Minutes – Executive Policy Committee – March 10, 2020

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 2, 2020

Item No. 2 Extension of Time for an Option to Purchase - CentreVenture Development Corporation

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That the Council decision of June 21, 2017 to provide CentreVenture options to purchase a portion of the public lane north of MacDonald Avenue, east of Maple Street (to be closed), and Lot 33, Plan 32416 on the north side of MacDonald Avenue, within 2 years from June 21, 2017, be amended to extend the option period to December 31, 2020.

2. That, subject to approval of Recommendation 1, the City enter into, execute and deliver Option to Purchase Agreements and such other agreements as determined necessary by the Director of Legal Services and City Solicitor 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 Option to Purchase Agreements and any Ancillary Agreements in accordance with this report and such other terms and conditions determined necessary by the Director of Legal Services and City Solicitor 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 – March 2, 2020

DECISION MAKING HISTORY:

Moved by Councillor Gillingham,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Carried

Moved by Councillor Mayes,

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

Carried

STANDING COMMITTEE RECOMMENDATION:

On March 2, 2020, 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: Extension of Time for an Option to Purchase - CentreVenture Development Corporation

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	N/A	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

On June 21, 2017, Council granted CentreVenture Development Corporation ("CentreVenture") the option to purchase four properties, as shown on Misc. Plan 15182/2 attached as Schedule C, prior to June 21, 2019.

CentreVenture completed transactions on two of the four optioned properties and is nearing completion of another transaction that involves the final two optioned properties. However, the options to purchase were not exercised by CentreVenture prior to June 21, 2019.

The Public Service recommends that time to exercise the outstanding options to purchase be extended to December 31, 2020.

RECOMMENDATIONS

1. That the Council decision of June 21, 2017 to provide CentreVenture options to purchase a portion of the public lane north of MacDonald Avenue, east of Maple Street (to be closed), and Lot 33, Plan 32416 on the north side of MacDonald Avenue, within 2 years from June 21, 2017, be amended to extend the option period to December 31, 2020.

2. That, subject to approval of Recommendation 1, the City enter into, execute and deliver Option to Purchase Agreements and such other agreements as determined necessary by the Director of Legal Services and City Solicitor 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 Option to Purchase Agreements and any Ancillary Agreements in accordance with this report and such other terms and conditions determined necessary by the Director of Legal Services and City Solicitor 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

Council approval is required to amend the June 21, 2017 Council Decision and extend the term of the option to purchase to December 31, 2020.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory, environmental, financial, operational, human resources or other implications associated with this report.

If the option to purchase is extended until December 31, 2020, it will provide CentreVenture with an opportunity to revitalize an underdeveloped parcel of City-owned land.

HISTORY/DISCUSSION

On June 21, 2017, Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and adopted the following:
That CentreVenture Development Corporation ("CentreVenture") be granted an option to purchase the following 4 properties:

A. the portion of the Public Lane North of MacDonald Avenue, East of Maple Street to be closed
B. the portion of James Avenue between Amy Street and Waterfront Drive to be closed
C. Lot 33, Plan 32416 on the North side of MacDonald Avenue
D. Lot K, Plan 43292 and Lot A, Plan 499 and Lot 55, Plan 32440 on the West side of Waterfront Drive (the "City Properties")

each for the price of $1.00 in accordance with the terms and conditions in the attached Schedules A and B, and such other terms and conditions deemed necessary to protect the interests of the City, for a period of 2 years following approval hereof by Council.
Within the two-year period, Centre Venture completed the conveyance of:

- "B. the portion of James Avenue between Amy Street and Waterfront Drive to be closed;" and
- "D. Lot K, Plan 43292 and Lot A, Plan 499 and Lot 55, Plan 32440 on the West side of Waterfront Drive".

