Minute No. 513
Report – Executive Policy Committee – May 17, 2006

Item No. 6 Pan Am Pool Building, West End Addition - Aquatic Hall of Fame and Museum of Canada Inc. - Resolution of Outstanding Matters File PR-2.2

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the Chief Administrative Officer be authorized to finalize a Modified Facility Use Agreement for the Aquatic Hall of Fame and Museum of Canada Inc. (AHF) in the Pan Am Pool building by June 30, 2006, subject to the following terms and conditions:

   A. Confirmation by the Aquatic Hall of Fame and Museum of Canada Inc. (AHF) of ownership and/or responsibility of the Swimming Artifacts and Memorabilia Collection;
   B. AHF to provide proof of insurance for the Swimming Artifacts and Memorabilia Collection;
   C. AHF to provide a written commitment to improve the display showcases for safety and security purposes in a manner satisfactory to the City;
   D. Such additional terms and conditions that the City Solicitor/Manager of Legal Services deem necessary to protect the interest of the City,

   failing any of which, the entire Swimming Artifacts and Memorabilia Collection be removed from City premises by August 1, 2006.

2. That if the Aquatic Hall of Fame and Museum of Canada Inc. complies with the proposed terms/conditions of the Modified Facility Use Agreement, the Administration be directed to consult with Winnipeg Indoor Lawn Bowls Group to inform of the pending expiry of the temporary use permit for their Bowling Group in the Pan Am Pool building effective August 15, 2006.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report - Executive Policy Committee - May 17, 2006

DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,
That the recommendation of the Executive Policy Committee be adopted.

Moved by Councillor Gerbasi,
That the item be referred back to the Executive Policy Committee for further consideration.

The motion to refer was put.

Councillor Eadie called for the yeas and nays, which were as follows:

Yea: Councillors Lazarenko, Benham, Gerbasi, Lubosch, Smith, Swandel, Thomas and Wyatt. 8

Nay: His Worship Mayor Katz, Councillors O'Shaughnessy, Clement, De Smedt, Magnifico, Pagtakhan, Steeves and Eadie. 8

and the motion to refer was declared lost.

The motion for the adoption of item was put.

Councillor Benham called for the yeas and nays, which were as follows:

Yea: His Worship Mayor Katz, Councillors O'Shaughnessy, Lazarenko, Clement, De Smedt, Lubosch, Magnifico, Pagtakhan, Steeves and Eadie. 10

Nay: Councillors Benham, Gerbasi, Smith, Swandel, Thomas and Wyatt. 6

and the motion for adoption of the item was declared carried.

Report - Executive Policy Committee - May 17, 2006

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 17, 2006, the Executive Policy Committee submitted the following to Council, namely:

1. That the Chief Administrative Officer be authorized to finalize a Modified Facility Use Agreement for the Aquatic Hall of Fame and Museum of Canada Inc. (AHF) in the Pan Am Pool building by June 30, 2006, subject to the following terms and conditions:

   A. Confirmation by the Aquatic Hall of Fame and Museum of Canada Inc. (AHF) of ownership and/or responsibility of the Swimming Artifacts and Memorabilia Collection;
   B. AHF to provide proof of insurance for the Swimming Artifacts and Memorabilia Collection;
   C. AHF to provide a written commitment to improve the display showcases for safety and security purposes in a manner satisfactory to the City;
   D. Such additional terms and conditions that the City Solicitor/Manager of Legal Services deem necessary to protect the interest of the City,

   failing any of which, the entire Swimming Artifacts and Memorabilia Collection be removed from City premises by August 1, 2006.

2. That if the Aquatic Hall of Fame and Museum of Canada Inc. complies with the proposed terms/conditions of the Modified Facility Use Agreement, the Administration be directed to consult with Winnipeg Indoor Lawn Bowls Group to inform of the pending expiry of the temporary use permit for their Bowling Group in the Pan Am Pool building effective August 15, 2006,

Further on May 17, 2006, the Executive Policy Committee considered a communication from Vaughan Baird, President, Aquatic Hall of Fame and Museum of Canada Inc. dated April 13, 2006 (including attachments) with respect to Aquatic Hall of Fame and Museum, which has been placed on file in the City Clerk's Department.

RE: **Pan Am Pool Building – West End Addition – Proposed Resolution of All Outstanding Matters Including: (1) Proposed Terms and Conditions of a Modified Facility Use Agreement (2) the Ownership of the Sports Memorabilia and Artifacts "Collection" at the Pan Am Pool (J3) Proposed Interior Improvements and Funding and (4) Conflicts with Existing Users**
City Centre Community
River Heights Ward

FOR SUBMISSION TO: **Executive Policy Committee**

ORIGINAL REPORT SIGNED BY: **Director of Planning, Property and Development**

REPORT DATE: **April 13, 2006**

RECOMMENDATION:

1. That the subject Report be received as information.

2. That Council provide direction to the Administration regarding the Swimming Artifacts and Memorabilia Collection, and conflicts with Existing Users.

3. Pending consideration of this Report and subsequent to receiving additional direction, the Chief Administrative Officer be delegated authority to finalize a Modified Facility Use generally in accordance with the discussion herein.

Report Summary

Key Issues:

- In June 1998, Council approved a proposal for an Addition to the west end of the Pan Am Pool Building to accommodate the Aquatic Hall of Fame and Museum of Canada Inc. (AHFM) display of swimming artifacts and memorabilia, and for the holding of receptions and events. As well, they directed that the utility and maintenance costs for the space be added to the Public Works Department Budget. To facilitate the implementation of same, an agreement is required between the City and the AHFM.

- Since January 2003, the Planning, Property and Development Department has been attempting to negotiate the proposed terms and conditions for a Modified Facility Use Agreement with the AHFM. The Department is now of the opinion that an agreement can be finalized pending the resolution of several outstanding issues.

- The ownership of the "Collection", proposed interior improvements, and user conflicts are the remaining issues, which need Council input and resolution.

Implications of the Recommendation(s):

General Implications

( ) None

(X) For the organization overall and/or for other departments

(X) For the community and/or organizations external to the City

( ) Involves a multi-year contract

Comment(s):

The ownership of the Swimming Artifacts and Memorabilia Collection is a major issue within the negotiations for a Modified Facility Use Agreement. The AHFM is of the opinion that the City owns the Collection and wishes to execute a formal Bill of Sale to document same. The Administration is of the opinion that the City does not own the Collection and that there exists significant risks and responsibilities associated with ownership. The risks and responsibilities include: the possible requirement to pay for a fine arts insurance policy (or for some other insurance arrangement) for the Collection; the possible need for and payment for on-going appraisal of the collection; the potential for liability for degradation or damage to the Collection associated with the display of same within an indoor pool environment, and/or with the current methods of display; ongoing exposure to potential liability associated with the use of plate glass display cases (not tempered glass); exposure to vandalism, theft, damage or other loss arising out of making the collection accessible to the public with limited security protection.

User conflicts have arisen as result of the City's approvals regarding the addition and the accommodation of the Winnipeg School Division and the Winnipeg Indoor Lawn Bowls Group on a temporary basis and, the establishment of Community Services Department recreation programming. On July 17, 2002, Council approved some interim uses (Winnipeg School Division, Winnipeg Indoor Lawn Bowls) of the space so as to obtain public benefit. "A standard Facility Use Agreement would be utilized to formalize their temporary, seasonal use of the space" while awaiting a resolution of the dispute. The AHFM are supportive of the Winnipeg School Division use of space within the future workroom area but do not support the continued use of the Addition by the Winnipeg Indoor Lawn Bowls Group or for recreation programming given the timing and requirement for the use of the entire space. The AHFM will not sign an agreement or complete the interior improvements until the City agrees to terminate its agreement with the Winnipeg Indoor Lawn Bowls Group. The Administration advises that an alternate space is not currently available to relocate the Winnipeg Indoor Lawn Bowls Group or recreation programming.

Policy Implications

(X) No

( ) Yes

Comment(s):

Regulatory Implications

(X) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s):

Environmental Implications

(X) No

( ) Yes

Comment(s):

Human Resources Implications

(X) No

( ) Yes

Comment(s):

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s):
The Public Works Department pays for the addition maintenance and utility costs. In the event the City agrees to accept ownership of the "Collection", the City would likely incur the annual cost of providing some method of insurance to be determined by the City's Risk Manager for obtaining a Fine Arts Policy and to pay any potential deductibles related thereto. In order to obtain and maintain the policy, an initial appraisal, plus subsequent periodic appraisals of the "Collection" would be required. At this time, the Administration has obtained a cost estimate for the initial appraisal in the amount of $25,000.00 (not including photographs).

Pending the completion of the appraisal, the City's Risk Manager would be in a position to determine the optimal method of providing insurance and the annual cost.

Report

REASON FOR THE REPORT:

Administration is seeking Council direction regarding the ownership of the "Collection" and User Conflict issues prior to finalizing the Aquatic Hall of Fame and Museum matter.

Council approval is required for the proposed terms and conditions of a Modified Facility Use Agreement.

HISTORY:

At its meeting held on June 24, 1998, Council approved a proposal to construct a 10,000 sq. ft. Addition to the west end of the Pan Am Pool Building. The Addition created a dedicated display area for the Aquatic Hall of Fame and Museum of Canada and is designed in a manner to allow for receptions and gatherings. A copy of the Council Order is attached as Schedule "A".

At its meeting held on June 19, 2002, Council approved the terms of a lease agreement with the Winnipeg School Division to construct and occupy a temporary classroom within the Addition.

