Agenda – Council – January 29, 2014

Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – January 6, 2014

Item No. 2 Proposed Amendment to the Encroachment Agreement Adjacent to 194 Broadway & Proposed Terms and Conditions for an Encroachment Agreement on City Lands between 194 Broadway and 142 Main Street
(Fort Rouge - East Fort Garry Ward)

STANDING COMMITTEE RECOMMENDATION:

On January 15, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submits the following to Council:

1. That the amendment to the Encroachment Agreement between the City of Winnipeg and Manitoba Club to reduce the current Encroachment Area to that as shown on attached Miscellaneous Plan 14047/6 be approved in accordance with the amended Terms and Conditions as set out in the attached Schedule A.

2. That an Encroachment Agreement in favour of the Friends of Upper Fort Garry Inc. for the purpose of the development of the Upper Fort Garry Heritage Park for the area as shown on attached Miscellaneous Plan No. 14047/7 be approved in accordance with the Terms and Conditions as set out in the attached Schedule B.

3. 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, Heritage and Riverbank Management – January 6, 2013

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 15, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On January 6, 2014, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Amendment to the Encroachment Agreement Adjacent to 194 Broadway & Proposed Terms and Conditions for an Encroachment Agreement on City Lands between 194 Broadway and 142 Main Street**

Issue: **City-Owned Lands between 194 Broadway and 142 Main Street, currently licensed by Manitoba Club, are required for the development of a Heritage Park by the Friends of Upper Fort Garry Inc.**

Critical Path: **Standing Policy Committee on Downtown Development, Heritage and Riverbank Management, Executive Policy Committee, Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
I. Day	B. Thorgrimson	n/a	D. Joshi COO

RECOMMENDATIONS

1. That the proposed amendment to the Encroachment Agreement between the City of Winnipeg and Manitoba Club to reduce the current Encroachment Area to that as shown on attached Miscellaneous Plan 14047/6 be approved in accordance with the proposed amended Terms and Conditions as set out in the attached Schedule A.

2. That a proposed Encroachment Agreement in favour of the Friends of Upper Fort Garry Inc. for the purpose of the development of the Upper Fort Garry Heritage Park for the area as shown on attached Miscellaneous Plan No. 14047/7 be approved in accordance with the proposed Terms and Conditions as set out in the attached Schedule B.

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

REASON FOR THE REPORT

Encroachment By-law 692/74, General Regulations, 4. (1) d, states:

“Where the encroachment is of an unusual or commercial nature that it be referred to the Director of Land and Development Services of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council.”

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions to amend the Encroachment Agreement with Manitoba Club.

In addition, the Planning, Property & Development Department has negotiated Terms and Conditions of for an Encroachment Agreement in favor of Friends of Upper Fort Garry Inc.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to amending the current Encroachment Agreement as shown on Misc. Plan 14047/6 or to entering into an Encroachment Agreement shown on the attached Miscellaneous Plan No. 14047/7.

The proposed amending agreement would allow for the Friends of Upper Fort Garry to enhance the visual appearance for this project as the Manitoba Club Encroachment Agreement in its original form would have affected sightlines of the Fort.

Further, a proposed encroachment agreement would formalize the terms and conditions for the use of the "Encroachment Area" as outlined on Misc. Plan. No.14047/7, which will allow the Friends of Upper Fort Garry to utilize the Encroachment Area in concert with its own land holdings for the purpose of developing a heritage park.

HISTORY

In 2011, the City of Winnipeg and Manitoba Club entered into an Encroachment Agreement for the purposes of parking on the public lane between 194 Broadway and 142 Main Street.

The Friends of Upper Fort Garry Inc. submitted an encroachment application to the City's Zoning and Permits Branch to allow for use of a portion of the public lane between 194 Broadway and 142 Main St. for the purpose of the development of a heritage park. The area sought in the Encroachment Application submitted by the Friends of Upper Fort Garry Inc. for partial use of the public lane overlapped with lands previously leased to Manitoba Club. The application was circulated to applicable City departments and public utilities for consideration and comments. All comments and concerns have been incorporated into the signed terms and conditions.

