Minute No. 675
Report - Standing Policy Committee on Property and Development - October 2, 2008

Item No. 10 **Land Exchange and Option to Purchase - West Side of McPhillips Street at The Chief Peguis Trail Extension**
(Old Kildonan Ward)
E-File FI-2.4.4.1

COUNCIL DECISION:

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

1. That the land exchange of "Area A-1 Land to be conveyed to the City" and "Area B Land to be conveyed to Dilawri" with DKA Developments Inc. (doing business as "Dilawri Group"), as bare trustee for the Dilawri Family Trust II (hereinafter referred to as "DKA Developments Inc."), be approved at a price of $1.00 plus applicable Good and Services Tax with the City having the option to purchase lands identified as "Area A-2 Option Land - to be conveyed to the City" from DKA Developments Inc. as shown on Misc. Plan No. 13124/6, be approved as described in the report dated September 22, 2008 from the Director of Planning, Property and Development, and upon such terms and conditions as may be acceptable to the City Solicitor/Manager of Legal Services and the Director of Planning, Property and Development.

2. That the City-owned lands identified as "Area B Land to be conveyed to Dilawri" as shown on Misc. Plan No. 13124/6 be declared surplus to the City's needs.

3. That the sources of funding identified in the report dated September 22, 2008 from the Director of Planning, Property and Development, be approved for the acquisition of the subject property.

4. 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 2, 2008

DECISION MAKING HISTORY:

Moved by Councillor Swandel,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 15, 2008, 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 2, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

RE: PROPOSED LAND EXCHANGE AND OPTION TO PURCHASE – WEST SIDE OF MCPHILLIPS STREET AT THE CHIEF PEGUIS TRAIL EXTENSION
Lord Selkirk – West Kildonan Community
Old Kildonan Ward

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

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

REPORT DATE: September 22, 2008

RECOMMENDATION:

1. That the proposed land exchange of "Area A-1 Land to be conveyed to the City" and "Area B Land to be conveyed to Dilawri" with DKA Developments Inc. (doing business as "Dilawri Group"), as bare trustee for the Dilawri Family Trust II (hereinafter referred to as "DKA Developments Inc."), be approved at a price of $1.00 plus applicable Good and Services Tax with the City having the option to purchase lands identified as "Area A-2 Option Land – to be conveyed to the City" from DKA Developments Inc. as shown on attached Misc. Plan No. 13124/6 be approved as described herein and upon such terms and conditions as may be acceptable to the City Solicitor/Manager of Legal Services and the Director of Planning, Property and Development.

2. Subject to the approval of Recommendation 1 above, that the City-owned lands identified as "Area B Land to be conveyed to Dilawri" as shown on the attached Misc. Plan No. 13124/6 be declared surplus to the City's needs.

3. That the sources of funding identified herein be approved for the acquisition of the subject property.

4. 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:

- In May 2007, the City received a proposal from Landmark Planning & Design Inc. on behalf of The Dilawri Auto Group (DKA Developments Inc.) for a commercial development on the west side of McPhillips Street.

- The proposal incorporates privately owned holdings. A portion of these holdings will be required by the City at some future date for the extension of the Chief Peguis Trail.
- The Winnipeg Public Service has negotiated terms and conditions of a land exchange which include City-owned lands commonly known as the former "Bergen Cut-off" land under Public Works jurisdiction. The Public Works Department has no objection to the land exchange as negotiated.
- The Winnipeg Public Service has determined that the former "Bergen Cut-off" land in question is not required for civic purposes.
- The Winnipeg Public Service has determined that an equitable land exchange would not only support the proposed development, assemble required lands for the future Chief Peguis Trail extension, but also improve on-site access from a traffic safety perspective. The Department is seeking approval of the terms and conditions of a land exchange agreement as negotiated.

Implications of the Recommendation(s):

General Implications

( ) None

( ) For the organization overall and/or for other departments

(X) For the community and/or organizations external to the City

( ) Involves a multi-year contract

Comment(s):

Policy Implications

(X) No

( ) Yes

Comment(s): On December 12, 2001, Council adopted and gave third reading to By-law No. 7630/2000 to re-designate the lands described herein from "Rural Policy Area" to a "Neighbourhood Policy Area" designation.

The proposed land exchange agreement also complies with the Council adopted policy concerning unsolicited offers insofar as a portion of the privately owned land in question is required for a public use and to facilitate a Council approved land acquisition program.

Regulatory Implications

(X) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s):

Environmental Implications

(X) No

( ) Yes

Comment(s): No environmental issues are anticipated. However, 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 Public Works Department has advised that adequate funding for this proposed land exchange is available in the Land Acquisition for Future Transportation Purposes capital account.

Report

REASON FOR THE REPORT:

This report is being submitted to the Standing Policy Committee on Property and Development as the Committee has the authority to recommend to Council the terms and conditions of a proposed land exchange and to seek Council approval to declare the City-owned property identified as "Area B Land to be conveyed to Dilawri" on the attached Misc. Plan No. 13124/6, as surplus to the City's requirements.

HISTORY:

In May 2007, the City received a proposal from Landmark Planning & Design Inc. on behalf of The Dilawri Auto Group (DKA Developments Inc.), for a commercial development on the west side of McPhillips Street to accommodate a car dealership. The Dilawri Auto Group exercised their option to purchase a parcel of land identified as "Agritoba Incorporated-Dilawri Property" on April 14, 2008 shown outlined in a heavy black line on the attached Misc. Plan No. 13124/6. The proposed development incorporates these lands.