At its meeting held on July 17, 2002, Council considered a Report regarding a request from the Winnipeg Indoor Lawn Bowls Club to enter into a long term lease agreement for the use of space within the addition. Council was advised that the Planning, Property and Development Department did not concur with the request given there was no agreement in place with the Aquatic Hall of Fame and Museum and that their plans could potentially affect the use of the space by the Winnipeg Indoor Lawn Bowls Club and in a situation such as this, where a group does not have exclusive use of the facility space, the City utilizes Facility Use Agreements that relate to the dates and hours that the group uses the facility. It was recommended that a standard Facility Use Agreement would be utilized to formalize their temporary, seasonal use of the space. As such, Council approved the following recommendation:

1. That the City enter into standard Facility Use Agreements with the Winnipeg Indoor Lawn Bowls Club, for the use of the Aquatic Hall of Fame at the Pan Am Pool on an annual basis.

2. That the current Fees and Charges Policy be waived in order that the Winnipeg Indoor Lawn Bowls Club receive a rental fee reduction for the use of the Aquatic Hall of Fame at the Pan Am Pool as outlined in Appendix A.

On December 11, 2002, Council approved a request from the AHFM to develop the Poseidon Room (a portion of the 10,000 sq. ft. Addition) and requested the Chief Administrative Officer to negotiate a Facility Use Agreement for the project.

At its meeting held on October 22, 2003, Council considered a Report regarding the AHFM proposal and other occupancy matters related to the Addition and made the following recommendations:

> "1. That the Administration's proposed strategy to deal with the Aquatic Hall of Fame and Museum of Canada Inc. request, pertaining to the use of the Workroom, establishment of a museum, and transfer of artifacts, be approved as referenced herein.
>
> 2. That the scope of work for the development be limited to the construction of the Poseidon Room and that the terms and conditions of the proposed Modified Facility Use Agreement with the Aquatic Hall of Fame and Museum of Canada Inc. as referenced herein for the Poseidon Room, be approved.
>
> 3. That the proposed terms of a lease agreement between the City and the Winnipeg School Division in accordance with the terms and conditions as referenced herein for the use of space as a classroom, be approved.
>
> 4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing."

During the period between November 2003 and December 2004, representatives of the Aquatic Hall of Fame and Museum of Canada Inc. and the Planning, Property and Development Department met to implement the above referenced strategy. Although various attempts were made to resolve the matters, the parties did not achieve a consensus as of June 2004. In order to bring a resolve to the situation, Dr. P. Clark, Vice President of the Aquatic Hall of Fame and Museum of Canada Inc. and the Senior Negotiator met to negotiate an understanding on the issues and to create a framework to finalize this matter.

The Planning, Property and Development Department outlined the details of the understanding and requested acceptance in writing from the AHFM by letter dated February 11, 2005, a copy of which is attached as Schedule "B".

In 2004, the AHFM requested the Ombudsman of Manitoba to conduct an investigation into the Department's dealings with the AHFM. This investigation occurred during the period between September 2004 and August 2005 and subsequently found that:

> "In our view the actions or decisions of the Department and its officials did not contravene section 36 of The Ombudsman Act and, therefore we will not be making any formal recommendations to the head of City Council or taking any further action with respect to your complaint."

By letter dated January 9, 2006, the AHFM provided a response to the proposed terms and conditions for a Modified Facility Use Agreement, a copy of which is attached as Schedule "D".

DISCUSSION:

Summary of Issues and Negotiations:

The AHFM matter involves: (1) the negotiation of a Modified Facility Use Agreement for the use of the new Addition by the AHFM for the display of swimming artifacts and memorabilia and for the hosting of receptions and events (2) the ownership, insurance, maintenance and curatorial responsibilities for the existing collection (3) the finalization of plans and specifications and confirmation of funding for the interior development of the Addition and (4) resolution of conflict between the existing users within the new Addition. The details of each are as follows:

1. Proposed Terms and Conditions for a Modified Facility Use Agreement:

The negotiation of the proposed terms and conditions for an agreement has been difficult and protracted spanning approximately 9 years. In January 2003, the Chief Administrative Officer assigned the responsibility to conduct the negotiations and to finalize the terms and conditions for a Modified Facility Use Agreement for the Poseidon Room only to the Planning, Property and Development Department.

The Planning, Property and Development Department met with a representative of the AHFM to finalize the remaining terms and conditions and extended same under letter dated February 11, 2005 to the AHFM as set out in the attached Schedule "B" and fully outlined in the attached Schedule "C". The AHFM responded by letter dated January 9, 2006 as set out in the attached Schedule "D".

A review of the above indicates the following:

- consensus has been reached on 23 of the proposed terms and conditions for a Modified Facility Use Agreement;

- In the AHFM's January 9, 2006 letter, they have identified five terms which they believe require modification. The five terms (items 11, 15,23, 26, and 27), are summarized as follows:
    1) Clause 11 – AHFM wish to make the City's right to make alterations, repairs or additions subject to a discussion and review with the User;
    2) Clause 15 – AHFM does not accept the City's position of the Collection or responsibility for damage to or loss of swimming artwork or memorabilia;
    3) Clause 23 – Hyphenate the word Pan Am Pool to Pan-Am Pool;
    4) Clause 26 – in the title Aquatic Hall of Fame and Museum of Canada Inc., a comma needs to be inserted to read Aquatic Hall of Fame and Museum of Canada, Inc. and
    5) Clause 27 – AHFM does not agree with having the Winnipeg Indoor Lawn Bowls Group on site and request that the occupancy be removed.

The Administration has no issues with items 3 and 4.

- the AHFM wishes to add terms 30 through 39 to the Modified Facility Use Agreement (MFUA) - (many of which are repetitious and contained in the proposed MFUA). Clause 30 – provided for in Clause 19 – will need to discuss to determine if rental should include the Poseidon Room; Clause 31 – provided for in Clause 29; Clause 32 – provided for in Clause 20; Clause 33 – provided for in Clause 4; Clause 34 – provided for in Clause 19; Clause 35 – provided for in Clause 22; Clause 36 – provided for in the draft Bill of Sale; Clause 37 – provided for in Clause 12; Clause 38 – the proposed terms and conditions for the agreement outline the essential terms for the occupancy and issues relating to programming should be dealt with under the Clause 29 provision and Clause 39 is dependant upon the proposed amendment. Normally, changes to a Modified Facility Use Agreement require Council approval in each instance; and,

- to add "Whereas" sections to the introduction to the Agreement which outline the history of the Pan Am Pool and the Addition.

Departmental Comments:

Based on the response from the AHFM dated January 9, 2006, the Planning, Property and Development Department is of the opinion that an agreement on the final terms and conditions for a Modified Facility Use Agreement is within reach and could be generally settled in accordance with Schedule "C". However, issues relative to the "Collection", proposed interior improvements and floor layouts and user conflicts must first be resolved.

For the information of the Executive Policy Committee, the Administration is advising of additional facts regarding the AHFM as follows:

- The current composition of the AHFM may be outdated given the resignation of Dr. P. Clark, former Vice President of AHFM, and of Mr. D. Ellerby who indicated that he has not been actively involved during the past number of years. Further, the status of Dr. R. Thorlakson as Campaign Chairman, is unknown at this time;

- The Administration is not aware of any background studies completed by the AHFM supporting the feasibility of operating the museum or formal business plan identifying its proposed operation; and,

- That although the AHFM is prepared to undertake the curatorial responsibilities at this time, they have made earlier requests to have the City add a curatorial position to the City Staff complement to perform such functions.

2. Swimming Artifacts and Memorabilia Collection:

The ownership of the "Collection" has been a major issue in the negotiations with the AHFM, along with the proposed improvements within the Addition, and proposed terms and conditions for a Modified Facility Use Agreement. This issue arose as a result of the need to define the ownership, maintenance, liability, insurance and curatorial responsibilities for the "Collection".

The "Collection" is comprised of a large quantity of sports memorabilia, posters and art relating to the evolution of aquatics with an estimated value of $4.0 million dollars (estimate provided by AHFM), which has been acquired over the past 36 years. The "Collection" is currently on display within the Pan Am Pool corridors and second floor vestibule area. More recently, a portion of the "Collection" has been put on display within the Addition.

The AHFM position is as follows:

- AHFM believes that the City agreed to be the Owner of the "Collection" and would extend its insurance coverage to the "Collection" based on conversations with former Mayor Juba, subject to a reversionary right in favour of the AHFM should the Museum cease to exist;

- since 1967, the AHFM has been developing and displaying the "Collection" at the Pan Am Pool Building;

- AHFM agrees to provide a plan for the maintenance and display of swimming and art memorabilia to the Director of Public Works and to provide for the setting up and proper housing and maintenance of showcases and artifacts brought into the museum, and throughout the pool; and,

- AHFM is prepared to execute a Bill of Sale to document the ownership of the "Collection".

The Administration is of the position that:

- the City is not the Owner of the "Collection"; and

- the Ownership of the "Collection" would involve the City assuming various risks and responsibilities including: the cost of providing a fine arts insurance policy (or for some other insurance arrangement) and the payment of any deductibles, the potential cost of cataloguing and of obtaining appraisals for insurance purposes, the liability for damage or loss to the "Collection" associated with the display of same, and the risk associated with the current methods of display using plate glass cases.

Administration Comments:

The intent of the 1998 Council approval was to facilitate the development and implementation of the Aquatic Hall of Fame and Museum at the Pan Am Pool Site. Since January 2003, the Planning, Property and Development Department have been attempting to finalize a Modified Facility Use Agreement with the AHFM, which includes defining the responsibilities for the "Collection". In order to finalize an agreement, the AHFM has insisted that the "Collection"

issue be resolved. In this regard, the Administration is seeking a decision from Council with respect to the AHFM position regarding the "Collection" as part of this Report.

If consideration is given to accepting the ownership of the "Collection", several implications would result and certain implementation steps would need to be completed such as:

- The Corporate Risk Manager advises that the matter of providing insurance for the "Collection" will require the development of an appropriate risk strategy and method of providing insurance. This could range from not obtaining any insurance coverage to a full fine arts insurance policy to cover the entire "Collection".