Manitoba Club was contacted about this issue and agreed to amend their lease, giving up a portion of the lane to allow for unfettered sightlines that the Friends of Upper Fort Garry Inc. had sought.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the terms and conditions.

The Planning, Property and Development Department has negotiated amended terms and conditions of an Encroachment Agreement with Manitoba Club and proposed terms and conditions of an Encroachment Agreement in favour of Friends of Upper Fort Garry Inc. satisfactory to all parties.

This report seeks approval of the Amended Encroachment Agreement with Manitoba Club and Encroachment Agreement with Friends of Upper Fort Garry Inc. as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 9, 2013

Project Name:

First Year of Program **2014**

Proposed Amendment to the Encroachment Agreement Adjacent to 194 Broadway & Proposed Terms and Conditions for an Encroachment Agreement on City Lands between 194 Broadway and 142 Main Street

	2014	2015	2016	2017	2018
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	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	532	282	282	282	282
Net Cost/(Benefit)	$ (532)	$ (282)	$ (282)	$ (282)	$ (282)
Less: Existing Budget Amounts	(532)	(282)	(282)	(282)	(282)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2014 consist of the annual rental of $281.50 + a one-time administration fee of $250. Revenues from 2015 onward consist of the rental amount only.

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

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department as to legal issues
Risk Management, Corporate Finance

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters
Date:	December 12, 2013
File No.	430

