

File No. CI 17-01-05958

THE QUEEN'S BENCH

WINNIPEG CENTRE

IN THE MATTER OF: City of Winnipeg By-Law 127/2016, as amended and passed on October 26, 2016, *The City of Winnipeg Charter* S.M. 2002, c. 39 and Subsections 92(2) and (9) of the *Constitution Act, 1867*.

BETWEEN:

URBAN DEVELOPMENT INSTITUTE  
(MANITOBA DIVISION) and MANITOBA  
HOME BUILDERS' ASSOCIATION INC.,

applicants,

- and -

THE CITY OF WINNIPEG,

respondent.

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AFFIDAVIT OF ERIC VOGAN

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AFFIDAVIT OF ERIC VOGAN

I, ERIC VOGAN, of the City of Winnipeg, in the Province of  
Manitoba,

AFFIRM AND SAY THAT:

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1. I am the President of the applicant Urban Development Institute (Manitoba Division) ("UDI") in the within application, and, as such, have personal knowledge of the facts and matters hereinafter deposed to by me except where stated to be based upon information and belief, in which case I do believe them to be true.

2. I am employed as Vice-President Community Development at Qualico Developments (Winnipeg) Ltd. ("Qualico") in Winnipeg, Manitoba. I have been employed by Qualico since 1979. I have 38 years' experience in the property development industry in Winnipeg and elsewhere in Western Canada.

3. Qualico develops land and also builds homes, multi-family and commercial properties. Qualico currently has four divisions that operate as residential home builders, Sterling, Kensington, Broadview and Foxridge. Qualico also has a division, Streetside, which primarily builds multi-family developments.

4. From 1979 to 1986, I worked in the Qualico head offices in Winnipeg. From 1979 to 1980, I worked in its Multi-family Syndication division. From 1980 to 1986, I was Assistant to the Treasurer. My responsibilities included arranging financing for land development in Calgary, Edmonton and Winnipeg. Since 1986, I have managed Qualico's Land Development operations in the Winnipeg region. Since

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1986, Qualico has developed land for approximately 13,000 homes in the Winnipeg region.

5. A copy of my curriculum vitae is attached as Exhibit "A".

6. I graduated from the University of Manitoba in 1974 with a Bachelor of Arts in economics and in 1978 with a Master of Business Administration in finance.

7. I am a long-time participant, as a representative of UDI and Qualico, in the joint City of Winnipeg and industry ad hoc Committee on Development Agreement Parameters. I have also worked as UDI representative on issues of standardized development agreements, road classifications, and area development charges.

## **SECTION 1**

### **UDI, Its Members and the Commencement of this Application**

8. UDI is a non-share capital corporation incorporated under the laws of Manitoba. A copy of the UDI Articles of Incorporation is attached as Exhibit "B".

9. UDI describes its purpose as being the voice of the professional development industry in the Province of Manitoba. Established in 1962, it was formed to promote, among other things:

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- (a) well planned communities by encouraging the reasonable and unselfish use of land for residential, public, commercial and industrial purposes;
- (b) efficiency and a high standard of ethics among persons, firms and corporations engaged in the business of land assembly and development;
- (c) pleasant and efficient relationships between persons, firms and corporations and municipal, planning and other governmental authorities and agencies.

10. UDI has had a long history of working with The City of Winnipeg's representatives on issues of mutual interest and concern.

11. I have had involvement with UDI beginning in approximately 1987. I first served as President of UDI for a term from 1999 to 2002. I am currently serving my second term as President.

12. The following businesses and entities are the sustaining members and developer members of UDI as provided to me by UDI on May 23, 2017:

- (a) Genstar Development Company
- (b) Ladco Company Limited
- (c) Manitoba Housing

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- (d) Qualico Developments (Winnipeg) Ltd.
- (e) Terracon Development Ltd.
- (f) A & S Homes
- (g) Caspian Projects Inc.
- (h) Cushman & Wakefield Winnipeg
- (i) Daytona Land Corp
- (j) Exemplar Developments Inc.
- (k) FWS Group of Companies
- (l) Harvard Developments Inc.
- (m) Hopewell Development LP
- (n) Longboat Development Corporation
- (o) North Grassie Properties Inc.
- (p) Novamet Development Corporation
- (q) Sandhu Developments Inc.
- (r) Streetside Development Corporation

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- (s) VBJ Developments Ltd.
- (t) Ventura Land Company Inc.
- (u) Waterside Development Corp.
- (v) Winnipeg Airports Authority Inc.; and
- (w) Winnipeg Airport Lands Corporation.

The sustaining members and developer members of UDI are engaged in the business of development in The City of Winnipeg. In addition to the developer members of UDI, the membership also includes engineers, architects, landscape architects, financiers and contractors as professional and associate members.

13. This application is brought by UDI on behalf of UDI and its members and has been authorized by a resolution passed by the UDI board of directors on November 7, 2016.

## **SECTION 2**

### **Planning and Land Development Control in Manitoba**

14. I am also swearing an Affidavit in the matter of Ridgewood West Land Corp. and Sage Creek Development Corporation v. The City of Winnipeg, Court File CI17-01-05957. That affidavit will reproduce

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parts of this affidavit for the sake of completeness of the information in that matter.

15. Land development, at its most basic, is the conversion of raw land into construction-ready residential, commercial, institutional or industrial building sites. Depending on the site, land development can also involve the conversion of developed or partially developed sites to other uses. In some instances it involves the redevelopment of previously developed, obsolete (often industrial) "brownfield" sites to new uses.

16. For The City of Winnipeg, the legislative scheme governing municipal planning and land development is codified in Part 6 of *The City of Winnipeg Charter Act* (the "**Charter**"). The *Charter* came into force in 2002, replacing *The City of Winnipeg Act*.

17. For municipalities other than The City of Winnipeg, the legislative scheme governing municipal planning and land development is codified in generally comparable terms in *The Planning Act*.

18. *The Planning Act*, parallels Part 6 of the *Charter* except that *The Planning Act* includes provisions that permit capital levies that are not found in Part 6 of the *Charter*. Other municipal powers found in the *Charter* as relates to municipalities other than The City of Winnipeg are found in *The Municipal Act*.