- Prior to formulating a risk strategy, the Manager advises that questions and consideration of several issues needs to be researched and analyzed including the following: a review of the process for keeping track of updates and additions to the collection; a review of the plan for maintenance and display and standards; a review of security issues; a determination of the City's position regarding degradation of the collection due to humidity and any other environmental impact; a determination of whether the "Collection" is "museum artifacts" or "fine art"; consideration of the fact that the nature of the collection makes it unlikely that artifacts damaged by fire or water can be replaced; consideration of whether they are "originals" or "one of a kind" objects and that same are not replaceable, that insurance is often based on the value of the most important/expensive object; that fine arts policies do provide coverage for remediation of the artifacts (eg. from smoke damage) and that such policies are often expensive and annual insurance costs may also be high and that no insurance covers "wear and tear" or depreciation in value resulting from normal deterioration due to age.

- That a fine arts insurance policy may be the most appropriate method of providing insurance. Obtaining an estimate of insurance rates and costs is not possible at this time. When approached by the City's insurance broker, the insurance companies indicated they would need an itemized list showing the types of artifacts, plus a detailed description of the single most valuable artifact in the collection. If we assume a rate of between $2 per $100 and $4 per $100, a $4M collection could cost anywhere from $88,000 to $176,000 in order to insure every year. A premium of this magnitude would undoubtedly push us towards "self-insurance" as a preferred option. At this time we do not know what the deductible level would be. However the City may want to explore an alternative insurance tool, in the form of a museum artifact policy specifically designed for museums, as opposed to fine art. A museum artifact policy is apparently available to large and small museums in Manitoba in the form of a co-operative program. If Council approved the transfer of ownership, our Insurance Section would certainly explore this option. This is premised on the basis that each piece would need to be appraised, catalogued, described and assigned a value. The AHFM has an inventory of the "Collection" with an explanation for each piece. However, a formal cataloguing of each item would be a pre-requisite to obtaining an insurance policy.

- The matter of the "old plate glass cases" relates to the potential for injuries to people in case of failure of the glass. The City's existing Commercial General Liability Policy would cover this type of loss.

- An initial appraisal of the "Collection" has been estimated at $25,000 (not including photographs) and funding would need to be identified;
- If a fine arts insurance policy was purchased annually by the City, it is anticipated that the insurance company would require appraisal updates on a regular basis, funding for which would need to be identified;
- The City would need to finalize a Bill of Sale to effect the Transfer of Ownership (a draft Bill of Sale has been prepared by the AHFM – See attached Schedule "E");
- Annual funding to pay for the cost of a fine arts policy or for some other insurance arrangement would need to be identified;
- There would be a need to more fully develop a curatorial plan to identify specific responsibilities and standards; and
- A formalized method for tracking updates and additions to the "Collection" would need to be developed.

3. Proposed Interior Improvements, Cost Estimate, Funding and Project Timing:

The AHFM wants to complete interior improvements within the Addition as shown on the attached Schedule "F". The proposed works consist of constructing the Poseidon and Work Rooms and installing floor tiling within the entire +/-10,000 square foot addition.

In order to accommodate the storage of the indoor lawn bowling carpets used by the Winnipeg Indoor Lawn Bowls Club, and their associated use, the subject plans and specifications were altered by the Project Architect to reconfigure the Work Room as shown on the attached Schedule "G". The plans and specifications have been reviewed and approved by the Public Works and Community Services Department(s). The Planning, Property and Development Department is in a position to issue a building permit once all issues are settled and a Modified Facility Use Agreement is executed.

The project was originally estimated to cost $110,000 and to be completed under the direction of the AHFM Project Architect. The AHFM confirmed funding in the amount of $110,000 to pay for the proposed improvements. As of this date, the Department does not have an updated project cost estimate. The Project Architect has relocated to the West Coast and is no longer available to supervise the Project.

In addition, the Department does not have a summary of confirmed funding due to the lapse in time (Jan/03 to Jan/ 06).

Administration Comments:

The plans and specifications as referenced in Schedule "G" are acceptable to the Community Services and Public Works Departments. The proposed lay-out of the Work Room is based on accommodating the Winnipeg Indoor Lawn Bowls occupancy to provide a storage area for the lawn bowl carpets and equipment. Pending further direction from Council regarding the

Winnipeg Indoor Lawn Bowls occupancy, the proposed lay-out of the Work Room could be adjusted as necessary.

The original cost estimate will need to be updated to reflect current prices. The Administration will need to confirm with AHFM that it will provide project management as earlier contemplated even though the Project Architect has relocated. In Addition, the Administration will need to confirm that the original project funding is still available prior to approving a building permit.

4. Conflict of Existing Users:

During the past seven (7) years, Council has approved various uses of the 10,000 square foot Addition to the Pan Am Pool as follows:

June 24, 1998 The construction of the Addition to house the AHFM Collection

June 19, 2002	Winnipeg School Division request to accommodate the Kelvin High School Alternative Pilot Project Classroom
July 17, 2002	Relocation of the Winnipeg Indoor Lawn Bowls from the Fort Rouge Leisure Centre to the Pan Am Pool on a temporary and seasonal basis
December 11, 2002	AHFM request to develop the Poseidon Room and to negotiate a Facility Use Agreement
October 22, 2003	Five-year lease agreement with the Winnipeg School Division for the use of a temporary classroom.

The Community Services Department has been using a portion of the Addition for recreation programs for a number of years on an informal basis.

Administration Comments:

Given several City commitments to various groups for the use of the Addition, ambiguity has been created as to its use.

The original Council approval for the Addition is based on the premise that the AHFM would use the Addition for the display of swimming artifacts and holding of receptions. Following the completion of the Addition and the hosting of the Pan Am Games, the City and AHFM were involved in a dispute regarding an AHFM capital contribution to the cost of constructing the Addition during the period between 1999 and 2002.

On July 17, 2002, Council approved some interim uses (Winnipeg School Division, Winnipeg Indoor Lawn Bowls) of the space so as to obtain public benefit. “A standard Facility Use

Agreement would be utilized to formalize their temporary, seasonal use of the space" while awaiting a resolution of the dispute.

In December 2002, the Executive Policy Committee approved a resolution of the dispute and anticipated that an agreement would be completed in early 2003 with the AHFM.
Between the period of January 2003 and January 2006, the City continued to make use of the Addition including the scheduling of certain recreation classes within the Addition, while awaiting the completion of negotiations with the AHFM.

The AHFM is of the opinion as follows:

- it is entitled to the exclusive use of the space;
- it does not support the use of the addition by the Winnipeg Indoor Lawn Bowls Club;
- it does support the use of a portion of the space by the Winnipeg School Division to facilitate the Kelvin High School Alternative Program; and
- it has not responded to a written request from the City to allow recreation programming in the Addition.

At this time this time, the Administration is seeking Council Direction regarding the User Conflicts and advises as follows:

- The Administration has searched within the City's existing building inventory and cannot identify a suitable facility to accommodate the needs of the Lawn Bowlers. The termination of the Agreement will likely result in a reaction from the group and the loss of seasonal rental revenue of $1,100.00 per year.
- It may be possible to relocate the Community Services Department recreation programming to a Winnipeg School Division building. However, there are several issues related to this as follows:

    1) The termination of recreation programming in the Addition will result in a loss of $21,500 in annual net rental recreation programming revenue.
    2) Use of these facilities would not be available for the daytime program.
    3) The Winnipeg School Division cannot confirm the availability of that space initially until the schools identify their requirements in late spring, nor will they commit the space on an ongoing basis.
    4) The availability of suitable space within a Winnipeg School Division facility cannot be determined until an application for a specific time period is provided.
    5) The rental cost for use of the School Buildings is - $32.50/hour or approximately $8775/year.
    6) Additional mats and equipment would need to be purchased ($500 – $1000) and stored at the schools (storage at schools is always an issue).

7) It is anticipated that there would be significant complaints from the public for moving the programs from Pan Am Pool to other sites based on our experience with introducing any type of change to our programming with the participants of these programs. The participants see the pool as "their pool" and are very passionate about expressing their position.

- The total loss of annual rental revenue to the Community Services Department would equal $29,750.00 if the above uses were terminated.
- The Administration would support adding a proposed clause to the proposed terms and conditions for a Modified Facility Use Agreement wherein the Aquatic Hall of Fame and Museum could be requested to allow recreation programming in the Addition subject to their approval, which shall not be unreasonably withheld.

Summary Comments:

In accordance with the June 1998 Council decision, the Administration was involved with the construction of the Addition and added the cost of maintaining the new space to the current budget. Subsequent to the hosting of the Pan Am Games, the Administration became involved with a funding dispute with the Aquatic Hall of Fame and Museum, which was resolved by the Executive Policy Committee at its December 2002 meeting. As of this date, the Aquatic Hall of Fame and Museum of Canada, Inc. have not made a capital contribution towards the construction of the addition.

In the interim, the City became involved with various parties (Winnipeg Indoor Lawn Bowls Group, Winnipeg School Division and Community Services Recreation Programming) who expressed an interest in utilizing the newly constructed space. The arrangements were on an interim basis and awaiting further actions regarding a plan from the AHFM to utilize the Addition.

At the time of considering the AHFM proposal to construct the Addition, several implementation issues were not addressed including: a museum feasibility plan, a detailed business operations plan, the determination of detailed terms and conditions for an agreement with AHFM, a determination of "Collection" ownership and curatorial responsibilities and a plan to complete the interior improvements and guidelines for the use of the space.

