Report - Standing Policy Committee on Property and Development – July 4, 2006

Item No. 22 Changes to Sale - east side St. Mary's Road, south of Burland Avenue File FI-2.4(35)

STANDING COMMITTEE RECOMMENDATION:

On July 19, 2006, 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 Council Decision of May 19, 2004, with respect to the terms and conditions of the sale of the subject City property as outlined on Misc. Plan No. 7103/8, be amended in accordance with the terms and conditions outlined in the report from the Director of Planning, Property and Development dated June 27, 2006, and the agreement dated June 15, 2006, attached to the said report.

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

Agenda – Council - July 26, 2006

Report - Standing Policy Committee on Property and Development – July 4, 2006

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 19, 2006, 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 July 4, 2006, 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 Changes to Sale of East Side of St. Mary's Road, South of Burland Avenue
Riel Community
St. Vital Ward

For submission to: Standing Policy Committee on Property and Development

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

Report date: June 27, 2006

Recommendation(s):

1 That approval is given for the attached amendment to the purchase agreement dated February 3, 2004, which was approved by Council at its meeting held May 19, 2004.

1. That the transfer of title to the Subject City Property as shown on Misc. Plan No. 7103/8 be in the name of Odyssey Holdings Inc.

REPORT SUMMARY

Key Issues:

- On May 19, 2004, Council concurred in the recommendation of the Standing Policy Committee on Property and Development and approved the sale of the subject City property located on the east side of St. Mary's Road and south of Burland Avenue (see Misc. Plan No. 7103/8) to Kelly Rempel and Ed Krahn for the price of $175,100.00 in accordance with the terms and conditions of the Offer to Purchase dated February 3, 2004.

- It was discovered during the rezoning process that the Purchaser would be responsible for a regional transportation levy on St. Mary's Road. The Administrative Coordinating Group recommended the following:

  That the Purchaser shall pay to the City, in cash on demand, its share of the cost of the following services to be installed, in St. Mary's Road, along the full length of the Subject City Property abutting St. Mary's Road (see Misc. Plan No. 7103/8):

  a) a 4.0 m in width by 200 mm in thickness Portland cement concrete lane of pavement and related works;

  b) a 1.5 m in width by 100 mm in thickness Portland cement concrete sidewalk in the east boulevard;

  c) street lighting in the east boulevard;

d) landscaping in the east boulevard;

all as determined by the Director of Public Works.

It should be noted that the 2006 costs of the above services are estimated to be $71,200.00.

- The attached amending agreement obligates the payment of the $71,200 at such time in the future as the services are installed. An enforceable caveat to this effect can be placed on the title of the subject City property (see attached agreement).

- The Purchaser is ready to close on the sale and proceed with development of the property; however a second issue has emerged insofar as Ed Krahn has agreed to relinquish his interest in the property to Kelly Rempel, who intends to take title to the property in the name of Odyssey Holdings Inc. Since approval of the sale was not in the name of Odyssey Holdings Inc., approval is required to transfer the title of the property to Odyssey Holdings Inc.

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):

The Real Estate Division has not conducted an Environmental Site Assessment (ESA) on this property. In accordance with the Sales and Purchase Agreement, the Purchaser will have an opportunity to conduct its own ESA, at its own cost.

Regulatory Implications

X	None
	Eliminates or reduces regulatory impact
	Proposes regulatory impact

Comments(s):

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):

-

Report

REASON FOR THE REPORT:

An additional amendment to the Offer to Purchase dated February 3, 2004, is required as well as a change in the name of the Purchaser. Both changes require approval by the Standing Policy Committee on Property and Development.

HISTORY:

On May 19, 2004, Council concurred in the recommendation of the April 27, 2004 report of the Standing Policy Committee on Property and Development, and adopted the following:

1. That the Subject City Property shown on Misc. Plan No. 7103/8 be declared surplus to the City's requirements.

2. That the sale of the subject property located on the east side of St. Mary's Road and south of Burland Avenue (shown on Misc. Plan No. 7103/8) to Kelly Rempel and Ed Krahn for the price of $175,100.00, be approved in accordance with the terms and conditions of the Offer to Purchase dated February 3, 2004.

3. That the Director of the Planning, Property and Development Department be authorized to grant a further extension of the due diligence period and

closing date in order to accommodate the time required for the Purchasers to rezone the property to an “RM-3” Multiple Family District.

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

Extensions of time have been granted for the Purchaser to complete the rezoning process.