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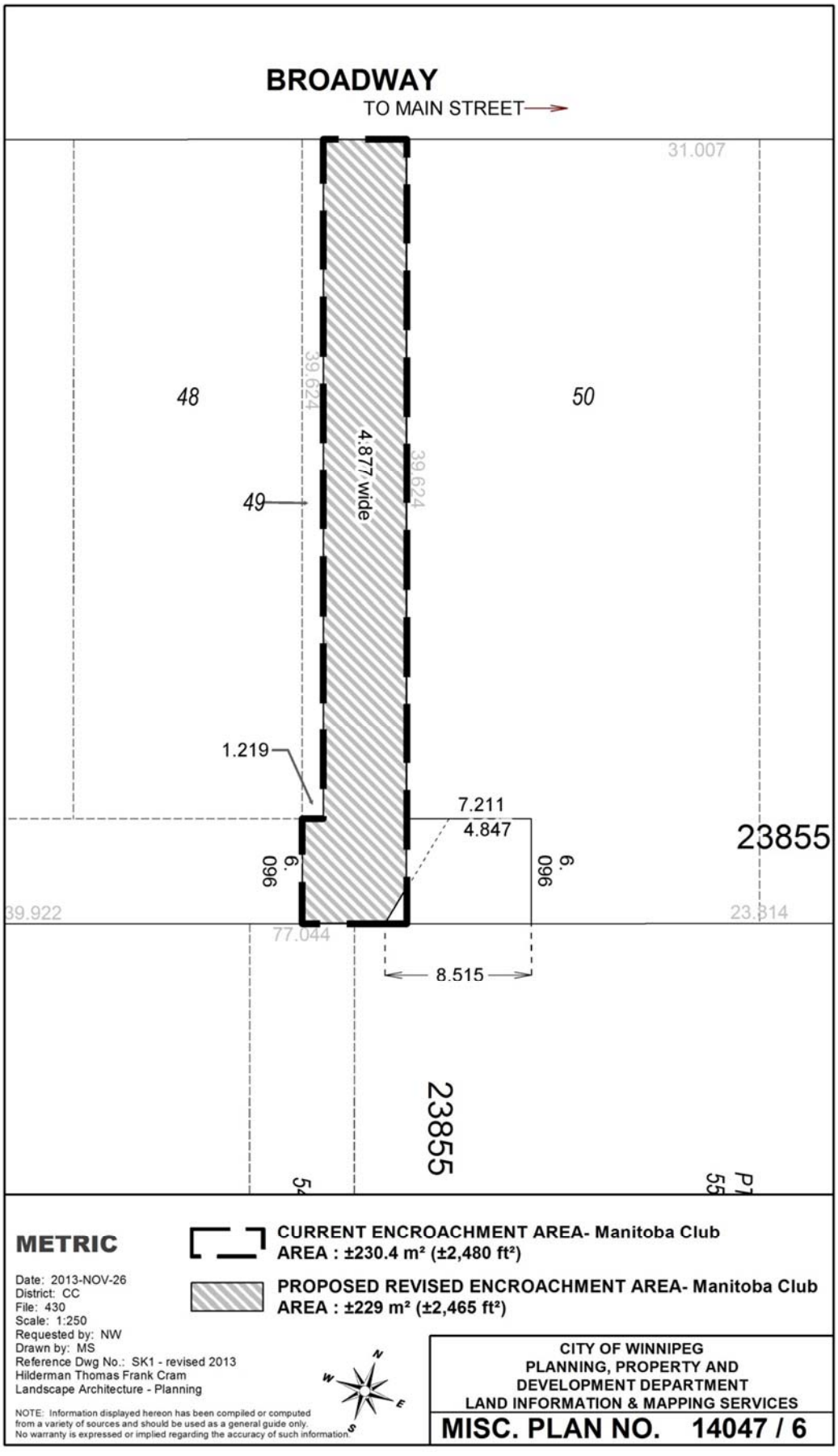
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METRIC
CURRENT ENCROACHMENT AREA- Manitoba Club
AREA : ±230.4 m² (±2,480 ft²)
PROPOSED REVISED ENCROACHMENT AREA- Manitoba Club
AREA : ±229 m² (±2,465 ft²)
Date: 2013-NOV-26
District: CC
File: 430
Scale: 1:250
Requested by: NW
Drawn by: MS
Reference Dwg No.: SK1 - revised 2013
Hilderman Thomas Frank Cram
Landscape Architecture - Planning