At some future date, the City will require a portion of the "Agritoba Incorporated-Dilawri Property" as public street right of way to extend the Chief Peguis Trail across McPhillips Street. Ensuing negotiations by the Winnipeg Public Service and The Dilawri Auto Group have produced an agreement to a proposed land exchange and an option granted to the City of Winnipeg to purchase additional lands required for the Chief Peguis Trail Extension. The proposed terms and conditions of said agreement are attached hereto. The particulars of the subject properties are as follows:

Agritoba Incorporated – Dilawri Property (Dilawri to convey in part to City)

Location:	West Side of McPhillips Street, between Templeton Avenue and Storie Road
Legal Description:	Part Lots 23, OTM, Parish of Kildonan (shown outlined in a heavy black line on Misc. Plan No. 13124/6, attached)
Ownership:	DKA Developments Inc.
Certificate of Title No.	1858265, 2290977
Description of Property:	Vacant Land

Area B (City to convey to Dilawri)

Location:	West Side of McPhillips Street, between Templeton Avenue and Storie Road, adjacent to and immediately south of Agritoba Incorporated – Dilawri property (also known as former "Bergen Cut-off" lands)
Legal Description:	Part Lots 20, 21 and 22, Plan 1906, Parish of Kildonan (identified as "Area B – Land to be conveyed to Dilawri" on Misc. Plan No. 13124/6, attached)
Ownership:	City of Winnipeg
Certificate of Title No.	1160080
Description of Property:	Vacant land, former "Bergen Cut-off" lands

DISCUSSION:

In May 2007, the City received a proposal from Landmark Planning & Design Inc. on behalf of The Dilawri Auto Group (DKA Developments Inc.), for a commercial development on the west side of McPhillips Street to accommodate a car dealership. The Dilawri Auto Group exercised their option to purchase a parcel of land identified as "Agritoba Incorporated-Dilawri Property" on April 14, 2008 shown outlined in a heavy black line on the attached Misc. Plan No. 13124/6. The proposed development incorporates these lands.

At some future date, the City will require a portion of the "Agritoba Incorporated-Dilawri Property" as public street right of way to extend the Chief Peguis Trail across McPhillips Street. Ensuing negotiations by the Winnipeg Public Service and The Dilawri Auto Group have produced an agreement to a proposed land exchange that will support the proposed commercial development as well as facilitate interim use of the lands identified as "Area A-2 Option Land to be conveyed to the City" on the attached Misc. Plan No. 13124/6 by the Dilawri Auto Group with an option granted to the City of Winnipeg to purchase those lands for the Chief Peguis Trail Extension when required and improve on-site access to the proposed development from a traffic safety perspective.

The City of Winnipeg owns two properties immediately south of the "Agritoba Incorporated-Dilawri Property". The first southerly City-owned property located at 2546 McPhillips Street is occupied by The Winnipeg Fire Paramedic Service (WFPS) Academy. The WFPS utilizes this location as a staff training facility and raised concerns regarding the live fire training exercises that are conducted daily at this location and its proximity to the proposed commercial development. The WFPS is satisfied that acceptable terms and conditions have been negotiated as part of the land exchange agreement to address these concerns and mitigate the City's liability.

The second City-owned property located immediately adjacent to the "Agritoba Incorporated-Dilawri Property" encompasses the former "Bergen Cut-off" lands identified as "Area B Land to be conveyed to Dilawri" on the attached Misc. Plan No. 13124/6 under Public Works jurisdiction. The Public Works Department has no objection to the proposed land exchange agreement as negotiated.

The Planning, Property and Development Department has determined that there is no civic need for the City-owned property commonly known as the former "Bergen Cut-off" lands identified as "Area B Land to be conveyed to Dilawri" on the attached Misc. Plan No. 13124/6. The Department considers the land exchange to be equitable since "Area B Land to be conveyed to Dilawri" and the combined "Area A-1 Land to be conveyed to the City" and "Area A-2 Option Land – To be conveyed to the City" as identified on the attached Misc. Plan No. 13124/6 each are valued at approximately one million dollars ($1,000,000). It should be noted that pursuant to the proposed land exchange agreement, the "Area A-2 Option Land – To be conveyed to the City" will be conveyed to the City for the sum of $1.00 upon notification from the City that the lands are required for the Chief Peguis Trail extension. The associated terms and conditions are considered reasonable and consistent with other land exchanges negotiated by the City.

In view of the fact that no civic need has been identified for the City-owned lands identified as "Area B Land to be conveyed to Dilawri" on the attached Misc. Plan No. 13124/6 and that the concerns raised by the WFPS have been addressed in the best interests of the City of Winnipeg, the Winnipeg Public Service is recommending that the property be declared surplus to the City's requirements and that the property be included in the land exchange agreement as negotiated.

It should be noted, that in order to facilitate this proposal and land exchange, a Plan Winnipeg Amendment of both the "Agritoba Incorporated-Dilawri Property" and the City owned lands identified as "Area B Land to be conveyed to Dilawri" on the attached Misc. Plan No. 13124/6 was required to extend the existing "Rural Policy Area" to "Neighbourhood Policy Area" designation boundaries north to the future public right-of-way road allowance. In 2007, appropriate public hearings were scheduled and consideration was given to the proposal to amend Plan Winnipeg…2020 Vision with By-law No. 7630/2000 which re-designated the lands to "Neighbourhood Policy Area". The Plan Winnipeg amendment was supported and on February 20, 2008 was adopted and received its third reading by Council.

Concurrent to the Plan Winnipeg Amendment process, a subdivision and rezoning application was also submitted in association with this project. The rezoning for the combined "Agritoba Incorporated-Dilawri Property" and the City owned land identified as "Area B Land to be conveyed to Dilawri" on the attached Misc. Plan No. 13124/6 proposed that a Winnipeg Zoning By-law No. 6400/94 be amended by rezoning the subject lands from the combined "A"-Agricultural and "M2" – Industrial Districts to a "C2" Commercial District. On November 21, 2007, Council concurred in the recommendation

of the Executive Policy Committee to amend the rezoning as proposed subject to a number of conditions. A notable condition states:

> *"11. That the zoning section of the by-law shall not come into force and effect until negotiations between the City and the applicant respecting the exchange/purchase of lands for the future Chief Peguis Trail Extension and adjacent lands are approved to the satisfaction of the Director of Planning, Property and Development."*

This condition has now been satisfied. This report seeks the approval of the Standing Policy Committee on Property and Development of the terms and conditions of the land exchange agreement and to recommend to Council the approval of said terms and conditions as negotiated and that the City-owned land identified as "Area B Land to be conveyed to Dilawri" on the attached Misc. Plan No. 13124/6 be deemed surplus to the City's needs.

The Public Works Department has advised that adequate funding for this proposed land exchange is available in the Land Acquisition for Future Transportation Purposes capital account.

