

<b>TO:</b>	<b>CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE  MEETING ON MARCH 19, 2013</b>
<b>FROM:</b>	<b>BRYAN BAAR MANAGER OF REALTY SERVICES OPERATIONS</b>
<b>SUBJECT:</b>	<b>DECLARE SURPLUS AND TRANSFER CITY OWNED LANDS 83 ELLIOTT STREET</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Manager Realty Services Operations, with the concurrence of the Manager of Realty Services, with respect to a portion of the City owned property located at 83 Elliott Street, legally described as Part of Lot 3, Registered Plan 251, measuring approximately 12' x 110', containing an area of approximately 1,320 square feet, shown as Parcel 2 on Schedule "A" attached, the following actions **BE TAKEN**:

- a) a portion of the subject property be declared surplus;
- b) accept the offer submitted by Brian Broere, the owner of the adjacent property at 81 Elliott Street, to purchase the subject surplus property from the City, for a consideration of \$2.00; and
- c) the attached proposed By-law (Appendix "A") be introduced at the Municipal Council meeting to be held on March 26, 2013 to approve the sale and disposition, and to authorize the Mayor and the City Clerk to execute the Agreements of Purchase and Sale.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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None

<b>BACKGROUND</b>
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**PURPOSE**

To work with the property owner of 81 Elliott Street to re-establish the necessary access to the rear of the Carling Arena property and formalize the existing property boundaries through a transfer, at nominal consideration, of the disputed lands.

**BACKGROUND**

The City's Facilities Division identified a municipal need to establish a secondary access laneway to the Carling Arena to alleviate issues associated with congestion and access at the rear of the building. Upon review of the works required to establish the secondary route, an encroachment from an abutting land owner at 81 Elliott Street was discovered. Realty Services was requested to review the encroachment and pursue resolution to the matter.

The current encroached area is described as Parcel 1 and Parcel 2 on the attached sketch (Appendix "A"). The encroachment is over the southern property line of 83 Elliott Street and is contained within two fences. It includes a garden shed and a gravel parking area.

Realty Services has reviewed the matter with the City Solicitor's Office to determine the potential for the establishment of a possessory title claim by the owner of 81 Elliott Street. In the opinion of the City Solicitor's Office there was sufficient merit to the potential claim to warrant a redefinition of the property boundaries while appropriately servicing the municipal need.

In order to establish the appropriate property boundaries required for the works and to eliminate the issues associated with the potential for possessory title, Parcel 2 is to be conveyed to the owner of 81 Elliott at nominal consideration and Parcel 1 is to remain in the City's ownership as described in the attached Agreement of Purchase and Sale (Appendix "D").

An internal liaison process has concluded that no Civic need exists for the subject City owned property being proposed for land transfer.

The form of agreement has been approved by the City Solicitor's Office.

A location map is attached for the Committee's information (Appendix "B").

An aerial image is attached for the Committee's information (Appendix "C").

The Agreement of Purchase and Sale is attached for the Committee's information (Appendix "D").

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
<b>RON GASPARETTO PROPERTY CO-ORDINATOR AND NEGOTIATOR</b>	<b>BRYAN BAAR MANAGER REALTY SERVICES OPERATIONS</b>
<b>CONCURRED BY:</b>	
<b>BILL WARNER MANAGER OF REALTY SERVICES</b>	

February 25, 2013  
Attach.

File No. P-2393

cc: Gary Irwin, Manager, Geomatics and Chief Surveyor  
David G. Mounteer, Solicitor II  
Ken Owen, Manager Facilities and Design

**APPENDIX "A"**

Bill No.

By-law No.

A By-law to declare a portion of 83 Elliot Street surplus, and to authorize the Agreement of Purchase and Sale between The Corporation of the City of London and Brian Broere for the sale of a portion of 83 Elliott Street 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 the Agreement of Purchase and Sale with Brian Broere (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and the 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 Appendix "D" to this by-law, being the Agreement of Purchase and Sale between the City and Brian Broere is hereby AUTHORIZED AND APPROVED.
2. The Mayor and the 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 March 26, 2013.

