Minute No. 138
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 6, 2020

Item No. 9 **Sale of City-owned Public Right-of-Way, Paulin Street between Ross and Pacific Avenues (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 sale of Paulin Street, shown as "Proposed Closing" on the attached Misc. Plan 10775/6, in favour of CentreVenture for the purchase price of $1.00 be approved in accordance with the terms and conditions in the attached Schedules "B" and "C" and that the requirements of the "Offers to Purchase City-Owned Property" policy approved by Council on December 6, 2006, be waived in this instance.

2. That the City enter into, execute and deliver an Offer to Purchase and such other agreements (the "Ancillary 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 Chief Administrative Officer to negotiate and approve the terms and conditions of the Offer to Purchase 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 – January 6, 2020

DECISION MAKING HISTORY:

Moved by Councillor Mayes,

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 January 21, 2020, 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 January 6, 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: Sale of City-owned Public Right-of-Way, Paulin Street between Ross and Pacific Avenues

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	P. Olafson, Interim CFO	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

On February 28, 2019, Council approved the closure and sale of Paulin Street ("Proposed Closing") to CentreVenture under File No. DAC 5/2018. The Proposed Closing may be incorporated into a future subdivision application along with two City properties, 311 Ross Avenue and 346 Pacific Avenue, previously optioned to CentreVenture for $1.00. A purchase price for the Proposed Closing was not identified in the report approved by Council.

On September 17, 2019, CentreVenture submitted a request to the Director of Planning, Property and Development to purchase the Proposed Closing for $1.00 to align with the terms established for the transfer of 311 Ross Avenue and 346 Pacific Avenue. The Public Service is supportive of the request inasmuch as CentreVenture's business plan for the site is contingent on obtaining the Proposed Closing at less than market value.

The sale of the Proposed Closing will allow CentreVenture the opportunity to consolidate the optioned properties and facilitate a significant redevelopment opportunity.

RECOMMENDATIONS

1. That the sale of Paulin Street, shown as "Proposed Closing" on the attached Misc. Plan 10775/6, in favour of CentreVenture for the purchase price of $1.00 be approved in accordance with the terms and conditions in the attached Schedules "B" and "C" and that the requirements of the "Offers to Purchase City-Owned Property" policy approved by Council on December 6, 2006, be waived in this instance.

2. That the City enter into, execute and deliver an Offer to Purchase and such other agreements (the "Ancillary 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 Chief Administrative Officer to negotiate and approve the terms and conditions of the Offer to Purchase 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

On February 28, 2019, Council closed Paulin Street and declared it surplus to its needs. The Council approval included a requirement that the applicant/purchaser enter into a Purchase and Sales Agreement with the City. The Council approval did not explicitly state the purchase price of the Proposed Closing and, pursuant to Council policy, the purchase price should be at market value.

It was CentreVenture's understanding that the purchase price for the Proposed Closing would be $1.00 based on similar recommendations contained within their 2018 Council adopted business plan ("CentreVenture Development Corporation: Drive for 2020"). CentreVenture has requested the Proposed Closing be transferred for $1.00.

A waiver of the "Offers to Purchase City-Owned Property" Council policy is required to complete an unsolicited offer with CentreVenture for less than market value.

IMPLICATIONS OF THE RECOMMENDATIONS

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

It is noted that a sale of Paulin Street would be subject to:

- a closing plan and subdivision application;
- consolidation with the adjoining optioned properties located at 311 Ross Avenue and 346 Pacific Avenue;
- all costs associated with the public street closing, subdivision and consolidation are the responsibility of CentreVenture or their proponent. There are no financial implications for the City of Winnipeg.

Proceeds from the disposition of the closed public right-of-way will fund CentreVenture's general operating expenditures and reduce their line of credit as outlined in the Business Plan Pro-forma.

HISTORY/DISCUSSION

At its meeting held on May 24, 2018, Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development, as amended, and approved CentreVenture's Business Plan entitled "Drive for 2020". Council's approval included the option to purchase surplus City properties located at 311 Ross Avenue and 346 Pacific Avenue for the nominal sum of $1.00 each. Paulin Street is located between these properties. The Proposed Closing was not included.

At its meeting held on February 28, 2019, Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and recommended that Paulin Street be closed and declared surplus to the City's needs, subject to the following:

" 2. That the Director of Legal Services and the City Solicitor be instructed to prepare and bring directly to Council for enactment a by-law to facilitate the street closing in accordance with Misc. Plan No. 15461, subject to:

A. The approval of the conveyance of the land by Council or its delegated authority, and

B. The applicant/purchaser entering into a Purchase and Sales Agreement with the City, which agreement shall include, among other things, a requirement that the applicant/purchaser fulfill the administrative conditions of approval outlined in Appendix "A" of the report.

