Report - Standing Policy Committee on Property and Development - October 4, 2005

Item No. 25 **Rapid Transit Project (Eastern Corridor) - Land Exchange - Tallman Investments Ltd. (Princess Auto) - east side of Panet Road, south of Regent Avenue West**
File FI-2.4.4.1

STANDING COMMITTEE RECOMMENDATION:

On October 19, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That the exchange of the lands shown as Parcel A and Parcel B on Misc. Plan No. 11824/4 be approved in accordance with the terms and conditions as negotiated and specified in Schedule "A1" to the report of the Director of Planning, Property and Development dated September 27, 2005.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report - Standing Policy Committee on Property and Development - October 4, 2005

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 19, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On October 4, 2005, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: **Proposed Rapid Transit Project (Eastern Corridor)**
Proposed Land Exchange - Tallman Investments Ltd. (Princess Auto)
East Side of Panet Road, South of Regent Avenue West
East Kildonan/Transcona Community
Elmwood/East Kildonan Ward

For submission to: **Standing Policy Committee on Property and Development**

Original report signed by: **Director of Planning, Property and Development**

Report date: September 27, 2005

Recommendation(s):

That the proposed exchange of the lands shown as Parcel A and Parcel B on Misc. Plan No. 11824/4 be approved, in accordance with the terms and conditions as negotiated and specified in the attached Schedule "A1".

REPORT SUMMARY

Key Issues:

- On September 19, 2005, the solicitor for Tallman Investments Ltd. (Princess Auto) advised the Planning, Property & Development Department of their agreement to proceed with an equitable land exchange, in accordance with the terms and conditions as negotiated and specified in the attached Schedule "A1".
- The City requires Parcel A shown on Misc. Plan No. 11824/4 for the Eastern Corridor of the proposed Rapid Transit Project.
- Tallman Investments Ltd. (Princess Auto) requires Parcel B for a proposed expansion of the existing Princess Auto building at their Panet Road location.
- The terms and conditions of the land exchange require approval by Council.

Implications of the Recommendation(s):

General implications:

X	**None**
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s):

-

Policy implications:

X	**No**
	Yes

Comment(s):

-

Environmental implications:

X	**No**
	Yes

Comment(s):

- As a precaution, the proposed transaction contains terms that protect the City's interests regarding environmental matters.

Human resources implications:

X	**No**
	Yes

Comment(s):

-

Financial implications:

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s):

- The Transit Department has advised that adequate funding for this land exchange is available in Capital Account No. 442-181000-420754-4220000394-PROPERTY CNOTH.

REASON FOR THE REPORT:

Council's approval is required for the proposed land exchange, in accordance with the terms and conditions as negotiated and specified on the attached Schedule "A1".

HISTORY:

On July 23, 2003, Council approved the proposed Rapid Transit project and "authorized the Director of the Planning, Property and Development Department to negotiate such property acquisitions as the Transit Department, through its consultants, may identify for completion of Stage 1 of the Eastern Corridor and Stage 1 of the Southwestern Corridor, and to report back with the results thereon".

In January, 2005, representatives of the Planning, Property and Development Department and the Transit Department met with the owner, Tallman Investments Ltd. to review the building expansion plans proposed by Princess Auto and to identify the City's land requirements for the proposed Eastern Corridor, and to explore available options, such as a proposed land exchange.

Ensuing negotiations by the Department with Tallman Investments Ltd. (Princess Auto) have produced an agreement to a proposed land exchange, subject to Council approval. The particulars of the subject properties and the negotiated settlement are as follows:

Parcel A [Tallman Investments Ltd. (Princess Auto) to convey to City]

Location:	East side of Panet Road, North of Mission Street
Legal Description:	Part Lot 74, OTM, St. Boniface (shown as Parcel A on Misc. Plan No. 11824/4, attached)
Ownership:	Tallman Investments Ltd. (Princess Auto) c/o Bob Hucal, Monk Goodwin, 800 – 444 St. Mary Avenue, Winnipeg, Manitoba, R3 C 3T1
Certificate of Title No.:	Part 1748952
Zoning:	"M1"- Industrial District
Site Size/Area:	±5140 square metres (±55,326.5 square feet)
Description of Property:	Parcel A forms part of a paved parking lot for the Princess Auto operation and is improved with an existing loading dock, including an enclosed area. Any and all affected improvements are to be reconstructed and/or replaced by the City as part of the proposed Rapid Transit Project.

