Minute No. 80
Report - Standing Policy Committee on Property and Development - November 30, 2004

Item No. 10 Joint Venture Agreement with Genstar Development Company - Jointly Owned lands within the Transcona-West Area File FI-2.4(33)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That the Draft Joint Venture Agreement attached to the report from the Director of Planning, Property and Development dated November 26, 2004, between Genstar Development Company and the City be approved, subject to any other additional terms and conditions deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services.

2. That the City lands shown within Areas "A" and "B" on Schedule "A" attached to the report from the Director of Planning, Property and Development dated November 26, 2004, be declared surplus to the City's needs and reserved for the Joint Venture with Genstar Development Company.

3. That pursuant to the terms of the Transcona-West Joint Venture Agreement a Management Committee be formed to consist of two (2) individuals appointed by the City and two (2) individuals appointed by Genstar Development Company, the City appointees to be the Chairperson of the Standing Policy Committee on Property and Development, the Councillor for the Transcona Ward and an alternate appointee to be named by City Council.

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

Minutes - Executive Policy Committee - December 8, 2004

Report - Standing Policy Committee on Property and Development - November 30, 2004

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

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

Carried

STANDING COMMITTEE RECOMMENDATION:

On November 30, 2004, the Standing Policy Committee on Property and Development concurred in the administrative recommendation with the following amendments, namely:

- That the words "other than for the purposes of this recommended Joint Venture proposal" at the end of Recommendation No. 2 be deleted and substitute therefore the following words "and reserved for the Joint Venture with Genstar Development Company."

- That Recommendation Nos. 3 and 4 be added as follows:

    3. That pursuant to the terms of the Transcona-West Joint Venture Agreement a Management Committee be formed to consist of two (2) individuals appointed by the City and two (2) individuals appointed by Genstar Development Company, the City appointees to be the Chairperson of the Standing Policy Committee on Property and Development, the Councillor for the Transcona Ward and an alternate appointee to be named by City Council.

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

and submitted the matter to the Executive Policy Committee and Council.

Re: **Proposed Joint Venture Agreement with Genstar Development Company on Jointly Owned Lands within the Transcona-West Area**
East Kildonan–Transcona Community
Transcona Ward

For submission to: **Standing Policy Committee on Property and Development**

Original report signed by: **Director of Planning, Property and Development**

Report date: November 26, 2004

Recommendation(s):

1. That the attached Draft Joint Venture Agreement between Genstar Development Company and the City, be approved, subject to any other additional terms and conditions deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services.

2. That the City lands shown within Areas "A" and "B" within Schedule "A" as attached, be declared surplus to the City's needs other than for the purposes of this recommended Joint Venture proposal.

REPORT SUMMARY

Key Issues:

- On July 23, 2003, the Planning, Property and Development Department received a Joint Venture proposal from the Genstar Development Company (Genstar) for the development of Genstar and City owned lands within the Transcona-West Area.
- The Planning, Property and Development Department has consulted with the Planning Executive Advisory Committee (PEAC) and the Ward Councillor and both are supportive of the joint development proposal.
- On December 4, 2003, the Standing Policy Committee on Property and Development instructed the Director of Planning, Property and Development to negotiate the terms of a Joint Venture with Genstar for the purposes of developing and marketing City and Genstar owned lands in the Transcona-West Area of the East Kildonan-Transcona Community.
- The proposed Joint Venture includes equal amounts of City owned land and Genstar land for a total of approximately 258 acres. These lands are designated as "Neighbourhood" under Plan Winnipeg 2020.
- The Department is of the opinion that the Joint Venture would be in the City's best long-term interests.

Implications of the Recommendation(s):

General implications:

	None
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
X	**Involves a multi-year contract**

Comment(s):

- It is projected that full development of the City and Genstar owned lands contained within the Joint Venture would involve approximately 15 years.

Policy implications:

X	**No**
	Yes

Comment(s):

-

Environmental implications:

X	**No**
	Yes

Comment(s):

-

Human resources implications:

X	**No**
	Yes

Comment(s):

-

Financial implications:

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s):

- Preliminary financial projections generated through a project proforma indicate that the City would receive total net revenues of $6.1 million over 16 years in conjunction with the Joint Venture.

REASON FOR THE REPORT:

At it's meeting on December 4, 2003, the Standing Policy Committee on Property and Development instructed the Director of Planning, Property and Development to negotiate the terms of a Joint Venture with Genstar Development Company and the City for the purpose of developing and marketing City and Genstar owned lands within the Transcona-West Community Area.

This report brings forward the completed Draft Joint Venture Agreement for approval by the Standing Policy Committee on Property and Development.

HISTORY:

On July 23, 2003, the Planning, Property and Development Department received a proposal from Genstar, for the creation of a Joint Venture between Genstar and the City for the purpose of developing and marketing City and Genstar owned lands within the Transcona-West Area of the East Kildonan-Transcona Community.

Genstar proposes that portions of City owned lands totaling approximately 129.1 acres; located within the area generally bounded by the Kildonan Corridor to the north, Plessis Road to the east, Rougeau Avenue to the south, and Lagimodiere Boulevard to the west; be combined with an equal amount of Genstar land within that area to create a Joint Venture over a total of approximately 258 acres. Genstar's total land holdings within the area comprise 324 acres.

Additional City lands totaling approximately 44.5 acres, located west of Plessis Road and north of Ravelston Road, may be made available to the Joint Venture within the foreseeable future. This property is currently being used by the Water and Waste and Public Works Departments as operational office space and as an equipment maintenance and storage facility. The said lands will become surplus to the City's needs when these operations are relocated to the Department's new facilities currently being constructed within the south-east quadrant of the City.

This proposed Joint Venture Agreement is being structured generally in accordance with two successful Joint Venture Agreements previously negotiated and approved between Genstar and the City of Winnipeg in Linden Woods, within the southwest quadrant of the City. The Linden Woods Joint Venture II is currently in the final stages of completion.

DISCUSSION:

Description:

The City owned properties proposed for inclusion within the Joint Venture are shown on Schedule “A” attached. The Joint Venture includes the following City owned lands:

- Approximately 18 acres of land fronting on Rougeau Avenue that is readily and independently serviceable, developable and marketable. These lands are under the

jurisdiction of the Public Works Department, a portion of which are reserved out for the projected north-east transit corridor.

- Property situated along Ravelston and Plessis Road, comprising about 77 acres, that is totally dependent upon the extension of services through the adjoining Genstar owned land. These lands are under the jurisdiction of the Planning, Property and Development Department and were acquired by tax sale on March 3, 1997.

- Some 34 acres of land situated east of Peguis Street. These lands are under the jurisdiction of the Water and Waste Department and were utilized for the deposition/storage of excess earth material during the construction/excavation of the Transcona land drainage impoundment lake referred to as the "Deep Pond".

