Minute No. 584
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – September 4, 2018

Item No. 9 **Encroachment Agreement between 109 James Avenue Ltd. and the City of Winnipeg to Allow for the use of City Right-of-Way Adjacent to 109 James Avenue**
(Point Douglas Ward)

COUNCIL DECISION:

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

1. That the proposed Terms and Conditions for an Encroachment Agreement, attached hereto as Schedule A, in favour of 109 James Avenue Ltd. for the land adjacent to 109 James Avenue (identified as "Encroachment Area" in Schedule B) be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with 109 James Avenue Ltd. and such other agreements as determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Encroachment Agreement and the Ancillary Agreements, in accordance with this report 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 Property and Development, Heritage and Downtown Development – September 4, 2018

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 12, 2018, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 4, 2018, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Encroachment Agreement between 109 James Avenue Ltd. and the City of Winnipeg to Allow for the use of City Right-of-Way Adjacent to 109 James Avenue

Critical Path: Standing Policy Committee on Property and Development, Heritage, and Downtown Development - Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	M. Ruta	D. Wardrop, Acting CAO

EXECUTIVE SUMMARY

The Planning, Property and Development Department (the "Department") has negotiated the proposed Terms and Conditions of an Encroachment Agreement in favour of 109 James Avenue Ltd. (the "Licensee"). The property located at 109 James Avenue will be developed with two residential buildings that will encroach onto the public right-of-way.

The Licensee will be responsible for all costs associated with the Encroachment Agreement. The Ward Councillor concurs in the recommendation of the Department.

RECOMMENDATIONS

1. That the proposed Terms and Conditions for an Encroachment Agreement, attached hereto as Schedule A, in favour of 109 James Avenue Ltd. for the land adjacent to 109 James Avenue (identified as "Encroachment Area" in Schedule B) be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with 109 James Avenue Ltd. and such other agreements as determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Encroachment Agreement and the Ancillary Agreements, in accordance with this report 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

Clause 4(1)(d) of the Encroachment By-law No. 692/74 (the "By-law") states:

> "Where the encroachment is of an unusual or commercial nature that it be referred to the Designated Officer 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 Section 2 of the By-law, Designated Officer is defined as "the Director of Planning, Property and Development or such other person as may be authorized in writing by the said Director to exercise some or all of the powers vested in him by this By-law".

The Department has negotiated Terms and Conditions of an Encroachment Agreement for an encroachment in favour of the Licensee.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general, policy, regulatory, environmental, human resource, or other implications of this report.

The Encroachment Agreement may be terminated upon ninety (90) days' written notice should the City require these lands for any purpose in the future.

The Licensee will be responsible for all costs associated with this Agreement.

HISTORY/DISCUSSION

The property at 109 James Avenue is the former James Avenue Pumping Station and is on the Historical Resources Conservation List. The Licensee is seeking to create a mixed-use development on the site, consisting of two new residential buildings (fronting on Amy Street and Waterfront Drive) and the conversion of the pumping station into a commercial space. Council approved a partial closure of James Avenue through DAC 11/2016 and the closed road was sold to CentreVenture (who subsequently sold the land to the Licensee). Due to the scale of the development and the limited site area, the Licensee requires an encroachment into the right-of-way.

The east elevation of the Waterfront Drive Building will encroach into the right-of-way as will the west elevation of the Amy Street building. Further, a steel switchback staircase for egress will be fixed to the south elevation of the Waterfront Drive building and to the south side of the Amy Street building. The encroachments are identified on Schedules B and C.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed encroachment and their comments have also been incorporated into the Terms and Conditions (attached as Schedule A). Further, the encroachment 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 rent for the Agreement is based upon the encroachment license annual rate noted in the City of Winnipeg 2018 Fees and Charges Schedule. The encroachment license annual rate is currently set at $25.60 per square meter.

The Ward Councillor concurs in the recommendation of the Public Service.

FINANCIAL IMPACT

Financial Impact Statement

Date: August 1, 2018

Project Name:

First Year of Program 2018

Encroachment Agreement between 109 James Avenue Ltd. and the City of Winnipeg to Allow for the use of City Right-of-Way Adjacent to 109 James Avenue

	2018	2019	2020	2021	2022
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	5,269	4,161	4,244	4,329	4,415
Net Cost/(Benefit)	$ (5,269)	$ (4,161)	$ (4,244)	$ (4,329)	$ (4,415)
Less: Existing Budget Amounts	(5,269)	(4,161)	(4,244)	(4,329)	(4,415)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2018 consist of encroachment fees of $3,699, lease admin fees of $380 and a document preparation fee of $1,190. Revenues in 2019 and forward represent encroachment & lease admin fees increased by an assumed inflation factor of 2%. Property taxes, levies and other fees that might apply are immaterial and have been excluded from this analysis.

