

**BRIEF SUBMITTED ON BEHALF OF MAGNETIC CAPITAL GROUP INC.**

By virtue of the Court Order (attached hereto as Appendix "A") the Court of Queen's Bench Judicial Centre of Regina granted a Fiat approving the sale of the following Property that being:

Lot 50 Blk/Par 342 Plan No 102032255 Extension 0

to Magnetic Capital Group Inc.

By virtue of the Order a portion of funds are payable to the first charge lender and the remaining to the City of Regina for back taxes.

Appendix "B" is the offer approved by the Court. Possession date was scheduled for September 1, 2020. A condition of the offer was that a temporary parking permit be granted.

After initial inquiries were made to the City as to what information was required to obtain a parking permit. On June 2, 2020 the application for the same was filed with the City (attached hereto as Appendix "C").

On September 4, 2020, notice was given to the applicant that the matter was proceeding to the Planning Commission with a recommendation to approve the rezoning of the Capital Pointe site and to allow for a temporary parking permit. Shortly thereafter, the applicant gave clarification that a second entrance would not be required therefore, a center median on Albert Street would not be required. On September 9 we appeared before the Planning Commission to request the granting of a temporary parking permit as recommended by City Administration. At the Planning Commission the report was tabled to March of 2021 so as to await the parking report on downtown.

We were not advised of the tabling motion, nor were we advised as to what had happened at the meeting until we received the Leader Post the next morning. If we had remained on the call to hear the deliberations we would have made the Commission aware that we needed a decision that day and that tabling the matter was an unacceptable result.

As such we wrote to the City Clerk requesting that City Council review the matter as time was of an essence in this matter. (Appendix "D").

On September 17, 2020, the City Clerk ruled that a procedural error had occurred and that this matter should be referred to City Council (attached hereto as Appendix "E").

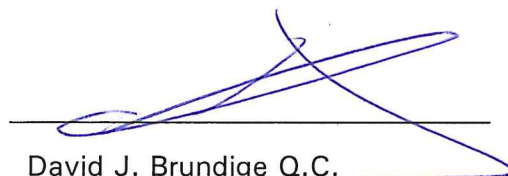
Submission:

The applicants supports the submission by administration except as noted above. This has been a long and arduous process in getting to this stage. Magnetic Capital Group Inc. holds the third charge mortgage interest on this Property and has been involved in the project for almost 4 years. It initially got involved because it believed then – and still believes, that it is important for a Capital City to have a beautiful building at the corner of Albert and Victoria. It sees this location as being the cornerstone of the City – the gateway to downtown. It has been meeting with City Officials for the past 18 months as this matter wound its way through the courts and was pleased to obtain the final court order in May of this year.

The Applicant is somewhat frustrated with the delays it has faced and thanks City Council for hearing this matter this evening. Our request is simple – we need approval of a temporary parking permit forthwith as it is a condition of the offer that Magnetic has made on the Property. Magnetic is not a developer – it is a financial company and therefore is bringing capital to the project. The development partners it is bringing to the table all want to ensure that the project is viable- hence the request for temporary parking permit so that it can cover City Taxes in 2021.

If council does not approve this request then the Applicant cannot remove this condition and frankly it is likely that the offer would fail. What that means for the site is unclear but it likely would not be purchasing the same, and the City will not be getting its back taxes paid by it in 2020. So we are here today to ask you to approve the Administrations report and grant us a temporary parking permit.

All of which is respectfully submitted this 24 day of September, 2020.



David J. Brundige Q.C.  
Willows Wellsch Orr & Brundige LLP  
1916 Dewdney Ave.  
Regina, SK S4R 1G9  
(On behalf of Magnetic Capital Group Inc.)