The Genstar land holdings are also shown on Schedule "A" attached. The City owned lands and Genstar owned lands located north of Regent Avenue are equally and mutually dependent upon cooperative planning and servicing to effect timely, efficient and economical development of the area. It is, therefore, beneficial for both the City and Genstar to collaborate in planning and developing the overall utility, municipal servicing, transportation and recreational requirements of this new residential area.

The undeveloped City and Genstar lands are designated "Neighbourhood" under Plan Winnipeg 2020 (Policy Plate A). An Area Structure Plan (Secondary Plan) is currently being prepared for the development of this area. The Plan will provide the framework for future sustainable development in the area.

There are no adjacent privately owned parcels in this area (other that the Genstar lands), which offer the City any alternate opportunity for a Joint Venture. The direct sale of the City lands to a private developer through a sales tender would produce immediate revenue for the City, but the City's opportunity to acquire added value through an enhanced land development and marketing process would be lost.

Because the City, or any other owner, must co-operate with Genstar in order to address the cost and timing implications associated with shared services, it was concluded by both parties that a strategic Joint Venture represented the most practical solution for developing the Transcona-West Area.

The City's Rougeau lands, which are directly serviceable, have been included within the Joint Venture because they are immediately developable at minimal cost. The development of these lands would occur in the first phase of the Joint Venture. The revenue produced by the sale of lots or parcels generated on this site can be applied toward the City's funding requirements for the balance of the Venture. This would substantially reduce the City's need for a longer-term funding source for its share of start-up and ongoing expenditures.

As in all previous Joint Ventures, the City would remain a "silent and inactive partner" with regard to the development approval process of the Venture project. This is necessary to maintain the impartiality and integrity of the existing development approval process. Genstar would function as the corporate managing partner and represent the Venture in all applications and negotiations with the various administrative agencies of the City.

Proposed Joint Venture Agreement

The Planning, Property, and Development Department has negotiated the terms of a Draft Joint Venture Agreement with Genstar Development Company, including the organizational, financial and operational obligations/responsibilities of each Venturer. The Draft text of the Transcona-West Joint Venture Agreement is appended to this report as Schedule "B".

The Lands being contributed by each Venturer are identified on Schedule "A". These lands are further categorized into Areas "A" and "B" in order to identify equivalent amounts of City and Genstar land that can be used for reconciling over-contributions of land in the event the Agreement becomes frustrated.

Genstar originally proposed a management fee requirement of 8% of gross sales proceeds. The 8% fee proposal represents an increase from the 6% fee currently in effect within the Linden Woods Joint Venture II Agreement.

Genstar had argued that the current Venture will be significantly more complex to administer than the previous Linden Woods Joint Venture II Agreement. Genstar takes the position that the Transcona-West Joint Venture will require more preparatory planning efforts than any prior ventures in order to identify the overall community requirements, and to prepare those detailed plans and documentations for approvals through the City's development processes.
They contend that the day-to-day administration of this volume of increased work will be substantially greater than in previous ventures.

The Department recognizes that the management of this proposed Venture will be more complex to administer than the Linden Woods Joint Ventures. However, the Department does not believe that the additional efforts warrant a management fee increase to 8%.

This Venture is between two entities that have mutually participated in prior Ventures with no history of discontent. Both Venturers will be contributing equal land and funding. In addition, both parties will have equal representation on the management committee overseeing the Venture, similar to the Linden Woods Joint Ventures, which were structured at fees ranging from 5% to 6%.

The Department does recognize an incremental increase in demand for additional resources by the Managing Venturer within the longer term conduct of this proposed Venture, and therefore, advised Genstar that it is prepared to recommend a fee of 6½% of Gross Sales Income.

The Vice President of Genstar's Managing Partner in Manitoba has subsequently advised that the Company is prepared to accept a management fee of 6.5%.
Analysis:

Genstar Development Company has prepared a pro-forma projection for the Transcona-West project that are based on the most current information available for the residential housing

market within the Winnipeg Area. This pro-forma is based on certain foreseeable trends within the market place that anticipate land use requirements, residential housing market conditions and demands, sales volumes, and housing absorption rates over the life of the Venture.

In addition, the pro-forma includes projections on the City's municipal utility infrastructure cost requirements and the apportionment of such costs over benefiting lands. The intent of this proforma is to outline the scope of the project in terms of housing units, expected revenues and costs, and an estimated time frame for the development of the lands.

The Planning, Property and Development Department has examined the pro-forma and concluded that the projections contained therein are reasonable and achievable.

To summarize, the following is projected for the Venture at the management fee level of 6½%:

- During the initial phase of the Joint Venture, the City and Genstar would each be responsible to fund a total of approximately $775,200 over years 1 to 4, as their share of the development costs.

- After that initial period, the City and Genstar are projected to each receive a net income (after recovery of all expenses and initial funding) totalling $2,337,200 over years 5 to 8.

- During the second phase of the Venture, the City and Genstar would each be required to fund approximately $703,500 in year 8.

- During the period between year 9 and completion of the project, the City and Genstar would each receive a net income totalling $3,840,600.

- The resulting total net income is equal to $6,177,800 for each Venturer, or $47,850 per contributing acre. This translates into an average net income of $386,100 per year to each Venturer.

- The net management fee cost to the project would total approximately $99,700 per year to each Venturer. This is equivalent to 3-1/4 per cent of gross income to each Venturer.

Conclusion:

It is the opinion of the Planning, Property, and Development Department that it would be in the City's best interest to enter into a Joint Venture with Genstar Development Company and to proceed with co-development of a residential neighbourhood within the Transcona-West Area. The Joint Venture proposal provides the City of Winnipeg with an opportunity to capitalize on the added value attributable to fully serviced development of the land.

The Department therefore recommends that the Standing Policy Committee on Property and Development endorse the creation of this Joint Venture by approving the appended Joint Venture Agreement.

The Planning, Property and Development Department recommend approval of the Joint Venture Agreement for the following reasons:

The City's involvement within the proposed Joint Venture would improve opportunities for:

- Defining the parameters for an Area Structure Plan that would establish guidelines for the overall development of Transcona-West Area;

- Planning and staging orderly growth in the Transcona-West Area;

- Defining the Area's requirements for municipal infrastructure works;

- Accelerating the installation of community infrastructure works;

- Establishing guidelines for the recreational and social needs for this emerging community;

- Accelerating the creation of new municipal tax revenues; and

- Creating an on-going income stream for the City's Land Operating Reserve Account and reducing the funds dependency on borrowed capital for its mandated operations.