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

CONSULTATION

This Report has been prepared in consultation with:

Legal Services (as to legal issues)
Risk Management (as to insurance requirements)

OURWINNIPEG POLICY ALIGNMENT

01-1a - City Building- Direction 1: Develop and Apply Direction Strategies

01-1c - Key Directions For Specific City Areas - A key to making our city attractive and competitive will be to create 'complete communities' and to complete existing communities by enhancing existing infrastructure and assets to ensure that most amenities for daily living are universally accessible within walking distance.

01-4 - Housing- Direction 6: Encourage residential development downtown.

SUBMITTED BY

Department: Planning, Property and Development Department
Division: Real Estate and Land Development
Prepared by: Armohan Singh, Real Estate Officer
Date: August 10, 2018
File No: 320/1(V3)

Attachments:

Schedule A – Proposed Terms and Conditions
Schedule B – Misc. Plan
Schedule C – Building Plan

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR EXTERIOR EXIT STAIRCASES, EXTERIOR WALKWAY AND BUILDING, AND EXTERIOR EXIT STAIRCASE LANDINGS AND BUILDING, LOCATED ADJACENT TO 109 JAMES AVENUE

Use:	Exterior exit staircases, exterior walkway and building, and exterior exit staircase landings and building, located adjacent to 109 James Avenue
Licensee:	109 James Avenue Ltd. (herein called the "Licensee");
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 15358 attached (herein called the "Encroachment Area");
Term:	Annually continuing, commencing on the later of the first day of the month following approval from the City's Standing Committees and Council or the commencement of construction of the improvements in the Encroachment Area, or such other date as mutually agreed upon and approved by the City's Director of Planning, Property and Development (hereinafter called the "Director");
Rental:	$3699.20 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. 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;
Administrative Fee:	Annual administrative fee of $380.00 plus GST;
Document Preparation Fee:	A one-time Legal Services Document Preparation Fee in the amount of $1,190.00 plus GST payable prior to the commencement date;
Realty Taxes:	The Licensee is responsible for all realty taxes, municipal taxes, school taxes, local improvements, license fees, business tax, etc. of which may be charged in respect of the use and occupation of the Encroachment Area.
Other Fees, Licenses,	All other license fees, business tax, levies, etc. which

Taxes etc:	may be charged in respect of the use and occupation of the Encroachment Area.
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 for bodily injury and property damage. Such liability policy to include the City of Winnipeg as an additional insured and contain evidence of contractual liability and cross liability clause, non-owned automobile liability, and products and completed operations liability and shall not contain any special limitations on the scope of coverage afforded the City, its officers, officials, employees, agents or volunteers;
	If required, automobile liability insurance for owned automobiles to be used for or in connection with this agreement in the amount of at least two million dollars ($2,000,000.00) inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence;
	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 ensure that all commercial general liability policies written on behalf of the Licensee contain a waiver of any subrogation right which the Licensee's insurers may have against the City and against those for whom the City is, in law, responsible, whether any such damage is caused by the act, omission or fault of the City or by those for whom the City, is in law, responsible.
	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 to the City's Supervisor of Insurance;

	The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this 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 by either party;
	Should the Licensee be in default of any of the terms and conditions of the Agreement, the City shall provide the Licensee with fifteen (15) days written notice to remedy the default along with a description of the nature of the default. Should the Licensee not remedy the default to the satisfaction of the City, the City, at its sole discretion, may terminate this Agreement immediately upon the expiration of the fifteen (15) days' notice period;
Conditions:	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 Licensee 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;
	The Licensee acknowledges and agrees that the area identified as "Encroachment Area" on Misc. Plan No. 15358 is located within a right-of-way and is governed by The City of Winnipeg By-law No. 692/74;
	The Licensee understands and agrees that the Encroachment Area is licensed on an "as is" basis.
	The City shall have the right to access the Encroachment Area at any time (twenty four hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment for any purpose whatsoever, including to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area without being responsible for any damage occasioned thereby.
	The City reserves the right for Manitoba Hydro-Electric Board, Centra Gas Manitoba Inc. or other

public utilities (hereinafter referred to as the "Public Utilities") to enter upon the Encroachment Area at any time without notice to the Licensee for maintenance, repair or installation of their utilities without the City and/or Public Utilities being responsible for any damage occasioned thereby. Any removal or relocation of existing facilities as a result of the proposed license will be at the expense of the Licensee.