It was discovered during the rezoning process, that the Purchaser would be responsible for a regional transportation levy on St. Mary’s Road. The Administrative Coordinating Group recommended the following:

That the Purchaser shall pay to the City, in cash on demand, its share of the cost of the following services to be installed, in St. Mary’s Road along the full length of the subject City property abutting St. Mary’s Road (as shown on Misc. Plan No. 7103/8):

a) a 4.0 m in width by 200 mm in thickness Portland cement concrete lane of pavement and related works;

b) a 1.5 m in width by 100 mm in thickness Portland cement concrete sidewalk in the east boulevard;

c) street lighting in the east boulevard;

d) landscaping in the east boulevard;

e) all as determined by the Director of Public Works.

It should be noted that the 2006 costs of the above services are estimated to be $71,200.00.

The Purchaser subsequently agreed to provide a letter of credit in the amount of $63,000 to cover the costs of the services to be installed due and payable at the time the services were installed in the future. The cost of these services to be installed at 2006 rates is $71,200. Carrying a letter of credit for an undetermined period of time is a significant burden to a small developer, as it not only reduces his line of credit, but there is an ongoing cost for the letter of credit. The Purchaser is looking at converting the project to condominiums in the near future.

The attached amending agreement obligates the payment of the $71,200 at such time in the future as the services are installed. An enforceable caveat to this effect can be registered on the title of the subject City property (see attached agreement).

The Purchaser is prepared to close on the sale and proceed with development of the property. However, a second issue has emerged insofar as Ed Krahn has agreed to relinquish his interest in the property to Kelly Rempel and Kelly Rempel proposes to

take title to the property in the name of Odyssey Holdings Inc. Since approval of the sale was not in the name of Odyssey Holdings Inc., approval is required to transfer the title to the property to Odyssey Holdings Inc.

DISCUSSION:

The Planning, Property and Development Department is of the opinion that it is in the best interests of the City to accept the amendment agreement, as attached, and register a caveat against the title accordingly. The Department also recommends that the transfer of the title be in the name of Odyssey Holdings Inc.

Financial Impact Statement Date: June 19, 2006

Project Name:
Proposed Changes to Sale of East Side of St. Mary's Road, South of Burland Avenue

COMMENTS:

The recommendations in this report are that approval is given for the attached amendment to the purchase agreement dated February 3, 2004, which was approved by Council at its meeting held May 19, 2004, and that the transfer of title to the Subject City Property as shown on Misc. Plan No. 7103/8 be in the name of Odyssey Holdings Inc. There are no direct financial implications associated with these recommendations.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

N/A

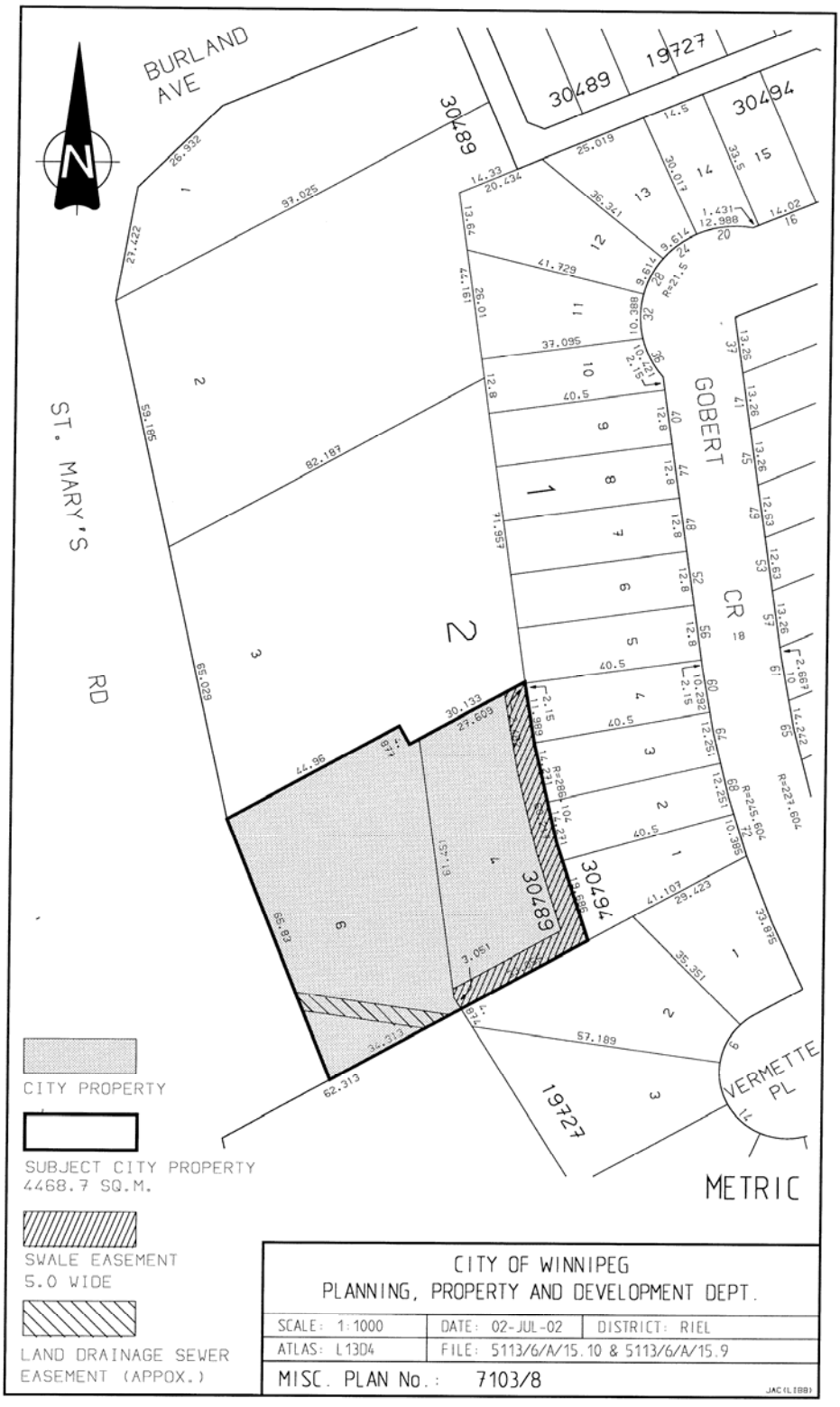
External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Gerry Anderson
PPD File #: 5113/6-A/15.9

