 of the Environmental Protection Act, published by the Ministry of the Environment and dated March 9, 2004 (the "**Standards**") for Table 3 full depth generic site condition standards in a non-potable groundwater condition (the "**Contamination**") and that the full extent of the Contamination has not yet been determined. The presence of such Contamination might require or contribute to an additional cost for management and offsite disposal, sorting and replacement with engineered fill relative to the cost of managing unimpacted soils, for which additional costs may be incurred during development of the Lands.

In order to address the Contamination and costs specified in this subsection 9.1, the Vendor covenants, at its sole cost and expense, to commence (to the extent not already commenced) and thereafter carry out with all due diligence the actions or work specified in subsections 9.2 and 9.3 hereof.

9.2 Promptly following execution of this Agreement and subject to Section 9.3, the Vendor shall deliver the following documentation to the Purchaser on a without recourse basis:

(a) a copy of its consultant's proposal for additional on-site investigations for the Purchaser's review and comment that would allow for delineation of the quantity of beryllium impacted soils to be estimated as well as the concentration levels (the "**Updated Phase 2 ESA**");

(b) a copy of its consultant's opinion concerning cost impact to the Lands and their development, based on the currently available information (the "**Cost Estimate**"); and

(c) any and all other reports or documentation concerning the Contamination in the Vendor's possession or control.

9.3 Immediately after execution of this Agreement, the Vendor shall, at its sole cost and expense, arrange to undertake the Updated Phase 2 ESA in accordance with its consultant's approved proposal for the same and use commercially reasonable efforts to provide a copy of its consultant's report to the Purchaser on a non-recourse basis by no later than August 25, 2009 for the purposes of the due diligence review referred to in section 6.1(a).

9.4 Promptly following the Closing Date (if not already commenced) the Purchaser shall undertake remediation of the Contamination to restore the Lands to the currently applicable Standards so that the Lands are suitable for the Purchaser's intended use and redevelopment plans.

At the conclusion of the remediation, the Purchaser agrees to provide to the Vendor, a report from the contractor performing the remediation addressed to the Vendor confirming completion of the remediation.

9.5 The parties agree that on the Closing Date, an amount equal to an amount agreed on between the Vendor and the Purchaser as being Vendor's contribution to the cost of remediation of the Contaminant (the "**Environmental Cap**") shall be paid to the Purchaser in consideration for Purchaser undertaking the remediation of and all further liability in respect of the Contaminant.

9.6 The payment of the Environmental Cap to the Purchaser will be the Vendor's sole responsibility and liability with respect to the remediation of the Contamination and after Closing, Purchaser shall assume such responsibility and liability. The terms and conditions of Sections 9.1 to 9.6 shall survive Closing and continue in full force and effect thereafter.

10.0 VENDOR'S CLOSING DELIVERIES

10.1 On closing the Vendor shall deliver the following documentation to the Purchaser, the form and content of which shall be satisfactory to the Purchaser and Purchaser's solicitor,

both acting reasonably, all of which shall be prepared by the Purchaser, other than items (a), (b) and (c):

(a) a registerable Transfer/Deed of Land conveying the Lands to the Purchaser in fee simple;

(b) where applicable, a direction regarding the closing funds;

(c) a statement of adjustments (the "**Statement of Adjustments**");

(d) an undertaking by the Vendor to readjust all items on the Statement of Adjustments or that should have been adjusted in accordance with the provisions of this Agreement;

(e) the Document Registration Agreement;

(f) an officer's certificate from each entity comprising the Vendor certifying that it is not a non-resident of Canada pursuant to and for the purposes of the non-residency provisions of the Income Tax Act (Canada);

(g) four (4) signed copies of the Restrictive Covenant Agreement attached as Schedule "D"; and

(h) such other agreements, documents and things relative to the completion of the transaction contemplated by this Agreement reasonably required by the Purchaser and its solicitor.

11.0 PURCHASER'S CLOSING DELIVERIES

11.1 On closing, the Purchaser shall deliver to the Vendor the following, the form and content of which shall be satisfactory to the Vendor and Vendor's solicitors, both acting reasonably:

(a) the Purchase Price payable by negotiable cheque in accordance with the Statement of Adjustments;

(b) the GST Certificate (as defined below);

(c) an undertaking by the Purchaser to readjust all items on the Statement of Adjustments or that should have been adjusted in accordance with the provisions of this Agreement;

(d) the Document Registration Agreement;

(e) four (4) signed copies of the Restrictive Covenant Agreement attached as Schedule "D";

(f) a certified copy of a by-law of The City of Mississauga authorizing the Purchaser to enter into and complete this transaction; and

(g) such other agreements, documents and things relative to the completion of the transaction contemplated by this Agreement reasonably required by the Vendor and its solicitors.

12.0 ADJUSTMENTS

12.1 Adjustments shall be made as of the Closing Date for all realty taxes and local improvement charges and all other items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Lands. The Closing Date itself shall be for the account of the Purchaser.

12.2 The parties agree to readjust after the Closing Date all items on the Statement of Adjustments or that should have been adjusted in accordance with the terms of this

Agreement, forthwith after the written request of either party, if such readjustment is appropriate to comply with the terms of this section.

13.0 GST

13.1 On closing, in addition to satisfaction of the Purchase Price, the Purchaser shall pay all applicable federal and provincial sales taxes exigible in connection with the transaction contemplated by this Agreement, including without limitation, GST and land transfer tax, or shall provide to the Vendor, in the case of GST, evidence by way of a certificate of an officer of the Purchaser (the "**GST Certificate**") certifying that the Purchaser is a registrant under the Excise Tax Act (Canada) (the "**ETA**") and confirming its registration number pursuant to the ETA which shall be in good standing. The Purchaser shall indemnify and save harmless the Vendor from any GST, penalty, interest or other amounts which may be payable by or assessed against the Vendor, and all costs, expenses or damages incurred or suffered by the Vendor as a result of or in connection with the failure by the Purchaser to pay all of the aforementioned sales taxes, whether arising from re-assessment or otherwise. This indemnity will be contained in the GST Certificate and, in any case, will survive Closing.