Manitoba Hydro and/or Centra Gas Manitoba Inc. advise of the following when working in proximity to all natural gas mains:

1. Manitoba Hydro and Centra Gas Manitoba Inc. have no easement requirements.

2. Any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed subdivision will be at the expense of the developer and/or customer.

3. Future electrical and or gas service can be obtained from the local Manitoba Hydro District Office.

4. If this application is revised at any time it will be necessary for Manitoba Hydro/Centra Gas to review the file to determine if our easement requirements remain the same.

The Water and Waste Department advise of the following requirements:

1. Please be advised that if any work/maintenance needs to be performed on any nearby City infrastructure, the staircase and walkway may need to be removed and any removal/restoration would be at the expense of the owner.

2. "Click before you Dig Manitoba" (http://www.clickbeforeyoudigmb.com/) must be

contacted to ensure that locates are preformed, prior to any construction in the City right-of-way.

3. Any construction work must maintain standard clearances off any City-owned water/sewer infrastructure.

4. Plans for any Construction in the City Right-of-Way must be submitted to Underground Structures Branch for review and approval, prior to any construction.

The Fire Department advise of the following requirement:

- Provided the exiting complies to the requirements of the Manitoba Building Code, the Fire Department does not have any issues with the encroaching on city property.

The Plan Examination Branch advise of the following requirements:

- This is fine in principle but subject to detailed review at building permit application stage.

- That all applicable permits be obtained, including an occupancy permit, prior to any further development.

The Licensee acknowledges and agrees that, if any work or maintenance needs to be performed on the City-owned infrastructure, and the proposed structures are in any way impeding this work or maintenance, such proposed structures may need to be removed and any removal/restoration of such structures would be at the sole expense of 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, snow removal, security, 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.

The Licensee shall not assign this agreement or sublet the Encroachment Area without the prior written consent of the City. And further the Licensee acknowledges and agrees that upon its making application for such consent by the Director, the Licensee shall pay to the City a non-refundable administration fee of three hundred and eighty dollars ($380.00), plus applicable GST.

The Licensee shall release, indemnify and save the City harmless from and against any and all claims for damages or injuries, including death, which may arise from the use of the Encroachment Area by the Licensee. This provision shall survive any termination, cancellation or expiration of this Agreement.

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 204-941-7267, 48 hours prior to excavation for further confirmation in the field;

That if at any time during the term the City's use or requirements for the Encroachment Area reasonably necessitate the relocation and/or modification and/or removal of the Licensee's property on the Encroachment Area, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove its property as required by the City and to pay all costs and expenses associated therewith.

Unless otherwise specified herein, all improvements, development and construction on the Encroachment Area are to be performed at the sole cost, expense and effort of the Licensee, including but not limited to obtaining all permits required to develop, occupy and utilize the Encroachment Area for its intended use. All improvements, development and construction are subject to prior written approval of the Director;

The Licensee will not erect or permit the erection of any building or structure whatsoever on the

Encroachment Area, nor make any excavation therein or improvement thereon, without the prior written approval of the Director;

The Licensee shall maintain at its own expense the Encroachment Area in good repair in accordance with industry standards and in a safe, clean and tidy condition to the satisfaction of the City;

In the event that the Encroachment Area require repair and the Licensee receives a written notice from the City, the Licensee shall forthwith perform the repairs at its sole cost, expense and effort. If the Licensee does not so repair, the City may enter upon the Encroachment Area and conduct the repairs at the sole cost and expense of the Licensee;

The Licensee shall not suffer or permit any claim, lien or charge under *The Builders' Liens Act*, C.C.S.M. c. B91, or any like statute to be made, filed or registered against the City or against the Encroachment Area or any fixtures or improvements thereto by reason of work, labor, services or materials supplied or claimed to have been supplied to the Licensee.