CentreVenture has a pending sale for:

- "A. the portion of the Public Lane North of MacDonald Avenue, East of Maple Street to be closed" and
- "C. Lot 33, Plan 32416 on the North side of MacDonald Avenue;"

The “pending sale” properties are to be conveyed in one transaction to the adjacent owner. The owner engaged a surveyor to prepare the closing plan and plan of subdivision in an effort to complete the transaction. There were some unforeseeable delays and the transaction could not be completed within the two-year timeframe.

Since all parties have acted in good faith, the Public Service recommends that Council extend the time to complete the option to purchase to December 31, 2020.

Subject to Council approval of the report’s recommendations, CentreVenture will enter into the Option to Purchase and Indemnity Agreement that are attached as Schedules A and B respectively. The properties that are to be optioned to CentreVenture are identified on Misc. Plan 15182/2, attached as Schedule C.

The Ward Councillor was consulted and concurs with the Public Service recommendation.

FINANCIAL IMPACT

Financial Impact Statement Date: January 31, 2020

Project Name:

Extension of Time for an Option to Purchase - CentreVenture Development Corporation

COMMENTS:

There are no financial implications associated with the recommendations contained in this report.

"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
Ward Councillor

OURWINNIPEG POLICY ALIGNMENT

Our Winnipeg
01-3-4: Support a thriving and vibrant Downtown as a citywide destination and Winnipeg's window to the world.

01-3-4: Ensure that the important and distinct roles of partnering agencies are united with a clear mission.

01-3-7: When appropriate, assist with land assembly to create viable sites for commercial and employment land development in locations that support complete communities.

01-3-7: Prioritize long-term development projects in the existing public realm based on their ability to catalyze private sector investment and area revitalization.

01-4-6: Promote downtown living with developers and potential residents.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Land Use: Section 4.1 – Key Directions and Actions - Increase Strategic Infill Development That Provides Access to and Capitalizes on Existing and Planned Corridors with Frequent Transit Service

"Explore opportunities for the City of Winnipeg to take a more direct role in advancing mixed use development that may include developing City-owned lands, assembling land for resale, partnering on development, or using City funds to leverage private investment."

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development Division
Prepared by: Neil Gifford, Real Estate Officer
Date: February 11, 2020

Attachments:

Schedule A – Option to Purchase
Schedule B – Indemnity Agreement
Schedule C – Misc. Plan 15182/2

Schedule A Option to Purchase

1. At any time up to and including December 31, 2020 CentreVenture, at its sole discretion, may exercise its option to purchase a portion of the public lane north of MacDonald Avenue, east of Maple Street (to be closed), and Lot 33, Plan 32416 on the north side of MacDonald Avenue, as shown on Misc. Plan No. 15182/2 (the "City Properties") for the sum of $1.00.

2. In order to acquire one or more of the City Properties, CentreVenture shall deliver notice in writing to the City in care of the Director of the Planning, Property and Development Department (the "Director"). Such notice must contain the identity of the property and the Closing Date in respect thereof. The Closing Date shall be a date not more than seventy-five (75) days following the date of the Notice or as otherwise agreed between CentreVenture and the Director.

3. CentreVenture may, at its sole discretion and without restriction, assign its right to purchase the City Properties subject to delivery to the City of an indemnity from CentreVenture in favour of the City saving the City harmless from all liabilities, damages, costs, expenses, causes of action, suits, claims or judgments arising from or out of any assignment of rights to purchase the City Properties by CentreVenture in form and having content as set out in Schedule B attached.

4. In the event of CentreVenture assigning its right to purchase the City Properties, CentreVenture shall, prior to the Closing Date, provide the legal description of the assignee for purposes of transferring title to the City Properties.

5. There shall be no adjustments as between the City and CentreVenture or its assignee in respect of the City Properties except for:

   (a) Rent in the event the City Properties, or any part thereof, are leased by the City to a third party and such lease is not terminated prior to the Closing Date; and

   (b) all other amounts, items and matters as would normally be adjusted between a vendor and purchaser on the sale of real property unless otherwise excluded pursuant to the provisions of this Schedule.