As a result, the City is now faced with a situation wherein the Addition has been constructed and used in the interim by various facility users and the AHFM wants to proceed with completing interior improvements and establishing the display of the "Collection" within the new space. In this regard, this Report is seeking direction from the Executive Policy Committee as to the following:

- proposed terms and conditions for a Modified Facility Use Agreement;
- a decision regarding the request to assume Ownership of the "Collection";
- approval of the floor plan for the completion of the Interior Improvements; and,
- a direction regarding the user-conflicts, within the Addition.

Financial Impact Statement Date: 11-Apr-06

Project Name:

Pan Am Pool Building – West End Addition – Proposed Resolution of All Outstanding Matters

COMMENTS:

As this report is for information only, there is no associated financial impact.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Public Works Department
Community Services Department
Corporate Finance (Risk Management Branch)
Legal Services Division as to consultation regarding legal issues

External Consultation With:

None

THIS REPORT SUBMITTED BY:

Department	Planning, Property and Development Department
Division	Real Estate
Prepared by:	D. Armstrong
PPD File No.	2320/A V5

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SCHEDULE A

Report of the Executive Policy Committee dated June 17, 1998]

Pan Am Pool - Aquatic Hall of Fame and Museum of Canada Addition

File PR-2.2(Vol. 18)

742 - 3. The Executive Policy Committee has been advised that the Pan Am Pool has been the home of the Aquatic Hall of Fame and Museum of Canada since the pool was constructed for the Pan Am Games in 1967.

Under the Canada / Manitoba Infrastructure Program, approximately $2,000, 000 was allocated to the upgrading and expansion of Pan Am Pool and surrounding site in preparation for the Pan Am Games. This project is near completion.

On September 24, 1997, Council approved the expenditure of $150,000 for foundation reinforcement to house a future proposed Aquatic Hall of Fame addition. This foundation work was carried out in conjunction with the above referenced expansion and upgrade.

The Aquatic Hall of Fame is presently housed in the main foyer and side hallways of Pan Am Pool. Over the years it has grown significantly as many new artifacts have been acquired and added to the collection of memorabilia. The present display, although very well kept, is difficult to fully appreciate given space and layout constraints.

The proposed addition will create a dedicated display area for the Hall of Fame and will be designed in a manner to allow for receptions and gatherings. As well, the addition which will be on the front face of the building (west elevation) will significantly improve the aesthetic appeal of the facility.

The tourism potential for the Aquatic Hall of Fame has been largely untapped to date. Housing the museum in a central location within Pan Am Pool allows for special displays and shows which can be marketed to the local population and visitors to the city.

It is expected that contributions to the project from the Province of Manitoba and the Government of Canada will come in the form of an allocation from the recently announced Canada - Manitoba Economic Development Partnership Program. The City would be viewed as the proponent and responsible for a contribution of one third of the total project cost.

Funding for the City's share of the project ($333,333) has been identified within the building maintenance sections of the former Civic Buildings ($ 207,000) and Parks and Recreation ($126,333) budgets.

Annual operation and maintenance costs associated with a proposed 10,000 sq.ft. addition is estimated at $30,416.
Given the preliminary nature of project planning, accurate cost projections cannot be identified. Upon preparation of final plans and specifications, detailed operating cost estimates will be prepared and submitted for consideration in the 1999 current budget estimates. The addition is

not expected to be complete until early 1999 and as such, there is not expected to be any operating costs in 1998.

The Executive Policy Committee recommends:

I. That the City of Winnipeg contribute $333,333 as a one third share toward the construction of an addition to Pan Am Pool to house the Aquatic Hall of Fame and Museum of Canada conditional upon the federal and provincial governments each matching the City contribution.

II. That funding for the ongoing operation and maintenance of the addition be identified and considered in the preparation of the 1999 current budget estimates.

III. That the Proper Officers of the City be authorized to do all things necessary to effect the intent of the foregoing.

Adopted by consent.

Councillor Murray asked to be recorded as having voted against the clause, in accordance with Rule 50.7 of the Procedure

Insert electronic attachments here

SCHEDULE B

FILE COPY

Winnipeg

Planning, Property & Development Department • Service de l'urbanisme, des biens et de l'aménagement

Real Estate Division • Division des biens immobiliers

In reply please refer to / Référence à rappeler :

D.Armstrong
(204) 986-3811
Fax / Téléc. : (204) 944-8476

February 11, 2005

Aquatic Hall of Fame and Museum of Canada Inc.
c/o Dr. P. Clark, Vice President
494 Beresford
Winnipeg, Manitoba
R3L 1J5

Dear Philip:

RE: AQUATIC HALL OF FAME AND MUSUEM OF CANADA INC. AND PAN AM POOL BUILDING - SWIMMING ART AND MEMORABILIA COLLECTION; PROPOSED TERMS AND CONDITION FOR A FACILITY USE AGREEMENT AND REQUEST FOR APPROVAL TO COMPLETE INTERIOR IMPROVEMENTS
FILE: 2320/A V5 (PLEASE QUOTE WHEN REPLYING)

This is in response to your letter dated November 15, 2004, your memorandum dated January 10, 2005 and our meetings on January 11, 2005 and February 10, 2005, relative to the above referenced matters.

Based on our meetings and correspondence, I have prepared a Departmental response to the three issue areas for your review and consideration. I understand that you will review the attached in conjunction with the appropriate Aquatic Hall of Fame and Museum Inc. (AHFM) representatives and provide a response back to the Planning, Property and Development Department at your earliest convenience.

1. Swimming Art and Memorabilia Collection:

As discussed, the Planning, Property and Development Department is preparing an administrative report to deal with the "Collection" issue and to seek Council direction in this regard. The Department intends to communicate the AHFM position as follows:

- Since 1967, AHFM has been developing and displaying the "Collection" at the Pan Am Pool Building;

- AHFM believes that the City agreed to be the Owner of the "Collection" and would extend its insurance coverage to the "Collection" based on conversations with former Mayor Juba;

- AHFM is prepared to execute a Bill of Sale to document the ownership of the "Collection";

- AHFM would agree to remain responsible for the curatorial functions associated with the "Collection" and to provide appropriate display cases and other display equipment as may be necessary and would not require the City to be responsible for any degradation to the "Collection" as a result of being located within an indoor swimming pool environment; and,

- AHFM wants the City to be the owner of the "Collection" subject to a reversionary right in favour of the AHFM should the Museum cease to exist, and, to agree to provide insurance coverage for same.

Would you please confirm AHFM concurrence, in writing, to the above.

2. Modified Facility Use Agreement:

The Planning, Property and Development Department intends to include proposed terms and conditions for a Facility Use Agreement within the aforementioned administrative report. The proposed terms would cover (1) the AHFM use of the hallways and corridors within the Pan Am Pool Building to display the "Collection", (2) the use of the addition for the display of the "Collection", the holding of receptions and special events (3) the use of the Poseidon Room for meetings, and (4) the use of the Work Room for AHFM curatorial purposes.

The Planning, Property and Development Department has reviewed the 28 proposed terms and the 7 areas of difference as highlighted in your memorandum dated January 10, 2005, a copy of which is attached. As discussed, it was proposed that the (7) seven areas be resolved as follows:

- In clause 1(b), the City originally proposed that the User protect and indemnify the City in 1(b) as follows:

  "from all or any loss or damage to the Facility or to any property of the City used in conjunction with the Facility"

  AHFM responded by requesting and amendment as follows:

  "from all or any loss or damage to the Facility or to any property of the City used in conjunction with the Facility provided that it is willfully caused by the User"

The standard indemnification clause is seeking protection from the User from all or any loss or damage to the Facility or to any property of the City used in conjunction with the Facility regardless of whether it is willful or not. As such, the Department is seeking the concurrence of the AHFM to not request an amendment to the current wording.

- In clause (4), the City originally proposed that:

  "The User provide a plan for the maintenance and display of the swimming and art memorabilia to the Director of Public Works and if required, to make any revisions or, modifications to such plan."

  AHFM responded by requesting and amendment as follows:

  > "The User provide a plan for the maintenance by the City for the display of the swimming and art memorabilia to the Director of Public Works and if required, to make any revisions or, modifications to such plan in consultation with the Director"

  The City responded by deferring the matter and linking same to the receipt of a business plan in support of establishing a Museum.

  Based on our discussions, it was clarified that the AHFM is of the opinion that it is already operating a Museum at the Pan Am Pool and that it simply wanted to add the addition to the existing operation. As such, the following amendment is proposed:

  > "The User provide a plan for the maintenance and display of the swimming and art memorabilia to the Director of Public Works and if required, to make any revisions or, modifications to such plan in consultation with the Director of Public Works."

- In clause (6), the City typically restricts the User from providing any food catering service or approving any advertising in the Facility without the approval of the Director.

  AHFM requested that Clause 6 be amended as follows:

  > "d) The Facility is not to be used for any catering purposes excepting events hosted by the AHF of Canada.
  >
  > e) Advertising at the Facility with the exception of the Aquatic Hall of Fame of Canada"

  The City responded that it did not agree with the requested amendments and indicated that each request would need to be approved on a case-by-case basis.

this Agreement (i.e. preparation, clean up, maintenance, replacement, repairs), excluding those costs directly associated with the Winnipeg School Division use of the Work Room."

In clause 12, the standard term is as follows:

"That any agent or employee of the City shall at all reasonable times be entitled to enter upon and inspect the Facility and make any alterations, repairs, or additions as deemed necessary by the Community Services Department".

AHFM requested the following amendment:

"That any agent or employee of the City shall at all reasonable times be entitled to enter upon and inspect the Facility and make any alterations, repairs, or additions as deemed necessary by the Community Services Department after consultation with the User".

The City maintained that it needed this clause; however, it acknowledged that prior to undertaking any alterations, repairs or additions, that the Director would attempt to discuss and review same with the AHFM excepting where required for emergency purposes.

