
TO: GENERAL COMMITTEE

SUBJECT: SALE OF PROPERTY- PART OF EDGEHILL DRIVE

WARD: 5

PREPARED BY AND KEY CONTACT: E. EMBACHER, SENIOR REAL ESTATE OFFICER, EXTENSION #4479

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That Part 1 on Plan 51R-40947 as shown in Appendix "A", being Part of PIN 58768-0492 (LT) (the "Subject Property") be sold to Guyval Investments Inc. (the "Purchaser") in accordance with the terms and conditions set out in the Agreement of Purchase and Sale (the "APS") attached as Appendix "B".
2. That the City Clerk be authorized to execute all associated and required documents necessary to remove the condition of sale or amend any term contained in the APS on the recommendation of and in a form approved by the Director of Legal Services.
3. That the proceeds from the sale be transferred to the Tax Capital Reserve (Account # 13-04-0440).

PURPOSE & BACKGROUND

Report Overview

4. The purpose of this staff report is to recommend the sale of the Subject Property to the Purchaser at fair market value and in accordance with the terms and conditions contained in the APS.
5. Staff Report LGL008-16 was put forward to General Committee on November 28, 2016 and recommended that the Subject Property be permanently closed as a roadway, declared surplus to the needs of the Corporation of the City of Barrie and offered for sale to the Purchaser. Council Motion 16-G-274 approved this recommendation.
6. The Purchaser owns the adjacent lands known municipally as 108 Edgehill Drive which has an existing 13 storey apartment building constructed upon it as represented in Appendix "C".
7. The Purchaser is proposing to add 3 additional apartments to their building by converting existing covered parking spaces on the ground floor of the building into livable area. The removal of these parking spaces would be replaced by acquiring the Subject Property and converting the lands to additional parking area.

ANALYSIS

8. An external appraisal was completed for the Subject Property in March of 2017 and estimated the fair market value to be \$156,000.
9. In accordance with Council Motion 16-G-274, an APS has been entered into with the Purchaser and is conditional upon Council's approval of the transaction.
10. A circulation of applicable City departments for staff comment on the proposed disposition of the Subject Property was completed. Any comments or concerns raised by Staff have been addressed as part of the disposition process.
11. The requirements of Section 34 of the *Municipal Act, 2001*, City's Sale of Property By-law 95-104 and the City's Notice By-law 2003-116 to declare the Subject Property surplus and permanently close it have been complied with by way of published notices in a newspaper having general circulation within the City of Barrie.
12. Disposition of the Subject Property and development of it in conjunction with the surrounding lands will create a revenue source for the City through the sale proceeds, development charges and future property taxation while reducing City liability on unutilized vacant land.

ENVIRONMENTAL MATTERS

13. The Purchaser will be satisfying themselves of the environmental status of the Subject Property prior to the sale becoming firm and have agreed to purchasing it on an "as it where is" basis that is absent of any representations or warranties made by the City with respect to the environmental condition.

ALTERNATIVES

14. The following alternative is available for consideration by General Committee:

Alternative #1 General Committee could choose not to approve the sale of the Subject Property to the Purchaser.

This alternative is not recommended as pursuant to an internal circulation, the Subject Property is not required for City purposes and the sale will create a source of revenue to the City while reducing the City's liability upon unutilized land.

