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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

OTTAWA TOWER II, LLC, A Michigan Limited Liability Company, and NORTH BAY DRYWALL, INC. PROFIT SHARING PLAN & TRUST, a California Pension and Profit Sharing Trust,

Plaintiffs,

v.

Case No. 2012-130331-CH
Hon. JUDGE WARREN

CITY OF PONTIAC, a Michigan Municipal Corporation, LOUIS SCHIMMEL, an individual acting as the Emergency Manager of the City of Pontiac, and OAKLAND COUNTY, a Michigan Municipal Corporation, and OAKLAND COUNTY BUILDING AUTHORITY, a Michigan Building Authority,

Defendants.

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An action arising out of the same transaction or occurrence alleged in the complaint between these parties was filed the United States Federal District Court for the Eastern District of Michigan, where it was assigned Docket No. 12-cv-13134.

COMPLAINT AND JURY DEMAND

Plaintiffs OTTAWA TOWER II, LLC and NORTH BAY DRYWALL, INC. PROFIT SHARING PLAN & TRUST, through their undersigned counsel, for their Complaint and Jury Demand states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff OTTAWA TOWER II, LLC ("Ottawa") is a Michigan limited liability company with a registered office of 30600 Telegraph Road, Suite 2345, Bingham Farms, Oakland County, Michigan 48009.

2. Plaintiff NORTH BAY DRYWALL, INC. PROFIT SHARING PLAN & TRUST ("North Bay") is a qualified pension and profit sharing trust with a business address of 715 Southpoint Boulevard, Suite B, Petaluma, California 94954.

3. Defendant CITY OF PONTIAC is a Michigan Municipal Corporation situated in Oakland County, Michigan.

4. Defendant LOUIS SCHIMMEL is an individual who is serving as the current Emergency Manager for Defendant City of Pontiac and has an office and principal place of business located at 47450 Woodward Avenue, Pontiac, Oakland County, Michigan.

5. Defendant OAKLAND COUNTY is a Michigan Municipal Corporation that is located in the City of Pontiac, Oakland County, Michigan.

6. Defendant OAKLAND COUNTY BUILDING AUTHORITY ("Building Authority") is a building authority incorporated by the State of Michigan pursuant to Act. No. 31 of the Michigan Public Acts of 1948 that operates in the City of Pontiac, Oakland County, Michigan.

7. This Court has subject matter jurisdiction in this case pursuant to MCL 600.601 and 600.605.

8. Venue is proper in this Court pursuant to MCL 600.1615.

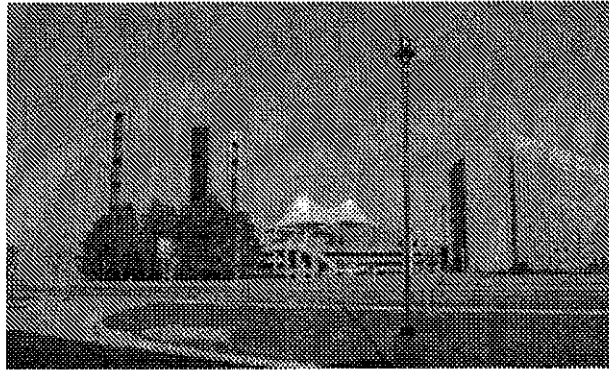
COMMON ALLEGATIONS

The Ottawa Towers And The Phoenix Center – An Integrated Structure

9. Ottawa owns an eight-story office building ("Tower I") comprised of approximately 175,000 square feet of leasable office space located at 31 E. Judson Street, Pontiac, Oakland County, Michigan.

10. North Bay owns an eight-story office building ("Tower II") comprised of approximately 200,000 square feet of leasable office space located at 51111 Woodward Avenue, Pontiac, Oakland County, Michigan. Tower I and Tower II are referred to as the "Ottawa Towers."

11. The Ottawa Towers are located cross-adjacent from each other and are significantly similar in appearance. Ex. 1, Picture of Ottawa Towers, and the picture below:



12. The Ottawa Towers are physically connected to The Phoenix Plaza & Parking Garage (commonly known as the "Phoenix Center"), a three-story, 874,000 square foot (approximate) parking garage structure. The uppermost level of the parking deck is a 292,000 square foot (approximate) garden and entertainment plaza that includes an amphitheater covered by a synthetic fabric canopy.

13. The Phoenix Center was completed in 1980 as part of an urban renewal plan for Pontiac and is a unique, readily identifiable focal point the city's skyline. A portion of Orchard Lake Road runs underneath the Phoenix Center.

14. The Phoenix Center is physically connected to a residential high rise building to the east that provides senior housing for the community.

15. On its parking levels, the Phoenix Center provides approximately 2,500+ parking spaces, which are used by the Ottawa Towers, the senior housing building and the public.

16. The State of Michigan currently leases and occupies a portion of Tower II, and its employees park their vehicles in the Phoenix Center and enter their offices through from inside the parking deck through the connected entrances that join the parking deck and Tower II. Ex. 1, Pictures.

