



**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Economic Development Division**

<b>TO:</b> Mayor and Members General Issues Committee	<b>WARD(S) AFFECTED:</b> WARDS 1, 2 & 3
<b>COMMITTEE DATE:</b> November 14, 2011	
<b>SUBJECT/REPORT NO:</b> Five-Year Review - Hamilton Realty Capital Corporation (PED11198) (Wards 1, 2 & 3)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Hazel Milsome 905-546-2424 x 2755
<b>SIGNATURE:</b>	

**RECOMMENDATION:**

- a) That Report PED11198 respecting the five-year review of the Hamilton Realty Capital Corporation be received;
- b) That the proposal to increase the City’s commitment to the Hamilton Realty Capital Corporation by \$5 million be referred to the 2012 capital budget deliberations and be matched by FH Investco Inc., the private investor;
- c) That the annual interest costs resulting from the proposed loan (if/when accessed) in recommendation (b), if approved above, in the estimated amount of up-to \$150,000 also be referred to the 2012 budget deliberations for consideration;
- d) That the Redevelopment Zone in which the Hamilton Realty Capital Corporation can make capital expenditures always be in accordance with the boundaries of the Downtown Hamilton Community Improvement Project Area that may be amended from time-to-time;

- e) That the Mayor and City Clerk be authorized and directed to execute an Amending Agreement to amend the Unanimous Stakeholders' Agreement with respect to recommendation (b) above, if approved by City Council during the 2012 capital budget deliberations, to the satisfaction of the City Solicitor.

## **EXECUTIVE SUMMARY**

The Hamilton Realty Capital Corporation (HRCC) is a for-profit development corporation operating within the Downtown Hamilton Community Improvement Project Area (DHCIPA). The HRCC was established in July 2006, when City Council approved the Unanimous Stakeholders' Agreement (USA) and allocated \$2 million for capital expenditures and \$180,000 for operating costs of the HRCC. The USA governs the day-to-day management, accountability, financial strategy, monitoring and the winding up and liquidation of the HRCC. The USA may be terminated on the earlier date on which the HRCC has made aggregate capital expenditures of not less than \$8 million or July 26, 2016 (ten years from the date of the USA). It further provides the City with the additional right to terminate the USA following the five-year anniversary of the USA, if the City determines, acting reasonably, that the HRCC's Board of Directors has consistently declined proposed capital expenditures without reasonable justification.

The private sector investor, FH Investco Inc., (a privately owned Toronto based development company specializing in municipal and provincial projects) in accordance with the USA, contributes fifty-percent towards all HRCC approved capital expenditures, thereby matching the City's commitment of \$2 million.

The mandate of the HRCC is to develop properties that are considered too risky or expensive for the private sector developers. Investment decisions of the HRCC will have a catalytic effect on an area in which it invests including increased property values and stimulation of private sector investment in surrounding properties, ultimately contributing to the acceleration of downtown rejuvenation.

FH Investco Inc. is extremely interested in increasing funding for the HRCC as well as expanding the Redevelopment Zone in which the HRCC invests (Appendix "A" to Report PED11198 delineates the proposed expansion to the Downtown Hamilton Community Improvement Project Area to be considered by Planning Committee on November 8, 2011 followed by consideration of City Council at its meeting to be held November 16, 2011). These initiatives will build upon the momentum created to date and enable the HRCC to move forward on significant investment opportunities, particularly in the expanded area of the Downtown Hamilton Community Improvement Project Area. To this end, FH Investco Inc. has agreed to commit an additional \$5 million to the HRCC to match an increase of \$5 million by the City of Hamilton as detailed in a letter from FH Investco Inc. attached as Appendix "B" to Report PED11198. If the City's proposed contribution is increased by \$5 million in the capital budget deliberations, the City's total contribution in the form of a loan will be \$7 million matched by FH Investco Inc.

**Alternatives for Consideration – See Page 8.**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial:** City Council, at its meeting held July 12, 2006, approved \$2 million for capital expenditures and \$180,000 for operating costs of the HRCC. Funding originated from the Hamilton Future Fund. Capital monies could only be released to the HRCC once it had entered into an offer to purchase or lease property or, owned property within the DHCIPA. One of the aforementioned requirements had to be met in order to satisfy the requirements of the Planning Act.