Parcel B [City to convey to Tallman Investments Ltd. (Princess Auto)]

Location:	East Side of Panet Road, South of Regent Avenue West
Legal Description:	Part of Public Road Plan 8961, shown as Parcel B on Misc. Plan No. 11824/4, attached)
Ownership:	City of Winnipeg
Certificate of Title No.:	Part 1711262; Part 979139
Zoning:	"M1" Industrial District
Site Size/Area:	±5140 square metres (±55,326.5 square feet)
Description of Property:	Vacant land.

DISCUSSION:

Ensuing negotiations by the Planning, Property and Development Department produced the owner's agreement on September 19, 2005 to an equitable land exchange, in accordance with the terms and conditions as negotiated and specified on the attached Schedule "A1".

In order to postpone potential relocation costs for Princess Auto's existing improvements and use of Parcel A, the proposed agreement provides for a lease back to Princess Auto until either the land is required for the proposed rapid transit project, or a determination is made that some or all of the land is no longer required. The proposed lease is for a rental of one ($1.00) Dollar per annum plus realty taxes. The initial term would be for a five (5) year period and automatically renewed on an annual basis until the City provides six (6) months notice, as per Clause 10 of Schedule "A1".

By proceeding with this proposed acquisition, based on the proposal as recommended herein and the terms and conditions as now accepted by the property owner, the City will be in a position to obtain vacant possession of the subject property (Parcel A) in order to accommodate the Eastern Corridor of the proposed Rapid Transit Project. In addition, Tallman Investments Ltd. (Princess Auto) will be able to undertake the expansion of their existing building onto Parcel B immediately.

The Planning, Property and Development Department consider the proposed land exchange to be equitable since both parcels are valued at approximately $110,650.00. The associated terms and

conditions are considered reasonable and consistent with similar land exchanges negotiated by the City. A copy of Schedule "A1" containing the terms and conditions of this proposed land exchange is attached hereto.

The Transit Department and the Planning, Property and Development Department are of the opinion that it would be in the best interests of the City to conclude this matter on the basis of the proposal as specified herein.

The Transit Department has advised that adequate funding for this proposed land exchange is available in Capital Account No. 442-181000-420754-4220000394-PROPERTY CNOTH.

Financial Impact Statement

Date: September 20, 2005

Project Name:

Proposed Rapid Transit Project (Eastern Corridor) - Proposed Land Exchange - East Side of Panet Road, South of Regent Avenue West

First Year of Program 2005

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ 4,100				
Less: Existing Budgeted Costs	4,100				
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal					
Debt - External					
Grants (Enter Description Here)					
Reserves, Equity, Surplus					
Other - (Enter Description Here)					
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs					
Less: Incremental Revenue/Recovery					
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts					
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

On September 20, 2005, the Transit Department advised the Real Estate Division of the Planning, Property and Development Department that the costs of implementing this transaction are to be charged to Capital Account No. 442-18100-420754-4220000394-PROPERTY CNOTH. Closing and associated costs with this proposed land exchange should be achievable within an approximate amount of $4,100.00.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

