Minute No. 406
Report - Standing Policy Committee on Downtown Development - May 2, 2008

Item No. 1 **Encroachment Agreement - Sky Waterfront Developments Ltd. - Access Ramp and Loading Bay onto the Amy Street Public Right-of-Way at Pacific Avenue**
(Point Douglas Ward)
File ED(34)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Downtown Development and adopted the following:

1. That an Encroachment Agreement in favour of Sky Waterfront Developments Ltd. be approved for the development and use of an access Ramp and loading bay onto the Amy Street public right-of-way at Pacific Avenue shown as 'Encroachment Area" on Misc. Plan No.13286/4, in accordance with the terms and conditions outlined on Schedule 'A' to the report from the Director of Planning, Property and Development; the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development and by the City Solicitor/Manager of Legal Services to protect the City's interest.

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 Downtown Development - May 2, 2008

DECISION MAKING HISTORY:

Moved by Councillor Wyatt,

That the recommendation of the Standing Policy Committee on Downtown Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 7, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 2, 2008, the Standing Policy Committee on Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

RE: Proposed Encroachment Agreement in favour of Sky Waterfront Developments Ltd. for the Development and Use of an Access Ramp and Loading Bay onto the Amy Street Public Right-of-Way at Pacific Avenue

FOR SUBMISSION TO: Standing Policy Committee on Downtown Development

ORIGINAL REPORT SIGNED BY: Director, Planning, Property and Development

REPORT DATE: April 18, 2008

RECOMMENDATION:

1. That Council approve an Encroachment Agreement in favour of Sky Waterfront Developments Ltd. for the development and use of an access Ramp and loading bay onto the Amy Street public right-of-way at Pacific Avenue shown as 'Encroachment Area" on Misc. Plan No.13286/4, attached, in accordance with the terms and conditions outlined on attached Schedule 'A'; the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department and by the City Solicitor/Manager of Legal Services to protect the City's interest.

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

Report Summary

Key Issues:

- Pursuant to the Asset Agreement between the City of Winnipeg and CentreVenture, CentreVenture exercised an Option Notice to purchase the City-owned property located at 340 Waterfront Drive as denoted on the attached Misc. Plan No. 12534/3. Sky Waterfront Developments Ltd. is the intended purchaser. The closing date of sale is April 16, 2008.

- The Planning, Property and Development Department has negotiated terms and conditions of an Encroachment Agreement in favour of Sky Waterfront Developments Ltd. for the development and use of an access ramp and loading bay onto the Amy Street public right-of-way at Pacific Avenue.

- The Water and Waste Department supports the proposed encroachment upon condition that Sky Waterfront Developments Ltd. be aware that a watermain junction exists directly below the Encroachment Area and that Sky Waterfront Developments Ltd. be required to enter into an easement agreement in favour of the City of Winnipeg for the proposed easement limit fronting Waterfront Drive with respect to the existence of the Shoal Lake Aqueduct underdrain pipe.

- The Public Works Department are also in agreement to the proposed encroachment on condition that Sky Waterfront Developments Ltd. be required to enter into an agreement with the City of Winnipeg to cost share upgrading of the sidewalk on the west side of Amy Street between James Avenue and Rupert Avenue.

- The Corporate Finance Department, Risk Management Branch, reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the proposed terms and conditions.

- This report seeks approval of the Encroachment Agreement as negotiated.

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

( ) Involves a multi-year contract

Comment(s):

Policy Implications

(x) No

( ) Yes

Comment(s):

Regulatory Implications

(x) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s):

Environmental Implications

(x) No

( ) Yes

Comment(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:

Council has the authority to permit or license the use of a public right-of-way. The Planning, Property and Development Department has negotiated the terms and conditions of an Encroachment Agreement in favour of Sky Waterfront Developments Ltd. for the development and use of an access ramp and loading bay onto the Amy Street public right-of-way at Pacific Avenue. This report seeks Council's approval to the proposed Encroachment Agreement.