6. CentreVenture, or its assignee, shall obtain possession of the City Properties at its own expense. For greater clarity and without limitation, CentreVenture shall be responsible for all its closing costs, including legal, Winnipeg Land Titles Office registration, Land Transfer Tax, Provincial Sales Tax, if any, Goods and Services Tax, environmental site assessments and survey costs as may be required as a condition of sale.

7. CentreVenture, or its assignee, shall accept title subject to all exceptions, reservations and encumbrances expressed or implied in the City's title to the City Properties unless otherwise agreed between CentreVenture and the City and subject to any and all standard utility easements.

8. The sale of the City Properties to CentreVenture, or its assignee, shall be subject to the provisions of all laws, by-laws, regulations, restrictions, ordinances and the like of any municipal, provincial, federal or statutory authority having jurisdiction.

9. On or before the Closing Date in respect of the City Properties, the City shall provide to CentreVenture, or its assignee if so directed by CentreVenture, the transfer documentations set out as follows:

   (a) an executed registerable transfer of land in favour of CentreVenture, or its assignee, in accordance with The Real Property Act (Manitoba) which, upon registration in the Winnipeg Land Titles Office, will vest good and marketable title to the City Properties in the transferee subject to all exceptions, reservations and encumbrances, expressed or implied, in the City's title to the City Properties unless otherwise agreed between CentreVenture and the City, and subject to any and all standard utility easements;

   (b) a statement of adjustments to the purchase price of the City Properties in form and content satisfactory to CentreVenture and the City; and

   (c) an Indemnity Agreement given by the City in favour of CentreVenture and its assignee saving CentreVenture and its assignee harmless from any and all liabilities, damages, costs, expenses, causes of actions, suits, claims or judgments arising from or out of leases, contracts, agreements or any other matter whatsoever with respect to the City Properties in respect of which CentreVenture has exercised its right to purchase, or any part thereof, and arising before or after the Closing Date but in existence at or relating to the period of time up to the Closing Date.

10. On or before the Closing Date in respect of the City Properties, CentreVenture shall provide to the City:

   (a) the balance due on closing in accordance with the statement of adjustments; and

   (b) an Indemnity Agreement given by CentreVenture's assignee in favour of CentreVenture and the City saving CentreVenture and the City harmless from any and all liabilities, damages, costs, expenses, causes of actions, suits, claims or judgments arising from or out of the leases or any contract or agreement assumed by such assignee or any other matter whatsoever with respect to the City Properties in respect of which CentreVenture has exercised its right to purchase, or any part thereof, arising after the Closing Date but not existing at or relating to the period prior to the Closing Date. In the event that CentreVenture exercises its option to purchase the City Properties but does not assign its right to purchase such properties, such Indemnity Agreement with the necessary changes being made shall be given by CentreVenture in favour of the City.

11. CentreVenture, or its assignee, may at any time conduct an environmental site assessment of the City properties. CentreVenture agrees that in the event it or its assignee conducts or causes to be conducted an environmental site assessment and/or soil testing of the City Properties it shall do so at its cost or at the cost of the assignee and it shall:

   (a) ensure all work done in connection with such environmental site assessment and/or soil testing is completed within ninety (90) days from the commencement of

such work and, if such work is being done on the City Properties, such work shall be completed prior to the Closing Date in respect of such City Properties;

(b) maintain the City Properties in a safe condition at all times during the conduct of any work done in connection with such environmental site assessment and/or soil testing;

(c) restore the City Properties to the same condition as prior to the commencement of such work;

(d) indemnify and save harmless the City from and against all damages and claims arising out of or in any way attributable to the conduct of any such environmental site assessment and/or soil testing;

(e) provide true copies of any such environmental site assessment and/or report concerning soil testing to the City for its own use.

