

TO:	CHAIR AND MEMBERS FINANCE & ADMINISTRATIVE SERVICES COMMITTEE MEETING ON APRIL 16, 2012
FROM:	JOHN FLEMING DIRECTOR of LANDUSE PLANNING & CITY PLANNER PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES
SUBJECT:	LAND ACQUISITION from OLD OAK PROPERTIES INC. for SUGAR CREEK PARK

RECOMMENDATION

That, on the recommendation of the Director of Land Use Planning and City Planner, regarding land acquisition from Old Oak Incorporated to complete Sugar Creek Park, the following actions **BE TAKEN:**

- a) The offer from Old Oak Properties Incorporated to sell 0.109 Ha of land, designated as Part 14 on Plan 33R-17797, to the City to complete Sugar Creek Park at a purchase price of \$79,685.00 **BE ACCEPTED** as per the Source of Financing in Appendix "C", subject to the following conditions:
 - i) the purchase price be made up of a cash payment of \$40,401.00 and a "gift in kind" donation receipt in the amount of \$39,284.00; and
 - ii) the City grant an easement to the Vendor for existing storm and sanitary sewers crossing Sugar Creek Park over Part 14 and adjacent parkland;
- b) The City **PROVIDE** a gift in kind donation receipt to the vendor in the amount of \$39,284.00, and;
- c) The attached proposed By-law (Appendix "D") **BE INTRODUCED** at the Municipal Council meeting to be held on May 1, 2012 to approve this acquisition and to authorize the Mayor and City Clerk to execute the agreement.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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| May 5, 2008 | Planning Committee Recommendation on Beaverbrook / Proudfoot Community Park |
| October 10, 2010 | Board of Control Report on 400 Sugar Creek Trail - Exchange of Lands with Old Oak Properties |

DISCUSSION

BACKGROUND

Within the Beaverbrook Planning District, an "Area Plan" concept was developed in 1991 for lands south of Proudfoot Lane and west of Beaverbrook Drive to ensure that the many small parcels of land would develop in a coordinated way and provide for proper road and servicing alignments and a park central to the Area (see Appendix "A" for the Area Plan). Over the last 10 years, development has progressed parcel by parcel, almost exclusively by Old Oak as they acquired the parcels.

The Sugar Creek road allowance was acquired by the City in pieces and recently the road construction was completed from Proudfoot Lane through to Beaverbrook Avenue as per the concept plan. At the same time, the City acquired various pieces of Sugar Creek Park as parcels developed. In October 2010, a land swap occurred to acquire a small portion of parkland and provide Old Oak with suitable lands for the construction of their community centre adjacent to the park as its use is complimentary to the park. Block 14, 33R-17797 (Appendix "B") remains the only outstanding acquisition to be made to complete the park.

PARK ACQUISITION

The remaining parcel that completes the full Sugar Creek Park was identified on a reference plan as Old Oak's adjacent lands were developed. Through standard development processes, the required parkland dedication was received for that development. Part 14, 33R-17797 is 0.109 Ha in size and completes the park. The market value for Block 14 has been assessed by Realty Services and is worth \$79,685 and previous acquisitions from Old Oak have been at that same rate per Ha.

As part of our on-going discussions with Old Oak, staff asked if Block 14 could be acquired at the Council approved rate of \$370,650/Ha for parkland (as per By-law CP-9, Parkland Conveyance & Levy By-law) being \$40,401. To continue our extremely productive joint efforts to provide parkland and amenities in the Sugar Creek community, Old Oak is prepared to accept cash payment of the \$40,401 and a "gift in kind" donation receipt from the City for the difference - \$39,284.