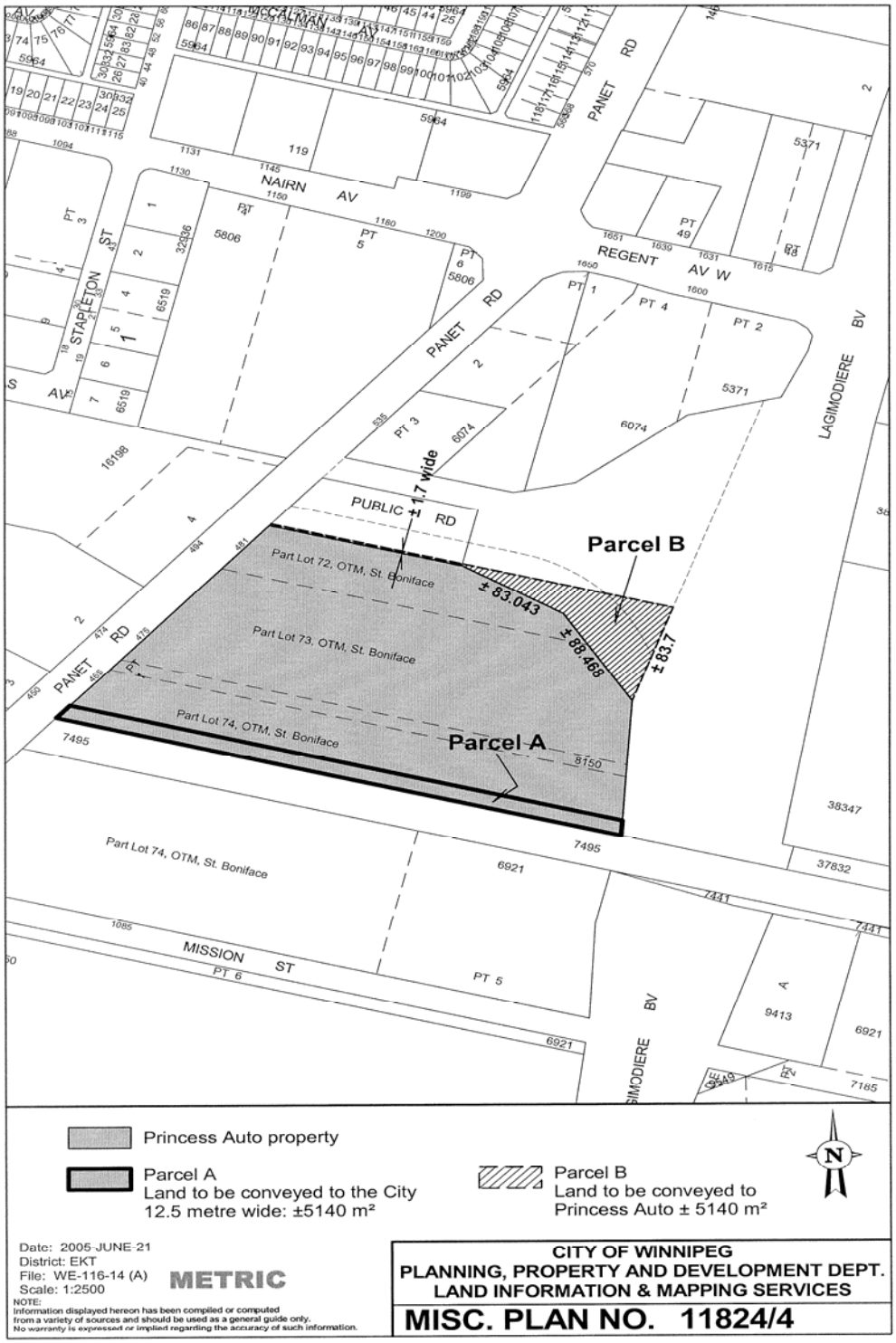
IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

The Transit Department.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate Division
Prepared by: Maria Haddock, Senior Negotiator
PPD File #: WE-116-14(A)

Document name: O:\Reports Directive\Real Estate\Acquisition\princessauto.doc


Parcel B
Parcel A
PUBLIC RD
± 1.7 wide
± 83.043
± 88.468
± 83.7
Part Lot 72, OTM, St. Boniface
Part Lot 73, OTM, St. Boniface
Part Lot 74, OTM, St. Boniface
PANET RD
NAIRN AV
REGENT AV W
MISSION ST
LAGIMODIERE BV
STAPLETON ST
Princess Auto property
Parcel A
Land to be conveyed to the City
12.5 metre wide: ±5140 m²
Parcel B
Land to be conveyed to
Princess Auto ± 5140 m²
N
Date: 2005 JUNE 21
District: EKT
File: WE-116-14 (A)
Scale: 1:2500
METRIC
NOTE:
Information displayed hereon has been compiled or computed
from a variety of sources and should be used as a general guide only.
No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11824/4

Schedule "A1"

File No. R.__/____(_)

THIS AGREEMENT made in duplicate the day of , 2005.

