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CITY OF KELOWNA

**MEMORANDUM**

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**Date:** June 4, 2009  
**To:** City Manager  
**From:** Community Sustainability Division  
**Purpose:** Discharge a Land Use Contract  
**File No.:** LUC09-0002                      **Owner(s):** WGP-241 HOLDINGS LTD.  
**At:** 2009-2015 ENTERPRISE WAY                      **Applicant(s) :** WGP-241 HOLDINGS LTD.(Gordon Anton)  
**Existing Zone:** LUC77-1028                      **Proposed Zone:** C4 – URBAN CENTRE COMMERCIAL  
**Report Prepared by:** PAUL McVEY

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1.0 RECOMMENDATION

THAT Application No. LUC09-0002 to discharge the Land Use Contract 77-1028 for Lot 1, District Lot 140, ODYD Plan 27785 located on Enterprise Way, Kelowna, BC, be considered by Council;

AND THAT Application No. LUC09-0002 be forwarded to a Public Hearing for further consideration;

2.0 SUMMARY

The applicant is seeking the discharge of Land Use Contract # LUC77-1028 in order to allow for the use of the existing commercial building located on the subject property to fall under the C4 – Urban Centre Commercial zone, which is the underlying zone. The Land Use Contract controlled the development regulations for the original development site, and controlled the form of building on the site, as well as the permitted uses. (See attached copy). The property has been fully developed, and the land use contract is no longer relevant to development on this property.