Financial Impact Statement Date: September 16, 2008

Project Name:

Proposed Land Exchange and Option to Purchase – West Side of McPhillips Street at the Chief Peguis Trail Extension

COMMENTS:

The recommendations in this report, if approved, would result in a land exchange between the City of Winnipeg and DKA Developments Inc. and include nominal consideration of $1. As such, there are no direct financial implications associated with this report.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:
Public Works Department
Winnipeg Fire Paramedic Service
Internal Services Department – Legal Services

External Consultation With:

THIS REPORT SUBMITTED BY:
Planning, Property and Development Department
Real Estate Division
Prepared by: Sara Cianflone
PPD File No. 5626 (V2)

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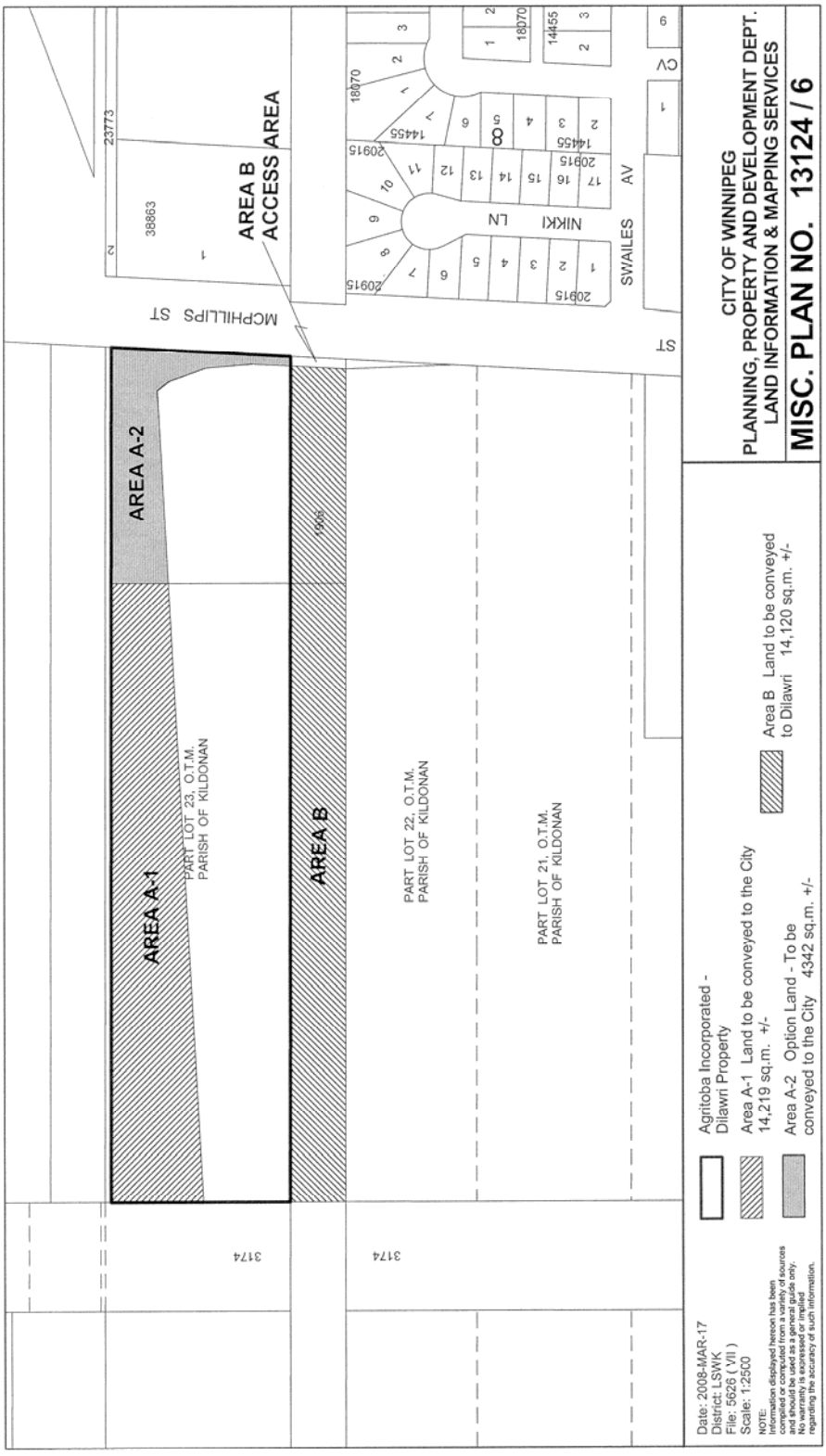

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13124 / 6
AREA A-1
AREA A-2
AREA B
AREA B ACCESS AREA
PART LOT 23, O.T.M. PARISH OF KILDONAN
PART LOT 22, O.T.M. PARISH OF KILDONAN
PART LOT 21, O.T.M. PARISH OF KILDONAN
MCPHILLIPS ST
SWAILES AV
NIKKI LN
CV
ST
3174
Agritoba Incorporated - Dilawri Property
Area A-1 Land to be conveyed to the City 14,219 sq.m. +/-
Area A-2 Option Land - To be conveyed to the City 4342 sq.m. +/-
Area B Land to be conveyed to Dilawri 14,120 sq.m. +/-
Date: 2008-MAR-17
District: LSWK
File: 5626 (VII)
Scale: 1:2500
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.

(Land Exchange) File No. R.10/2007(4)

THIS AGREEMENT made in duplicate the day of , 2008.

BETWEEN:

THE CITY OF WINNIPEG,
(hereinafter called the ***"City"***),

OF THE FIRST PART,

- and -

DKA DEVELOPMENTS INC.
(d/b/a ***"Dilawri Group"***),
duly registered to carry on business in Manitoba,
as bare trustee for the Dilawri Family Trust II,
(hereinafter called ***"Dilawri"***),

OF THE SECOND PART.

WHEREAS the City is the registered owner of the land comprising approximately 3.50 acres shown hatched and identified as ***"Area B Land to be conveyed to Dilawri"*** on Misc. Plan No. 13124/6 attached hereto as Schedule "A" (hereinafter called ***"Area B"***);

AND WHEREAS Dilawri wishes to acquire Area B for consolidation with its adjoining land for commercial purposes, specifically, to accommodate the development of a car dealership;

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

AND WHEREAS Dilawri is entitled to be the registered owner of certain land comprising approximately 5.45 acres shown hatched and shaded and identified as ***"Area A-1 Land to be conveyed to the City"*** and ***"Area A-2 Option Land - To be conveyed to the City"*** on Misc. Plan No. 13124/6 (hereinafter called ***"Area A-1"*** and ***Area A-2"*** respectively);

AND WHEREAS the City wishes to acquire Area A-1 and to acquire an option to purchase for Area A-2 for the purposes of the proposed Chief Peguis Trail Extension;

AND WHEREAS Dilawri has agreed to convey Area A-1 and grant to the City an option to purchase Area A-2 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. Dilawri will purchase Area B for the sum of **ONE ($1.00) DOLLAR**, plus applicable Goods and Services Tax.

