

**FILED IN THE
COURT OF
QUEEN'S BENCH**

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File No. CI-17-01-05957

**THE QUEEN'S BENCH
Winnipeg Centre**

**IN THE MATTER OF: The City of Winnipeg Charter Act, City of
Winnipeg By-law 127/2016 and Section
92(2) of the Constitution Act 1867**

BETWEEN:

**RIDGEWOOD WEST LAND CORP., AND SAGE CREEK
DEVELOPMENT CORPORATION,**

applicants

- and -

THE CITY OF WINNIPEG,

respondent.

**Application under Rule 14.05 and Rule 68 of The Court of
Queen's Bench Rules.**

**AFFIDAVIT OF Ken Braun
Sworn April 12, 2018**

**FILLMORE RILEY LLP
Barristers, Solicitors & Trade-Mark Agents
1700 – 360 Main Street
Winnipeg, MB R3C 3Z3**

Telephone: 204-957-8325 / 204-957-8321
Facsimile: 204-954-0325 / 204-954-0321

**Mark Newman / Dayna M. Steinfeld
File No. 404659-127/MN**

File No. CI17-01-05957

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Queen's Bench Rules.**

AFFIDAVIT OF KEN BRAUN
Sworn the 12th day of April, 2018

I, Ken Braun, of the City of Winnipeg, in the Province of
Manitoba, Vice President, Single Family Homes, Qualico
Developments (Winnipeg) Ltd.

AFFIRM AND SAY THAT:

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1. I am the Vice President, Single Family Homes of Qualico Developments (Winnipeg) Ltd. ["Qualico"] and as such have personal knowledge of the matters herein deposed to by me, save and except where same are stated to be based upon information and belief and where so stated, I verily believe the same to be true.

2. Founded in 1951, the Qualico group of companies is an integrated real estate business primarily operating in Western Canada, with regional offices in Winnipeg, Regina, Saskatoon, Calgary, Edmonton, Vancouver, and Austin, Texas. Qualico Developments (Winnipeg) Ltd. is a wholly owned subsidiary of Qualico Developments Canada Ltd., which is wholly owned by Qualico Group Ltd.

3. Qualico develops land and also builds homes, multi-family and commercial properties. Qualico currently has four divisions operating residential home builders, Sterling, Kensington, Broadview and Foxridge. Qualico also has a division, Streetside, which primarily builds multi-family developments.

4. In my capacity as Vice President, Single Family Homes, I manage the Sterling and Broadview operating divisions of Qualico. These divisions operate as residential single family home builders.

Both divisions have been building homes in Winnipeg for over 30 years.

5. On October 26, 2016, Council of The City of Winnipeg ["The City"] passed the Impact Fees By-law as By-law No 127/2016 [the "Impact Fees By-law" or the "By-law"]. The By-law mandates the payment of fees by every person who is issued a building or development permit in a residential development identified in the "Emerging Communities" depicted in the maps attached as Schedule A to the By-law.

6. The transitional provisions of the By-law provide that no Impact Fee is payable if the application for a building permit or development permit is made prior to May 1, 2017; the permit is issued within 6 months following the date of application, or such later date as determined by the Director of Planning, Property and Development; and construction of the development begins prior to November 1, 2017.

7. On October 25, 2017, the Council of The City of Winnipeg approved an amendment to the By-law. This amendment extended the transitional exemption from the application of the Impact Fee. The deadline for the commencement of construction was extended to

January 1, 2018, but only if the application for a building permit or development permit was made prior to May 1, 2017. Permit applications submitted after May 1, 2017, regardless of construction start date, were subject to the Impact Fee.

8. Since the By-law was passed on October 26, 2016, I have observed higher than average numbers of sales for building new homes and applications for building permits. The divisions that I run have submitted approximately double the number of building permit applications compared to the same time frame in previous years. It is my belief based on these observations and from discussions with Sterling and Broadview sales representatives that new home buyers and builders were trying to submit as many building permits as possible before May 1, 2017 in order to avoid the application of Impact Fees under the By-law.

