

Bill No. 28
2012

By-law No. A.-

A By-law to authorize an Agreement of Purchase and Sale between The Corporation of the City of London and Atchison Machine Service Inc. to purchase from the City a portion of the City owned Old Victoria Road road allowance, being Parts 1, 2, 3, 4, 9, 10, 11, 15 and 16, Reference Plan 33R-18115, and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into an Agreement of Purchase and Sale with Atchison Machinery Service Inc. (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this By-law, being an Agreement of Purchase and Sale between the City and Atchison Machinery Service Inc. is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under Section 1 of this by-law.
3. This By-law shall come into force and effect on the day it is passed.

PASSED in Open Council on January 10, 2012.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading - January 10, 2012
Second Reading – January 10, 2012
Third Reading – January 10, 2012

Schedule A

AGREEMENT OF PURCHASE AND SALE

VENDOR: THE CORPORATION OF THE CITY OF LONDON

PURCHASER: ATCHISON MACHINE SERVICE INC.

REAL PROPERTY:

Address: part of closed road allowance of Old Victoria Road

Location: lands abutting the frontage of 3075 Old Victoria Road

Measurements: Irreg.- area 1493.6 sq m

Legal Description: Part of Lot 7, Conc. 2 and part of Block 14 & 15, Plan 33M-627, of the Geographic Township of Westminster more particularly described as Parts 1, 2, 3, 4, 9, 10, 11, 15 & 16 of Ref. Plan 33R-18115 in the City of London, County of Middlesex, as shown on Schedule "A" (the "Property").

1. **OFFER TO PURCHASE:** The Purchaser agrees to purchase from the Vendor in accordance with the terms and conditions as set out in this Agreement.
2. **SALE PRICE:** The purchase price shall be two DOLLARS CDN (\$2.00) payable as follows:
 - a) a deposit of TWO DOLLARS (\$2.00) cash or cheque on the date hereof as a deposit; and
 - b) the balance of the sale price, subject to adjustments, in cash or by cheque on completion of this Agreement.
3. **ADJUSTMENTS:** Any unearned fire insurance premiums, rents, mortgage interest, realty taxes including local improvements rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to the Purchaser.
4. **SCHEDULE(S):** The following Schedule(s) form(s) part of this Agreement:
 - Schedule "A" Description of the Property
 - Schedule "B" Additional Terms and Conditions
5. **IRREVOCABILITY:** This Offer shall be irrevocable by the Vendor until considered by council of the corporation of the city of London at a meeting to be held no later than January 13, 2012, after which date, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Purchaser in full without interest or deduction.
6. **TITLE SEARCH:** The Purchaser shall be allowed until 4:30 p.m. on January 27, 2012 (Requisition Date) to examine the title to the Property and at its own expense and to satisfy itself that there are no outstanding work orders or deficiency notices affecting the Property, that its present use may be lawfully continued and that the principal building may be insured against risk of fire.
7. **COMPLETION DATE:** This Agreement shall be completed by no later than 4:30 p.m. on February 10, 2012. Upon completion, vacant possession of the Property shall be given to the Purchaser unless otherwise provided for in this Agreement.
8. **NOTICES:** Any notice relating to or provided for in this Agreement shall be in writing.
9. **HST:** If this transaction is subject to Harmonized Sales Tax (HST) then such HST shall be in addition to and not included in the sale price, and HST shall be collected and remitted in accordance with applicable legislation. If this transaction is not subject to HST, the Vendor agrees to provide, on or before completion, to the Purchaser's solicitor, a certificate in a form satisfactory to the Purchaser's solicitor certifying that the transaction is not subject to HST.
10. **FUTURE USE:** Vendor and the Purchaser agree that there is no representation or warranty of any kind that the future intended use of the Property by the Purchaser is or will be lawful except as may be specifically provided for in this Agreement.
11. **TITLE:** Provided that the title to the Property is good and free from all encumbrances. If within the specified times referred to in paragraph 6 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to the Vendor and which Vendor is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and any deposit paid shall be returned without interest or deduction and Vendor shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, the Purchaser shall be conclusively deemed to have accepted Vendor's title to the Property.
12. **DOCUMENTS AND DISCHARGE:** The Purchaser shall not call for the production of any title deed, abstract,