3. (a) The City will purchase Area A-1 as shown hatched on Misc. Plan No. 13124/6 for the sum of **ONE ($1.00) DOLLAR**, plus applicable Goods and Services Tax.

   (b) Dilawri grants to the City the sole and exclusive option, for the sum of **ONE ($1.00) DOLLAR**, (hereinafter called the ***"Option Price"***), to purchase Area A-2 as shown shaded and identified as ***"Area A-2 Option Land - To be conveyed to the City"*** on Misc. Plan No. 13124/6 for a price representing market value to be determined at the time of exercise of the option (hereinafter called the ***"purchase price"***), plus applicable Goods and Services Tax, and in strict accordance with the terms and conditions as are contained in the form of Option to Purchase Agreement hereto attached as Schedule "B".

4. Area B shall be conveyed to Dilawri by the City free and clear of any and all registered encumbrances and any and all leasehold interests, except the caveat referred to in clause 6 hereof, any public utility caveats and any other encumbrance that may be registered through, by or against Dilawri.

5. Area A-1 and in the event that the City exercises its option in accordance with the Option to Purchase Agreement attached as Schedule "B" Area A-2 shall be conveyed to the City by Dilawri free and clear of any and all registered encumbrances and any and all leasehold interests, except the caveat referred to in clause 6 hereof, any public utility caveats and any other encumbrance that may be registered through, by or against the City.

6. (a) Dilawri may register and maintain a caveat against Area A-1 and Area A-2 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 Dilawri an interest in Area A-1 and Area A-2 according to the tenor of this Agreement.

(b) The City may register and maintain a caveat against Area B to ensure the performance of the covenants on the part of Dilawri herein set forth, and Dilawri agrees to grant and does hereby grant to the City an interest in Area B according to the tenor of this Agreement.

(c) The City may register and maintain a caveat against Area A-2 to ensure the performance of the covenants on the part of Dilawri herein set forth and set forth in the Option to Purchase Agreement, and Dilawri agrees to grant and does hereby grant to the City an interest in Area A-2 according to the tenor of this Agreement and the Option to Purchase Agreement.

7. (a) The date for vacant possession (free of leasehold interest) and tax adjustments in respect of Area A-1 and Area B shall be the date ninety (90) 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"***).

(b) The date for vacant possession (free of leasehold interest) and tax adjustments in respect of Area A-2 shall be the later of ninety (90) days after the date on which the Option to Purchase is exercised or ninety (90) days after the date on which the market value of Area A-2 is determined in accordance with the Option to Purchase Agreement. The date for vacant possession (free of leasehold interest) and tax adjustments in respect of Area A-2 shall also be the closing date for the Option to Purchase (hereinafter called the ***"option closing date"***).

8. Dilawri 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 Area B as though Area 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. Dilawri hereby covenants and agrees that it shall grant to the City, on and after the closing date, an easement and right to use Area A-2 until the option closing date or, if the City fails to exercise the option to purchase, until the option to purchase expires, on terms and conditions to be agreed upon by the parties; and Dilawri hereby covenants, agrees and undertakes to enter into such an easement

agreement with the City and agrees that the City shall be entitled to use Area A-2 for the purposes of access (ingress/egress) and to install, inspect, maintain and replace, or cause or permit to be installed, inspected, maintained and replaced, works, equipment and appurtenances pertaining thereto of any utilities (including the City) in conjunction with Area A-1. The City agrees to restore Area A-2 to at least as good a condition as it was in prior to any utilities (including the City) entering onto Area A-2 for the purposes aforesaid.

10. Failure by either party to execute the Option to Purchase Agreement concurrently with this Land Exchange Agreement shall result in this Land Exchange Agreement being deemed null and void and the transaction as herein contemplated at an end.

11. The parties are providing no warranty or representation of any kind related to the condition of Area A-1 and Area A-2, and Area 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 Dilawri and the City respectively acknowledge and accept the facts that both Area A-1 and Area A-2 and Area B each are situated adjacent to lands which 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 Area A-1 and Area A-2, or Area B, as the case may be, 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 Area A-1 and Area A-2, and Area B shall be fixed and set by a plan (herein called ***"the plan"***) which Dilawri 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 Area A-1 for the City, Area A-2 for Dilawri

(subject to the option in favour of the City as set out in clause 3(b)), Area B for Dilawri, and consolidation of Area B and the residual portion of the Dilawri property after conveyance of Area A-1 to the City, as herein contemplated;

(b) Dilawri hereby acknowledges and agrees that it shall, at its sole cost, effort and expense, ensure that:

(i) if Area A-1 and Area A-2 are, at closing, subject to any existing mortgage(s), lien(s), builders' lien(s) or judgment(s), Dilawri 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) or judgment(s) is/are fully discharged from Area A-1 and Area A-2 prior to conveyance of Area A-1 and Area A-2 to the City and Area B to Dilawri 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 Area B and the residual Dilawri property including without limiting the generality of the foregoing, land transfer tax as may be applicable to Area B and registration fees for documentation which may be required to be provided to the City by Dilawri in compliance with sub-clause 14(b)(i) above;

(iii) the residual Dilawri property and Area 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) Dilawri hereby agrees that pursuant to clause 14(a) registration of the plan will open Area A-1 and Area B Access Area as a public street and that Dilawri must apply for and obtain from the City private approach approval for a bi-directional approach within the Area B Access Area compatible with the initial at-grade intersection of Chief Peguis Trail and with the currently proposed diamond interchange; and

(d) In addition to such costs and expenses 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. Dilawri shall be entitled within ninety (90) days from the date of approval of this transaction by City Council, but in any event, not later than the closing date as herein defined (hereinafter called the ***"due diligence period"***), to:

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

(b) Inspect or investigate Area 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 Area B or Area B is not suitable for Dilawri's intended use of Area B and documentation to that effect is produced to the City within the due diligence period, Dilawri, at its sole option, shall be entitled to cancel this Agreement;

AND FURTHER, in the event that Dilawri fails to provide such documentation as aforesaid, Dilawri shall complete the land exchange 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 Area B.

16. In the event that this Agreement shall be cancelled pursuant to clause 15 hereof, Dilawri shall restore Area B to the same condition as prior to its entering in or upon the same in pursuance of clause 15.