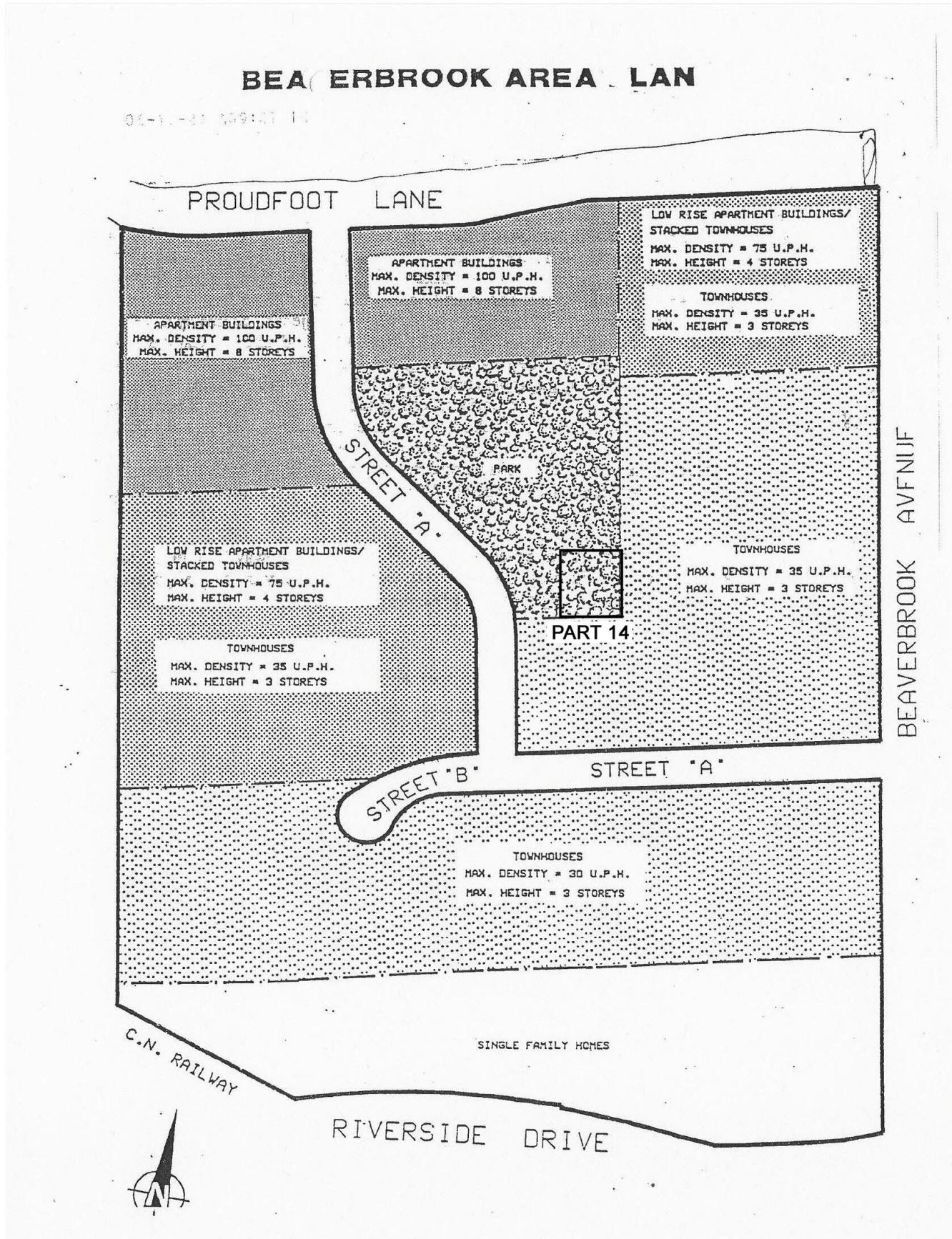
This report was completed with input from our Legal, Realty Services and Finance Divisions.

PREPARED BY:
ANDREW MACPHERSON MANAGER, PARKS PLANNING & DESIGN
RECOMMENDED BY:
JOHN FLEMING DIRECTOR, LAND USE PLANNING & CITY PLANNER