Financial Impact Statement

Date: November 23, 2004

Project Name:

Proposal to Approve a Joint Venture Agreement with the Genstar Development Company on Jointly Owned Lands within the Transcona-West Area

First Year of Program 2005

	2005	2006	2007	2008	2009-2020
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 879,558	$ 481,458	$ 2,019,524	$ 1,969,566	$ 13,575,773
Less: Incremental Revenue/Recovery	705,618	864,023	1,969,321	1,947,366	19,597,061
Net Cost/(Benefit)	$ 173,940	$ (382,565)	$ 50,203	$ 22,200	$ (6,021,288)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ 173,940	$ (382,565)	$ 50,203	$ 22,200	$ (6,021,288)

Additional Comments:

Based on amount and timing of income and expense streams contained within Genstar's proforma financial analysis, the City of Winnipeg will realize approximately $6.1 million in net income over 16 years from the proposed joint venture agreement. The analysis was prepared assuming constant 2004 dollars (i.e. inflation was not factored in). The assumptions used in preparing the analysis have been reviewed and appear reasonable. However, in view of the uncertainties inherent in predicting future conditions and actions, users of this information should be cautioned that actual results will vary, perhaps materially, from the information contained herein.

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

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

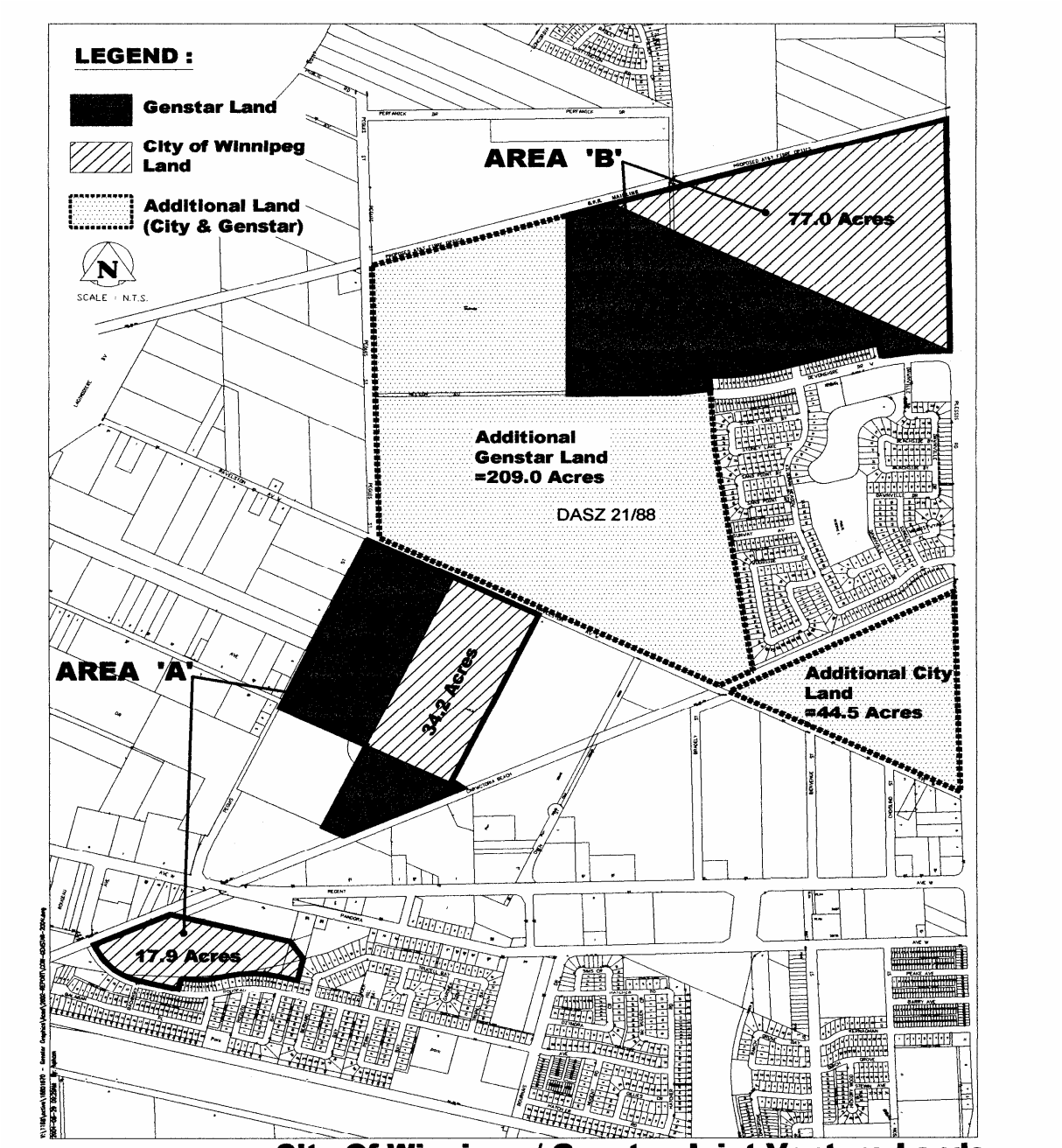
Legal Services

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate Division
Prepared by: Ed Dolhun, P. Eng., M.C.I.P. Consultant to the Land Enhancement Program
PPD File #:

Document name: O:\Reports Directive\Real Estate\Sales\Transcona Joint VentureV2.doc

This is Schedule "A" attached to and forming part of an Agreement in writing, made the _____ day of _____, 2004 between The City of Winnipeg, hereinafter referred to as the "City", of the first part and Genstar Development Company as Managing Partner of Genstar Development Partnership, hereinafter referred to as "Genstar", of the second part.



City Of Winnipeg / Genstar Joint Venture Lands

THIS AGREEMENT made as of the day of , 2004.

BETWEEN:

THE CITY OF WINNIPEG
(hereinafter referred to as the "City"),

OF THE FIRST PART,

- and -

GENSTAR DEVELOPMENT COMPANY
As Managing Partner of Genstar Development Partnership
(hereinafter referred to as "Genstar"),

OF THE SECOND PART.

WHEREAS:

A. The City has title to approximately 129.1 acres of land in the Transcona Community of Winnipeg, as outlined on Schedule "A" annexed hereto (hereinafter referred to as the "City Land") and the City has agreed to contribute the City Land for development pursuant to the terms of this Agreement;

B. Genstar has title to approximately 342.4 acres of land in the Transcona Community of Winnipeg, as outlined on Schedule "A" annexed hereto and Genstar has agreed to contribute 129.1 acres of said 342.4 acres of land (hereinafter referred to as the "Genstar Land") for development pursuant to the terms of this Agreement;

C. Genstar and the City have agreed to consider and treat the Genstar Land and the City Land as equal in all respects;

D. On [insert applicable date] City Council adopted the Report of the Standing Policy Committee on Property and Development dated [insert applicable date] which

proposed the City enter into a Joint Venture with Genstar for the development of the City Land and Genstar Land.