9. Qualico is directly passing on the cost of Impact Fees to the home buyer. When a home buyer purchases a Sterling or Broadview home, the Agreement of Purchase and Sale between Qualico and the home buyer includes a line item for the estimated Impact Fee applicable to the home. This line item is included in the base price list in all Sterling and Broadview home models and is automatically

applied to the purchase of each new home. This line item forms part of the template Agreement of Purchase and Sale used for the sale of all Sterling and Broadview home models. Attached hereto as Exhibit "1" is a copy of the template agreement.

Exhibit 1, Template Agreement of Purchase and Sale

10. Where a customer is not willing to acknowledge and pay the cost of the Impact Fee, the sale will not be accepted by Qualico. This is subject only to any offsetting of the amount of the Impact Fee through individual negotiations; however, the Impact Fee itself must be paid by the customer in order for the sale to be accepted.

11. All buyers of Sterling and Broadview homes are charged the cost of the Impact Fee. However, each Agreement of Purchase and Sale provides for a refund to the home buyer if the By-law is overturned or the amount of the Impact Fee is lowered, resulting in The City returning the amount of the Impact Fee to the builder.


12. I have discussed the By-law with others who work in the home building industry in The City. I have been informed through these discussions that most home builders in The City are addressing the

By-law in the same way as Qualico, namely directly passing the cost of the Impact Fee onto the home buyer.

AFFIRMED BEFORE me at the)
City of Winnipeg, in the Province of)
Manitoba, this 12 day of April, 2018)



Ken Braun



A [Commissioner for Oaths / Notary Public]
in and for the
Province of Manitoba


My Commission Expires:

Wayne Richard Leach
Manitoba Practising Lawyer
and Notary Public
One Dr. David Friesen Drive
Winnipeg, MB R3X 0G8

This is Exhibit 1 to the Affidavit
of Ken Braun, affirmed before
me this 12 day of April, 2018



A Notary Public in and for
the Province of Manitoba

Original Court Copy

**AGREEMENT OF PURCHASE AND SALE
for House and Land**

Job # 7576

This Agreement made this Thursday, April 13, 2017

BETWEEN:

Name: _____

Name: _____

(in this agreement called the "Purchaser")

- and -

QUALICO DEVELOPMENTS (WINNIPEG) LTD.
One Dr. David Friesen Drive, Winnipeg, Manitoba, R3X 0G8
(in this agreement called the "Builder")

The Builder is the owner or is entitled to be the owner of the following land: _____
LOT-BLOCK-PLAN

Civic Address: _____ (in this agreement called the "Lot")

SALE

1. The Builder agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Builder the Lot and house described in paragraph 2 following (collectively the "Property"), subject to the terms and conditions of this Agreement.

CONSTRUCTION

2. The Builder agrees to construct the house on the Lot by supplying all of the materials and performing all of the work for its construction in accordance with the floor plan of Builder's model _____ Elevation and the general specifications in the attached specification sheet and the list of inclusions contained in Options and Upgrades Agreement attached.

TERMS OF PAYMENT

3. The price to be paid by the Purchaser to the Builder for the Property shall be the sum below set out today and shall include only extras as may be written and attached. The Purchaser agrees to pay the purchase price with interest at the rate of three percentage points above Prime per annum on any part of the purchase price not paid when due.

Purchase Price (not including GST)	_____	
Plus Estimated Impact Fee	_____	+
Plus GST (calculated @ 5%)	_____	+
Minus estimated GST rebate claimed through Builder	_____	-
TOTAL PURCHASE PRICE (Includes Estimated Impact Fee, GST and rebata)	_____	
(Notes 3,4,5 and 6)	_____	
Less deposit, paid to the Listing Broker, Rancho Realty Services (Manitoba) Ltd. in trust, upon signing of this agreement	_____	-
Less further deposit (payable to Qualico Developments (Winnipeg) Ltd. upon satisfaction of Purchaser's conditions)	_____	-
Less additional deposit (Payable to Qualico Developments (Winnipeg) Ltd.) ...	_____	-
Due by: (_____)		\$0.00
Less additional deposit (Payable to Qualico Developments (Winnipeg) Ltd.) ...	_____	-
Due by: (_____)		\$0.00
By: <u>Proceeds of a New Mortgage</u> From: <u>RBC</u>	_____	-
If applicable a "change of mortgage" fee shall be charged and will become due and payable on or before possession (Note 1)		
Balance cash required to close	_____	\$0.00

NOTES

4.