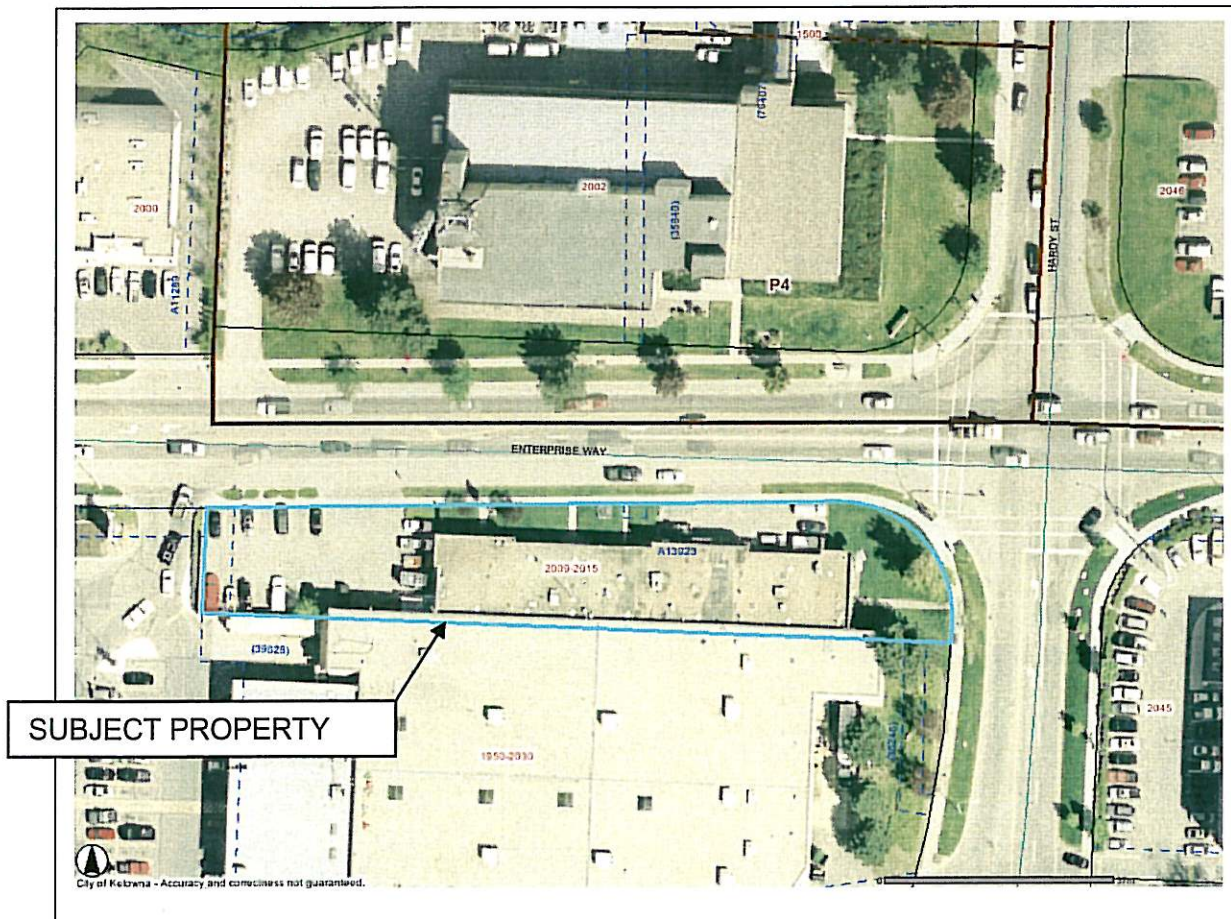
### 3.2 Site Context

The subject property is located on the south west corner of the intersection of Enterprise Way and Hardy Street.

North - C4 – Urban Centre Commercial / Enterprise Way  
East - C4 – Urban Centre Commercial / Hardy St.  
South - C4 – Urban Centre Commercial – Shopping Centre  
West - C4 – Urban Centre Commercial – Shopping Centre

### 3.3 Subject Property Map

Subject Property: 2009-2015 Enterprise Way



#### 4.0 CURRENT DEVELOPMENT POLICY

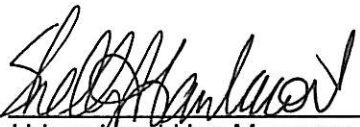
##### 4.1 Council Strategy for the Elimination of Remaining Land Use Contracts

- that a Land Use Contract be discharged for any contract where there has been a change in use or density from what was originally intended by the Land Use Contract;
- that where the City of Kelowna had entered into a Land Use Contract that contains a cancellation clause contingent on failure to develop and use the lands, the City proceed to discharge the Land Use Contract;
- that the City of Kelowna initiate proceedings to discharge Land Use Contracts that have provisions enabling the City to unilaterally discharge the contracts subject to consultation with affected owners of the land and subject to prior approval by Council with regard to affected contracts;
- that staff negotiate with owners of land under Land Use Contracts that only enabled the subdivision of land, to discharge contracts where the subdivision has been completed;
- that priority be given to terminate Land Use Contracts having a significant financial impact or those Land Use Contracts that enable development contrary to the fulfillment of community objectives.

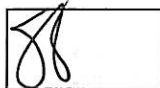
#### 5.0 LAND USE MANAGEMENT DEPARTMENT

The Land Use Management Department has no concerns with the discharge of the Land Use Contract from the land title of the subject property. The existing site development complies with the requirements of the underlying C4 – Urban Centre Commercial zone.

In conclusion, the Land Use Management Department supports this application, and recommends for positive consideration by Council.

for   
Urban Land Use Manager  
Danielle Noble

Approved for Inclusion



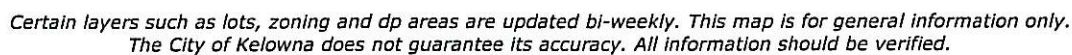
Shelley Gambacort  
Director of Land Use Management

PMcV/

**Attachments**

- Subject Property Map
- Land Use Contract





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**CITY OF KELOWNA**  
**MEMORANDUM**

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**Date:** April 21, 2009  
**File No.:** LUC09-0002  
**To:** Land Use Management Department (PMcV)  
**From:** Development Engineering Manager (SM)  
**Subject:** 2006-2015 Enterprise Way Lot 1 Plan 27785

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The Development Services Division comments and requirements regarding this application are as follows:

The discharge of the Land Use Contract does not compromise the Development Services Branch.