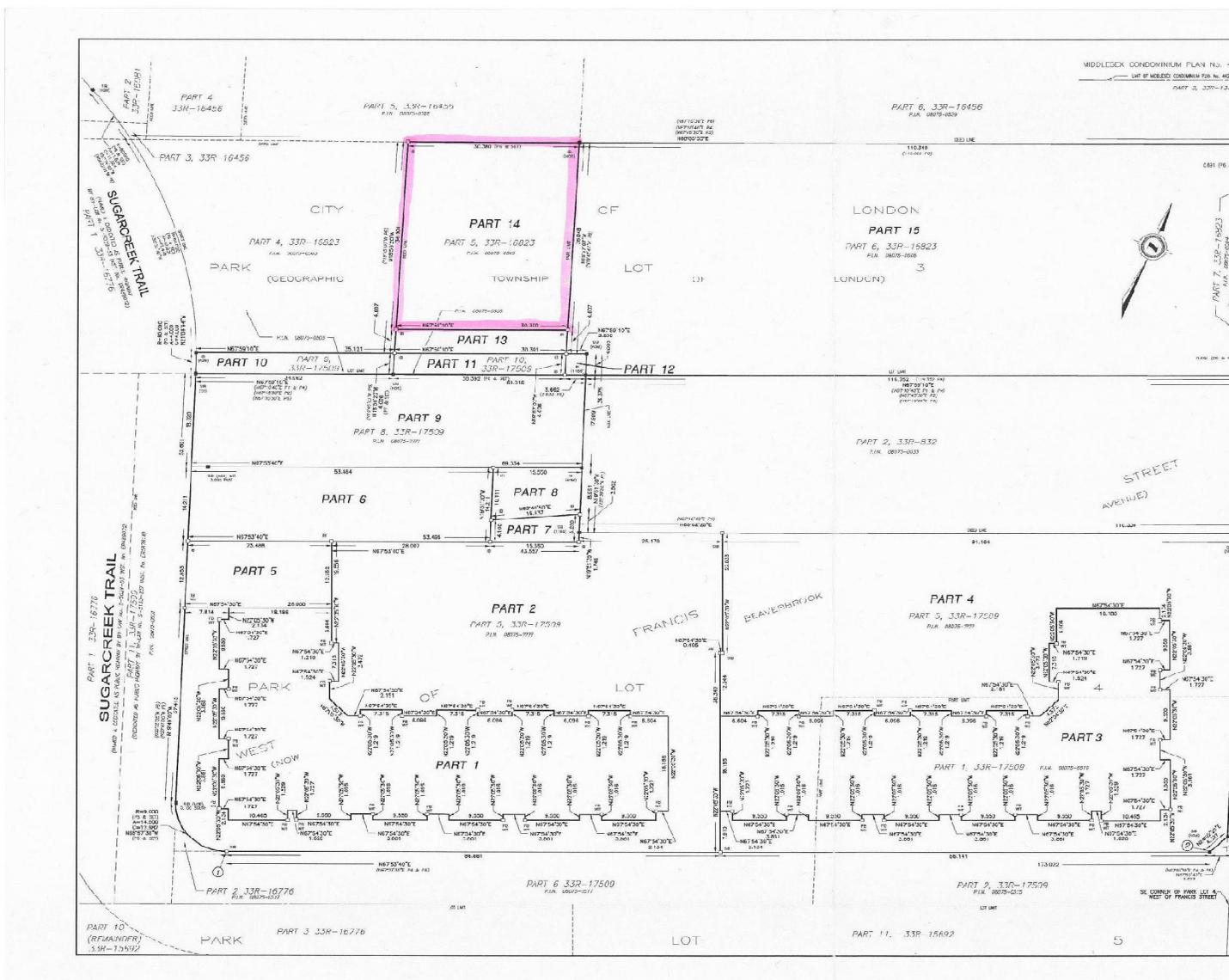
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- Attachments: Appendix A - Beaverbrook Area Plan
 Appendix B - Survey Plan
 Appendix C - Source of Financing
 Appendix D – Acquisition By-law

Appendix A - Beaverbrook Area Plan



Appendix B - Survey Plan



Appendix C – Source of Financing

Appendix D - By-Law

Bill No.

By-law No.

A By-law to authorize an Agreement between The Corporation of the City of London and Old Oak Properties Inc.; 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 Section 51(25)(d) of the *Planning Act*, R.S.O. 1990, c. P. 13 as amended authorizes the City to enter into agreements for the provision of municipal and other services;

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 Old Oak Properties 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 Old Oak Properties 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 , 2012.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading –
Third reading –

SCHEDULE A - AGREEMENT OF PURCHASE AND SALE

VENDOR: OLD OAK PROPERTES INC.