17. The Ottawa Towers have walkways and entrances that are physically attached to the Phoenix Center, including but not limited to entrance doors, stairwells and an atrium. The primary means of ingress and egress for the Ottawa Towers is through the parking deck and/or plaza.

18. The Phoenix Center is physically attached to, and abuts, the exterior walls of the Ottawa Towers and they have attached drainage systems.

19. Due to their intentional integrated design and physical attachment, the Ottawa Towers were designed and constructed to have access doors and stairwells that integrate with the various levels of the Phoenix Center. If those connections were removed, the Ottawa Towers would have large, unfinished and unsafe openings in their structures.

20. Plaintiffs installed extensive fiber optic cables and harnesses in the Ottawa Towers that run through, and are physically connected to, the Phoenix Center and each of the Ottawa Towers. Such cables and harness system were installed and are maintained at great expense to Plaintiffs, and are necessary infrastructure components of the Ottawa Towers.

Integrated Development and Construction, Comprehensive Development Agreement, and Declaration of Easements

21. The City adopted a Modified Urban Renewal Plan in December 1970 (Ex. 2) to redevelop, renew and create a cohesive urban center for businesses, parking, streets, and residential areas. Under that plan, the City desired to “[d]evelop the area at a high density with high-rise buildings integrated into and generally on the perimeter of an off-street parking facility; low-rise buildings may be developed on the air rights over the parking facility” and to “[p]rovide for a tri-level parking structure as an essential element

of the plan, to accommodate approximately 3900 parking spaces and where feasible, to be functionally and architecturally integrated with other components in the area." Ex. 2, pp. 17-18 (emphasis added).

22. Consistent with its written plan to develop an integrated, high-density parking and building structure in the redevelopment area, the City entered into a Comprehensive Development Agreement with the Pontiac Downtown Development Authority ("DDA") and the Downtown Pontiac Development Company, a Michigan co-partnership ("Developer"), on or about October 30, 1979. A copy of such "Development Agreement" is attached as Ex. 3.

23. Under the Development Agreement, Ex. 3, the development and construction of the Phoenix Center, the Ottawa Towers and other attached structures and improvements were planned, funded and constructed as a fully-integrated project. By way of example, the Development Agreement states that:

- a. The DDA was established in 1977 for the purpose of redeveloping the Pontiac central business district.
- b. The City's General Building Authority issued \$25,000,000 in bonds to finance the construction of a parking deck and pedestrian plaza in the central business district.
- c. In addition to the \$25,000,000 in bond funds, the City had requested federal grant funds to make funds available for the construction of the Deck, the Plaza and other Public Site Improvements (as defined in the Development Agreement).
- d. The Developer agreed that it would develop and construct the Deck, Plaza and Public Site Improvements that would become the Phoenix Center, as well as certain "Private Components" that included "Office Buildings" that would become the Ottawa Towers.
- e. The City agreed to transfer certain land to the Developer so that the Developer could construct the Deck, Plaza and Public Site Improvements, as well as the Private Components such as the Office Buildings.
- f. The cohesive, integrated development and construction of all of the Public and Private Improvements, including the Deck, Plaza and Office Buildings, and the assured completion thereof as provided by the Development Agreement and related documents referenced therein, were necessary pre-conditions to the award of any grant monies by the Secretary of the U.S. Department of Housing and Urban Development.
- g. Pursuant to Article III of the Development Agreement, Section 3.4, the City and the DDA agreed to execute and record a Declaration of Easements to be recorded against the "Project

Area," which included all of the real property that comprises the current Phoenix Center, the Ottawa Towers and other attached structures.

- h. Article IV of the Development Agreement states that conditions precedent to the Development Agreement, and the improvements, financing, grants and actions taken pursuant to such agreement, included the approval by all relevant government bodies and agencies of integrated plans, permits and drawings for the development project that would become the Phoenix Center and the Ottawa Towers, and related structures and improvements.

24. As required under the Development Agreement, the City executed a Declaration of Easements dated May 8, 1980, as recorded on May 19, 1980 at Liber 7788, Page 01, Macomb County Records (Ex. 4). The easement applied to all of the parcels identified on Exhibit 1 to the Declaration of Easements (collectively, the 'Easement Parcels').

25. The Declaration of Easements expressly states that the owners of the Easement Parcels intended to:

create certain reciprocal easements for the benefit of the Initial Sites and the Initial Components to provide for ingress and egress for pedestrian traffic between the Initial Components and to and from any Initial Component and the Deck and/or any adjacent city streets, with said easements to be over the Plaza and in and through the Deck; to provide for reciprocal ingress and egress between the Initial Components; to provide for the use of certain walls of the aforesaid improvement either as party walls or for the attachment of one or more of such Initial Components to each other; and to provide for the contingencies of subsequent development.

Ex. 4, p. 1

26. The term "Initial Components", as used in the Declaration of Easements, refers to the definition contained in the Development Agreement and includes the "Additional Retail Building(s), conference center, Deck, Hotel, Office Building No. 1, Office Building No. 2, Plaza, Public Site Improvements, Retail Building No. 1 and the Senior Citizen Building(s)." The structures and improvements that became the Phoenix Center and the Ottawa Towers are included within the definition of "Initial Components."