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Steve Muenz, P. Eng.  
Development Engineering Manager

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CITY OF KELOWNA

BY-LAW NO. 4432-77

(A.R. Dyck Heating & Air Conditioning Ltd. Land Use Contract  
Authorizing By-Law, Enterprise Way, File LUC77-1028)

N 0994-9  
Feb 27, 1975

WHEREAS Subsection (3) of Section 702A of the "Municipal Act", being Chapter 255 of the Revised Statutes of British Columbia, 1960, provides in part that the Council may, by by-law, notwithstanding any by-law of the municipality, or Section 712 or 713 of the "Municipal Act", enter into a Land Use Contract containing such terms and conditions for the use and development of the land as may be mutually agreed upon, and thereafter the use and development of the land shall, notwithstanding any by-law of the municipality, or Section 712 or 713 of the said Act, be in accordance with the land use contract;

AND WHEREAS the Municipal Council of the City of Kelowna is desirous of entering into a Land Use Contract with A. R. Dyck Heating & Air Conditioning Ltd., R.R. #3, Wildwood Road, Kelowna, B.C.;

THEREFORE, the Municipal Council of the City of Kelowna in open meeting assembled, enacts as follows:

1. The Municipal Council of the City of Kelowna hereby authorizes the City of Kelowna to enter into a Land Use Contract with A. R. Dyck Heating & Air Conditioning Ltd. of R.R. #3, Wildwood Road, Kelowna, B.C., in the form of Land Use Contract attached hereto and forming part of this by-law.
2. His Worship the Mayor and the City Clerk are hereby authorized to sign the attached Land Use Contract as well as any conveyances, deeds, receipts, and other documents in connection with the attached Land Use Contract and affix the corporate seal of the City of Kelowna to same.

Read a first time by the Municipal Council this 11 day of October, 1977.

Considered at a Public Hearing on the 15th day of November, 1977.

Read a second time by the Municipal Council this 15th day of November, 1977.

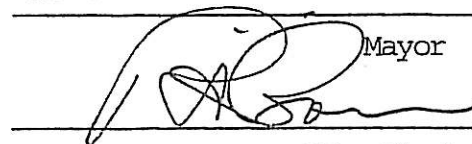
Read a third time by the Municipal Council this 15th day of November, 1977.

Department of Highways approval: 8th December, 1977.

Reconsidered, finally passed and adopted by a vote of two-thirds of the members of the Municipal Council of the City of Kelowna present this 20th day of December, 1977.



Mayor



City Clerk

LAND USE CONTRACT

THIS CONTRACT made the 20 day of December, 1977

BETWEEN:

CITY OF KELOWNA  
a municipal corporation having  
its offices at 1435 Water Street,  
in the City of Kelowna,  
Province of British Columbia  
(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

A. R. DYCK HEATING & AIR CONDITIONING LTD.  
a company duly incorporated under  
the laws of the Province of  
British Columbia, having its  
office at R.R. #3, Wildwood Road,  
Kelowna, British Columbia

(hereinafter called the "Developer")

OF THE SECOND PART

WHEREAS the Municipality, pursuant to Section 702A of the Municipal Act, may, notwithstanding any By-Law of the Municipality, or Section 712 or 713 of the Municipal Act, enter into a land use contract containing such terms and conditions for the use and development of land as may be agreed upon with a Developer, and thereafter the use and development of the land shall be in accordance with the land use contract;

AND WHEREAS the Municipal Act requires that the Municipal Council consider the criteria set out in Section 702(2) and 702A(1) in arriving at the terms, conditions and consideration contained in a land use contract and the Council of the Municipality have considered such criteria in arriving at the terms and conditions herein contained;



AND WHEREAS the Developer has presented to the Municipality a scheme of use and development of the within described lands and premises that would be in contravention of the Zoning By-Law of the Municipality and has requested that the Council of the Municipality enter into this contract under the terms, conditions and for the consideration hereinafter set forth;

AND WHEREAS the Land is within an area of the Municipality designated as a development area pursuant to Section 702A(2) of the Municipal Act;