The City's \$2 million for capital expenditures is in the form of a loan *in accordance with the USA*. The hierarchy of repayment if a project is profitable is as follows:

- i) firstly, interest to FH Investco Inc. on its contribution at a rate of 15%;
- ii) secondly, FH Investco Inc.'s contribution to the project;
- iii) thirdly, the City's contribution to the project; and,
- iv) the balance to FH Investco Inc.

In the event a project is not profitable, the City and FH Investco Inc. will share equally the loss. However, the City will benefit from the increase in the assessment of HRCC's regenerated property as well as properties in the surrounding area due to its catalytic effect.

In accordance with the USA, capital expenditures of the HRCC are funded fifty-percent by the City and fifty-percent by FH Investco Inc. The City's \$2 million capital contribution to the HRCC is contained in Project ID#8200203107. Capital expenditures charged to Project ID#8200203107 for property transactions of the HRCC have amounted to \$137,500 to date and, in accordance with the USA, FH Investco Inc. has matched the City's investment. The transactions are as follows:

- In December 2010, the HRCC entered into an Agreement of Purchase for Sale for 14 Mary Street, a property required as part of a potential development at 140 King William Street.
- In February 2011, the HRCC purchased 134 Cannon Street East the former site of the Cannon Knitting Mills.

Further details on the aforementioned property transactions are contained in the Analysis/Rationale for Recommendation section of Report PED11198.

With respect to the City's contribution to the operating budget of the HRCC, it is important to note that at its meeting held August 12, 2004, City Council directed staff to report back on a negotiated USA and establishment of the Hamilton Realty Capital Corporation. At that time, \$250,000 was approved for costs for the preparation of the

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USA and operating costs of the HRCC. When staff reported back to Council in July 2006, approximately \$70,000 had been spent on professional fees towards the negotiation of a USA.

The \$250,000 was near depletion at the end of December 2010 due to the following expenditures:

- |                                                                                                          |                  |
|----------------------------------------------------------------------------------------------------------|------------------|
| • Establishing the HRCC (legal and peer review)                                                          | \$ 91,000        |
| • Professional fees in regard to analysis and due diligence<br>of potential properties for redevelopment | \$130,000        |
| • Salary and expenses for the Designated Manager                                                         | <u>\$ 26,000</u> |
|                                                                                                          | \$247,000        |

Costs associated with the Designated Manager's salary and expenses in 2011 are being charged to the Urban Renewal Section's operating budget. Salary and expenses in 2012 will also be charged to the Urban Renewal Section's operating budget. Expenditures associated with capital projects such as professional fees for 134 Cannon Street East, will be charged to the \$2 million capital contribution and, in accordance with the USA, FH Investco Inc. will match those costs.

FH Investco Inc. has agreed to commit an additional \$5 million to the HRCC to match a proposed \$5 million capital budget allocation by the City of Hamilton. If recommendations (b) and (c) of Report PED11198 are approved, the \$5 million plus annual interest in the estimated amount of \$150,000, will be forwarded for *consideration* during the 2012 budget deliberations.

**Staffing:** Staffing for the HRCC is provided through the "Designated Manager". City Council at its meeting held September 16, 2009 appointed G. Norton to the position. The authority and responsibility of the Designated Manager are set-out in the Management Services Agreement (MSA) which was executed concurrently with the USA.

**Legal:** The USA governs the City's relationship with the HRCC and FH Investco Inc. The USA complies with the Municipal Act and Planning Act and other legal requirements. Legal Services will develop the necessary Amending Agreement to:

- amend the USA to reflect the contribution amount to the HRCC by the City and FH Investco Inc. if recommendation (b) to Report PED11198 is approved by City Council through the 2012 capital budget process; and,
- revise the Redevelopment Zone subject to the amendment to the boundary of the Downtown Hamilton Community Improvement Project Area being approved by City Council.