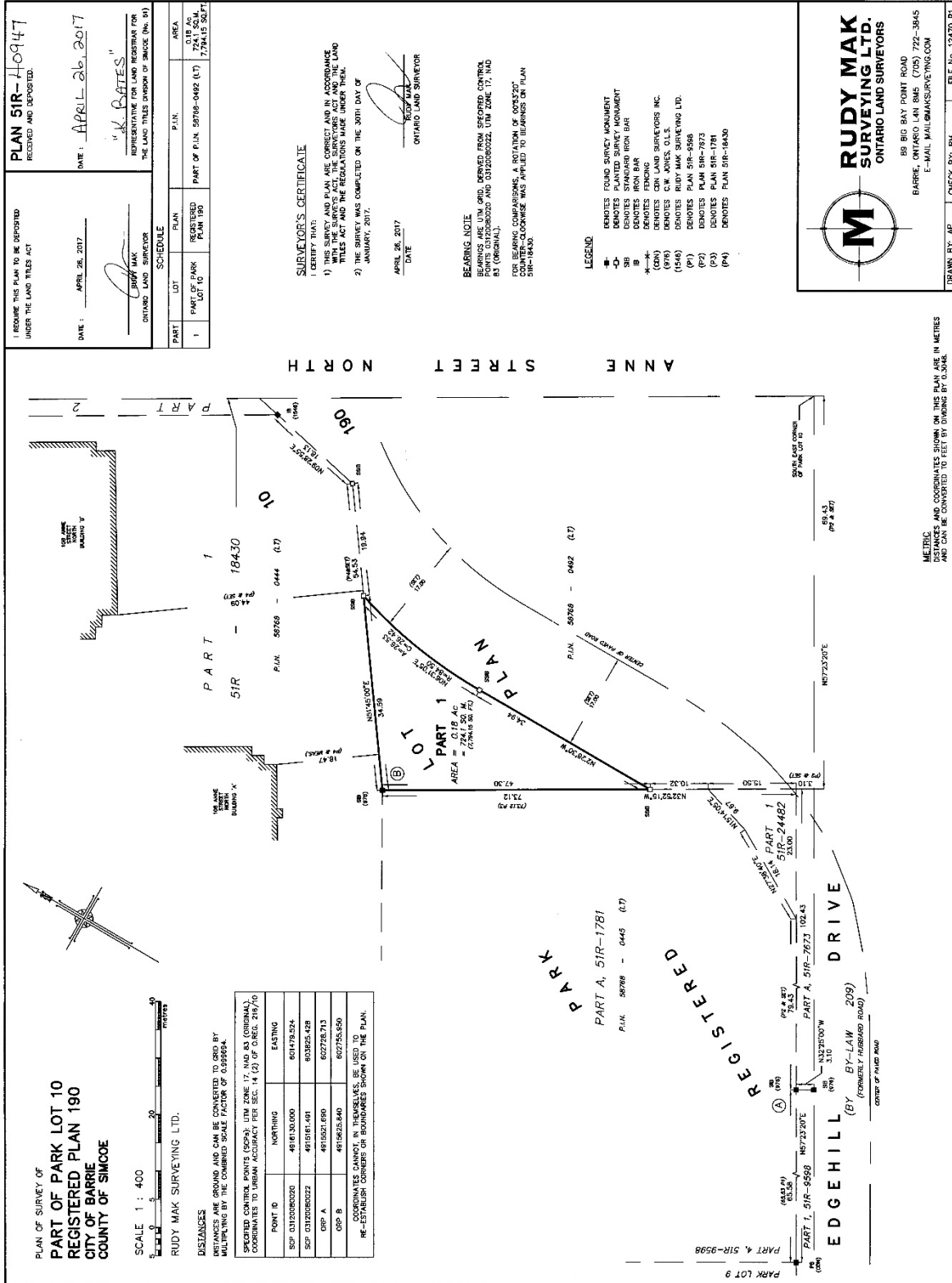
FINANCIAL

15. The proceeds from the sale will be transferred to the Tax Capital Reserve (Account # 13-04-0440).
16. The Purchaser shall pay all of the City's costs and fees associated with the transfer of the Subject Property including advertising and legal expenses.

LINKAGE TO 2014-2018 STRATEGIC PLAN

17. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2014-2018 Strategic Plan.