NOW THEREFORE this Agreement Witnesseth that in consideration of the terms and conditions herein contained, the parties hereto covenant and agree as follows:

1. **DEFINITIONS**

As used in this Agreement, the following terms shall have the following respective meanings:

(a) "**Agreement**" means the agreement herein describing the terms and conditions under which the Joint Venture is to operate and describing the respective rights, privileges, obligations, liabilities and duties of the Joint Venturers in respect of the development of the Lands:

(b) **"Additional City Land"** means the land outlined and identified as Additional City Land on Schedule "A" annexed hereto or any other lands that are deemed to be available for future contribution to the Joint Venture by the City, if mutually agreed upon;

(c) **"Additional Genstar Land"** means the land outlined and identified as Additional Genstar Land on Schedule "A" annexed hereto that is available for future contribution to the Joint Venture by Genstar, if mutually agreed upon;

(d) **"Area A"** means the land outlined and identified as AREA "A" on Schedule "A" annexed hereto;

(e) **"Area B"** means the land outlined and identified as AREA "B" on Schedule "A" annexed hereto;

(f) **"Auditor"** means the firm of chartered accountants acceptable to and agreed upon by the Management Committee responsible for performing the audit pursuant to sub-paragraph 6(k)(ii) hereof;

(g) **"Costs of Development"** means the following costs reasonably incurred by Genstar in the development of the Lands:

a) planning fees and disbursements including all costs incurred for developing and creating an approved area structure plan or secondary plan as prescribed under Plan Winnipeg;
b) engineering fees and disbursements;
c) legal survey fees and disbursements;
d) all costs of construction, operation and maintenance of all services, improvements and/or amenities;
e) soil tests and feasibility study fees and disbursements;
f) environmental assessment consulting fees including wetland and endangered species land delineation;
g) development cost charges including imposts, levies, and any other payments required to be paid in accordance with the policies of any regulatory bodies having authority;
h) subdivision application fees and disbursements;
i) inspection fees and disbursements;
j) legal counsel fees, which are incurred with respect to any matter affecting the project, but excluding those incurred as the result of any act of negligence by Genstar as Manager or by the City;
k) legal costs and registration costs including land transfer tax, if any, incurred in the subdivision, development, sale and transfer of the Land or any part thereof;
l) annual audit fees and disbursements;
m) architectural fees and disbursements;

n) landscape fees and disbursements;

o) costs and/or fees of any and all professionals, technicians, consultants and supervisors, hired for and dedicated to the project and/or construction management of the project;

p) cost of bonds or security, such as letters of credit or as otherwise required, which are provided by Genstar from a financial institution of Genstar's choice, at a cost of the greater of actual cost or 1% of the face value of such bonds or letters of credit unless the Joint Venturers agree to each provide one-half of the bonding, security or letters of credit requirements at their own expense in which case, same shall not be included in the Costs of Development;

q) realty taxes and assessments on subdivided lots and subdivided blocks;

r) real estate commission where a licensed real estate agent is employed to sell lots or blocks on behalf of the Joint Venture;

s) all costs of insurance premiums as may be required by the Joint Venture;

t) such other costs as may occur from time to time that are not included as part of the services provided for the Management Fees;

u) recoveries payable to Genstar and/or the City, as the case may be, for prepaid municipal services and land improvements previously installed by Genstar and/or the City on the Lands and on adjacent land, which municipal services and land improvements benefit the Lands, as determined by the Project Consulting Engineer; and

v) such other costs as the Management Committee from time to time shall determine.

(h) **"City Appointees"** means the representatives of the City appointed to the Management Committee pursuant to paragraph 8 hereof;

(i) **"Force Majeure"** means:

i) an Act of God;

ii) war, revolution, insurrection, riot, blockade, or any other unlawful act against public order or authority;

iii) a strike, lockout or other labour disturbance;

iv) a storm, fire, flood, explosion, lightning, earthquake, landslide, epidemic or similar catastrophe or inclement weather which makes performance impossible without extraordinary efforts by the party seeking to be excused from performance;

v) economic frustration.

(j) **"Genstar's Appointees"** means the representatives of Genstar appointed to the Management Committee pursuant to paragraph 8 hereof;

(k) **"Genstar's Solicitor"** means any solicitor who is in good standing with The Law Society of Manitoba and who has been nominated by Genstar to act in its behalf in respect of this Agreement;

(l) **"Incurred Costs"** means Costs of Development, Joint Venture Agreement Costs and Marketing Costs for which invoices or other documentation for payment have been received by Genstar, or for which Genstar has a binding obligation to pay in respect of the development of the Lands;

(m) **"Insurance"** means the insurance described in Schedule "B" attached hereto;

(n) **"Joint Venture"** means this Agreement for the development of the Lands by the City and Genstar;

(o) **"Joint Venturers"** means the City and Genstar;

(p) **"Joint Venture Agreement Costs"** means:

i) reasonable legal costs incurred by Genstar for the preparation of the Joint Venture Agreement; and

ii) all third party due diligence costs for studies commissioned by Genstar.

(q) **"Real Property Act"** means C.C.S.M., c. R30;

(r) **"Land Titles Office"** means the Land Titles Office at Winnipeg, Manitoba;

(s) **"Lands"** means those lands and premises lying within the areas identified as City Land and Genstar Land as outlined on Schedule "A";

(t) **"Management Committee"** means the committee consisting of the representatives of the City and Genstar pursuant to paragraph 8 hereof;

(u) **"Management Costs"** means the cost of any or all of the following:

i) all regional Genstar support personnel;

ii) support of Genstar's Corporate Office;

iii) Regional office overhead such as heat, light, rent, transportation, travel, computer time, etc.;

iv) accounting and administrative functions;

v) efforts required in lieu of brokerage fees in the sale of lots, blocks, or any part of the Lands where regulations do not require a licensed real estate agent or broker and where such sales are concluded by Genstar personnel; and

vi) costs of attending any meetings required to advance the Lands through the approval, development, and sales process and through the subdivision completion process.

(v) **"Management Fee"** means a payment of six and one-half (6.5%) percent of Sales Proceeds paid to Genstar to cover all Management Costs;

(w) **"Marketing Costs"** means the following costs reasonably incurred by Genstar in the marketing of the Lands:

i) direct and/or indirect advertising or promotional costs, including the printing of brochures and any costs involved in providing a sales information office and show home models which may be shared with builders; and

ii) other marketing costs as may occur from time to time that are not included as part of the services provided for in the Management Fee.