**HISTORICAL BACKGROUND** (Chronology of events)

City Council, at its meeting held August 4, 2004, endorsed, in principle, a downtown development corporation, and directed staff to report back upon the negotiation of a USA and establishment of the Hamilton Realty Capital Corporation (HRCC). In order to ensure appropriate oversight, Council also agreed that the City should enter into a management agreement with the HRCC to provide management and staff support to the HRCC through the Urban Renewal Section (at that time known as the Downtown Renewal Division).

Subsequently, City Council, at its meeting held July 12, 2006, approved the USA that addresses corporate governance of the HRCC including day-to-day management, accountability, financial strategy, monitoring, winding up and liquidation of the HRCC.

The HRCC is a for-profit development corporation operating within the Downtown Hamilton Community Improvement Project Area (DHCIPA). The City of Hamilton agreed to make contributions to a maximum of \$2 million to the capital expenditures of the HRCC in accordance with the USA. The private investor, FH Investco Inc., has agreed to make contributions (and maintain such contributions), at all times that are at least equal to the amount of the City's contribution to each project. The objective of the partnership is to stimulate development in the downtown.

The USA allows the HRCC to pursue the following capital expenditures:

- buy and sell property
- redevelop property
- propose and make applications under the Municipal Act or the Planning Act to seek approval of plans to redevelop property
- advance loans to any other person for the purpose of any of the foregoing

The termination date of the USA is the earlier of ten years from the date of the USA or the date when the Capital Expenditures Satisfaction Date is achieved. The Capital Expenditures Satisfaction Date is the date on which the HRCC has made aggregate capital expenditures of not less than \$8 million. Basically, that is when the City's and the private investor's \$2 million initial investment has circulated twice. The City will receive the \$2 million initial investment back if funds are available in accordance with the USA. Ultimately, the City will benefit through the increased value of the redevelopment of property and the resulting taxes.

The City has a further right to terminate the USA at any time following the five year anniversary date of the USA (the USA was dated July 26, 2006, therefore, the five year anniversary date is July 26, 2011), if the City, acting reasonably, determines that HRCC's Board of Directors has consistently declined proposed capital expenditures without reasonable justification.

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To ensure potential proposals being considered by the HRCC's Board of Directors meet all requirements of the Downtown Secondary Plan, the Downtown Zoning By-law and other policies of the City of Hamilton, a multi-disciplinary review team of staff has been established with expertise in financing, law and planning. The team meets when required.

Staffing for the HRCC is provided in accordance with the MSA which was executed concurrently with the execution of the USA. Under the terms and conditions of the MSA, it is within the purview of the City to appoint a Designated Manager from time to time. The former Senior Business Consultant for the Urban Renewal Section was appointed to the Designated Manager's position in 2006 until he left the employment of the City in March 2009. City Council appointed G. Norton as the Designated Manager of the HRCC at its meeting held September 16, 2009.

#### **POLICY IMPLICATIONS**

Projects of the HRCC must be in conformity with the relevant Official Plan documents, the Downtown Hamilton Secondary Plan, zoning by-laws and, the Downtown and Community Renewal Community Improvement Plan (DCRCIP). The DCRCIP provides the context for a co-ordinated municipal effort to improve the physical, economic and social climates of the Downtown and, meets the legislative requirements of the community improvement provisions of Section 28 of the Planning Act.

#### **RELEVANT CONSULTATION**

Staff from the Finance and Administration Division, Corporate Services Department and the Legal Services Division, City Manager's Office, were consulted and the advice received is incorporated into Report PED11198.

#### **ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

Staff has undertaken a five-year review of the HRCC in order to determine whether or not the City can or should exercise its right of termination following the five year anniversary of the date of the USA. The City may terminate the USA following the five-year anniversary only if the City, acting reasonably, determines that HRCC's Board of Directors has consistently declined proposed capital expenditures without reasonable justification. To date, the Board has not declined any proposed expenditures.