- Note (1) The exact terms, conditions and monthly payments of the mortgage, as well as an estimate of the annual taxes will be provided by the lender. Mortgage Insurance Fee, if applicable, shall be in all instances be paid by the Purchaser.
- Note (2) It is acknowledged that the lender may not advance the entire assumed balance to the Builder until after Closing. The Purchaser shall pay interest at the mortgage rate from Closing until the advance is received by the Builder.
- Note (3) The Purchaser represents that the house will be used as his/her primary place of residence. The Purchaser requests that the GST new housing rebate be credited against the GST payable. Purchaser agrees to provide to the Builder on Closing a statutory declaration concerning eligibility to the GST new housing rebate.
- Note (4) The Purchaser agrees to provide the Builder with an application for the rebate in the prescribed form and containing the prescribed information as required under Section 254(C) of the *Excise Tax Act*.
- Note (5) The Builder's Goods and Services Tax Registration Number is 10435 5656 RT
- Note (6) For homes with a fair market value exceeding \$350,000 including additions and upgrades, the amount of the rebate is reduced using a formula that will cause the rebate to equal zero when the capping value of \$450,000 is reached. This reduction will be the Purchaser's expense on closing.

MORTGAGE FINANCING

5. It is expressly agreed that:

- (a) If mortgage financing is to be arranged by the Purchaser either by way of an assumption or a new mortgage as contemplated in section 3 of this Agreement, this Agreement shall be conditional upon the Purchaser being approved for such mortgage on or before _____ failing which this Agreement shall terminate and all monies paid by the Purchaser to the Builder shall be refunded;
- (b) The Purchaser authorizes and directs that deposits shall be released to the Builder upon the Purchaser being approved for financing on or before the financing Condition Date set out above;
- (c) The Purchaser is advised to check that her/his lender's mortgage commitment doesn't expire prior to the Target Closing Date. The Builder shall have no responsibility to the Purchaser to assist in obtaining, maintaining or preserving the terms of the Purchaser's mortgage in consequence of any delay in the Target Closing Date.

PURCHASER CONDITIONS

6. This offer is made subject to the following conditions for benefit of the Purchaser:

- a) _____
- b) _____
- c) _____ by _____

The Purchaser must provide written notice on or before the date specified for satisfaction of the condition that:

- (i) the condition has been satisfied or waived; or
- (ii) the condition has not been satisfied or waived and as a result the Agreement is terminated, in which case all deposits paid by the Purchaser shall be refunded to the Purchaser, without deduction or interest.

NOTICES

7. All notices required herein shall be in writing (except as hereinafter provided) to the Builder at One Dr. David Friesen Drive, Winnipeg, Manitoba, R3X 0G8 and to the Purchaser's address as set out in the conveyancing information provided by the Purchaser. Any mailed notices shall be deemed to be served upon the fourth day following their deposit, postage pre-paid at a post office or postal box in Manitoba.

8. As an alternative to postal delivery any written notice may be delivered in electronic form either by facsimile or email to the Purchaser if the Purchaser has provided such electronic addresses. Documents with original signatures shall be provided upon request of any party.

COVENANTS

9. The Builder and Purchaser agree to the following terms:

- (a) The Purchaser hereby acknowledges that any changes or alterations must be determined and agreed upon with the Builder by completing a change modification request form before the Plan Modification Deadline set out in Schedule "C" attached.

(b) The Builder and Purchaser agree to complete the sale and purchase of the Property on the Target Closing Date as may be extended by the Builder, all as set out in Schedule "C" attached.

