Minutes - Executive Policy Committee - July 15, 2009

Minute No. 349
Report - Standing Policy Committee on Property and Development - June 30, 2009

Item No. 11 Acquisition for Harte Trail - CN Lands
(Charleswood-Tuxedo Ward / Transcona Ward)
eFile FI-2

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

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 acquisition of the properties shown as "Subject Property" on Misc. Plan Nos. 12189 and 12190 be approved at a purchase price of $242,500.00, plus Goods and Services Tax, and in accordance with the terms and conditions as outlined in Schedule "A" to the report of the Winnipeg Public Service dated June 11, 2009.

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

Minutes - Executive Policy Committee - July 15, 2009

Report - Standing Policy Committee on Property and Development - June 30, 2009

DECISION MAKING HISTORY:

Moved by Councillor Fielding,

That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On June 30, 2009, 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.

ADMINISTRATIVE REPORT

ISSUE: **Proposed Acquisition of Lands for Public Pathway Purposes – Harte Trail Extension and the Former Canadian Northern Railway Line**
Assiniboia Community
Tuxedo Ward
East Kildonan/Transcona
Transcona Ward

Critical Path: **Standing Policy Committee on Property and Development**
Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Klassen Manager of Real Estate	D. Joshi	M. Ruta	G. Laubenstein

RECOMMENDATIONS

1. That the acquisition of the properties shown as "Subject Property" on the attached Misc. Plan Nos. 12189 and 12190 be approved at a purchase price of $242,500.00, plus Goods and Services Tax, and in accordance with the terms and conditions as outlined in the attached Schedule "A".

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

IMPLICATIONS OF THE RECOMMENDATIONS

- On May 14, 2008, Council adopted a capital project for the construction of the Harte Trail Pathway as one of the Active Transportation Network Projects for 2008.
- The Harte Trail Pathway Construction was initiated in 2008 and was completed up to the private holding owned by the Canadian National Railway Company.

- In December 2008, the Public Works Department, under the authority granted in 2008, instructed the Planning, Property and Development Department to pursue the immediate acquisition of the Canadian National Railway Company lands.
- The Canadian National Railway Company's position on the sale of the lands required for the Harte Trail extension is that the purchase of these lands is conditional upon the City concurrently acquiring the former Canadian Northern Line (commonly known as the Dundee Line) identified as "Subject Property" on Misc. Plan No. 12190.
- The former Canadian Northern Line is required for a future trail link that has been supported by the Transcona Trails Association for many years. The alignment is identified on the City of Winnipeg Active Transportation Network and on the City of Winnipeg 2009 Cycling Map as a future route. This alignment will also serve as a connection to the Perimeter Highway and the Floodway Trail proposed by the Manitoba Floodway Authority.
- Council approval of all capital projects is required prior to the acquisition of lands for any public purpose. As the Canadian National Railway Company has linked the acquisition of both the Subject Properties, this report seeks Council approval to acquire the former Canadian Northern Line for a future pathway project.
- On March 25, 2009, Council adopted the 2009 Active Transportation Action Plan which included the Harte Trail Extension and the 2009 Active Transportation Network.

HISTORY

On May 14, 2008, Council concurred in the recommendations of the Standing Policy Committee on Infrastructure Renewal and Public Works to approve the 2008 Active Transportation Action Plan. The said plan included the construction of the Harte Trail from Shaftesbury Boulevard to Elmhurst Road, utilizing in part the subject Canadian National Railway Company lands for the construction of the Harte Trail Pathway as one of the Active Transportation Network Projects for 2008. The Harte Trail construction has been completed up to the lands owned by the Canadian National Railway Company.

The Winnipeg Public Service initiated negotiations with the Canadian National Railway Company for the acquisition of the Subject Property as identified on the attached Misc. Plan No. 12189 for the Harte Trail extension project.

In the interim, public demand for year-round active transportation facilities and programs increased and both communication and delegations were made to various Standing Committees of Council. At its meeting of December 16, 2008, Council adopted the 2009 Annual Capital Budget and requested a report back on the recommended Active Transportation Plan in response to this public demand.

On March 4, 2009, the Standing Policy Committee on Infrastructure Renewal and Public Works considered a report recommending approval of the 2009 Active Transportation Plan and an increase in the 2009 Capital Budget to support the Harte Trail Extension. Council adopted said recommendations on March 25, 2009.