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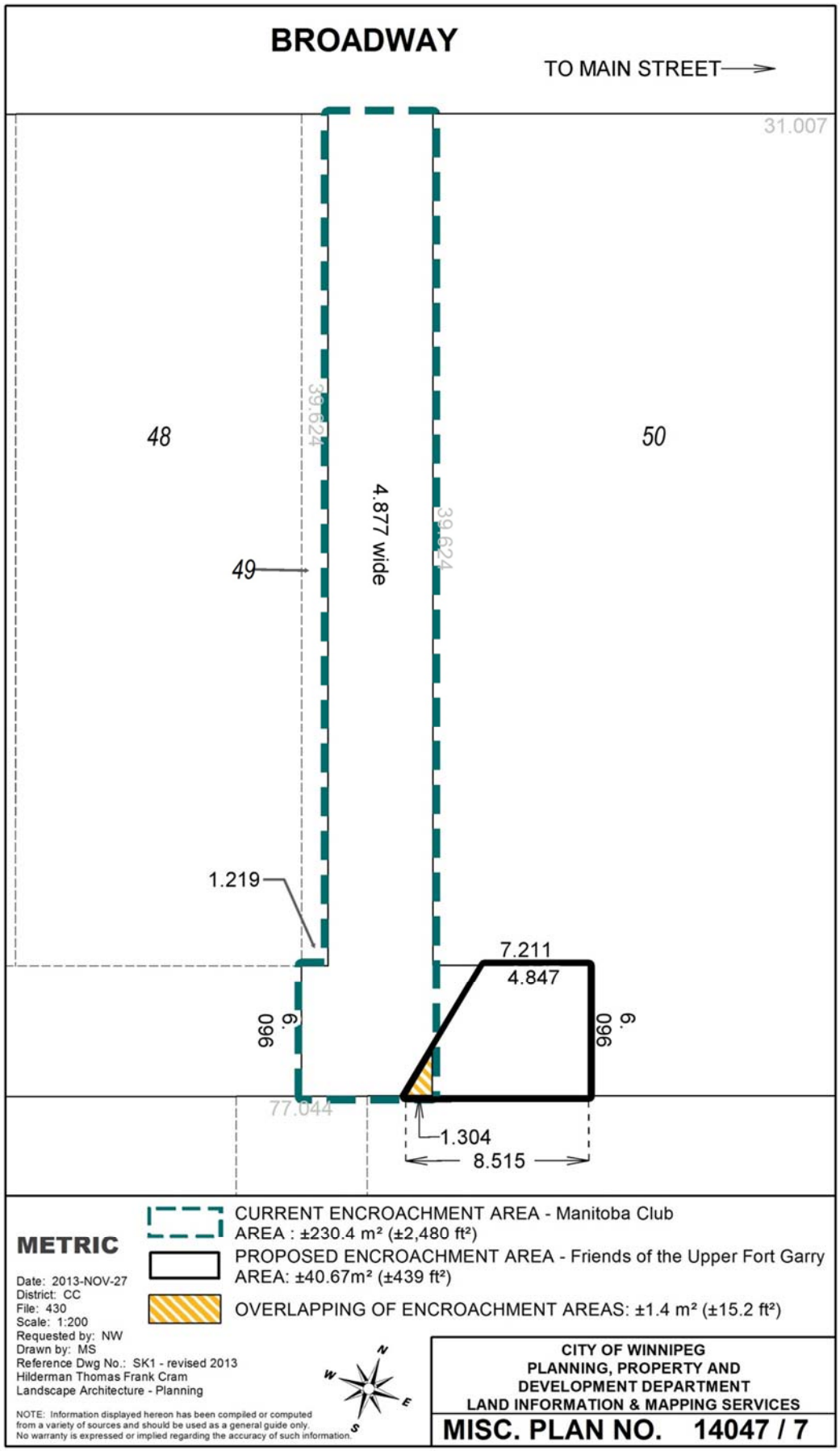
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14047 / 6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CURRENT ENCROACHMENT AREA - Manitoba Club
AREA : ±230.4 m² (±2,480 ft²)
PROPOSED ENCROACHMENT AREA - Friends of the Upper Fort Garry
AREA: ±40.67m² (±439 ft²)
OVERLAPPING OF ENCROACHMENT AREAS: ±1.4 m² (±15.2 ft²)
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DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14047 / 7