Document name: o:\reports directive\real estate\sales\(ga)eastsidest.marys&burland.doc


BURLAND AVE
ST. MARY'S RD
GOBERT CR
VERMETTE PL
30489
30494
19727
CITY PROPERTY
SUBJECT CITY PROPERTY
4468.7 SQ.M.
SWALE EASEMENT
5.0 WIDE
LAND DRAINAGE SEWER
EASEMENT (APPOX.)
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
SCALE: 1:1000
DATE: 02-JUL-02
DISTRICT: RIEL
ATLAS: L13D4
FILE: 5113/6/A/15.10 & 5113/6/A/15.9
MISC. PLAN No.: 7103/8

File No. R.14/2004(46)

THIS AGREEMENT made in triplicate as of the 15TH day of JUNE, 2006.

BETWEEN:

THE CITY OF WINNIPEG,

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

OF THE FIRST PART,

- and -

ODYSSEY HOLDINGS INC.,

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

OF THE SECOND PART.

WHEREAS the Purchaser agreed to purchase from the City by virtue of an Offer to Purchase, made February 3, 2004 and accepted by Council at its meeting held May 19, 2004, (hereinafter called the ***"Purchase Agreement"***) lands more particularly described in the Purchase Agreement, (hereinafter called the ***"Lands"***),

AND WHEREAS the Parties have agreed to amend the Purchase Agreement to add further conditions to the Purchase Agreement;

NOW THEREFORE in consideration of the mutual covenants herein contained, the City and the Purchaser do hereby covenant and agree as follows:

1. The above recitals are true and form part of this Agreement.

2. The purchase price as set out in the Purchase Agreement shall be **TWO HUNDRED AND FORTY-SIX THOUSAND, THREE HUNDRED ($246,300.00) DOLLARS**, plus applicable Goods and Services Tax, payable as follows

- $175,100.00 on closing
- $71, 200.00 at such time as the following services are installed, in the future by the City in St Mary's Road along the full length of the subject City Property as shown on Misc. Plan No. 7103/8, abutting St Mary's Road:
  a) A 4.0 m in width by 200 mm in thickness portland cement concrete lane of pavement and related works;
  b) A 1.5 m in width by 100 mm in thickness portland cement concrete sidewalk in the east boulevard;
  c) street lighting in the east boulevard;
  d) landscaping in the east boulevard;

3. All other terms and conditions of the Purchase Agreement are hereby ratified and confirmed and remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

ODYSSEY HOLDINGS INC.