27. The term "Deck" as defined in the Declaration of Easements refers to the definition contained in the Development Agreement as "that certain parking deck to be constructed on the Deck Site by the Developer pursuant to the Construction Contract" and refers to the parking deck as currently existing as part of the Phoenix Center." Ex. 3, Development Agreement, p. 4.

28. The term "Plaza" as defined in the Declaration of Easements refers to the definition contained in the Development Agreement as "that certain pedestrian plaza to be constructed by the Developer atop the Deck." Ex. 3, Development Agreement, p. 9.

29. The term "Owner" is defined in the Declaration of Easements to be "any person, including but not limited to individuals, corporations, partnerships and unincorporated associations, at any given time holding any fee, mortgage, leasehold or land contract interest in the Project and/or any Parcel by, through or as a grantee, successor or assign of the City, whether direct or indirect."

30. Plaintiffs are each an "Owner" as provided by the Declaration of Easements.

31. The term "Improvements" is defined in the Declaration of Easements as "all improvements presently existing or hereafter placed upon the Land with the Written Consent of the Public Owner."

32. The Phoenix Center and the Ottawa Towers constitute "Improvements" pursuant to the Declaration of Easements.

33. The term "Pedestrian Ways" is defined in the Declaration of Easements as "those bridges to be constructed in the approximate locations shown on Exhibit 2 hereto and to be used to convey pedestrian traffic over, through and between those Parcels and the Improvements to be constructed thereon as shown in said Exhibit 2." Ex. 4, p. 2. By definition, the term "Pedestrian Ways" includes the bridges and walkways between and among the Ottawa Towers and the Phoenix Center.

34. The Declaration of Easements expressly grants Plaintiffs, each as an Owner, and their respective agents, employees, customers and invitees, the following perpetual and irrevocable easement rights:

- a. "the non-exclusive right to use the Plaza . . . to be constructed pursuant to the Construction Contract and the sidewalks adjacent thereto and any other sidewalks located from time to time on the Plaza, for ingress and egress for pedestrian traffic and vehicles between the Improvements or any of them, and the adjacent public streets." Ex. 4, p. 3.
- b. "the right to use the Pedestrian Ways, and the corridors, walkways, bridges, and hallways of the Improvements or any of them directly leading from the Pedestrian Ways through the Improvements to the Plaza on a non-exclusive basis as a means of ingress and egress between the Improvements," and that "[s]uch means of ingress and egress shall remain open during the period that the respective Improvements in which they are located, or the Improvements which they may serve, shall be open for business or public use." Id.
- c. "access to and from any Parcel and/or the Improvements thereon by means of said Pedestrian Ways shall be freely permitted at all times." Id.
- d. "The public and all users of the Project, the Parcels and the Improvements thereon shall be deemed to be the beneficiaries of the easements for Pedestrian Ways" as provided. Id. at p. 5.
- e. The right to require that the Pedestrian Ways be repaired and maintained, because "[i]t shall be the obligation of the Public Owner [meaning the owner of the Deck and the Plaza which, on information and belief, at this time is Oakland County] to restore and maintain the Pedestrian Ways at its own expense. Id. at p. 5.
- f. "easements for the construction, maintenance and operation of such private and public utilities across, under, over and through the Parcels and the Improvements thereon as may be necessary, desirable or appropriate to service the Project, the Parcels and the Improvements to be constructed thereon." Id. at p. 7.
- g. The benefit of an express covenant that "[e]ach Owner shall cause the driveways and sidewalks contained within its respective portion of the Project and any landscape areas contained therein to be continuously repaired and maintained, including cleaning, lighting, painting, landscaping, removal of debris, removal of snow and ice, making of repairs to the driveways and sidewalks, and other similar maintenance, each at their own expense." Id.

35. As expressly stated in the Declaration of Easements, all of the easements, restrictions, and covenants contained in the Declaration of Easements run with the land and are a perpetual charge and burden upon the land for the benefit of the parties and the land described in the Declaration of Easements, including the Phoenix Center and the Ottawa Towers.

36. As provided by the Declaration of Easements, each Owner is required to maintain, at its own expense, any portion of any easement set forth in such easement agreement contained within such Owner's Parcel Ex. 4, p. 7.

37. Pursuant to Paragraph 14 of the Declaration of Easements, Plaintiffs are entitled to enforce their easement rights against any person or persons violating or attempting to violate any declaration, restriction, covenant, condition or agreement contained within the easement agreement, and to enjoin continuation of such violation and/or to recover damages and specific performance. Ex. 4, p. 9.

38. Pursuant to Paragraph 15 of the Declaration of Easements, and also due to the express provision that the easements shall run with the land, the Declaration of Easements is binding upon and inures to the benefit of the parties to such agreement, their respective heirs, executors, administrators, beneficiaries, successors and assigns. Ex. 4, p. 9.