BETWEEN:

THE CITY OF WINNIPEG,

(hereinafter called the ***"City"***),

OF THE FIRST PART,

- and -

TALLMAN INVESTMENTS LTD.

(hereinafter called ***"Princess Auto"***),

OF THE SECOND PART.

WHEREAS the City is the registered owner of the land comprising approximately 5,140 square metres shown hatched and identified as "Land to be conveyed to Princess Auto" on Misc. Plan No. 11824/4 attached hereto as Schedule "A", (hereinafter called ***"Parcel B"***);

AND WHEREAS Princess Auto wishes to acquire Parcel B for the purposes of expanding its business currently operating on its adjoining land shown outlined and identified as Princess Auto property" on said Misc. Plan No. 11824/4;

AND WHEREAS the City is prepared to convey Parcel B to Princess Auto for consolidation with its adjacent Princess Auto property, upon certain conditions as hereinafter set forth;

AND WHEREAS Princess Auto is the registered owner of certain land comprising approximately 5140 square metres shown shaded and identified as "Land to be conveyed to the City" on Misc. Plan No. 11824/4, (hereinafter called ***"Parcel A"***);

AND WHEREAS the City wishes to acquire Parcel A for the purposes of a proposed rapid transit corridor;

AND WHEREAS Princess Auto has agreed to convey Parcel A to the City upon certain conditions as hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the premises and the covenants herein, the parties agree, each with the other, as follows:

1. The preamble hereto shall and does form an integral part of this Agreement.

2. Princess Auto will purchase Parcel B for the sum of **ONE ($1.00) DOLLAR**, plus applicable Goods and Services Tax.

3. The City will purchase Parcel A for the sum of **ONE ($1.00) DOLLAR**, plus applicable Goods and Services Tax.

4. Parcel B shall be conveyed to Princess Auto by the City free and clear of any and all registered encumbrances and any and all leasehold interests except any public utility caveats and any other caveat that may be placed by the City pursuant to this Agreement.

5. Parcel A shall be conveyed to the City by Princess Auto free and clear of any and all registered encumbrances and any and all leasehold interests except any public utility caveats and any other caveat that may be placed by Princess Auto pursuant to this Agreement.

6. Princess Auto may register and maintain a caveat as a first charge against Parcel A to ensure the performance of the covenants on the part of the City herein set forth, and the City agrees to grant and does hereby grant to Princess Auto an interest in Parcel A according to the tenor of this Agreement.

7. The date for vacant possession (free of leasehold interest) and adjustments in respect of Parcel A and Parcel B shall be the date one hundred and twenty (120) days from approval of this transaction by the City of Winnipeg Council or as otherwise agreed to by the parties (hereinafter called the ***"closing date"***).

8. Princess Auto shall pay as an adjustment an amount equal to the total of such taxes, rates and charges which would have been levied or charged against Parcel B as though Parcel B had been entered on the assessment rolls of the City as privately owned and subject to taxation, which adjustment shall be calculated from the closing date to and including the last day of the current taxation year.

9. Pursuant to a Lease of Parcel A back to Princess Auto once Parcel A has been conveyed to the City pursuant to this Agreement, as defined in paragraph 10 hereof, Princess Auto shall continue to pay the realty taxes payable in respect of Parcel A as though Parcel A continued to be privately owned and subject to taxation until either termination or expiration of the said lease.