Per:_____
Name: Kelly Kemp *(affix corporate*
Title: President *seal)*

Per:_____
Name:
Title:

THE CITY OF WINNIPEG
Per:

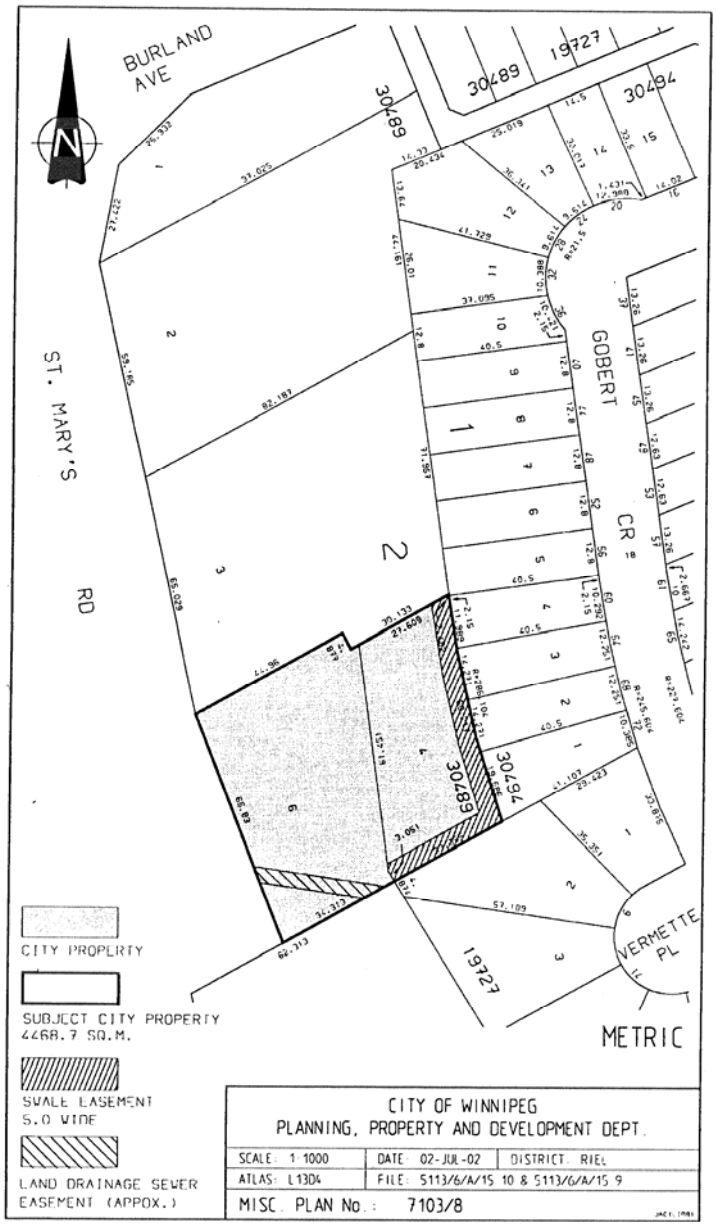
_____
Director, Planning, Property and Development

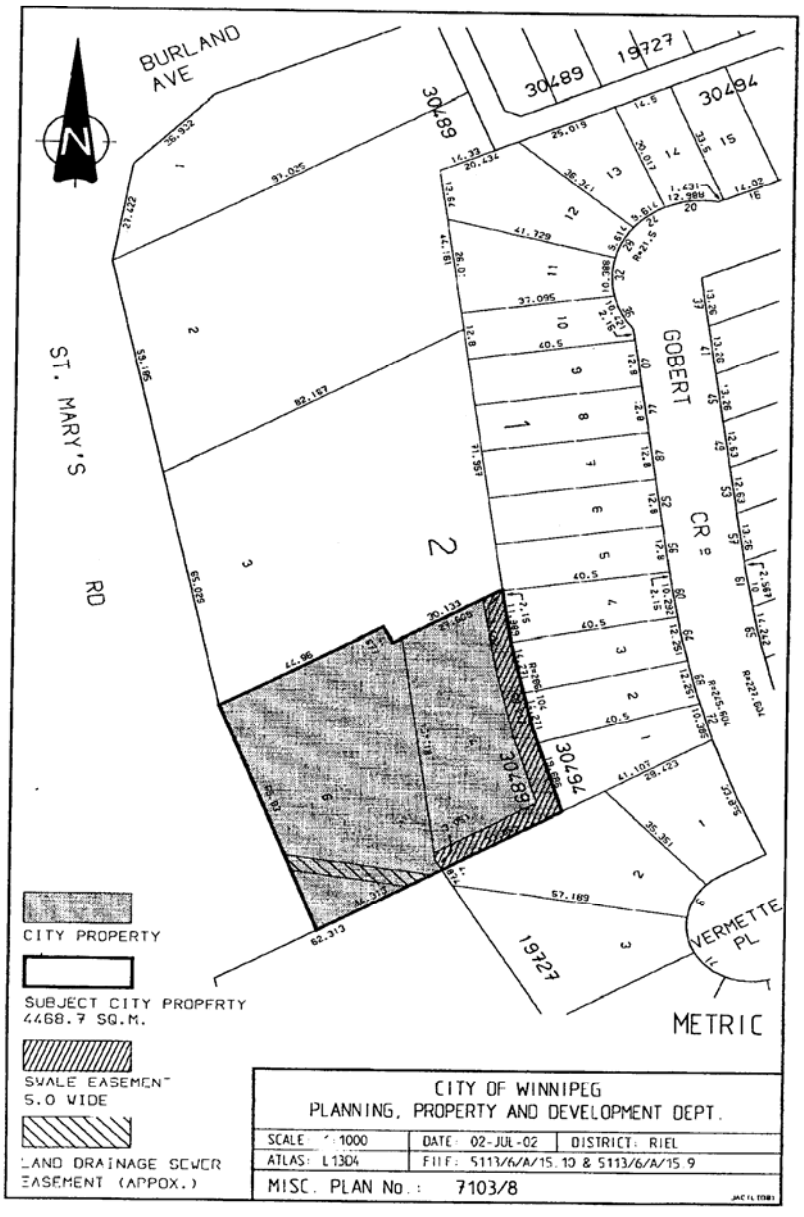
Approved:

_____
Planning, Property and Development

Certified as to form:

_____
for City Solicitor/Manager of Legal Services


BURLAND AVE
ST. MARY'S RD
GOBERT CR
VERMETTE PL
METRIC
30489
30494
19727
CITY PROPERTY
SUBJECT CITY PROPERTY
4468.7 SQ.M.
SWALE EASEMENT
5.0 WIDE
LAND DRAINAGE SEWER
EASEMENT (APPOX.)
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
SCALE: 1:1000
DATE: 02-JUL-02
DISTRICT: RIEL
ATLAS: L13D4
FILE: 5113/6/A/15 10 & 5113/6/A/15 9
MISC. PLAN No.: 7103/8


BURLAND AVE
ST. MARY'S RD
GOBERT CR
VERMETTE PL
30489
19727
30484
30494
CITY PROPERTY
SUBJECT CITY PROPERTY
4468.7 SQ.M.
SWALE EASEMENT
5.0 WIDE
LAND DRAINAGE SEWER
EASEMENT (APPOX.)
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
SCALE: 1:1000
DATE: 02-JUL-02
DISTRICT: RIEL
ATLAS: L1304
FILE: 5113/6/A/15.10 & 5113/6/A/15.9
MISC. PLAN No.: 7103/8

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page 1

File No: 5113/A-6/15.9

INDUSTRIAL/COMMERCIAL

OFFER TO PURCHASE

The Undersigned (hereinafter called "the Purchaser") hereby offers to purchase from The City of Winnipeg (the "City") the following lands: -

Shown as "subject City Property" on Misc. Plan No. 7103/8

(hereinafter called the "lands")

for the sum of $ 175,100.00 cash, and upon the following terms and conditions:

1. (1) Attached to this Offer is the Purchaser's certified cheque payable to "The City of Winnipeg" in the amount of $ 26,500.00, and represents an amount equal to fifteen (15%) percent of the purchase price which the Purchaser tenders by way of deposit, and which sum shall be applied to the purchase price if the sale is approved by the City's Standing Policy Committee on Property and Development and/or City Council (in the event that Council approval is required). The Purchaser agrees to pay the balance of the purchase price, interest and adjustments on or before the date of closing.

(2) If the Purchaser fails to pay the balance of the purchase monies, interest and adjustments on or before the date of closing as in sub-clause (1) above provided, the City may, at its option, cancel the sale and retain the deposit as liquidated damages.

2. (1) The date of Closing, Possession and adjustments shall be on or before 120 days from the date of approval of the sale.

(2) The Purchaser agrees to pay as an adjustment an amount equal to the total of such taxes, rates and charges which would have been levied or charged against the Lands as though the Lands had been entered on the assessment rolls of the City as privately owned and subject to taxation, which adjustment shall be calculated from the date of adjustments to and including the last day of the current taxation year.

(3) The Purchaser shall pay interest in lawful money of Canada on all monies remaining outstanding and payable to the City as of the date of adjustments, which interest shall be calculated at the rate per annum equivalent to the prime lending rate in force by the City's Banker at the date of adjustments plus one (1%) percent, computed from the date of adjustments to and including the date all such monies and interest as aforesaid have been fully paid to the City.

3. Goods and Services Tax

(1) The Purchaser agrees to pay to the City all Goods and Services Tax applicable on the sale of the Lands or, if the Purchaser is a registrant

under the Goods and Services legislation, the Purchaser shall advise the City in writing of its registration number The Goods and Services Tax is to be paid or the registration number provided to the City on or before the date of closing.

(2) If the Purchaser fails to pay the Goods and Services Tax or fails to provide its registration number as prescribed in sub-clause (1) of this Clause, the Purchaser agrees that all of the Purchaser's rights and interests in respect of the Lands shall, at the City's sole discretion, be fully ended without notice or any formality and all monies paid to the City by the Purchaser shall be retained by the City free from every claim.