39. The Modified Urban Renewal Plan, the Development Agreement, the Declaration of Easements, and other related agreements make clear that the Phoenix Center and Ottawa Towers were planned, developed and constructed as fully-integrated structures, both physically and economically, in perpetuity and irrevocably.

40. As the current owners, Plaintiffs are the successors in interest to the prior Owners of the portion of the Project and land comprising the Ottawa Towers. Consequently, the Declaration of Easements benefits Plaintiffs and their real property.

41. As planned and developed from inception, the Phoenix Center's plaza and parking deck are critical and necessary to the viability and operations of the Ottawa Towers. In addition to providing ingress and egress into the Ottawa towers, the deck and plaza provide parking for building tenants, walkways and utility connections between the Ottawa Towers and the Phoenix Center, and structural support. Further, the Plaza is a critical amenity to the towers.

42. On information and belief, the Building Authority is the current owner of the Phoenix Center, and has leased the Phoenix Center to the County which, in turn, has subleased the Phoenix Center to the City.

43. The City, County and Building Authority have neglected the maintenance of the Phoenix Center over the last several years.

44. Over the course of several years, Plaintiffs have invested more than \$500,000 of their own funds for the repair and maintenance of the Phoenix Center due to the failures and/or refusals of the City, the County and the Building Authority to maintain and repair the Phoenix Center as required by the Declaration of Easements.

45. DIE Energy approached Plaintiffs and inquired whether Plaintiffs, the County and the City would be interested in an offer by DIE to replace all of the light fixtures within Phoenix Center with high-efficiency, state-of-the-art light fixtures at DIE's expense as part of a DIE initiative. Although Plaintiff approved such improvements, the City, the County and the Building Authority refused to allow DIE to replace the broken, aged and existing light fixtures. As a result, the light fixtures were not replaced, even though DIE's proposal would have provided the Phoenix Center with new lighting with no cost for the fixtures and significant, permanent energy savings.

46. The State of Michigan currently leases space within the Ottawa Towers and its employees park their vehicles within the Phoenix Center parking deck.

47. As billed by the City, Plaintiffs pay the City the monthly charges for the permits issued to the vehicles of Ottawa Towers occupants that park in the Phoenix Center parking deck.

Parking Requirements of the Ottawa Towers

48. As required for business purposes for its tenants, and for its future occupancy needs, the Ottawa Towers are required to have sufficient off-street parking.

49. As part of the integrated structural and conceptual development of the Phoenix Center and the Ottawa Towers, the parking within the Phoenix Center was, on information and belief, considered by the City to satisfy the parking requirements applicable to the Ottawa Towers prior to the issuance of construction permits and, ultimately, certificates of occupancy for each of the Ottawa Towers.

50. The Ottawa Towers have approximately 375,000 +/- of combined rentable square footage, and require at a bare minimum at least 1,250 off-street parking spaces. Due to the fiber-optic capabilities and the construction and design of the Ottawa Towers, the highest and best use of the towers is for a call center and, historically, the Ottawa Towers were used for such purpose and housed approximately 2,000 workers.

51. Without the parking areas provided by the Phoenix Center, the Ottawa Towers will not have sufficient off-street parking to meet their minimum parking requirements.

The Emergency Manager's Decision to Demolish Phoenix Center

52. In March 2009, Governor Jennifer Granholm, through the Local Emergency Financial Assistance Loan Board, appointed Fred Leeb as the City's first emergency manager, due to its economic decline and distress. Mr. Leeb was appointed under 1990 PA 72 ("Public Act 72").

53. In 2011, Michigan's Legislature repealed Public Act 72 and enacted 2011 PA 4, the "Local Government and School District Fiscal Accountability Act," which was codified as MCL 141.1501, et. seq. ("Public Act 4").

54. On September 12, 2011, Defendant Louis Schimmel was appointed to serve as the Emergency Manager ("EM") for the City pursuant Public Act 4.

55. Public Act 4 was suspended August 8, 2012 as the result of a voter-driven ballot referendum under Michigan Const 1963, art 2, sec 9.

56. On May 30, 2012, Defendant Schimmel (as the City's EM), the Vice-Mayor for the City of Pontiac, and the Deputy Oakland County Executive met with Plaintiffs' representatives to discuss the current condition of the Phoenix Center, its maintenance needs and its future.

57. During the meeting, Defendant Schimmel claimed that the Phoenix Center was a financial drain on the City. Because the Phoenix Center is structurally integrated with the Ottawa Towers, and because the parking deck provides necessary parking for the building tenants, it is critical to the continued

viability of the Ottawa Towers. Therefore, Plaintiffs' representative stated that Plaintiffs would be willing to assume responsibility for all of the maintenance, repair, security and operational obligations for the Phoenix Center. As a result, neither the City nor the County would have any further operational obligations or expenses for the Phoenix Center.

58. Defendant Schimmel indicated that he was willing to consider the deal proposed by Plaintiffs' representative on or about June 15, 2012.