The Canadian National Railway Company presented their final position regarding the proposed acquisition of the lands required for the Harte Trail Extension. This purchase is conditional upon the concurrent acquisition of the former Canadian Northern Line. The value of compensation for the combined subject lands is supported by both an internal and independent appraisals. The Harte Trail and the former Canadian Northern Railway lands are comprised of 8.99 acres and 14.25 acres respectively, for a total combined area of 23.24 acres.

While the acquisition of the former Canadian Northern Line has not received consideration by Council in its entirety, a portion of said lands was included in the 2009 Active Transportation Network approved by Council on March 25, 2009.

In addition, it should be noted that the conversion of abandoned rail lines to recreational and commuter trails has proven to be extremely beneficial to the quality of life of residents in the community. The best known example is the conversion of the abandoned CPR Marconi Rail line in Elmwood, East Kildonan and North Kildonan to the Northeast Pioneers Greenway. The award winning Northeast Pioneers Greenway has quickly become the City's flagship trail facility.

The Transcona Trails Association has been requesting for a number of years that the City acquire the subject property. The subject property is an excellent opportunity to supply north Transcona with a 3 km east/west trail link that will connect the Transcona Bio-reserve, the Rotary Prairie Nature Park, and the cycling facilities on Regent with the east end of Transcona, a distance of approximately 6 kms. In addition, the subject property would connect with the proposed Cordite Trail which will provide a direct connection between Transcona and East Kildonan.

The Winnipeg Public Service has concluded its negotiations with the Canadian National Railway Company and is recommending that the proposed acquisition of the Subject Properties be approved in accordance with the terms and conditions outlined on the attached Schedule “A”.

Funds for the acquisition of these lands are available under the Planning, Property and Development Department’s General Unspecific Account.

FINANCIAL IMPACT

Financial Impact Statement

Date: June 12, 2009

Project Name: **First Year of Program** **2009**

Proposed Acquisition of Lands for Public Pathway Purposes – Harte Trail Extension and the Former Canadian Northern Railway Line

	2009	2010	2011	2012	2013
Capital					
Capital Expenditures Required	$ 249,775	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	249,775	-	-	-	-
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	$ -	$ 18,733	$ 18,733	$ 18,733	$ 18,733
Less: Incremental Revenue/Recovery	7,275	-	-	-	-
Net Cost/(Benefit)	$ (7,275)	$ 18,733	$ 18,733	$ 18,733	$ 18,733
Less: Existing Budget Amounts	(7,275)	18,733	18,733	18,733	18,733
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures in 2009 consist of the proposed acquisition price of $242,500, short-term financing costs of $4,850 and corporate admin fees of $2,425. The latter two amounts are offset by recoveries in the Corporate Finance current budget. Direct costs from 2010 onward represent debt & finance charges on the 2009 capital expenditure and will be charged to the Planning, Property and Development Department's current budget.

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

CONSULTATION

In preparing this Report there was consultation with:

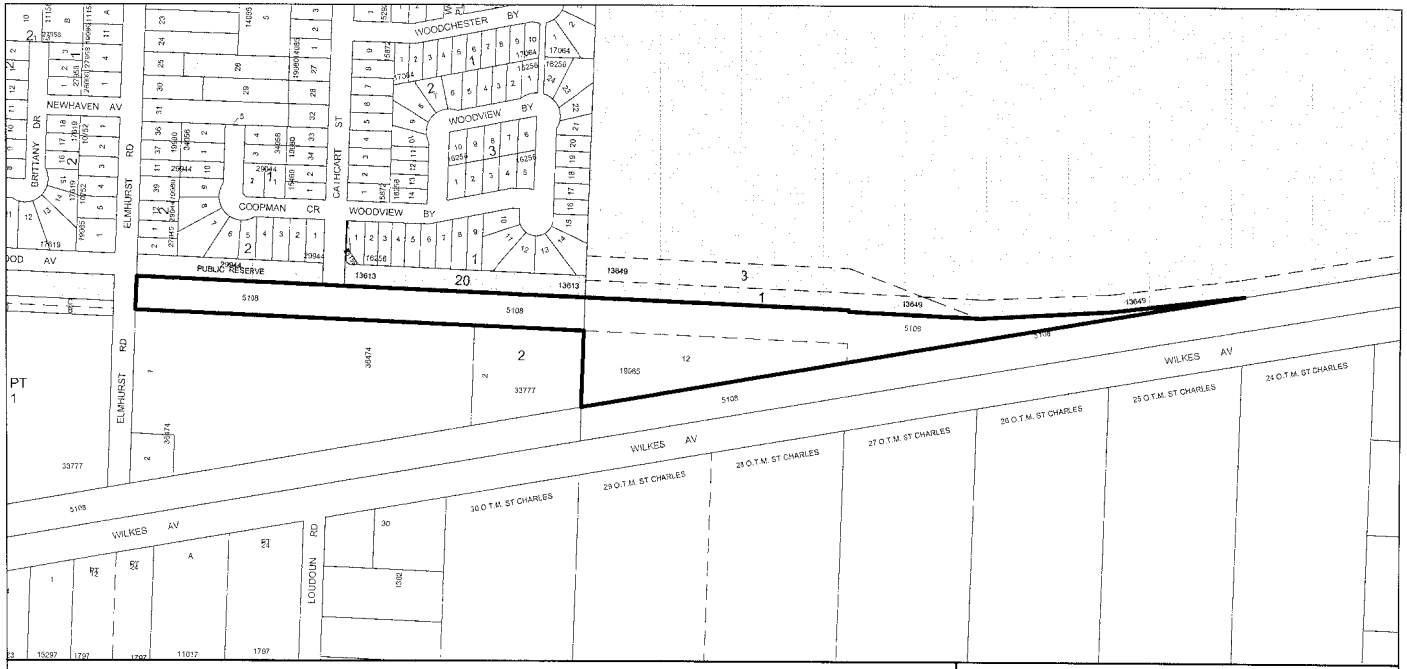
Public Works Department
Corporate Support Services Department – Legal Services (as to legal issues)