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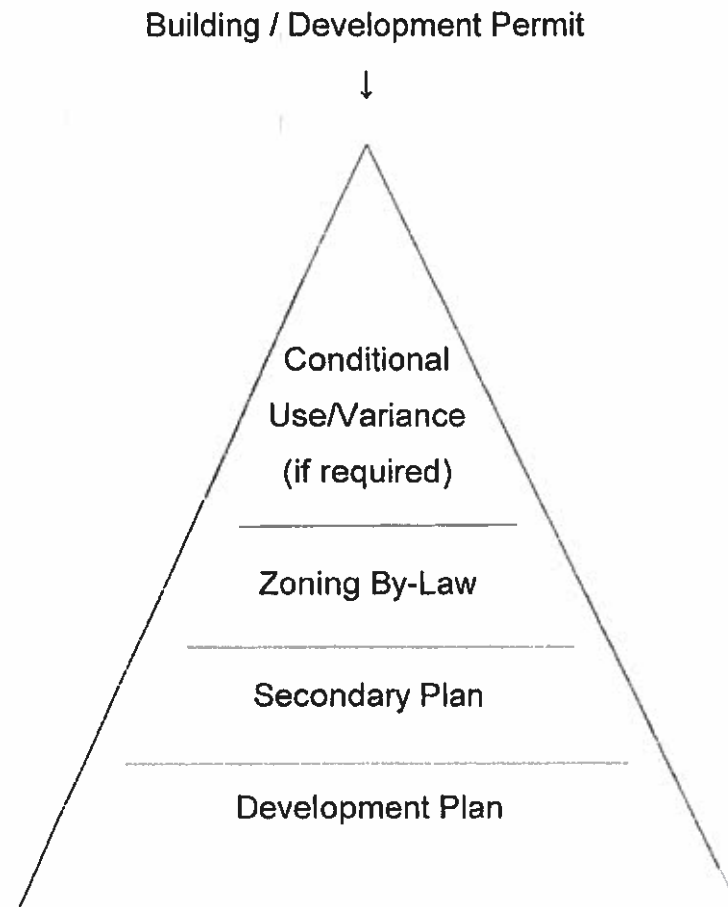
### SECTION 3

#### Development Plans and Secondary Plans

##### **Development Plans and Secondary Plans:**

19. The municipal planning scheme contained in both the *Charter* and in *The Planning Act* can be looked at as a series of layers of planning documents and approvals. They start, at the base, with very broad planning statements that apply to the whole municipality, and narrow to more specific planning documents that cover particular land areas and then to planning approvals that relate to particular developments and, then to specific lots, and specific structures or improvements. Each layer is required to be consistent with every underlying layer. That scheme can be shown as:

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20. The base planning document is the municipality's development plan. Part 6 of the *Charter* refers to the development plan for The City of Winnipeg as "*Plan Winnipeg*". Part 6 of the *Charter* requires The City of Winnipeg to enact a "Plan Winnipeg by-law" to adopt *Plan Winnipeg*. Part 6 of the *Charter* further provides that *Plan Winnipeg* must set out:

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- (a) the city's long-term plans and policies respecting;
  - (i) its purposes;
  - (ii) its physical, social, environmental and economic objectives, and
  - (iii) sustainable land uses and development;
- (b) measures for implementing the plan; and
- (c) such other matters as the minister or council considers necessary or advisable.

21. The Plan Winnipeg by-law must be approved by the minister, who may refer it to the Manitoba Municipal Board for a report and recommendations.

22. In The City of Winnipeg, the current development plan that serves as *Plan Winnipeg* is titled *Our Winnipeg*. It was considered by The City of Winnipeg on July 21, 2010 as *By-law No. 67/2010*, received third reading by Council on July 20, 2011 and took effect on August 17, 2011, following approval by the Province of Manitoba on June 27, 2011. A copy of *Our Winnipeg* is attached as Exhibit "C".

23. Under Part 6 of the *Charter*, The City of Winnipeg may create and adopt secondary plans. Under a secondary plan Council may set out any objectives and actions it considers necessary or advisable to

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address any matter within the sphere of authority of The City of Winnipeg, in a neighbourhood, district or area of the City. That typically includes: dealing with subjects contained in the development plan in ways more specific to the area; land use and development objectives for the area; economic development; and protection of heritage and environmental features in the area. The secondary plan must be consistent with *Our Winnipeg*.

24. The city-wide secondary plan approved by Council is titled *Complete Communities*. Section 01-1a of *Our Winnipeg* says that one of the enabling strategies in the development plan is to "Adopt Complete Communities as the City's land use and development guide". Of the three Direction Strategies (*Complete Communities*, *Sustainable Transportation*, *Sustainable Water and Waste*), *Complete Communities* is the only Direction Strategy that has been adopted as a secondary plan in *Our Winnipeg*. A copy of *Complete Communities* is attached as Exhibit "D".

25. Together, *Our Winnipeg* and *Complete Communities* lay the foundation for the creation of regional and local area plans. A local area plan may be approved by Council through adoption as a secondary plan by-law or as a non-statutory "Precinct Plan". Precinct Plans were The City of Winnipeg's first attempt to undertake regional planning.

26. The purpose of Precinct Plans was to determine general land use, and identify existing infrastructure and new infrastructure

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requirements. Many Precinct Plans do not clearly identify required infrastructure necessary to effect the plan.

27. *Sustainable Transportation*, another companion document to *Our Winnipeg*, contemplates the creation of a Transportation Master Plan and further transportation plans to support land use. The purpose of the transportation plans is to introduce regional transportation planning to the City for the first time since the creation of Unicity in 1972. Transportation planning on a regional basis can identify the purpose and goals of major roads, identifying relative local and regional responsibilities. Detailed transportation planning can be used to measure local benefits and impacts associated with development and related transportation infrastructure.

## **SECTION 4**

### **Zoning**

28. The *Charter* requires The City of Winnipeg to enact zoning by-laws to control or prohibit the use of real property and development in the City or parts of the City. Those by-laws divide the City into zones and then prescribe permitted and conditional uses for land and buildings in each zone. The *Charter* sets out what may be included in a zoning by-law:

#### **Content of zoning by-law**

236(2) A zoning by-law may provide for any of

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the following:

- (a) classifications of uses of land and buildings;
- (b) permitted and conditional uses of real property;
- (c) the number and dimensions of dwelling units or non-residential buildings permitted on a lot or other land;
- (d) the area and dimensions of lots or other units of land;
- (e) the number, lot coverage, floor area, dimensions and locations of buildings on units of land;
- (f) the location, height and maintenance of fences and walls;
- (g) open space around and between buildings and minimum distances between buildings;
- (h) landscaping and buffers between buildings, units of land, and different uses of real property;
- (i) establishment and maintenance of parking and loading facilities;
- (j) the design details of buildings and building sites, including vacant sites, and the establishment of committees or boards to approve designs;
- (k) the location, dimensions and number of access points from a unit of land to a street;
- (l) the use and placement of exterior lighting on land and the exterior of buildings;
- (m) the outdoor storage of goods, including machinery, building materials and waste materials;

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- (n) the removal, deposit or movement of soil, gravel or other material;
- (o) the cutting and removal of vegetation;
- (p) the placement of pedestrian walkways;
- (q) the kind, number, nature, location and dimensions of outdoor signs and displays;
- (r) the protection of scenic areas, heritage resources and sensitive land;
- (s) the protection of waterways, including setbacks of buildings from a waterway;
- (t) the protection of a water or sewage treatment facility, waste disposal facility or any other utility or public work from incompatible uses;
- (t.1) for new residential developments, the establishment of a specified percentage of the dwelling units within the development that offer affordable housing to low and moderate income households;
- (t.2) modification of the zoning requirements otherwise applicable, including requirements respecting density of dwelling units, if a development provides the public benefits prescribed in the by-law, such as affordable housing;
- (u) the sequence in which development is undertaken;
- (v) such other matters as council consider necessary or advisable.

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29. Zoning by-laws must be consistent with *Our Winnipeg* and any secondary plans. The City of Winnipeg has adopted two zoning by-laws, the *Downtown Zoning By-law 100/04* and the *City of Winnipeg Zoning By-law 200/06*.