AND WHEREAS if the Land is within a radius of one-half mile of the intersection of a controlled access highway and another highway, the approval of the Minister of Highways to the terms hereof must be obtained;

AND WHEREAS the Municipality and the Developer both acknowledge that the Council of the Municipality cannot enter into this Contract, until the Council has held a public hearing in relation to this Contract, and considered any opinions expressed at such hearing, and unless two-thirds of the members of Council present at the meeting at which the By-Law to approve this Contract is adopted vote in favour of the Municipality entering into this Contract;

NOW THEREFORE THIS CONTRACT WITNESSETH that in consideration of the premises and the conditions and covenants hereinafter set forth, the Municipality and the Developer covenant and agree as follows:

1. The Developer is the registered owner of an estate in fee simple of all and singular that certain parcel or tract of land and premises, situate, lying and being in the City of Kelowna, in the Province of British Columbia and being more particularly known and described as:

Lot 1  
District Lot 140  
Osoyoos Division  
Yale District  
Plan 27785

(herein called the "Land")

CONSENTS

2. The Developer has obtained the consent of all persons having a registered interest in the Land as set out in the Schedule prefacing the consents to the use and development set forth herein which consents are attached hereto.

DEVELOPMENT

3. For the purpose of determining the use of the Land, the siting, size and shape of the buildings and structures on the Land, the permitted buildings and structures on the Land and the off-street parking and off-street loading requirements, the Land shall be subject to the regulations and provisions set forth in Schedule "A" attached hereto and any developments upon the Land shall be strictly in compliance with those provisions and regulations.

4. All industrial buildings shall be sited and of a size and shape and parking and landscaping amenity areas shall be constructed and developed in conformance with the proposed Plan of Development, a copy of which is attached hereto as Schedule "B"; exterior design and finish shall conform to Schedule "B" attached hereto.

BUILDING AND  
LANDSCAPING  
PLANS

5. All building and landscaping plans shall be to the satisfaction and meet the approval of the City Planner and the Chief of Inspection Services prior to the issuance of any building permits for future constructed buildings upon the Land.

CONSTRUCTION

6. The Developer agrees to commence construction of all or part of the proposed development within two (2) years of the date of conveyance of the Land by the Municipality to the Developer. Upon failure to commence to construct all or part of the said development within the two (2) year time limit, ownership of the Land will revert back to the City of Kelowna at the original sale price of the Land equalling not more than Forty Thousand, Five Hundred Dollars (\$40,500.00). It being understood and agreed that construction of all of the development shall be completed within not more than four (4) years of the date of conveyance of the Land.

SUBDIVISION

7. The Developer agrees that no subdivision of the Land shall be permitted other than strata subdivision and that the Land shall remain to be of a size and shape in strict compliance with Schedule "C" attached hereto.

SECURITY

8. The Developer shall deposit with the Municipality prior to the execution of this Contract by the Municipality, security in the amount of Two Thousand Dollars (\$2,000.00) either in cash or by an Irrevocable Letter of Credit drawn on a Chartered Bank. The condition of deposit of the security is that should the Developer fail to landscape the Land as required in Sections 4 and 5 hereof to the satisfaction of the City Planner within six (6) months of the date of the issuance of an occupancy permit by the Municipality for any building to be built upon the Land, the Municipality may, by contract, at the cost of the Developer, carry out the landscaping and apply the funds held as security for such purpose. Should the security be insufficient to pay for the landscaping the Developer shall pay the balance of such cost to the Municipality within thirty (30) days of invoice thereof or should the cost of providing the landscaping be less than the security held the Municipality shall, upon completion of the landscaping, return the security or the excess thereof, to the Developer.

INCORPORATIONS

9. The Schedules attached hereto hereinbefore referred to are hereby incorporated into and made a part of this Contract.

COMPLIANCE

10. Except for the matters otherwise specifically provided for herein the Developer shall comply with all of the By-Laws of the Municipality as the same apply to the Land.

REPRESENTATIONS

11. It is understood and agreed that the Municipality has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer other than those set out in this Contract.