(f) In the event the environmental site assessment and/or soil testing is done in connection with the City Properties and it is determined that as result of the environmental site assessment and/or soil testing that contamination levels exceed provincial environmental standards for the intended use of the City Properties, CentreVenture shall be entitled to cancel and withdraw the exercising of its option to purchase within fourteen (14) days of receipt of notice that contamination levels exceed provincial environmental standards. In such event any monies paid to the City by CentreVenture or its assignee shall be immediately refunded, without interest, in full without deduction of any kind. In the event CentreVenture fails to cancel and withdraw the exercising of its option to purchase, CentreVenture hereby agrees to complete the purchase of the City Properties and to indemnify and save harmless the City from and against any and all claims from or in any way attributable to the existence of contaminants of any kind whatsoever, at, in or upon the City Properties.

12. CentreVenture shall bear the full responsibility of attending to the completion of the transfer of the City Properties, subject to the City providing the transfer documentation as set out above, without liability to the City following the transfer of the City Properties. In doing so CentreVenture shall make no representations or give any warranty on behalf of the City without the expressed authority of the City to do so.

13. In the event of any condition or conditions imposed upon the purchaser of the City Properties such condition or conditions shall be between CentreVenture and such purchaser and shall be the sole responsibility of CentreVenture to enforce or satisfy, as the case may be.

14. The City shall continue to operate and manage the City Properties to the Closing Date in respect of each City Property in as prudent and responsible a manner as would a reasonable and prudent proprietor of similar properties.

15. At all times and without restriction CentreVenture by its authorized representatives shall have full and complete access to each one of the City Properties subject however to reasonable notice to tenants, if any.

16. CentreVenture shall exercise its best efforts to ensure that the City Properties in respect of which CentreVenture has exercised its right to purchase be recoverable in the event that the transferee of such City Properties shall fail to complete development of the City Properties as contemplated.

17. Each party covenants and agrees to do and cause all things to be done and to execute and deliver all such documents as may be required fully and effectually to carry out the terms of this Schedule.

18. Any tender of documents or money hereunder may be made upon the City or CentreVenture or the solicitors acting in their respective behalves. The solicitors for the parties shall be entitled to impose reasonable trust conditions each upon the other, consistent always with the provisions hereof, in order to protect the interests of their respective clients.

SCHEDULE B
INDEMNITY

TO: THE CITY OF WINNIPEG
(the "City")

WHEREAS pursuant to Council approval of , 2020, CentreVenture exercised its right to purchase the property described as follows:

_____

_____

_____

(the "Subject Property");

NOW THEREFORE IN CONSIDERATION of the sum of One ($1.00) Dollar paid by the City to CentreVenture and in consideration of other good and valuable consideration (the receipt and sufficiency whereof is hereby acknowledged by CentreVenture), CentreVenture covenants and agrees as follows:

1. The preamble hereto shall be deemed to be a part hereof to the same extent and as effectually as if again set forth.

2. CentreVenture indemnifies and saves harmless the City from and against all liabilities, damages, costs, expenses, causes of actions, suits, claims and judgments arising from or out of the assignment by CentreVenture to the Assignee of CentreVenture's right to purchase the Subject Property.