~~DUPLICATE ORIGINAL~~

APPENDIX "A"

COURT FILE NUMBER Q.B. No. 2952 of 2018

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE Regina

PLAINTIFF KEB Hana Bank of Canada  
(formerly Korea Exchange Bank of Canada)

DEFENDANTS Westgate Properties Ltd., Nexera Law Group Professional Corporation, Olympia Trust Company, Fortress Capital Pointe 2013 Inc., JYR Investment Management Inc. and Double Star Drilling (1998) Ltd. and Computershare Trust Company of Canada

### ***Order Confirming Sale***

Form 10-47E | Subrule 10-47(5)

Before the Honourable Madam Justice M. D. Tochor, a Judge of the Court of Queen's Bench for Saskatchewan in chambers the 7<sup>th</sup> day of May, 2020.

On the application of the Plaintiff, and on reading the Order Nisi for Sale by Real Estate Listing with Proof of Service, Affidavit of Francis Bast, and on hearing:

#### ***The Court Orders That:***

1. The sale of the mortgaged land namely:

- a. Surface Parcel #164962570, Lot 50 Blk/Par 342 Plan 102032255 Ext 0
- b. Mineral Parcel #111369067, Lot 44 Blk/Par 342 Plan 00RA12095 Ext 7
- c. Mineral Parcel #111369089, Lot 45 Blk/Par 342 Plan 00RA12095 Ext 8

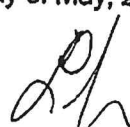
to Magnetic Capital Group Inc. by Francis Bast as Selling Officer appointed by the Court under the Order Nisi for Sale by Real Estate Listing dated March 4, 2019 for the sum of \$2,937,116.46 plus additional property taxes and penalties as provided in the Offer to Purchase and Agreement for Sale dated March 4, 2020 is confirmed.

2. The Registrar of Titles shall accept an application to set up new titles to the mortgaged land in the name of Magnetic Capital Group Inc. as the Purchaser (the "Purchaser") subject, however, to the following encumbrances as to Surface Parcel #164962570:
  - a. CNV Easement – Interest Register #100006861
  - b. CNV Easement – Interest Register #100650484
  - c. CNV Common Law Easement – Interest Register #100650507
  - d. Miscellaneous Interest – Interest Register #110384209
  - e. Public Utility Easement – Interest Register #120485370
  - f. Planning and Development Act, 2007 Development Agreement – Interest Register #122498084
  - g. City of Regina Tax Lien – Interest Register #123409964
3. The proceeds of the sale shall be paid to the solicitors for the Plaintiff, and shall be disbursed in the following order of priority:
  - a. In payment of the outstanding property taxes owing to the City of Regina;
  - b. In payment of the amount due to the selling officer in the amount of \$195,612.00;
  - c. The balance to the Plaintiff to be applied on account of the subject mortgage.
4. The Defendant, Westgate Properties Ltd., and all persons claiming through or under it in possession of the mortgaged land and bound by the Order Nisi for Sale by Real Estate Listing, do deliver up possession to the Purchaser upon service on them of a copy of this order provided that the Purchaser shall not be entitled to take such possession until it has first closed the transaction to purchase the mortgaged land
5. If the Purchasers fail to complete the sale transaction approved by this order, or if the Plaintiff and/or Selling Officer requires further direction in order to complete the sale, the Plaintiff and/or the Selling Officer shall have leave to apply to this Court for further directions.

6. A copy of this Order is to be served:
- a. On counsel for all Defendants having filed Demands for Notice by fax or email to their respective solicitors; and
  - b. On any other Defendants or persons who appear from the copies of the titles to have an interest in the said lands subsequent to the mortgage in favour of the Plaintiff, by ordinary prepaid registered mail addressed to them at their respective addresses shown on the said titles.
7. The Plaintiff shall have its costs of this application on a solicitor – client basis as against the Defendant, Westgate Properties Ltd.
8. The Plaintiff need not comply with Queen's Bench Rule 10-4(2) before issuing this order.

**ISSUED** at Regina, Saskatchewan this 12 day of May, 2020.

(seal)

  
\_\_\_\_\_  
(Deputy) Local Registrar

**NOTICE**

Take notice that, unless the order is consented to by the respondent or a person affected by the order or unless otherwise authorized by law, every order made without notice to the respondent or a person affected by the order may be set aside or varied on application to the Court. You should consult your lawyer as to your rights.