REGISTRATION

12. This Contract shall be construed as running with the Land and shall be registered in the Land Registry Office by the Municipality pursuant to the provisions of Section 702A(4) of the Municipal Act.

## BINDING

A public hearing on this Contract was held on the 15 day of November, 1977

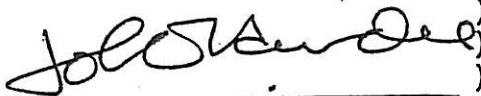
This Contract was adopted by an affirmative vote of at least two-thirds of the members of the Council of the Municipality present at the meeting at which the By-Law to authorize this Contract was adopted by the Council of the Municipality on the 20 day of December, 1977



IN WITNESS WHEREOF the said parties to this Contract have hereunto set their hands and seals the day and year first above written.

THE CORPORATE SEAL OF THE )  
CITY OF KELOWNA was here- )  
unto affixed in the )  
presence of: )

(Seal)



Mayor



City Clerk

SIGNED, SEALED AND DELIVERED )  
by the Developer in the )  
presence of: )

Name: )

Address: )

City: )

Occupation: )

THE CORPORATE SEAL OF )  
A R Dyck Heating & )  
Air Conditioning Ltd. )  
was hereunto affixed in )  
the presence of: )

(Seal)



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# Acknowledgment of Maker

I HEREBY CERTIFY that, on the 28<sup>th</sup> day of September, 19 77, at KELOWNA, in the Province of British Columbia

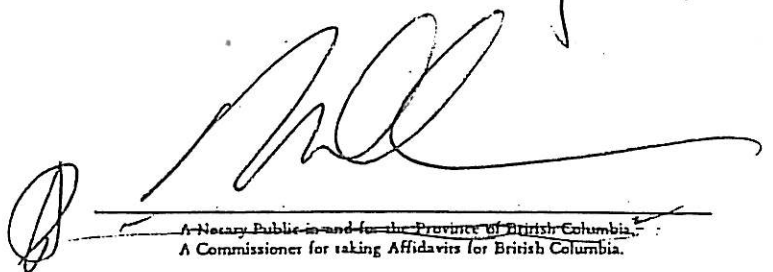
AL DYCK

(whose identity has been proved by the evidence on

~~oath of~~

before me and acknowledged to me that he is the person mentioned in the annexed instrument as the maker thereof, and whose name is subscribed thereto as party that he knows the contents thereof, and that he executed the same voluntarily, and is of the full age of nineteen years.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office, at Kelowna in the Province of British Columbia, this 28<sup>th</sup> day of Sept 1977:

  
A Notary Public in and for the Province of British Columbia.  
A Commissioner for taking Affidavits for British Columbia.

NOTE.—Where the person making the acknowledgment is personally known to the officer taking the same, strike out the words in brackets.

SCHEDULE "A"

REVISED

TERMS AND CONDITIONS FOR THE DEVELOPMENT  
OF LOT 1, DISTRICT LOT 140, OSOY00S  
DIVISION, YALE DISTRICT, PLAN 27785

1. PERMITTED USES

The following uses and no others shall be permitted on the Land.

A. Principal Uses

- i) Warehousing and storage facilities.
- ii) Light manufacturing and assembly which produce no dust, odour, glare or noise beyond their property line.
- iii) Coffee Shops

B. Secondary Uses

- i) Office.
- ii) Minor ancillary sales.
- iii) Construction trade offices.

C. Conditions of Secondary Uses

- i) Secondary uses shall be permitted only in conjunction with a principal use.
- ii) Offices shall be permitted on the condition that they are wholly contained within the building housing the permitted principal use.
- iii) No outdoor storage shall be permitted.
- iv) All exterior lighting shall be designed to deflect away from adjacent properties.
- v) All outdoor yards shall have vehicular access to a public street.

- vi) No toxic, noxious, explosive, odorous, or radio active materials shall be stored in storage areas.

## 2. PERMITTED BUILDINGS AND STRUCTURES

The following buildings and structures and no others shall be permitted to be constructed upon the Land.