APPENDIX "A"



APPENDIX "B"



**AGREEMENT OF PURCHASE AND SALE
(FOR USE IN THE PROVINCE OF ONTARIO)**

BUYER: Guyval Investments Inc. _____, agrees to purchase from
(Full legal names of all Buyers)

SELLER: The Corporation of the City of Barrie _____ the following
(Full legal names of all Sellers)

REAL PROPERTY:

Address: Edgehill Drive fronting on the See Schedule "B" side of Edgehill Drive
in the City of Barrie

and having a frontage of unknown more or less by a depth of unknown more or less, legally described as

Part of Park Lot 10, Registered Plan 190, Barrie; being Part 1 on 51R-40947, as shown in Schedule "B" ("the Property")
(Legal description of land including easements not described elsewhere)

PURCHASE PRICE: One Hundred & Fifty Six Thousand Dollars (CDN\$ 156,000.00)

DEPOSIT: Buyer submits (Upon Acceptance) ----- One ----- Dollars (CDN\$ 1.00)
(Herewith/Upon acceptance)

By negotiable cheque payable to the Seller to be held in trust without interest pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. Buyer agrees to pay the balance as follows:

On closing, the balance of the purchase price, subject to the adjustments described herein, by cash or certified cheque to the Seller or as the Seller may direct.

SCHEDULE(S) "A" & "B" attached hereto form(s) part of this Agreement.

1. CHATTELS INCLUDED: NONE
2. FIXTURES EXCLUDED: NONE
3. RENTAL ITEMS: The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable: N/A
4. IRREVOCABILITY: This Offer shall be irrevocable by Buyer until 4:00 p.m. on the 5th day of June, 2017
(Seller/Buyer)
after which time, if not accepted, the Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.
5. COMPLETION DATE: This Agreement shall be completed by no later than 4:00 pm. on the _____ day of (SEE SCHEDULE "A") 2017.
Upon completion, vacant possession of the Property shall be given to the Buyer unless otherwise provided for in this Agreement.
6. FAX No. (705) 739-4278 (For delivery of notices to Seller) FAX No. _____ (For delivery of notices to Buyer)
7. HST: If this transaction is subject to Harmonized Sales Tax (H.S.T.), then such tax shall be in addition to the Purchase Price.
(included in/in addition to)
If this transaction is not subject to H.S.T., Seller agrees to certify, on or before closing that the transaction is not subject to H.S.T.
8. TITLE SEARCH: Buyer shall be allowed until 6:00 p.m. on the 30th day prior to the day of completion (Requisition Date) to examine the title to the Property at his own expense and until the earlier of (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or, (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the Property, that its present use (N/A) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the Property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.
9. FUTURE USE: Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the Property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. TITLE: Provided that the title to the Property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with, (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility, (c) any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties, and (d) any easement for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the Property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact that 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 Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance and except against risk of fire in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Broker and Co-operating Broker 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, Buyer shall be conclusively deemed to have accepted Seller's title to the Property.
11. CLOSING ARRANGEMENTS: Where each of the Seller and Buyer 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 111 of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electric Registration Act, S.O. 1991, Chapter 44, and any amendments thereto the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers, the form of which is as recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.
12. DOCUMENTS AND DISCHARGE: Buyer 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 Seller. If required by Buyer, Seller will deliver any sketch or survey of the Property within Seller's control to Buyer 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 Trust and Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, prepared by the mortgagee setting out the balance required to obtain the discharge, together with a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
13. INSPECTION: Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

APPENDIX "B" cont'd

14. **INSURANCE:** All buildings on the Property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller 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.
16. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
17. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and all owed to the day of completion, the day of completion shall be apportioned to Buyer.
18. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing and completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
19. **TENDER:** Any tender of documents or money hereunder may be made up on Seller or Buyer or their respective lawyers 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.
20. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereunder provided.
21. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the Property, Seller has not caused any building on the Property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the Property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is subject of this transaction.
22. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
23. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision written or typed in this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto shall constitute the entire Agreement between Buyer and Seller. 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.
24. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) _____ (Buyer) Name: _____ (Seal) DATE: _____
 Title: _____
 I have authority to bind the corporation

(Witness) _____ (Buyer) (Seal) DATE: _____

I, the Undersigned Seller, agree to the above Offer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) _____ (Seller) Name: Dawn McAlpine (Seal) DATE: _____
 Title: City Clerk
 I have authority to bind the corporation

(Witness) _____ (Seller) (Seal) DATE: _____

SPOUSAL CONSENT: The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidence herein.