Based on our discussions, the AHFM concern relates to the City substantially altering the completed interior improvements. As such, an amendment is proposed as follows:

"That any agent or employee of the City shall at all reasonable times be entitled to enter upon and inspect the Facility and make any alterations, repairs, or additions as deemed necessary by the Community Services Department provided that same does not substantially alter the interior improvements to be constructed."

In clause 19, the standard term is as follows:

"That the Agreement shall be considered renewed each succeeding year unless otherwise cancelled by either party upon (90) ninety days notice."

AHFM requested the following amendment:

"That the Agreement shall be considered renewed each succeeding year unless otherwise cancelled, after consultation, by either party upon (90) ninety days notice."

Based on our discussions, the Department better understands the AHFM position and is proposing an amendment as follows:

"That the Agreement shall be considered renewed each succeeding year unless otherwise cancelled by either party upon (90) ninety days notice on the

understanding that the User may appeal the City's decision to cancel the Agreement to the Chief Administrative Officer of the City whose decision shall be final and binding"

In clause 20, the City agreed to amend 20(a) but did not agree with the proposed amendment to 20(b) as follows:

" Provided that if the User obtains by promotion the rental of the Facility, then the User shall receive ½ of said rental fees."

Based on our discussions, the Department is prepared to forward the requested amendment for Council's consideration.

With respect to clauses 27 and 28 as referenced in the attached proposed terms and conditions, my understanding is that the AHFM is willing to support the ongoing occupancy of the Winnipeg School Division use of the workroom. AHFM does not however support the occupancy of the Winnipeg Indoor Lawn Bowls use because such use is not compatible with its concept. AHFM would be prepared to support the occupancy for a limited timeframe until the Lawn Bowls use is relocated. Moreover, it was suggested that perhaps the area could be programmed for less obtrusive recreational uses such as aerobics and art classes to be determined in consultation with the Director of Community Services.

I trust that the above completes the discussion regarding the proposed terms and conditions of the Modified Facility Use Agreement and that you will find same satisfactory. Please review and if in agreement, please indicate same in writing.

Please note that the above referenced amendments have not been discussed with the Public Works and Community Services Departments. Upon receipt of your response, the Department will solicit their positions and incorporate into the administrative report.

3. Proposed Interior Improvements, Cost Estimate, Funding and Project Timing:

The Planning, Property and Development Department understands that the AHFM wishes to complete certain interior improvements within the western addition to the Pan Am Pool Building. These improvements are outlined in the attached Misc. Plan 11927 and involve the construction of the Poseidon Room and Work Rooms and the installation of flooring throughout the entire addition. This Plan does not include the proposed revisions to the Work Room to accommodate the storage of indoor lawn bowling carpets.

AHFM's Architect has estimated the Project to cost $110,000.00. Could you please advise if the cost is still valid and whether the Project Architect is still under contract and able to implement the Project? As well, the AHFM previously confirmed funding in the amount of $110,000.00 to pay for the improvements. Could you please advise if the subject funds are still available and re-confirm the amount of available funding?

Considering the current Winnipeg School Division and Winnipeg Indoor Lawn Bowls uses, could you please provide a project schedule for the completion of the proposed works?

Upon the receipt of your responses to the above referenced matters, the Department will complete an administrative report and forward same to the appropriate Committee's of Council for consideration and decision. Your cooperation along with Mr. Baird's earlier efforts in bringing this matter to a conclusion is appreciated and I look forward to receiving your favorable consideration to the above.

THE SUBJECT PROPOSAL AND PROPOSED TERMS AND CONDITIONS FOR A MODIFIED FACILITY USE AGREEMENT ARE SUBJECT TO COUNCIL APPROVAL AND TO THE CITY SOLICTOR AS TO FORM

Yours sincerely,

D. Armstrong,
Senior Negotiator

DJA/dja

Encl.

cc: I. McKay, Senior Manager of Operations
R.Klassen, Manager of Real Estate
W.Bollman, Supervisor of Property Management
Mr. V.Baird, President, Aquatic Hall of Fame and Museum of Canada Inc.

PFC to DA, Jan. 10, 05 1

AHFC

Memo

To: Don Armstrong, Senior Negotiator, Planning, Property and Development

From: Philip Clark, Vice President, Aquatic Hall of Fame and Museum of Canada, Inc.

Date: 1/27/2005

Re: Outstanding Issues – Facility Use Agreement

As part of the ongoing mandate to attempt to get the outstanding differences clarified I am pleased to note that you:

1) Are prepared to submit a report to Council recommending formalization of the ownership of the Collection;
2) Are prepared to recommend a Facilities Use Agreement based largely on correspondence between your self and Vaughan Baird between May 30th and July 7th 2003.
3) Are prepare to recommend that a building permit be issued to include construction of the Poseidon Room, the Curator's office, as well as other internal improvements and finishings as outlined in numerous letters prior to May 30th.

I have spent a number of hours reviewing documents that pertain to point 2 above. The surprising conclusion is that by July 7th, 2003, we were within sight of a Facility Use Agreement. It was at this point that the City made an incomprehensible departure from the established procedure and introduced a recommendation that only the Poseidon Room be considered. This threw the entire process into limbo and has resulted in 18 months of further delay.

An analysis of the May 30th to July 7th 2003 period is based on seven documents:

May 30	Conditions of Use (Draft) Schedule "A" – 28 clauses	Don Armstrong to Vaughan Baird
June 2	Proposed amendments to: 1,2,4,6,8,11,12,14,15,18,19, 20, 27	Vaughan Baird to Don Armstrong
June 16	Follow up to June 2. Requesting consultation with the AHF in future events like Pan Am Games to avoid unilateral removal of objets d'art	Vauhan Baird to Harry Finnigan and Don Armstrong
June 25	City response to June 2 and 16 letters. Accepting some amendments to May 30, and rejecting others.	Don Armstrong to Vaughan Baird
June 30	Response to June 25	Vaughan Baird to Don Armstrong and Harry Finnigan
July 4	Response to above and July 4th meeting. Requests letter of value regarding the collection and highlights and highlights differing opinions on the Curatorial Position. 3 new clauses added by the City	Don Armstrong to Vaughan Baird
July 7	Upon correction of typos, approval of pages 4-10 of the Terms and Conditions for the Facility Use Agreement Minor corrections suggested to the "Whereas" section with a request for further looks as security	Vaughan Baird to Harry Finnigan and S. Polet

1

In order to more clearly see any outstanding differences on the Terms and References the following table represents the 28 clauses of the Draft Terms to May 30th, 2003. Shaded areas still represent differences.

	AHF AMENDMENTS	CITY REPONSES
1	[6.2] 1b) wished to add "provided it is willfully caused by the User"	[6.25] City disagrees with our amendment of the indemnification clause
2	[6.2] Since the City's clause was predicated on an absence of Collection ownership, the AHF responded that the City was to ensure all property which the AHF had transferred to the City for one dollar and which items became the sole property of the City. [1]	[6.25] 2b City adds request for inventory list and letter of value. AHF agree to maintain and siplay the collection. City not be responsible for replacement or loss due to deterioration. That AHF enter into Bill of Sale or equivalent transfer document in form satisfactory to City Sollicitor. That a reversionary right in favour of the AHFM be included. (found on page 3)
3		
4	[6.2] "Again, based on the assumption that ownership of the Collection is with the City, it was suggested that the words "by the City" and "in consultation with the Director" be added.	[6.25] pp.3-4 Suggesting that AHF wishes to establish a museum. [2]
5		
6	[6.2] 6d) Re. catering: recommend changing "by the User" to "by the AHF of Canada." 6e) add to ban on advertising – "with the exception of the Aquatic Hall of Fame of Canada"	City disagrees with our proposed changes.
7		
8		Agreement with AHF [6.2]
9	NO CLAUSE NINE – forcing renumbering in any final version	
10		

[1] Herein lies one of the major misunderstandings. For more that 35 years the AHF had worked on the understanding that ownership of the Collection had always been in the hands of the City. It was the City, in this latest round of negotiations, that raised the issue of formalisation.

[2] This is a source of misunderstanding. The AHF has been an established and incorporated entity since 1967. The intent of the present negotiations is no to establish anything but to agree as to how the Royal Gallery may be used as an extension of an existing museum.

11	[6.2] Added "to the surrender" and "subject to the proviso of paragraph 27"	City agrees with point one, disagrees with point 2
12	[6.2] Wish to add: "after consultation with the User."	City maintains it has a right to make any alterations with no need to consult with the User. [4]
13		
14		Agree
15		Agree
16		
17		
18	[6.2] Add "receptions"	Agree
19	[6.2] Replace " shall be renewed" by "shall be considered removed"; add the words "after consultation"	Disagree [5]
20	[6.2] 6a) Add: Subject to the proviso the User shall promote the rental of the Royal Gallery for displays and receptions and reservations will be made through the appropriate authority of programs and events to be held at the Facility.	Agree with 6a)
	6b) Add Providd that if the User obtains by promotion the rental of the Facility, the User shall receive ½ of said rental fee.	Disagree with request for revenue sharing at this time, but prepared to discuss later in light of a business plan.
21		
22		
23		
24		
25		
26		

[3] Given that the City has contracted this space to other parties, the AHF alone should not be held responsible for the "acceptable condition" clause.

[4] I have never understood the City's opposition to consulting with its Users. Nowhere here is a veto mentioned. Simply common decent coutesy.

[5] See above – once again one might think of Friendly Manitoba and dictatorial Winnipeg. The need to consult does not impose vetoes – it merely makes for more harmonious decisions.