10. In consideration of Princess Auto conveying Parcel A to the City as herein contemplated, the City will enter into a Lease Agreement with Princess Auto to lease Parcel A back to Princess Auto, it being understood that the date for commencement of the Lease shall be either the date of possession as hereinbefore stipulated or the date immediately following the date of possession as hereinbefore stipulated as mutually agreed upon by the City and Princess Auto and subject to the following conditions:

    a. Term – Five (5) Years and thenceforth to be automatically renewed on an annual basis.

b. Termination – at the City's discretion, six (6) months notice in writing to be provided to Princess Auto, from either:

(i) the date the City advises Princess Auto of the approval of the proposed rapid transit corridor by the City of Winnipeg Council; or,

(ii) the date the City advises Princess Auto that no portion of Parcel A will be required for the proposed rapid transit corridor.

c. Rental – One ($1.00) Dollar, plus an amount equivalent to the realty taxes on the said land, rates including local improvements, and charges assessed for the land as though privately owned.

d. In the event that the City should ultimately determine it only requires the most southerly 5.0 metres in perpendicular width of Parcel A and not the total 12.5 metres in perpendicular width of Parcel A for its purposes, then in such case Princess Auto shall have the right to reacquire from the City the residual portion of Parcel A, being the most northerly 7.5 metres in perpendicular width of Parcel A, at its then prevailing market value.

e. In the event that the City requires more than only the most southerly 5.0 metres in perpendicular width of Parcel A for the purposes of a proposed rapid transit corridor, the City shall, at its sole expense, reconstruct the portion of existing loading dock, including the existing enclosed area and also replace the affected parking stalls, if possible, and in a reasonable manner onto the adjacent property owned by Princess Auto; the details of which are to be determined by the City prior to the land being required by the City for the purposes of a proposed rapid transit corridor.

f. In the event that the City does not require any portion of Parcel A for the purposes of a proposed rapid transit corridor, then in such case Princess Auto shall have the right to reacquire from the City all of Parcel A at its then prevailing market value.

g. In the event that Princess Auto becomes entitled to the right to reacquire from the City the whole or any portion of Parcel A pursuant to the above provisions and Princess Auto wishes to exercise such right, then Princess Auto shall advise the

City in writing that Princess Auto is exercising such right within three (3) months of the date the City provides notice to Princess Auto pursuant to sub-paragraph 10(b) and the date of possession shall be the date of termination of the Lease.

11. The parties are providing no warranty or representation of any kind related to the condition of Parcel A and Parcel B or developability of such lands. Each party must rely upon its own investigations and must satisfy itself as to the suitability of the subject lands for its needs. For greater certainty and without limiting the generality of the foregoing, both Princess Auto and the City respectively acknowledge and accept the facts that both Parcel A and Parcel B each have a history of industrial uses, thus, either or both parcels of land may contain environmental contaminants and, in this regard, the term *"caveat emptor"* applies to the fullest extent.

12. Each party shall accept from the other Parcel A and Parcel B in an "as is" condition, each party relying on their own personal inspections of the respective lands, independent of any representations made by or on behalf of the other party. Any error or discrepancy in the description or dimensions of the lands as contained herein shall not entitle the parties to any compensation in respect thereof, nor will it entitle the parties to cancellation of this transaction.

13. No real estate commissions are payable in respect of these transactions.

14. The parties hereto agree, each with the other, as follows:
    a. the exact boundaries and area of Parcel A and Parcel B shall be fixed and set by a plan (herein called ***"the plan")*** which the City does hereby covenant and agree that it shall, at its sole cost, effort and expense, cause to be prepared and deposited at the Winnipeg Land Titles Office to properly secure title to Parcel A for the City, Parcel B for Princess Auto, and consolidation of Parcel B and the residual portion of the Princess Auto property after conveyance of Parcel A to the City, as herein contemplated;

b. Princess Auto hereby acknowledges and agrees that it shall, at its sole cost, effort and expense, ensure that:

(i) if Parcel A is, at closing, subject to any existing mortgage(s) liens(s), builders' lien(s) or judgement(s), Princess Auto shall and does hereby undertake to provide to the City at no charge to the City, all required documentation so as to ensure that such mortgage(s), lien(s), builders' lien(s) is/are fully discharged from Parcel A prior to conveyance of Parcel A to the City and Parcel B to Princess Auto as herein contemplated;