SCHEDULE A

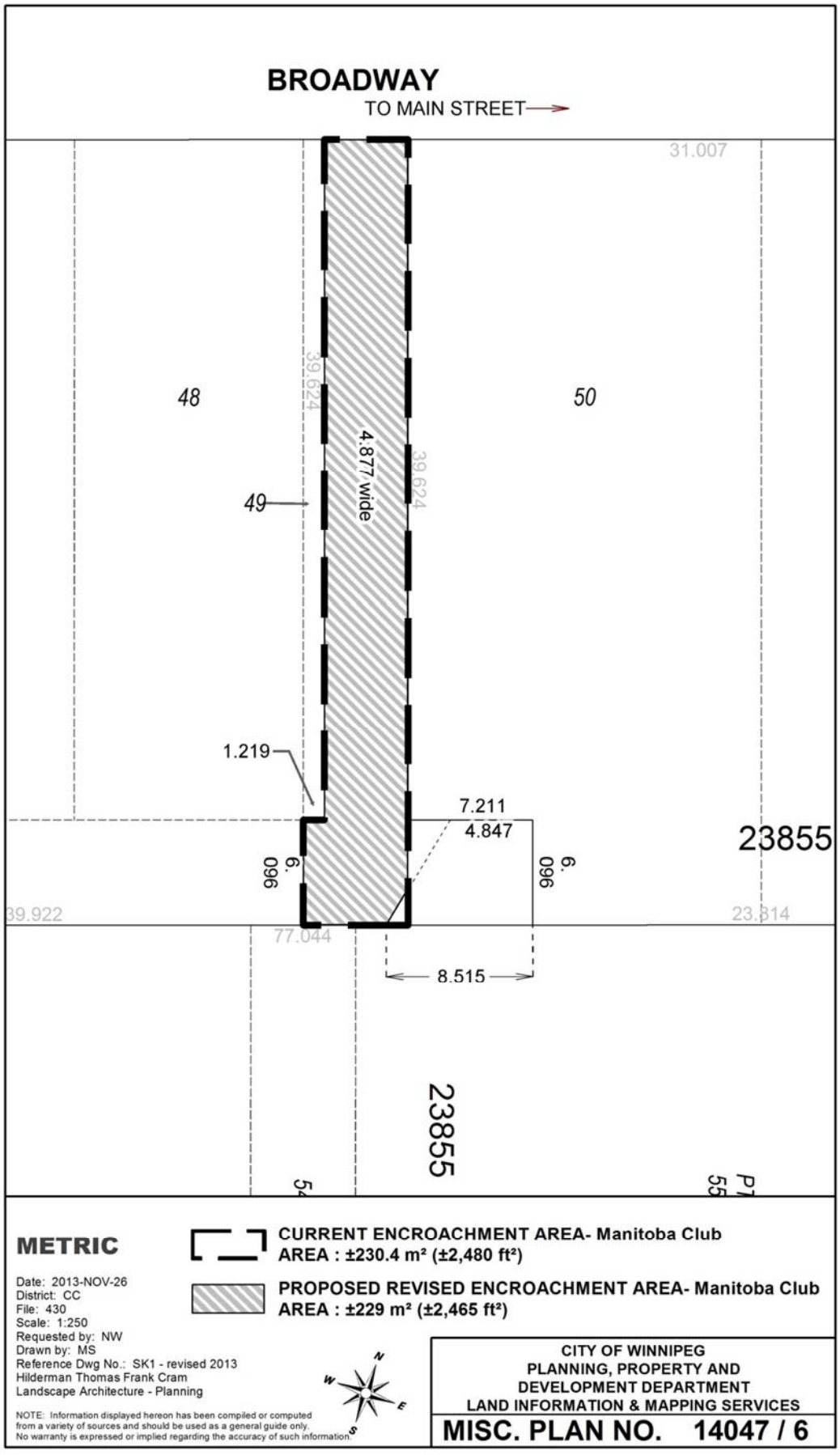
PROPOSED TERMS & CONDITIONS TO AMEND THE ENCROACHMENT AGREEMENT BETWEEN THE CITY OF WINNIPEG AND MANITOBA CLUB FOR THE USE OF A PUBLIC LANE ADJACENT TO 194 BROADWAY

Amendment Date:	Commencing the first day of the month following approval from the City's Standing Committees and Council;
Landlord:	The City of Winnipeg
Licensee:	Manitoba Club
Purpose:	To amend the Encroachment Agreement between the City of Winnipeg and Manitoba Club dated the 1st day of October, 2011 (the "Encroachment Agreement")
Amended Area:	Identified as "Encroachment Requirement- Manitoba Club on misc. plan 14047/5
Special Conditions:	To amend the definition of the licensed area identified as "Encroachment Area" in the Encroachment Agreement to the licensed area identified as "Encroachment Requirement-Manitoba Club" as outlined on attached Misc. Plan 14047/5 To amend the licensed area in the Encroachment Agreement from ±2,480 ft^2 to ±2,465 ft^2 to accommodate the needs of the Friends of Upper Fort Garry Inc. To replace Schedule "A" in the Encroachment Agreement with Misc. Plan No. 14047/5 All other terms and conditions to remain unchanged.

MANITOBA CLUB HEREBY ACKNOWLEDGES AND AGREES WITH THE ABOVE TERMS AND CONDITIONS.