4. The Purchaser will obtain possession of the Lands at the Purchaser's own expense.

5. The Purchaser will accept Title to the Lands subject to all exceptions, reservations and encumbrances expressed or implied in the City's Title.

6. The sale of the Lands to the Purchaser shall be subject to the provisions of the By-laws of the City of Winnipeg and all amendments thereto. Furthermore the Purchaser acknowledges and understands that it's proposed use and development of the lands may require applications for rezoning, variances or conditional uses and/or amendments to Plan Winnipeg, which applications and resulting charges (if any) are to be at the sole cost and responsibility of the Purchaser.

7. The Purchaser agrees that the City may register and maintain a caveat against the Lands to ensure the performance of the covenants on the part of the Purchaser herein set forth, and the Purchaser agrees to grant and does hereby grant to the City an interest in the Lands according to the tenor of this Offer.

8. Upon closing of the sale, the Purchaser agrees to make application to the City Assessor (in form set out in Exhibit "A" attached) to have the Purchaser's name added to the Assessment Roll of the City as the Real Owner in respect of the lands.

9. The Purchaser agrees that in the event the Purchaser, at its sole cost, conducts or causes to be conducted an Environmental Site Assessment, it shall

(1) ensure that all work done in connection with such Environmental Site Assessment is completed no later than ninety (90) days from the Date of Approval, and

(2) maintain the Lands in safe condition at all times during the conduct of any work done in pursuance of this Clause 9; and

(3) restore the Lands to the same condition as prior to its entering in or upon same in pursuance of this Clause 9; and

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(4) indemnify and save harmless the City from and against all damages and claims arising out of or in any way attributable to the conduct of any such Environmental Site Assessment; and

(5) provide copies of any such Environmental Site Assessment of the said Lands to the City for its own use, at no cost to the City no later than ninety (90) days from the date of approval.

AND in the event it is determined as a result of said Environmental Site Assessment, that contamination levels exceed Provincial Environmental Standards for the intended use of the Lands and documentation to that effect is produced to the City within ninety (90) days following the Date of Approval, the City, at its sole option, shall be entitled to:

take remedial action to bring the contamination levels to within the Provincial Environmental Standards;

OR

cancel the sale and return all monies paid in respect of the proposed sale by the Purchaser to that date, PROVIDED that the Applicant shall have first satisfied all conditions of this Clause 9.

AND FURTHER if the City has not been advised of any non-compliance of the lands to Provincial Environmental standards within 90 days from the Date of Approval, the Purchaser agrees to complete its purchase as herein contemplated and to indemnify the City against any and all claims arising from or in any way connected with the existence of contaminants of any kind at the Lands.

10 (1) The Purchaser agrees that the sale of the Lands shall be subject to any easement which may be required by a public utility, including, but not limited to the Manitoba Hydro, Manitoba Telephone System, Centra Gas, or The City of Winnipeg, for the maintenance of existing and future facilities together with the right to enter upon the Lands at any time, with or without equipment for said purposes and subject to the owner covenanting not to erect or cause to be erected upon the easement area any building or structure without the prior written consent of the public utility or The City of Winnipeg requiring such easement.

(2) The Purchaser is aware of the land drainage sewer and swale easement requirements as shown on Misc. Plan No. 7103/8.

(3) The Purchaser to enter into agreements satisfactory to the said utilities or the City of Winnipeg.

(4) The Purchaser acknowledges that the City may grant the easements before the Transfer of Land issues.

11. The Purchaser acknowledges and agrees that notwithstanding any other terms, conditions or provisions in this agreement that:

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(1) the City has given no representations or warranties with respect to the Lands or with respect to the value thereof or with respect to the Purchaser's intended uses or development or redevelopment thereof or with respect to the environmental condition of the Lands;

(2) the Purchaser has inspected or investigated the Lands, the title thereto, the Permitted Encumbrances, any tenancies and all other matters material to the Purchase and the proposed use of the Lands and 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;

(3) the Purchaser agrees that it is purchasing the Lands on an "as is", "where is" basis, and is purchasing the Lands based entirely on its own examinations without any representation by or on behalf of the City or any agent of the City. The Purchaser acknowledges that it has relied entirely upon its own inspection and investigation with respect to quantity, quality and value of the Lands;

(4) any information supplied to the Purchaser by the City or its agents or representatives is and was supplied without any representation or warranty, and that the responsibility for verification of any such information shall be the responsibility of the Purchaser; and

(5) the Lands are deemed to be taken by the Purchaser at the Purchaser's own risk with all faults and imperfections whatsoever. The Purchaser agrees with the City that the application of "Buyer Beware" shall apply to the offer in the strictest meaning.