(ii) pay to the City upon demand so to do, any costs incurred by the City directly related to the consolidation of Parcel B and the residual Princess Auto property including without limiting the generality of the foregoing, land transfer tax as may be applicable to Parcel B and registration fees for documentation which may be required to be provided to the City by Princess Auto in compliance with sub-clause 13(b)(i) above;

(iii) the residual Princess Auto property and Parcel B are to be considered as ***"consolidated lands"*** to constitute a single and indivisible parcel; and

(iv) henceforth, no further subdivision or conveyance or disposition of any part of the consolidated lands shall be carried out without making application to the City for approval of the subdivision of the consolidated lands or any part thereof;

c. In addition to such costs and expense as hereinbefore identified, each party shall be solely responsible for all costs incurred by them in meeting their respective obligations as are herein contained, including without limiting the generality of the foregoing, professional and legal fees, disbursements, land transfer tax and any and all applicable taxes.

15. Princess Auto shall be entitled within ninety (90) days from the date hereof (hereinafter called the ***"due diligence period"***) to:

a. Conduct or cause to be conducted an Environmental Site Assessment of Parcel B. Should Princess Auto conduct such Environmental Site Assessment, Princess Auto shall provide copies of such Environmental Site Assessment and/or Report(s) concerning soil testing of Parcel B to the City for its own use, at no cost to the City;

b. Inspect or investigate Parcel B, the title thereto, the permitted encumbrances, any tenancies and all other matters material to the proposed use of the City Land and further, on the express understanding that it is relying solely upon its own independent inquiries and investigations and the advice of its own consultants and there are no representations, warranties, guarantees, conditions, collateral agreements, covenants and agreements except those expressly set forth herein;

If it is determined as a result of such inspections and investigations that contamination levels exceed Provincial Environmental Standards for the intended use of Parcel B or Parcel B is not suitable for Princess Auto's intended use of Parcel B and documentation to that effect is produced to the City within the due diligence period, Princess Auto, at its sole option, shall be entitled to cancel this Agreement;

AND FURTHER, in the event that Princess Auto fails to provide such documentation as aforesaid, Princess Auto shall complete the purchase as herein contemplated and shall indemnify and save harmless the City from and against any and all claims arising from or in any way attributable to the existence of contaminants of any kind whatsoever at, in or upon Parcel B.

16. In the event that this Agreement shall be cancelled pursuant to Clause 14 hereof, Princess Auto shall restore Parcel B to the same condition as prior to its entering in or upon the same in pursuance of Clause 14.

17. During the due diligence period, Princess Auto shall indemnify and save harmless the City from and against any and all expenses, costs, claims, demands, actions, causes of action, suits or other proceedings whatsoever, arising out of the work done in pursuance of the Environmental Site Assessment, by Princess Auto or any person, firm or corporation whether to real or personal property, wheresoever situated, or by any member, employee, agent, licensee, invitee, tenant or third party, whether claiming through or under Princess Auto or otherwise, caused by reason of or in any way attributable to Princess Auto's use of Parcel B and regardless of whether there is or was any negligence on the part of the City, its servants, employees, agents or otherwise. Without limiting the generality of the foregoing, such indemnity shall include any expenses, costs, claims, demands or actions arising out of injury or death to persons or animals who gain access to Parcel B as a result of the said Environmental Site Assessment. Claims referred to herein shall include any awards made against the City under any statute for the protection of workmen.

18. Princess Auto shall consent on a Real Owner Application form to add the City as the real owner of Parcel A and the City shall consent on a Real Owner Application form to add Princess Auto as the real owner of Parcel B on the assessment rolls of the City.

19. Each of the parties hereto will self-assess any Goods and Services Tax payable on this proposed transaction. The City's GST Registrant Number is R121682967. The Purchaser's GST Registrant Number is _____.

20. Time shall be in every aspect and particular of the essence of this Agreement, which shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns and successors in title to the lands affect thereby.

21. This proposed transaction is subject to approval by the City of Winnipeg Council.