14.0 NOTICES

14.1 Any demand, notice or other communication to be provided hereunder shall be in writing and may be given by personal delivery, by prepaid registered mail or by fax transmission, addressed to the parties as follows:

To the Purchaser:

The Corporation of the City of Mississauga
300 City Centre Drive
Mississauga, Ontario, L5B 3C1
Attention: Manager, Realty Services
Telephone: (905) 615-3200 Ext. 5435
Facsimile: (905) 615-3956
e-mail: doug.mccaslin@mississauga.ca

Purchaser's Solicitor:

City of Mississauga - Legal Services Division
300 City Centre Drive
Mississauga, Ontario, L5B 3C1
Attention: Domenic Tudino, Legal Counsel
Telephone: (905) 615-3200, ext. 5412
Fax Number: (905) 896-5106
e-mail: domenic.tudino@mississauga.ca

To the Vendor:

OMERS Realty Management Corporation & 156 Square One Limited
c/o Oxford Properties
130 Adelaide Street West, Suite 1100
Toronto, Ontario, M5H 3P5
Attention: John Filipetti, Vice President, Development
Tel: (416) 865-5359
Fax: (416) 865-8307
e-mail: jfilipetti@oxfordproperties.com

Vendor's Solicitors

McCarthy Tétrault, LLP
Suite 5300, TD Bank Tower
Toronto Dominion Centre
Toronto, Ontario, M5K 1E6
Attention: Abraham Costin
Tel: (416) 362-1812
Fax: (416) 868-0673
e-mail: acostin@mccarthy.ca

or to such other address or fax number as any party may from time to time notify the others. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to whom it is addressed on the day of actual delivery thereof. Any demand, notice or other communication given by fax transmission shall be conclusively deemed to have been received by the party to whom it is addressed on the same day as the date of faxing provided that a fax transmission report is generated and retained, if it is a business day, or the first (1st) business day thereafter if it is not. If a demand, notice or other communication is addressed to more than one party, it shall be conclusively deemed to have been received by the parties to whom it is addressed on the day upon which actual delivery thereof has been completed to all such parties. Any demand, notice or other communication to be given by the Purchaser may be given by the Manager of Realty Services or by its Legal Counsel, and need not be under the corporate seal of the Purchaser and any such notice, so signed, shall be conclusively deemed to express the will and corporate act of the Purchaser as therein contained and no further evidence thereof or of any by-law or resolution need be given.

15.0 ELECTRONIC REGISTRATION

15.1 Where each of the Vendor and the Purchaser retain a lawyer to complete this Agreement and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registerable documents and other items (the "**Requisite Deliveries**") and the release thereof to the Vendor and Purchaser will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of the transaction contemplated by this Agreement) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers, the form of which is as recommended from time to time by the Law Society of Upper Canada (the "**DRA**").

16.0 REFERENCE PLAN

16.1 If required, the Purchaser shall be responsible for the payment of all costs and expenses associated with the preparation and deposit of a reference plan.

17.0 PLANNING ACT

17.1 This Agreement shall be effective to create an interest in the Lands only if Vendor complies with the subdivision control provisions of the Planning Act, as amended, by completion and Vendor covenants to proceed diligently at his expense to obtain any necessary consent by completion.

18.0 TENDER OF DOCUMENTS

18.1 It is expressly understood and agreed by the parties that an effective tender shall be deemed to have been validly made when the solicitor for the party wishing to tender has faxed a letter to the other party's solicitor prior to 5:00 pm on the Closing Date stating that:

(a) all closing documents required under this Agreement have been prepared and signed by the tendering party and that, where applicable, a cheque for the closing funds has been drawn (with copies of the aforementioned documents attached to the letter being faxed);

(b) the tendering party is ready, willing and able to complete the transaction in accordance with the terms of this Agreement; and

(c) all steps required by the Teraview electronic registration system that can be performed or undertaken without the cooperation of the solicitor for the party on whom tender is being made have been completed by the solicitor for the tendering

party, including signing of the transfer/deed electronically by the solicitor for the tendering party,

all without the necessity of personally attending upon the other party or its solicitor with the aforementioned documents, and where applicable, funds or keys, and without any requirement to have an independent witness to evidence the foregoing.

19.0 TIME OF THE ESSENCE

19.1 Time shall in all respects be of the essence hereof, provided that the time for the doing or completion of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed in that regard.

20.0 SUCCESSORS AND ASSIGNS

20.1 This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

21.0 ASSIGNMENT

21.1 The Agreement shall not be assigned legally or beneficially, directly or indirectly by either party without the prior written consent of the other, which consent may be withheld in the other party's sole, absolute and subjective discretion.

22.0 GOVERNING LAWS

22.1 The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein.

23.0 ENTIRE AGREEMENT

23.1 This Agreement, including any schedules attached hereto and the instruments contemplated hereby, shall constitute the entire Agreement between the Purchaser and the Vendor relating to the subject matter hereof. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.

24.0 MUNICIPAL DISCRETION

24.1 Nothing in this Agreement derogates from, interferes with or fetters the exercise by the Purchaser of all its rights as a municipality or imposes any obligations on the Purchaser, in its role as a municipality. Nothing in this Agreement derogates from, interferes with or fetters the exercise by the Purchaser's officers, employees, agents, representatives or elected and appointed officials of all of their rights or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials.

25.0 REAL ESTATE BROKERAGE FEES

25.1 The Vendor covenants, represents and warrants that any and all liability for the payment of real estate brokerage fees to DTZ Barnicke in connection with, or deriving from the listing of the subject Lands for sale shall rest solely with the Vendor and not the Purchaser. Furthermore, the Vendor hereby indemnifies and holds harmless the Purchaser regarding the payment of any real estate brokerage fees with respect to the transaction contemplated by this Agreement.

25.2 The Purchaser covenants, represents and warrants that it did not independently retain the services of a real estate broker for the negotiation and acquisition of the Lands by the Purchaser, and that to the best of the Purchaser's knowledge and belief, there exist no real estate broker who may make a claim for real estate brokerage fees as a result of representing the Purchaser in respect of this acquisition.