(c) *Within one year of possession the Purchaser will install at their own expense sodding from the street to the rear of the home (or as required by the developer) including side boulevards, and any municipal requirements that are not specifically covered by this agreement or the plans and specifications pertaining hereto.* Purchaser will be charged a deposit of \$2,500 on closing. Upon the final lot grade passing inspection by the designated Engineering Company the Builder will provide a final grading approval letter to the Purchaser. Only upon receipt of the final grading approval letter can the Purchaser proceed with their landscaping. The Purchaser has 1 year from possession to complete their landscaping as required by the developer. The Builder will refund the deposit upon satisfactory inspection and approval of the landscaping by the developer. Failure to complete landscaping as required will result in forfeit of the deposit.

_____Purchaser(s) Initials

(d) Purchaser accepts the Property subject to the restrictions, easements, encroachment agreements and/or covenants that run with the land, and subject to all public utilities caveats registered hereafter for the supply and installation of services benefiting the Property or any adjacent or neighbouring properties, building restriction caveats and those encumbrances assumed by the Purchaser. Purchaser acknowledges that the location of Hydro/MTS/cable transformers are at the discretion of the applicable utility.

(e) The Purchaser agrees to accept title subject to one or more mortgages upon the Builder's undertaking to register discharge(s) within a reasonable time after closing.

(f) In entering into this Agreement Purchaser relies on his/her own judgment and not on any representations made by any agents and/or the Builder as to taxes or any matter not specifically covered by this Agreement or the plans and specifications pertaining hereto.

(g) Purchaser acknowledges that the showhome and model they viewed prior to making this offer may have features, upgrades, floor plan alterations and lot siting different from the standard floor plans and specifications of the model they selected.

(h) All items of adjustment including taxes shall be made as at the closing and possession of Property.

SITING AND SOIL CONDITIONS

10. Subject only to the zoning and building by-laws of the municipal authority having jurisdiction and bona-fide architectural guidelines that may apply, the siting of the house on the Lot shall be in the sole discretion of the Builder. In the event, by reason of adverse soil conditions (silt, roots, frost, disturbed soil, etc.) the Builder is required to pile the foundation of the house or to remove silt and supply compacted granular fill, the Purchaser shall pay such costs. Any amount payable by the Purchaser for these costs shall be allowed as a credit to the Builder on the statement of adjustments.

EXTRAS OR DELETIONS

11. Any additions, removals, corrections, variations or purchase price changes shall be effected by further agreement in writing signed by the Builder and the Purchaser and attached to this Agreement or by completion and execution of the Schedule "B" attached by both the Builder and the Purchaser.

MATERIALS AND COLOURS

12. All materials necessary to complete the house which may not be available due to circumstances beyond the control of the Builder may be substituted by other materials and/or colours of similar or better quality at the sole discretion of the Builder, without prior authorization of the Purchaser.

DESIGN CONTROL

13. The Purchaser agrees not to make any alterations to the approved lot grades or construct any house on the Lot otherwise than in accordance with a plan of the house showing its siting on the Lot, elevation and exterior appearance including finishing and colour, which has been approved in writing by the land developer. If for any reason the Builder's deposit is withheld by the developer due to unapproved changes by the Purchaser, the Purchaser will be responsible for costs or lost deposits incurred by the Builder.

_____Purchaser(s) Initials

PROHIBITION AGAINST RESALE

14. The Purchaser shall not list for sale, advertise for sale, sell or assign his/her interest and rights under this Agreement or in the Property at any time prior to the closing of the transaction contemplated hereunder, without the prior written consent of the Builder, which consent may be arbitrarily withheld.

POSSESSION

15. The Purchaser agrees to complete the Builder's standard pre-occupancy inspection form ("POIF") and to finalize the purchase and pay all outstanding sums payable under this Agreement before taking possession of the Property. There shall be no holdbacks for deficient items at the date of possession. The Purchaser and Builder acknowledge and agree that at the date of possession, the house need not be totally complete and may

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_____Purchaser(s) Initials
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be subject to deficiencies for seasonal work which cannot be completed due to weather conditions, or work which may have been only partially completed.