- A. Structures and buildings necessary to accommodate the needs of the uses set forth in Section 1 of this Schedule.
- B. Signs.
- C. Fencing and landscaping to the satisfaction of the Chief of Inspection Services and the City Planner.

## 3. REGULATIONS

The following regulations shall apply:

### A. Floor Area Ratio

The maximum floor area ratio shall not exceed 0.3.

### B. Height

The height of buildings and structures shall not exceed eighteen (18) feet except that parapets and mechanical appurtenances may project above this height a distance not to exceed four (4) feet.

### C. Front Yard

The front yard shall have a minimum depth of fifty (50) feet. No storage of materials or loading bays shall be permitted in the required front yard. (measured from Hardy Street).

### D. Side Yard

The side yard shall have a minimum depth of twenty (20) feet as it abuts the side street line and no side yard shall be required as the side yard abuts an industrial zone.



E. Rear Yard

The rear yard shall have a minimum depth of one hundred and twenty-five (125) feet. No storage of materials or loading bays shall be permitted in the required rear yard.

F. Off-Street Parking

The provision for required off-street parking shall be made in accordance with the requirements set forth in Section 6 of Part III of the City of Kelowna Zoning By-Law, 1976, No. 4500 or as amended from time to time.

G. Off-Street Loading

The provision for required off-street loading shall be made in accordance with the requirements set forth in Section 5 of Part III of the City of Kelowna Zoning By-Law, 1976, No. 4500 or as amended from time to time.

SCHEDULE "A"

TERMS AND CONDITIONS FOR THE DEVELOPMENT  
OF LOT 1, DISTRICT LOT 140, OSOY00S  
DIVISION, YALE DISTRICT, PLAN 27785

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SUPERCEDED

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LAND USE CONTRACT

Schedule of Persons Having a Registered Interest in the Land whose Consents are  
required

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<u>Full Name</u>	<u>Address</u>	<u>Occupation</u>	<u>Nature of Charge</u>
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Nil

BETWEEN:

CITY OF KELOWNA

AND:

A. R. DYCK HEATING & AIR CONDITIONING LTD.

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LAND USE CONTRACT

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J. GALT WILSON  
Barrister and Solicitor

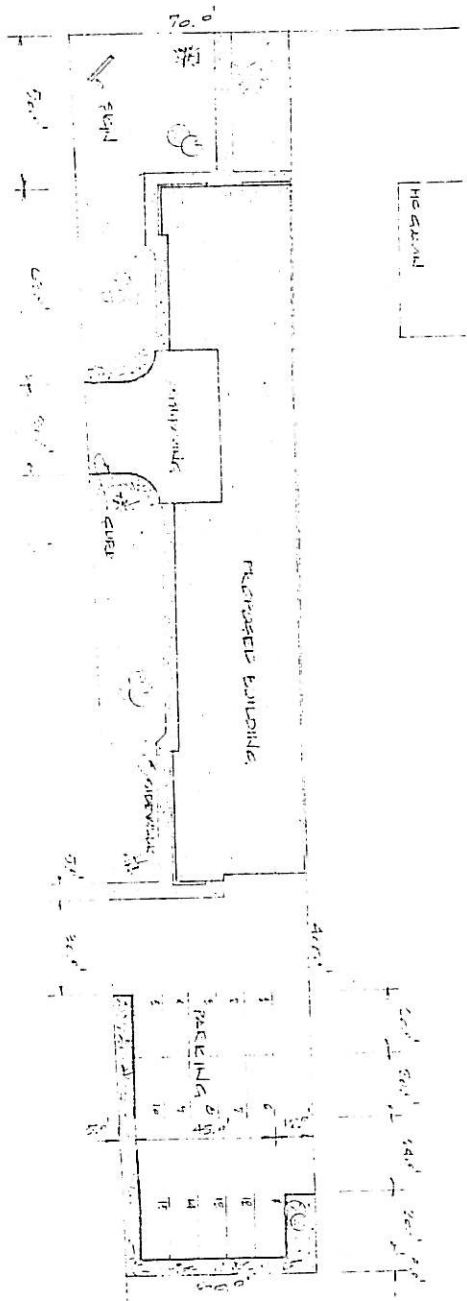
                      
#1 - 246 Lawrence Avenue  
Kelowna, B.C. V1Y 6L3.