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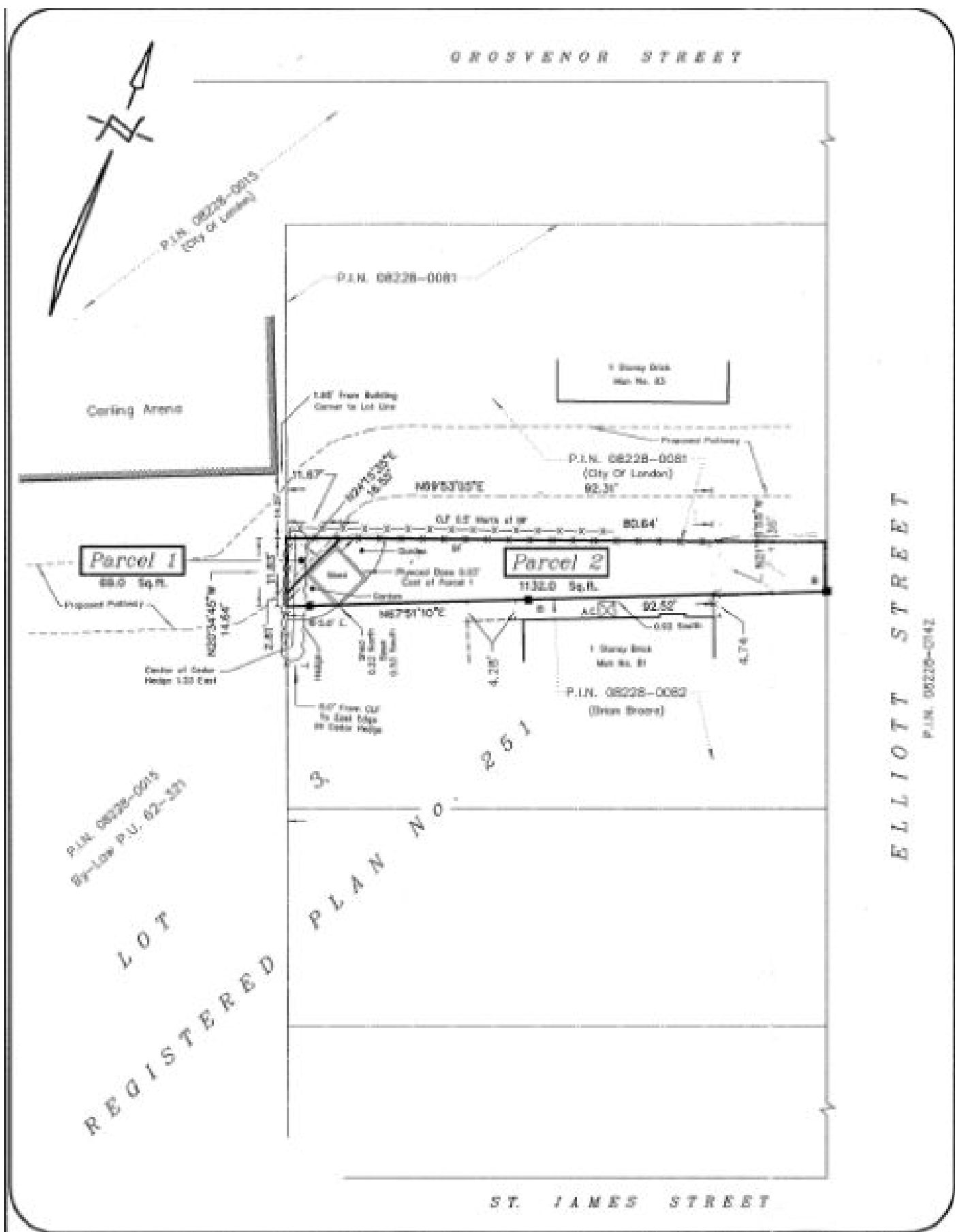
Joe Fontana  
Mayor