59. Believing that the parties had reached an agreement relating to the Phoenix Center, Plaintiffs' representative was surprised when a reporter contacted him on July 5, 2012 seeking a comment or reaction to Defendant Schimmel's recently announced plan to demolish the Phoenix Center.

60. Unbeknownst to Plaintiffs, Defendant Schimmel had ordered the demolition of the Phoenix Center in its entirety, notwithstanding his agreement to allow Plaintiffs to assume responsibility for the updating and maintenance of the Center.

Procedural History and Current Posture Regarding Planned Demolition

61. On July 5, 2012, Defendant Schimmel issued Order No. S-221 (Ex. 5, the 'EMDirective'), which contained his "Approval to Request the County of Oakland to Approve the Demolition of the Phoenix Center Parking Structure" (the 'Phoenix Center').

62. The EMDirective states that Defendant Schimmel has determined that the real estate on which the Phoenix Center is situated is more valuable without the parking structure. The EM also recommended demolition to avoid the expense of necessary repairs and also future maintenance and operational expenses. The EM authorized and recommended immediate demolition of the Phoenix Center. Ex. 5, p. 1. The EM did not disclose how he intended to pay for the cost of demolition, which is conservatively estimated to be at approximately \$2 million.

63. In the EMDirective, and the EM's City of Pontiac Financial and Operating Plan dated June 15, 2012 (Ex. 6), the EM acknowledges that the Phoenix Center is not owned by the City.

64. As attached to the EMDirective as Appendix A (Ex. 5), the Description of the Demolition

Project provides that the demolition contractor is required to:

- a. Complete the demolition project within 120 days of the awarding of the demolition contract. If the demolition contract is awarded prior to August 18, 2012, the City requires that the contractor fence off the entire Phoenix Center structure to prevent all access (including by Plaintiffs' tenants).
- b. Disconnect all utilities (which would include the extensive fiber optic cable system between Tower I and Tower II).
- c. Take all necessary precautions to protect the integrity of the permanent structures that are physically connected to the Phoenix Center, and that the contractor (not the EM, the County or the City) shall be responsible for any damages to the surrounding buildings and streets.

65. In the Scope of Services to be performed by the contractor as part of the planned demolition as set forth in the EMDirective (Ex. 5), there is no requirement that Plaintiffs consent to such work that will physically damage their buildings or that any actions be taken to preserve and protect the Ottawa Towers, their tenants, the parking areas that are required or the operations at such properties.

66. In the "Scope of Services" set forth in the EMDirective (Ex. 5), there is no provision or budget for repairs to the Ottawa Towers or to address the gaping holes and other intentional and foreseeable damage that would be caused to the Ottawa Towers by such demolition. Instead, the EM merely includes "optional" items regarding potential architectural services and cost estimates regarding the repairs to the Ottawa Towers that Plaintiffs assert would necessarily need to be made to the Ottawa Towers if such demolition activities occur.

67. If the Phoenix Center structure is removed and demolished, the impacts upon the Ottawa Towers will be physically destructive and catastrophic because:

- a. Doorways and stairwells will be left exposed with large openings in the sides of the towers;
- b. The façade will be significantly damaged;
- c. The doorways that opened onto the Phoenix Center's plaza, and the doors and stairwells leading to the parking deck's internal levels, will be hazardous and lead to open air, and the

ground elevations outside of some of the entrances will be subject to a cliff-like drop-off thereby rendering them unusable;

- d. The fiber optic cable system and other utilities that traverse through the Phoenix Center will be cut and destroyed;
- e. The parking areas used by the tenants at the Ottawa Towers will be destroyed and become permanently unavailable, leaving the buildings without adequate parking for their total capacity;
- f. The supporting foundations and structural reliance potentialities between the three structures will be withdrawn thereby potentially causing structural insufficiency of the Ottawa Towers;
- g. Plaintiffs property interests in the structure as granted by the Declaration of Easement, including easements for ingress and egress to the Ottawa Towers on multiple levels, will be permanently and irrevocably destroyed; and
- h. The value of the Ottawa Towers will be severely, if not entirely, diminished by the demolition of the Phoenix Center due to, among other things, the severe shortage of adequate parking for the buildings' capacity, resulting damage to the buildings, and the removal of the primary means of ingress and egress.

68. Defendants have acted with complete disregard for the safety, vested interests and welfare of Plaintiffs and their current and future tenants.

69. On July 10, 2012, Defendant Schimmel presented his demolition plans and related proposed Resolution Authorizing the City of Pontiac to Demolish the Phoenix Center Parking Structure (Ex. 7, 'Resolution') to the Oakland County Planning and Building Committee.

70. On July 12, 2012, the Oakland County Finance Committee similarly approved the Resolution and recommended its approval to the Oakland County Board of Commissioners, who approved the resolution on July 18, 2012.

COUNT I – ACTION FOR DECLARATORY JUDGMENT REGARDING DEFENDANT SCHIMMEL'S
AUTHORITY TO INVERSLY CONDEMN PLAINTIFFS' PROPERTY

71. Plaintiffs incorporate all previous allegations as if fully restated herein.

72. An actual case or controversy exists between Plaintiffs and Defendants as to their respective legal rights and obligations, including but not limited to the lack of authority of Defendant Schimmel relating to the Phoenix Center and the Declaration of Easements.