PURCHASER: THE CORPORATION OF THE CITY OF LONDON

REAL PROPERTY: Part of Park Lot West of Francis Street, designated as Part 14 on Plan 33R-17797, being part of PIN 08075-0505, City of London, County of Middlesex, AS SHOWN ON Schedule "A" attached (the "Property").

Address: Sugar Creek Trail, London

- a) **OFFER TO PURCHASE:** The Purchaser agrees to purchase the Property from the Vendor in accordance with the terms and conditions as set out in this Agreement.
- b) **SALE PRICE:** The purchase price shall be SEVENTY-NINE THOUSAND, SIX HUNDRED AND EIGHTY-FIVE DOLLARS CDN (\$79,685.00) 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 purchase price, subject to adjustments, in accordance with the provisions of Schedule "B" of this Agreement.
- c) **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.
- d) **SCHEDULE(S):** The following Schedule(s) form(s) part of this Agreement:
 - Schedule "A" Location Map showing the Property
 - Schedule "B" Additional Terms and Conditions
- e) **IRREVOCABILITY:** This Offer shall be irrevocable by the Purchaser until considered by the Council of the Corporation of the City of London at a meeting to be held no later than the 1st day of May, 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.
- f) **TITLE SEARCH:** The Purchaser shall be allowed until 4:30 p.m. on the 15th day of, May 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 Open Space, may be lawfully continued and that the principal building may be insured against risk of fire.
- g) **COMPLETION DATE:** This Agreement shall be completed by no later than 4:30 p.m. on the 25th day of May, 2012. Upon completion, vacant possession of the Property shall be given to the Purchaser unless otherwise provided for in this Agreement.
- h) **NOTICES:** Any notice relating to or provided for in this Agreement shall be in writing.
- i) **GST:** If this transaction is subject to Goods and Services Tax (G.S.T.) then such G.S.T. shall be in addition to and not included in the sale price, and G.S.T. shall be collected and remitted in accordance with applicable legislation. If this transaction is not subject to G.S.T., 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 G.S.T.
- j) **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.
- k) **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.
- l) **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.

- m) **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.
- n) **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.
- o) **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 may be specifically authorized in that regard.
- p) **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 certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
- q) **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.
- r) **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.
- s) **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.
- t) **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

I, the Undersigned Purchaser, agree to the above Agreement of Purchase and Sale.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

) THE CORPORATION OF THE CITY OF LONDON
)
) Per: _____
)
) Name: Joe Fontana
) Title: Mayor
)
)
) Per: _____
) Name: Catharine Saunders
) Title: City Clerk

/We Have the Authority to Bind the Corporation

OLD OAK PROPETES INC.

 Per:
 I have the authority to bind the corporation

SCHEDULE "B"

1. **PAYMENT OF PURCHASE PRICE:** On closing, the Purchaser shall pay to the Vendor the Purchase Price as follows:

- a) a payment by cash or cheque in the amount of \$40,401.00; and
- b) the delivery of an "gift in kind" tax receipt in the amount of \$39,284.00

2. **SOIL AND ENVIRONMENTAL TESTS:** The Purchaser shall have a period of 14 days from the date of acceptance of this Agreement to satisfy itself in its sole and absolute discretion as to the soil and environmental condition of the Property. The Purchaser may enter on the Property and have soil and environmental tests conducted using qualified agents or servants. The Purchaser agrees that all such tests shall be conducted using reasonable care and that the Property shall be restored to a condition as close as reasonably possible to its condition prior to entry. The Purchaser agrees to indemnify and save harmless the Vendor from and against all claims, demands, costs, including reasonable legal costs, damages, expenses and liabilities whatsoever arising out of its entry on the Property and the conducting of such test.

If the results of the soil tests are not satisfactory to the Purchaser, it shall within the time limited deliver written notice to the effect to the Vendor and the Agreement shall be terminated and the deposit immediately returned to the Purchaser without interest or deduction; failing delivery of written notice, the condition shall be deemed to have been waived. This condition is inserted for the benefit of the Purchaser and may be waived by it at any time during the time limited period.

3. **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.