**Agenda – Executive Policy Committee – March 12, 2014**

**Report - Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – March 3, 2014**

**Item No. 2** **Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way between 311 Portage Avenue and 329 Hargrave Street for the Development of a Geothermal District and Connection of 2 Geothermal Pipes**
**(Daniel McIntyre Ward)**

STANDING COMMITTEE RECOMMENDATION:

On March 3, 2014, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the terms and conditions attached as Schedule "A" for an encroachment agreement in favour of 310 Donald Inc. for the purpose of a geothermal district identified as "Easement Area" on Misc. Plan 14414/1 be approved.

2. That the City enter into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

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 Downtown Development, Heritage and Riverbank Management – March 3, 2014

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On March 3, 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 Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way between 311 Portage Avenue and 329 Hargrave Street for the Development of a Geothermal District and Connection of 2 Geothermal Pipes**

**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 | M. Ruta, CFO | D. Joshi<br>A/CAO |

## RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule "A" for an encroachment agreement in favour of 310 Donald Inc. for the purpose of a geothermal district identified as "Easement Area" on Misc. Plan 14414/1 be approved.

2. That the City enter into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. 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 of an Encroachment Agreement, in favour of 310 Donald Inc.

## IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general, policy, regulatory, environmental or human resource implications to entering into an Encroachment Agreement shown on the attached Miscellaneous Plan No. 14414/1.

The Encroachment Agreement will allow 310 Donald Inc. to connect geothermal piping between the office and hotel development, alternatively known as Centrepoint, at 311 Portage Avenue and an adjacent parkade at 329 Hargrave Street.

## HISTORY

Currently under construction, Centrepoint (311 Portage Avenue) is a 200,000 square foot mixed use building located within the City of Winnipeg`s Sport Hospitality and Entertainment District (SHED). When completed the twenty story building will house four floors of office space, a one hundred fifty-four room Hotel, two restaurants and a four hundred stall parkade.

An application was submitted to the City's Zoning and Permits Branch to develop and maintain a geothermal district encroaching onto the City right-of-way between 329 Hargrave Street and 311 Portage Avenue.

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.

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 proposed terms and conditions of an Encroachment Agreement in favour of 310 Donald Inc.

This report seeks approval of the Encroachment Agreement as negotiated.

## FINANCIAL IMPACT

# Financial Impact Statement

**Date:** January 28, 2014

**Project Name:** **First Year of Program** **2014**

Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way between 311 Portage Avenue and 329 Hargrave Street for the Development of a Geothermal District and Connection of 2 Geothermal Pipes

| | 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 | 438 | 188 | 188 | 188 | 188 |
| Net Cost/(Benefit) | $ (438) | $ (188) | $ (188) | $ (188) | $ (188) |
| Less: Existing Budget Amounts | (438) | (188) | (188) | (188) | (188) |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:** Revenues in 2014 consist of the annual encroachment fee of $187.50 + a one-time administration fee of $250. Revenues from 2015 onward represent just the annual encroachment fee.