Since September 2009, the Designated Manager of the HRCC has worked with HRCC's Board of Directors and pursued a number of capital expenditure opportunities for property acquisition and development including:

- Education Square. The HRCC focussed a lot of energy into discussions on purchasing, building and condominiumizing 150 Main Street West when the McMaster Family School of Medicine was initially contemplated. The HRCC redirected its energy on other investment opportunities when the Hamilton Wentworth School Board decided that, before it committed to selling the lands, it would undertake a visioning exercise.
- 140 King William Street. City Council, at its meeting held August 13, 2009, approved the sale of 140 King William Street to the HRCC. The HRCC proposed to develop the municipal parking lot to accommodate a retail/commercial/institutional development together with a multi-level parking structure. Public Health was to be the anchor tenant, however the City decided instead, to put Public Health into the new McMaster Health Centre. The HRCC continued to seek prospective tenants for the development. The conditional offer was extended to September 1, 2011, however recently, the HRCC agreed to withdraw its offer in favour of Hamilton Police Services.
- 193 King Street East, the site of the former Sandbar Tavern. City Council at its meeting held September 27, 2006: accepted the transfer of 193 King Street East to the City by the Crown in Right of Ontario; declared the land surplus to the requirements of the City; and, requested that the City enter into negotiations with the HRCC for the purposes of transferring the property to the HRCC. The HRCC submitted an Offer to Purchase the property in April 2010. The HRCC proposed to incorporate 193 King Street East into the redevelopment of 140 King William Street. The conditional offer was extended to September 1, 2011, however, recently the HRCC agreed to withdraw its offer in favour of Hamilton Police Services.
- 14 Mary Street. The HRCC entered into an Agreement of Purchase and Sale for 14 Mary Street in December 2010, for the purposes of facilitating development planned for 140 King William Street. After Public Health was withdrawn as the anchor tenant, the HRCC did not pay extra fees for an extension to the Agreement of Purchase and Sale, therefore, no longer has an interest in this property.
- 134 Cannon Street East, the site of the former Cannon Knitting Mills and the first venture for the HRCC that has resulted in the purchase of property by the HRCC in the Downtown Core. The HRCC purchased the property in January 2011, and continues to explore uses for the property's redevelopment, including space for the creative industry. The property is contaminated and, the HRCC is participating in a pilot study for an in-situ bioremediation product on a small area on the contaminated property. If the pilot is successful then remediation of the full site will be arranged by the HRCC. Recently, a contract was signed to clean the building itself of contaminants such as pigeon feces and lead paint flakes. Feasibility studies on potential future uses are progressing.

134 Cannon Street East



The HRCC's mandate is to develop properties that are considered too risky or expensive for private sector developers. Investment decisions will have a catalytic effect on an area in which the HRCC has redeveloped a property including increased property values and stimulating investment by the private sector in surrounding properties.

Expanding the HRCC's mandate to the expanded Downtown Hamilton Community Improvement Project Area would provide the opportunity for the HRCC to explore investing in properties that are considered "risky" within the expanded area including the Barton/Tiffany area.

Finally, by increasing the contribution to the HRCC by \$10 million (split 50-50 between the City of Hamilton and FH Investco Inc.), the HRCC will have sufficient capital to invest in the regeneration of significant older, unused properties that require major investment over the long-term that ultimately leads to new businesses, jobs, residents and, an increase in development in adjacent properties.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

The City may decide to exercise its right to terminate the USA in accordance with the provisions of the USA. However, the City's right to terminate the USA following the five-year anniversary is based on the City determining that HRCC's Board of Directors has consistently declined proposed capital expenditures without reasonable justification. There is no evidence that the Board of Directors has declined capital expenditures. The proposed development of 134 Cannon Street East would be jeopardized if the USA were to be terminated at this time. This alternative is not recommended.

Another option is not expanding the Redevelopment Zone to the expanded area of the Downtown Hamilton Community Improvement Project Area. This option would not provide an opportunity for HRCC to redevelop properties within the expanded area including the Barton/Tiffany area. This alternative is also not recommended.

An additional option is not approving the additional \$5 million loan to the HRCC. This would result in the private investor not matching the \$5 million, therefore reducing the potential of an influx of \$10 million investment in the downtown. This option would restrict the type of projects the HRCC could undertake as significant redevelopment projects require major investment. This alternative is also not recommended.

The final option would be to increase the contribution to the HRCC in an amount less than \$5 million. This alternative is also not recommended.