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

Name of Firm: **CUELENAERE LLP**, Name of Lawyer in charge of file: Grant Richards; Address: Suite #200, 450 – 2<sup>nd</sup> Avenue North, Saskatoon, Saskatchewan, S7K 2C3; Telephone Number: (306) 653-5000; Facsimile Number: (306) 652-4171; Email Address: [grichards@cuelenaere.com](mailto:grichards@cuelenaere.com); Our File: 131367-001-GAR





City of Regina

Clear Form

Print Form

Do you intend to  
apply for any City  
Housing Incentives?  
(check all that apply)

☐ Tax Incentive

☐ Capital Grant

## FOR OFFICE USE ONLY

Application #: \_\_\_\_\_

Date Fee Paid: \_\_\_\_\_

Pymt Amount: \_\_\_\_\_

## Contract Zoning Application

## Applicant

☐ Registered Owner

☒ Representative of Owner

☐ Option to Buy
Name: David J. Brundige Q.CCompany: Willows Wellsch Orr & Brundige LLPAddress: 401-1916 Dewdney AveCity: ReginaProvince: SKPostal Code: S4R 1G9Phone Number: ( ) 306-525-2191E-Mail: dbrundige@wwoblpl.com

## Present Owner (if different from Applicant)

Name: Westgate Properties Ltd., Nexco Law Group Professional Corporation, Olympia Trust Company, Fortress Capital Private 2013 Inc., JYR Investment Management Inc. and Double Star Drilling (1998) Ltd. and Computershare Trust Company of Canada

Company: \_\_\_\_\_

Address: 1500 - 1874 SCARTH STREETCity: ReginaProvince: SKPostal Code: S4P 4E9

Phone Number: ( ) \_\_\_\_\_

E-Mail: \_\_\_\_\_

## Subject Property

Address: 1971 Albert Street; Regina, SaskatchewanLot(s): 50Block: 342Plan No: 102032255

1/4: \_\_\_\_\_

Sec: \_\_\_\_\_

Tp: \_\_\_\_\_

Rg: \_\_\_\_\_

W 2<sup>nd</sup> Meridian: \_\_\_\_\_Agent/Engineer/Architect/Contractor Francis Bast AS COURT APPOINTED SELLING OFFICER

Present Use of Buildings and Property (be specific)

Bare Land

Proposed Use of Buildings and Property (be specific)

On-site parking

Reasons for this Request

Purchasing property to rezone

Proposed Terms of Contract (i.e. conditions to be included)

Parking license until September 2021

Please check here if you intend to apply for condominium approval ☐

Please ensure you have attached

☒ Application Fee    ☒ Property titles    ☒ Required plans    ☒ JPG copies of plans

Signature of Applicant

David J. Brundige Q.C

Name

May 29, 2020

Date

Signature of Owner (if different from applicant)

Francis Bast

Name (printed)

May 29 / 2020

Date

# WILLOWS WELLSCH ORR & BRUNDIGE LLP

## BARRISTERS, SOLICITORS & NOTARIES

#401 - 1916 DEWDNEY AVENUE • REGINA, SASKATCHEWAN • S4R 1G9 • TELEPHONE: (306) 525-2191 • FAX: (306) 757-8138

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David J. Brundige, Q.C.  
B.A. (Hons.), J.D.

J. Paul Malone  
B.A., LL.B.

Scott A. Mazinke \*  
B.Admin., LL.B.

Louis A. Browne  
B.A. (Hons.), LL.B. (Dist.)

Matt M. Sirois  
B.A. (Hons.), LL.B.