MANITOBA CLUB

_____	Oct 30/2013.
SIGNATURE	**DATE**
EVELYN JACKS.	PRESIDENT.
NAME (Please Print)	**TITLE**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File: 430
Scale: 1:250
Requested by: NW
Drawn by: MS
Reference Dwg No.: SK1 - revised 2013
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MISC. PLAN NO. 14047 / 6

SCHEDULE B

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF THE PUBLIC RIGHT-OF-WAY BETWEEN 192 BROADWAY AND 142 MAIN STREET, FOR THE PURPOSE OF THE CONSTRUCTION OF A HERITAGE PARK

Use:	Development of the Upper Fort Garry Heritage Park
Licensee:	Friends of Upper Fort Garry Inc.
Area:	Shown and identified as 'Encroachment Requirement- Friends of the Upper Fort Garry' on Misc. Plan No. 14047/3
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	**$281.50** per annum, plus GST, computed on the basis of the fees outlined in the City of Winnipeg Encroachment By-Law No. 692/74 and amendments thereto, plus an initial administrative fee of $250.00 plus GST. In the event that the By-law is amended changing the fees charged for encroachments the rental paid under this agreement shall be adjusted accordingly;
Insurance:	The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage: Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of a cross liability clause, products and completed operations and contractual liability; All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba; Deductibles shall be borne by the Licensee; The Licensee shall not cancel, materially change or cause any such policies to lapse without a minimum of thirty (30) days prior written notice to the City of Winnipeg; The Licensee shall provide written notice to The City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect. The Licensee shall file with the City a certificate of insurance in a form satisfactory for the City Solicitor;

The City shall have the right to alter the limits and/or coverage's as reasonably required from time to time during the continuance of this lease agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

Cancellation: Ninety (90) days written notice;

Conditions: The Licensee acknowledges and agrees that The City of Winnipeg Encroachment By-law No. 692/74 (the "By-law") applies to this agreement and in the event of an inconsistency between this agreement and the By-law, the inconsistency will be resolved in accordance with the provisions of the By-law.

That the approval of this application by the Designated Officer – Encroachments is only valid for a period of six (6) months from the date of said approval unless the applicant enters into an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtain an extension of time from the Designated Officer – Encroachments;

That all utilities be permitted to enter the area for maintenance, repair or installation of services at any time without notice to the Licensee and that any removal or relocation of existing facilities as a result of the proposed applicant will be at the expense of the Licensee. Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc. advise the Licensee contact the Call-Before-You Dig line at 480-1212;

The Licensee is responsible for all initial construction and future maintenance costs for the Encroachment Area.

That if any removal, relocation or adjustment of existing MTS facilities is required, it will be at the expense of Licensee; that extreme caution be used when excavating in the vicinity of MTS buried plant and that the Licensee contact the Buried Plan Location Service at 941-7267, 48 hours prior to excavation for further confirmation in the field;

That all applicable permits be obtained by the Licensee prior to any development;

That snow removal in the area shall be the responsibility of the Licensee;

The Licensee shall, at its sole cost and expense, apply to the City through the Public Works Department within 3 years from signing the Terms and Conditions to legally close the entire lane as shown identified on Misc. Plan No. 14047/3. Subject to Council approving the lane closure as applied for herein, the Licensee shall negotiate with the City's Real Estate Division for the purchase of the property."

That the Licensee will erect a fence on the west and north borders of the Encroachment Area and will access the Encroachment Area through the Licensee's adjacent property

The Licensee shall not assign this agreement or sublet the Lands without the prior consent of the Licensor.

The Licensee shall indemnify and save the City harmless from and against any and all claims for damages or injuries, including death that may arise from the use of the Lands by the Licensee.