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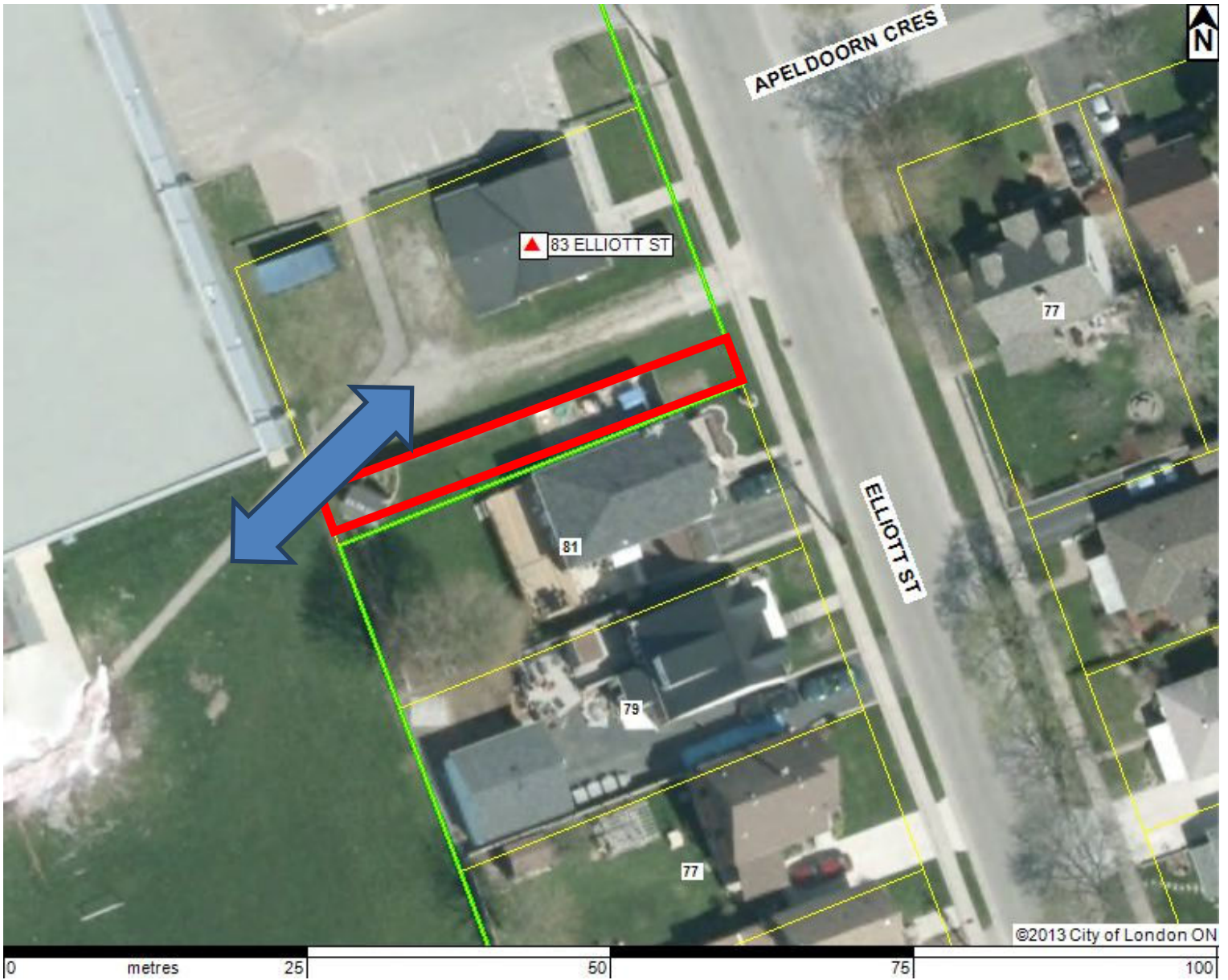
Catharine Saunders  
City Clerk

First reading - March 26, 2013  
Second reading - March 26, 2013  
Third reading - March 26, 2013

APPENDIX "B"



APPENDIX "C"



Approximate Laneway Location



Approximate Encroachment Area

## APPENDIX "D"

### AGREEMENT OF PURCHASE AND SALE

**VENDOR:** CORPORATION OF THE CITY OF LONDON

**PURCHASER:** BRIAN JEFFREY BROERE

**REAL PROPERTY:**

Address: Part of 83 Elliott Street, London, ON

Location: fronting on the west side of Elliott Street

Measurements: irregular


Legal Description: Part of Lot 3 of Register Plan 251 shown as Parcel 2, City of London, County of Middlesex as shown on Schedule "A" (the "Property").

1. **OFFER OF SALE:** The Vendor agrees to sell the Property to the Purchaser in accordance with the terms and conditions as set out in this Agreement.
2. **SALE PRICE:** The sale price shall be DOLLARS CDN (\$0.00) 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 Vendor until considered by the Council of the Corporation of the City of London at a meeting to be held no later than the 8<sup>th</sup> day of April, 2013, 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 the 19<sup>th</sup> of April 2013, (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 the 30<sup>th</sup> of April 2013. 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 the 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.