26.0 REGISTRATION OF AGREEMENT

26.1 A copy of this Agreement and/or a document providing notice of this Agreement, whether in electronic format or not, shall not be registered against title to the Lands by either party.

27.0 SCHEDULES

27.1 The schedules attached to this Agreement and listed below shall have the same force and effect as if the information and terms contained therein were contained in the body of this Agreement:

(a) Schedule "A" - Legal Description of the Lands;

(b) Schedule "B" - Permitted Encumbrances.

(c) Schedule "C" – Indemnity Agreement

(d) Schedule "D" – Restrictive Covenants

[signatures follow]

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the 20 day of July, 2009.

OMERS REALTY MANAGEMENT CORPORATION

Per: _____
Name
Print Title: John D. Filipetti
V.P. Development

Per: _____
Name
Print Title: Gawain S.E. Smart
Vice President

I/We have authority to bind the Corporation

156 SQUARE ONE LIMITED

Per: _____
Name
Print Title: Craig Coleman
President

Per: _____
Name
Print Title: Mel Nesh
Vice-President

I/We have authority to bind the Corporation

APPROVED
AS TO FORM
City Solicitor
MISSISSAUGA
D. Iudino
Date July 21 09

THE CORPORATION OF THE CITY OF MISSISSAUGA

_____
Name: **Janice Baker**
Title: City Manager

_____
Name: ~~Crystal Greer~~ GRANT BIVOL
Title: ~~City Clerk~~ DEPUTY CLERK
Authorized Through Mississauga By-Law 0182-2009

SCHEDULE "A"

Legal Description of the Lands

PINs:	13141-0216 (LT) and 13141-0214 (LT)
Legal Description:	Blocks 9 and 29, Registered Plan 43M-1010, City of Mississauga, Region of Peel.
Interest to be Conveyed:	Fee Simple

SCHEDULE " B "

Permitted Encumbrances

13141-0216 (LT)

Registration Number	**Date**	**Type of Document**
VS288971	November 6, 1973	Transfer of Easement
LT455992	August 28, 1983	Notice - Agreement
FAD589	January 13, 1986	Application First Registration
LT1099979	February 20, 1990	Partial Release of Easement 288971VS
LT1280194	December 9, 1991	Notice – Financial Agreement
LT1280195	December 9, 1991	Notice – Amendment to Financial Agreement
LT1280212	December 9, 1991	Subdivision Agreement
LT1394303	March 11, 1993	Partial Release of Easement 288971VS
LT1493567	June 10, 1994	Partial Release of Easement 288971VS

13141-0214 (LT)

Registration Number	**Date**	**Type of Document**
LT455992	August 28, 1983	Notice - Agreement
LT1280194	December 9, 1991	Notice – Financial Agreement
LT1280195	December 9, 1991	Notice – Amendment to Financial Agreement
LT1280212	December 9, 1991	Subdivision Agreement

SCHEDULE " C "

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

THIS INDEMNIFICATION AND HOLD HARMLESS AGREEMENT is made in quadruplicate as of the ___ day of July, 2009 (hereinafter the "Agreement").

BETWEEN:

OMERS REALTY MANAGEMENT CORPORATION
and
156 SQUARE ONE LIMITED

(collectively the "*Indemnifier*")

- and -

THE CORPORATION OF THE CITY OF MISSISSAUGA
and
THE SHERIDAN COLLEGE INSTITUTE OF TECHNOLOGY AND ADVANCED LEARNING

(collectively the "*Indemnified Parties* ")

WHEREAS:

1. The Indemnifier responded to a request for proposal issued by The Sheridan College Institute of Technology and Advanced Learning (hereinafter "Sheridan") wherein Sheridan sought to secure a site for a new campus to be developed in the City of Mississauga's downtown core, legally described as Blocks 9 and 29, Registered Plan 43M-1010, City of Mississauga, Region of Peel (hereinafter the "Lands");

2. The Indemnifier and The Corporation of The City of Mississauga (hereinafter "Mississauga") executed an Agreement of Purchase and Sale of even date herewith (hereinafter the "APS"), whereby the Indemnifier agreed to convey good and marketable title to the Lands in fee simple to Mississauga on the Closing Date (as therein defined);

3. Following acquisition of the Lands, Mississauga intends to enter into a ninety-nine (99) year ground lease with Sheridan, permitting Sheridan to develop a large scale college campus on the Lands;

4. The Indemnifier has entered into this Agreement for the purposes of agreeing to indemnify the Indemnified Parties in connection with any "Indemnified Claims" (as herein defined) arising out of a terminated agreement of purchase and sale (hereinafter, the "First APS"), entered into between the Indemnifier and World Class Developments Limited (hereinafter, "WCD") with respect to the Lands, in accordance with and on the terms hereinafter set forth.

NOW THEREFORE for good and valuable consideration exchanged between the Indemnifier and the Indemnified Parties (the receipt and sufficiency of which are hereby acknowledged by all of the parties), the Indemnifier agrees with the Indemnified Parties as follows:

1. Subject to the terms and conditions hereinafter set forth, the Indemnifier shall indemnify the Indemnified Parties (including their elected officials, officers, board of governors, administrators, employees and agents) from and against all damages ordered by a court together with related legal fees and disbursements ("Losses"), suffered or incurred by such Indemnified Parties as a result of any claim, demand, action, application, injunction or other court proceeding (each, an "Indemnified Claim") initiated by WCD or its successors and assigns against any of the Indemnified Parties in connection with the First APS and the completion of the transaction of purchase and sale contemplated by the APS, including damages and costs which may be adjudged, assessed or ordered by a

court against the Indemnified Parties or any one of them as payable to WCD or its successors and assigns in connection therewith.

2. The Indemnifier agrees that each Indemnifier shall be jointly and severally liable for all Losses incurred or suffered by the Indemnified Parties, as if they were named separately under this Agreement.