Monte L. Stewart  
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Timothy J. Beler  
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Alexander R. Deacon \*  
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J.D., B.Comm

Sean P. Watson  
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Lindsay N. Hjorth  
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Lucas M. K. Richards  
Student-At-Law

Member of Collaborative \*  
Lawyers of Saskatchewan

Robert D. McCrank (Inactive)

Richard P. Rendek, Q.C. (Retired)

Nicholas A. Kaufman, Q.C. (Retired)

Stewart D. Orr (1989-2015)

REGINA OFFICE:  
TELEPHONE: (306) 525-2191  
FAX: (306) 757-8138

GRENFELL BRANCH OFFICE:  
BOX 175, GRENFELL, SK, S0G 2B0  
TELEPHONE / FAX: (306) 697-2500

September 10, 2020

Via Fax: 306-777-6809

City of Regina  
Office of the City Clerk  
PO BOX 1790  
2476 Victoria Ave.  
Regina, Saskatchewan S4P 3C8

Attention: JIM NICOL

Dear Sir:

RE: 1971 Albert Street, Regina, SK  
Contract Zone Application (PL202000118)  
Item # RPC20-31  
Our File # 72053 DJB

Our office represents Magnetic Capital Group Inc. The Applicant in item # RPC 20-31 which was heard yesterday by the Regina Planning Commission.

After our virtual presentation, we left the call and were not aware the Commission was considering referring the matter back to the Administrator to come forward with a parking report next March.

Had we been aware that that option was being considered we would have made the Commission aware that the original possession date was September 1, 2020 and has been delayed because we have to attain a temporary Parking Permit. We would have also made them aware that this was a condition of the March 2, 2020 accepted offer and of the May 7, 2020 Order of Sale to our client and that we have been working on getting the permit for four months.

Since it is a condition of the offer, we cannot move forward until this condition is met.

Unfortunately, this delay likely puts the project into jeopardy. It will be a full year since the Court Order granted and my client does not believe





its investors will be patient and allow us to continue to pursue the project. Nor are we certain that the Vendor will wait for its monies. Additionally, the amount of costs and penalties due to the City will likely make the project not financially viable, as the numbers were tight to start with.

We therefore, are requesting the City of Regina put forward to Regina City Council the simple question of whether a temporary parking permit will be granted. We appreciate that the decision rests with the City but we believe that this is an issue of sufficient importance and that elected officials should make the decision – not an appointed body. Furthermore, had the Commission known that the referral would have killed the project, perhaps they would have made a decision rather than referred it back to the Administration.

In any event the decision as it stands the likely effect of the existing Order will be that Magnetic Capital Group Inc. may have to withdraw its offer. The City can then take title of the Property for the back taxes that are owed.

I look forward to a prompt response.

Yours truly,

**WILLOWS WELLSCH ORR & BRUNDIGE LLP**

Per:



**David J. Brundige, Q.C.**

/rn

## APPENDIX "E"

**From:** Jim Nicol [mailto:JNICOL@regina.ca]  
**Sent:** September 17, 2020 2:49 PM  
**To:** Reception <Reception@wwobllp.com>  
**Cc:** Elaine Gohlke <EGOHLKE@regina.ca>; Amber Ackerman <AACKERMA@regina.ca>  
**Subject:** 1971 Albert Street - ATTENTION: David Brundige

Good afternoon. I am writing further to the recommendation made at the September 8, 2020 meeting of the Regina Planning Commission respecting your Contract Zone Application and in response to your letter to me dated September 10, 2020.

Notwithstanding the Commission's decision last week to table this matter until such time as a separate report on temporary parking lots returns to City Council in early 2021, I have ruled that this is procedurally out-of-order. **As a result, the original report to Regina Planning Commission respecting your application will be placed on the City Council agenda for Wednesday, September 30, 2020.**

Similar to your presentation at the Commission, you may attend the meeting via teleconference. To attend, you must provide my office with the telephone number you will be using to call in. This can be done by email to [clerks@regina.ca](mailto:clerks@regina.ca) or by calling 306-777-7262 **no later than 12 p.m. on Tuesday, September 29, 2020.** You will receive meeting details and instructions after you have confirmed your attendance for the meeting.

If you wish to address Council at this meeting, **you must provide a written submission by 1 p.m. on Thursday, September 24, 2020.** Details on what should be included in your written submission are available on [Regina.ca](http://Regina.ca) or by calling the Office of the City Clerk at 306-777-7262.

Jim Nicol  
City Clerk  
City of Regina  
2476 Victoria Avenue  
Regina, SK S4P 3C8

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