

PODIUM RESTORATION AT PARK SQUARE 2015–2018

A. INTRODUCTION

1. In **June 2007**, Keller Engineering was retained by the Board of Directors to perform a detailed inspection of the parking garage. Keller Engineering concluded that both the underground garage and the podium were showing signs of deterioration that required early attention. In **February 2008**, a second survey was jointly commissioned by CCC145 and Urbanetics, the owner of the public garage. In this report, Cleland Jardine Engineering Ltd. also concluded that urgent restoration work was required. Work commenced in **October 2010** and continued until **June 2011**.

2. Meanwhile, investigative excavation in the podium showed severe deterioration of the waterproofing membrane, allowing water to penetrate into the public and private sections of the garage, which would eventually cause damage to the newly repaired areas and the stairwell. In **March 2011**, the Board presented an architect's proposed landscape design for the rebuilding of a new podium.

3. On **June 22, 2011**, six owners at Park Square, Danielle Boily, Dr. Juan Escudero, Lisa Backa-Demers, Kanta Marwah, Doug Cummings and Richard Maurel (the **Applicants**), obtained an injunction stopping the Board of Directors of CCC145, Daniel Litchinsky, Jean Guy Bourgeois, Carol Smale and Avis Miller (the **Respondents**), from holding a meeting about the proposed landscape change that evening and enjoining the corporation not to make any alteration to the courtyard landscape until further order from the Court. This was the start of the "podium dispute" at Park Square.

A chronology of the podium dispute from 2011 to 2014 is attached.

B. PREPARATORY WORK, 2015

1. The current Board of Directors took immediate steps to educate itself concerning the history of the exterior landscaping, the history of the legal proceedings, and the various expert reports received regarding the podium renovation, bearing in mind

Justice Beaudoin's order to return the courtyard and podium landscape of CCC145 to its configuration and appearance prior to the 2011 demolition, in particular:

- (i) Remove the lamp post presently erected in the traffic circle, where none existed before;*
- ii) Remove the round, grey limestone veneered traffic circle presently in place in the Court yard;*
- iii) Reinstate the seven central modular hexagonal-shaped planters, made of aggregate concrete, as they existed prior to the 2011 demolition;*
- iv) Remove the engraved address plate, where none existed before;*
- v) Reinstate the custom-made, illuminated, metal address sign as it existed prior to the 2011 demolition;*
- vi) Reinstate the peripheral trapezoidal-shaped planters in the same shape, size and material as they existed prior to the 2011 demolition; and,*
- vii) Reinstate the three-levelled vegetation, using the same kind, species, size and quantity on multiple levels, including the grade-level vegetation which has now been replaced with interlocking pavement, as it existed prior to the 2011 demolition.*

2. At an Owners' Information Meeting held on **February 18, 2015**, the Board presented an initial plan and a timeline for reinstating the podium.

3. The following is a summary of the work undertaken in 2015:

a. Consultation with Keller Engineering and HRS Hoskins – Ms. Josée Deslongchamps, Property Manager for CCC145, prepared a comprehensive report on this consultation, which addresses all issues and challenges identified by Steve Christison, P.Eng. of Keller Engineering, the structural engineer who worked on the 2011 podium restoration, and by HRS Hoskins, the restoration contractor who carried out most of the work as directed by the Board at that time.

b. Review of Property Limits – The Board researched and reviewed several documents such as *(i)* the Park Square Site Plan, dated July 1, 1974, showing the sidewalks and planters existing at that time; *(ii)* As Built Park Square Landscape Development Plan dated January 21, 1988; and *(iii)* As-Built Site Plan for CCC145 Podium Waterproofing dated February 2, 2012.

c. Legal Opinion on Easement Issues – The Board, in consultation with Elia and Associates, its legal counsel, carried out a document search and ascertained that there is an easement in favour of the City of Ottawa on Queen Street and Albert

Street. This is registered as Instrument No. LT 153796. Counsel gave their legal interpretation and explained the implications of such easements.

d. Establishment of the Ad-Hoc Committee on Podium Restoration – On May 6, 2015, the Board approved the establishment of an Ad-hoc Committee and its Terms of Reference in order to achieve three objectives:

- to promote transparency and owner involvement in the reinstatement project;
- to obtain assistance in carrying out the corporation's due diligence; and
- to represent owners' interests in how the reinstatement is carried out.

The Committee consisted of four volunteer resident-owners: Dr. Robert Rose, John Trowbridge, Peter Russell and Ruth Cardinal. The Committee was chaired by Ken Porter, President of the Board. It met six times, discussed and provided input on questions put to it by the Board in relation to all seven elements of the Court Order, and made specific recommendations. The Committee reviewed the available engineering evidence and discussed various options, with their corresponding advantages and disadvantages. The Committee submitted its Final Report in September 2015.

e. Establishment of the Gardening Committee – The Gardening Committee was established as early as May 2014 and its Terms of Reference were officially ratified by the Board in **September 2014**. In **August 2015**, the Board tasked the Gardening Committee with assisting in plant selection for the three-level vegetation in the podium in consultation with Yards Unlimited. That summer, the Committee sent out a general request to all owners and residents for any documents and photographs showing the trees, shrubs, and other plants that were in the various planters in the courtyard before the demolition. The Committee reviewed the vegetation list specified in a 1988 landscape plan. The Committee also began preparing a detailed survey of all plants in the existing beds in 2012, in order to keep track of vegetation losses due to winter-kill and other causes and to identify new plantings. The Committee submitted a report in September 2015.

f. Meeting with Applicants/Respondents of the Contempt Order – On July 23, 2015, the Board met with Dr. Escudero and his legal counsel, Mr. Rodrigue Escayola. In a separate meeting on the same day, the Board also met with Daniel Litchinsky, Jean Guy Bourgeois, Carol Smale and Avis Miller. Both meetings were facilitated by Patricia Elia, legal counsel for CCC145, for the purpose of informing them of the work undertaken by the Board in reinstating the podium and to solicit their reaction.