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

## CONSULTATION

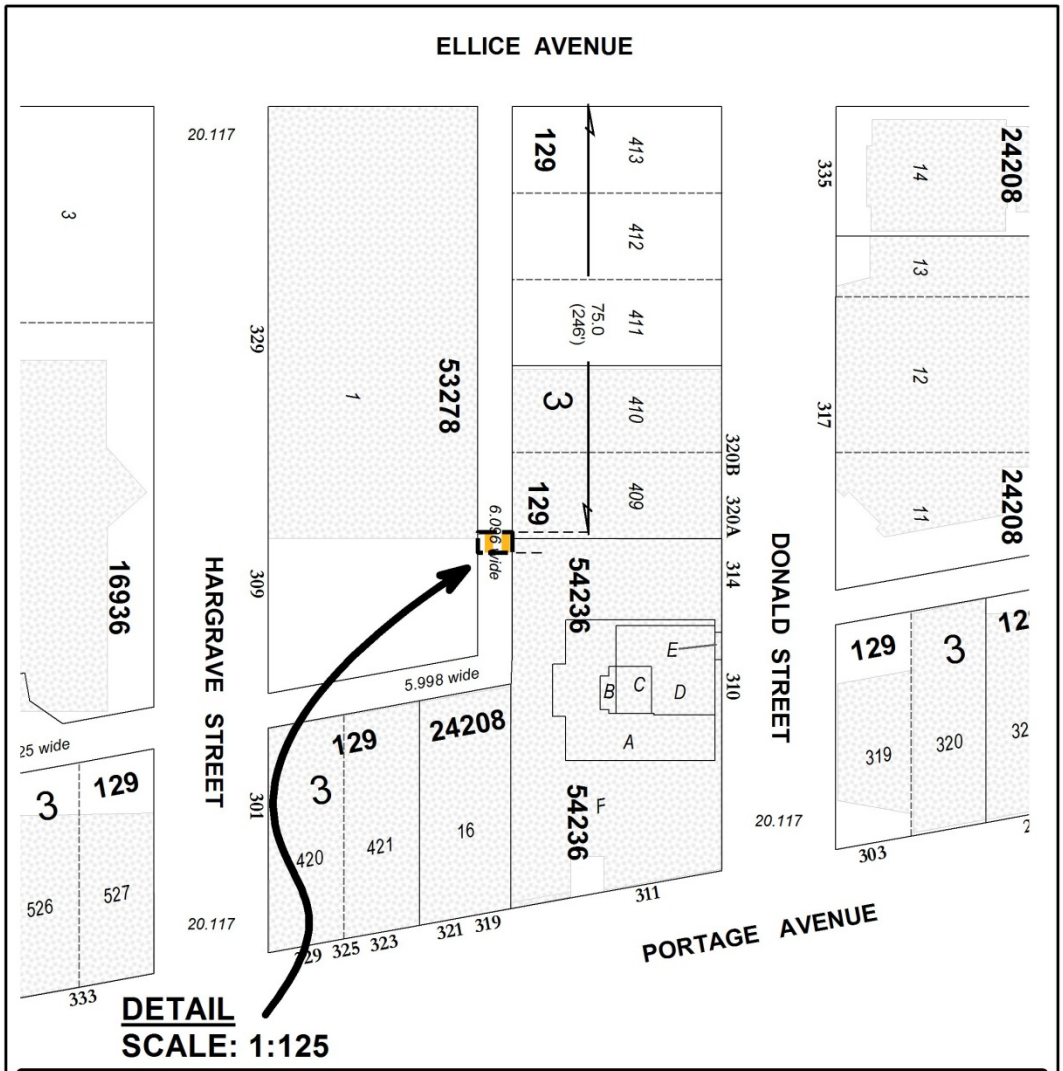
**In preparing this report there was consultation with:**