17. During the due diligence period, Dilawri 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 Dilawri 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 Dilawri or otherwise, caused by reason of or in any way attributable to use of Area 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 or which gain access to Area 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. The City shall be entitled within ninety (90) days from the date of approval of this transaction by City Council, but in any event, not later than the closing date as herein defined (hereinafter called the ***"due diligence period"***), to:

    (a) Conduct or cause to be conducted an Environmental Site Assessment of Area A-1 and Area A-2. Should the City conduct such Environmental Site Assessment, it shall provide copies of such Environmental Site Assessment and/or Report(s) concerning soil testing of Area A-1 and Area A-2 to Dilawri for its own use, at no cost to Dilawri;

    (b) Inspect or investigate Area A-1 and Area A-2, the title thereto, the permitted encumbrances, any tenancies and all other matters material to the proposed use of Area A-1 and Area A-2 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 Area A-1 and Area A-2, or Area A-1 or Area A-2 is not suitable for the City's intended use of Area A-1 and Area A-2 and documentation to that effect is produced to Dilawri within the due diligence period, the City, at its sole option, shall be entitled to cancel this Agreement;

AND FURTHER, in the event that the City fails to provide such documentation as aforesaid, the City shall complete the land exchange as herein contemplated and shall indemnify and save harmless Dilawri 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 Area A-1.

19. In the event that this Agreement shall be cancelled pursuant to clause 18 hereof, the City shall restore Area A-1 and Area A-2 to the same condition as prior to its entering in or upon the same in pursuance of clause 18.

20. During the due diligence period, the City shall indemnify and save harmless Dilawri 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 the City 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 the City or otherwise, caused by reason of or in any way attributable to the City's use of Area A-1 and Area A-2 and regardless of whether there is or was any negligence on the part of Dilawri, 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 or which gain access to Area A-1 and Area A-2 as a result of the said Environmental Site Assessment. Claims referred to herein shall include any awards made against Dilawri under any statute for the protection of workmen.

21. Dilawri hereby covenants and agrees that it shall not:

    (a) construct any buildings or permanent structures on or within any portion of Area A-2;

(b) submit any claim for injurious affection;

(c) object to the proposed Chief Peguis Trail Extension or claim damages allegedly resulting therefrom.

22. Dilawri is aware that the City is conducting daily live fire training exercises on the property immediately to the south of Area B, which may result in smoke, products of combustion, "Class A Foam" spray and other similar products being carried over and onto Area A-1, Area A-2, Area B and Area B Access Area and exposure to such smoke, products of combustion, "Class A Foam" spray and other similar products. Dilawri hereby acknowledges that this may cause, among other things, corrosion to painted surfaces and the smell of smoke and other products of combustion to infiltrate motor vehicles and buildings located on Area A-1, Area A-2, Area B and Area B Access Area. Dilawri hereby covenants and agrees to release and forever discharge the City of and from any and all claims, demands, actions, suits or other proceedings which Dilawri may have in any manner whatsoever arising from such live fire training exercises and exposure to smoke, products of combustion, "Class A Foam" spray and other similar products resulting therefrom including those arising after the closing date, and including any claims or demands for loss of or damage to buildings, motor vehicles or any machinery or equipment brought upon Area A-2, Area B or Area B Access Area or into any buildings located on the said Area A-2 or Area B.

Dilawri further covenants and agrees to indemnify and save harmless the City from any and all expenses, costs, claims, demands, actions, suits or other proceedings arising out of the said live fire training exercises and exposure to smoke, products of combustion, "Class A Foam" spray and other similar products resulting therefrom including those arising after the closing date. 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 or which gain access to Area A-2, Area B or Area B Access Area.

23. Dilawri shall consent on a Real Owner Application form similar to that attached hereto as Schedule "C" to add the City as the real owner of Area A-1 and Area A-2 and the City shall consent on a Real Owner Application form similar to that attached hereto as Schedule "C1" to add Dilawri as the real owner of Area B on the assessment rolls of the City.

(b) submit any claim for injurious affection;

(c) object to the proposed Chief Peguis Trail Extension or claim damages allegedly resulting therefrom.

22. Dilawri is aware that the City is conducting daily live fire training exercises on the property immediately to the south of Area B, which may result in smoke, products of combustion, "Class A Foam" spray and other similar products being carried over and onto Area A-1, Area A-2, Area B and Area B Access Area and exposure to such smoke, products of combustion, "Class A Foam" spray and other similar products. Dilawri hereby acknowledges that this may cause, among other things, corrosion to painted surfaces and the smell of smoke and other products of combustion to infiltrate motor vehicles and buildings located on Area A-1, Area A-2, Area B and Area B Access Area. Dilawri hereby covenants and agrees to release and forever discharge the City of and from any and all claims, demands, actions, suits or other proceedings which Dilawri may have in any manner whatsoever arising from such live fire training exercises and exposure to smoke, products of combustion, "Class A Foam" spray and other similar products resulting therefrom including those arising after the closing date, and including any claims or demands for loss of or damage to buildings, motor vehicles or any machinery or equipment brought upon Area A-2, Area B or Area B Access Area or into any buildings located on the said Area A-2 or Area B.

Dilawri further covenants and agrees to indemnify and save harmless the City from any and all expenses, costs, claims, demands, actions, suits or other proceedings arising out of the said live fire training exercises and exposure to smoke, products of combustion, "Class A Foam" spray and other similar products resulting therefrom including those arising after the closing date. 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 or which gain access to Area A-2, Area B or Area B Access Area.

23. Dilawri shall consent on a Real Owner Application form similar to that attached hereto as Schedule "C" to add the City as the real owner of Area A-1 and Area A-2 and the City shall consent on a Real Owner Application form similar to that attached hereto as Schedule "C1" to add Dilawri as the real owner of Area B on the assessment rolls of the City.

24. 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 85866 7488 RT0001.

25. 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 affected thereby.

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

THE CITY OF WINNIPEG

Per: _____
for DIRECTOR of Planning, Property and Development

DKA DEVELOPMENTS INC.

Per: _____
Name: President
Title:
(affix corporate seal)

Witness: _____
Name: DAISY POE
(please print)
Address: 900 - 1717 Waverley

Per: _____
Name: ASHOK DILAWALI
Title:
DKA DEVELOPMENTS INC.