At these meetings, the matter of requesting a date for an in-chambers meeting with Mr. Justice Beaudoin was addressed, firstly to seek clarification on the terms of the March 2013 Endorsement, and secondly, to request guidance and direction in order for CCC145 to have a better understanding of how to comply with the terms of the Order.

g. Consultation with EXP Engineering – On **May 5, 2015**, the Board decided to seek an independent opinion from another engineering firm with respect to some of the findings and conclusions of Keller Engineering. Ms. Chantal Wegner P.Eng. of EXP Engineering was contracted for this purpose and she accepted the commission on May 27, 2015. The Final Report of EXP Engineering was received on **January 20, 2016**.

h. Consultation with Yards Unlimited – In **August 2015**, the Board approved consultations with Ms. Stephanie Scott, landscape designer with Yards Unlimited, to produce a landscape design that would reinstate the three-level vegetation on Bay Street and Albert Street. As of this date, the Board is still seeking information on what will happen on Queen Street.

i. Consultation with the City of Ottawa on the Construction of the Light Rail Transit Station on Queen Street – When construction related to the Light Rail Transit (LRT) Confederation Line started **in the spring of 2016**, contractors working for the City of Ottawa displaced a large area of patio stones on the Queen Street side of our building in order to use it as a staging and mobilization site. The Board received a monthly look-ahead report on work being performed on Queen Street and the Lyon Street Station from Damon Berlin, Stakeholder Relations for O-Train Construction, City of Ottawa. Of particular concern to the Board was the construction of a huge ventilation shaft immediately adjacent to the location of the planned above-ground and in-ground planters. Because of the City's extensive use of Queen Street, including its sidewalks, involving regular street closings and other continuous construction activities, it was evident that installation of any infrastructure on the Queen Street sidewalk would have to wait until the LRT project on Queen Street was completed.

j. Consultation with the City of Ottawa regarding the Queen Street Beautification Project – The City has designated Queen Street as a “Transit Showcase Street”. The document entitled “Downtown Moves: Transforming Ottawa's Streets”, approved by the City of Ottawa Council on March 27, 2013, describes Queen Street as the main corridor for pedestrian movement to and from the Queen Street LRT station. It also describes Queen Street as a “priority building

orientation” location, where the pedestrian-oriented building façades are of greatest functional importance and where consistent landscaping and street tree planting will be encouraged.

On **April 7, 2016**, the Board received a public notice that the Queen Street streetscaping and resurfacing would start in the spring and continue until the summer of 2018, to coincide with the opening of the LRT Confederation Line. The Board was informed that Queen Street will have extra-wide boulevard sidewalks, creative designs for parking and access, and improved landscaping with trees, benches and bike rings, along with new OC Transpo bus stops and shelters.

k. Scheduled Meeting with Justice Beaudoin– On **November 12, 2015**, the Trial Coordinator informed the Board through our legal counsel that she had booked an in-chambers meeting with Mr. Justice Beaudoin on **November 30, 2015**. However, on **November 16, 2015**, the Board was advised that Mr. Justice Beaudoin had declined the Board’s request for a meeting. He had nonetheless advised that the Board could choose to make a motion to vary his order before a different judge of the Ontario Superior Court.

l. November 27, 2015: Notice of Motion – In light of the above, CCC145 filed a Notice of Motion seeking a declaration as to how CCC145 might effect compliance with the order issued by Mr. Justice Beaudoin on March 8, 2013. The Board was advised that the Motion would be heard on **February 18, 2016**.

C. DEVELOPMENTS IN 2016

1. January 26, 2016 – An Amended Notice of MotionThe Board filed an amended Notice of Motion with a Comprehensive Record to explain the corporation’s actions, future plans, and its request to obtain further directions from the Court where required. This included an Affidavit submitted by Ken Porter, the Board President.

2. February 2016 – Adjournment of Motion Hearing

On **February 1, 2016**, Mr. Rodrigue Escayola, acting on behalf of Dr. Juan Escudero, requested an adjournment of the hearing scheduled on February 18, 2016. Despite an earlier agreement that they would take just two weeks to examine the documents, Mr. Escayola requested more time to engage their own professional experts and conduct a cross-examination of Ken Porter and Ms. Chantal Wegner, P.Eng. They also proposed mediation between the Board and the **Applicants** to try to resolve the matter.

Paragraph 147 of the Court of Appeal's decision states: "*With the flow of time, the movement of owners in and out of the condominium, the extended opportunity to live with the amalgam of the Original Design and the Artistic Design, the maturing landscaping, and the changed composition of the Board of Directors, the circumstances are different. I remind the parties at any stage of the proceedings, even in the face of an outstanding finding of civil contempt, they have the power to settle their differences on their own terms*". The Board agreed to the Applicant's request to adjourn the Motion and accepted the suggestion to enter into mediation. This was supported by Elia Associates, the Board's legal counsel.

Because of the magnitude and scope of work that had to be undertaken, members of the Board invested significant time, manpower and resources to educate themselves on the history of the exterior landscaping and the legal proceedings and to review the engineering and landscaping advice received by the corporation. The Board then proceeded to investigate the practicality of reinstating the podium. Through due diligence, consultation with experts, and valuable input from members of the Park Square community, the Board obtained information and alternatives that were not available, discovered, or considered previously.

The Board did not wish to initiate or undertake any work that would not be acceptable to the Court. Because financial resources were at stake, as well as the continued well-being of our property and community, the Board wished to reinstate the podium so that it complied with legal parameters, such as the Building Code, zoning by-laws, and easement rights, and would be compatible with the physical limitations of our property. The Board did not wish to undertake any reinstatement work that might damage or compromise the integrity of the building.