3. Under no circumstances shall any Indemnifier be liable or obligated to indemnify any of the Indemnified Parties for (i) any general or consequential losses, including loss of revenue and/or loss of profits, damages (except for damages awarded by a court in respect of an Indemnified Claim), including indirect and/or consequential damages, whether in contract or in tort, costs and expenses incurred or suffered by the Indemnified Parties in connection therewith or (ii) any Losses arising from an Indemnified Claim occasioned or caused by any gross negligence, illegal acts, fraud or willful misconduct by any one of the Indemnified Parties, or any breach of this Agreement or the APS which breach expands or triggers the Indemnifier's indemnity obligation over that in the absence of such a breach. Without limiting the generality of the foregoing, the Indemnifier shall not be liable for any losses or damages suffered by any Indemnified Party in connection with any government funding that may be reduced or forfeited in connection with any Indemnified Claim or other claim.

4. The Indemnifier shall have the sole, absolute and exclusive right to assume and control the direction of the defense of any Indemnified Claim and the Indemnifier shall assume such defense at its reasonable expense and shall defend the Indemnified Parties in accordance with this Agreement. In so doing, the Indemnifier agrees to apprise the Indemnified Parties on an ongoing basis.

5. The Indemnified Parties shall provide reasonable cooperation without charge to the Indemnifier and its counsel in defending, commencing or continuing any legal proceedings in connection with any Indemnified Claim including, without limitation, providing documents and information, preparing for and attending at examinations, cross-examinations, mediations, settlement conferences, motions and trial. The Indemnified Parties shall give reasonable notice to the Indemnifier in connection with any Indemnified Claim being made or threatened against any of the Indemnified Parties. The Indemnified Parties represent and warrant to the Indemnifier, as of the date hereof, that no Indemnified Claim has been made or threatened against any of them.

6. The Indemnifier and the Indemnified Parties agree that the interests of the Indemnified Parties appear to be substantially aligned with the interests of the Indemnifier, and accordingly, the Indemnified Parties will allow single counsel representation at the outset of any court proceedings pursuant to paragraph 4 above. However, if WCD makes any allegations that put the interests of the Indemnifier in conflict with the interests of the Indemnified Parties (or either of them) or if either (or both) of Mississauga or Sheridan, acting reasonably and in good faith, are of the opinion that they should retain independent counsel, then in such event, the Indemnifier shall reimburse Mississauga or Sheridan, or both, as the case may be, for all reasonable legal costs incurred in such event to a maximum aggregate amount not to exceed, in any and all circumstances, five hundred thousand dollars $500,000.00 (the "Cap"), and the Indemnifier shall provide reasonable cooperation, without charge, to the Indemnified Parties and their counsel in assuming the defense of any legal proceedings in connection with any Indemnified Claim. The Indemnified Parties agree and acknowledge that in the event a dispute arises between such parties as to the percentage each shall be entitled to share of the Cap, the Indemnifier shall have fully discharged its obligations hereunder by paying such Cap amount into escrow for the benefit of such Indemnified Parties until such time as such dispute shall have been resolved to the satisfaction of the Indemnified Parties.

7. The Indemnifier's obligations hereunder may not be assigned and shall be binding on it and its successors and assigns, as the case may be.

8. The grammatical changes required to make the provisions of this Agreement apply in the plural sense where the Indemnifier comprises more than one person, and to corporations, firms, partnerships, or individuals, male or female, will be assumed as though in each case fully expressed, and if the Indemnifier consists of more than one person, the

agreements of the Indemnifier shall be deemed to be joint and several agreements of each such person.

9. The Indemnifier covenants, represents and warrants that it has full power, capacity and authority to enter into this Agreement and to perform each of its obligations hereunder and that the individuals who have executed this Agreement on behalf of the Indemnifier have the unconditional authority to bind the Indemnifier. The Indemnified Parties covenant, represent and warrant that each of them has full power, capacity and authority to enter into this Agreement and to perform each of its obligations hereunder and that the individuals who have executed this Agreement on behalf of the Indemnified Parties have the unconditional authority to bind such parties respectively.

10. Notwithstanding anything to the contrary herein set forth, the Indemnifier's obligation to indemnify hereunder shall be conditional on the transfer of title to Mississauga on Closing as contemplated by the APS. Once the Closing has occurred, the Indemnifier's obligation to indemnify hereunder shall arise and be effective from the date of this Agreement to the date that all claims by WCD against the Indemnified Parties have been fully settled by an agreement or court order. Assuming the Closing has occurred, any Losses or damages suffered or sustained by the Indemnified Parties prior to the Closing shall be reimbursed forthwith by the Indemnifier following Closing. For the avoidance of doubt, under no circumstances shall the Indemnifier have any obligation to indemnify hereunder for any Indemnified Claims suffered or incurred by any Indemnified Party if the closing has not occurred. If by the date of closing WCD has not commenced any legal proceedings against the Indemnified Parties, the Indemnifier's obligation to indemnify shall terminate only following the expiry of the limitation period applicable to any claim by WCD.

11. Whenever any reference is made herein to the APS or the obligations of Mississauga thereunder, such reference shall be deemed to include any and all agreements and instruments executed by Mississauga in connection with the APS or pursuant thereto and which relate to the Lands.

12. Any demand, notice or communication to be provided hereunder shall be in writing and may be given by personal delivery, by prepaid first class mail or by fax transmission, addressed to the respective parties as follows:

To Mississauga:	**The Corporation of the City of Mississauga** 300 City Centre Drive Mississauga, Ontario, L5B 3C1 Attention: City Solicitor, Legal Services Division Telephone: (905) 615-3200, ext. 5393 Facsimile: (905) 615-5106
To Sheridan:	**The Sheridan College Institute of Technology and Advanced Learning** 1430 Trafalgar Road Oakville, Ontario, L6H 2L1 Attention: Karam Daljit, Vice President Telephone: (905) 815-4075 Facsimile: (905) 815-4002
To OMERS:	**OMERS Realty Management Corporation** 130 Adelaide Street West, Suite 1100 Toronto, Ontario, M5H 3PS Attention: John Filipetti, Vice President Telephone: (416) 865-5359 Facsimile: (416) 865-8307
To 156 Square One:	**156 Square One Limited**

c/o 1100 – 80 Richmond Street West
Toronto, Ontario M5H 2A4
Attention: Craig Coleman
Telephone: (416) 943-9914 ext. 210
Facsimile: (416) 943-9122

or to such other address or fax number as any party may from time to time notify the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof. If given by fax transmission, on the same day as the date of faxing provided that a fax transmission report is generated and retained. In the case of a demand, notice or communication addressed to more than one party, on the day upon which actual delivery thereof has been completed to all such parties. Any notice sent by prepaid first class mail as aforesaid shall be deemed to have been delivered on the fifth (5th) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof provided that postal services have not been interrupted, in which case notice shall only be given by personal delivery or fax transmission as aforesaid.