30. For those uses of land categorized under a zoning by-law as "conditional uses", Part 6 of the *Charter* provides for a public hearing process for prior approval before a conditional use may be established on a site. The approving committee may impose conditions upon the use of the site when granting a conditional use approval.

31. In circumstances where adjustments to the requirements of a zoning by-law are needed in order to accommodate a particular development or use on an individual site, Part 6 of the *Charter* provides for an application and approval process for zoning variances. A zoning variance must, among other things, be consistent with *Our Winnipeg* and any secondary plan.

## **SECTION 5**

### **Subdivision Control**

#### **Subdivision Control:**

32. Development typically requires the subdivision of land into smaller lots that can be built upon as housing or commercial or industrial lots or sold for those purposes. Part 6 of the *Charter* provides a system



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for the approval and regulation of the subdivision of land. There is a public hearing process for the approval of subdivisions.

33. A proposed subdivision of land cannot be approved by The City of Winnipeg unless the proposed subdivision conforms with *Our Winnipeg*, any secondary plan, and the zoning by-law.

34. A plan of subdivision will lay out the lots to be created by the subdivision and any public roads to be opened and dedicated to the municipality and any public reserve lands to be dedicated to the municipality.

35. The *Charter* requires The City of Winnipeg to adopt a by-law establishing subdivision standards. A copy of the *Subdivision Standards By-law No. 7700/99* (the "***Subdivision Standards By-Law***") is attached as Exhibit "E". A proposed subdivision must be consistent with the *Subdivision Standards By-Law*.

36. Typically, a new development of any scale will require a rezoning to permit the intended purposes of the development and the proposed use of the land (e.g., a change from agricultural to residential use), as well as the subdivision of the land to provide for development lots. Sometimes other approvals may be required, such as an amendment to *Our Winnipeg*, or the development of or amendment of a Secondary Plan.

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37. The *Charter* provides that, as a condition of any approval of an application for rezoning, conditional use, variance or subdivision, The City of Winnipeg may impose a condition that the developer enter into a development agreement with the City:

**Authority for development agreements**

240(1) Where an application is made under subsection 275(1) (initiation of development proposals) for adoption of, or amendment to, a zoning by-law, the city may, as a condition of adopting the proposed zoning by-law, require the owner of real property affected by the application to enter into a development agreement with the city respecting the development and any adjacent real property owned or leased by the owner, and such agreements may provide for any of the following:

- (a) the use of the land and any existing or proposed building;
- (b) the timing of construction of a proposed building;
- (c) the siting and design of a proposed building, including the materials to be used for the exterior of the building;
- (c.1) the provision of affordable housing, if the application is to permit a new residential development that is subject to a requirement under clause 236(2)(t.1);
- (d) traffic control and parking facilities;
- (e) landscaping, open space, and grading of land;

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(f) any condition described in subsection 259(1).

### **Conditions for plans of subdivision**

259(1) Council may, by by-law, provide that approval of proposed plans of subdivision be made subject to one or more of the following conditions:

(a) that at least 10% of the land be conveyed to the city for purposes of the city other than streets, without consideration or for nominal consideration;

(b) that instead of setting the condition under clause (a), money be paid to the city for the purchase of land for purposes of the city other than streets;

(c) that all outstanding taxes, including local improvement taxes, be paid;

(d) that streets within the proposed subdivision be dedicated as council considers necessary;

(e) that where land in the proposed subdivision abuts on an existing street, land in the proposed subdivision, other than land occupied by an existing building, be conveyed for the purposes of making the street conform with any provision respecting streets of a by-law passed under section 255 (subdivision standards by-law);

(f) that the owner of land within a proposed subdivision enter into one or more agreements with the city respecting such matters as council considers advisable or necessary, which agreements may include, without limiting the generality of the foregoing, requirements that

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(i) the owner pay to the city some or all of the cost of existing or future public works, including the cost of any related environmental, engineering or other studies or reports, which benefit or will benefit the proposed subdivision,

(ii) the owner construct or pay for all or part of the capacity of the public works in excess of the capacity required for the proposed subdivision, and

(iii) the city reimburse the owner for the cost, including interest at such rate as is agreed on, of the excess capacity referred to in subclause (ii) when money is recovered by the city from owners of other lands benefited by the excess capacity or at some earlier time.

38. Similar planning controls are in place for municipalities other than The City of Winnipeg under *The Planning Act*. A notable difference between the land development approval scheme applicable to The City of Winnipeg under the *Charter* and the scheme applicable to other Manitoba municipalities under *The Planning Act* is that *The Planning Act* specifically allows municipalities to impose a levy for capital costs that may be incurred by the municipality related to the subdivision of land. *The Planning Act* also requires that any municipality imposing a capital levy must maintain a reserve fund into which the levy must be paid. Those capital levies paid into the reserve funds must be used for the purposes for which they were levied:

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**Levies established by by-law**

143(1) A council may, by by-law, set the levies to be paid by applicants to compensate the municipality for the capital costs specified in the by-law that may be incurred by the subdivision of land.

**Establishment of reserve funds**

143(2) A council must establish a reserve fund under The Municipal Act into which the levies are to be paid.

39. The procedures for development approval applications in The City of Winnipeg are governed by the *Development Procedures By-law No. 160/2011*. A copy of the *Development Procedures By-law No. 160/2011* is attached as Exhibit "F".

40. The basic requirements for development agreements with The City of Winnipeg are set out in the *Subdivision Standards By-Law*.

41. The City of Winnipeg has also established a set of *Development Agreement Parameters*, the latest version of which was adopted by Council on July 7, 2002. The *Development Agreement Parameters* outline the general policy of The City of Winnipeg in formulating development agreement terms and conditions that are imposed on developers in relation to any particular development. A copy of *Development Agreement Parameters* is attached as Exhibit "G".

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42. To assist in the interpretation and application of the *Development Agreement Parameters*, The City of Winnipeg has published *A Guide to Understanding the Development Agreement Parameters*, a copy of which is attached as Exhibit "H".

### **SECTION 6**

#### **UDI Input On Development Parameters In The City Of Winnipeg**

43. My review of documents and correspondence shows that UDI has been involved with The City of Winnipeg in the establishment and ongoing refinement of The City of Winnipeg's *Development Agreement Parameters*.

44. Since the early 1970's, following the creation of Unicity with the amalgamation of the old City of Winnipeg and its surrounding municipalities in 1972, contact between The City of Winnipeg and UDI has been ongoing.

45. Work on the *Development Agreement Parameters* between UDI and The City of Winnipeg was historically focused around three periods of strong housing markets and a review of the *Development Agreement Parameters* occurred during each of those periods; the 70s, the late 80s and the early 2000s. UDI's first involvement was with the *Development Agreement Parameters*, dated December 21, 1972, and adopted by The City of Winnipeg Council on or about January 10, 1973.

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46. In 1987 and 1988 I participated in a supporting role as The City of Winnipeg and UDI worked together on a thorough review of the *Development Agreement Parameters* during the resurgence of the housing market in the mid-1980s. At that time the chairpersons of The City of Winnipeg Council's Standing Committees on Finance, Public Works and Planning were closely engaged with the developer members of UDI in the review of the *Development Agreement Parameters*. Among other things, changes to the *Development Agreement Parameters* at that time included provision for area charges for roads and increased responsibility for provision by developers of parks. A number of recommended amendments to the *Development Agreement Parameters* were adopted by Council for The City of Winnipeg in 1989.