HISTORY:

Sky Waterfront Developments Ltd. has been in discussions with CentreVenture with the intent of purchasing the City-owned property located at 340 Waterfront Drive as denoted on the attached Misc. Plan No. 12534/3. Sky Waterfront Developments Ltd. is moving quickly to remove all conditions of purchase. One such condition is the approval of the encroachment agreement for the proposed development and use of an access ramp and loading bay onto the Amy Street public right-of-way at Pacific Avenue, as denoted on the attached Misc. Plan. No. 13286/4.

DISCUSSION:

Pursuant to the Asset Agreement between the City of Winnipeg and CentreVenture, CentreVenture exercised an Option Notice on April 11, 2008, to purchase the City-owned property located at 340 Waterfront Drive as denoted on the attached Misc. Plan No. 12534/3. Sky Waterfront Developments Ltd. is the intended purchaser. The closing date of sale is April 16, 2008.

Sky Waterfront Developments Ltd. has made an encroachment application in conjunction with the proposed development at 340 Waterfront Drive for the approval of an encroachment agreement for the proposed development and use of an access ramp and loading bay onto the Amy Street public right-of-way at Pacific Avenue, as denoted on the attached Misc. Plan. No. 13286/4.

The application was circulated to various City departments and public utilities for consideration and comments. The Water and Waste Department supports the proposed encroachment upon condition that Sky Waterfront Developments Ltd. be aware that a watermain junction exists directly below the Encroachment Area and that Sky Waterfront Developments Ltd. be required to enter into an easement agreement in

favour of the City of Winnipeg for the proposed easement limit fronting Waterfront Drive with respect to the existence of the Shoal Lake Aqueduct underdrain pipe.

The Public Works Department are also in agreement to the proposed encroachment on condition that Sky Waterfront Developments Ltd. be required to enter into an agreement with the City of Winnipeg to cost share upgrading of the sidewalk on the west side of Amy Street between James Avenue and Rupert Avenue.

The Corporate Finance Department, Risk Management Branch, reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the proposed terms and conditions attached hereto as Schedule "A".

The application was circulated to various City departments and public utilities for consideration and comments. No objections were received for the proposed development and use of an access ramp and loading bay onto the subject public right-of-way.

Pursuant to Section 4(1)(d) of the City's Encroachment By-law No. 692/74, the Department has concluded its negotiations of an Encroachment Agreement in favour of Sky Waterfront Developments Ltd, entitled to be the property owner of 340 Waterfront Drive. Both parties concur that the proposed terms and conditions are fair and reasonable.

In summary, the terms and conditions of the Encroachment Agreement (Schedule 'A' attached) agreed to by Sky Waterfront Developments Ltd., are as follows:

Term:	Commencement to be the date Sky Waterfront Developments Ltd becomes the registered owner of 340 Waterfront Drive
Purpose:	Development and Use of an Access Ramp and Loading Bay
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 13286/4, attached
Rental:	$1.00 per annum plus an initial administrative fee of $500.00 and applicable GST.
Insurance:	Property and Liability insurance requirements have been updated by the Risk Management Branch staff as deemed appropriate to cover the scope, terms and conditions of the agreement.
Cancellation:	180 days written notice

Financial Impact Statement

Date: April 14, 2008

Project Name:

First Year of Program **2008**

Encroachment Agreement in favour of Sky Waterfront Developments Ltd. for the development and use of an access ramp and loading bay onto the Amy Street right-of-way at Pacific Avenue.

	2008	2009	2010	2011	2012
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
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	$ 501	$ 1	$ 1	$ 1	$ 1
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 501	$ 1	$ 1	$ 1	$ 1
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ 501	$ 1	$ 1	$ 1	$ 1

Additional Comments: Revenues for 2008 reflect a $1.00 encroachment fee plus a $500 initial administration feet. Remaining revenues reflect annual encroachment fees of $1.00.