(x) **"Profits"** means the balance of the Sale Proceeds described in subparagraph 6(o)iv);

(y) "**Project Consulting Engineer**" means the firm of consulting engineers acceptable to and agreed upon by the Management Committee responsible for performing the engineering requirements for the development of the Lands;

(z) **"Purchaser** or **Purchasers"** means a party or parties who purchase a Subdivided Lot or Lots from the Joint Venture;

(aa) **"Sale Proceeds"** means the gross revenues, including any deposits and interest payments received by Genstar in respect of the sale of Saleable Lots and the sale of all or any part of the Lands;

(bb) **"Saleable Lot** or **Lots"** means the lot or lots or block or blocks actually or anticipated to be created by way of a subdivision or subdivisions within the Lands and which are to be offered for sale as residential lot or lots or block of blocks or for such uses as may be approved by the Management Committee, but does not

include the lot or lots or block or blocks to be created and conveyed for the purpose of parks;

(cc) **"Sold lot"** means a Saleable Lot for which payment of a deposit equal to fifteen (15%) percent of the purchase price has been made by a Purchaser pursuant to an executed sales agreement;

(dd) **"Subdivided Lot** or **Lots"** means a lot or lots or block or blocks created by the filing of a subdivision plan or plans in respect of the Lands pursuant to the Real Property Act in the Land Titles Office;

(ee) **"Transcona Joint Venture Bank Account"** means the bank account opened and maintained for the purposes of the Joint Venture pursuant to subparagraph 13(l) hereof;

(ff) **"Unsold Lots and Lands"** means any Subdivided Lot or Lots and/or any part of the Lands unsold to Purchasers at the time the Joint Venture is terminated pursuant to paragraph 10 and 11 hereof.

2. FORMATION OF JOINT VENTURE

The City and Genstar do hereby enter into and form the Joint Venture for the limited purpose and scope set forth in this Agreement pursuant to the laws of the Province of Manitoba and the terms of this Agreement.

3. NO CREATION OF PARTNERSHIP

(a) Nothing contained herein or otherwise arising shall constitute the City and Genstar as partners, nor shall anything contained herein constitute, or be deemed to constitute, either as agent for the other.

(b) The parties hereto acknowledge and agree that nothing contained herein shall entitle the Joint Venturers to any preferential treatment by reason of the City being a party to the Joint Venture, and it is expressly understood and agreed that the City shall not be obligated or committed to extend any compromises or concessions to the Joint Venturers whenever exercising its regular and normal functions as a regulatory authority.

4. COMMENCEMENT OF TERM OF JOINT VENTURE

The Joint Venture shall become effective on the date this Agreement becomes legally binding and shall continue until the last part of the Lands has been sold, all undertakings pursuant to this Agreement completed, and all financial matters settled in accordance with the provisions hereinafter set forth or as otherwise terminated by the terms of this Agreement. Genstar shall not be entitled to carry out any construction or make any use of the City Land until the effective date of the Joint Venture, unless prior written permission is obtained from the City.

5. INTEREST IN JOINT VENTURE ASSETS

(a) Genstar acknowledges that the City is the registered and beneficial owner of the City Land identified on Schedule “A” and the City acknowledges that Genstar is entitled to be the registered owner and is the beneficial owner of the Genstar Land identified on Schedule “A”.

(b) The City and Genstar mutually agree that the City is contributing the City Land and fifty (50%) percent of the Joint Venture cash flow requirements and that Genstar is contributing the Genstar Land and fifty (50%) percent of the Joint Venture cash flow requirements, and its Land development expertise. Upon the execution of

this Agreement, the City and Genstar shall become the beneficial owners of an undivided one-half interest in the City Land and the Genstar Land. Notwithstanding that the City and Genstar shall each become the beneficial owners of an undivided one-half interest in the City Land and the Genstar Land, Genstar and the City shall indemnify and hold each other harmless from all liability of any nature and kind whatsoever that either party may incur with respect to all and any matters arising out of the other's land identified on Schedule "A". Without limiting the generality of the foregoing, it is expressly understood and mutually agreed that Genstar shall solely be liable for discharging all and any debt and obligations affecting the Genstar Land where such debts and obligations relate to or have arisen out of matters not incurred for the purposes of the Joint Venture and the City shall solely be liable for discharging all and any debt and obligations affecting the City Land where such debts and obligations relate to or have arisen out of matters not incurred for the purposes of the Joint Venture. It is further understood and mutually agreed that Genstar shall continue to be liable for the payment of all realty taxes affecting the Genstar Land up to the date that a plan of subdivision affecting the Genstar Land is registered at the Land Titles Office against the Genstar Land and the City shall continue to be liable for the payment of all realty taxes (if any) affecting the City Land up to the date that a plan of subdivision affecting the City Land is registered at the Land Titles Office against the City Land. If at any time during the currency of this Agreement a plan of subdivision is registered only against a portion of the Genstar Land and/or a portion of the City Land, Genstar and the City as the case may be, shall respectively continue to be liable for the payment of all realty taxes affecting that portion of the Genstar Land and that portion of the City Land that has not been subdivided into Subdivided Lots until a plan of subdivision affecting that portion of the Genstar Land and that portion of the City Land is registered at the Land Titles Office.

(c) For the purposes of implementing the orderly development, servicing, marketing and conveyance of the Genstar Land and the City Land, the following procedure shall apply and be followed:

i) Whenever the Joint Venturers are prepared to register a plan of subdivision for all or a portion of the Lands, the City shall transfer and convey all that portion of the City Land to be subdivided in accordance with the plan of subdivision to Genstar; it being understood that the City shall retain title to all of the City Land and the residual portions thereof until title to the City Land and the residual portions thereof are required to be transferred and conveyed to Genstar in order to accommodate the plan of subdivision registration;

ii) The City transfer of land to Genstar shall be registered at the Land Titles Office by a duly enrolled Barrister and Solicitor of Manitoba mutually acceptable to Genstar and the City in series immediately preceding the plan of subdivision;

iii) All Sales Proceeds and other revenues derived from the Genstar Land and the City Land shall be paid to Genstar, to be deposited into the Transcona Joint Venture Bank Account for subsequent disbursements as provided for in paragraph 6(o) of this Agreement;

iv) All Incurred Costs shall be paid from the Transcona Joint Venture Bank Account as and when same become properly due and payable. If at any time there are not sufficient funds available in the Transcona Joint Venture Bank Account to pay all and any Incurred Costs which are properly due and payable, the City and Genstar shall each promptly pay and deposit to the Transcona Joint Venture Bank Account an equal amount of money so that there will then be sufficient funds in the Transcona Joint Venture Bank

Account to pay all such Incurred Costs which are then properly due and payable.

(d) The City and Genstar mutually agree that the Lands will be developed on a phased or staged basis.