47. UDI arranged for the participation of the Directors of Planning and Transportation of The City of Calgary and the City of Edmonton in the *Development Agreement Parameters* review process. At that time, UDI, on behalf of the development industry, advocated for establishing a hierarchy of roadways depending upon their function so as to better determine impacts on major roads, and thus better determine local, city-wide and senior government responsibilities. This resulted in the adoption by City Council on September 26, 2001 of the *Development of a New Arterial and Expressway Cost Sharing Model*. Attached as Exhibit "I" is a copy of Clause 1 of the Report of the Executive Policy Committee dated September 12, 2001, adopted by Council at its meeting on September 26, 2001.

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48. As President of UDI from 1999 to 2002, I played an active role as a developer member of UDI as we participated with representatives of The City of Winnipeg as an ad hoc Committee on Development Agreement Parameters. The Committee undertook an extensive review, resulting in the 2002 edition of the *Development Agreement Parameters*. The ongoing purpose of the Committee is to provide input and consultation on the imposition of development-related conditions on development approvals and the development of more standardized terms for development agreements. This provides transparency and predictability for all parties. A copy of minutes of the Executive Policy Committee of City of Winnipeg Council dated July 10, 2002 is attached as Exhibit "J". These minutes reference participation of UDI in the *Development Agreement Parameters* review process.

49. UDI has also advocated for clearer provisions regarding "oversizing" (i.e., the installation of services, such as roads, sewers and drainage, that has greater capacity than what is required for the development that is the subject of approval, so as to allow for further, adjacent development often by a different developer), cost sharing and repayment provisions for infrastructure, as well as improvements in relation to land dedication and the payment by developers of fees in lieu of dedication.

50. UDI and its developer members also participated in a 2008 review of the *Development Agreement Parameters*. This resulted in very few changes, as The City of Winnipeg's focus was on issues of detail,



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such as performance warranties on improvements installed by developers.

51. In 2016 UDI and its developer members again put forward a proposal to establish a hierarchy of roads in The City of Winnipeg with a view to establishing responsibility as between the developer and the greater public for various classes of roads, along with development cost charges for certain classes of roads, based on transportation plans and precincts. At that time UDI also proposed a plan to consider a development charge for the purpose of assisting the financing of regional recreational facilities. UDI further proposed creating a mechanism for providing land for the construction of new fire halls in connection with proposed new developments.

52. In the 2016 *Development Agreement Parameters* consultations, UDI noted to City's representatives that the water and wastewater utility model administered by The City of Winnipeg already provided for the financing of regional sewer and water infrastructure costs outside of and apart from the development approvals process and that it would therefore not be appropriate to include those items as a charge in a development agreement. These sewer and water infrastructure costs are paid for by The City of Winnipeg through borrowing and the costs are charged to users over the useful life of those infrastructure projects through utility rates, matching cost to those benefiting from the capital expenditures. A copy of the 2016

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*Development Agreement Parameters* - UDI Agenda dated April 5, 2016, presented to The City of Winnipeg by UDI is attached as Exhibit "K".

## **SECTION 7**

### **Other Jurisdictions**

53. In the course of my thirty-seven years involved in the land development business with Qualico, I have had experience with land development charges and development requirements in other jurisdictions in Canada.

54. In British Columbia, Alberta and Ontario, the jurisdictions with which I am acquainted, each jurisdiction has developed extensive mechanisms for the identification of municipal costs that might reasonably be associated with specific new developments.

55. Those jurisdictions have enacted legislation to establish methodologies for the identification of development-related costs, financing those costs, matching charges and related expenditures to the costs associated with those developments, and have implemented programs to review those charges.

56. A copy of the Ontario *Development Charges Act* and regulations are attached as Exhibit "L". A copy of the City of Calgary *Off-Site Levy By-law* is attached as Exhibit "M". A copy of the Province of Alberta publication, *Municipal Government Act, Principles and Criteria*

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*for Off-site Levies Regulation 48/2004* is attached as Exhibit "N". A copy of the Government of British Columbia publication *Development Cost Charges: Best Practices Guide* is attached as Exhibit "O".

57. The recurring principle in these documents is the use of empirical bases for determining what offsite costs are attributable to, and that may reasonably be assigned to, a particular development. Components include:

- consistency with existing development standards elsewhere in the municipality;
- taking into account the relative proximity of offsite infrastructure and the measurable impact of new development to determine attribution of costs;
- no back-charging of costs of existing infrastructure;
- the use of traffic impact studies that take into account types of land uses and the different traffic intensity associated with different uses (i.e., shopping centre - high impacts; single-family detached houses - less impact; multi-family residential apartments in planned communities with nearby amenities - the fewest traffic impacts).

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58. Attached as Exhibit "P" is a copy of information presented at a City of Toronto Corporate Finance Division industry stakeholder consultation meeting held June 5, 2017. Attached as Exhibit "Q" is a copy of information presented at a City of Toronto Corporate Finance Division industry stakeholder consultation meeting held July 10, 2017. The two presentations outline the detailed process involved in conducting the legislated review of that city's *Development Charges By-law*.

59. UDI has been seeking a plan-based alternative approach to development costs in Winnipeg, a scientific plan-based methodology that will better identify the impact of new development by objectively determining impacts beyond the neighbourhood, based on the development of regional plans. This is based in part on experience of UDI that land values in various parts of Winnipeg reflect the presence or absence of necessary infrastructure capacity. A disciplined method of determining impacts would also be instructive in demonstrating necessary additions to infrastructure to allow development, while at the same time offering opportunities to share those off-site costs.

## **SECTION 8**

### **Development Agreements in The City of Winnipeg**

60. In the case of a typical development, the development agreement will require the developer to install roads, sewers, storm

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drainage, underground services, water mains, sanitary sewers, curbs, sidewalks, street lighting, traffic control devices and signage, required flood protection and other amenities in the subdivision, all as a condition of development approval. This is all at the developer's cost. The developer may also be required to set aside land for public parks and to landscape those lands. The developer may be required to set aside land for public school sites for purchase by the Province.

61. In some cases developers have been required to pay, as a condition of subdivision approval, area charges to address impacts that arise outside of the boundaries of the subdivision due to the creation of the subdivision. As an example, the Ridgewood Transportation Levy was applied to land developed in the Ridgewood land development; the levy flowed from the planning process and was adopted within the Precinct Plan for the area.

62. Municipal infrastructure needs that are general are not dealt with in the development approval process. One example is regional transportation infrastructure.

63. Typically in development agreements, roads that service a larger region are not the sole responsibility of the developer, but rather a joint responsibility with the City as a whole. Modern arterial roads and expressways limit the number of access points in order to achieve the purpose of moving traffic from community to community (arterial roads) and throughout the region (expressways) in an efficient way. As

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roadways become more regional in function, the developer's share of responsibility declines.

64. In 2000, UDI introduced road classifications based on Transportation Association of Canada (TAC) criteria in an attempt to broaden the understanding of the purpose of roads. A copy of the road classifications is attached as Exhibit "R".