27	[6.2] (New addition) If the City no longer wishes to maintain the Aquatic Hall of Fame of Canada then all property and items originally transferred to the City, shall be returned by(sic) to he Aquatic Hall of Fame and Museum of Cfanada, Inc. for the total sum of $1.00 for disposal.	
27	NEW – not in previous City Proposal	[5.30 revised] That the AHF recognizes arrangements made with Winnipeg 1 School Division
28	NEW – not in previous City Proposal	That the AHF recognizes arrangements made with Winnipeg Lawn Bowls Club
29	NEW – not in previous City Proposal but suggested by Vaughan Baird [6.2)	That if a major aquatic event is planned in the future, the Directory of Community Services would concult with the AHF regarding objets d'art oon display

On June 30, Vaughan Baird replied in detail to these above points. On July 4th was circulated a document entitled Conditions for Use (Draft) Schedule A, May 30th, Revised July4th., accompanied by 15 Whereas clauses as submitted by Vaughan Baird.

On July 7th Vaughan Baird responded with minor corrections, agreement to pages 4-10. Disagreement was expressed over the insurance clause (this clause will disappear automatically when the issue of the Collection ownership is formalized.

As can be seen, there were still a few details to be worked over a final time before both parties could sign. They were most manageable and well with negotiating range.

I would also hope that some mention could be made as to the priority access of the AHF to the Poseidon room form part of this general Facilities Use agreement.

I urge you therefore to issue a new draft of the May 30/Revised July 4 Facility Use Agreement for Vaughan Baird's view. Such a document should be predicated on the formalization of the Collection ownership issue you raised. Such a document should try and narrow the gaps in existing positions. We are beyond the introduction of substantive new proposals at this time.

This brings to an end our individual role of trying to bridge gaps between our principals. Once the Facility Use Agreement is mutually acceptable then the two priority issues of Collection and Facility Use will be resolved and there can be no further obstacle to issuance of the necessary building permit to complete the job.

SCHEDULE C

Schedule "A"(Revised December, 2005)

CONDITIONS OF USE

The User agrees and covenants as follows:

1. To protect and indemnify the City during the periods in which the User is using any portion of the Pan Am Pool (Facility) including the expansion to the west end of the Pool Building for User purposes:
   (a) in respect of any and all claims of any kind whatsoever arising out of any act or omission of the User or of any agent or employee of the User or arising out of or resulting from the use of the Facility;
   (b) from all or any loss or damage to the Facility or to any property of the City used in conjunction with the Facility.
2. (a) To maintain and keep in force during the term of this Agreement, a general liability insurance policy in respect of the use of the Facility named in the Agreement with:
      i) minimum limits of $2,000,000.00 inclusive;
      ii) the City of Winnipeg added as an additional named insured;
      iii) inclusion of a cross liability clause;
      iv) insurance coverage to be effective immediately upon the User taking possession of the Facility until such time as the Facility is surrendered to the City;
   (b) To maintain and keep in force during the term of this agreement, a contents policy in respect of the Facility named in the agreement for all contents.
3. That the rights granted to the User shall not be transferred or assigned in any way.
4. The User to provide a plan for the maintenance and display of the swimming and art memorabilia to the Director of Public Works and if required, to make any revisions or modifications to such plan in consultation with the Director of Public Works.
5. The City shall have the right at any time to eject from the Facility or refuse admittance to any person who, in the opinion of an employee of the City having the responsibility for the supervision of the Facility (Director of Community Services or an authorized designate), is creating a disturbance or behaving in an objectionable or unacceptable manner.
6. That the following as referenced in a), b), c), d) and e) is not permitted without prior written consent of the Community Services Department:
   (a) The consumption of liquor within the Facility. If approval is granted, an Occasional Permit must be obtained pursuant to the Liquor Control Act.
   (b) Constructing, erecting, or attaching or causing or permitting to be constructed, erected, or attached any device, fixture or other thing of any nature to any part of the Facility.
   (c) The sale or supply of food and/or refreshments at the Facility beyond four events per year.
   (d) The Facility is not to be used for general catering purposes excepting events hosted by the Aquatic Hall of Fame and Museum of Canada Inc.

(e) Advertising at the Facility is not permitted with the exception of sponsor advertising during the events hosted by the Aquatic Hall of Fame and Museum of Canada Inc. and the right to acknowledge financial contributions in a manner acceptable to the Director of Community Services.

7. Cancellation of this Agreement or any requests for changes by the User must be by written notice and delivered to the Director of Community Services not less than two weeks (unless otherwise stated) prior to the date on which the Facility becomes subject to this Agreement.

   If such notice is not provided:

   (a) no refund or any sum paid towards this Agreement shall be repaid by the City;
   (b) the User will be assessed applicable user fees for returned bookings that cannot be reallocated.

8. To pay the City $1.00/ year for the use of the Facility.

9. That if the User fails to pay any monies required to be paid towards this Agreement at the time the monies are required to be paid, or if the User fails to comply with any conditions of this Agreement, the City may immediately terminate this Agreement and consequently, all rights of the User are also terminated.

10. To surrender the Facility to the City in acceptable condition upon the termination or expiration of this Agreement. The User is responsible for any additional costs, on the surrender, that may be incurred over and above the provisions outlined in this Agreement (i.e. preparation, clean-up, maintenance, replacement, repairs), excluding those costs directly associated with the Winnipeg School Division use of the Work Room.

11. That any agent or employee of the City shall at all reasonable times be entitled to enter upon and inspect the Facility and make any alterations, repairs, or additions as deemed necessary by the ~~Community Services Department~~ City provided that same does not substantially alter the improvements to be constructed.

12. The User will not undertake any renovations or improvements to the Gallery and Meeting Room areas without the written consent of the Director of Public Works.

13. The User shall be responsible to provide all furnishings it deems necessary within the North, Central and South Galleries and the Poseidon Room and Curator's Office.

14. At the request of the Director of Community Services, the User shall remove all chattels including equipment, displays, goods and belongings of the user from the Facility excepting improvements installed on-site on or before the termination of this Agreement. If the User fails or neglects to do so, the City may remove and store the same at the expense of the User without liability to the City for any loss or damage.

15. That the City is not responsible for any damage to or loss of any of the swimming art and memorabilia collection or belongings of the User brought into the Facility.

16. To abide by and conform to all by-laws, rules, and regulations of the City and all Provincial legislation relating to the occupancy and use of the Facility.

17. That the use of the Facility shall be limited to Aquatic Hall of Fame and Museum activities, receptions, programs and events only, and for no other purposes unless approved in writing by the Director of Community Services.

18. That the Agreement shall be renewed each succeeding year unless otherwise cancelled by either party upon (90) ninety days notice on the understanding that the User may appeal the City's decision to cancel the Agreement to the Chief Administrative Officer of the City whose decision shall be final and binding.

19. User shall:

    (a) promote the rental of the Poseidon Room and Galleries for displays and swimming receptions. Reservations will be made through the appropriate authority of programs and events to be held at the Facility.
    (b) the user shall receive ½ of rental fees generated through rentals as referenced in clause 19(a)

20. City to be responsible for building maintenance and cleaning.

21. Users, under the auspices of the Aquatic Hall of Fame and Museum of Canada, are to be responsible for all costs associated with hosting its activities including but not limited to preparing and cleaning the space used for such activities under separate Facility Use Agreements.

22. City to pay all utility and operating costs associated with the Facility.

23. City to provide for security of the Pan Am Pool Building.

24. If an unsafe condition exists at the Facility, the City at its sole option may close the facility until such time as corrective action is undertaken all to the satisfaction of the Director of Community Services.

25. The User shall:

    (a) ensure the access to the Facility is conducted in a careful manner in accordance with good industry standards and in compliance with the provisions of any applicable environmental, health or safety statutes, regulations, orders or directives of any government or governmental agency having jurisdiction over such operations;
    (b) ensure that all environmental contaminants are received, handled, used, stored, treated, shipped and disposed of in the manner required from time to time by applicable laws, by-laws, regulations, rules or requirements of all authorities having jurisdiction over the Facility or the Lessee;
    (c) not release into the environment, or deposit, discharge, place or dispose of, at, on or near the Facility, any dangerous goods as that term is defined in The Dangerous Goods Handling and Transportation Act, R.S.M. 1987, c D12, as amended, replaced or sustained from time to time;
    (d) comply with all applicable statutes, by-laws, ordinances and regulations pertaining to the use of the Facility as herein contemplated.

26. The User acknowledges that the City will be entering into an agreement with the Winnipeg School Division to use the Work Room during the school year between the hours of 8:00 AM and 12:00 Noon, Monday to Friday on an annual basis with a one year

cancellation provision and that during such times will not be available to the Aquatic Hall of Fame and Museum of Canada Inc. These dates and times are subject to change.

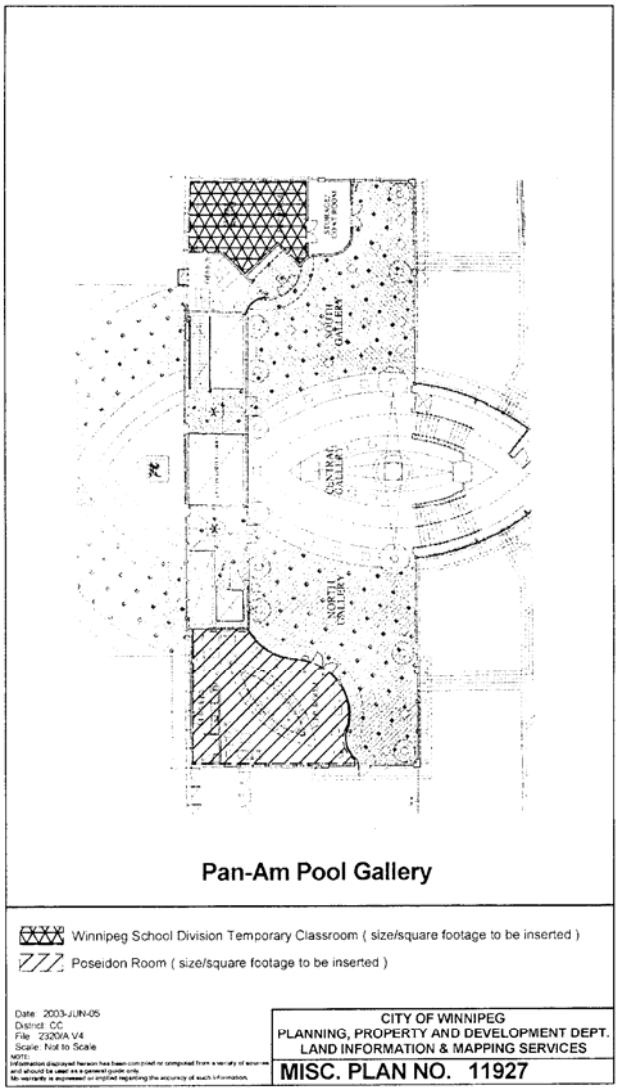
27. The User acknowledges that the City will be entering into a Facility Use Agreement with the Winnipeg Lawn Bowls Club to use the North, Central and South Galleries on Saturdays from 1:00 PM to 5:00 PM; Sunday 10:00 AM till 3:00 PM and Monday from 10:00 AM till 3:00 Pm all between October and April of each year and that during such times, the above space will not be available to the Aquatic Hall of Fame and Museum of Canada Inc. These dates and times are subject to change.