73. According to the EMDirective, the Resolution and all other operative documents regarding the demolition of the Phoenix Center, Defendant Schimmel purported to be exercising his authority under Public Act 4 which has been suspended.

74. On August 3, 2012, the Michigan Supreme Court ruled that the Michigan Board of Canvassers must certify a referendum petition to repeal Public Act 4 for the November 2012 election.

75. On August 8, 2012, the Michigan State Board of Canvassers ("Board") certified the petitions to repeal Public Act 4 for the November 2012 election.

76. As a result of the certification of the petitions by the Board, Public Act 4 was immediately suspended and is of no effect.

77. According to Michigan's Attorney General, the suspension of Public Act 4 resulted in the reinstatement of the prior emergency financial manager statute, Public Act 72. See Michigan Attorney General Opinion No. 7267, issued August 6, 2012.

78. Defendant Schimmel was, on information and belief, reappointed by Michigan Governor Snyder as an EFM pursuant to Public Act 72 within a few hours of the suspension of Public Act 4.

79. For purposes of Public Act 4 and Public Act 72, the City is the "local government" that is subject to the manager's authority. See MCL 141.1505(e).

80. Public Act 72 provides a more limited grant of authority to emergency financial managers appointed under that Act. Indeed, on July 24, 2012, prior to the suspension of Public Act 4, Oakland County sent a letter to Defendant Schimmel noting that if Public Act 4 was suspended, then Defendant Schimmel's "role and authority [would] likely be reduced and the City Council will have an expanded role in the demolition decision [regarding the Phoenix Center]." The letter also notes that Pontiac City Council members appeared to oppose the demolition of the Phoenix Center, and if Public Act 4 was suspended, "the Emergency Financial Manager may have insufficient powers to independently proceed with the demolition project."

81. Upon information and belief, no directives were issued by Defendant Schimmel as an EFM pursuant to Public Act 72, and therefore no approvals or resolutions were given by the County, the City or the Building Authority.

82. Under Public Act 4, prior to its suspension, the EM was empowered to 'sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions or responsibilities of the local government, provided the use or transfer of assets, liabilities, functions, or responsibilities for this purpose does not endanger the health, safety, or welfare of residents of the local government or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the local government.'"

83. Public Act 72, provides that an EFM may, "[e]xcept as restricted by charter or otherwise, sell or otherwise use, the assets of the local government to meet past or current obligations, provided the use of the assets for the purpose does not endanger the public health, safety, or welfare of residents of the unit of local government." MCL 141.1221(1)(i).

84. Defendant Schimmel lacks authority under Public Act 4 to close and demolish the Phoenix Center for at least the following reasons:

- a. Public Act 4 does not provide that the EM can demolish any assets of the local government, being the City;
- b. Public Act 4 does not provide the EM with any authority over the assets of the Building Authority and, as acknowledged by Defendants, the Phoenix Center is an asset of, and owned by, the Building Authority;
- c. Public Act 4 does not authorize the EM to demolish the Phoenix Center because such demolition will endanger the safety and welfare of Plaintiffs, the Ottawa Towers and their tenants;
- d. Public Act 4 does not authorize the EM to close and demolish the Phoenix Center because such closure and demolition will impair the uncontested legal obligations of the City pursuant to the Declaration of Easements; and
- e. Public Act 4 does not authorize the EM to close and demolish the Phoenix Center because to do so will improperly impair the vested property rights and interests of Plaintiffs.

85. The Resolution that was reviewed and recommended for approval by the County's Building and Planning Committee, Finance Committee and Board of Commissioners was presented to them by the EM upon a representation that the EM possessed authority to act pursuant to Public Act 4 to proceed with the closure and demolition of the Phoenix Center.

86. Because Defendant Schimmel lacks authority pursuant to Public Act 4, the Resolution is erroneous, unsupported and legally invalid, and cannot serve as any basis for closure or demolition of the Phoenix Center, and Defendant Schimmel has no authority to proceed with closure or demolition pursuant to suspended Public Act 4.

87. Under Public Act 72, Defendant Schimmel lacks authority to order demolition because: (a) Public Act 72 confers no authority upon Defendant Schimmel to destroy, close and demolish the Phoenix Center; and (b) such destruction, closure and demolition is not intended and would not be to "meet past or current obligations" of the City. Instead, Defendant Schimmel has repeatedly stated that he is attempting to avoid future expenses relating to the Phoenix Center.

88. Defendant Schimmel lacks any authority, under Public Act 4 or Public Act 72, to close or demolish the Phoenix Center or damage the Ottawa Towers.

COUNT II – BREACH OF DECLARATION OF EASEMENTS AND REQUEST FOR SPECIFIC
PEFORMANCE

89. Plaintiffs incorporate all previous allegations as if fully restated herein.

90. The Declaration of Easements is a valid and binding agreement that is enforceable between Plaintiffs and Defendants, and conveys an interest in real property to Plaintiffs.