"Original signed by"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

- Water & Waste Department
- Public Works Department
- Corporate Finance, Risk Management Division
- Internal Services, Legal Services Division

External Consultation With:
N/A

THIS REPORT SUBMITTED BY:

Department Planning, Property and Development
Division Real Estate Division
Prepared by: Sara Cianflone
PPD File No. 320 (V4)

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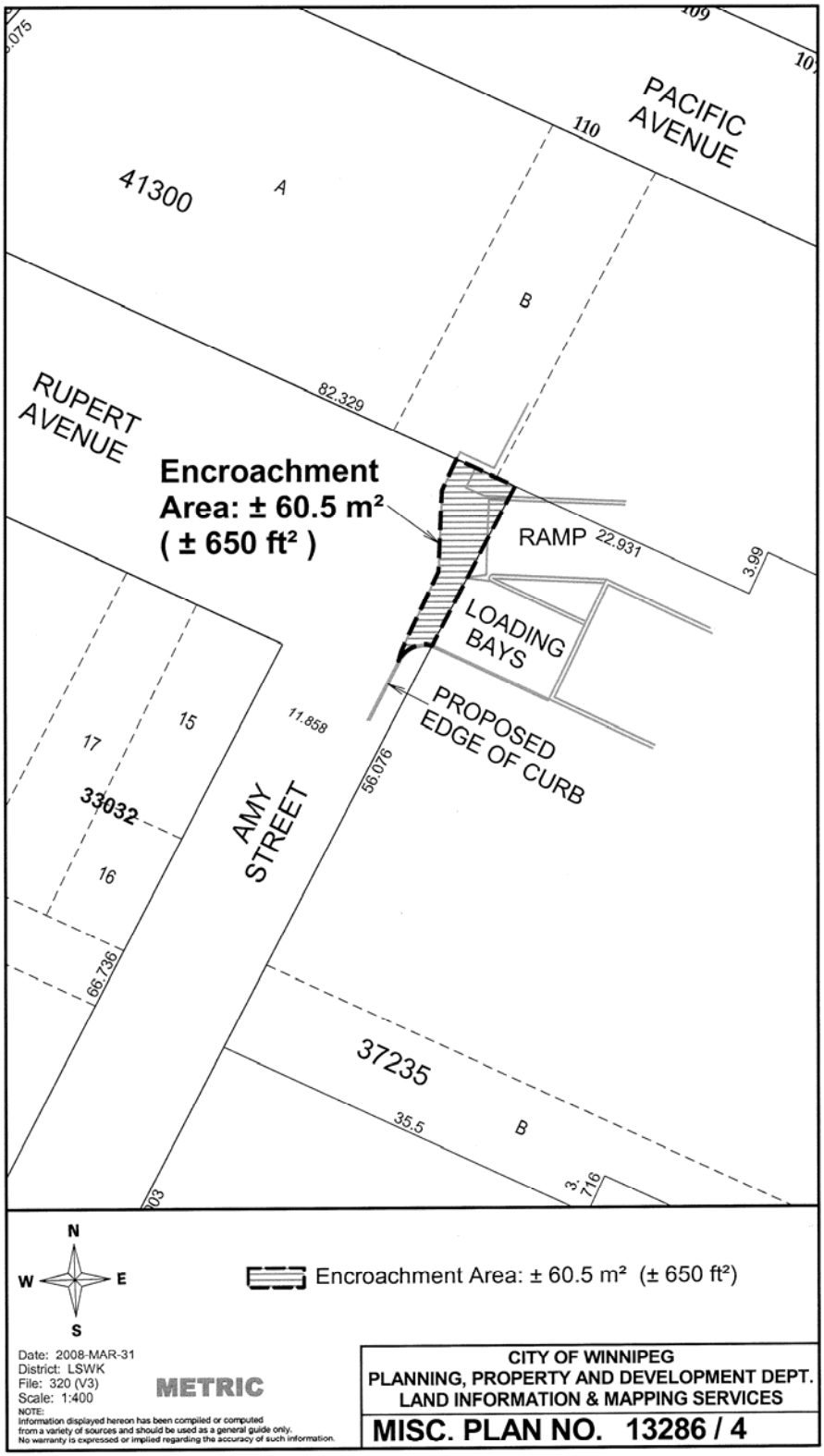
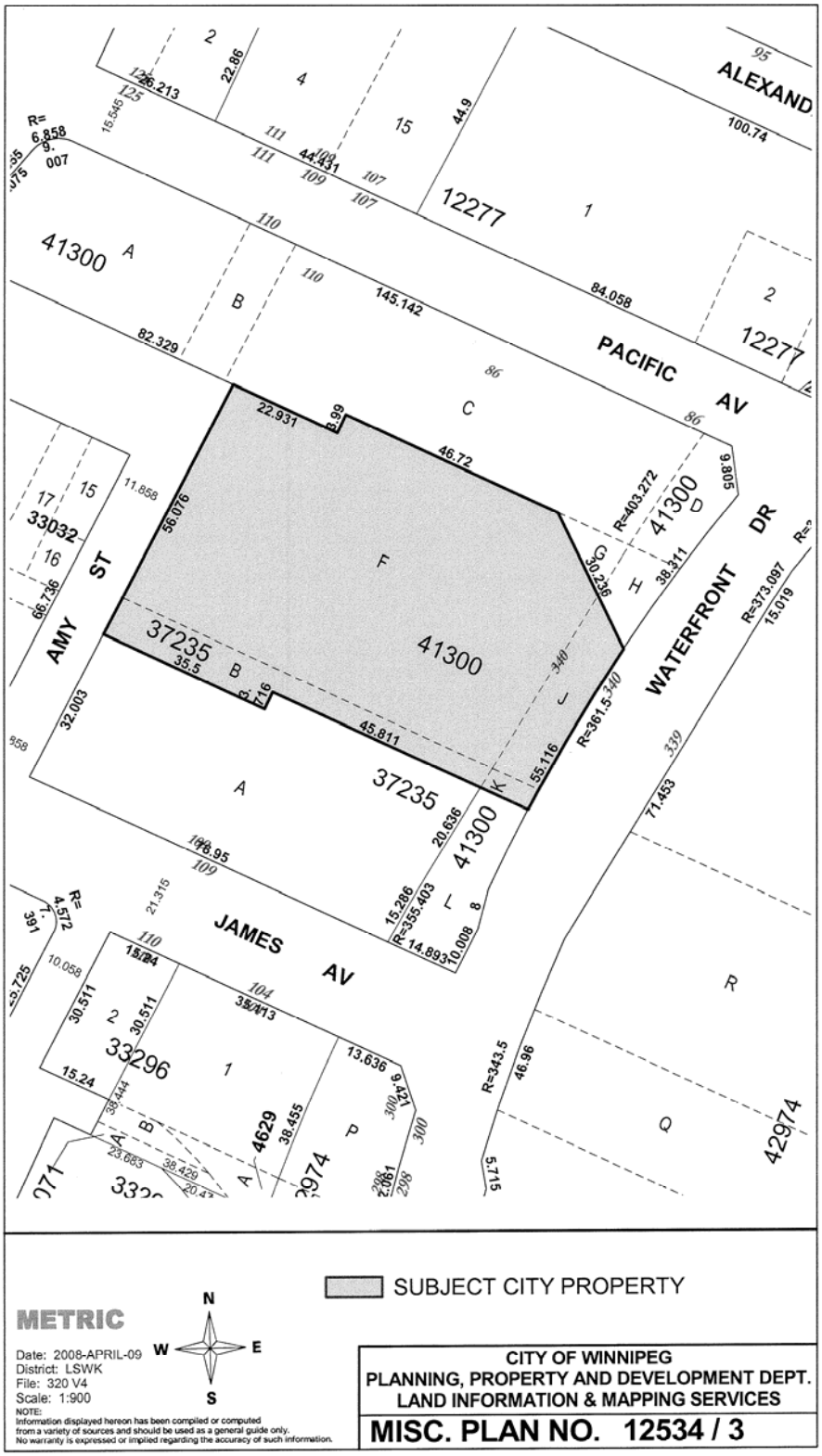