13. Should a court of competent jurisdiction deem any provision of this Agreement to be invalid, void, illegal or unenforceable, such provision shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto, as though such provision had not been included.

14. Time shall be deemed to be of the essence with respect to any time limits mentioned in this Agreement.

15. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

16. Neither this Agreement nor any document providing notice of this Agreement, whether in electronic form or not, shall be registered by the Covenantee against title to the Lands.

IN WITNESS WHEREOF THIS Agreement has been executed by the undersigned in the City of _____ on the _____ day of _____, 2009 under seal and duly attested to by the signatures of their duly authorized signing authorities.

OMERS REALTY MANAGEMENT CORPORATION

Per: _____
Name

Print Title:

Per: _____
Name

Print Title:

I/We have authority to bind the Corporation

IN WITNESS WHEREOF THIS Agreement has been executed by the undersigned in the City of _____ on the _____ day of _____, 2009 under seal and duly attested to by the signatures of their duly authorized signing authorities.

156 SQUARE ONE LIMITED

Per: _____
Name

Print Title:

Per: _____
Name

Print Title:

I/We have authority to bind the Corporation

IN WITNESS WHEREOF THIS Agreement has been executed by the undersigned in the City of _____ on the _____ day of _____, 2009 under seal and duly attested to by the signatures of their duly authorized signing authorities.

THE CORPORATION OF THE CITY OF MISSISSAUGA

_____

Name: **Janice Baker**

Title: City Manager

_____

Name: **Crystal Greer**

Title: City Clerk

Authorized Through Mississauga By-Law 0182-2009

IN WITNESS WHEREOF THIS Agreement has been executed by the undersigned in the City of _____ on the _____ day of _____, 2009 under seal and duly attested to by the signatures of their duly authorized signing authorities.

THE SHERIDAN COLLEGE INSTITUTE OF TECHNOLOGY AND ADVANCED LEARNING

_____

Name:

Title:

_____

Name:

Title:

I / We have authority to bind the Corporation

SCHEDULE "D"

THIS RESTRICTIVE COVENANT AGREEMENT is made in quadruplicate and effective as of the 14th day of July, 2009 (the "Agreement").

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(the "Covenantor ")

- and -

OMERS REALTY MANAGEMENT CORPORATION

and

156 SQUARE ONE LIMITED

(together the "*Covenantees*")

WHEREAS:

(a) The Covenantor is the registered owner of the lands and premises described on Schedule "A" attached hereto (the "Development Property");

(b) The Covenantor entered into an agreement of purchase and sale dated July 20, 2009 (the "APS") whereby the Covenantor purchased the Development Property from Covenantees. Pursuant to the provisions of the APS, the Convenantor agreed to provide certain restrictive covenants against the Development Property in favour of the Covenantees and subject to the terms and conditions as hereinafter set forth;

(c) The Covenantor intends to enter into a ninety-nine (99) year ground lease with The Sheridan College Institute Of Technology And Advanced Learning ("Sheridan"), permitting Sheridan to develop a large scale college campus on the Development Property.

NOW WITNESSETH that in consideration of the mutual covenants and agreements herein contained and the sum of Two Dollars ($ 2.00) now paid by the Covenantee to the Covenantor (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. The Covenantor hereby covenants and agrees with the Covenantees and their respective successors and assigns, that the Development Property shall from the date hereof be subject to the following covenants and restrictions (the "Restrictive Covenants"):

   (a) Site Plan:

   The site plan for the first phase of the Development Property ("Phase 1") shall be substantially in accordance with that portion of the Sheridan master plan attached hereto as Schedule "B";

   (b) Parking:

   The Covenantor shall ensure that a minimum number of parking spaces are created in conjunction with completion of Phase 1 of the Development Property which will be based on 2.65 parking spaces (located anywhere on the Development Property) for each 1000 square feet of gross floor area in Phase 1. Parking ratios for future phases will be based on a parking study undertaken by Covenantor at Covenantor's cost to determine the actual utilization rates of the parking facilities on the Lands by Covenantor's tenant's students and staff. The methodology for this study will be based on then applicable parking utilization. Covenantor will and will cause its tenants to (i) police Covenantor's parking facilities on the Development Property; and (ii) communicate with and provide incentive initiatives to Covenantor's tenant's students to discourage parking by them in the Covenantee's neighbouring parking facilities (such as, by way of example, providing all students with discounted transit passes).

(c) Use:

For the initial twenty-five (25) year period following the transfer of title to the Covenantor, the primary use of the Development Property shall not be any purpose other than the Permitted Uses as defined below, and no retail, food or restaurant use shall be permitted except as follows:

(i) the gross floor area ("**GFA**") occupied by any particular retail, food or restaurant use shall not exceed 3,500 square feet (which excludes the cafeteria seating area) and the aggregate GFA occupied on the completed Development Property, in aggregate for retail, food and restaurant uses shall not exceed 34,445 square feet;

For greater clarity, any retail bookstore use associated with a college or university purpose or use is permitted without any size restrictions.

The definition of "Permitted Use" shall include and be limited to one or more of the following uses:

- a college, university or other institution of higher learning, along with accessory student housing;
- a public park;
- an office tower or office facilities, including but not limited to institutional offices;

(d) Right to Make a First Offer:

In the event the Development Property or any portion thereof is declared surplus in the future by the Covenantor (acting in its capacity as a municipality), then within sixty (60) days of such surplus declaration the Covenantee shall have the right to submit a signed unconditional offer on such lands, declared surplus in priority to any other prospective purchaser, provided all of the Covenantor's conditions relating to the sale of the lands are fully met and the purchase price for the lands reflects fair market value for highest and best use, as established by the Covenantor.