91. Defendants have violated the Declaration of Easements by, at a minimum:

- a. Refusing to abide by Plaintiffs' easement rights of ingress/egress and for utilities within, through and upon the Phoenix Center;
- b. Upon demolition or closure of the Phoenix Center, the complete destruction and termination of Plaintiffs' easement rights relating to the Phoenix Center;

- c. Failing to maintain the parking areas within the parking structure, including the concrete surfaces, parking lot striping and sweeping, lighting, electrical conduits and systems, lighting fixtures, gates and signs;
- d. Failing to maintain any of the landscaping, including grass cutting and trimming, flower/planter boxes, weeding or other activities necessary for upkeep of the grounds included within or surrounding the Phoenix Center and the top deck/amphitheater areas;
- e. Failing to maintain and repair the pedestrian walkway that traverses across Orchard Lake Road but within the parking structure;
- f. Failing to remove trash and trespassers from the Phoenix Center;
- g. Leaving exposed high-voltage wires and broken light fixtures present in the parking areas within the Phoenix Center within the reach of, and potential contact with, persons legally within the Phoenix Center; and
- h. Failing to allow Plaintiffs with reasonable access to certain areas of the Phoenix Center so that Plaintiffs could repair and address certain hazardous conditions within the parking areas, including exposed high-voltage wiring, among other violations.

92. If Defendants fail to maintain the Easement as required in the Declaration of Easements, then Plaintiff are entitled to undertake any efforts necessary to maintain the Easement.

93. Defendants have refused to permit Plaintiffs to take all efforts necessary to maintain the Easement.

94. Plaintiffs' easement rights under the Declaration of Easements constitute interests in land and, therefore, are unique.

95. Defendants are in breach of the Declaration of Easements.

96. The Declaration of Easements expressly provides that Plaintiffs are entitled to specific performance by Defendants of their obligations under such agreement.

97. Plaintiffs are entitled to specific performance by Defendants of their obligations and the enforcement of Plaintiffs' rights pursuant to the Declaration of Easements because the Declaration of Easements contains an express provision that states that the parties are entitled to specific performance.

Ex. 4, p. 9.

98. As a direct and proximate result of Defendants' violations of the Declaration of Easements, Plaintiffs have suffered damages in an amount not less than \$500,000.00 as expended by Plaintiffs for necessary repairs and maintenance of the Phoenix Center, and will, on information and belief, suffer damages in an amount not less than \$9,000,000.00 if the demolition of the Phoenix Center occurs.

99. Plaintiffs do not have an adequate remedy at law to address the diminution or loss of their easements rights pursuant to the Declaration of Easements.

COUNT III – INVERSE CONDEMNATION

100. Plaintiffs incorporate all previous allegations as if fully restated herein.

101. Plaintiffs are the owners of the Ottawa Towers and possess the rights set forth in the Declaration of Easements.

102. Defendants' decision to close and demolish the Phoenix Center will (1) deprive Plaintiff's of their rights and property interests under the Declaration of Easements and (2) cause the Ottawa Towers to suffer physical intrusion and damage, loss of access, subsidence and loss or diminution of lateral/adjacent support and land stability, and pre-closure/demolition threats and delay.

103. The closure and/or demolition of the structure will be substantially and/or completely and permanently diminish the value of Plaintiff's property.

104. Demolition of the Phoenix Center constitutes a taking of Plaintiff's property because, among other things:

- a. Demolition of the Phoenix Center will result in the destruction of Plaintiff's property rights as granted by the Declaration of Easements;
- b. Demolition of the Phoenix Center will eliminate the primary means of ingress and egress into the Ottawa Towers;
- c. Demolition of the Phoenix Center will require that Defendants intrude onto Plaintiff's buildings, causing significant damage and injury to the physical structure of the Ottawa Towers;
- d. The cost of known repairs to the Ottawa Towers necessitated by removal of the Phoenix Center exceeds \$2 million;

- e. Demolition of the Phoenix Center will leave Plaintiffs without adequate parking for the buildings, thereby significantly diminishing the value of the Ottawa Towers;
- f. The fiber optic cable system and other utilities that traverse through the Phoenix Center will be cut and destroyed.

105. Defendants' actions as taken under color of state law for the purpose of a public project or for public use violate the Fifth Amendment and Fourteenth Amendment of the United States Constitution and the Constitution of the State of Michigan, Const. 1963, Article 10, §2, which prohibit the temporary and permanent taking of private property for public use without just compensation.

106. Defendants' overt and affirmative actions are directly aimed at Plaintiffs' property and, as such, represent an abuse of any of Defendants' legitimate governmental powers.

107. Each of the Defendants either planned or approved the public project for closure and demolition of the Phoenix Center or substantially participated in such activities.

108. As a direct and proximate result of Defendants' wrongful taking of, and damage to, Plaintiffs' property and easement rights, Plaintiffs have suffered, and will further suffer, damages, in an amount not less than \$9,000,000.00, plus costs and attorney fees.