SUBMITTED BY

Planning, Property and Development Department
Real Estate Division
Prepared by: Sara Cianflone
Date: June 11, 2009
File No. 5667 (V3)

o:\reports directive\real estate\acquisition\(sc) proposed acquisition for harte trail - cn lands (r2).doc

6182



Date: 2003-FEB-12
District: ASSINIBOIA
File: Not Available
Scale: 1:4000

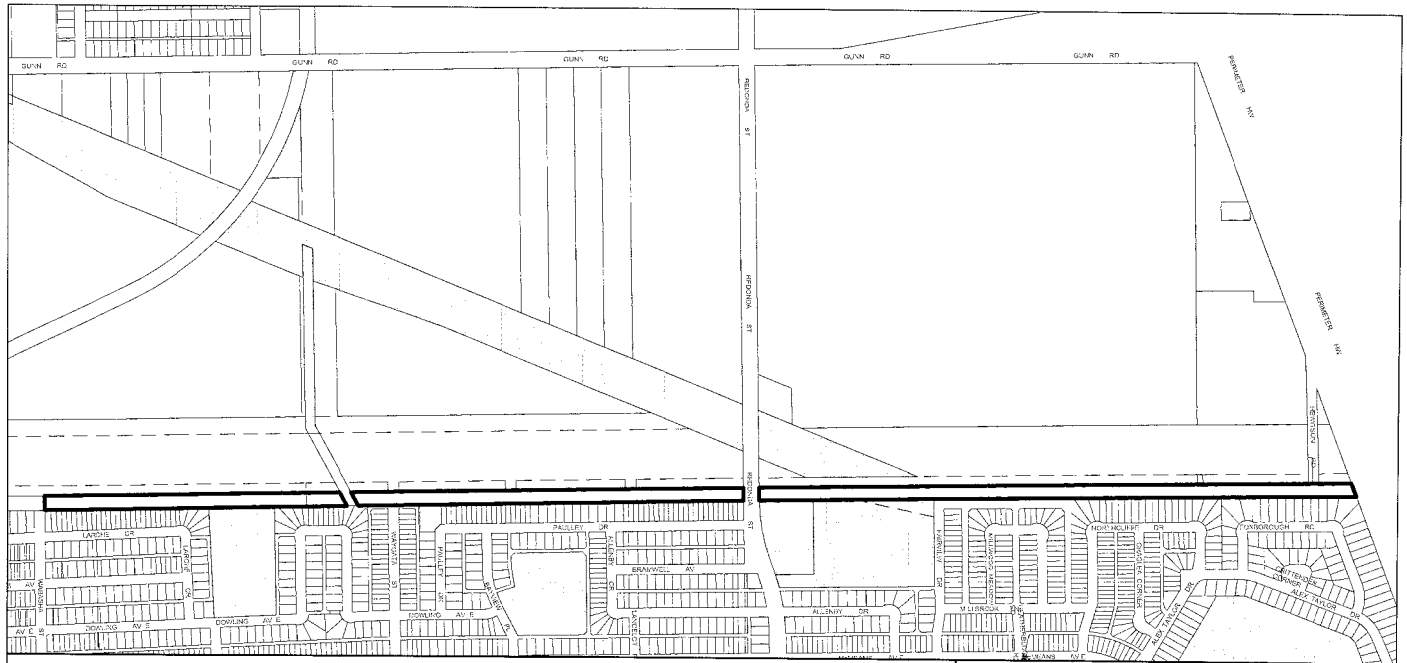
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only.
No warranty is expressed or implied regarding the accuracy of such information.