65. An understanding of roads and their purposes is important to the creation of any mechanism of allocating road improvement costs to any development:

- (a) In Winnipeg, the cost of local and collector roads are typically a developer responsibility. Local roads provide access within the development. Collector roads provide communities with access from local roads to regional, arterial roads.
- (b) Arterial roads such as Taylor Avenue, Henderson Highway, and Waverley Street, have historically been a shared responsibility between The City of Winnipeg and developers of new developments specifically serviced by those roads. The developer would typically pay for two traffic lanes of pavement and provide land, by way of dedication, for the entire right-of-way. The City of Winnipeg could then be responsible for the cost of, and add, additional lanes, as required by traffic levels.

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- (c) Expressways have limited access points and link various regions of the city to one another. Expressways are considered city-wide infrastructure, have not been a developer responsibility, and are often cost-shared among the three levels of government.

66. The *Development Agreement Parameters* currently provide that a developer must pay for the cost of one traffic lane of any boundary road that borders a subdivision. The developer on the other side of the boundary road would also be responsible to pay for the cost of one traffic lane. For example, it was on this basis that Qualico, as developer of Island Lakes and Sage Creek, twinned Lagimodiere Blvd. between Bishop Grandin and Warde Avenue.

67. A plan using rules based on TAC Road Classifications could define a shared responsibility for arterial roads wherein the developer provides land for the right-of-way and two lanes of pavement. If the arterial road within the planned area is beyond the boundary of the subdivision, an area charge could be levied to appropriately share the burden among developers. The City would add lanes later, as warranted.

68. The responsibility for the installation of sewer and water infrastructure servicing new developments in The City of Winnipeg is divided between the developer and the water and waste utility. Sanitary sewers with a diameter up to and including 12 inches that service a development are a local developer responsibility. High-capacity sanitary

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sewers, known as "sanitary interceptors", and that service large areas of land and development, are paid for by the sewer utility. As set out at page 12 of Order No. 56/12 of the Manitoba Public Utilities Board dated May 3, 2012 (the "PUB Order"), as of 2011, there were 119 km of sanitary interceptors compared to 2,500 km of local sanitary sewers in The City of Winnipeg. A copy of the PUB Order is attached as Exhibit "S".

69. Similarly, water mains with a diameter of up to and including 10 inches servicing a development are a developer responsibility. The City of Winnipeg's water and waste utility installs high volume water lines, known as feeder mains, which strategically extend the reach of water lines into various parts of the city. As set out in the PUB Order, as of 2011, the City's water utility has invested in 150 km of feeder mains, enabling about 2,500 km of local water lines. The water utility investment in feeder mains allows the City to access more customers and increase revenues.

70. As stated previously, it is the responsibility of the developer to install sewer and water infrastructure within the limits of a proposed development (including excess capacity to service further development). The operation of The City of Winnipeg water and wastewater systems is the responsibility of The City of Winnipeg water and wastewater utility and is financed through sewer and water rate revenues. The approach to financing the sanitary sewer and water utilities is described in the PUB Order. Revenues from the water and wastewater utility finance new



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interceptor and feeder main components and provide for the maintenance of the entire system. Maintenance responsibility includes the separation of antiquated combined sewers and the renewal and replacement of obsolete water mains.

71. Other municipalities in Manitoba without an expansive sewer and water system rely on the imposition of sewer and water levies, not only to finance new reservoirs and treatment lagoons, but to install entire sewer and water networks. The rates for these levies are reviewed by the Public Utilities Board as part of the utility rate approval process. Municipalities other than The City of Winnipeg usually have by-laws under *The Planning Act* that require developers to pay specified capital costs (e.g., servicing costs or water or sewage treatment capacity costs) that are incurred as a result of the subdivision. Under *The Planning Act*, those capital cost payments are to be paid into a reserve fund established by the municipality. All such levies imposed by municipalities and the use of any resulting reserve funds are subject to review by the Public Utilities Board.

72. When an approved plan of subdivision resulting from the subdivision approval process is registered in the Land Titles Office, the new lots shown in that plan of subdivision are legally created. The registration of the plan of subdivision also results in the dedication of public streets (title to which lie in the Crown, and control in the municipality) and public reserve lands within the plan of subdivision. Notice of the development agreement, under certain conditions, is

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typically registered by way of caveat against title to the lots within the new subdivision so as to run with the land and be binding upon the builders and other subsequent transferees of those lots.

73. When the lots have been created, the developer may, provided that the developer is doing so in compliance with any conditions in the development agreement, market the lots to builders or prospective homeowners, or it may apply to build on the lots.

74. When a builder wishes to construct a home or other structure or improvement, it must apply for and obtain a building permit.

75. At the time that subdivided land in The City of Winnipeg is "permit-ready", development costs and off-site costs have already been dealt with in the development agreement process, borne by the developer, and built into the cost of the lot. The cost of a building permit represents the cost of providing services, the building inspection and administrative services directly related to issuing the permit.

76. Other municipalities address off-site impacts through development agreements and development permits. Some development agreements postpone the requirement for payment of development costs under a development agreement until the time that a building permit is applied for by the builder, particularly when the cost is closely related to the development of the lot. The deferred payments assist in developer financing and cash flow related to development. Those delayed charges are paid by the developer, and are separate from building permit

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charges. For example in Oak Bluff, Qualico pays charges levied by The Rural Municipality of Macdonald under a development agreement with the Municipality for sewage lagoon expansion when a builder applies for a building permit.

## **SECTION 9**

### **The Introduction of Development Cost Charges in Winnipeg**

77. The City of Winnipeg had considered the imposition of development cost charges in 2005. It commissioned Hemson Consulting Ltd. ("Hemson") to prepare a report. A copy of the report prepared by Hemson titled *Financing Infrastructure Related to Land Development* is attached as Exhibit "T" (the "2005 Hemson Report"). The 2005 Hemson Report confirms that growth does pay for growth in its statement on page 33 that "We estimate that the costs of growth related infrastructure and the additional operating cost associated with projected growth could be more than covered by the additional assessment from new development". On page 34 of the 2005 Hemson Report it states that "As was identified at the beginning of the report, the City does not currently have the range of information and analysis that is required to effectively manage the amount of growth that is anticipated in the coming years. The City requires more detailed land use planning estimates of future needs. These land need estimates should form the basis for detailed infrastructure project planning (in which case cost estimates are a key part)."

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78. The City of Winnipeg again began to consider the imposition of development cost charges in 2013. A copy of a City of Winnipeg press release titled *2013 Growth Development Charges* is attached as Exhibit "U".

79. In February, 2016, Mayor Brian Bowman announced during his "State of the City Address" that The City of Winnipeg planned to engage experts to consider the potential for the imposition of development cost charges in Winnipeg.

80. On May 27, 2016 The City of Winnipeg awarded Hemson a contract to carry out the proposed Growth Study. Hemson was engaged to conduct industry consultation, provide an analysis of best practices across other municipalities and explore growth-related costs and revenues. A copy of a press release of The City of Winnipeg dated May 27, 2016 is attached as Exhibit "V".