3. That, in the event the subject closing is not proceeded with expeditiously and the by-law:

A. Is not enacted within two (2) years following the date the subject report is approved by Council, and

B. Is not registered in the Winnipeg Land Titles Office within one (1) year following the date it is enacted by Council,

the matter shall be deemed to be concluded and shall not be proceeded with, unless an extension of time is applied for prior to the expiry of the two (2) year period referred to in clause (A) above and Council approves the extension."

On April 8, 2019, the Department offered the Proposed Closing to CentreVenture for the purchase price of $345,000.00 based on a fair market value appraisal. The appraised market value reflected a highest and best mixed use based on its location, surrounding development and current zoning.

On September 17, 2019, the CentreVenture Board submitted a letter to the Director of Planning, Property and Development, formally requesting to purchase Paulin Street for $1.00. Consolidating the optioned properties with the Proposed Closing may facilitate a significant downtown development opportunity.

The Ward Councillor has been consulted and approves of the proposed transaction.

The transaction is expected to close on or before February 28, 2020.

FINANCIAL IMPACT

Financial Impact Statement Date: November 25, 2019

Project Name:

Sale of City-owned Public Right-of-Way, Paulin Street between Ross and Pacific Avenues

COMMENTS:

Other than the nominal consideration of $1, there are no financial implications to the City of Winnipeg associated with this report.

"Original Signed By"
Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

Public Works Department
Corporate Finance Department
Legal Services Department (as to Legal Issues)

OURWINNIPEG POLICY ALIGNMENT

OurWinnipeg 01-1c – Key Directions for Specific City Areas: Downtown

"*Downtown intensification and redevelopment makes efficient use of land and makes the best use of existing infrastructure*."

The recommendations of this report align with this section of the OurWinnipeg Policy as a future proposed sale of the public right-of-way would include a condition that the property be consolidated and redeveloped with the existing building at 311 Ross Avenue and would include redevelopment of the adjacent surface parking lot located at 346 Pacific Avenue.

Complete Communities 03-1b Places To Live Downtown

"Promote and enable sustainable, high-density residential development in strategic locations downtown."

- Facilitate the redevelopment of vacant or underutilized properties in defined areas in support of increased residential and mixed-use development;
- Develop a downtown parking strategy to facilitate the redevelopment of surface parking lots in defined areas in support of residential and mixed-use development;
- Facilitate the adaptive reuse of viable and underutilized heritage building space in defined areas, with particular emphasis on the Exchange District, in support of increased residential and mixed-use development."

The recommendations of this report align with the above Complete Communities Direction Strategy for Downtown Development, as the inclusion of Paulin Street with CentreVenture's two Optioned Properties, enhances their Proponent's future development proposal.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Strategic Opportunity #4 – Land Use: Facilitate Compact, Complete Development and Increase Density

"The City of Winnipeg has a significant opportunity to pursue land use strategies that align with climate mitigation through the implementation of compact, complete communities, transit-oriented development, increased infill and higher density neighbourhoods.

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."

"Explore measures to encourage the re-purposing of surface parking lots in existing built areas."

The recommendations of this report align with the Winnipeg Climate Action Plan as a sale of the Proposed Closing is an integral part of a package deal which includes the re-purposing of a current parking lot at 346 Pacific Ave, as well as, promoting mixed use re-development of an existing downtown building at 311 Ross Ave.