City Property

Subject Property 36,415 SQ.M. +/-

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 12189



Date: 2003-FEB-12
District: EKT
File: Not Available
Scale: 1:4000

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 Property

Subject Property 57,675 SQ.M. +/-

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 12190

LOCATION: **Winnipeg** (MB) PIN: **101912 & 101815**

OFFER TO PURCHASE AND AGREEMENT OF PURCHASE AND SALE

PURCHASER: **City of Winnipeg**
Of **3rd Floor, 65 Garry Street, Winnipeg, Manitoba R3C 4K4, Attention: Director of Planning, Property and Development,**
OFFERS TO PURCHASE from CANADIAN NATIONAL RAILWAY COMPANY, Main Floor, Building B, 10229 – 127 Avenue, Edmonton, Alberta, T5E 0B9, Vendor of the property herein described, the lands and premises located near **Firstly Redonda Street and Secondly Elmhurst Road, in the City of Winnipeg,** in the Province of Manitoba and legally described as: **(description to be determined by survey),** mines and minerals excepted, as shown on the plan attached as Exhibit 1, forming part hereof ("Property")

For the PURCHASE PRICE OF **$242,500.00** plus GST. payable by a deposit of **$10,000.00** paid herewith, to be held by Vendor pending completion or as otherwise provided herein, with the balance of Purchase Price and GST. to be paid to Vendor on completion, subject to adjustments.

Purchaser is G.S.T. exempt and Purchaser's G.S.T. Registration No. is R121682967.

PURCHASER'S OFFER TO PURCHASE IS ON THE TERMS AND SUBJECT TO THE CONDITIONS HEREIN.

Title: Purchaser will accept title subject to:

(i) the following encumbrances:
3011759 – City of Winnipeg- Water Pipeline crossing
3059931 – Manitoba Hydro – overhead & underground wire crossing

the Vendor will, on request, provide the Purchaser with copies of the license encumbrances within 10 days of the date of acceptance of this offer. (NOTE: licenses may be converted to registered encumbrances prior to closing.)

(ii) all registered or unregistered agreements, easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the land; and

(iii) any easements or agreements required by the Vendor to protect its interest in conducting the safe operation of its railway.

(iv) the subsisting conditions, provisos, restrictions, exceptions and reservations in the original grant from the Crown and any encroachments as may be revealed by an up-to-date survey, or title search.

Rights of Lessees: Upon completion, vacant possession of the property shall be given to the Purchaser subject to the rights of the Lessees and Licensees listed above and their rights of occupation pursuant to any of the encumbrances, which the Purchaser has agreed to accept title subject to.

Excluded Items: Purchase Price does not include any buildings, fixtures, fencing, chattels or leasehold improvements except for _____

Offer Irrevocable: This Offer is irrevocable until 23:59 hours on the thirtieth day after its date of execution by the Purchaser and, if not accepted by Vendor before then, the Deposit will be returned to the Purchaser.

Completion: The Completion Date shall be: **December 1, 2009 or earlier as mutually agreed upon** or 30 days from completion of the Purchaser's conditions set out below. In the event subdivision/severance is required, the Completion Date shall be the first business day after the 30th day immediately following the date of subdivision/severance (final approval or registration of Plan) of the site by the Vendor, if necessary, to permit it to convey the property to the Purchaser.

Planning: Provided that this Agreement shall be effective to create an interest in the property only if the subdivision control provisions of the *The City of Winnipeg Charter* are complied with on or before completion. If severance is required the following provisions will apply:

The Purchaser and the Vendor shall proceed with diligence to obtain same at the sole cost and expense of the Purchaser, and which cost shall include all application fees, legal fees and disbursements, and all costs and expenses in connection with satisfying and/or complying with any conditions imposed as a condition of consent. If so requested by the Vendor, the Purchaser shall cooperate with the Vendor in the application by revealing its proposed plans for the property; attending at any hearings and making submissions; and/or executing any documents required as a condition of approval. Notwithstanding the foregoing, if, after preliminary discussions with the planning department of the municipality, the Vendor is of the opinion that the severance would not be granted, the Vendor shall be entitled to terminate this Agreement and the deposit shall be returned to the Purchaser without deduction and without interest and neither party shall have any further obligation to the other respecting the Agreement.