28. If a major Aquatic Event is planned for the Pan Am Pool in the future, the Director of Community Services would consult with the User regarding the objets d'art on disply at the time.

29. That following the completion of each season and in any event not later than December 1st of each year, the User shall provide the Aquatic Administrative Coordinator with a schedule of proposed activities, programs and events to be held at the facility by the Director of Community Services.

The Propose Terms and Conditions for a Modified Facility Use Agreement are subject to Council Approval and to the City Solicitor as to Form.

February 11, 2005 Page 12



SCHEDULE D

AQUATIC HALL OF FAME AND MUSEUM OF CANADA, INC.
La Galerie de la Renommée et le Musée Nautiques du Canada, Inc.

PAN-AM POOL / LA PISCINE PAN-AM / WINNIPEG
25 Poseidon Bay, Winnipeg, MB, R3M 3E4

Patron

Her Excellency
The Right Honorable
Adrienne Clarkson
C.C., C.M.M., C.D.
Governor General of Canada

Présidente d'honneur
Son Excellence
la très honorable
Adrienne Clarkson
C.C., C.M.M., C.D.
Gouverneure générale
du Canada

Honorary Chairperson
Président honoraire

His Worship
Son Honneur
Sam Katz

PRESIDENT/CHAIRMAN

V.L. Baird C.M., LL.D, Q.C.

Chairman Emeritus
Président emérite

Susan Thompson

Representatives
Représentants

J. Boddington (AB)
Faith Caeser (MAN)
Philip F. Clark Ph.D
D. Ellerby (MAN)
Nigri H. Kemp (NS)
Dr. W.S. Maddin (BC)
Margaret MacLennan (BC)
Janet Nutter (ONT)
Lynne Ritz (MAN)
Lawrence G. Tapp L.L.D. (BC)

Stephen Juba
(1967-1993)

Campaign Chairman
Président des Campagnes

Dr. Robert Thorlakson, OC

January 9, 2006

P.O. Box 300
Sainte-Agathe, Manitoba
R0G 1Y0

Tel/Fax: (204) 882-2494

Wayne A. Bollman, CPM
Supervisor of Property Management
2nd Floor – 65 Garry Street
Winnipeg, Manitoba
R3C 4K4

VIA FAX ONLY 1 (204) 944-8476

Dear Sir:

Re: AHFM of Canada – File 2320/AV5
Proposal Modified FUA

A. This is to acknowledge receipt of your Schedule "A" (Revised December, 2005) Conditions of Use on January 4/06 at Sainte-Agathe.

Previously, we have used fax or myself delivering to your office. You want a written response within 7 days while you have one month to get the modified Facility Use Agreement to us. It is not an agreement, it is described as Schedule "A". There is no Preamble or Agreement.

B. For weeks it has been described as a 'modified' Facility Use Agreement which according to the dictionary terms: "means to reduce in extent or degree: made moderate". The 29 sections to the Schedule remain.

C. Planning has had this matter since Aug. 2002 and Don Armstrong worked on the sections with myself and an Agreement was executed by the writer, Aug 11/03.

D. The Whereases alone, on the demand by Don Armstrong took hours of going through the files from 1967 onward and is important to be included in any agreement arrived at so the future will know the past.

With regard to Schedule "A" (Revised December 2005) Conditions of Use, we respond as follows and when I refer to same as Facility Use Agreement (FUA), I refer to the Aug 11/03 Agreement.

Your proposals contain 28 provisions, which basically were in the FUA signed by the writer Aug. 11/03. We concur with the following changes.

Section 11 "... the Directors will discuss and review same with the User." This should be reinserted.

Section 15 We do not agree. For the 38 years we have followed the policy established by Mayor Stephen Juba that the items are 'self-insured' by The City. In the past 6 to 8 items were stolen or vandalized and The City paid for same a total of under $1,000. This section should be deleted.

Section 23 Pan-Am title is hyphenated, otherwise OK

Section 26 In a corporate title, there is a comma after Canada, Inc.

Section 27 As previously, we object to this as it is contrary to what the funds were given for and contrary to the Executive Policy Committee's decision of June 17/98 as in our previous FUA Aug 11/03 we had placed the following in section 26 and it was agreed at the time of discussion with Don Armstrong:

27 'The User acknowledges that The City has an agreement with the Winnipeg Lawn Bowls Club to use the North, Central and South Gallery Space on Saturdays from 1:00 p.m. to 5:00 p.m.; Sundays 10:00 a.m. till 3:00 p.m. and Mondays from 10:00 a.m. till 3:00 p.m. all between October and April of each year and that during such times, the above space will not be available to the Aquatic Hall of Fame and Museum of Canada, Inc. These dates and times are subject to change.'

It is noted that the User was opposed to this agreement with the Winnipeg Lawn Bowls Club and requested it be discontinued as it was contrary to what the Government of Canada and the Government of Manitoba gave the funds, (1/3 each) that it 'be a dedicated display gallery for the Aquatic Hall of Fame of Canada and would be designed in a manner to allow for receptions and gatherings.'

Our previous 29 to 38 sections of the FUA have been left out and there is no reason why it should be deleted for it spells out the facts as they have been in the past 38 years. We have changed the numbers to conform.

30. The City along with the Government of Canada and the Province of Manitoba having approved the proposed addition, called The Royal Gallery, which is a dedicated Aquatic Hall of Fame of Canada display gallery and also designed to allow for public receptions. The Royal Gallery, or portions thereof, may be

rented by the City based on the current fees and charges per square foot. The area, security and cleanup shall be factored into the rental rates. All bookings are to be rented through the City. A reservation book shall be kept at the front desk, control desk of the Pool. Any events taking place outside normal building operation hours shall include a security guard in the rental contract.

31. A named representative from the User shall discuss with the Pool Supervisor of the Pan-Am Pool on room bookings and usage of space on an as required basis. A Schedule of Events is to be submitted for consideration by both the AHF of Canada and the City.

32. The City agrees to provide the standard level of janitorial service to the facility, i.e., clean floors, change light bulbs, etc. and to keep the electrical services properly functioning.

33. The User agrees to provide for the setting up and proper housing and maintenance of showcases and artifacts brought into the museum, and throughout the pool.

34. Other than a recognized AHF of Canada event or those under the auspice of the AHF of Canada or swimming, diving, synchronized swimming and water polo, no rental shall be payable. All rentals shall go through the City. The rental fee shall be split between the City and the AHF of Canada.

35. The City shall cover all utility costs associated with the museum.

36. The parties agree that the AHF of Canada has transferred all items to the City and if any damage is done to the said items or their cases, they will be covered by the in-house Insurance of the City. If the City no longer wishes to maintain the AHF of Canada, the property of all items will be turned over to the AHF of Canada for the sum of $1.00.

37. Any new construction/renovation shall receive City approval.

38. Dispute resolution – one member from User and one City representative, and the Manager, Community Development & Recreation Services Division. Initial resolutions to be attempted to be resolved by the named Representative and the Pool Supervisor

39. The Agreement may be amended from time to time on the consent of both Parties.

E. We submit that Councillor Benham reconvene a meeting to expedite the finalization of this matter.

Respectfully submitted.

Vaughan L. Baird

Vaughan L. Baird
President / Chairman

c.c. Councillor Vadel Benham

SCHEDULE E

RECEIVED
CITY OF WINNIPEG
AUG 27 2003
PLANNING, PROPERTY & DEVELOPMENT DEPARTMENT

THIS INDENTURE made in duplicate the 25th day of August, 2003.

BETWEEN:

AQUATIC HALL OF FAME AND MUSEUM OF CANADA, INC.
La Galerie de la Renommée et le Musée Nautiques du Canada, Inc.,
(hereinafter called the Bargainor),

OF THE FIRST PART,

- and -

THE CITY OF WINNIPEG,
(hereinafter called the Bargainee),

OF THE SECOND PART.

WHEREAS the Bargainor is possessed of the goods and chattels hereinafter set forth, cribed and enumerated, and has contracted and agreed with the Bargainee for the absolute sale to the Bargainee of the same, for the sum of One Dollar ($1.00).