81. Hemson had prepared similar reports for other municipalities. A copy of the report dated April 8, 2015 prepared by Hemson for The City of Saskatoon is attached as Exhibit "W". At Table 12, page 3 of that report, it states, "Winnipeg is bound by the Winnipeg Charter, which restricts development fees only to the immediate infrastructure -- roads, sewers, sidewalks, drainage, intersection improvements -- directly connected to a new development."

82. Hemson conducted two "stakeholder meetings" with invited representatives of residential developers and homebuilders. I attended

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both sessions, the first on July 19, 2016 and the second on August 18, 2016. Commercial and industrial land developers were not invited to the stakeholder meetings. Hemson made presentations at each stakeholder meeting.

83. A copy of the presentation titled *City of Winnipeg Financing Growth Study Stakeholder Meeting #1* prepared by Hemson and dated July 19, 2016 is attached as Exhibit "X".

84. A copy of the presentation titled *City of Winnipeg Financing Growth Study Stakeholder Meeting #2* prepared by Hemson and dated August 18, 2016 is attached as Exhibit "Y".

85. On August 31, 2016 Hemson presented its final reports to The City of Winnipeg. A copy of the Hemson report titled *Determination of Regulatory Fees to Finance Growth: Technical Report* dated August 31, 2016 (the "**2016 Hemson Technical Report**") is attached as Exhibit "Z". A copy of the Hemson report titled *Review of Municipal Growth Financing Mechanisms* dated August 31, 2016 (the "**2016 Hemson Report**") is attached as Exhibit "AA".

86. The 2016 Hemson Technical Report includes a listing of development-related capital projects, that Hemson identified as requiring funding through growth fees. Included in this listing are projects that I believe are either unrelated to future growth or that had already been completed, including the new City of Winnipeg Police Service

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headquarters building, the Disraeli Bridge rehabilitation project, the Pembina Underpass, the Public Works East Yards Complex, the Arlington Bridge, and a Water Treatment Plant completed for use in 2009. Certain other projects included in the 2016 Hemson Technical Report are actually not located in the City of Winnipeg such as the easterly extension of Bishop Grandin expressway through The Rural Municipality of Springfield and Highway 6 in The Rural Municipality of Rosser.

87. In other jurisdictions, growth is required to pay for new infrastructure that is needed to service new development, not to assist (other than through taxes) in paying for existing projects and services already financed using sources already identified. Other jurisdictions also require that projects identified as "growth related" be properly identified, estimated and funded in capital budgets to ensure that the projects are indeed seriously considered and fully funded. Several projects included in the Technical Report were not included in the annual capital budgets and 5 year estimates for The City of Winnipeg.

88. Some projects are included in the Technical Report without taking into account significant contributions from developers of both costs and land dedication. Examples include Bishop Grandin expressway east, and Waverley West arterial roads. (The Technical Report does not adequately consider the contributions of other levels of government.) For example, of the total cost of the Waverley West Arterial Roads Project, stated by the City to be anywhere from \$70 to \$80

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million, does not include an additional \$48 million contribution by developers.

89. On or about September 16, 2016 The City of Winnipeg publically released its administrative report titled *Implementation of an Impact Fee* prepared by Tyler Markowsky and dated September 1, 2016 (the "**Administrative Report**"). A copy of the agenda for the Executive Policy Committee of Council ("**EPC**") meeting of September 21, 2016, including the Administrative Report, is attached as Exhibit "**BB**". The Administrative Report included a draft of the proposed development cost charges by-law titled "Impact Fee By-law" (the "**Draft By-law**").

90. The Administrative Report also included copies of the 2016 Hemson Technical Report, found at Exhibit "Z" of this affidavit, and the 2016 Hemson Report, found at Exhibit "AA" of this affidavit.

91. On September 21, 2016 the EPC considered the Administrative Report and the Draft By-law. By approved motion, EPC delayed the implementation of the Draft By-law and directed that consultation occur with stakeholders. I attended and spoke at the EPC meeting. A copy of the minutes of the September 21, 2016 meeting of the EPC is attached as Exhibit "**CC**".

92. The MHBA and the UDI engaged MNP LLP to assist in the preparation of a report and in the presentation of an informational briefing to City Council. A copy of the report dated September 20, 2016,

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titled *Understanding Development in Winnipeg: An Informational Briefing for City Council and Winnipeg Citizens* (the "UDI/MHBA Presentation") is attached as Exhibit "DD". I participated in the preparation of the UDI/MHBA Presentation by providing resource materials and in reviewing and providing comments prior to its distribution. I concur in its content, except for the following points:

- (i) The MNP report indicates that slow growth of the 1990s was a major contributor to Winnipeg's infrastructure deficit. It is my experience and belief that the City of Winnipeg had a serious structural deficit prior to the amalgamation of municipalities that formed Unicity. Although the financial contribution of all the former suburban municipalities was critical to subsidizing the original City of Winnipeg, that structural deficit continued; and
- (ii) The reference on page 21 that "Sage Creek, which at completion would host a population of approximately 17,800 people in 7,533 housing units (both single and multi-family, at 2.36 persons per household" is incorrect. It should state that "Sage Creek, which at completion would host a population of approximately 10,850 people in 4,598 housing units (both single and multi-family), at 2.36 persons per household". Therefore, Figure 21-Density of Areas of Winnipeg on Page 21 of the MNP Report should indicate a population density of 3500 people/km<sup>2</sup> for Sage Creek and not as shown.



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The UDI/MHBA Presentation was prepared in the context of the development industry's long history of working with The City to build new communities. The UDI/MHBA Presentation agrees that there is a serious infrastructure deficit problem in The City of Winnipeg; however, it disputes the conclusion that the cause of the problem is a failure of growth to pay for growth.

93. UDI and the MHBA engaged MNP LLP to prepare a PowerPoint presentation to Winnipeg City Council members based on the UDI/MHBA Presentation. On October 11, 2016 the presentation was made to a group of City Councillors who attended. I, on behalf of UDI, participated with representatives of MNP LLP and with Mike Moore, on behalf of MHBA, in the presentation and in the subsequent discussions. A copy of the presentation materials are attached as Exhibit "EE". I concur in their content.

94. The Administrative Report put forward a proposed impact fee that represented a fifty percent reduction to the residential development charge proposed in the Hemson Report, without explanation for the change. This was a further reduction to the development charge of \$30,000 per dwelling unit as presented at the Hemson August 18, 2016 presentation. The proposed "impact fee", based on an 1,800 sf dwelling unit, was set at three different levels at various times:

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- (a) Approximately \$30,000 per 1,800 sf dwelling unit presented by Hemson on August 18, 2016;
- (b) Approximately \$20,000 per 1,800 sf dwelling unit based on \$109.45 per m<sup>2</sup> recommended by Executive Policy Committee on September 21, 2016;
- (c) Approximately \$10,000 per 1,800 sf dwelling unit based on \$54.73 per m<sup>2</sup> approved by Council on October 26, 2016.

95. The Administrative Report included exemptions from development cost charges for all types of development other than suburban, green-field residential development within designated zones until November 1, 2018.

## **SECTION 10**

### **Waverley West**

#### **Examples of Significant Developments in Winnipeg**

96. I have been directly involved with or have followed and have made myself familiar with some of the more significant property developments in The City of Winnipeg.