The Tenant shall not release into the environment, or deposit, discharge, place or dispose of, at, on or near the Encroachment Area and/or adjoining City land, any dangerous goods as that term is defined in *The Dangerous Goods Handling and Transportation Act*, C.C.S.M. c. D12, as amended, replaced or substituted from time to time

In the event of termination, cancellation or expiration of the Agreement the Licensee shall remove its property from the Encroachment Area and leave same in a condition satisfactory to the City. Should the Licensee default in so doing the City may remove the Licensee's property and restore the Encroachment Area at the sole risk and expense of the Licensee;

Notwithstanding the forfeiture or termination of this Agreement in any manner herein provided for, the Licensee shall be and remain liable to the City for all payments due and obligations and liabilities to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeitures or termination and for the fulfillment of all

obligations on the part of the Licensee to be observed and performed upon after the said termination;

The Licensee is to comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority;

The Licensee acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, conditions or suitability of the Encroachment Area for any use or purpose, nor as to any environmental conditions which may exist;

That snow removal on the Encroachment Area shall be the responsibility of the Licensee;

The Licensee shall enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services.

The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and Council, or its delegated authority, and are not binding until such time as that approval is obtained.

109 JAMES AVENUE LTD. HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS 'ENCROACHMENT AREA' ON THE ATTACHED MISC. PLANS NO. 15358 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