For all these reasons the Board sought the Court's clear direction and guidance, to ensure that the work to be carried out would comply with the terms of Justice Beaudoin's March 2013 Endorsement, as well as the decision of the Court of Appeal in 2014. The Board believes that the Court is the only and ultimate authority that can lift the contempt citation, but had nevertheless repeatedly solicited input from the **Applicants**, particularly their ideas and proposals on the podium restoration. The Board was willing to enter in good faith into mediation, where the **Applicants** would have a direct voice with respect to the Board's efforts to comply with the March 2013 Endorsement. This special treatment is above and beyond the opportunities afforded the majority of Park Square owners. If this prevented an escalation of costs and further delays in restoring the podium, and

lead to a resolution acceptable to all parties, then it would serve the best interests of all owners.

3. April 15, 2016 – Mediation

Representatives of CCC145 engaged in mediation with Dr. Juan Escudero and his legal counsel in the offices of retired Mr. Justice Chadwick. After extensive negotiation, the parties failed to reach a mutually agreeable resolution. However, the Board of CCC145 had gained a better appreciation of the concerns of one of the **Applicants**, and the scope of issues affecting the reinstatement was considerably narrowed.

4. May 19, 2016

After consultation with legal counsel, the Board agreed in principle to withdraw the motion filed by the corporation seeking direction from the Court. In light of the above mediation, the Board decided to proceed and complete the seven elements of Justice Beaudoin's March 2013 reinstatement order.

5. May 25, 2016

The Board approved the appointment of Mr. Jordan Giberson, a Carleton University Engineering graduate, as Project Manager to plan, organize and coordinate the various tasks related to the podium restoration under the Board's supervision.

6. May 11, 2017

The Board appointed Ms. Josée Deslongchamps as Project Manager for the completion of the podium restoration, in addition to her responsibilities as CCC145 Property Manager.

D. SUMMARY OF TASKS COMPLETED

1. Removal of the lamp post presently erected in the traffic circle, where none existed before

A 20 foot high lamp post with one LED light fixture was disconnected and removed, while keeping the electrical conduit that existed in this location prior to the podium restoration.

Completed May 2016

Contractor Jonas Building Restoration Ltd.

2. Removal of the round, grey limestone-veneered traffic circle presently in place in the courtyard

The stone cladding and rounded concrete cap stones were removed and the concrete walls were cut out of the planter wall, while maintaining the existing circular base. The dowels (rebar) holding the planter in place were cut and the base was covered with concrete.

The court order does not specifically call for the relocation of the traffic circle to its former location. After consultation with both Keller Engineering and EXP Engineering, the Board decided that the existing circular base should remain in its current location for the following reasons:

- a. Records indicate that the hexagonal planters installed in the centre of the courtyard in 1992 were used as a temporary replacement for the original developer-built traffic circle, which was removed to accommodate the podium membrane-repair project in 1992. The original traffic circle was tied into the concrete garage deck.
- b. When these hexagonal planters were removed from the courtyard in 2010, they had depressed and damaged the asphalt surface on which they had been resting. This led to water penetration into the garage.
- c. The concrete base, covered with membrane, built in 2011 is an integral part of the waterproofing of the garage podium deck and any disturbance would compromise the performance of the podium deck waterproofing and the warranty of the garage membrane.
- d. Relocating the base of the traffic circle to its former location would cover an existing roadway surface drain.
- e. Finally, according to EXP Engineering, “in order to meet the Ontario Building Code (OBC) clearance requirement for the fire route, the hexagonal planters must remain within the boundaries of the supporting base. The 1982 planters have a larger combined radius and cannot be installed over the existing base because the OBC clearance will be compromised”.

**Completed October 2016 –
Contractor Jonas Building Restoration Ltd.**

3. Reinstatement of seven central modular hexagonal-shaped planters, made of aggregate concrete, as they existed prior to the 2011 demolition

Central modular hexagonal planters composed of aggregate concrete, were installed on top of the circular concrete curb. They are architecturally consistent with the configuration and appearance of the former traffic circle.

Completed November 1, 2016

Planters fabricated by Parisien Precast

Installation Contractor Jonas Building Restoration Ltd.

4. Removal of the engraved address plate, where none existed before

The engraved stone plate was removed, as well as the electrical fixture installed directly above the sign. The part of the wall from which the sign was removed was infilled with new bricks and tinted to match the rest of the podium wall.

Completed May 2016

Contractor Jonas Building Restoration Ltd.

5. Reinstatement of the custom-made, illuminated, metal address sign as it existed prior to the 2011 demolition

The rebuilt sign was based on the original drawing in the corporation's files. The sign was custom-built. It is made of double-sided aluminum and mounted on the concrete wall at the entrance to the condominium where the previous sign used to be. Instead of the old fluorescent lamp, it is lit by an LED Halo light. The background is a white acrylic perimeter diffuser and the number/letters 151 BAY are in imitation bright polished brass. The sign has a Plexiglass/Lexan cover on the front.

Completed February 22, 2016

Sign fabricated and installed by Golden Triangle Signs

Electrical work by Transtech Electric

6. Reinstatement of the peripheral trapezoidal-shaped planters in the same shape, size and material as they existed prior to the 2011 demolition

Before the peripheral trapezoidal planters could be installed, the Board had to resolve the following issues:

a. Hardscaping Issues

The original trapezoidal planters that existed prior to the 2011 demolition were stand-alone planters made of aggregate concrete which extended approximately 3-4 feet below grade. They had no bottom and rested on the roof of the second level of the garage on Albert Street and Queen Street. These planters were installed without a back, very close to the podium wall. These conditions allowed tree roots to proliferate and penetrate deep into the ground.

In a 2009 study by Susan Day and Eric Wiseman at Virginia Tech, young trees less than 8 inches in diameter growing in unobstructed soil were analyzed and the ratio of root radius to trunk diameter was found to be about 38 to 1. For example, the roots of a 6 inch diameter tree could spread out from the trunk as far as 19 feet. Photographs of the trunks of trees planted in the concrete trapezoidal planters and cut down during the podium demolition show diameters ranging from 6 to 12 inches.