PACIFIC AVENUE
110
41300
A
B
RUPERT AVENUE
82.329
Encroachment
Area: ± 60.5 m²
(± 650 ft²)
RAMP
22.931
3.99
LOADING BAYS
PROPOSED EDGE OF CURB
11.858
56.076
17
15
33032
16
AMY STREET
66.736
37235
35.5
B
N
W
E
S
Encroachment Area: ± 60.5 m² (± 650 ft²)
Date: 2008-MAR-31
District: LSWK
File: 320 (V3)
Scale: 1:400
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. 13286 / 4


ALEXAND
PACIFIC AV
AMY ST
WATERFRONT DR
JAMES AV
12277
41300
37235
33032
33296
42974
SUBJECT CITY PROPERTY
METRIC
Date: 2008-APRIL-09
District: LSWK
File: 320 V4
Scale: 1:900
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12534 / 3

Schedule "A"

Proposed Terms and Conditions for Encroachment Agreement to Permit Development and Use of an ACCESS RAMP and LOADING BAY onto the Amy Street right-of-way at Pacific Avenue (Shown as "Encroachment Area" on attached Misc. Plan No. 13286/4)

Grantee:	Sky Waterfront Developments Ltd.
Use:	Development and Use of an Access Ramp and Loading Bay
Area:	± 60.5 m^2 (± 650 ft^2) shown hatched and identified as 'Encroachment Area' on Misc. Plan No. 13286/4, attached.
Commencement:	Commencement to be the date Sky Waterfront Developments Ltd. becomes the registered owner of 340 Waterfront Drive
Term:	Annual Continuing for the duration of the proposed use
Rental:	$1.00 per annum, plus GST, plus an initial administration fee of $500.00 plus GST.
Insurance:	There are two stages to the insurance requirements; Construction Phase and Operation/Maintenance Phase

Insurance Phase One:

For the construction phase of the Access Ramp, the Grantee will ensure that any contractor or sub-contractor hired to perform the work shall provide and maintain the following insurance coverage:

(a) commercial general liability insurance, in the amount of at least five million dollars ($5,000,000.00) inclusive, with The City of Winnipeg and the Grantee added as additional insured, such liability policy to also contain a cross-liability clause, contractual liability, unlicensed motor vehicle liability, non-owned automobile liability and products and completed operations cover, to remain in place at all times during the performance of the Work and throughout the warranty period;

(b) automobile liability insurance for owned automobiles used for or in connection with the Work in the amount of at least five million dollars ($5,000,000.00) to be retained at all times during the performance of the Work and until the date of Total Performance;

Deductibles shall be borne by the Contractor;

The Grantee shall provide the City with a certificate of insurance of each policy, in a form satisfactory to the City of Winnipeg, at least two (2) Business Days prior to the

Initials

Schedule "A"

commencement of any Work on the Site;

The Grantee shall not cancel, materially alter, or cause each policy to lapse without providing at least fifteen (15) Calendar Days prior written notice to the City.

Any certificates of insurance documenting the above should be sent to: The City of Winnipeg, Risk Management Division, 3rd Floor, 185 King Street, Winnipeg, Manitoba R3B 1J1 Attention: E. Martin, Supervisor of Insurance and Risk Financing, Phone: 986-5252, Fax: 986-6132, Email: emartin@winnipeg.ca

Insurance Phase Two:

During the operation and maintenance phase (after completion of construction) the Grantee shall provide and maintain the following insurance coverage:

(a) Commercial general liability insurance, in the amount of at least five million dollars ($5,000,000.00) inclusive; such liability policy to add The City of Winnipeg as an additional insured, contain evidence of cross-liability, non-owned automobile liability and contractual liability;

All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

Deductibles shall be borne by the Grantee;

The Grantee shall not cancel, materially change, or cause any such policy or policies to lapse without minimum fifteen (15) days prior written notice to the City of Winnipeg – refer to Phase One for contact details;

The Grantee shall file with the City an annual Certificate of Insurance in a form satisfactory to the City Solicitor – refer to Phase One for contact details;

The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this encroachment agreement and any subsequent renewals thereof, provided that the City shall give the Grantee reasonable notice and shall request reasonable change.