survey or other evidence of title to the Property except such as are in the possession or control of Vendor. If requested by the Purchaser, Vendor will deliver any sketch or survey of the Property within Vendor's control to the Purchaser as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by the Purchaser on completion, is not available in registerable form on completion, the Purchaser agrees to accept Vendor's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registerable form and to register same on title within a reasonable period of time after completion, provided that on or before completion Vendor shall provide to the Purchaser a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, together with a direction executed by Vendor directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registerable form at the expense of the Vendor. If requested by the Purchaser, Vendor covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50 (22) of the *Planning Act*, R.S.O. 1990
14. **RESIDENCY:** The Purchaser shall be credited towards the Purchase Price with the amount, if any, necessary for the Purchaser to pay to the Minister of National Revenue to satisfy the Purchaser's liability in respect of tax payable by Vendor under the non-resident provisions of the *Income Tax Act* by reason of this sale. The Purchaser shall not claim such credit if Vendor delivers on completion the prescribed certificate or a statutory declaration that Vendor is not a non-resident of Canada.
15. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Vendor and the Purchaser or their respective lawyers who are hereby specifically authorized in that regard.
16. **TENDER:** Any tender of documents or money hereunder may be made upon Vendor or the Purchaser or their respective solicitors on the day set for completion. Money may be tendered by bank draft or cheque by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
17. **FAMILY LAW ACT:** Vendor warrants that spousal consent is not necessary to this transaction under the provisions of the *Family Law Act*, R.S.O. 1990 unless Vendor's spouse has executed the consent provided.
18. **CLOSING ARRANGEMENTS:** Where each of the Vendor and Purchaser retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. , Chapter L4, and any amendments thereto, the Vendor and Purchaser acknowledge and agree that the delivery of documents and the release thereof to the Vendor and Purchaser may, at the lawyer's discretion: (a) not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documentation) and (b) be subject to conditions whereby the lawyer receiving documents and/or money will be required to hold them in trust and not release them except in accordance with the terms of a written agreement between the lawyers.
19. **AGREEMENT IN WRITING:** This Agreement, including any Schedule attached, shall constitute the entire Agreement between the Purchaser and Vendor. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
20. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

85 11

THE CORPORATION OF THE CITY OF LONDON

Joe Fontana, Mayor

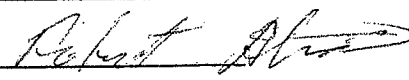
Catharine Saunders, City Clerk

The Corporation of the City of London hereby accepts the above Agreement of Purchase and Sale and agrees to carry out the same on the terms and conditions herein contained.

GIVEN UNDER MY/OUR HAND AND SEAL, (OR, IN WITNESS WHEREOF THE VENDOR HERETO HAS HEREUNTO CAUSED TO BE AFFIXED ITS CORPORATE SEAL ATTESTED BY THE HANDS OF ITS PROPER SIGNING OFFICERS, as the case may be) this 24th day of November, 2011,

SIGNED, SEALED AND DELIVERED
In the Presence of

Per: Atchison Machine Service Inc.

Name: Robert Atchison 

Title: President


I/We Have the Authority to Bind the Corporation

VENDOR'S LAWYER: _____

PURCHASER'S LAWYER: David G. Munteer, Solicitor, 519-661-2500 Ext. 4709 Fax: 519-661-5530

Graham Porter, Leners, 519-672-4131

Schedule "A"