The roots of the trees and shrubs planted in the concrete trapezoidal planters over 20-30 years ago penetrated through the concrete and damaged the membranes protecting the podium wall and the roof of the garage, as well as causing structural deterioration and movement in the planters themselves. A review of CCC145 Board Minutes indicates that in **June 1998**, the Board approved a contract with R.J. Rogers Landscaping Ltd. *“for the removal of roots from the trees in the planter in the corner of Albert and Bay.”* In **June 2005**, the Board paid Proulx Lawn and Shrub Care for *“the removal and disposal of three large fir trees which have outgrown the planters on Bay Street and Queen Street”*. As late as **February 2008**, the Board paid for *“the removal of large over-grown evergreen trees on Queen Street and Bay Street”*.

For all these reasons, both engineering consultants strongly recommended the fabrication of new trapezoidal planters with a concrete bottom and proper drainage. They should also be offset from the existing podium wall by approximately 6 inches to prevent a repeat of the above-stated problems.

The installation of these concrete trapezoidal planters required the removal of the existing paving stones and excavation of the area in front of the podium walls to ensure that the gravel and soil were properly compacted.

The shop drawings and specifications of the concrete trapezoidal planters **in the same shape, size and material as they existed prior to the 2011 demolition** were prepared by Jordan Giberson and reviewed by Steve Christison P.Eng. of Keller Engineering on **July 6, 2016**.

b. Easement Issues on Albert Street and Queen Street

Before the trapezoidal planters could be installed on Albert Street and Queen Street, the Board performed its due diligence and determined its rights and obligations with respect to the easements in favour of the City of Ottawa. On both streets the City of Ottawa enjoys the benefit of an 8-foot “surface easement” from the perimeter wall. It was understood that **in the future**, the corporation may be required to remove any infrastructure that could be encroaching on the easement if the City decides to use that surface for the purpose of “pedestrian and vehicular passage”. The new concrete planters were therefore designed so that they could be easily lifted and moved if it was deemed necessary.

c. Encroachment Permit on Bay Street

The condominium’s property line extends only slightly more than 2 feet from the property wall, and the previous trapezoidal planters were partly situated on City of Ottawa property, hence the need for an Encroachment Agreement. In addition, it was noted that new structures have been built on Bay Street since 2012, such as (i) an underground traffic plant and traffic signal hardware, (ii) an enlarged Bell Canada concrete-encased structure, and (iii) underground structures belonging to Rogers Ottawa, Telus and Videotron.

The first letter seeking clarification from the City was sent on **August 24, 2015**. This was followed on **November 30, 2015**, by an e-mail exchange between Ken Porter and Michael Mizzi, Acting General Manager of the Planning and Growth Management Department, who stated that “*to authorize the planters, the condominium property should enter into an Agreement with the City*”. On **July 12, 2016**, Mr. Jeff Thompson, Right of Way Approvals, wrote in an e-mail that they “*have no issues providing the planters do not obstruct snow removal, pedestrian traffic flow, hydrants, valves, manholes and catch basins, etc.*”.

On **January 16, 2017**, a follow-up letter was sent to Mr. John Moser, Deputy City Manager, Planning and Infrastructure, advising the City that CCC145 would like to enter into an Encroachment Agreement. On **January 27, 2017**, Mr. Moser wrote back to state that he had forwarded our letter to Mr. Court Curry, Manager, Right of Way, Heritage and Urban Design.

An e-mail follow-up letter was sent to Ms. Linda Carkner on **April 18, 2017**. On **August 9, 2017**, a letter signed by Mr. Peter Grunstra, Senior By-law Administrator, indicated that the City “*is prepared to enter into a Permanent*

Encroachment Agreement with associated annual fees, provided several items are submitted within 30 days of construction”.

Telephone conferences between Kati Aubin (Elia Associates), Mr. Peter Grunstra and Ken Porter held on **December 8, 2017**, and **January 11, 2018**, as well as a meeting with Mr. Grunstra at Park Square on **December 13, 2017**, led to the understanding that *“as long as CCC145 complies with the provisions of the Agreement between Urbanetics Ltd and the City of Ottawa dated July 24, 1974 and subsequently amended on June 20, 1983; and that the planters will be installed in the same configuration and footprint as the original landscape plan #4460-78, no further action is required on the part of the Corporation with respect to an Encroachment Agreement”*. This is referenced in a letter signed by Ken Porter on **January 17, 2018**.

d. Soil Erosion on Bay Street

Two concrete trapezoidal planters were installed on Bay Street in **September 2016**, and an Amur maple was planted in each. However, by the following spring, there was evidence of serious soil erosion affecting the planter at the corner of Bay Street and Queen Street. The City was informed immediately of a potential sinkhole in the area. While awaiting the City’s response and expert opinion on the problem, the Board decided to move the two installed trapezoidal planters to Albert Street before further sinking could occur.

In various e-mails and telephone consultations with City of Ottawa officials and the condominium’s legal counsel, the Board was given the impression that, after the City’s investigation, the City authorities thought that reinstalling the concrete planters might be a bad idea in light of the subsidence problem on Bay Street. On **January 31, 2018**, the Board received a letter from Mr. Peter Grunstra stating that the City *“prefers the in-ground planters instead of the trapezoidal planters due to the soil subsidence in the area.”*

On **February 23, 2018**, the Board submitted a landscape plan for Bay Street showing the installation of in-ground planters, instead of concrete trapezoidal planters. On **March 1, 2018**, the City replied to our landscape proposal and asked for several changes and additions. The revised landscape plan was re-submitted on **June 1, 2018**.