If approval by the appropriate body is not given or, if approval is given but conditions are attached which the Vendor in its absolute discretion is not prepared to satisfy, or if approval is given, but is appealed and the Vendor is not prepared to defend such appeal, then the Vendor may by notice in writing to the Purchaser terminate this Agreement and the deposit shall be returned to the Purchaser without deduction and without interest and neither party shall have any further obligation to the other respecting the Agreement. In absence of delivery of such a notice, the Agreement shall be completed on the later of (a) five (5) days after notice is given to the Purchaser that the consent is final and binding if no conditions have been imposed; or (b) five (5) days after notice is given to the Purchaser that the conditions have been satisfied by the Vendor, if conditions have been imposed. Notwithstanding the foregoing, this Agreement may be terminated by the Vendor if the consent is not final and binding, or if any conditions which have been imposed have not been satisfied, within one hundred and eighty (180) days after the date of acceptance (the "Initial Period"). If the consent is not final and binding, or if any conditions imposed have not been satisfied, by such date, the Vendor may, at any time up to ten (10) days following the expiration of the Initial Period, or each extended time period, as the case may be, extend the time on one or more occasions to obtain the consent in final and binding form, or to satisfy any conditions imposed, as the case may be, for further periods of time chosen by the Vendor, provided that the total number of days of extension do not exceed three hundred and sixty-five (365) days after the date of acceptance (the "Extended Period") upon notice to the Purchaser. If the consent is not final or binding, or if all conditions have not been satisfied by the expiration of the Extended Period, this Agreement shall automatically be terminated and the deposit shall be returned to the Purchaser without deduction and without interest and neither party shall have any further obligation to the other respecting the Agreement.

Examination of Title: The Purchaser shall be allowed the thirty (30) days next following the Vendors date of acceptance of this offer, to examine the title to the property, at his own expense. Provided that the title to the property is good and free from all encumbrances except as aforesaid. If within the time allowed for examining the title any valid objection to title is made in writing to the Vendor and which the Vendor is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies theretofore paid shall be returned without interest or deduction and the Vendor shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the property.

Purchaser's Due Diligence: The Purchaser shall be allowed the thirty (30) days next following the Vendors date of acceptance of this offer, to perform all such Due Diligence investigations, inquiries, surveys, tests and inspections of the Property as the purchaser may require to satisfy itself with respect to the Property. Unless written notice is received prior to the expiry of the aforesaid period the Purchaser shall be conclusively deemed to have completed its Due Diligence and satisfied this condition.

Management Approval: This Agreement is conditional for thirty (30) days following the Vendors date of acceptance of this offer, to confirm that the senior management of the Vendor has approved the sale of the Property on the terms and conditions contained in this agreement

Adjustments: All adjustments of taxes, rents and other adjustments to be made as of Completion Date and possession will be given on completion. Rents will not be adjusted for lease, license or other agreements where the annual rental of the agreement does not exceed $300.00.

Special Conditions: This Offer is subject to the following conditions (if any):

A. The Vendor acknowledges that the sale of the herein referenced Elmhurst Road lands are contingent on the sale of the herein referenced Redonda Street lands.
B. The Vendor will permit the City, at its discretion and expense, before the date of possession, to conduct or have conducted on its behalf an environmental assessment together with any soil testing and analysis required. The results of said testing and/or analysis shall not in any way impact cancellation of the Purchase and Sales agreement. Further, the closing of the transaction shall not be delayed by the environmental testing or the results of the testing.
C. The Vendor consents to allow the City or its contractor, within forty-eight(48) written notice, to enter and construct upon the lands any time after the acceptance of this offer by the Vendor. The City shall be responsible for the preparation of the requisite Enter and Construct and Consent Agreements in this regard.
D. The City (Goods and Services Tax Registrant No. R121682967) will self-assess any tax payable on the acquisition.
E. This proposal is a recommendation only and is subject to the final approval of City Council and/or its delegated authority on or before October 29, 2009.

Tender of Documents: Any tender of documents or money hereunder may be made upon the Vendor or Purchaser or their respective solicitors on the day set for completion of this Agreement.