2. The Covenantor shall ensure that any party acquiring an interest in the Development Property from time to time, or an entitlement of ownership, use and/or possession of any part of the Development Property, also covenants and agrees on behalf of itself and its successors and assigns, in favour of the Covenantor and the Covenantees to strictly keep, observe, perform and comply with the Restrictive Covenants and that nothing will be done on the Development Property in breach of the Restrictive Covenants.

3. The provisions of this Agreement shall be construed in accordance with the laws of the Province of Ontario and if any provisions are determined to be invalid or unenforceable, then the same shall be severed herefrom and the remainder shall not be affected thereby but shall remain valid and enforceable to the fullest extent permitted.

4. Any formal demand or notice to be provided hereunder shall be in writing and may be given by (a) personal delivery, or (b) by prepaid first class mail or (c) by fax transmission, addressed to the respective parties as follows:

To The Covenantor: **The Corporation of the City of Mississauga**
300 City Centre Drive
Mississauga, Ontario, L5B 3C1
Attention: City Solicitor, Legal Services Division
Telephone: (905) 615-3200, ext. 5393
Facsimile: (905) 615-5106

To The Covenantee:

To OMERS:	**OMERS Realty Management Corporation** 130 Adelaide Street West, Suite 1100 Toronto, Ontario, M5H 3PS Attention: John Filipetti, Vice President Telephone: (416) 865-5359 Facsimile: (416) 865-8307
To 156 Square One:	**156 Square One Limited** c/o 1100 – 80 Richmond Street West Toronto, Ontario M5H 2A4 Attention: Craig Coleman Telephone: (416) 943-9914 ext. 210 Facsimile: (416) 943-9122

or to such other address or fax number as any party may from time to time notify the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof. If given by fax transmission, on the same day as the date of faxing provided that a fax transmission report is generated and retained. In the case of a demand, notice or communication addressed to more than one party, on the day upon which actual delivery thereof has been completed to all such parties. Any notice sent by prepaid first class mail as aforesaid shall be deemed to have been delivered on the fifth (5th) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof provided that postal services have not been interrupted, in which case notice shall only be given by personal delivery or fax transmission as aforesaid. It is agreed that any notice to be given by the Corporation of the City of Mississauga may be by the Manager of Realty Services or by its Legal Counsel, and need not be under the corporate seal of the City and any such notice, so signed, shall be conclusively deemed to express the will and corporate act of the Corporation of the City of Mississauga as therein contained and no further evidence thereof or of any by-law or resolution need be given.

5. The Covenantor agrees that any breach of this Agreement may cause the Covenantees irreparable harm that may not be quantifiable or compensated by damages. Accordingly, the Covenant or agrees that the Covenantees shall be permitted to make a claim for specific performance in order to enforce the terms of this Agreement and the Covenantor agrees not to oppose specific performance as an appropriate remedy.

6. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. In addition, either of the Covenantees may assign its interest in Section 1(d) to an affiliated or related corporation on 30 days prior written notice to the Covenantor.

7. Neither this Agreement nor any document providing notice of this Agreement, whether in electronic format or not, shall be registered by Covenantee against title to the Development Property.

IN WITNESS WHEREOF THIS Agreement has been executed by the undersigned in the City of _____ on the _____ day of _____, 2009 duly attested to by the signatures of their duly authorized signing authorities.

Covenantee

OMERS REALTY MANAGEMENT CORPORATION

Per: _____

Name

Print Title:

Per: _____

Name

Print Title:

I/We have authority to bind the Corporation

IN WITNESS WHEREOF THIS Agreement has been executed by the undersigned in the City of _____ on the _____ day of _____, 2009 under seal and duly attested to by the signatures of their duly authorized signing authorities.

Covenantee

156 SQUARE ONE LIMITED

Per: _____

Name

Print Title:

Per: _____

Name

Print Title:

I/We have authority to bind the Corporation

IN WITNESS WHEREOF THIS Agreement has been executed by the undersigned in the City of _____ on the _____ day of _____, 2009 under seal and duly attested to by the signatures of their duly authorized signing authorities.