Approved:

_____
Planning, Property and Development Department

Approved:

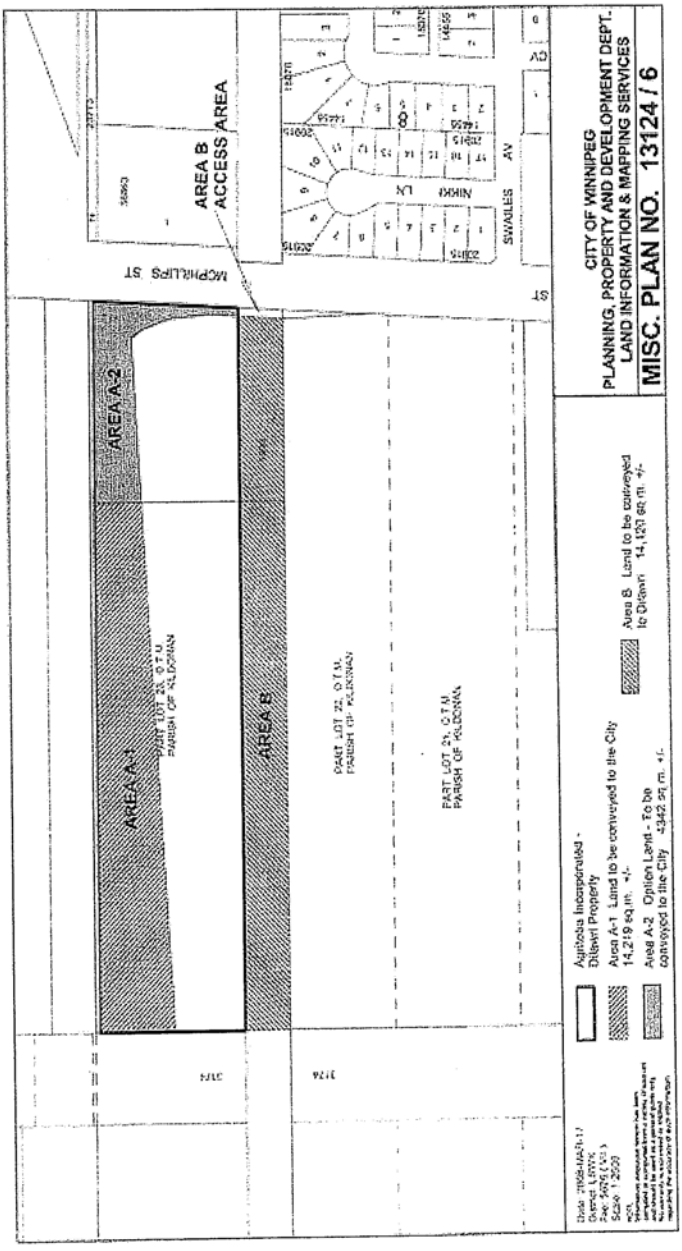
_____
for Director of Public Works

Certified as to form:

_____
for City Solicitor/Manager of Legal Services

(Land Exchange) File No. R.10/2007(4)

SCHEDULE "A"



Schedule "B"

(Option to Purchase) File No. R.10/2007(4)

THIS AGREEMENT made in duplicate this day of , 2008.

BETWEEN:

DKA DEVELOPMENT INC.,
(d/b/a "***Dilawri Group"***),
duly registered to carry on business in Manitoba,
as bare trustee for the Dilawri Family Trust II,
(hereinafter called ***"Dilawri"***),

OF THE FIRST PART,

- and -

THE CITY OF WINNIPEG,
(hereinafter called the ***"City"***),

OF THE SECOND PART.

WITNESSETH that in consideration of the sum of **ONE ($1.00) DOLLAR**, and other good and valuable consideration (hereinafter called the ***"Option Price"***), now paid by the City to Dilawri (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree, each with the other, as follows:

1. Dilawri hereby grants to the City the sole and exclusive option, irrevocable within the time hereinafter limited for acceptance, to purchase the land shown shaded and identified as ***"Area A-2 Option Land – To be conveyed to the City"*** on Misc. Plan No. 13124/6 attached hereto as Schedule "A" (hereinafter called the ***"Lands"***), for a price representing market value to be determined as hereinafter described (hereinafter called the ***"purchase price"***), plus applicable Goods and Services Tax, upon terms and conditions hereinafter contained.

2. (a) This option may be exercised at any time up to and including the 31st day of December, 2047, by notice in writing to that effect delivered to Dilawri or mailed postage prepaid to Dilawri at 900 – 1717 Waverley Street, Winnipeg, Manitoba R3T 6A9 and by paying to Dilawri at such time as market value is determined hereunder a sum equivalent to fifteen (15%) percent of the purchase price on account of the purchase price;

   (b) The date of the delivery or the mailing, as the case may be, shall conclusively be deemed to be the date on which the option is exercised.

3. The purchase price shall be an amount equivalent to the market value of the Lands at the time of exercise of the option to be determined not later than July 1, 2047 unless otherwise agreed by the City, by an appraiser accredited by and in good standing with the Appraisal Institute of Canada selected by mutual agreement between Dilawri and the City. If Dilawri and the City are unable to mutually agree upon the selection of an appraiser and the terms of reference for such appraisal on or before January 1, 2047, the purchase price, in that event, shall be determined by a referral to a single arbitrator, if the parties agree upon one, otherwise to three (3) arbitrators, one (1) to be appointed by each party to the reference, and a third arbitrator to be appointed by the first named arbitrator in writing and if either party shall refuse or neglect to appoint an arbitrator within seven (7) days after the other party shall have appointed an arbitrator, and shall have served a written notice upon the first mentioned party requiring such party to make such an appointment, then the arbitrator first appointed shall, at the request of the party appointing them, proceed to hear and determine the matter of purchase price as if they were a single arbitrator appointed by both parties for the purpose, and the award and determination which may be made by said arbitrators, or a majority of them, or by said arbitrator, shall be final and binding upon the parties to such arbitration. The costs associated with obtaining an appraisal shall be shared equally by the parties. Furthermore, each party shall be responsible for their own costs associated with the arbitration.

4. Upon the exercise of this option, this Agreement shall constitute a contract for sale and purchase of the Lands upon the following terms and conditions, namely:

   (a) The purchase price as determined pursuant to Clause 3 hereof, plus applicable Goods and Services Tax, shall be paid as follows:

      (i) a sum representing fifteen (15%) percent of the purchase price, payable as aforesaid;

      (ii) a sum representing the unpaid balance of the purchase price on the date of closing as hereinafter set out; and

      (iii) the Option Price of **ONE ($1.00) DOLLAR** shall be applied on account of the purchase price.