Initials

Schedule "A"

Cancellation: One Hundred and Eighty (180) days written notice by either party. The City may cancel the agreement immediately if the Grantee is deemed to be in default of any term(s) of the agreement.

Conditions: That all applicable permits be obtained prior to any development.

That if there are any existing Hydro/Gas or MTS facilities which require removal and/or relocation as a result of this application, the costs will be at the expense of the Grantee. The Grantee is required to use extreme caution when excavating in the vicinity of the MTS buried plant and to ensure that the Buried Plant Location Service (941-7267) is contacted 48 hours prior to excavation for further confirmation in the field.

That the Grantee be aware there is a junction between a 300mm diameter and a 200mm diameter water main directly below the Encroachment Area.

The development and maintenance of the Encroachment Area will be performed at the sole cost, expense and effort of the Grantee, including, obtaining all permits required to develop, occupy and utilize the Encroachment Area for its intended use.

That the Grantee be responsible for overall maintenance and repair of the Encroachment Area, including, but not limited to, the loading bays and parking entrance area i.e.; sweeping, litter removal, snow removal and hauling snow away from the site

The City shall have the right to access the Encroachment Area at any time, with or without notice, (twenty four hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines, and appurtenances located within the encroachment area. In so doing, the City may restrict or impede access to either the loading bay and/or ramp contained within the Encroachment Area and the Grantee hereby acknowledges and agrees that it will not be entitled to any compensation in this regard.

The Grantee shall, without any compensation whatsoever, and whenever so requested, remove any vehicles and any improvements which it may have placed, installed, constructed or erected within the Encroachment Area in order to permit the City and/or its employees or other persons acting with its authorization, with or without equipment unimpeded access to its own services contained within the Encroachment Area.

Initials

Schedule "A"

That the Grantee be required to enter into an agreement with the City of Winnipeg to share the costs of upgrading the sidewalk on the west side of Amy Street between James Avenue and Rupert Avenue.

That the Grantee be required to enter into an easement agreement in favour of the City of Winnipeg for the proposed easement limit fronting Waterfront Drive with respect to the existence of the Shoal Lake Aqueduct underdrain pipe.

That if the east-west private walkway the Grantee/contractor has proposed for the south side of the property between Waterfront Drive and Amy Street is installed, the Grantee/contractor shall extend this private walkway in a north-south direction along the east side of Amy Street (on the private property) to Rupert Avenue. At its intersection with Rupert Avenue, curb ramps meeting the City of Winnipeg Accessibility Design Standards and the Standard Construction Specifications will be required. The maintenance and snow clearing of this private walkway will be the responsibility of the Grantee.

Not to assign or sub-let or part with possession of all or any part of the Encroachment Area without the Grantee first obtaining the written consent of the Director of the Planning, Property and Development Department, hereinafter referred to as the Director, which consent shall not be unreasonably withheld; AND FURTHER, that:

1) Upon its making application for such consent by the Director, the Grantee shall forthwith pay to the City a non-refundable administrative fee of FIVE HUNDRED ($500.00) DOLLARS, plus applicable Goods and Services Tax, or such amount as may from time to time be determined by the City in its sole and unfettered discretion acting reasonably;

2) Any consent by the Director to an assignment or sub-let as contemplated herein shall not relieve the Grantee of its obligations for the payment of the rents hereby reserved and the performance of the terms and conditions herein contained and set forth; and

3) The City acknowledges that the Grantee will be entering into an agreement with a Condominium Corporation to assign its rights and obligations under the terms and conditions herein contained and set forth.

Initials

Schedule "A"

Any and all additional terms that may be required by the Director of Planning, Property and Development, Director of Public Works and/or the Director of Water and Waste.