Covenantor

THE CORPORATION OF THE CITY OF MISSISSAUGA

_____

Name: **Janice Baker**

Title: City Manager

_____

Name: **Crystal Greer**

Title: City Clerk

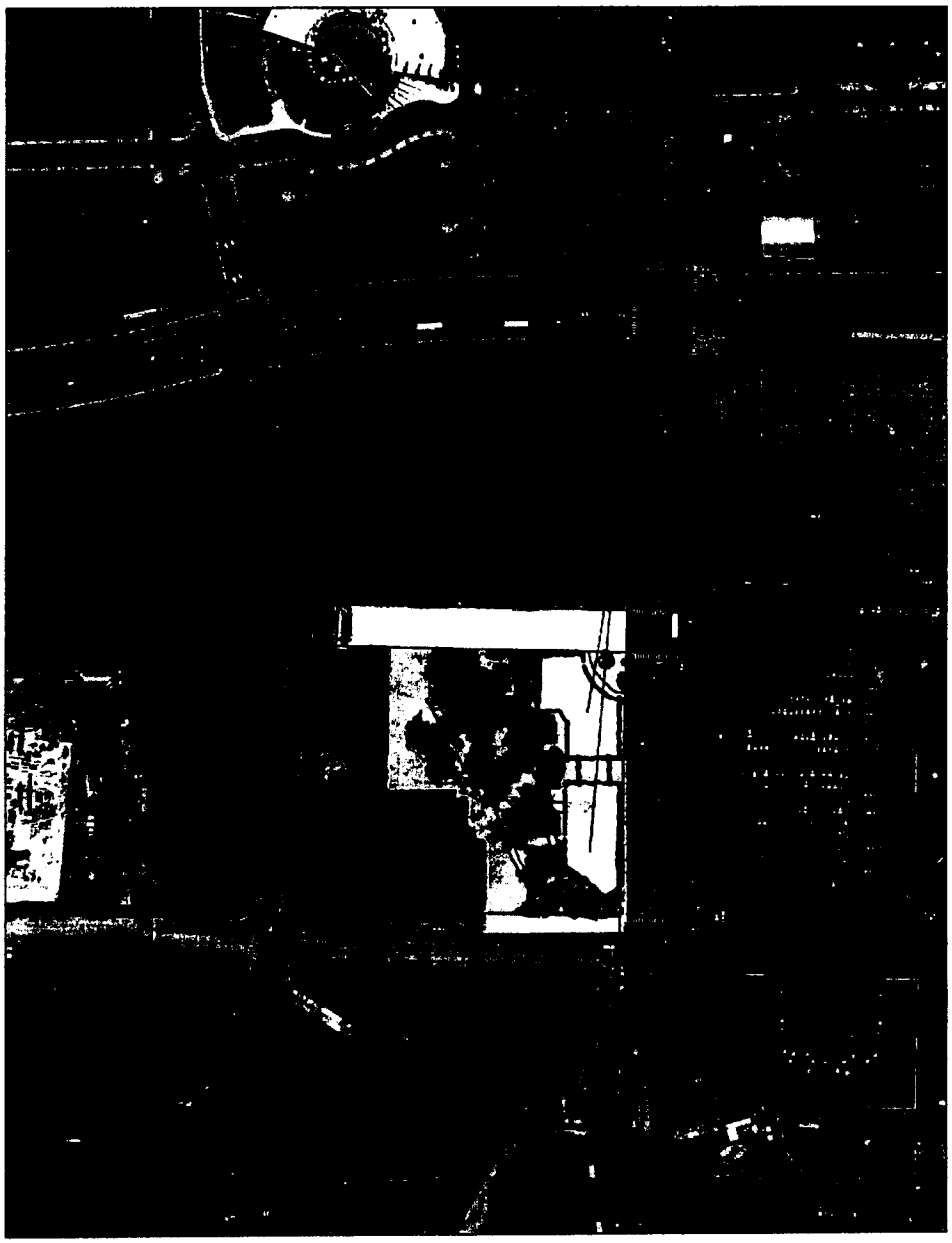
SCHEDULE "A"

Legal Description of the Development Property

PINs:	13141-0214 (LT) and 13141-0216 (LT)
Legal Description:	13141-0214 (LT): All of Block 29, Registered Plan 43M-1010, City of Mississauga, Regional Municipality of Peel. 13141-0216 (LT): All of Block 9, Registered Plan 43M-1010, City of Mississauga, Regional Municipality of Peel.

SCHEDULE "B"

Phase 1 of Sheridan Master Plan



APPENDIX C:

Profile of Comparable Sale:

152-180 Burnhamthorpe Road West, Mississauga

152-180 BURNHAMTHORPE ROAD WEST

Mississauga

3 November 2006 | 5.91 Acres @ $2,115,060 | $12,500,000

VENDORS

INVESTEX HOLDINGS LIMITED
President: Mario Polla, c/o Polla Realty Corporation, Suite 100, 3643 Cawthra Road, Mississauga, L5A 2Y4, 905-566-8640.
Vendor of 3.42 acres at 152 & 180 Burnhamthorpe, for $8,333,334.

FERNANDINO POLLA
Suite 18, Lower Level, 3643 Cawthra Road, Mississauga, L5A 2Y4,
Vendor of 2.49 acres at Burnhamthorpe & Kariya, for $4,166,666.

PURCHASER

2044274 ONTARIO LIMITED
Officer: Nair Abdel Aziz Ezzat, c/o Hansam Design Build, Suite 200, 4315 Village Centre Court, Mississauga, L4Z 1S2, 905-273-7600.
Mr Ezzat was reported to be from Kuwait.

REGISTRY DETAILS

Instruments PR-1164421 & PR-1164432.
PIN: 13144-0247, -0248, 0250.
AR: 21-05-040-154-06300, -06400, -06600.
Part of Lots 16 & 17, Concession 1-NDS (Parts 1 & 2 on Survey 43R-5321 and the lands in Instrument RO-604280).

LAND AREA 5.91 acres - 2.390 hectares

SITE This was never-developed, level, fully serviced land, close to the heart of the Mississauga City Centre apartment and business district.

Much of the site would be expropriated for a widening of Burnhamthorpe Road and extensions of Webb Drive, as shown on the map below.

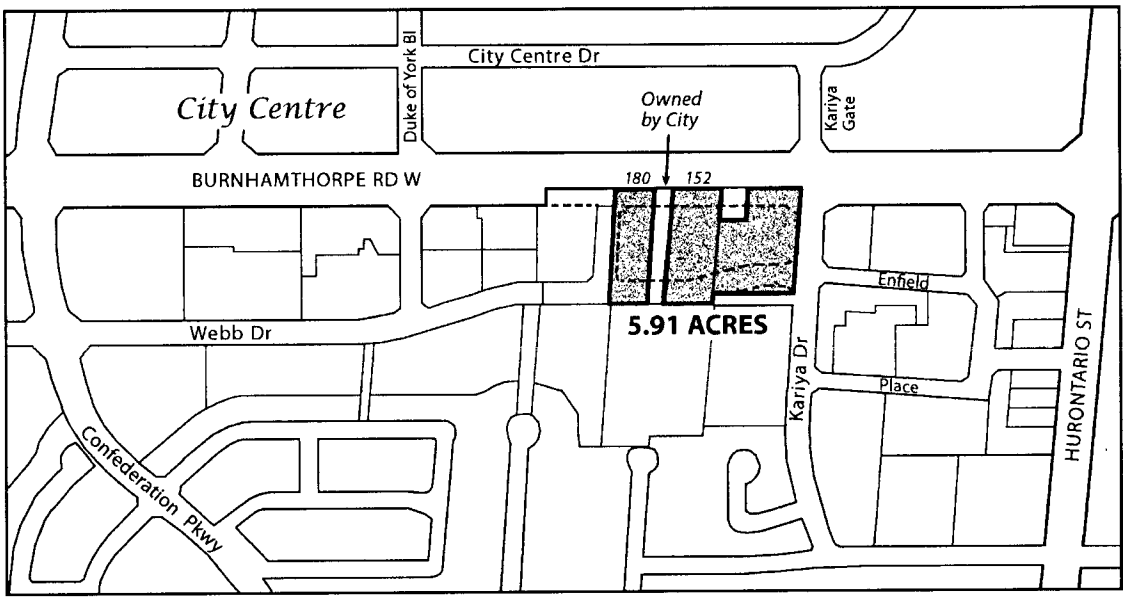
DEVELOPMENT The land was zoned H-CC2 ... Holding - City Centre 2: This was intended for high density office and apartment buildings. Hotels, places of worship and accessory retailing were among other allowable but uses.