3. This Indemnity is intended to effect as a document under seal.

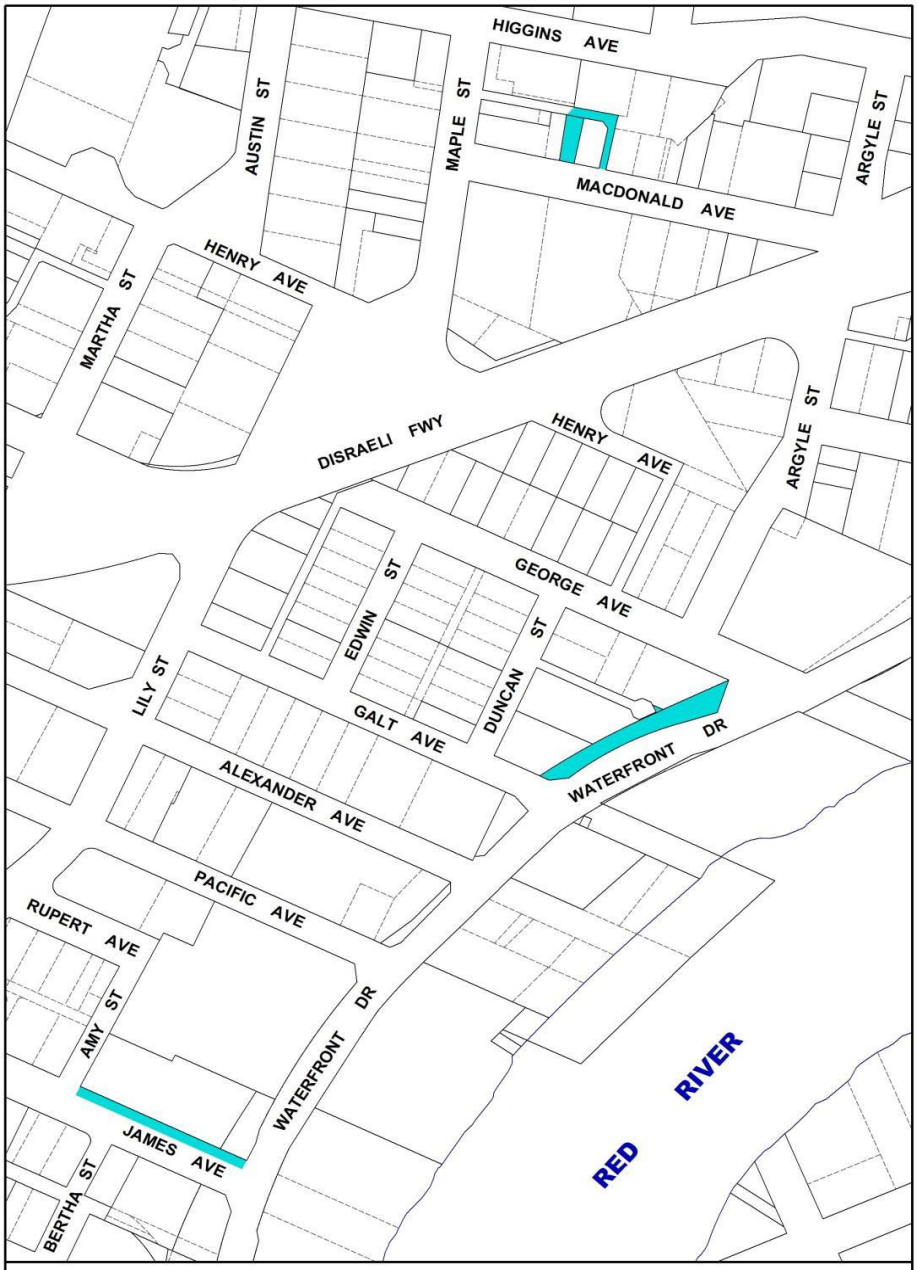
IN WITNESS WHEREOF this Indemnity has been executed by CentreVenture Development Corporation this _____ day of _____20____

CENTREVENTURE DEVELOPMENT CORPORATION

Per:_____
Authorized Signatory

Per:_____
Authorized Signatory
I/We have been authorized to bind the Corporation

Schedule C


HIGGINS AVE
AUSTIN ST
MAPLE ST
ARGYLE ST
MACDONALD AVE
HENRY AVE
MARTHA ST
DISRAELI FWY
HENRY AVE
ARGYLE ST
GEORGE AVE
EDWIN ST
DUNCAN ST
LILY ST
GALT AVE
WATERFRONT DR
ALEXANDER AVE
PACIFIC AVE
RUPERT AVE
AMY ST
WATERFRONT DR
JAMES AVE
BERTHA ST
RED RIVER
FOR CONVEYANCE TO CENTREVENTURE DEVELOPMENT CORPORATION
Date: 2017-MAY-04
District: LSWK
File: Not Available
Scale: 1:2400
Requested by: BL
Drawn by: IP
Reference Dwg No.: As requested
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.
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W
E
S
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 15182/2