Around the same period, the Board was advised that the Bay Street planters may be affected by the City of Ottawa’s “Bay Street Cycle Project”. Several e-mail exchanges and landscape plan revisions ensued. On **July 24, 2018**, Mr. Justin

Kurosky, Senior Engineer in the Planning, Infrastructure and Economic Development Department, stated “*the preliminary alignment of the Bay Street Cycling Facility has been finalized and he would like to confirm that this project will not impact the location of your current or proposed planters*”. Finally, in a letter dated **July 25, 2018**, the City stated that they “*have no objections with the proposed work, i.e. the installation of in-ground planters on the right of way*” (Utility Application No. MIS1810019).

e. LRT Construction on and Beautification of Queen Street

In an e-mail received from Mr. Steve Cripps, Director, Rail Implementation Office, dated **November 25, 2015**, he “*acknowledged that CCC 145 will be reinstating its planters on the Queen Street side of its property, and that only the planters on Queen Street would potentially be impacted by the Queen Street landscaping construction*”.

Follow-up e-mails on **August 9 and 10, 2016**, led to several meetings with City of Ottawa representatives. At a meeting with Damon Berlin (Stakeholder Relations, O-train Project), Dale Stevenson (LRT Project Leader), and Mike Keating (Parsons Engineering – lead for Queen Street) held on **September 9, 2016**, it was confirmed that the City had no objection to the reinstatement of concrete planters on Queen Street upon the termination of work related to the LRT.

Finally, on **October 18, 2017**, we were advised by Mr. Steve Cripps that CCC145 could install its planters on Queen Street by **July 2018**, assuming that all streetscaping work will be completed by then.

f. Curbs Around In-ground Beds

Because the Court has ordered the reinstatement of grade-level vegetation between the concrete trapezoidal planters, the Board has decided to create at-grade beds for planting. In 2011, vegetation was growing on all sides of the concrete planters i.e. in-front, in between and on their sides. The Board decided not to replicate this rather messy design and instead opted for a neat straight line that separates the concrete planters and the in-ground beds from the sidewalk pavers. The Board also decided that a curb be installed around these in-ground beds. This defines and limits the area where the in-ground vegetation is planted and will protect it from pedestrian traffic and potential damage from snow-removal and salt-spreading machines. These curbs will help drain away water, restrict soil erosion, and give the garden a more formal and finished look. The Permacon Chatham beige curbs also blend well with the pavers surrounding the property. Besides their practical usefulness, they play an undeniable role in the aesthetics of our landscaping.

g. Installation of Peripheral Planters

(1) Two concrete trapezoidal planters were installed on Bay Street in **September 2016**. They were moved and transferred to Albert Street in September 2017 because of soil subsidence.

(2) Four concrete trapezoidal planters and three in-ground beds were installed on Albert Street in **September 2017**.

(3) Two in-ground beds were installed on Bay Street in **July 2018**.

(4) Eight concrete trapezoidal planters and seven in-ground beds on Queen Street were installed in **August 2018**.

**Trapezoidal concrete planters fabricated by Parisien Precast
Concrete planters and in-ground beds on Albert Street and Queen Street
installed by Ottawa Construction Services
Concrete planters and in-ground beds on Bay Street installed by Yards
Unlimited**

7. Reinstate the three-levelled vegetation, using the same kind, species, size and quantity on multiple levels, including the grade-level vegetation which has now been replaced with interlocking pavement, as it existed prior to the 2011 demolition

a. The Park Square Gardens before and after demolition

(1) The earliest available landscape plan for Park Square was reproduced from Plan No. 3922 by C.N. Fairhall, O.L.S, dated 1973. This was revised by Wheeler/Douglas Associates Limited and submitted to the Community Development Planning Branch on January 31, 1983. Revised plantings were submitted on January 13, 1988, and the plan was finally approved by the City's Director of Planning on January 21, 1988.

(2) The nature of most gardens is that some trees and shrubs thrive there and others do not and are then replaced by other species, owing to lack of planning, the fashion trends of the times, or the personal preferences of the current gardeners. In a report written by Mr. Leo Marti Aguilar on May 11, 2011, he noted that "due to the absence of a comprehensive landscape maintenance program, or an existing deficient one, some plant material has died and has not been replaced".

(3) By the time the 2011 podium demolition was carried out, many of the plants in the 1988 landscape plan were no longer growing in the various planters. Either the quantity of material actually planted was much less or numerous plants did not survive over the years.

(4) When the gardens were reinstated in the summer of 2012, there were several marked differences between what had been demolished and what was restored. In terms of hardscaping, the concrete trapezoidal planters previously at the periphery of the podium on Queen Street, Bay Street and Albert Street were replaced with much smaller stand-alone rectangular planters, situated well away from the podium wall. An Amur maple was planted in each rectangular planter and under-planted by various annuals. A second major difference was the installation of interlocking pavers where the ground-level vegetation was formerly planted. Finally, owing to these significant hardscaping changes, the quantity and species of vegetation planted were also markedly different.

(5) The plants in the 1988 landscape plan, those that were still growing in 2011, and those planted in 2012 are listed in the **Comparative Chart of Trees, Shrubs and Plants in the Park Square Gardens in 1988, 2011 and 2012**.

b. Restoration of the Park Square Gardens in 2015

(1) Establishment of a Gardening Committee – The Gardening Committee at Park Square was established in May 2014 and its Terms of Reference were officially ratified by the Board in **September 2014**.

(2) In **August 2015**, the Board tasked the Gardening Committee with actively working with the Ad-hoc Committee on Podium Restoration, specifically to assist in selecting plants to comprise the three-level vegetation in the podium, in consultation with Yards Unlimited. That summer, the Committee sent out a general request to all owners and residents for any documents or photographs that identify the trees, shrubs, and other plants that were in the various planters in the courtyard before the demolition.

(3) The Committee reviewed the vegetation specified in the 1988 landscape plan. The Committee also began preparing a detailed survey of all the plants planted in the existing beds in 2012 in order to keep track of vegetation changes due to winter-kill and other causes and to identify new plantings.