12. The site is currently serviced with wastewater sewer, water main and a land drainage sewer in St. Mary's Road. There are outstanding local improvements as applicable to the wastewater and land drainage sewer in the amount of $5,461.22 which will be commuted by the City at the City's cost.

13. The Purchaser is aware that:

a) The subject City Property is zoned "A5" Agricultural District. This zoning is intended to accommodate rural and limited agricultural uses on smaller lot areas

b) The City is responsible for any dedication payable as a result of a rezoning of the property. Any other dedication payable is the responsibility of the Purchaser.

c) The Area Planner has indicated that single family residential and commercial developments are not considered viable options for the subject site.

14. Time shall be of the essence of this Offer.

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15. The Purchaser will not file any caveat or other encumbrance against the Lands before the transfer of the Lands to the Purchaser.

16. The word "Purchaser" shall have a plural meaning in the event that more than one party is making this offer, and the masculine shall mean the feminine or neuter as the case may be.

17. The Purchaser is hereby advised that soil conditions in Winnipeg are of the glacial till variety which are composed of Lacustrine Clays with Silt Intrusions. The Purchaser shall be responsible for any increased costs of development due to this random stratification.

18. The Purchaser acknowledges and agrees that sale of the Lands by the City is subject to the approval of City Council or its delegated authority.

19. The full, true and correct name of the Purchaser is as follows: -

20. see page 8

Ed Krahn and Kelly Rempel Box 297, Oak Bluff Mb. R0G 1N0

Name (Please Print) Address

Purchaser's Registration No. (G.S.T.) N/A

IN WITNESS WHEREOF the Purchaser has signed this document in

Winnipeg, Manitoba, this 3 day of February 2004

Witness Authorized Signature

Ed Krahn

Name and Title of Authorized Signature (Please print)

Witness Authorized Signature

Kelly Rempel

Name and Title of Authorized Signature (Please print)

KR

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ACCEPTED this _____day of _____, A.D., 2004

THE CITY OF WINNIPEG

Per:_____

DIRECTOR

Planning,Property and Development Department

Approved:

_____

Planning Property and Development Department

Certified as to form:

_____

for City Solicitor/Manager of Legal Services

KC

Page 7

20. This offer is subject to the following condition:

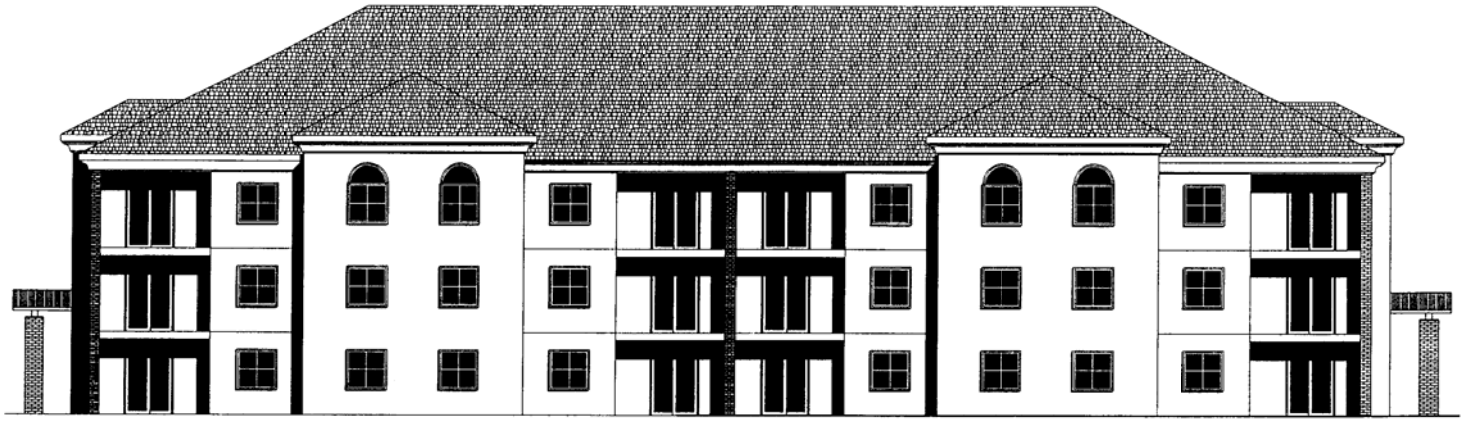
a.) That after application by the purchaser, the City of Winnipeg to allow the property to be rezoned RM-3 to permit the construction of a multi family building as described by the attached schedule "A" and schedule "B". Please be advised that the drawings are at the "conceptual" stage. The intent is to use the site to develop between 24 and 32 apartment units to be marketed to the "adult living" segment of the market. The building will be 3 or 4 stories tall and serviced by elevators. The building will be positioned on the property to make it most appealing to all the adjoining properties and to comply with any and all zoning requirements. We appreciate the fact that the adjoining properties to the east might not appreciate the building being to close to the west fence line. Parking will be above grade only and will be asphalt covered. Thank you for considering what I believe to be the best use of the property. If you have any questions regarding our intentions or need some clarification, I can be reached on my cell phone 291-3545.