   (b) The date for closing, possession and adjustment of all realty taxes, local improvement levies and other adjustments shall be the later of ninety (90) days after the date on which this option is exercised or ninety (90) days after the date on which market value is determined;

(c) Dilawri warrants to the City that at the time of completion of the purchase:

(i) Dilawri will have a good and merchantable title to the Lands under The Real Property Act of the Province of Manitoba, subject only to:

(A) current taxes not yet delinquent;

(B) easements, rights-of-way, servitudes, restrictions and similar rights in real property or interests therein granted or reserved to other persons, provided that such rights do not materially interfere with the use of the Lands;

(C) the reservations, limitations, provisos and conditions, if any, expressed in any original grant from the Crown of any real property or any interest therein or in any comparable grant in jurisdictions other than Canada, provided they do not materially interfere with the use of the Lands;

(D) liens given to a public utility or any governmental entity when required by such governmental entity, provided that such liens do not materially interfere with the use of the Lands; and

(E) any registrations on title as of the date of execution of this Agreement by Dilawri, as well as any instruments registered by, for, through or against the City;

and that title to the Lands shall be free and clear of all other matters except such as may be approved and accepted by the City in writing. Such other matters shall include, but shall not be limited to, the following: all liens, charges, encumbrances, easements, rights-of-way, leases, tenancies, rental agreements, reservations, covenants, conditions and restrictions which are unacceptable to the City or which provide for a forfeiture of the title to the Lands; and

(ii) The Lands are in the location as shown on Schedule "A" hereto.

5. The City and its employees, servants and agents, has the right during the option period, as well as at any time after the exercise of the option, from time to time at its own expense to enter upon the Lands with equipment for the purpose of making surveys and soil tests, provided that the City, as often as it shall do so, shall restore the Lands to their former condition and will and does hereby covenant and agree to indemnify and save harmless Dilawri from and against all damages and claims arising out of or in any way attributable to the conduct of any such soil testing as may be carried out by the City hereunder. The City shall obtain from Dilawri its prior written consent before entering upon the Lands, which consent shall not be unreasonably withheld.

If it is determined as a result of such inspections and investigations that contamination levels exceed Provincial Environmental Standards for the intended use of the Lands or the Lands are not suitable for the City's intended use of the Lands and documentation to that effect is produced to Dilawri within ninety (90) days following its exercising of the option, the City, at its sole option, shall be entitled to cancel this Agreement;

AND FURTHER, in the event that the City fails to provide such documentation as aforesaid on or before ninety (90) days following its exercising of the option, the City shall complete the purchase as herein contemplated and shall indemnify and save harmless Dilawri 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 the Lands.

6. In the event that this Agreement shall be cancelled pursuant to clause 5 hereof, the City shall restore the Lands to the same condition as prior to its entering in or upon the same in pursuance of clause 5.

7. During the ninety-day period from the date of its exercising of the option, the City shall indemnify and save harmless Dilawri 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 the City 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 the City or otherwise, caused by reason of or in any way attributable to the City's use of the Lands and regardless of whether there is or was any negligence on the part of Dilawri, 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 or which gain access to the Lands as a result of the said Environmental Site Assessment. Claims referred to herein shall include any awards made against Dilawri under any statute for the protection of workmen.

8. Dilawri hereby covenants and agrees that it shall grant to the City, on and after the closing date, an easement and right to use the Lands until the date for closing, possession and adjustments or, if the City fails to exercise the option to purchase, until the option to purchase expires, on terms and conditions to be

agreed upon by the parties; and Dilawri hereby covenants, agrees and undertakes to enter into such an easement agreement with the City and agrees that the City shall be entitled to use the Lands for the purposes of access (ingress/egress) and to install, inspect, maintain and replace, or cause or permit to be installed, inspected, maintained and replaced, works, equipment and appurtenances pertaining thereto of any utilities (including the City) in conjunction with the Lands. The City agrees to restore the Lands to at least as good a condition as it was in prior to any utilities (including the City) entering onto the Lands for the purposes aforesaid.

9. If the City does not exercise the option within the time limited as aforesaid, the City agrees that all of the City's right and interest in respect of the option and of the Lands shall be fully ended without notice or any formality, and that the monies paid as the Option Price shall be retained by Dilawri free from every claim.

10. Dilawri hereby covenants and agrees that it shall not:

    (a) construct any buildings or permanent structures on or within any portion of the Lands;

    (b) submit any claim for injurious affection; and

    (c) object to the proposed Chief Peguis Trail Extension or claim damages allegedly resulting therefrom.

11. Dilawri is aware that the City is conducting daily live fire training exercises on the property immediately to the south of the property shown as Area B on Misc. Plan No. 13124/6 attached hereto as Schedule "A", which may result in smoke, products of combustion, "Class A Foam" spray and other similar products being carried over and onto the Lands and exposure to such smoke, products of combustion, "Class A Foam" spray and other similar products. Dilawri hereby acknowledges that this may cause, among other things, corrosion to painted surfaces and the smell of smoke and other products of combustion to infiltrate motor vehicles and buildings located on the Lands. Dilawri hereby covenants and agrees to release and forever discharge the City of and from any and all claims, demands, actions, suits or other proceedings which Dilawri may have in any manner whatsoever arising from such live fire training exercises and exposure to smoke, products of combustion, "Class A Foam" spray and other similar products

resulting therefrom including those arising after the date of closing, possession and adjustment, and including any claims or demands for loss of or damage to buildings, motor vehicles or any machinery or equipment brought upon the Lands or into any buildings located on the Lands.

Dilawri further covenants and agrees to indemnify and save harmless the City from any and all expenses, costs, claims, demands, actions, suits or other proceedings arising out of the said live fire training exercises and exposure to smoke, products of combustion, "Class A Foam" spray and other similar products resulting therefrom including those arising after the date of closing, possession and adjustment. 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 or which gain access to the Lands.

12. The City hereby covenants and agrees that it will self-assess any tax payable in respect of the transaction herein contemplated. The City's G.S.T. registrant number is R121682967.

13. Time shall be of the essence of the option and of any agreement of purchase and sale arising on the exercise of the option.

14. The schedule marked Schedule "A" and appended hereto is incorporated into and forms a part of this Agreement.

15. This Agreement enures to the benefit of and is binding upon the parties hereto, their and each of their respective successors and assigns.

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

THE CITY OF WINNIPEG

Per: _____
for DIRECTOR of Planning, Property and Development

DKA DEVELOPMENTS INC.