Indemnification: Purchaser indemnifies and saves harmless Vendor from any costs, claims, damages, demands, fines or awards that may arise directly or indirectly as a result of the condition of the Property, including any Environmental Conditions. This indemnity shall not merge but shall survive the closing of this transaction.

Risk: Property remains at the risk of Vendor until the day of possession.

Binding Agreement: Upon acceptance of this Offer, the Agreement constitutes a binding agreement of sale and purchase and time will be of the essence.

Vendor's Remedies: If after acceptance of this Offer, Purchaser fails to complete according to the terms of this Agreement, Vendor may, at its option, cancel this Agreement, retain the Deposit and take what other remedies Vendor may have at law, including obtaining payment of any costs including costs of severance, which are the Purchaser's responsibility hereunder.

Fencing: The Purchaser hereby covenants and agrees to install and maintain in a good and workmanlike manner a six-foot (6') chain link fence as may be required in accordance with Municipal public safety standards and the Council approved Urban Active Transportation Policy.

Noise, Vibration and Grading: The Vendor or its successors or assigns in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the rail facilities on such right-of-way in the future including the possibility that the Vendor or its successors or assigns as aforesaid may expand its operation, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwellings. The Vendor will not be responsible for any complaints or claims arising from use of such facilities and/or operations, on over or under the aforesaid right-of-way. The Purchaser hereby covenants with the Vendor not to alter grades on the property so as to increase runoff onto the abutting lands presently owned by the Canadian National Railway Company. This paragraph shall not merge but shall survive the closing of this transaction and shall be a continuing obligation of the Purchaser.

Redistrict/ Residential Use:	The Vendor reserves its right to oppose any application by the Purchaser (or its successors in title) to redistrict the Property for residential use or develop the Property for residential use. Notwithstanding the foregoing, should the Property be redistricted for residential use, the Purchaser agrees, on its own behalf and on behalf of its successors in title, to develop the Property only in accordance with the following safety requirements, namely: Setback 30metres; Berm 2.5metres; Acoustical Fence 5.5metres. The restrictive covenant contained in this paragraph shall be annexed to and run with the Property for the benefit of the Vendor's adjacent property. This restrictive covenant shall not merge but shall survive the closing of this transaction and the Vendor shall be entitled to file a caveat in relation to this restrictive covenant against title to the Property on or before the closing of this transaction.
Costs:	THE COST OF CONVEYANCE WILL BE BORNE BY THE PURCHASER. CONVEYANCE COSTS SHALL INCLUDE ALL COSTS, IF ANY, PAYABLE BY PURCHASER TO OBTAIN SEVERANCE IF APPLICABLE AND SURVEY AND/OR AREA CERTIFICATION, LAND REGISTRATION FEES AND PURCHASER'S OWN LEGAL FEES.
Commission:	The Purchaser warrants to the Vendor that no one is entitled to any fee or commission payable by the Vendor in respect of this transaction by reason of having introduced the property to the Purchaser.
Non Repre-sentations "As is" Condition:	The Vendor makes no representation or warranty of any kind either express or implied as to the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of any buildings or improvements, the use to which the property may be put and its zoning, and no condition exists other than as expressed herein, all of which will survive the completion of the sale and purchase. -Purchaser has inspected Property and accepts it in an "as is" condition.

DATED as at _____, 2009

SIGNED, SEALED AND DELIVERED in the presence of:

_____ _____
Witness Signature of Purchaser

_____ _____
Witness Signature of Purchaser

CANADIAN NATIONAL RAILWAY COMPANY by its authorized signatory hereby accepts the above Offer.