(e) The City and Genstar acknowledge that the Lands may benefit from prepaid municipal services and land improvements on the Lands and on adjacent land (including without limitation, services and improvements such as streets, sidewalks, street lights, traffic signals, sewer and water services, land drainage sewers and shallow utilities) previously installed by Genstar and/or the City. The Project Consulting Engineer shall identify and determine the fair market value of said prepaid municipal services and land improvements as they relate to the Lands. As the Lands are developed, the Project Consulting Engineer shall determine the amount to be paid to Genstar and/or the City for reimbursement towards the fair market value of said prepaid municipal services and land improvements in accordance with present industry practices and same shall be paid from the Transcona Joint Venture Bank Account to Genstar and/or the City, as the case may be, and treated as a Cost of Development.

6. APPOINTMENT OF MANAGEMENT AND DUTIES OF GENSTAR

Genstar shall irrevocably be named the manager of the Joint Venturers and shall use its experience and expertise to advance and develop the Lands as rapidly as economically practical, for sale as Subdivided Lots. In this process Genstar will provide the following services:

(a) prepare development concepts and strategies;

(b) prepare pro forma cash flows and budgets;

(c) retain, supervise and instruct, on behalf of the Joint Venture, any consultants, planners, engineers, architects, surveyors, lawyers and other professionals and technicians required from time to time;

(d) negotiate and liaise with the appropriate authorities, for planning, zoning, engineering and environmental approvals and subdivision registration, etc.;

(e) execute subdivision improvement and/or other agreements with the appropriate authorities as may be required on behalf of the Joint Venture, and monitor development;

(f) provide subdivision surety, bonding, letters of credit and general liability insurance;

(g) negotiate and/or tender, finalize and enforce contracts for works and materials, and monitor and process invoices. All contracts will be at arms length, from both Genstar and the City;

(h) maintain development cost and sales records and provide periodic progress reports to the City based on actual costs and sales and comparison to the budget;

(i) negotiate and finalize agreements for sale of Saleable Lots and enforce compliance with such agreements. All sales will be at arms length from both Genstar and the City. Saleable Lots shall not be sold to Genstar or to the City unless approved by the Management Committee;

(j) manage and administer a marketing program, an architectural administration program and a landscaping and housekeeping program;

(k) administer the financial affairs of the Joint Venture including:

i) depositing Sales Proceeds, other revenue and project advances (capital contributions) as may be required from time to time to the Transcona Joint Venture Bank Account; and paying from the Transcona Joint Venture Bank Account, debts and obligations;

ii) maintaining financial records, expenditures, assets and liabilities and preparing the requisite financial statements within ninety (90) days of such fiscal year end for audit by the Auditor. An audit shall be made by the Auditor covering the assets, properties, liabilities and operations of the preceding fiscal year on all matters customarily included in such audit. A full copy of the audit shall, upon its completion, be furnished to each party to the Joint Venture, and each party shall have twenty-one (21) days after receipt of the audit to make an objection to the audit by giving notice in writing to the Auditor and to the other party, which objection shall set forth in reasonable detail the reason for such objection. If neither party shall give such notice within the twenty-one (21) day period, then the audit shall be deemed conclusive and binding upon the parties. Each party to the Joint Venture shall have the right to examine and inspect at any and all reasonable times the books, records and accounts of the Joint Venture. The fiscal year of the Joint Venture shall end on the 31st day of December in each and every year. The City shall have the right at its sole expense, to conduct an audit of the Joint Venture books, records and accounts;

(l) managing and administering the day-to-day affairs of the Joint Venture as well as advise and providing reviews for the Joint Venture Management Committee;

(m) retaining or employing, and coordinating the services of all employees, and other individuals required to enable Genstar to carry out its duties hereunder;

(n) maintaining the amount and the form of the Insurance in accordance with Schedule “B” attached hereto;

(o) causing the deposit of all Sale Proceeds and all other monies received in connection with the development and sale of all or any part of the Lands into the Transcona Joint Venture Bank Account and to subsequently cause same to be disbursed as follows:

i) payment forthwith to Genstar of an amount equal to six and one-half (6.5%) percent of the Sale Proceeds as and when received from time to time. This sum shall constitute the Management Fee and shall cover all overhead, administration and other costs incurred by Genstar in carrying out its duties pursuant to this Agreement;

ii) payment of the Incurred Costs until same have been paid in full. It is understood and agreed that the Incurred Costs shall only be paid after invoices have been rendered and they become properly due and payable;

iii) subject to making appropriate allowances for adequate reserves to fund anticipated Incurred Costs, repayment of any of the cash contributions that are made pursuant to subparagraph 5(c) v) hereof, equally to Genstar and the City until they are repaid in full;

iv) payment out of the balance, if any, after making appropriate allowances for adequate reserves to fund anticipated Incurred Costs as follows:

(a) 50% to the City
(b) 50% to Genstar

v) the City and Genstar mutually acknowledge and agree that within ninety (90) days after the sale of the last part of the Lands, the total revenues and total costs shall be reviewed and the Profits paid pursuant to subparagraph

6(o)(iv) hereof shall be adjusted in the event that all Incurred Costs have not been fully paid for. In such an event, the City and Genstar each agree to promptly pay and deposit into the Transcona Joint Venture Bank Account an amount equal to one-half of the unpaid Incurred Costs to ensure that all Incurred Costs will be fully paid prior to the division of any Profits;

(p) not use the City Land or any part thereof as security for financing for the benefit of Genstar, but Genstar shall be entitled to take back mortgages from purchasers or to enter into agreements for sale with purchasers.

7. THE CITY'S RESPONSIBILITIES

The City shall:

(a) Execute all documents pertinent to the Joint Venture in a reasonably expeditious manner;

(b) Convey title to such portions of the City Land in favour of Genstar free and clear of any liability, cross collateralization and encumbrances, save and except those encumbrances shown on title that are mutually approved by Genstar and the City whenever Genstar requires title in order to register a plan of subdivision on the City Land;

(c) i) remove, if required, at its sole discretion, cost and expense, all surplus fill material on the 34.2 acre parcel comprising part of the City Lands as shown on Schedule "A" at a time and in a manner that does not interfere with the timely development of said 34.2 acre parcel, or

ii) by mutual agreement with Genstar, establish land uses that are compatible with the topography of the existing site, or

iii) remove the said 34.2 acre site from the Joint Venture Agreement, at its sole discretion, or replace the said lands with other mutually accepted lands, and that any discrepancies within the contributions of lands by each party being adjusted accordingly.

8. **MANAGEMENT COMMITTEE**

(a) The parties hereby agree to form the Management Committee which will consist of two individuals appointed by the City and two individuals appointed by Genstar.

The City appointees are:
The Chair of the Standing Committee of Planning, Property and Development, and
The Councillor for the Transcona Ward, and
an Appointee to be named by City Council, as an alternate

The Genstar Appointees are:
Jerry C. Klein and
Frank Thomas, and
Greg Jasper, as an alternate Appointee.