97. The following is a description of the development approval process in the context of two significant developments in The City of Winnipeg. Waverley West is an example of large-scale greenfield

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development. Ridgewood South (with which I was directly involved) is an example of a development added as a new precinct to the existing Charleswood neighbourhood. The infrastructure needs and solutions for each area were quite different. For example, the Waverley West development is a "greenfield" development that required an expansion of the arterial road network building upon elements of the transportation network that was established decades earlier; whereas in the Ridgewood South development, new development must rely upon the legacy roads that served the original Parish River Lots (Roblin) and the Outer Two Mile lots (Wilkes).

98. The Waverley West Area Structure Plan defines the arterial roads network using the extension of the Kenaston Expressway. The Ridgewood South Secondary Plan focused on area-wide improvements to the existing roads.

### **Waverley West**

99. The Waverley West development in the southwest quadrant of The City of Winnipeg is a large-scale, complicated land development project undertaken by Manitoba Housing and Renewal Corporation and Ladco Company Limited. In order to develop the tract of land for its proposed uses by the land owners, the development required the approval of the following from The City of Winnipeg:

- (a) an amendment to the *Plan Winnipeg, 2020 Vision* development plan;

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- (b) an area structure plan for Waverley West;
- (c) more specific neighbourhood plans as planning documents;  
and
- (d) subdivision and rezoning of the land.

100. The history of the *Plan Winnipeg, 2020 Vision* amendment approval process is described in the administrative report dated December 7, 2004, a copy of which is attached as Exhibit "FF".

101. A copy of the minutes of the January, 2005 public hearing in respect of the *Plan Winnipeg, 2020 Vision* development plan amendment application is attached as Exhibit "GG".

102. As a requirement of the *Plan Winnipeg, 2020 Vision* amendment process, the developers of Waverley West were required to commission and present a cost benefit analysis to establish that the proposed new development would not create a financial burden to The City of Winnipeg. A copy of the cost benefit analysis report titled *Waverley West Plan Winnipeg Amendment City of Winnipeg Financial Cost - Benefit Analysis* dated July 2004 (Revisions December 2004) prepared by ND LEA is attached as Exhibit "HH". The report concluded that the development creates a significant net benefit to The City of Winnipeg.

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103. The City of Winnipeg also commissioned a cost benefit analysis in relation to the *Waverley West Plan Winnipeg, 2020 Vision* development plan amendment. A copy of the report titled *Waverley West Proposed Plan Winnipeg Amendment City of Winnipeg Financial Impact Analysis* dated December 10, 2004 is attached as Exhibit "II". The report validated the conclusion of the ND LEA report that the development creates a significant net benefit to The City of Winnipeg.

104. A copy of minutes of Council of The City of Winnipeg dated July 26, 2006 attaching the approved *Waverley West Area Structure Plan* is attached as Exhibit "JJ".

105. A copy of minutes of Council of The City of Winnipeg dated December 6, 2006 approving and attaching the *Waverley West Northeast Neighbourhood Area Structure Plan* is attached as Exhibit "KK".

106. A copy of minutes of Council of The City of Winnipeg dated December 6, 2006 approving the subdivision and rezoning of certain lands within the *Waverley West* development is attached as Exhibit "LL".

107. The *Waverley West Area Structure Plan* includes requirements for the developer to contribute to the cost of construction of major transportation facilities including:

- (a) dedication of all land for regional and collector rights-of-way at no cost to The City of Winnipeg;

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- (b) the construction of all at-grade intersections (except Kenaston and the South Perimeter) including pavement, traffic signals, stacking lanes, street lighting;
- (c) all land drainage impoundment areas required for roadway right-of-way drainage; and
- (d) additional cost for pavement due to the creation of the split pair Kenaston roadway through the Bridgwater development.

## **SECTION 11**

### **Ridgewood South and RidgeWood West**

108. The RidgeWood West development relied on the development of the Ridgewood South Precinct Plan.

109. The Ridgewood South Precinct Plan is supported by background studies, including a Cost/Benefit Analysis, Traffic Impact Assessment and Servicing Infrastructure Study. The Cost/Benefit analysis (a requirement of *Complete Communities*, Exhibit "D", page 70) demonstrates that the development will create a net financial benefit to The City of Winnipeg.

110. The Servicing Infrastructure Study recognized the requirement for increased land drainage capacity at Harstone to direct

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storm water from existing Charleswood, portions of Ridgewood South and lands south of Wilkes to an existing outfall at the Assiniboine River.

111. The Traffic Impact Assessment recognized the need for an internal collector/artery street network to flow to an extension of the William R. Clement Parkway from Grant Avenue to Ridgewood Avenue. Improvements to Rannock Avenue and Dieppe Street, streets beyond the area of the Secondary Plan, are planned and funded through payment by the developer of a transportation levy. On or about January 29, 2014, The City of Winnipeg Council decided that, other than the monies collected through the Ridgewood Transportation Levy, "No other transportation related infrastructure works outside the Ridgewood Precinct Plan shall be the responsibility of any precinct plan landowner."

112. The first phase of the Ridgewood South Precinct, known as RidgeWood West, resulted in the installation (at the cost of the developer) of the intersection on Wilkes at Charleswood Road which benefits lands beyond the subdivision, as part of the transportation plan.

113. The Secondary Plan for Ridgewood South requires the developer of land within the precinct to contribute to offsite improvements that benefit the subject land. In other words, the "regional" secondary plan includes provisions that require a developer to contribute through a form of development cost charge to infrastructure beyond the limits of the subdivision.

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## SECTION 12

### The Impact Fees By-law

114. On October 26, 2016 Council of The City of Winnipeg passed the *Impact Fees By-law No. 127/2016* (the "**By-law**"). A certified copy of the By-law is attached as Exhibit "**MM**".

115. The By-law defines an "Impact Fee" as a fee applicable to a development and that is payable by every person who is issued a building or development permit. The By-law is restricted in its application to residential developments in certain specified new and emerging neighbourhoods as represented in *Our Winnipeg* and *Complete Communities*. Commercial, office, industrial and institutional development are exempt from any Impact Fee for two years and residential infill developments in downtown, mature, and existing neighbourhoods of The City of Winnipeg are exempt for three years.

116. The By-law states that the Impact Fee applies only to residential properties in those areas identified on Map 1, and further depicted in detail on Maps 2 to 11, inclusive, all attached as Schedule "A" to the By-law (the "**Emerging Communities**").

117. The transitional provisions of the By-law provide that no Impact Fee is payable if the application for a building permit or development permit is made prior to May 1, 2017, the permit is issued within 6 months, or such later date as determined by the Director of



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Planning, Property and Development to be reasonable in the circumstances, and construction of the development begins prior to November 1, 2017.

118. Pursuant to section 4 of the By-law, the Impact Fee is calculated as the product of the total floor area that is being constructed or converted, multiplied by the fee per square metre established by Council. The fee established by Council for residential development in 2017 is \$54.73 per m<sup>2</sup>, or \$5.085 per ft<sup>2</sup>. The 2016 Hemson Report recommended using a multiplier of \$109.45 per m<sup>2</sup> for residential development. Based on my review of the 2016 Hemson Report, the By-law and the supporting documents for the By-law, I see no rationale or explanation nor do I understand how the amount of \$54.73 per m<sup>2</sup>, \$5.085 per ft<sup>2</sup>, was determined by The City of Winnipeg. The method used to arrive at this multiplier amount is also not explained in the By-law, the Administrative Report or the EPC recommendation. There is no apparent connection between the rate and the actual cost of a specific development. There is no reasoning for establishing impact as a square foot rate, nor is there any rationale offered for the same rate being charged for apartments, townhomes and single family homes. This is in contrast with the detailed process undertaken by the City of Toronto and outlined in Exhibits "P" and "Q".