(4) The Gardening Committee submitted its report in September 2015. Since then, the Committee has continued to present plans and recommendations for the Board's approval. Throughout this process, they have consulted with Garden Creations of Ottawa, now known as Living Green Landscaping, the landscape contractor who planted and has maintained the Park Square Gardens since 2011.

(5) Engagement of Yards Unlimited – In **March 2015**, the Board approved the engagement of Ms. Stephanie Scott, a landscape designer with Yards Unlimited Landscaping Inc. As the Board's thinking and decision-making concerning the nature and composition of the Park Square gardens have evolved over the past four years, Stephanie Scott has continued to revise and update the landscape plans and planting lists to produce a landscape design that would meet the requirements of the Court Order.

c. Upper-Level Planters

(1) The Bay Street Upper-Level Planter is the showcase planter and definitely the most attractive in the podium gardens. In 2011, it had 3 Amur maples, 6 crab apples, 1 white hydrangea, juniper, peonies, irises and hostas. It was obviously a major source of pride, as the crab apples made a colourful display in the spring and the Amur maple foliage turned a beautiful red in the fall.

(2) In pursuit of the Board's efforts to return the bed to its former glory, the five conifers that were planted there in 2012 were removed in the summer of 2016.

(3) Growing in this upper-level planter now are 2 crab apples, 3 Amur maples, 2 Japanese lilacs, a weeping caragana, 17 purple coneflowers, 30 Siberian irises, 4 white potentillas, 5 sea holly, 5 Russian sage, 8 peonies, a row of black-eyed susans and several decorative grasses. An assortment of bulbs is planted each fall to add an early splash of colour in the spring.

(4) It must be pointed out that in 2011 the vegetation include mature trees that had been planted there as early as 1988. In time, and with proper maintenance, when the trees and shrubs planted since 2016 come into full growth, they will be just as thick and lush. Eventually, the display of foliage and flowers in this upper-level planter will become even more varied and colourful with succeeding growing seasons.

(5) **The Queen Street Upper-Level planter** was a mixed planting of no discernible plan or design, photographs of which show a lilac, a yew, and a few junipers, as well as spireas interspersed with burning bush. Instead of replicating this design, the Board approved establishing **a thick row of white hydrangeas**, which were planted in 2012. They make a spectacular display of blossom from midsummer to late fall. Now almost 4 feet tall, they give an impression of height and a dramatic background to the trees and shrubs in the mid-level planters. They are also clearly visible from street level. While very attractive in themselves, they complement beautifully the varied colours of the Bay Street Upper-Level planter as the flowers turn to burgundy in the fall.

(6) **The Albert Street Upper-Level planter** contained an assortment of overgrown sand cherries, an Amur maple and some dwarf burning bush. Again, the Board decided not to replicate this haphazard design and opted instead for **a row of 70 dwarf burning bush**, which turn a vibrant crimson-red in the fall. They form a counterpart to the row of white hydrangeas on Queen Street. And like the hydrangeas, this thick row of burning bush also provides a neat delineation from the mid-level planters and completes the visual unity of the vegetation planted in all the upper-level planters.

(7) **Other upper-level planters**. In addition to these three main beds, there are six other upper-level beds: the above-garage bed, garage bed, herb bed, ramp bed, lockbox bed and triangle bed.

(8) The above-garage bed had a white crab apple growing in it in 2012. It was only a matter of time before this tree outgrew its container. Therefore, the Board decided not to plant another tree in this planter, which has a soil depth of less than 3 feet. Instead, 5 burgundy barberry, a spiny round-leaf deciduous shrub, and 48 daylilies, more suitable in this confined environment, were planted.

(9) The garage bed, herb bed, and lockbox bed also had one or two trees growing in them in 2011. For these beds, the Board decided to keep either a ginkgo or serviceberry that were planted in 2012. These were chosen for their hardiness. They also grow remarkably straight and their dense foliage and upright form make them a good choice for growing in narrow planters. These trees are also underplanted with other shrubs such as weigela, juniper, and climbing hydrangea, as well as clematis, hostas and daylilies. Given that these beds are closer to the building, this range of plants was chosen because they tolerate part shade as well as full sun exposure.

(10) The plants that were growing in the ramp bed and the triangle bed before the demolition seem to have had no discernible design or pattern, except for the predominance of various junipers. Because the triangle bed is at the entrance to the building at the south end of Bay Street, the Board decided to plant annuals, which can be changed every year. It receives full sun exposure, but is also subject to high winds in that corridor. It is also one of the few beds not connected to the irrigation system, thus somewhat limiting plant selection.

(11) The ramp bed is the closest and most visible for residents and visitors of Park Square, as everyone passes it on their way into and out of the building. The ramp bed was reduced in size after the demolition in order to accommodate a wider wheelchair ramp that was built in 2012. This bed is now flanked by two magnificent magnolias, a weeping spruce, a fragrant lilac, some junipers, some miniature roses, bearded irises, white Siberian iris, peonies, hostas, a climbing hydrangea, dwarf hydrangeas and daylilies.

d. Mid-Level Planters

(1) The Board cannot over-emphasize the fact that the conditions for planting vegetation in the mid-level planters (i.e. the concrete trapezoidal planters) are markedly different from those that existed in 2011. The roots of the trees and shrubs planted 20–30 years ago in the concrete trapezoidal planters penetrated through the concrete and damaged the membranes protecting the podium wall and the roof of the garage, as well as causing structural deterioration and movement in the planters themselves.