No development application had been received by the City by December 2006. It was ru m o red that the buyer would propose a 70-storey apartment tower.

BROKER Re/Max West Realty: Domenic Scolieri & Frank Polla, 416-588-6777.

SALE PRICE $12,500,000 All Cash

PRICE PER UNIT 5.91 acres @ $2,115,060 .... $48.56/sf



APPENDIX D:

Profile of Comparable Sale:

S/W Eglinton Avenue West, Mississauga

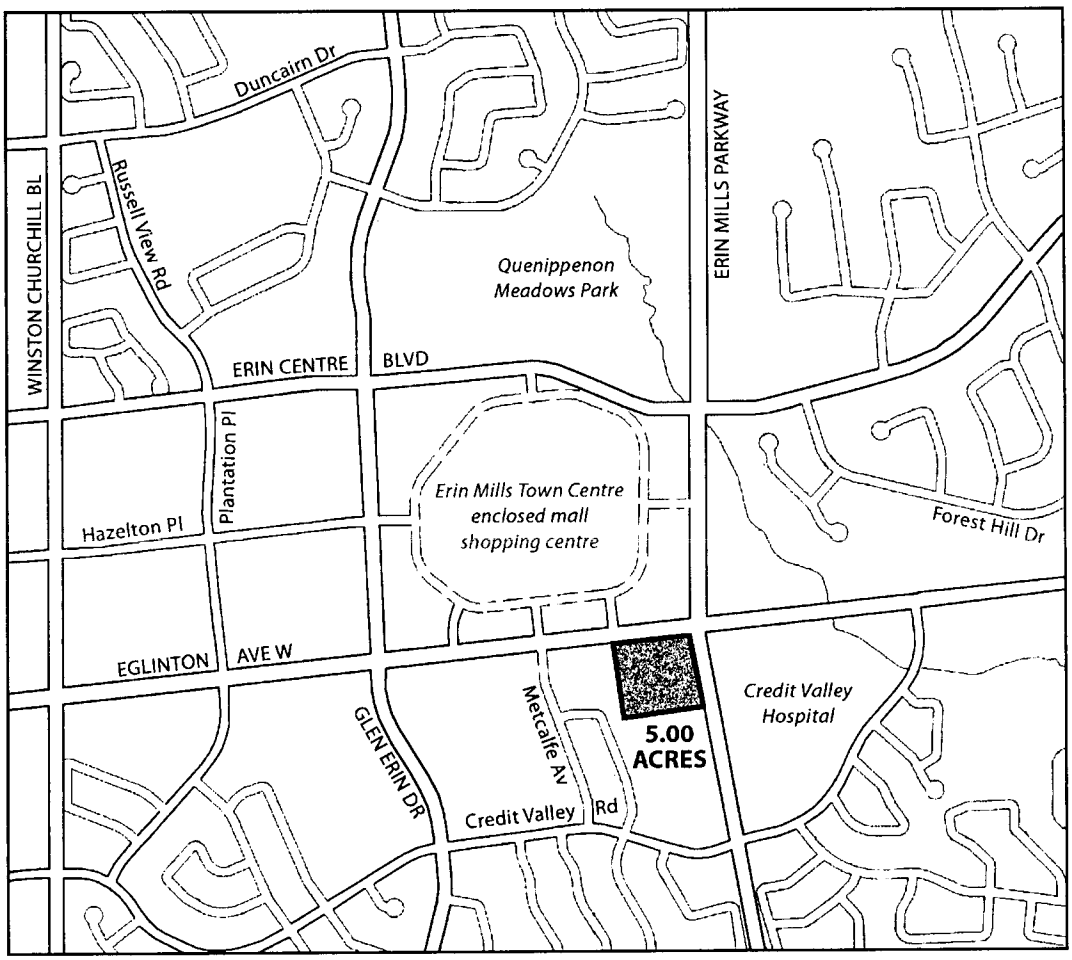
EGLINTON AVENUE WEST *Mississauga*

16 December 2008 | 5.00 Acres @ $1,693,600 | $8,468,155

VENDOR THE ERIN MILLS DEVELOPMENT CORPORATION
Officer: Larry Robbins, 7501 Keele Street, Suite 500, Vaughan, L4K 1Y2, 416-736-1809, www.erinmillsdev.com.
The sale was a severance from a parcel of 9.56 acres. The vendor retained 4.56 acres adjacent to the west side of the sale.

PURCHASER PEEL DISTRICT SCHOOL BOARD
Officer: Randy Wright, 5650 Hurontario Street, Mississauga, L5R 1C6, 905-890-1099, www.edu.on.ca.

REGISTRY DETAILS PIN: 13400-0129
Part of Lot 12, RC Plan 1003 (Parts 3-5 on Survey 43R-32479).



LAND AREA 5.00 acres - 2.024 hectares. Almost-square lot on the south-west corner of Eglinton Avenue West and Erin Mills Parkway. The Eglinton frontage was 129.21 metres, the western boundary of the lot 136.84 metres.

SITE This was level, bare, fully serviced land, apparently never developed, across streets from the big Credit Valley Hospital and the Erin Mills Town Centre shopping mall.

DEVELOPMENT The site was zoned RA5-34. This permitted only apartment buildings and retirement homes. The range of allowable building densities was from a minimum of 1.5x to a maximum of 4.0x the lot area. The maximum number of storeys was 22.

SALE PRICE $ 8,468,155 All Cash

PRICE PER UNIT Land of 5.00 acres @ $1,693,600 ... $38.88/sf.
Maximum allowable GFA of 871,200sf @ $9.72

On the same day, for the same price, the School Board sold two vacant nearby school sites to Erin Mills Development. See the file titled "Duncairn Drive."