**Financial:** Should the City decide to exercise its right to terminate the USA following the five-year anniversary, uncommitted funding from the \$2 million capital allocation would be available for other initiatives once all obligations under the USA were met. The Manager's salary and benefits would not be charged to the Urban Renewal Section's operating budget.

The proposed \$5 million loan plus \$150,000 annual interest costs would not be required.

**Staffing:** Not applicable.

**Legal:** In accordance with Section 4.02 of the USA, the City would have to provide thirty days prior notice of its intention to terminate the USA to the HRCC and FH Investco Inc. and, provide evidence that the HRCC Board of Directors has consistently declined proposed capital expenditures without reasonable justification.

<b>CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)</b>
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Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

***Growing Our Economy***

- ◆ Investment in Hamilton is enhanced and supported.
- ◆ Assists in the growth of taxable assessment
- ◆ Assists in meeting the established growth target of 250 per hectare people living and working in the Downtown
- ◆ Increases employment in the Downtown

***Environmental Stewardship***

- ◆ Supports the reuse of existing building stock and infrastructure

***Healthy Community***

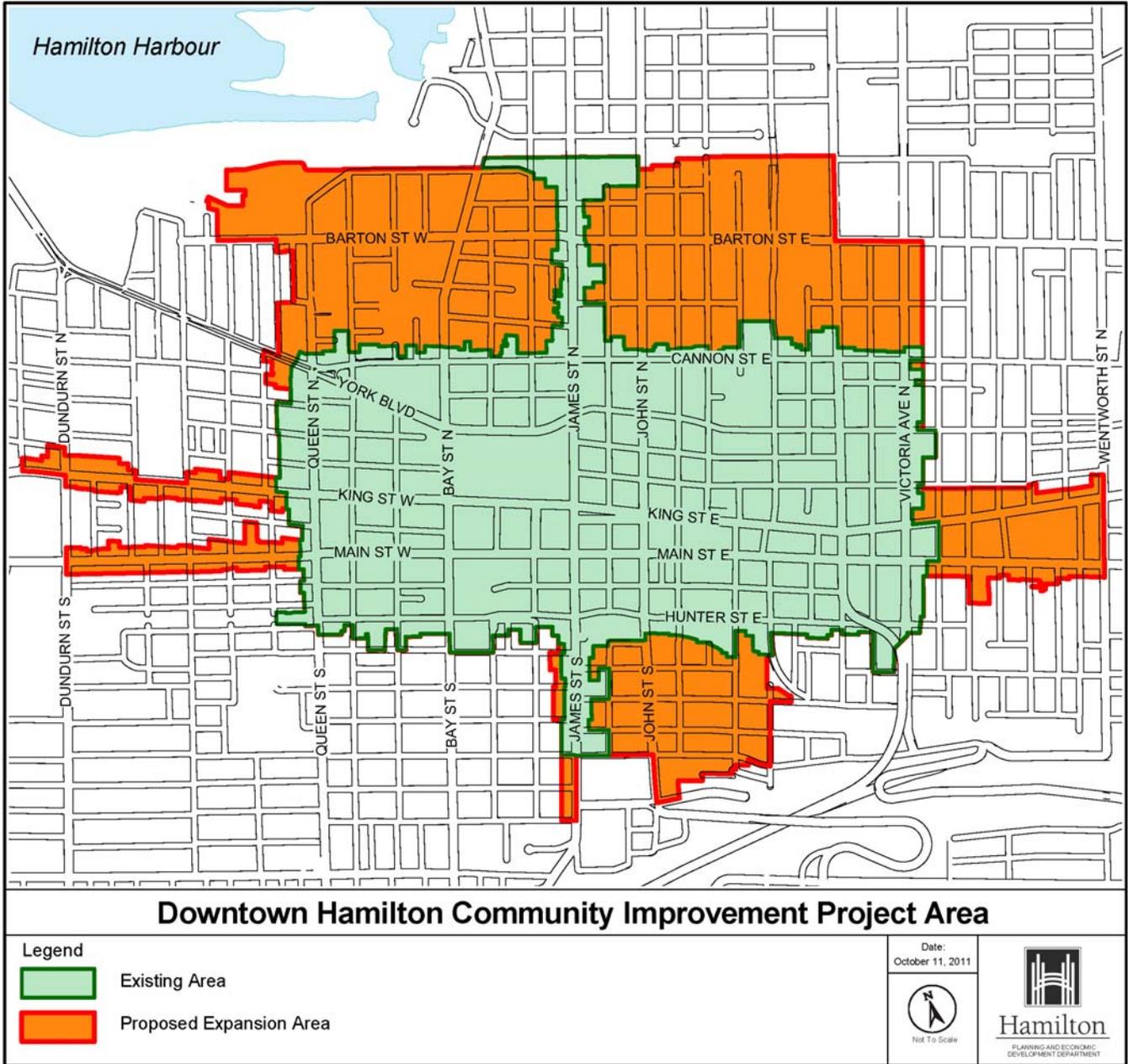
- ◆ Partnerships are promoted.