SUBDIVISION CONDITION

16. If the Lot has not yet been created, then this Agreement shall be conditional upon compliance with applicable subdivision control provisions and upon registration of the plan of subdivision encompassing the Lot, subject to any minor variations imposed by the City of Winnipeg or any other governmental authority having jurisdiction on or before the date 30 days prior to the Target Closing Date.

HOLDBACK

17. The Purchaser agrees that any holdback funds under *The Builders' Liens Act* shall be paid to the Builder's solicitor prior to possession and held in trust by the Builder's solicitor until the expiration of the lien holdback period and until a search of title has confirmed that no liens have been filed against title to the Lot. Interest on such funds will be to the account of the Builder.

CANCELLATION

18. The Builder and Purchaser agrees that should the Builder not be able to commence construction within 60 days from the date of Agreement due to causes beyond its control such as inability to obtain permits or the inability of the developer to convey title to the Lot, then Builder may cancel this Agreement on written notice to the Purchaser. The Builder's liability to the Purchaser shall be limited to the refund of any deposits paid by the Purchaser.

PURCHASER'S DEFAULT

19. Notwithstanding anything herein provided to the contrary, it is understood and agreed that the Purchaser shall be deemed to be in default under this Agreement if he fails to execute and/or submit, within the requisite time periods, all documents, directions and/or verifications that may be required by the Builder, the lender and/or any mortgage insurer for the purposes of assuming or obtaining from the lender, the first mortgage and facilitating the payment of all advances there under to the Builder, or if he fails to fulfill any of the other provisions of this Agreement, or if any lien, execution or encumbrance arising from any action or default of the Purchaser is charged against or affects the Property so as to prevent any advances under the First mortgage. If a default occurs by the Purchaser and such default is not remedied within five (5) days of the Purchaser being notified in writing by the Builder, then, in addition to any other rights or remedies provided in this Agreement or otherwise available to the Builder at law or in equity, the Builder shall have the unilateral right and option of declaring this Agreement terminated and of no further force or effect, in which event all deposit monies, together with all monies for extras or changes requested to be made to the Property shall immediately be forfeited to the Builder as liquidated damages and not as penalty. In the event of the termination of this Agreement, the Purchaser shall execute all releases and any other documents or assurances as the Builder may require with respect to releasing the Purchaser's interest in the Property.

RISK

20. Until the time of possession by the Purchaser, the Property shall remain at the risk and responsibility of the Builder. The Builder shall not transfer any policy of insurance on the Property to the Purchaser.

SITE VISITS

21. Purchaser acknowledges that a construction site can be a dangerous place and that access of the Purchaser to the Property is restricted. As reviewed during acceptance of this agreement, the Purchaser agrees to abide to the safety protocols identified in Schedule "S".

IDENTIFICATION RECORD

22. Purchaser (each if more than one individual) must provide acceptable identification to the sales representative in order to complete the Individual Identification Information Record (or a similar form if the Purchaser is a corporation). This record or report is required to be completed by all builders in Canada under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

NEW HOME WARRANTY

23.

(a) The Builder represents and warrants to the Purchaser that it is a registered builder with Aviva Insurance Company of Canada, represented by its agent National Home Warranty Group Inc. (the "Program") and that the Property is, or prior to commencement of construction, will be enrolled with the Program. The Builder has arranged with the Program to provide the new home warranty as set out in the sample form of policy Schedule "G". At the time of offer the purchaser will receive a copy of Schedule G (for their review only). In summary, the warranty provides 1:2:7 coverage – One year (defects in materials, labour and design); -Two years (defects in major systems, water penetration, exterior cladding and building code violations resulting in unreasonable health or safety risks or material damage, and defects in materials, labour and design that render the home unfit to live in; and Seven years (structural defects). The Purchaser is directed to sections 7 & 8 of Schedule "G" outlining the Purchaser's duties and obligations.