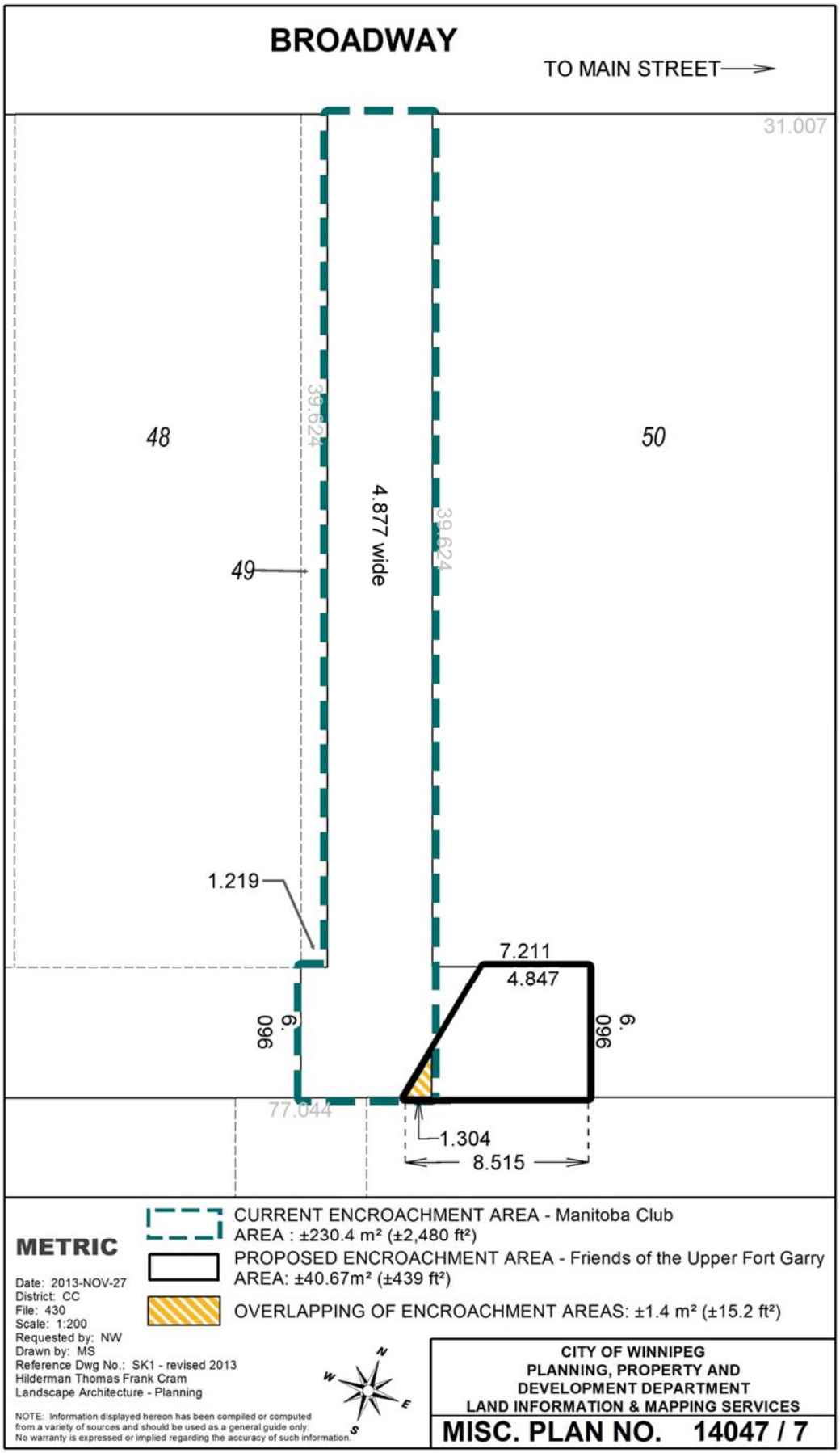
Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department, the Director of Public Works Department and by the City Solicitor/Director of Legal Services to protect the City's interests.

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, GARRY HILDERMAN, AM DULY AUTHORIZED TO ACT ON BEHALF OF FRIENDS OF UPPER FORT GARRY INC., HEREBY AGREE TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS `ENCROACHMENT REQUIREMENTS- FRIENDS OF THE UPPER FORT GARRY` ON THE ATTACHED MISC. PLAN NO. 14047/3 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

Per: FRIENDS OF UPPER FORT GARRY JULY 24 2013.
DATE

GARRY HILDERMAN.
NAME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