119. Under the By-law, a five storey, 102 suite apartment block in Sage Creek on a 2.5 acre site next to a developer-installed road system and a bus stop would be assessed \$500,000 in impact fees. One

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hundred affordable, 1,000 square foot single family homes would also pay \$500,000, but they would typically use 6.5 acres of serviced land, have 50% more people per unit, and 33% more cars travelling greater distances on City roads. A purchaser of a 2,400 square foot luxury retirement bungalow would pay twice as much Impact Fee as a purchaser of a 1,200 square foot single-family home, although the impact from that home and its occupants on infrastructure needs in The City of Winnipeg at large would be less.

120. Pursuant to the EPC recommendation adopted by Council, Impact Fees are to be deposited into the Impact Fee Reserve Fund. The EPC Recommendation states that the Impact Fee Reserve Fund is to be established as follows:

- (a) All funds generated by the impact fee are to be deposited into the Fund;
- (b) The purposes of the Fund are:
  - (i) to fund capital projects approved by Council recommended by the Chief Financial Officer with consideration given to the input provided by the Working Group;
  - (ii) to pay the costs of administering the Impact Fee By-law and Reserve Fund.

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121. As I understand the Impact Fee Reserve Fund based on my reading of the EPC Recommendation, the funds deposited into the general Impact Fee Reserve Fund may be used to fund any capital project approved by Council on the recommendation of the Chief Financial Officer. I understand that there is no requirement that Impact Fees collected from a specific development be used only to fund capital projects associated with that development, nor is there any credit given for developer contributions to named capital projects, as may be required by a development agreement or as a condition of a planning approval.

122. The economics of development are such that the Impact Fee is being passed on to home buyers. The Impact Fee will be built into the cost of building a new home in the areas subject to the By-Law. Home builders, such as Qualico's in-house builders, are including the Impact Fee as a line item on their sale agreements with homeowners. GST is also charged on Impact Fees in the new home agreements. This line item is included in the base price list in all Sterling and Broadview home models and is automatically applied to the purchase of each new home. This line item forms part of the template Agreement of Purchase and Sale used for the sale of all Sterling and Broadview home models. Attached hereto as Exhibit "NN" is a copy of the template agreement.

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## **SECTION 13**

### **The Problem**

#### **The Problem**

123. The 2016 Hemson Report concludes that The City of Winnipeg has been unable to fully meet its capital needs, with a consequent deterioration in The City of Winnipeg's existing infrastructure and a growing City-wide infrastructure deficit.

124. In contrast to the conclusion of the 2005 Hemson Report, the 2016 Hemson Report concludes that "Growth does not pay for growth" in The City of Winnipeg. The 2016 Hemson Report states as follows:

Currently it is self evident that growth does not pay for growth since significant amounts of required infrastructure are not being built. However, were the required infrastructure built, growth would only be paying a share of the cost. The City's tax rate would have to increase to account for the added cost and all ratepayers (not just new growth) would contribute. If the City were to have an infrastructure fee, the need for higher taxes would be moderated by the amount such a fee would generate.

The Hemson conclusion that growth does not pay for growth is based on a very simple, yet flawed, logical foundation:

- (i) Winnipeg has low capital spending;

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- (ii) Winnipeg does not have Development Cost Charges;
- (iii) therefore, growth does not pay for growth.

125. Firstly, the 2016 Hemson Report comparison of capital spending among cities ignores spending on major utilities and P3 projects such as the Chief Peguis Trail, and Disraeli freeway.

126. Secondly, the significance of the positive fiscal contribution of new development to The City of Winnipeg has been borne out not only by the 2005 Hemson Report but by cost/benefit studies associated with new developments, including those referred to elsewhere in this Affidavit.

127. The City has grappled for many decades with older neighbourhoods that offer little tax revenue due to low assessment values and high costs, while new developments pay a greater share of these costs. I attach a map I prepared utilizing City assessment data, City permit data and the 2011 Census data that shows the relative tax contributions of different areas of the City as Exhibit "OO". The map demonstrates the following:

- Forty (40%) percent of Winnipeg neighbourhoods, comprising 110,000 homes, pay less than 60% of their proportion of the cost of municipal services.
- The 38,000 homes in the neighbourhoods with the highest average assessments comprise 14% of the

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dwellings yet contribute 24% of the taxes. These neighbourhoods are predominately Winnipeg's newest neighbourhoods.

128. The UDI/MHBA Presentation agrees that there is a serious infrastructure deficit in The City of Winnipeg. However, the UDI/MHBA Presentation disputes the conclusion that the cause of the problem is a failure of growth to pay for growth.

129. The UDI/MHBA Presentation notes that the 2016 Hemson Report "does not consider the value of new development, including new revenues from property taxes from new development or other reasons for under-funded infrastructure." In addition, the Cost Benefit Studies required by The City of Winnipeg as part of the development approval process ensure that the revenues generated from development will pay for up-front and ongoing costs to The City of Winnipeg. The UDI/MHBA Presentation gives the example of the Waverley West development, which is estimated to provide The City of Winnipeg with \$892 million more revenue than it will cost, after all capital, operating and maintenance costs.

130. In the UDI/MHBA Presentation analysis, not only does growth pay for growth, but the cause of the problem is determined to be historic political decisions:

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In the 1990's a lack of growth in the city and decisions to spend money on operations instead of capital led to a serious infrastructure deficit.

In 2009, the City estimated that 'the added investment required to maintain [infrastructure assets] at appropriate service levels and in a good state of repair' was \$3.8 billion for existing infrastructure, and \$3.6 billion for 'new strategic' infrastructure. For both types of infrastructure, approximately half was to maintain at current (2008) condition, and half was to "raise the average condition to appropriate asset management condition" (City of Winnipeg, 2009). By definition, using the criteria of who benefits, all Winnipeg property owners should be contributing.

A significant amount of the investment identified as strategic new infrastructure is 'catch up' needed to service the City as it exists today...

A comparison of revenue per capita indicates that Winnipeg collects significant less tax revenue per capita than Edmonton and Hamilton... This is evidence of the age and the quality of Winnipeg's old assessment base.

131. New development in The City of Winnipeg is currently subsidizing the costs of providing services to other parts of the City, as described earlier in paragraph 127 and Exhibit "OO". Further, the Impact Fee, as structured, appears to impose charges for sewer and water infrastructure that are already paid for in utility rates.

132. I make this affidavit *bona fide* in support of the application.

AFFIRMED BEFORE ME at the )  
City of Winnipeg in the Province )  
of Manitoba this 29<sup>th</sup> day of )  
November, 2017 )

  
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)   
\_\_\_\_\_  
) ERIC VOGAN

A Barrister-at-law entitled to practice  
in and for the Province of Manitoba