An alternate appointee for a party may attend any meeting of the Management Committee in the place and stead of that party's absent appointee without notice to the other party.

Either party shall be at liberty to change its appointees or alternate and shall give written notice of such change to the other party.

(b) The Management Committee shall:

i) meet as appropriate to review the progress of the Joint Venture, but, in any event, at least once annually. The Committee shall meet within ten (10) days of a request to do so being received from one of its members;

ii) be bound by the decision of such Committee. In the event of a tied vote, Genstar shall cast the deciding vote except as to matters relating to the general ranges of pricing for sale of Saleable Lots and the general timing of development for the Lands, which shall be decided by mutual agreement. If mutual agreement cannot be reached, then either party at its option may refer the matter to arbitration in the following manner:

1. Either party desiring to submit the difference, dispute or question to arbitration shall give the other party notice in writing advising the other party of the name of the arbitrator appointed by the party giving notice. The party receiving notice shall, within ten (10) calendar days after receipt thereof, notify the party giving notice in writing of the name of its arbitrator and the two so named arbitrators shall within ten (10) days of being appointed select a third arbitrator who shall be the chairman. If the two named arbitrators are unable to agree upon a third arbitrator, then the third arbitrator shall be named by a Judge of the Manitoba Court of Queen's Bench. If the party receiving the original notice does not name an arbitrator within the time hereinbefore prescribed, the party receiving the original notice shall be deemed to have agreed to have the arbitrator named in the original notice be the sole arbitrator.

2. The arbitrator or arbitrators as the case may be shall establish the procedures under which the arbitration shall proceed, including but not limited to the calling and number of witnesses, submissions in writing or by hearings, whether either party may be interviewed separately by the panel; and other relevant matters; all within the requirements of The Arbitration Act of Manitoba; and shall render a decision and announce awards within the time limits of The Act.

3. The decision of the arbitrator or arbitrators as the case may be including the matter as to the allocation of costs of the arbitration shall be final and binding upon the parties.

iii) make and establish

a) broad program and policy decisions; and

b) general limits within which Genstar may act, without recourse to the Management Committee in order to undertake the day to day management of the Joint Venture respecting:

i) general servicing programs;
ii) general marketing schedules and programs;
iii) general ranges of pricing for sale of Saleable Lots;
iv) annual budgets which shall set forth the estimated receipts and expenditures (including construction, capital, operation, etc.). for the Joint Venture for the period covered by the budget;
v) general timing of development for the Lands;
vi) general plan of development of the Lands.

(c) Where Genstar, in its day to day management of the Joint Venture acts to implement the policy and programs respecting:

i) servicing;
ii) pricing and sales;
iii) plan of development of the Lands;
iv) marketing;
v) other expenditures provided for in the annual budgets;

within the general guidelines established by the Management Committee pursuant to paragraph 8 hereof, such acts shall be binding and conclusive upon the Joint Venture without further recourse to or approval from the Management Committee or the City.

9. FORCE MAJEURE

If any party hereto is prevented by Force Majeure from carrying out any obligations hereunder, the obligations of such party, insofar as its obligations are affected by the Force Majeure, shall be suspended while (but only so long as) the Force Majeure continues to prevent the performance of the said obligations.

10. TERMINATION OF AGREEMENT

This Agreement shall be terminated upon the happening of any one of the following events:

a. ninety (90) days after the disposition of all of the Lands; or

b. by written agreement of Genstar and the City for whatever reason; or

c. on December 31, 2020 or such later date that is mutually acceptable to Genstar and the City; or

d. Genstar, after making an application for rezoning and subdivision of any part of the Lands or a Phase thereof, determines that the conditions of development imposed by the approving authority of the City are such that in Genstar's opinion the financial return does not justify proceeding with further development of the Lands.

Upon the termination of this Agreement arising from any of the events described above, the Unsold Lots shall be sold and any other assets of the Joint Venture excluding the undeveloped Lands shall be realized and the proceeds therefrom shall be deposited into the Transcona Joint Venture Bank Account for distribution in accordance with the provisions of subparagraph 6(o) hereof.

11. **FRUSTRATION OF CONTRACT**

If this Agreement is frustrated because of a Force Majeure event, then either Genstar or the City may terminate this Agreement by giving written notice of termination to the other party. Following the notice of termination, the Unsold Lots shall be sold and any other assets of the Joint Venture excluding the undeveloped Lands shall be realized and the proceeds therefrom shall be deposited into the Transcona Joint Venture Bank Account for distribution in accordance with the provisions of subparagraph 6(o) hereof.

12. **LAND CONTRIBUTION EQUALIZATION**

In the event more of the City Land or more of the Genstar Land has been developed at the time of termination of this Agreement, the party contributing less land (the “Under-contributing Party”) shall compensate the party contributing more land (the “Over-contributing Party”) by giving the Over-contributing Party an amount equivalent to one half of the over contributed land, so that each party has contributed an equal amount of land in aggregate. The location of the land to be derived from the City Land or the Genstar Land, as the case may be, to be given by the Under-contributing Party to the Over-contributing Party shall determined by mutual agreement of the parties, failing which, same shall be determined by arbitration. To the extent that same is possible, the Under-contributing Party shall give the Over-contributing Party land from Area "A", if the land from the Over-contributing Party came from Area "A", and land from Area "B", if the land from the Over-contributing Party came from Area "B".

13. **GENERAL CONDITIONS**

(a) **Time of Essence**

Time shall be of the essence of this Agreement and every part hereof.

(b) **Notices**

All notices, requests, demands, or other communications by the terms hereof required or permitted to be given by one Joint Venturer to another shall, unless otherwise specifically provided for herein, be given in writing and be personally served or posted by registered mail, postage prepaid, addressed to such other Joint Venturer or delivered to such other Joint Venturer as follows:

To the City:

The City of Winnipeg
Planning, Property and Development Department
3rd Floor, 65 Garry Street
WINNIPEG, Manitoba
R3C 4K4
Attention: **Harry Finnigan**, Director

To Genstar:

Genstar Development Company
905 Waverley Street, Suite 218
WINNIPEG, Manitoba
R3T 5P4
Attention: **Jerry C. Klein,** Vice-President

Any notice, request, demand or other communication given by mail as aforesaid and posted anywhere in the Province of Manitoba shall be deemed to have been received on the third business day following the posting thereof, except during times of disruption of normal postal service, in which case, any such notice, request, demand or other communication shall be deemed to have been received upon actual receipt thereof.

(c) **Assignment**

This Agreement shall not be assigned by Genstar except with the express written consent of the Standing Policy Committee on Property and Development for the City. This Agreement shall not be assigned by the City except with the express written consent of Genstar. Either party may withhold its consent in its absolute discretion.