**APPENDICES / SCHEDULES**

Appendix 'A' to Report PED11198 – Map delineating the proposed expanded Downtown Hamilton Community Improvement Project Area

Appendix 'B' to Report PED11198 – Letter from Richard Abboud, President, FH Investco Inc.

HM:hm/dkm





October 18, 2011

Tim McCabe  
General Manager  
Planning and Economic Development Department  
City of Hamilton  
71 Main Street West, 7th Floor  
Hamilton, ON  
L8P 4Y5

Dear Tim:

As you know, Forum specializes in partnering with the public sector on real estate and infrastructure projects. We were initially very enthusiastic about the partnership with the City of Hamilton due to the bright future we had seen and continue to see for Downtown Hamilton, the unique nature of the partnership, and the perceived availability of buildings and land for redevelopment in Downtown Hamilton. We did expect a high level of mutual engagement that could lead to meaningful projects.

In retrospect, as you are aware, no projects were actioned during the first three years of the partnership/Agreement due to a lack of viable projects proposed by the City's appointee. The one project that did move partially forward during the previously mentioned timeframe was 140 King William. At that time, we had anticipated that the Police Services Board ("PSB") would be the tenant/client for a new building. In September of 2009 the PSB informed HRCC that it was no longer interested in pursuing this.

Since Sept 2009 and the appointment of a new City designate, projects that have been worked on include:

- a) Review and consideration of the Education Square project with the School Board. We had a significant mixed use redevelopment plan in mind. This ended early 2010 when the School Board decided not to pursue the concept. We are very pleased to see the McMaster project proceed and do believe it will be a strong addition to the Downtown core;
- b) Revival and expansion of 140 King William with the addition of new tenants, including a francophone group, City Housing Hamilton, a grocery store, Public Health, and Parking. We believe this multi-stakeholder, mixed-use project of significant scale would have had a significant impact on Downtown Hamilton. The project was fully advanced from a conceptual, site planning, design and pre-construction standpoint, after a significant



amount of time and effort expended by HRCC, its consultants and City Staff. This project was cancelled due to the loss of Public Health as the anchor tenant.

- c) A third project explored and ultimately acted upon is the purchase of the Cannon Knitting Mills. This project ultimately protects the historical asset from demolition and provides a much needed financial and social catalyst in the Beasley neighborhood. HRCC has engaged a local design team, is in the process of advancing environmental studies towards completing a remediation plan, and is considering market options for various uses. We expect this to be a meaningful project of significant scale that will have a very positive impact on the Beasley neighbourhood.

As you know, one of the challenges HRCC has faced in finding projects to action has been the size of the physical geography HRCC is limited by. This geography is currently defined by the Downtown Community Improvement Project area. Should HRCC be given a larger area to work within, we are confident that additional projects could be found. In support of the commitment to our partnership with the City of Hamilton, we are prepared to commit an additional \$5 million (or more if the City so chooses) based on the City continuing to match this financial commitment as an expansion of our Agreements.

We wish to thank you and Hamilton City Staff for your commitment to this partnership and to exploring unique opportunities with an open mind. Forum continues to look forward to working with the City on this endeavour, regardless of its decision on proceeding with the increased funding or geographical expansion.

Yours very truly,

A handwritten signature in black ink, appearing to read "Richard Abboud", written over a circular stamp or seal.

Richard Abboud  
President