(2) A review of CCC145 Board Minutes indicates that in **June 1998**, the Board approved a contract with R.J. Rogers Landscaping Ltd. *“for the removal of roots from the trees in the planter in the corner of Albert and Bay”*. In **June 2005**, the Board paid Proulx Lawn and Shrub Care for *“the removal and disposal of three large fir trees which have outgrown the planters on Bay Street and Queen Street”*. As late as **February 2008**, the Board paid for *“the removal of large over-grown evergreen trees on Queen Street and Bay Street”*

(3) In a 2009 study at Virginia Tech, young trees less than 8 inches in diameter growing in unobstructed soil were analyzed and the ratio of root radius to trunk diameter was found to be about 38 to 1. For example, the roots of a 6 inch diameter tree could spread out from the trunk as far as 19 feet. Photographs of the stumps of

trees planted in the concrete trapezoidal planters and cut down during the podium demolition show diameters of 6 inches to as much as 12 inches.

(4) Based on the above, the Board accepted the recommendation by two engineering consultants that the new trapezoidal planters be built with a concrete bottom to contain root penetration and prevent a repetition of the problems encountered in the past. This main factor restricted the choice of trees for these planters.

(5) Certain plants that were included in the 1988 plan were rejected as not suitable for planting. These include **purple-leaf sand cherry** because it is vulnerable to disease; **green ash** because it requires a greater soil depth than is available in the concrete planters, but more importantly, because it is susceptible to infestation by the emerald ash borer; **mock orange** because it is not suitable for growth in windy conditions; **mugho pine** because it is extremely slow-growing; and **arctic willow** because it is not hardy enough for the prevailing climatic conditions in the Park Square gardens.

(6) Certain evergreens which have been retained, like tamarix junipers, were in the 1988 landscape plan. Unfortunately, they have regularly suffered some form of winter-kill over the past 30 years. Because of their large, spreading nature – they can cover as much as 6 feet in width – they take up valuable space in a limited planting environment, where a variety of flowering shrubs and perennials would provide greater colour and overall visual interest. Hence, the Board has decided not to restore the junipers that died this past winter.

(7) Despite these limitations, the Board, with the recommendation of Yards Unlimited, has been able to plant an attractive array of trees and shrubs in the Albert Street and Queen Street concrete mid-level planters that will thrive in these restricted conditions, and can flourish for years to come without need of frequent replacement. Thus, trees like Amur maple, tree lilac, and crab apple, which have a small, non-invasive root ball, have been selected for these planters. Hardy varieties of shrubs like rugosa rose, dwarf ninebark and honeysuckle were chosen, in order to withstand the anticipated increase in pedestrian traffic due to anticipated highrise construction and the opening of the LRT Confederation Line.

(8) On Queen Street the landscape plan also takes into consideration the location, size and species of trees planted by the City as part of the Queen Street beautification project. The installation of a large ventilation shaft connected to the

Lyon Station of the LRT Confederation Line, which is adjacent to the planters, may also have an impact.

(9) On Albert Street the choice of plants was also influenced by a sun/shade study that was carried out on Albert Street in anticipation of significant changes in sun exposure with the construction of a major building project at 400 Albert Street.

e. The Hexagonal Planters in the Traffic Circle

(1) The only available photograph of the previous hexagonal planters in the traffic circle show a “pom-pom” tree under planted by junipers. Long-time residents however recall that various cedars, spruces and shrubs have been planted there over the past 30 years.

(2) In 2017, the Board approved the planting of boxwood (an evergreen shrub) in this location, but these unfortunately perished the following winter. For now, the traffic circle is planted with a glorious display of annuals and the Board will most likely continue with this practice. It is, after all, the focal point in the Park Square courtyard.

(f) The In-Ground Beds

(1) In 2011, the in-ground vegetation on Queen Street was composed mostly of potentillas and junipers which had spread widely between and in front of the mid-level planters. There were also dwarf burning bushes on Albert Street which had grown to an enormous size. The vegetation, including weeds which was very difficult to control in this type of set-up, was growing on all sides of the concrete planters i.e. in-front, in between and on their sides. The Board decided not to replicate this rather messy design and instead opted for a neat straight line that separates the concrete planters and the in-ground beds from the sidewalk pavers.

(2) It was also decided that a curb be installed around each of these beds. This defines and limits the area where the in-ground vegetation is planted and protects it from pedestrian traffic and potential damage from snow-removal and salt-spraying machines. These curbs will help drain away water, restrict soil erosion, and give flowers and shrubs a more formal and finished look. The Permacon-Chatham beige curbs also blend well with the pavers surrounding the property. Besides their practicality, they play an undeniable role in the aesthetics of our landscaping.

(3) Typically, several factors leave ground-level vegetation vulnerable to damage in urban settings. For Park Square, these range from the large number of dogs that are walked in our neighbourhood, young people using skateboards on their way to the Park of the Provinces, the large number of students and tourists who stay overnight in neighbouring hotels, and road maintenance in winter conditions.

(4) As in the mid-level planters, the shrubs that were selected for these in-ground beds are hardy varieties of plants like the rugosa roses and burgundy barberries on Albert Street. In addition to the usual factors that damage ground-level planting, the choice of plants was also influenced by the sun/shade study that was carried out on Albert Street in anticipation of significant changes in sun exposure with the construction of a major building project at 400 Albert Street.

(5) On Queen Street, Yards Unlimited took into consideration the location, species, and potential height and width of the trees that were planted by the City of Ottawa as part of the Queen Street beautification project, as well as the possible impact of the large ventilation shaft situated near the in-ground beds. Hardy varieties of dogwood, oak sedge, hosta and reed grass were also chosen because these plants will be exposed to a significant increase in pedestrian traffic to and from the Lyon Street Station of the LRT Confederation Line.

A detailed list of all plants in the upper-level, mid-level and in-ground beds can be found in the **Comparative Chart of Trees Shrubs and Plants in the Park Square Garden, 2015 to 2018.**

E. ASSOCIATED TASKS COMPLETED

1. Upgraded Irrigation System

Because of the extensive watering needs of all the trees, shrubs, perennials and annuals in the twelve new trapezoidal planters and fifteen new in-ground beds, the Board approved the installation of an expanded and elaborate irrigation system that will support the three-level vegetation scheme. Manual watering has also been arranged to ensure that newly planted vegetation has a good chance of taking root, settling and maturing. Manual watering is also used in areas where the automatic irrigation system does not reach. For this purpose, new water connections and faucets have been added at four locations.