(d) **Funds**

All capital investments and all references to funds herein shall be in Canadian currency, and all books, records and accounts shall be maintained in Canadian dollars.

(e) **Further Acts**

The Joint Venturers and each of them hereby covenant and agree to do such things, to attend such meetings and to execute such further documents, agreements, and assurances as may be deemed necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

(f) **Successors and Assigns**

This Agreement shall be binding upon and enure to the benefit of the parties thereto and their respective successors and permitted assigns.

(g) **Jurisdiction**

This Agreement shall be governed by and interpreted according to the laws of the Province of Manitoba.

(h) **Whole Agreement**

This Agreement constitutes and expresses the whole arrangement between the parties hereto. It is understood and agreed that there are no covenants, warranties, guarantees, promises or agreements (verbal or otherwise) between the parties other than those contained herein.

(i) **Amendments**

This Agreement shall not be amended except by an instrument in writing executed by the parties hereto.

(j) **Severability**

If any paragraph, subparagraph, clause or phrase of this Agreement is, for any reason, held to be invalid by the decision of any Court of competent jurisdiction, then the invalid portion shall be severed and the portion hereof that is declared invalid shall not affect the validity of the remainder hereof.

(k) **Indemnification of the City**

Genstar shall indemnify and save harmless the City from all claims, actions, damages, liabilities and expenses for any breach, violation, default or non-performance by Genstar of any term, covenant or obligation of Genstar under this Agreement.

(l) **Bank Account, Transfers of Land and Discharges of Mortgages**

A bank account shall be maintained on behalf of the Joint Venture. The bank account shall be kept in the name of “Transcona Joint Venture Bank Account”. All monies received in respect of the development and sale of all or any part of the

Lands from time to time on account of the business of the Joint Venture shall be deposited immediately into the bank account. All disbursements as provided in subparagraph 6(o) hereof, shall be made by cheque on such account.

The signing authorities for the Transcona Joint Venture Bank Account and for transfers of land and discharges of mortgages relating to the Lands shall be any two authorized signing officers of Genstar.

IN WITNESS WHEREOF the parties hereto have caused this document to be executed on the day and year first above written.

GENSTAR DEVELOPMENT COMPANY,
as Managing Partner of Genstar Development Partnership

Per: _____
Vice-President

Per: _____
Assistant Secretary

THE CITY OF WINNIPEG

Per: _____
Director, Planning, Property and Development

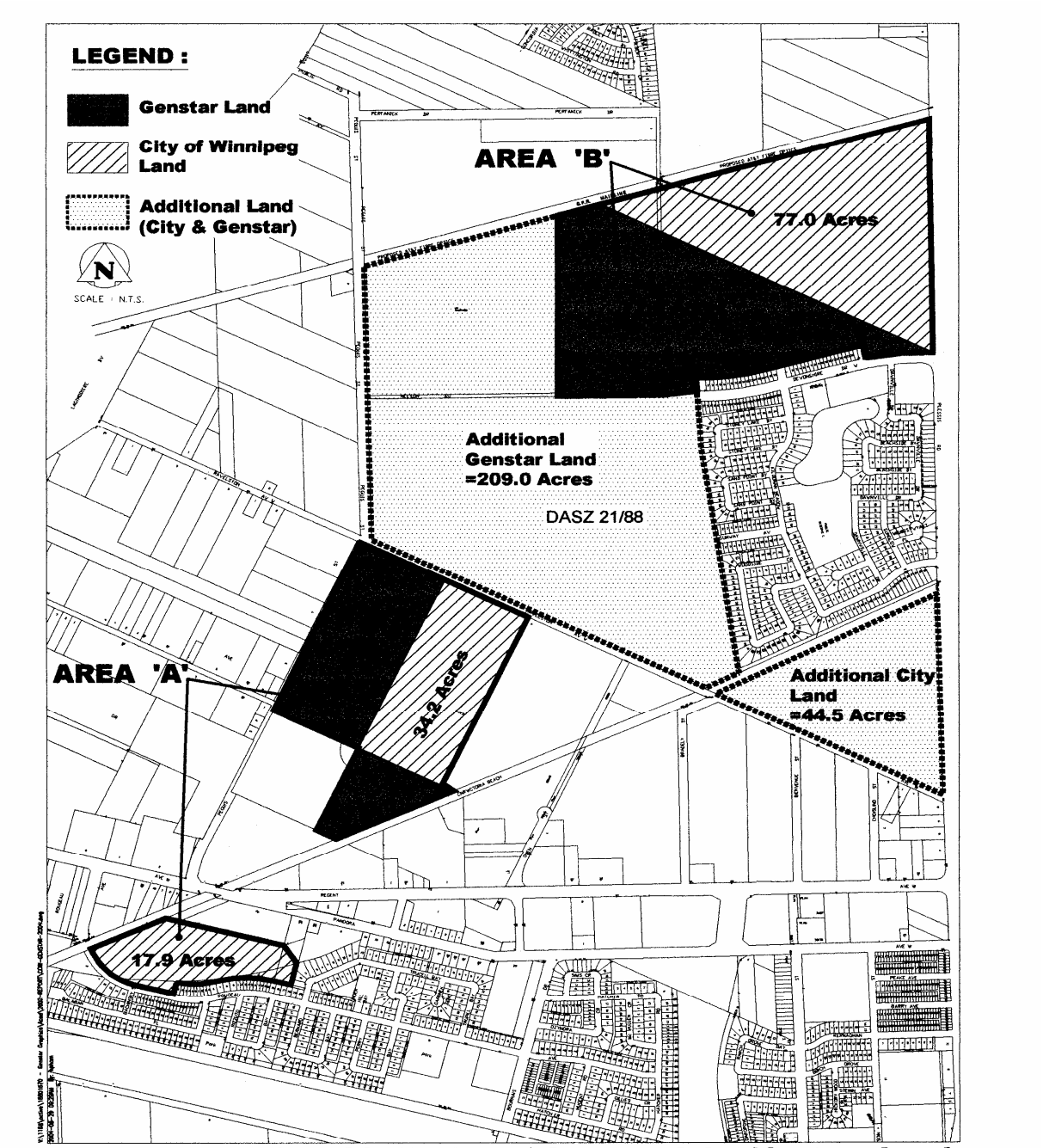
CERTIFIED AS TO FORM:

_____
for City Solicitor

APPROVED AS TO DETAILS:

_____
Director, Planning, Property and Development

This is Schedule "A" attached to and forming part of an Agreement in writing, made the _____ day of _____, 2004 between The City of Winnipeg, hereinafter referred to as the "City", of the first part and Genstar Development Company as Managing Partner of Genstar Development Partnership, hereinafter referred to as "Genstar", of the second part.



City Of Winnipeg / Genstar Joint Venture Lands