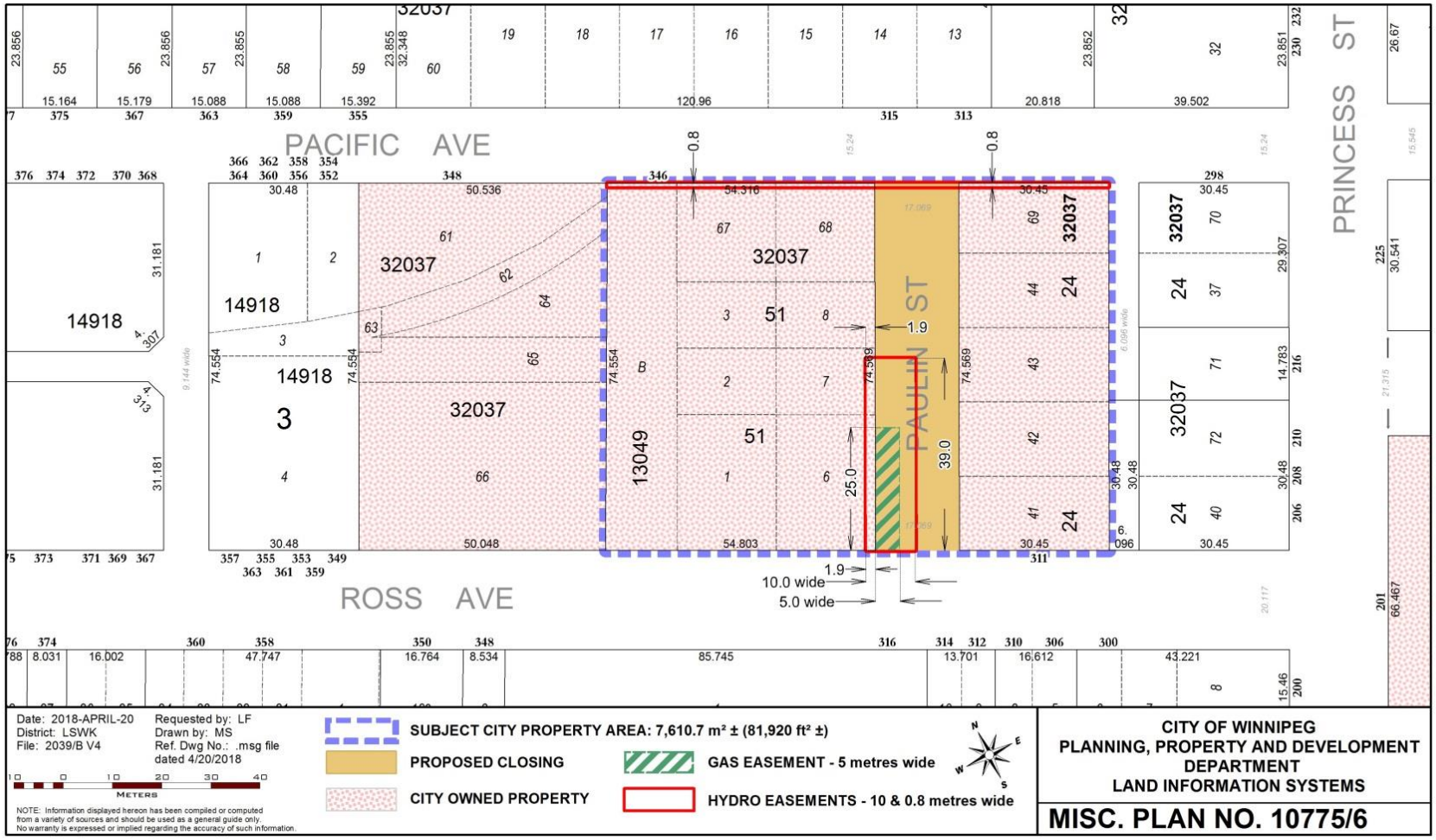
SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Leah Furedi, Senior Negotiator
Date: December 6, 2019
File No:

Attachments:

Schedule "A" – Misc. Plan 10775/6
Schedule "B" – Proposed Terms and Conditions of Offer to Purchase Agreement
Schedule "C" – Indemnity

SCHEDULE "A"


PACIFIC AVE
ROSS AVE
PRINCESS ST
PAULIN ST
14918
32037
13049
51
3
SUBJECT CITY PROPERTY AREA: 7,610.7 m² ± (81,920 ft² ±)
PROPOSED CLOSING
CITY OWNED PROPERTY
GAS EASEMENT - 5 metres wide
HYDRO EASEMENTS - 10 & 0.8 metres wide
Date: 2018-APRIL-20
District: LSWK
File: 2039/B V4
Requested by: LF
Drawn by: MS
Ref. Dwg No.: .msg file dated 4/20/2018
METERS
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 SYSTEMS
MISC. PLAN NO. 10775/6

SCHEDULE "B"

Proposed Terms and Conditions of Offer to Purchase Agreement

1. Prior to December 31, 2020, following approval by Council, CentreVenture may enter into an Offer to Purchase Agreement for the Proposed Closing referenced in DAC 5/2018 (the "City Property") for the purchase price of $1.00.