The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and Council and to the City Solicitor as to form and content.

I, Michael Evans, President of Sky Waterfront Developments Ltd., entitled to be the property owner of 340 Waterfront Drive, hereby acknowledge and agree to enter into an Encroachment Agreement with the City of Winnipeg to permit development and use of an access ramp and loading bay over the City owned lands identified as "Encroachment Area" on Misc. Plan No.13286/4 attached, in accordance with the proposed terms and conditions as outlined herein on this Schedule "A".

Michael Evans

Michael Evans, President
Sky Waterfront Developments Ltd.

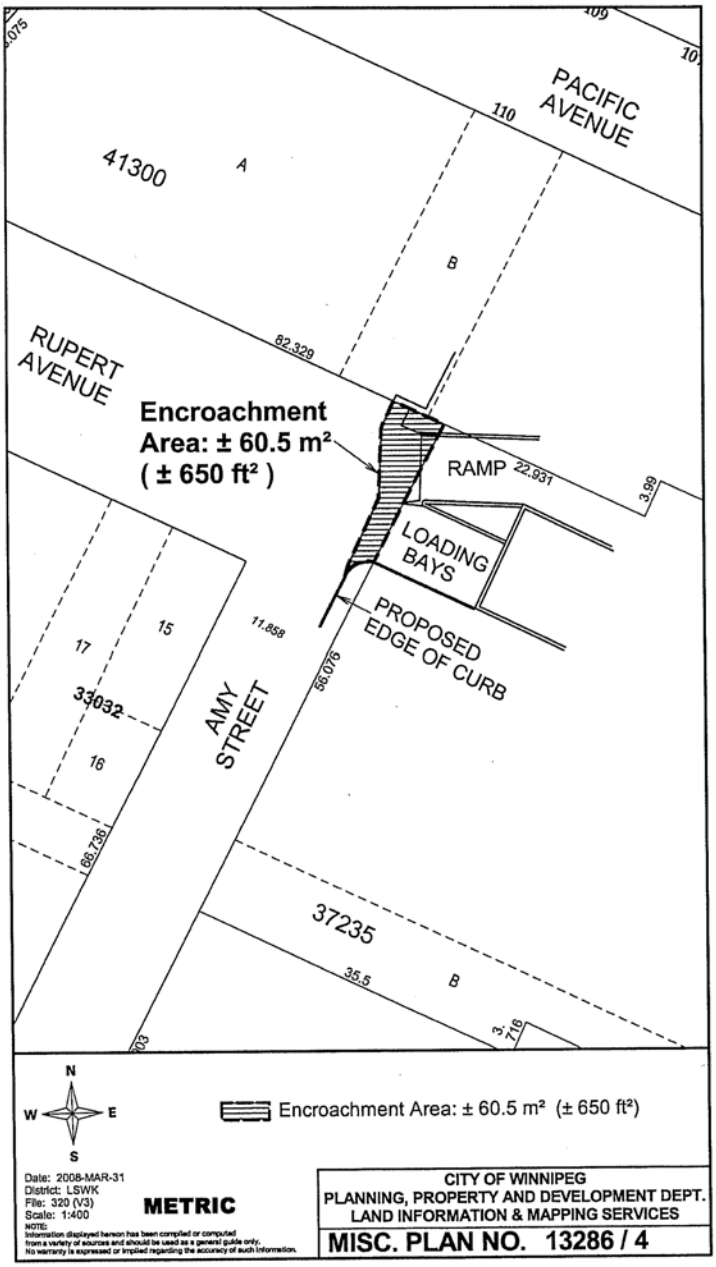
APRIL 7/08
Date

Please review and confirm the following Agent Contact Information:

Michael Evans, President
Sky Waterfront Developments Ltd.
c/o 475 Dovercourt Drive
Winnipeg, Manitoba R3Y 1G4
Ph: 204.487.5602
Fax: 204.487.2900
Email: mevans@fwsgroup.com

Initials

Schedule "A"



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