Per: _____
Name: ASHOK DILAWRI
Title: President
(affix corporate seal)

Witness: _____
Name: DAISY POE
(please print)
Address: 900 - 1111 West Hastings

Per: _____
Name:
Title:

DKA DEVELOPMENTS INC.

Approved:

_____
Planning, Property and Development Department

Approved:

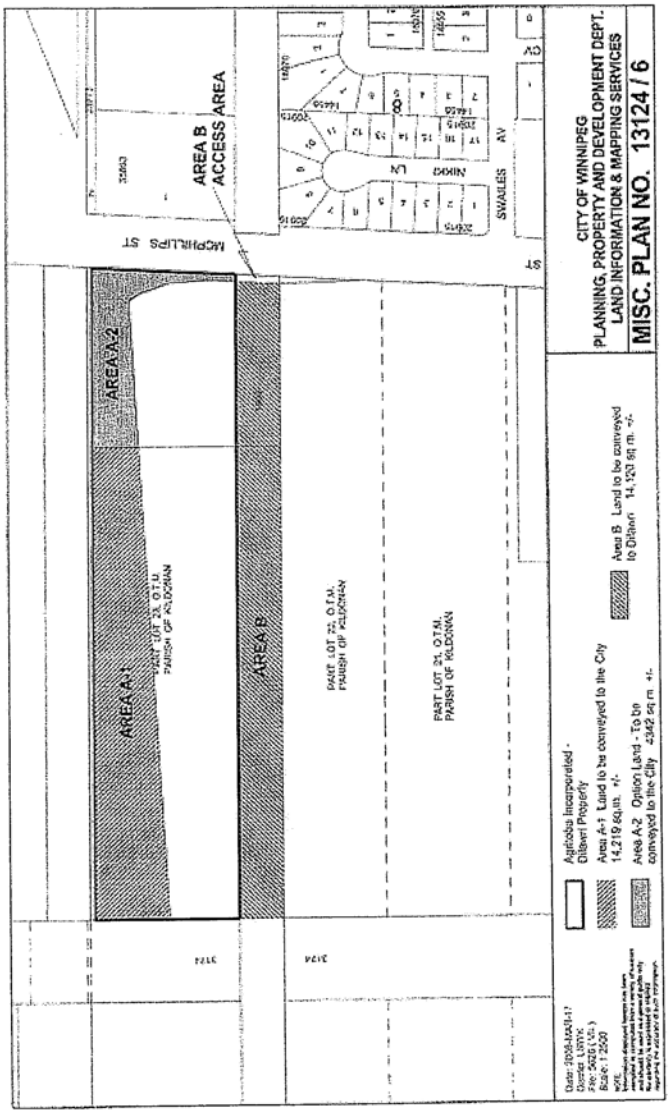
_____
for Director of Public Works

Certified as to form:

_____
for City Solicitor/Manager of Legal Services

(Option to Purchase) File No. R.10/2007(4)

SCHEDULE "A"



(Land Exchange) File No. R.10/2007(4)

SCHEDULE "C"

REAL OWNER APPLICATION

TO THE CITY ASSESSOR

The City of Winnipeg Roll No. _____

1. **THE CITY OF WINNIPEG** requests that its name appears in the Assessment Roll of The City of Winnipeg in respect to the following property, pursuant to Section 12(1) of "The Municipal Assessment Act", Cap. M 226 S.M.

2. Description of property:

PART OF LOT OR SECTION	LOT or SECTION	BLOCK or TOWNSHIP	PLAN or RANGE	INTEREST in PROPERTY
land shown hatched and identified as ***"A-1 Land to be conveyed to the City"*** on Misc. Plan 13124/6 attached				Fee Simple

3. Mailing Address: THE CITY OF WINNIPEG
510 Main Street, Winnipeg, Manitoba, R3B 1B9

4. Place of Residence: N/A

5. Name and Address of Current Registered Owner: DKA DEVELOPMENTS INC.
900 – 1717 Waverley Street, Winnipeg, Manitoba R3T 6A9

6. Description of Property: Dwellings: Vacant Land Other Buildings: Vacant Land

7. Date Purchaser is Responsible for Realty Taxes: T/B/A

8. Purchase Price: LAND EXCHANGE

Applicant:

THE CITY OF WINNIPEG

Per: *"Authorized Signatory"*
for DIRECTOR of Planning, Property and Development

Registered Owner:

DKA DEVELOPMENTS INC.
*(d/b/a the **"DILAWRI GROUP"**)*

Per: *"Authorized Signatory"*
Name:
Title: *(affix corporate seal)*

Per: *"Authorized Signatory"*
Name:
Title:

_____
Witness:
Name: _____
(please print)
Address: _____

_____

The Office of the City Assessor
The City of Winnipeg

(Land Exchange) File No. R.10/2007(4)

SCHEDULE "C1"

REAL OWNER APPLICATION

TO THE CITY ASSESSOR

The City of Winnipeg Roll No. _____

1. **DKA DEVELOPMENTS INC.** (d/b/a the "***DILAWRI GROUP***") requests that its name appears in the Assessment Roll of The City of Winnipeg in respect to the following property, pursuant to Section 12(1) of "The Municipal Assessment Act", Cap. M 226 S.M.

2. Description of property:

PART OF LOT OR SECTION	LOT or SECTION	BLOCK or TOWNSHIP	PLAN or RANGE	INTEREST in PROPERTY
land shown hatched and identified as ***"Area B Land to be conveyed to Dilawri"*** on Misc. Plan 13124/6 attached				Fee Simple

3. Mailing Address: 900 – 1717 Waverley Street, Winnipeg, Manitoba R3T 6A9
4. Place of Residence: N/A
5. Name and Address of Current Registered Owner: THE CITY OF WINNIPEG 510 Main Street, Winnipeg, Manitoba, R3B 1B9
6. Description of Property: Dwellings: Vacant Land Other Buildings: Vacant Land
7. Date Purchaser is Responsible for Realty Taxes: T/B/A
8. Purchase Price: LAND EXCHANGE

Applicant:

DKA DEVELOPMENTS INC.
*(d/b/a the **"DILAWRI GROUP"**)*

Per: *"Authorized Signatory"*
Name:
Title:
(affix corporate seal)

Per: *"Authorized Signatory"*
Name:
Title:

_____
Witness:
Name: _____
(please print)
Address: _____

_____

Registered Owner:

THE CITY OF WINNIPEG

Per: *"Authorized Signatory"*
for DIRECTOR of Planning, Property and Development

The Office of the City Assessor
The City of Winnipeg