I, the Undersigned Purchaser, agree to the above Agreement of Purchase and Sale. SIGNED, SEALED AND DELIVERED IN WITNESS whereof I have hereunto set my hand and seal:  
the presence of:

  
\_\_\_\_\_  
(Witness)

  
\_\_\_\_\_  
Brian Jeffrey Broere

DATE FEB 21/13

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.

IN WITNESS WHEREOF the Corporation of the City of London hereto has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-Law No. \_\_\_\_\_ of the Council of the Corporation of the City of London passed the \_\_\_\_\_ day of \_\_\_\_\_.

THE CORPORATION OF THE CITY OF LONDON

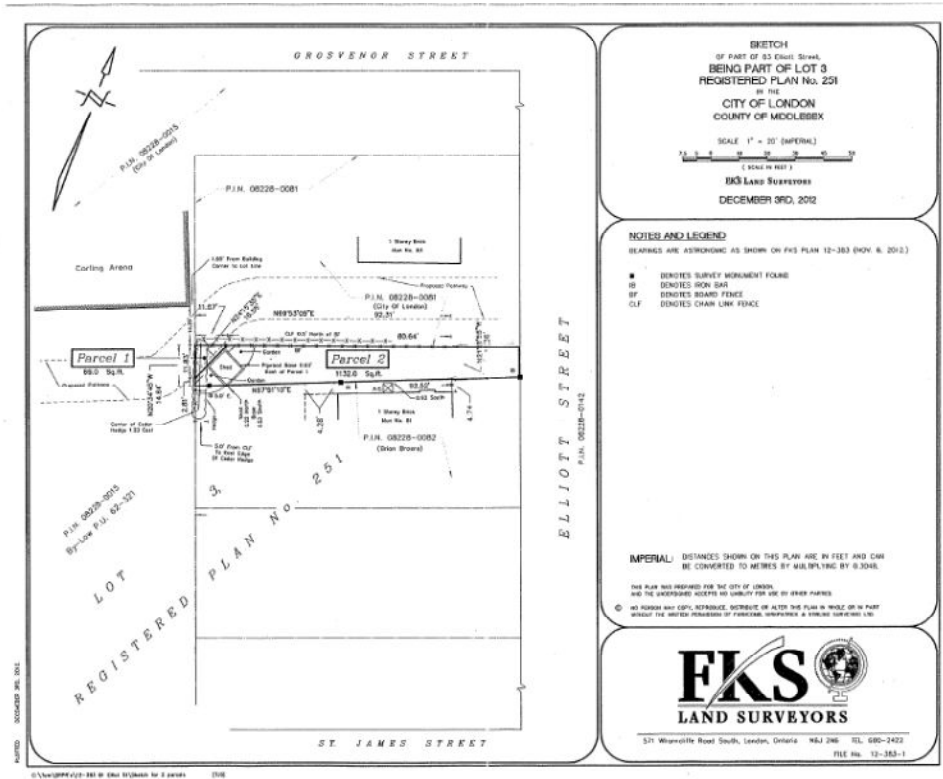
\_\_\_\_\_  
Joe Fontana, Mayor

\_\_\_\_\_  
Catharine Saunders, City Clerk

VENDOR'S LAWYER: David G. Mounteer - 519-661-2500 Ext. 4709 Fax: 519-661-5530

PURCHASER'S LAWYER: \_\_\_\_\_

SCHEDULE "A"



SCHEDULE "B"

1. **LEGAL COSTS:** The Vendor agrees to pay the Purchaser's reasonable legal costs, including fees, disbursements and applicable taxes, to complete this transaction, subject to assessment.
2. **REFERENCE PLAN:** The Vendor agrees to prepare and deposit on title, on or before closing and at its expense, a reference plan describing the Property
3. **QUIT CLAIM:** The Purchaser agrees to quit claim and surrender any right, title or interest he may have in Parcel 1 on Registered Plan 251.
4. **FENCE RESTORATION:** The Vendor agrees to remove the existing fence along the north and west portion of Parcel 1 and restore the boundary fence along the North West portion of Parcel 2.