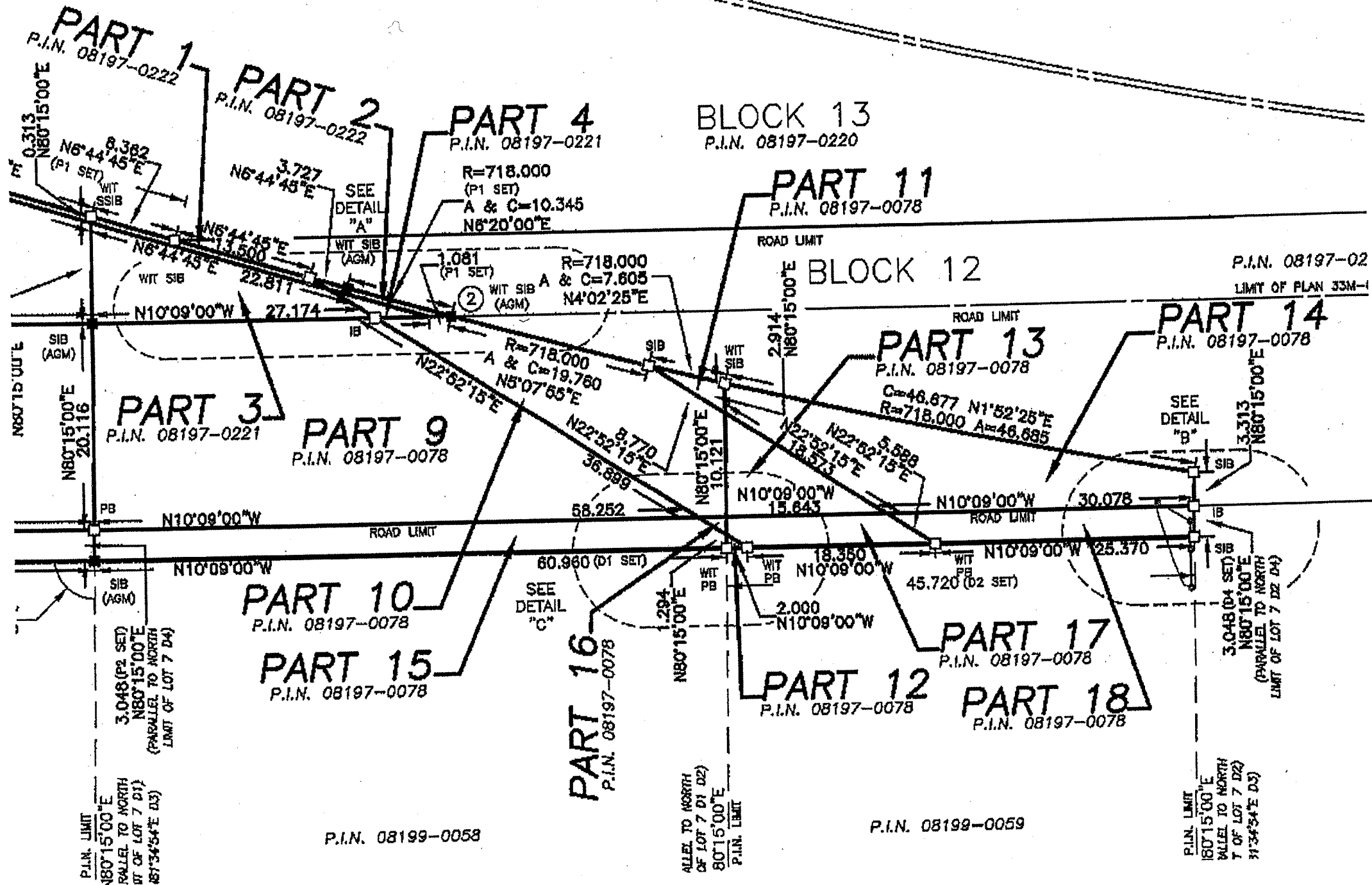
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|---|--|
| I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT. | PLAN 33R-18115 |
| | RECEIVED AND DEPOSITED |
| DATE: OCTOBER 11, 2011. | DATE: October 13, 2011 |
|  JASON WILBAND ONTARIO LAND SURVEYOR | P. KENNEDY-FISCHER |
| | REPRESENTATIVE FOR LAND REGISTRAR FOR THE LAND TITLES DIVISION OF MIDDLESEX (NO. 33) |