2. The Closing Date shall be February 28, 2020, or as may be otherwise agreed to between CentreVenture and the City and approved by the Director.

3. CentreVenture may, at its sole discretion and without restriction, assign its right to purchase the Proposed Closing 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 property by CentreVenture in form and having content as set out in Schedule "C" attached.

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

5. There shall be no adjustments between the City and CentreVenture or its assignee in respect of the City Property except for such 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 Property 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 the sale. In addition, CentreVenture shall be responsible at its sole cost, effort and expense to close the City Property, as it is a legally open public right-of-way.

7. The City Property is presently owned by Her Majesty the Queen in right of Manitoba and is under the direction, control and management of the City and is therefore tax-exempt to the extent provided for under the provisions of *The Municipal Assessment Act*, C.C.S.M. c. M226. The City Property will no longer be tax-exempt to the extent presently provided for under the provisions of *The Municipal Assessment Act* on and after the Date of Closing, Possession and Adjustments or the transfer of title, whichever is the earlier. The Purchaser is responsible for payment of the taxes applicable to the City Property on and after the Date of Closing, Possession and Adjustments or transfer of title, whichever is the earlier, and will be sent a statement of, and demand for payment of, taxes in

accordance with the provisions of *The Municipal Assessment Act* and *The City of Winnipeg Charter*, S.M. 2002 c. 39. All adjustments of other taxes, levies and charges, and other adjustments, if any, will be made as at the Date of Closing, Possession and Adjustments.

8. 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 Property unless otherwise agreed between CentreVenture and the City and approved by the Director. Further, CentreVenture, or its assignee, shall accept title subject to any utility easements required by The Manitoba Hydro-Electric Board, Bell MTS Inc., Centra Gas (Manitoba) Inc., Shaw Cablesystems Limited, The City of Winnipeg or any similar entity as a result of the transfer of the City Property, and any other instrument required by the City to be registered in favour of the City against title to the City Property including but not limited to caveats based on development agreements and conservation agreements. For clarity, it is understood and agreed that, in the event that the City Property is Old System Land to which The Registry Act of Manitoba applies, CentreVenture, or its assignee, shall accept title subject to any instruments registered against the City Property pursuant to The Registry Act of Manitoba.

9. The sale of the City Property 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. Furthermore, CentreVenture, or its assignee, acknowledges and understands that its proposed use and development of the City Property may require applications for re-zoning, variances or conditional uses, amendments to OurWinnipeg, which applications and resulting land dedication charges (if any) are to be at the sole cost and responsibility of CentreVenture or its assignee. Nothing in this Offer shall be construed as placing any duty or obligation upon the City to grant such rezoning, variance, or conditional use orders and/or amendments to OurWinnipeg when the Purchaser's application for same is made to the City.

10. On or before the Closing Date in respect of the City Property, the City shall provide to CentreVenture, or its assignee if so directed by CentreVenture, the transfer documentation 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 Property in the transferee subject to all exceptions, reservations and encumbrances, expressed or implied, in the City's title to the City Property 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 Property 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 Property in respect of which CentreVenture has agreed 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.

11. On or before the Closing Date in respect of the City Property, 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 Property in respect of which CentreVenture has agreed 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 agrees to purchase the City Property but does not assign its right to purchase, such Indemnity Agreement with the necessary changes being made shall be given by CentreVenture in favour of the City.

12. CentreVenture, or its assignee, may at any time conduct an environmental site assessment of the City Property. 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 Property it shall do so as 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 Property, such work shall be completed prior to the Closing Date in respect of such City Property;

    b. maintain the City Property 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 Property 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 Property and it is determined that as a result of the environmental site assessment and/or soil testing that contamination levels exceed provincial environmental standards for the intended use of the City Property, CentreVenture shall be entitled to cancel and withdraw its agreement 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 its agreement to purchase the City Property, CentreVenture hereby agrees to complete the purchase of the City Property 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 Property.

13. CentreVenture shall bear the full responsibility of attending to the completion or the transfer of the City Property, subject to the City providing the transfer documentation as set out above, without liability to the City following the transfer of the City Property. 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.

14. In the event of any condition or conditions imposed upon the purchaser of the City Property 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.

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

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

17. CentreVenture shall exercise its best efforts to ensure that the City Property purchased shall be recoverable in the event that the transferee of the City Property fails to complete development of the City Property as contemplated.

18. 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.

19. 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 "C"

INDEMNITY

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

WHEREAS pursuant to Council approval of , 20___, CentreVenture agreed 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