(b) The Purchaser shall meet with the Builder's representative on or before the Closing Date at the date and time designated by the Builder to conduct a pre-occupancy inspection of the house and to list all construction items remaining uncompleted and all discernible deficiencies with respect to the house at the time of the inspection on the POIF and, on completion of the inspection, the Purchaser shall sign the POIF containing the items and deficiencies listed.

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Purchaser(s) Initials
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IMPACT FEE

24. Commencing 01 May 2017, the City of Winnipeg will collect Impact fees for new and emerging residential developments. Residential downtown Infill developments and existing, mature developments will be subject to the fees in 2019. Impact fees are calculated at \$54.73 per m², or roughly \$5.09 per ft². Any change to the estimated Impact fee will be adjusted on Closing.

GENERAL

25. The term "Prime" as used in this Agreement shall mean the prime commercial lending rate of the Royal Bank of Canada as charged from time to time.

26. Time shall be of the essence in this agreement.

27. Whenever the singular, plural, masculine or feminine is used it shall be construed as meaning the plural, singular, feminine or masculine where the context so requires. All covenants shall be construed to be joint and several when applicable to more than one party.

28. There are no representations, warranties, guarantees, promises or agreements other than those set out herein. This agreement may be altered or amended only by agreement in writing signed by the parties.

29. All utility points of entry of the house are the discretion of the utility companies.

30. All incentives, bonuses, promotions offered by the Builder are deemed to be included in the purchase price unless expressly noted otherwise.

SCHEDULES

31. All schedules attached hereto or referenced herein shall be deemed to form part of this Agreement and shall be binding upon the parties. The schedules to the Agreement are:

- | | |
|---|---------------------------------------|
| Options and Upgrades Agreement | Schedule "I" - (If Applicable) |
| Schedule "B" - (If Applicable) | Schedule "M" - (If Applicable) |
| Schedule "C" - Important Dates | Schedule "Q" - Architectural Controls |
| Schedule "D" - Builder's Privacy Policy | Schedule "S" - Keep Safe Waiver |
| Schedule "E" - New Home Waiver | Schedule "V" - (If Applicable) |
| Schedule "F" - Concrete Driveway | Schedule "W" - Window & Door Schedule |
| Schedule "H" - (If Applicable) | Schedule "J" - Impact Fee |

32. This offer is open to acceptance by the Builder until 5:00 p.m. Winnipeg time _____
dd / mm / yyyy

IF THIS OFFER IS NOT ACCEPTED, THE DEPOSIT SHALL BE FORTHWITH REFUNDED TO THE PURCHASER, WITHOUT DEDUCTION OR INTEREST.

Witness by (our) hands this _____
dd / mm / yyyy

Witness

Signature of Purchaser

Witness

Signature of Purchaser

ACCEPTANCE

QUALICO DEVELOPMENTS (WINNIPEG) LTD. accepts the above offer _____ day of _____
20 and agrees to pay to the listing broker a broker's commission of _____ %

QUALICO DEVELOPMENTS (WINNIPEG) LTD.

Per: _____

Per: _____

I/we have authority to bind the Corporation

Schedule "J"



We, _____

Purchaser of _____

acknowledge that the Purchase Price of the Property includes the City of Winnipeg Impact Fee of approximately \$5.09 per square foot on all new homes with a building permit application after May 1, 2017. The amount included in your contract related to the estimated Impact Fee is _____. This amount is based on the standard plan square footage.

Any change to the estimated Impact Fee included in this contract will be adjusted on closing at the time of possession and will be determined by the actual amount charged on the building permit.

The Manitoba Home Builders Association and The Urban Development Institute are seeking clarification on the legality of the Impact Fee. In the event the Impact Fee is overturned or reduced prior to June 30, 2018, a portion of the Impact Fee could be refunded to the builder. Provided the Purchaser is the current owner of the Property, the Purchase Price will be reduced by the amount of the refund plus GST, not of rebate.

Date _____

Witness _____

Purchaser _____

Purchaser _____