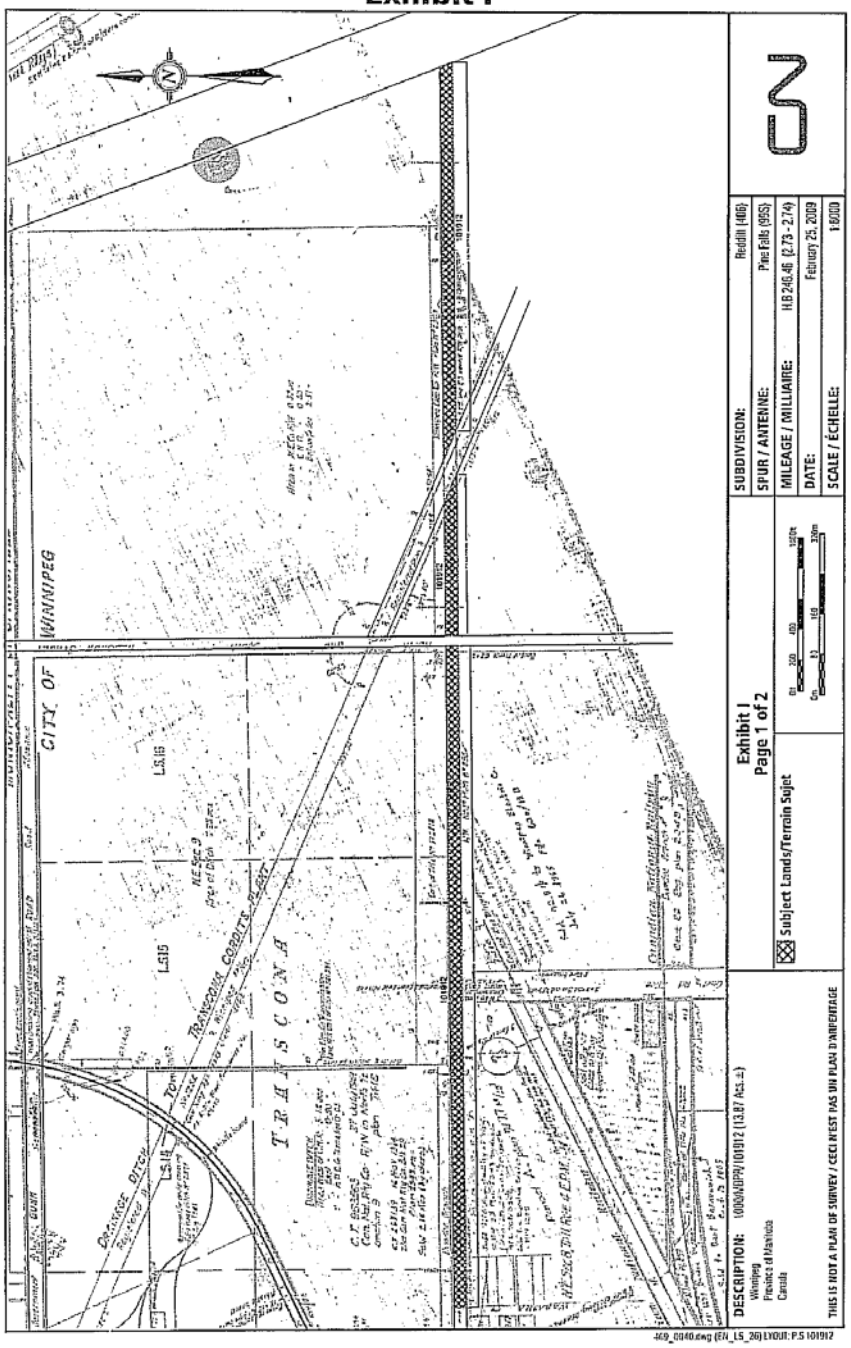
DATED as at May 25, 2009

CANADIAN NATIONAL RAILWAY COMPANY

Per: L Kral

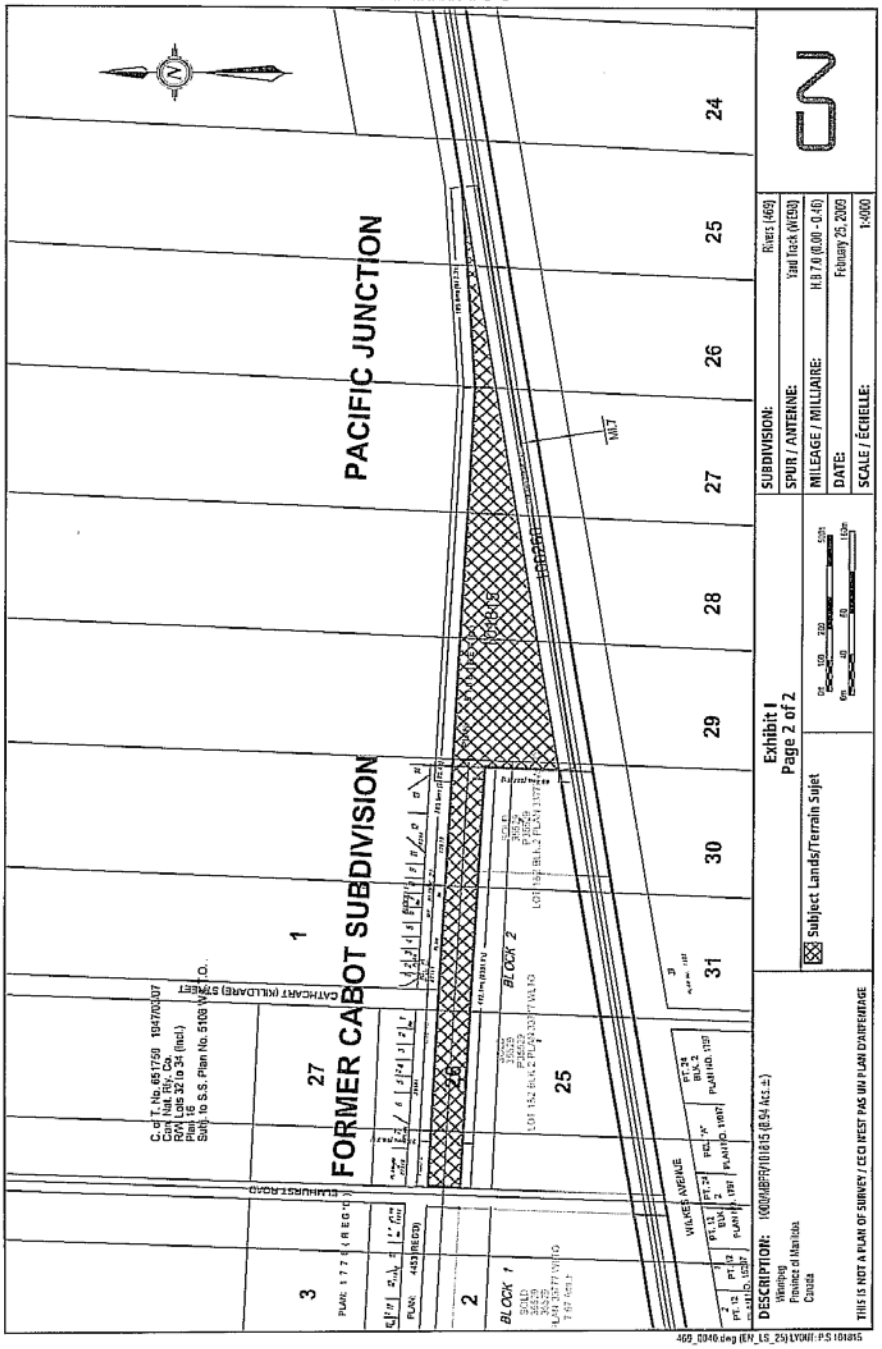
Name: Luci Krol
Title: Asset manager
I HAVE AUTHORITY TO BIND THE CORPORATION

Exhibit I



CITY OF WINNIPEG
TRANSCONA
L.S.15
L.S.16
Exhibit I
Page 1 of 2
Subject Lands/Terrain Sujet
SUBDIVISION: Reddit (406)
SPUR / ANTENNE: Pine Falls (995)
MILEAGE / MILLIAIRE: H.B 246.46 (2.73 - 2.74)
DATE: February 25, 2009
SCALE / ÉCHELLE: 1:6000
DESCRIPTION: 1000/MDPR/101912 (13.87 Acs.±)
Winnipeg
Province of Manitoba
Canada
THIS IS NOT A PLAN OF SURVEY / CECI N'EST PAS UN PLAN D'ARPENTAGE
469_0040.dwg (EN_LS_26) LYOUT: P.S 101912

Exhibit I


PACIFIC JUNCTION
FORMER CABOT SUBDIVISION
CATHCART (KILLDARE) STREET
ELMHURST ROAD
WILKES AVENUE
BLOCK 1
BLOCK 2
1
2
3
24
25
26
27
28
29
30
31
Exhibit I
Page 2 of 2
Subject Lands/Terrain Sujet
SUBDIVISION: Rivers (469)
SPUR / ANTENNE: Yard Track (WE98)
MILEAGE / MILLIAIRE: H.B 7.0 (0.00 - 0.46)
DATE: February 25, 2009
SCALE / ÉCHELLE: 1:4000
DESCRIPTION: 1000MBPR/101815 (8.94 Acs.±)
Winnipeg
Province of Manitoba
Canada
THIS IS NOT A PLAN OF SURVEY / CECI N'EST PAS UN PLAN D'ARPENTAGE
469_0040.dwg (EN_LS_25) LYOUT: P.S 101815