Final Completion Date August 2018

Contractor Cityscape/Ottawa Irrigation

2. Restoration of Paving Stones on Queen Street

The City of Ottawa has extensively used the sidewalks on the Queen Street side of the property for mobilization and construction work related to the LRT project. During this process, our condominium residents were subjected to constant noise, traffic disruption, dust and dirt on their balconies, and intermittent road closures for the past four years. The City also took away the paving stones that were installed by the corporation during the 2012 podium renovation. The Board has therefore arranged that the City supply the corporation with new paving stones up to the edge of the concrete trapezoidal planters and in-ground beds.

Completed August 2018

Contractor Ottawa Construction Services

3. Electric Lights in the Traffic Circle

Six low-level architectural accent lights similar to those that were in the hexagonal planters prior to the 2011 podium demolition were installed. They are connected to the existing electrical conduit located in the middle of the traffic circle.

Completed December 2016

Contractor Gloucester Electric Ltd.

4. Regular Reports to Owners on Work Progress

In order to maintain transparency and seek reactions, comments and recommendations from our owners, including the **Appellants** and the **Respondents**, to the contempt of court order by Mr. Justice Beaudoin, the Board has regularly reported on the work being carried out by the corporation in the Minutes of the monthly Board meetings, the Board's Report to the Annual General Meeting (AGM), and discussions during the AGM as recorded in the Minutes. In addition, the Board has issued the following reports over the years:

1. Minutes of the Information Session for Owners held on February 18, 2015
2. Board Report to Owners, August 3, 2015
3. Update Report to Owners, February 2016
4. Update Report to Owners, June 2016
5. Update Report to Owners, June 2017

The *Bay Street Beat*, the quarterly newsletter produced by the Board, has also reported on the podium restoration and LRT construction on Queen Street since its first edition published in March 2015.

F. IMPACT OF THE PODIUM DISPUTE

(1) In **June 2011**, the Board of CCC145 signed a contract with Hoskins Restoration Services for the garage and podium repair totalling \$1,135,650, which included HST but excluded Keller's engineering fee. The contract is broken down into two components: **garage/podium demolition and waterproofing \$566,412.50**; and **podium reinstatement \$569,237.50**.

(2) Between **July 1, 2011** and **June 30, 2014**, the corporation spent **\$346,380.00** to cover legal and professional fees pertaining to the podium dispute, the contempt hearing, the appointment of an Administrator and other Administrator-related activities, the appeal hearing, and some insurance issues.

(3) From **July 1, 2015** to **August 2018**, the Board incurred **\$655,494.00** in podium-related expenses; a few remaining bills are expected.

(4) Because of the huge financial burden imposed on the Reserve Fund of the corporation, the Board had to postpone several major capital and infrastructure projects until it was no longer able to do so. We are now undertaking a complete roof retrofit, but other important projects, such as the retrofit of the fire-alarm system and the garage ventilation, have had to be postponed.

(5) In addition to the enormous financial costs, the Board of CC145 has spent an inordinate amount of time and energy dealing with the issue of podium restoration over the past four years, to the detriment, at times, of other issues that are equally important.

(6) The negative publicity surrounding the podium dispute and the existence of the contempt of court order against CCC145 and its former Board of Directors have had a continuing detrimental effect on the resale value of units.

(7) Finally, and just as important, has been the negative impact of the dispute on the social fabric of the condominium community: neighbours on opposite sides of the dispute do not speak to each other, avoid each other in elevators, and refuse to mix in social gatherings. Fortunately, with the passage of time, the entry of new owners and residents, and the hard work of the various committees, neighbourly relations have gradually improved.

G. CONCLUDING REMARKS

(1) The Board has now complied with all seven elements listed in Mr. Justice Beaudoin's court order. Circumstances beyond our control, such as LRT construction and beautification on Queen Street, prevented us from carrying out the necessary hardscaping work in that part of the podium until July 2018. The process of obtaining an Encroachment Agreement with the City of Ottawa on Bay Street took much too long and the process is still ongoing as of this date. In addition, the soil erosion and subsidence on Bay Street was certainly an unexpected problem.

(2) Wherever possible, the Board has chosen to restore the gardens using the kind of trees that were growing before the demolition, such as Amur maple, serviceberry, lilac and crab apple. The maximum sizes of trees and shrubs that were planted were by necessity restricted by access to and availability of nursery-grown plants whose optimum size makes them ideal for planting. Beyond a certain size, these trees would be less viable.

(3) Furthermore, the shrubs and perennials such as junipers, hostas, hydrangeas and burning bush reflect the kind that were growing in the garden in 2011.

(4) The vegetation in various planters were chosen to complement the "brutalist" architectural style of our building and create softer lines and a more natural feel, in contrast to the rigid geometric shape of the walls. They also follow a specific colour scheme that does not clash with the brown/red brick of the building. The mature heights of the trees and shrubs in each of these planters were carefully chosen to create spaces that flow naturally from one planter to the next, creating visual unity in the garden environment as a whole.

(5) While most of the vegetation in the mid-level planters and in-ground beds has only been planted in the summer of 2018, the Board believes that it has now amply complied with the spirit and intent of Justice Beaudoin's Court Order. The three-tiered vegetation scheme has been fully restored. And once again, the Park Square gardens are looking lush and beautiful, full of trees and shrubs that re-create the flowering sequence and change of foliage colours throughout the growing season that existed before. The Park Square podium has once again become a welcome oasis in downtown Ottawa.

(6) Finally, the Board can report that it has received many compliments about the garden from long-time owners and residents, all of whom say that "the gardens are so beautiful and attractive".

Submitted by the CCC145 Board of Directors
August 24, 2018