PART SCHEDULE

| PART | BLOCK/LOT | PLAN/CONCESSION | P.I.N. | TRANSFeree | AREA |
|------|----------------------------|-----------------|--------------------|---------------------------------------|------------------------------|
| ✓ 1 | PART OF BLOCK 13 | PLAN 33N-627 | PART OF 08197-0222 | THE CORPORATION OF THE CITY OF LONDON | 6.7 sq m 72.2 sq ft |
| ✓ 2 | | | | | 4.0 sq m 42.8 sq ft |
| ✓ 3 | PART OF BLOCK 14 | PLAN 33N-627 | PART OF 08197-0221 | | 158.6 sq m 1888.8 sq ft |
| ✓ 4 | | | | | 10.5 sq m 113.0 sq ft |
| 5 | PART OF LOT 7 | CONCESSION 2 | PART OF 08197-0078 | | 6.0 sq m 68.0 sq ft |
| 6 | | | | | 1.8 sq m 18.7 sq ft |
| 7 | | | | | 4088.8 sq m 43948.0 sq ft |
| 8 | | | | | 788.7 sq m 8488.4 sq ft |
| ✓ 9 | | | | | 359.1 sq m 3847.8 sq ft |
| ✓ 10 | | | | | 250.8 sq m 2800.4 sq ft |
| ✓ 11 | | | | | 18.7 sq m 199.3 sq ft |
| 12 | | | | | 1.3 sq m 13.9 sq ft |
| 13 | | | | | 79.2 sq m 852.1 sq ft |
| 14 | | | | | 282.7 sq m 3043.4 sq ft |
| 15 | 183.4 sq m 1974.4 sq ft | | | | |
| ✓ 16 | 2.4 sq m 25.6 sq ft | | | | |
| 17 | 53.5 sq m 576.0 sq ft | | | | |
| 18 | 24.4 sq m 268.8 sq ft | | | | |
| 19 | PART OF BLOCK 13 | PLAN 33N-627 | PART OF 08197-0222 | | 71.4 sq m 768.5 sq ft |
| 20 | PART OF BLOCK 14 | PLAN 33N-627 | PART OF 08197-0221 | | 6288.8 sq m 68779.1 sq ft |

Attachment
Mach. Inc. 1493.5
58 m

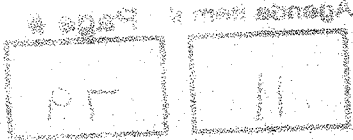
PARTS 1, 2 AND 19 COMPRISE ALL OF P.I.N. 08197-0222.
 PARTS 3, 4 AND 20 COMPRISE ALL OF P.I.N. 08197-0221.
 PARTS 5 TO 18 BOTH INCLUSIVE COMPRISE PART OF P.I.N. 08197-0078.



P.I.N. 08199-0058

P.I.N. 08199-0059

Schedule A



SCHEDULE "B"

1. **ENVIRONMENTAL CLAUSE:** The Purchaser acknowledges that the Property is being purchased on an "as is" basis. The Purchaser acknowledges that the Vendor has not made, did not make and shall not be required to provide any representations or warranties of any kind with respect to whether the Property and processes and undertakings performed thereon have been and are in compliance with all applicable environmental laws, regulations and orders and whether the Property is suitable for any specific use including and without limitation to any construction or development. The Purchaser acknowledges and agrees that the Vendor shall not be liable for any damages of loss whatsoever arising out of or pursuant to any claims in respect to the foregoing.
2. **UNION GAS EASEMENT:** The Purchaser agrees to accept the title to the Property subject to an easement over Parts 15 & 16 of Ref Plan 33R-18115 in favour of Union Gas Limited to survey, lay, construct, maintain, inspect, patrol, alter, remove, replace, reconstruct, repair, move, keep, use and or operate a pipe line or lines for the distribution of gas.
3. **LONDON HYDRO EASEMENT:** The Purchaser agrees to accept the title to the Property subject to an easement over Parts 2, 4, 10 & 16 of ref Plan 33R-18115 in favour of London Hydro to operate, maintain, repair, replace, renew or make additions to electric facilities including buried cable and wires, conduits, foundations, cabinets, markers and appurtenances.