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of One Dollar of lawful money of Canada, paid by the Bargainee to the Bargainor at or before the sealing and delivery of these presents (the receipt whereof is hereby by him acknowledged), the Bargainor HAS BARGAINED, sold, assigned, transferred, and set over, and by these presents DOES BARGAIN, sell, assigned, transfer, and set over unto the Bargainee ALL THOSE the said goods and chattels, hereinafter described, that is to say:

As per attached schedule "A".

all of which said goods and chattels are now in the possession of the Bargainor and are situate, lying and being in, on, upon or about:

AND all the right, title, interest, property, claim and demand whatsoever of the Bargainor f, in, to and out of the same, and every part thereof:

TO HAVE AND TO HOLD the said hereinbefore assigned goods and chattels and every one of them and every part thereof with the appurtenances and all the right, title and interest of the Bargainor thereto and therein, as aforesaid, unto and to the use of the Bargainee, to and for his sole and only use FOREVER.

AND the Bargainor doth hereby COVENANT, PROMISE and AGREE with the Bargainee in the manner following, that is to say: THAT the Bargainor is now rightfully and absolutely possessed of and entitled to the said hereby assigned goods and chattels, and every one of them, and every part thereof; AND that the Bargainor now has good right to assign the same unto the Bargainee in manner aforesaid, and according to the true intent and meaning of these presents; AND that the Bargainee shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, possess and enjoy the said hereby assigned goods and chattels, and every of them, and every part thereof to and for his own use and benefit, without hindrance, interruption, of any manner molestation, claim or demand whatsoever, of, from or by the Bargainor or any person or persons whomsoever; AND that free and clear, and freely and absolutely released and discharged, or otherwise (at the cost of the Bargainor) effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges and encumbrances whatsoever.

AND MOREOVER that the Bargainor and all persons rightfully claiming or to claim any estate, right, title, or interest of, in or to the said hereby assigned goods and chattels, and every of them, and every part thereof, shall and will from time to time and at all times hereafter upon every reasonable

request of the Bargainee, but at the cost and charges of the Bargainor, make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectually assigning and assuring the said hereby assigned goods and chattels unto the Bargainee, in manner aforesaid, and according to the true intent and meaning of these Presents as by the Bargainee or counsel shall be reasonably advised or required.

THE terms Bargainor and Bargainee in this Indenture shall include the Executors, Administrators, successors and assigns of each of them and that wherever the singular and masculine pronouns are used throughout this Indenture the same shall be construed as meaning the plural or feminine or neuter where the context or the parties so require.

IN WITNESS WHEREOF have hereunto affixed set their hands and seals, this 25th day of August, 2003.

AQUATIC HALL OF FAME AND MUSEUM OF CANADA, INC.

Per: Vaughan L Baird
VAUGHAN L. BAIRD, QC., President/Chairman

Per: Lynne Ritz
LYNNE RITZ, Secretary

Per: _____
THE CITY OF WINNIPEG

CANADA)
PROVINCE OF MANITOBA)
TO WIT:)

I, , of the City of Winnipeg, in Manitoba, ,

The Bargainee in the foregoing Bill of Sale named, make oath and say:

1. THAT I am aware of all the circumstances connected with the said Bill of Sale and have a personal knowledge of the facts deposed to.

2. THAT the said Bill of Sale was executed in good faith and for good consideration as set forth in the said Bill of Sale, and not for the purpose of protecting the chattels therein mentioned against the creditors of , the Bargainor or for the purpose of preventing such creditors from recovering any claims that they have against the said Bargainor.

SWORN BEFORE ME at the City of Winnipeg, in the Province of Manitoba, this day of , 2003.

_____

_____

_____

CANADA)
PROVINCE OF MANITOBA)
TO WIT:)

I, Vaughan L. Baird, President and I, Lynne Ritz, Secretary, of AQUATIC HALL OF FAME AND MUSEUM OF CANADA, INC.,

the within named Bargainor do solemnly declare:

1. Our names are correctly spelled in the within Bill of Sale, and we are correctly described therein. The Corporation is now absolutely, and in its sole and exclusive right, the owner and possessor of the goods and chattels mentioned and described in the within Bill of Sale.

2. THE SAID GOODS and chattels are correctly described in the said Bill of sale.

3. THERE IS NO MORTGAGE hypothec, lien or claim of any kind or nature adverse to its rights, of, upon or against said goods and chattels, or any portion of them, save the within Bill of Sale, and no taxes or rent are due on the said lands or premises on which said goods and chattels, or any of them, are situate.

4. THERE IS NO JUDGMENT or execution of any kind now in force or extant against me.

5. WE ARE OVER EIGHTEEN years of age.

I MAKE the above statements for the express purpose of inducing the within named Bargainee to complete the purchase of the said goods and chattels.

AND WE MAKE this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the "Canada Evidence Act".

SWORN BEFORE ME at the City of Winnipeg, in the Province of Manitoba, this 25th day of August, 2003.

AQUATIC HALL OF FAME AND MUSEUM OF CANADA, INC.

Vaughan L. Baird

Vaughan L. Baird, QC., President

Lynne Ritz

Lynne Ritz, Secretary

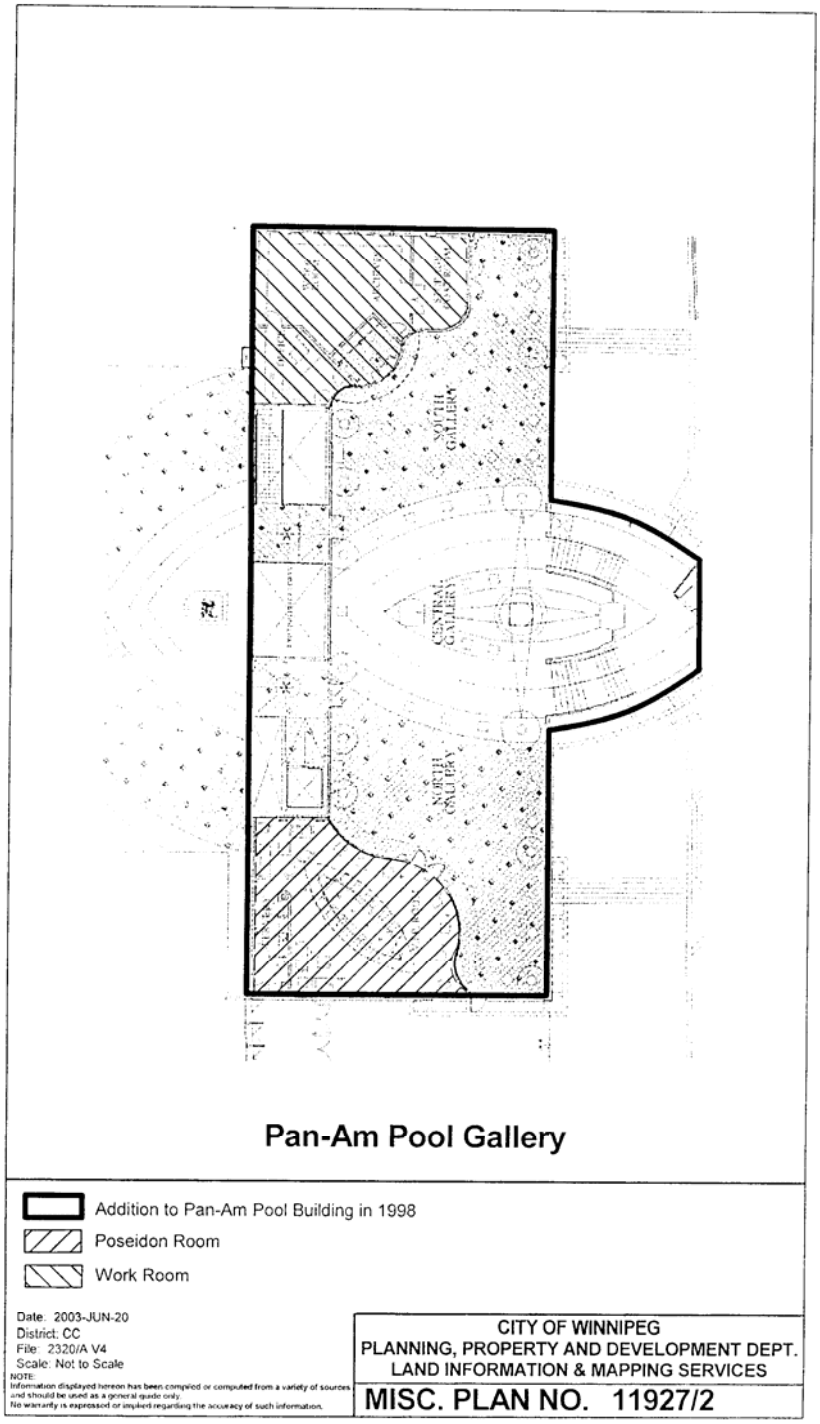
A [illegible] ENTITLED TO PRACTICE

Schedule "A"

The Bargainor transfers all the Aquatic memorabilia and art belonging to the AQUATIC HALL OF FAME AND MUSEUM OF CANADA, INC., La Galerie de la Renommée et le Musée Nautiques du Canada, Inc., on display at the Pan-Am Pool, Winnipeg including the celebrated ""Cutty Sark Collection" to the City of Winnipeg. There is a list done by the Government of Canada on computer printout on file at the said Pan-Am Pool located at 25 Poseidon Bay, Winnipeg, Manitoba, along with written notations.

Subject to the proviso that should the City of Winnipeg no longer want the AQUATIC HALL OF FAME AND MUSEUM OF CANADA, INC., La Galerie de la Renommée et le Musée Nautiques du Canada, Inc., then all the said property shall be returned to the AQUATIC HALL OF FAME AND MUSEUM OF CANADA, INC., La Galerie de la Renommée et le Musée Nautiques du Canada, Inc., for $1.00.

SCHEDULE F


SOUTH GALLERY
CENTRAL GALLERY
NORTH GALLERY
Pan-Am Pool Gallery
Addition to Pan-Am Pool Building in 1998
Poseidon Room
Work Room
Date: 2003-JUN-20
District: CC
File: 2320/A V4
Scale: Not to Scale
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only.
No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11927/2