EXCERPT "B"

ENTERPRISE WAY

HARDY ST.

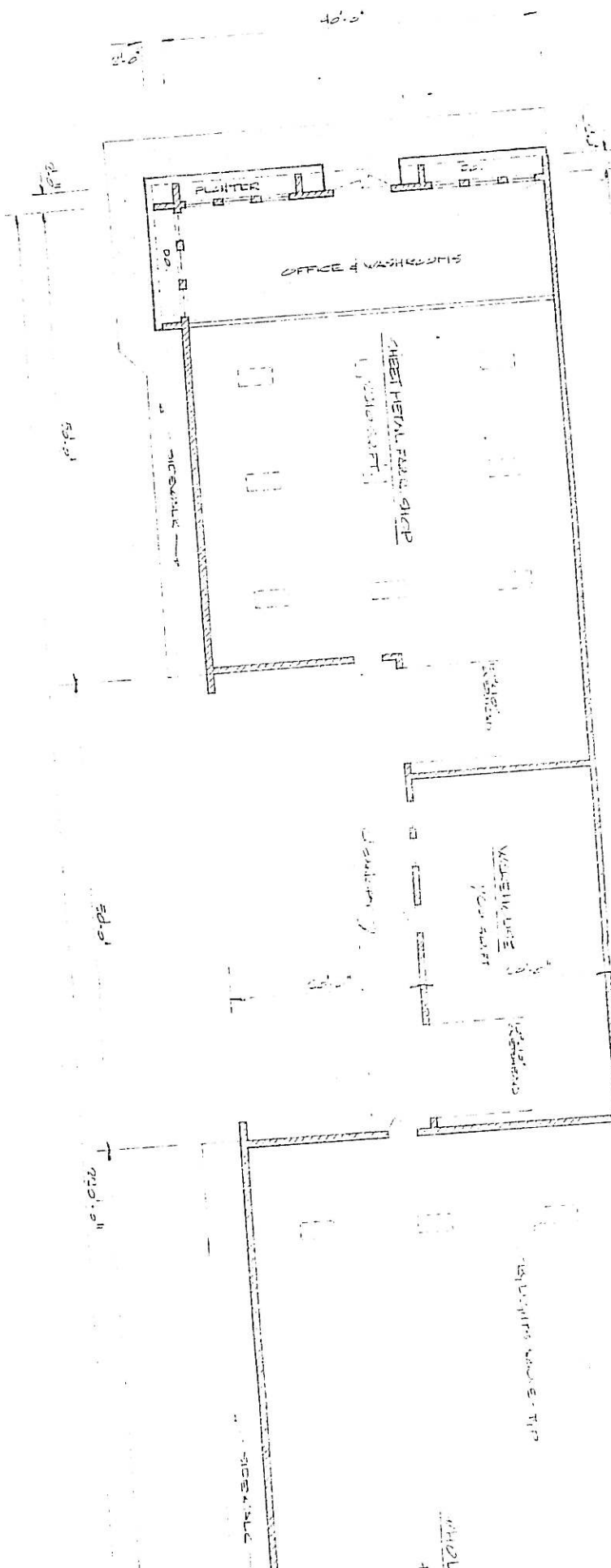
NORTH



LEGAL DESCRIPTION  
PART OF LOT 2, P. 20, 21, 22, 23, 24

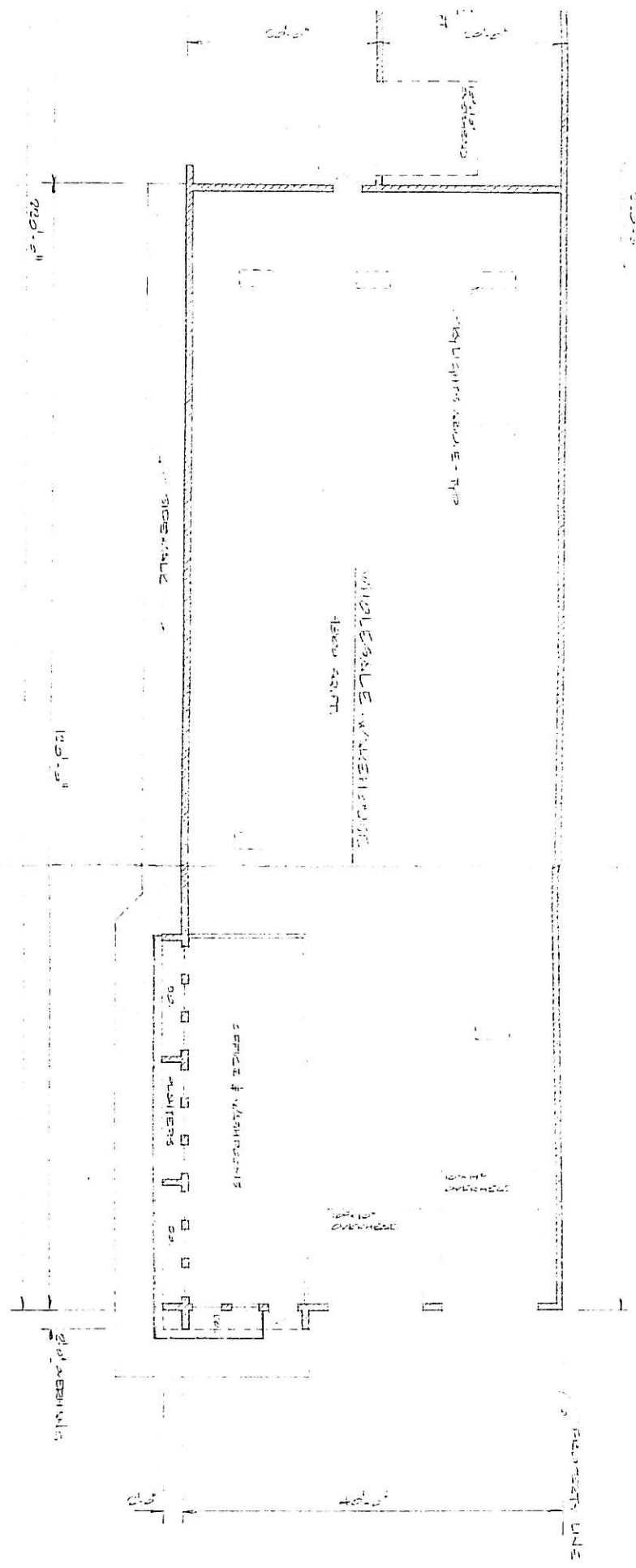
PAYROLL REQUIRED =  $\frac{7365}{500} = 14.7$   
 - VALUE PROVIDED - 15 SUFFICES

FLUORE PLIN  
-RUCI. SPED. 7300 = 2.57  
SENE 3/32 = 11.01



ETP consulting & design

1000 H. S. & E. 1000 H. S. & E.  
700. - 177



E.T.F.  
Consulting  
& Design

3000 HANCOCK AVE., BELLEVILLE, ILL.  
703.0777

PROJECT 2-11-93

DATE 2-11-93

SCALE AS SHOWN

DATE MARCH 77

CLIENT

A. D. FRICK HEATING & AIR CONDITIONING, LTD.

NOTE

PROPOSAL FOR COMMERCIAL BUILDING

DATE 12-1-93

A-2

REV.

PLAN OF SUBDIVISION OF  
LOT A PLAN 22894 D.L. 140

O.D.Y.D.

Scale: 1 inch = 50 feet

REM. LOT 35  
PLAN 415

LOT B  
PLAN 22894

ROAD  
ENTERPRISE

LOT A

LOT C  
PLAN 22894

400.22

5.20

ST