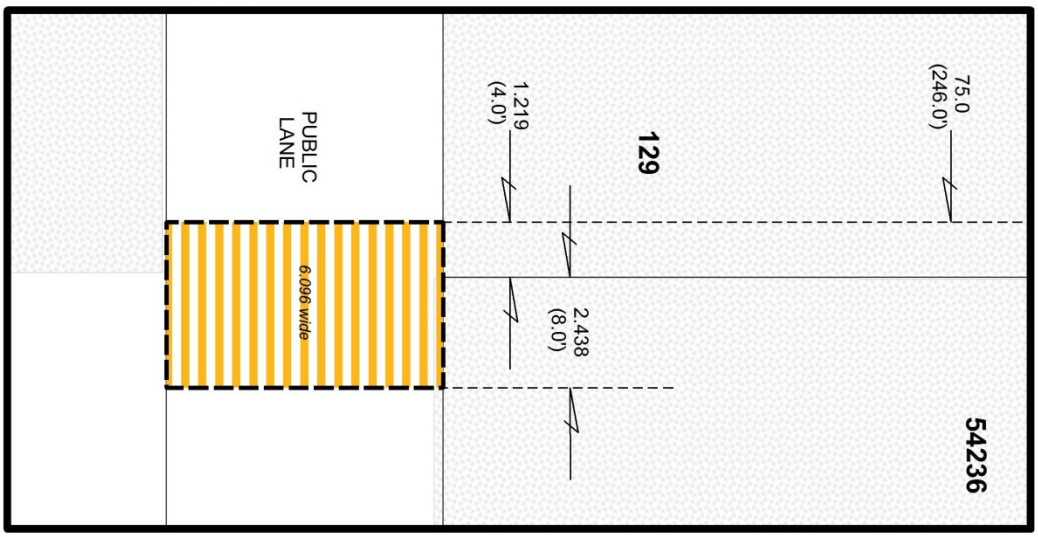
Legal Services Department as to legal issues
Risk Management, Corporate Finance

## SUBMITTED BY

| | |
|---|---|
| Department: | Planning, Property and Development |
| Division: | Municipal Accommodations |
| Prepared by: | Nolan Winters |
| Date: | February 7, 2014 |
| File No. | MA2014-019 |

O:\Reports Directive\Municipal Accommodations\Leases\2014\MA2014-019 RIS Report Encroachment Agreement for Right-of-Way at 311 Portage Ave and 329 Hargrave Street-Geothermal Piping.doc




## METRIC

Date: 2013-OCT-04
District: CC
File: 9000/48
Scale: 1:1000
Requested by: NW
Drawn by: MS
Reference Dwg No.: Encroachment Application
311 Portage Avenue - Centrepoint
GEO-XERGY SYSTEMS INC. GEOTHERMAL TRANSFER PIPE

EASEMENT AREA: ±22.3 m² (±240 ft²)

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

**CITY OF WINNIPEG**
**PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT**
**LAND INFORMATION & MAPPING SERVICES**

# MISC. PLAN NO. 14414 / 1

**SCHEDULE A**

**PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR TWO GEOTHERMAL PIPES CROSSING A CITY-OWNED PUBLIC RIGHT-OF-WAY ORIGINATING AT 311 PORTAGE AVENUE AND ENDING AT 329 HARGRAVE STREET**

| | |
|---|---|
| Use: | Establishment of a Geothermal District which includes two geothermal pipes; (hereinafter called the 'Geothermal Piping') |
| Licensor: | The City of Winnipeg (hereinafter called the 'City') |
| Licensee: | 310 Donald Inc. (hereinafter referred to as the `Licensee`) |
| Area: | Shown and identified as 'Easement Area' on Misc. Plan No. 14414/1, attached; |
| Term: | Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council; |
| Rental: | $187.50 per annum, plus GST, plus an initial administrative fee of $250.00 plus GST, computed on the basis of the fees outlined in the City of Winnipeg Encroachment By-Law No. 692/74 and amendments thereto. In event that By-law No. 692/74 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:<br><br>Commercial general liability insurance in the amount of at least two million dollars ($2,000,000.00) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain products and completed operations, evidence of contractual liability and cross liability clause;<br><br>All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba;<br><br>Deductibles shall be borne by the Licensee;<br><br>The Licensee shall ensure that the Contractor performing the installation of the geothermal system agrees to procure and maintain at its own expense a policy of public liability and property damage at an amount the Licensee may reasonably require; |

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 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: Six (6) months' written notice by either party;

Should the Licensee be in default of the terms and conditions of this agreement, the City shall provide the Licensee with thirty (30) days' notice to remedy the default along with a description of the nature of the default. Should the Licensee not remedy the default to the reasonable satisfaction of the City within thirty (30) days of the notice being provided, the City at its sole discretion may terminate this agreement immediately upon the expiration of the thirty (30) days;