COUNT IV – VIOLATION OF DUE PROCESS

109. Plaintiffs incorporate all previous allegations as if fully restated herein.

110. Plaintiffs possess property rights protected under the US and Michigan Constitutions, including all rights relating to ownership and possession of its real property, its easements rights pursuant to the Declaration of Easements and its vested rights to contractual benefits pursuant to its real property lease with the State of Michigan.

111. Defendants' actions in ordering the demolition of the Phoenix Center constitute a violation of the 5th and 14th Amendments of the U.S. Constitution, and Art. I, §§10 and 17 of the Michigan Const. of 1963, as amended, because the demolition constitutes a taking of Plaintiffs' property without just compensation.

112. Despite the fact that the demolition of the Ottawa Towers will result in the taking of Plaintiff's property, Defendants have provided no opportunity for hearing, redress, review, or appeal of the decision to demolish the structure, damage Plaintiffs' buildings or terminate Plaintiffs' easement rights.

113. Defendants have made no offer to justly compensate Plaintiffs for the taking of Plaintiffs' property, including but not limited to the destruction of Plaintiffs' easement rights and the damage to the Ottawa Towers.

114. Under Public Act 4 and Public Act 72, an emergency manager is appointed to manage cities facing "financial emergencies," and Defendant Schimmel has publicly stated that the City of Pontiac is projected to complete the 2011-2012 fiscal year "with a deficit of approximately \$8.4 million." Further, the deficit will be even higher if the City is forced to pay an additional \$5.9 million "to the Police and Fire Pension and VEBA plans." See City of Pontiac Financial and Operating Plan, June 15, 2012, available at <http://www.pontiac.mi.us/info/efm.html>.

115. Given the City's state of financial emergency, which resulted in the appointment of Defendant Schimmel and which is evidenced by the City's deficit and inability to fund public employee pensions, it is clear that Defendants lack the ability to justly compensate Plaintiffs for the property rights that will be destroyed with the demolition of the Phoenix Center.

116. Defendants' actions constitute violations of Plaintiffs' procedural and substantive due process rights by, among other things, depriving Plaintiffs of their vested property rights without due process or the possibility of just compensation.

117. To the extent that Defendant Schimmel claims authority under Public Act 4 and/or Public Act 72, as applied, to take Plaintiff's property interests, those statutes violate the 5th and 14th Amendments of the U.S. Constitution, and Art. I, §§10 and 17 of the Michigan Const. of 1963, as amended, as they purport to authorize Defendant Schimmel to take Plaintiffs' property without due process or just compensation.

118. Defendants have failed to demonstrate any necessary purpose for the taking of Plaintiffs' property, as there is currently no plan for the immediate development of the Property.

COUNT V – VIOLATION OF 42 USC §§ 1983 AND 1988

119. Plaintiffs incorporate all previous allegations as if fully restated herein.

120. Plaintiffs possess federally-protected property rights, including all rights relating to ownership and possession of its real property, its easements rights pursuant to the Declaration of Easements and its vested rights to contractual benefits pursuant to its real property lease with the State of Michigan.

121. Defendants, through their actions, have interfered with, and intend to deprive Plaintiffs, of such rights under color of state law, which is actionable pursuant to 42 U.S.C. §1983.

122. As a result of Defendants' violation of 42 U.S.C. §§1983, Plaintiffs are entitled to payment of their costs and attorney fees pursuant to 42 U.S.C. §1988(b) and (c).

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court grant Plaintiffs the following relief:

- A. A preliminary injunction to prevent closure or demolition of the Phoenix Center, any damage to Plaintiffs' buildings, and any interference with Plaintiff's rights under the Declaration of Easements, and with such preliminary injunction to be converted into a permanent injunction upon the conclusion of this case upon the merits;
- B. A declaratory judgment in favor of Plaintiffs that Defendant Schimmel, or such other Emergency Manager lacks authority to take action to demolish or close the Phoenix Center;
- C. A declaratory judgment that Public Act 4 and Public Act 72 are unconstitutional as applied, and/or otherwise ineffective and/or repealed;
- D. In the event of the demolition or closure of the Phoenix Center, a monetary judgment in favor of Plaintiffs against Defendants, jointly and severally, in an amount not less than \$9,000,000.00 as

just compensation for Defendants' wrongful taking and inverse condemnation of Plaintiffs' property and vested easement and other contractual rights, and an order compelling Defendants to post a security bond in such amount prior to the commencement of any demolition activities;

- E. A monetary judgment in favor of Plaintiffs against Defendants, jointly and severally, in the amount not less than \$500,000.00, or such other increased amount as this Court considers just and proper, as compensatory damages, for Defendants' breach of the Declaration of Easements by their failure to repair and maintain the Phoenix Center thereby causing Plaintiffs to expend such funds; and
- F. Such other monetary, equitable and injunctive relief as this Court considers just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all claims and issues so triable.

MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.

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Dated: November 2, 2012

EXHIBIT 1