109 JAMES AVENUE LTD.

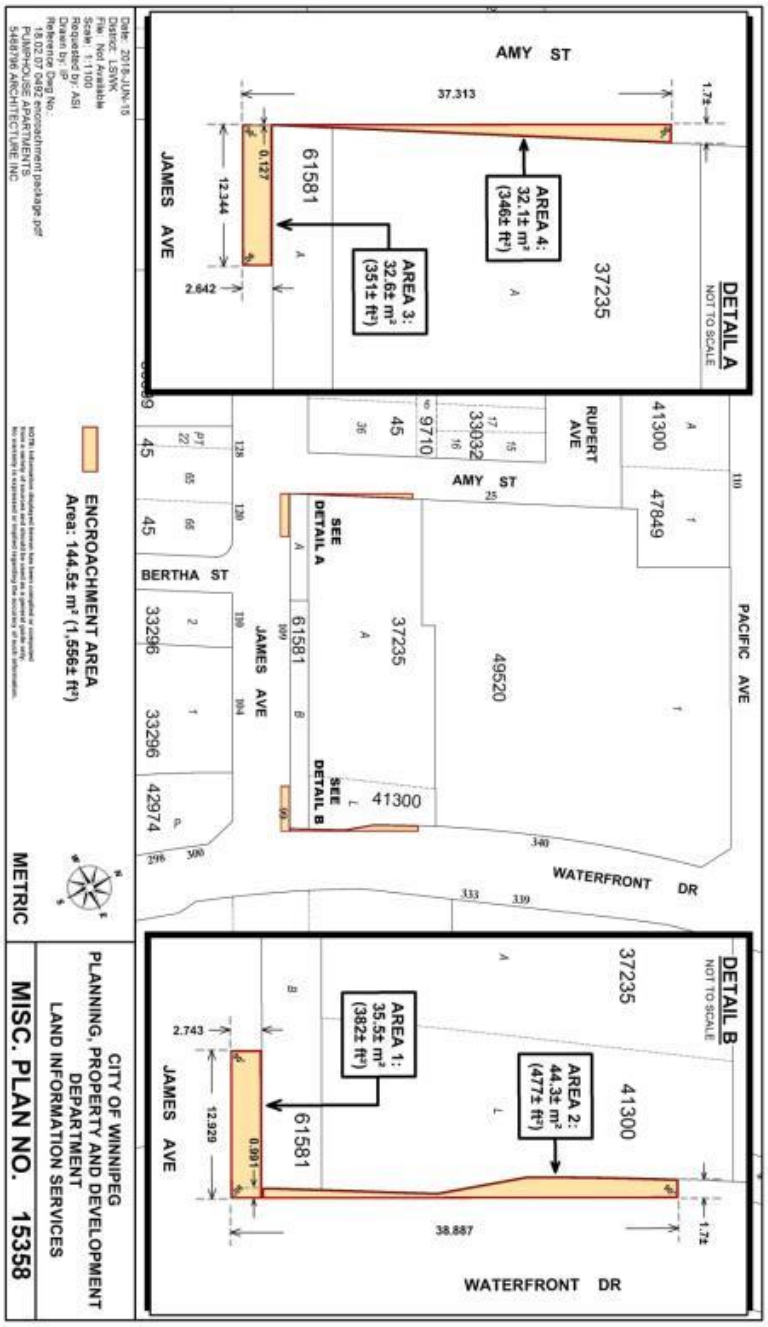
Per: _____ July 23, 2018
DATE

Bryce Alston
NAME

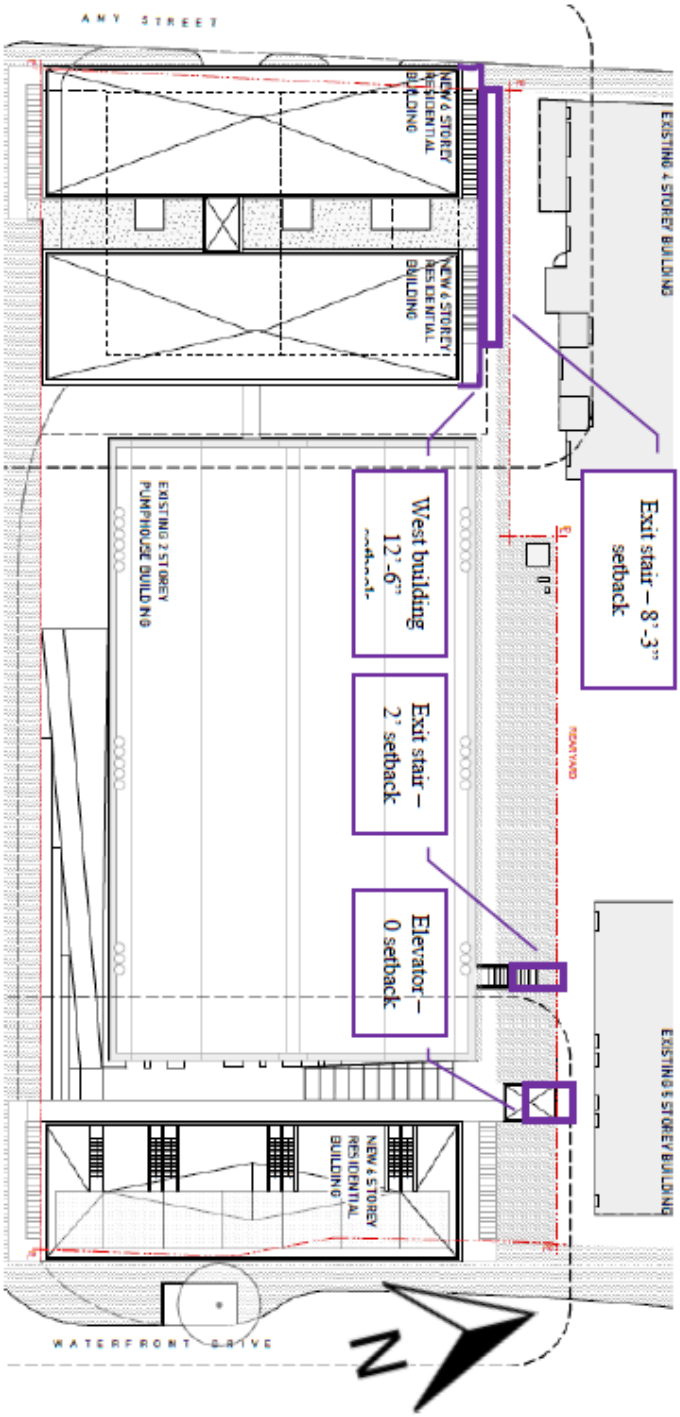
Director
TITLE

I/We have been authorized to bind the Corporation

Schedule B


AMY ST
JAMES AVE
RUPERT AVE
PACIFIC AVE
BERTHA ST
WATERFRONT DR
DETAIL A
NOT TO SCALE
DETAIL B
NOT TO SCALE
AREA 4: 32.1± m² (346± ft²)
AREA 3: 32.6± m² (351± ft²)
AREA 1: 35.5± m² (382± ft²)
AREA 2: 44.3± m² (477± ft²)
SEE DETAIL A
SEE DETAIL B
ENCROACHMENT AREA
Area: 144.5± m² (1,556± ft²)
37.313
38.887
61581
37235
41300
47849
49520
33032
9710
33296
42974
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT
DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 15358

Schedule C


ANY STREET
NEW 6 STOREY RESIDENTIAL BUILDING
NEW 6 STOREY RESIDENTIAL BUILDING
EXISTING 4 STOREY BUILDING
West building 12'-6" setback
Exit stair – 8'-3" setback
Exit stair – 2' setback
Elevator – 0 setback
EXISTING 2 STOREY PUMPHOUSE BUILDING
REARYARD
NEW 6 STOREY RESIDENTIAL BUILDING
EXISTING 6 STOREY BUILDING
WATERFRONT DRIVE
N