Conditions: That the approval of this application by the Designated Officer – Encroachments is only valid for a period of twelve (12) months from the date of said approval unless the Licensee enters into an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtains an extension of time from the Designated Officer – Encroachments;

Licensee to comply with all laws, by-laws and regulations of any federal, provincial or municipal authority, and shall obtain all necessary permits pertaining to the use and occupancy of the Encroachment Area;

The Licensee shall not erect or permit the erection of any building or other structure, other than the Geothermal Piping referred to herein, nor make any excavation other than that required for the Geothermal Piping referred to herein, and shall not place fill upon the Encroachment Area or on the lands adjacent to the Encroachment Area;

Immediately following construction or dismantling of the Geothermal Piping, the Licensee agrees to restore the lands in the Encroachment Area and the adjacent lands, including but not limited to the public lane, to a condition at least equal to the condition they were in prior to the said construction. The Licensee shall be responsible for any and all damages to the lands and permitted structures in the Encroachment Area and adjacent lands, including but not limited to the public lane, resulting from its use and occupation of the Encroachment Area;

That if at any time during the term the City's use or requirements for the public lane reasonably necessitate the relocation and/or modification and/or removal of the Geothermal Piping, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Geothermal Piping as required by the City and to pay all costs and expenses associated therewith. The City must give the Licensee at least six (6) months' notice to relocate and/or modify and/or remove the Geothermal Piping;

The Licensee shall release, 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 Encroachment Area by the Licensee;

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Encroachment Area including, but not limited to; license fees, business tax, garbage removal, etc. The Licensee shall also be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Encroachment Area;

That all utilities be permitted to enter the Encroachment Area for maintenance, repair or installation of services at anytime without notice to the Licensee and that any removal or relocation of existing facilities as a result of the proposed application will be at the expense of the Licensee;

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 Plant Location Service at 204-941-7267 at least 48 hours prior to excavation for further confirmation in the field;

Manitoba Hydro/Central Gas advise of the following conditions:

(i) Centra Gas will require easements for existing facilities and future development. Centra Gas requires that a detailed construction drawing must be sent to GasDesign@hydro.mb.ca for third party review;

(ii) Any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed application will be at the expense of the Licensee;

(iii) Future electrical and/or gas service can be obtained from the local Manitoba Hydro District Office;

(iv) If the application is revised at any time it will be necessary for Manitoba Hydro/Centra Gas to review the file to determine if their easement requirements remain the same;

(v) 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 204-480-1212;

The Licensee shall not assign this agreement without the prior written consent of the City. Should either or both of the buildings on either side of the Encroachment Area, more specificially referred to by their civic addresses as 311 Portage Avenue and 329 Hargrave Street, be sold or transferred to a third party, the Licensee shall obtain an acknowledgement and contractual undertaking by the purchaser or transferee in a form satisfactory to the City to be bound by the terms and conditions of the Encroachment Agreement prior to such purchase or transfer taking place;

Any costs associated with the repair and maintenance, relocation and/or removal of the Geothermal Piping is the responsibility of the Licensee;

That all applicable permits be obtained prior to any development;

The Licensee shall enter into a formal agreement with the City embodying the foregoing terms and conditions and any other terms and conditions as are deemed necessary by the Director of Planning, Property & Development, the Director of Public Works or by the City Solicitor/Director of Legal Services and in a form satisfactory to the City Solicitor/Director of Legal Services as to form; and

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.