(Witness) _____ (Spouse) (Seal) DATE: _____

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally executed by all parties at:

(Time) this _____ day of _____, 2017 (Signature of Seller/Buyer)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and authorize the Agent to forward a copy to my lawyer.

(Seller) _____ DATE _____

(Seller) _____ DATE _____

Address for Service: 70 Collier Street, Barrie, ON L4M 4T5

Seller's Lawyer: Chris Packham

Address: 70 Collier Street, Barrie, ON L4M 4T5

(705) 739-4220 Ext 4511 (705) 739-4278

Tel. No. Fax No.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and authorize the Agent to forward a copy to my lawyer.

(Buyer) _____ DATE _____

(Buyer) _____ DATE _____

Address for Service _____

Buyer's Lawyer _____

Address _____

Tel. No. Fax No.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

APPENDIX "B" cont'd

**SCHEDULE "A" TO THE
AGREEMENT OF PURCHASE AND SALE
(FOR USE IN THE PROVINCE OF ONTARIO)**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Guyval Investments Inc., and

SELLER, The Corporation of the City of Barrie

For the purchase and sale of Part of Park Lot 10, Registered Plan 190, Barrie; being Part 1 on 51R-40947, as shown in Schedule "B"

1. This Agreement has been executed by the City Clerk pursuant to Council motion 16-G-274 and is conditional for a period of 120 days following acceptance upon the ratification or approval of this agreement by the Council of The Corporation of the City of Barrie.

Unless the Seller gives notice in writing delivered to the Buyer that this condition has been fulfilled this Offer shall become null and void and the deposit shall be returned to the Buyer forthwith in full without deduction.

2. The Buyer shall have an "Approval Period" commencing on the date of acceptance of this Agreement and ending at 5:00 p.m. on the date that is thirty (30) days thereafter to conduct such physical and environmental inspections, tests, assessments and investigations of the Property (including, without limiting the generality of the foregoing, the soil and groundwater conditions thereof) (collectively, the "Investigations") by such agents, consultants or other persons as it deems necessary and satisfy itself, in its sole and absolute discretion, with such Investigations.

The Buyer's obligations under this Agreement are conditional on the Buyer being satisfied with such Investigations, all in its absolute discretion. This condition is for the sole benefit of the Buyer and may be waived by it in whole or in part. Unless the Buyer or its solicitors notifies the Seller or its solicitors in writing on or before the end of the Approval Period that such condition has been satisfied or waived by the Buyer then, notwithstanding any intermediate acts or negotiations, this Agreement shall be of no further force or effect, and the deposit shall be returned to the Buyer.

3. The Buyer and Seller may extend the conditional periods by mutual agreement so long as the extension is agreed to in writing and in advance of the conditional period expiring.
4. The completion date shall occur within 90 days following the removal of all conditions contained in this Agreement of Purchase and Sale.
5. The Buyer acknowledges that the sale of the subject land does not guarantee that a rezoning or official plan amendment will be granted by the municipality if pursued by the Buyer following closing. The Buyer acknowledges that any attempt at a future rezoning application is done so at the Buyer's sole risk.
6. The Seller makes no representation or warranty concerning the soil and/or environmental condition of the Property. The Buyer is purchasing the Property on an "as is where is" basis.
7. The Buyer agrees to pay the Seller's reasonable costs associated with this transaction which include legal and advertising fees, which costs shall not exceed \$5,000.
8. The Buyer and its representatives shall be entitled to enter upon the Property at any time prior to closing in order to inspect same, check elevations, conduct soil tests, prepare surveys, conduct environmental investigations and for any other purpose necessary or incidental for the Buyer to proceed with its development plans, at its own expense, provided that in so doing, no damage is done to the Property or any infrastructure contained within it.

INITIALS OF BUYER(S):

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INITIALS OF SELLER(S):

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APPENDIX "C"

Aerial Overview of Subject Property