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EAST & WEST SIDE ELEVATION

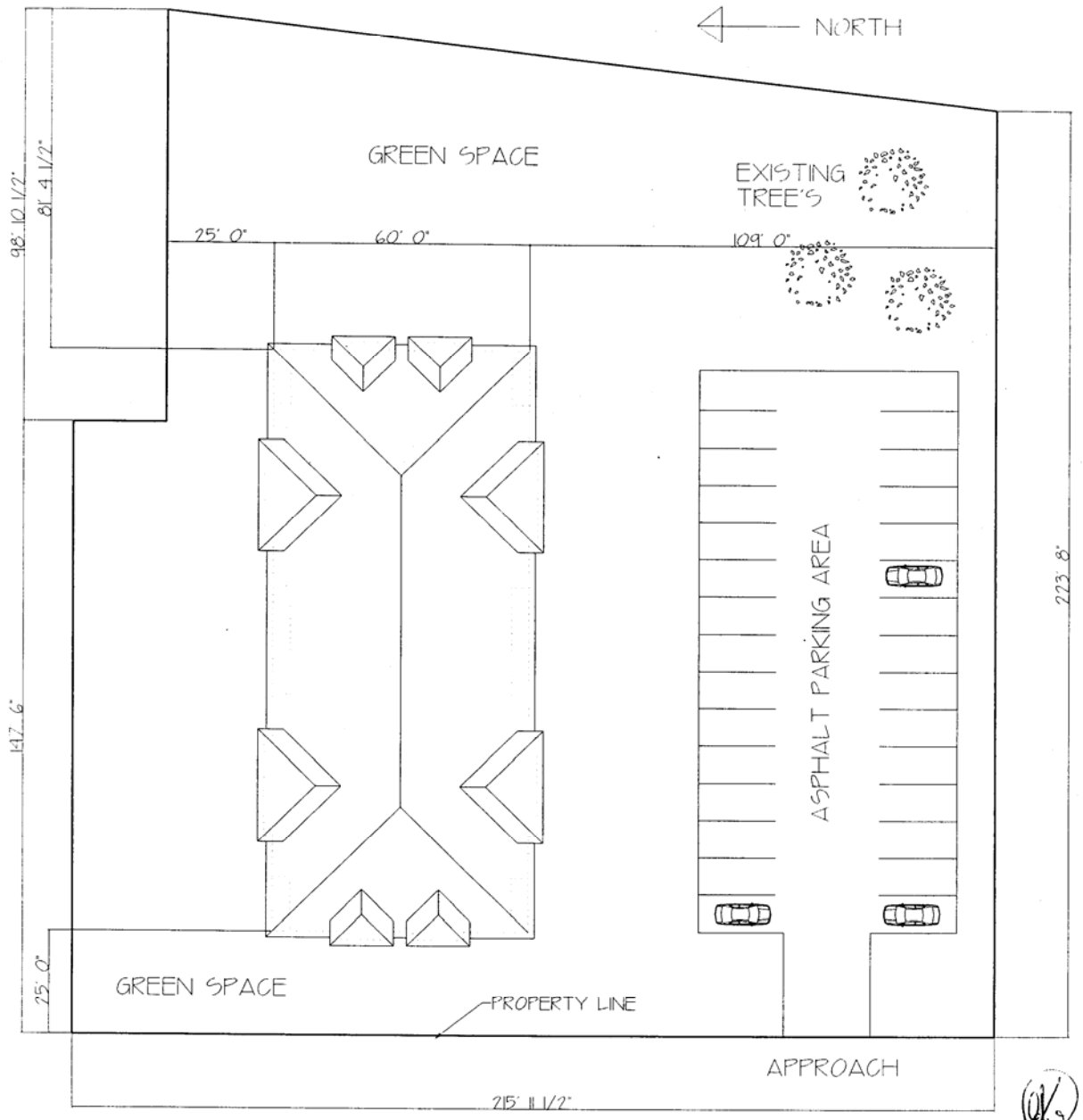


SOUTH & NORTH SIDE ELEVATION



CONCEPTUAL DRAWINGS ONLY

SCHEDULE "A"



45X@PJL EOJ NAME = "MSJOB 3"

SCHEDULE 'B'

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5302