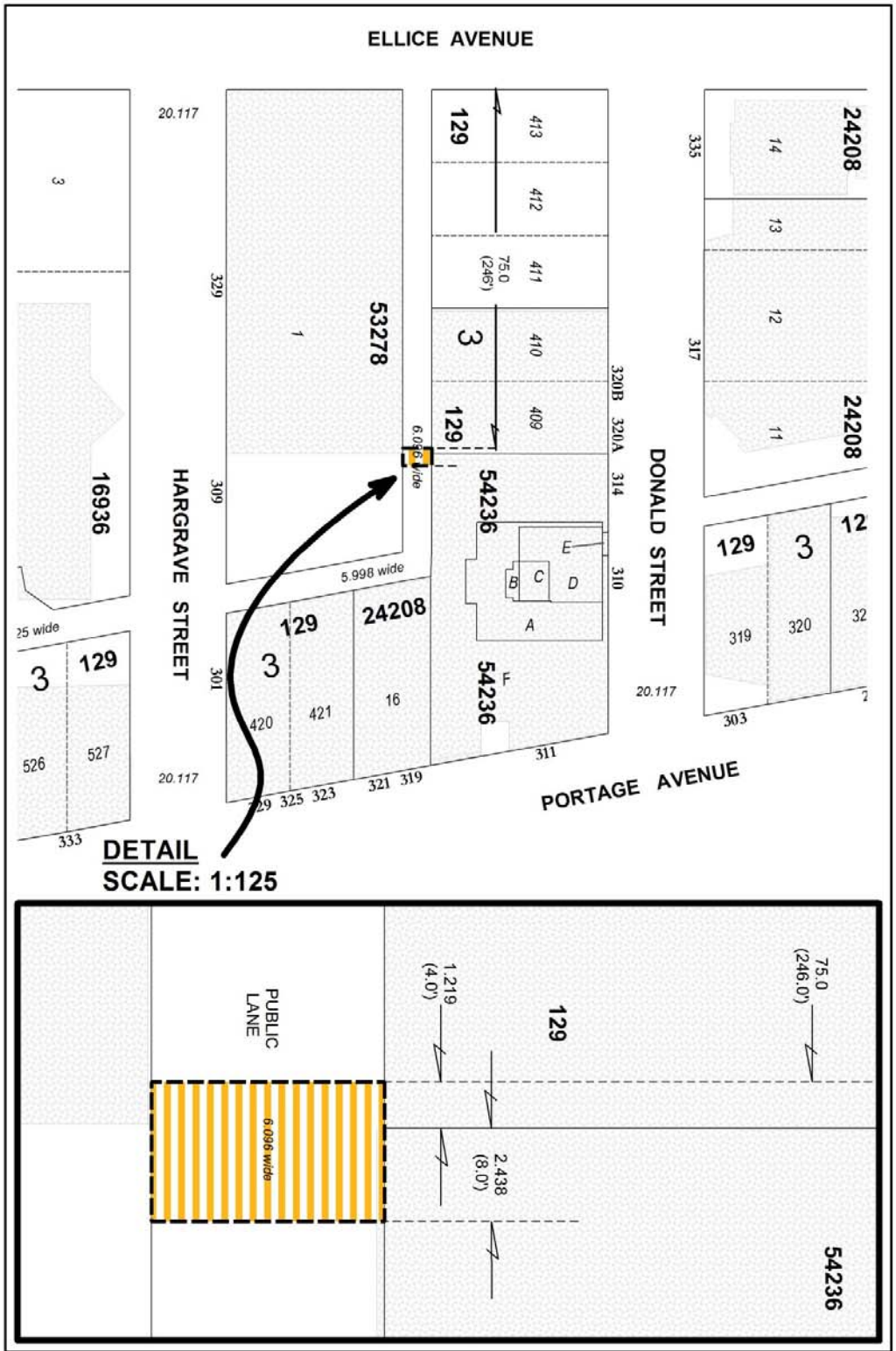
**310 DONALD INC. HEREBY ACKNOWLEDGES AND AGREES WITH THE ABOVE TERMS AND CONDITIONS.**

**310 DONALD INC.**

Per: _____

Name: Scott Stephanson

TITLE: Vice-President Date: January 22, 2013




**METRIC**

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CITY OF WINNIPEG
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LAND INFORMATION & MAPPING SERVICES

**MISC. PLAN NO. 14414 / 1**