Meeting No. 16 (continued)

Council Chamber
Winnipeg, October 22, 1997

THIS PORTION CONTAINS THE ATTACHMENTS

FOR MEETING NO. 16

1113 - Schedule "A" referred to in Clause 3 of the Report of the Committee on Planning and Community Se

REFERENCE: FILE NO. _____

THE CITY OF WINNIPEG

BY-LAW NO. _____ /97

A By-law of **THE CITY OF WINNIPEG** for the enactment of zoning text changes to By-law No. 6400/94, being The City of Winnipeg Zoning By-law.

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

1. Table 710(1) is amended by adding the following row immediately before the row, "AMUSEMENT ENTERPRISE, OUTDOOR":

AMUSEMENT ENTERPRISE, LICENSED as a sports facility	-	-	C	C	C	C	C	-	14

DONE AND PASSED, in Council assembled, this day of A.D. 1997.

_____
Mayor

_____
City Clerk

Certified as to details:

_____
for Director of Land and
Development Services Department

Certified as to form:

_____
for City Solicitor/Manager
of Legal Services

File No.: DAZ 229/96 JMF

Schedule "B" referred to in Clause 3 of the Report of the Committee on Planning and Community Services dated September 30, 1997

REFERENCE: FILE NO._____

THE CITY OF WINNIPEG

BY-LAW NO._____/97

A By-law of **THE CITY OF WINNIPEG** for the enactment of zoning text changes to By-law No. 4800/88 being The Downtown Winnipeg Zoning By-law.

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Part 3 of By-law No. 4800/88 is hereby amended as follows:

1. Subsection 321(3) is amended by relettering clauses (a) through (r) as clauses (b) through (s) and by adding the following before clause (b):

"(a) amusement enterprise, licensed as a sports facility;"

2. Subsection 322(3) is amended by relettering clauses (a) through (s) as clauses (b) through (t) and by adding the following before clause (b):

"(a) amusement enterprise, licensed as a sports facility;"

3. Subsection 323(3) is amended by relettering clauses (a) through (t) as clauses (b) through (u) and by adding the following before clause (b):

"(a) amusement enterprise, licensed as a sports facility;"

4. Subsection 324(3) is amended by relettering clauses (a) through (o)

Schedule "B" referred to in Clause 3 of the Report of the Committee on Planning and Community Services dated September 30, 1997 (continued)

By-law No. /97 ..2 .

as clauses (b) through (p) and by adding the following before clause (b):

"(a) amusement enterprise, licensed as a sports facility;"

DONE AND PASSED, in Council assembled, this day of A.D. 1997.

_____
Mayor

_____
City Clerk

Certified as to details:

_____
for Director of Land and
Development Services Department

Certified as to form:

_____
for City Solicitor/Manager
of Legal Services

File No.: DAZ 204/95 JMF

1114 - Schedule “A” referred to in Clause 4 of the Report of the Committee on Planning and Community Services dated September 30, 1997

REFERENCE: FILE NO.

THE CITY OF WINNIPEG

BY-LAW NO. /97

A By-law of **THE CITY OF WINNIPEG** to enact amendments of a minor nature to its By-law No. 6400/94 being The Winnipeg Zoning By-law.

WHEREAS:

(a) By its By-law No. 6400/94 enacted January 26, 1995 THE CITY OF WINNIPEG consolidated under one by-law all existing regulations as they pertained to the City excepting only the area covered by By-law No. 4800/88 in respect of which the regulations under By-law 4800/88 continue to apply; and

(b) Certain errors and omissions in By-law No. 6400/94 as enacted have come to light as that by-law has been put to practical use; and

(c) In the opinion of Council the proposed corrections to By-law No. 6400/94 are of a minor nature and do not prejudice the rights of the public or any interested person,

NOW THEREFORE THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

1. By-law 6400/94 is amended by this by-law.

2. Section 210 is amended by adding the following definition in alphabetical order:

""**Accessory building, structure or use**" means a building, structure or use established or erected in conjunction with or subsequent to the establishment or erection of a principal building, structure or use approved under this by-law, and is subordinate or incidental to, and located on the same zoning lot, as a principal building, structure or use."

3. Column 3 of the table following clause 623(3)(a)(i) is amended by adding, ", minimum 484 sq. ft." after the number "880 sq. ft".

Schedule “A” referred to in Clause 4 of the Report of the Committee on Planning and Community Services dated September 30, 1997 (continued)

4. Subsection 1120(1) is amended by adding the following row to the table immediately following the text of the subsection:

"

8 feet by 23 feet	12	3.6	parallel

"

5.(1) The heading, "SIGNS, ACCESSORY" is added preceding subsection 1212(9).

5.(2) Subsection 1220(5) is repealed.

5.(3) Subsection 1250(1) is added preceding table 1250(1):

"1250(1) No sign shall be erected, accessory to any use, except as follows:"

5.(4) The heading, "SIGN REGULATIONS" is added preceding subsection 1250(1).

5.(5) Rows 3 and 4 of Column 3 of Table 1250(1) are repealed and the following is substituted:

"

8 feet above grade [(4)]
wall height

"

5.(6) Subsection 1250(2) is amended:

(a) in Footnote 1, by adding the words, "religious institutions and schools" before the words, "and public buildings".

(b) by adding the following Footnote:

"4 In the "R" and "PR" districts, the maximum height of free-standing identification signs for schools and community centres shall be 20 feet."

6. Subsection 1300(1) is repealed and the following is substituted:

"1300(1) For a new single or two-family dwelling or addition thereto within a street block or portion thereof, where the front yard required by the district regulations is at a variance with the existing front yards, the director shall establish a minimum required front yard for the new dwelling or addition thereto from the average of the existing front yards within that block or portion thereof, or from the average of the existing front yards of the two adjacent dwellings on either side of the new dwelling or addition thereto."

7. Subsection A20(1) of Appendix A is amended by striking out maps identified as "SHEET NUMBERS: 54, 55, 56, 57, 76, 86, 105" and substituting corrected maps, copies of which are attached hereto as Exhibit "1".

Schedule “A” referred to in Clause 4 of the Report of the Committee on Planning and Community Services dated September 30, 1997 (continued)

DONE AND PASSED, in Council assembled, this day of A.D. 1997.

_____
Mayor

_____
City Clerk

Certified as to details:

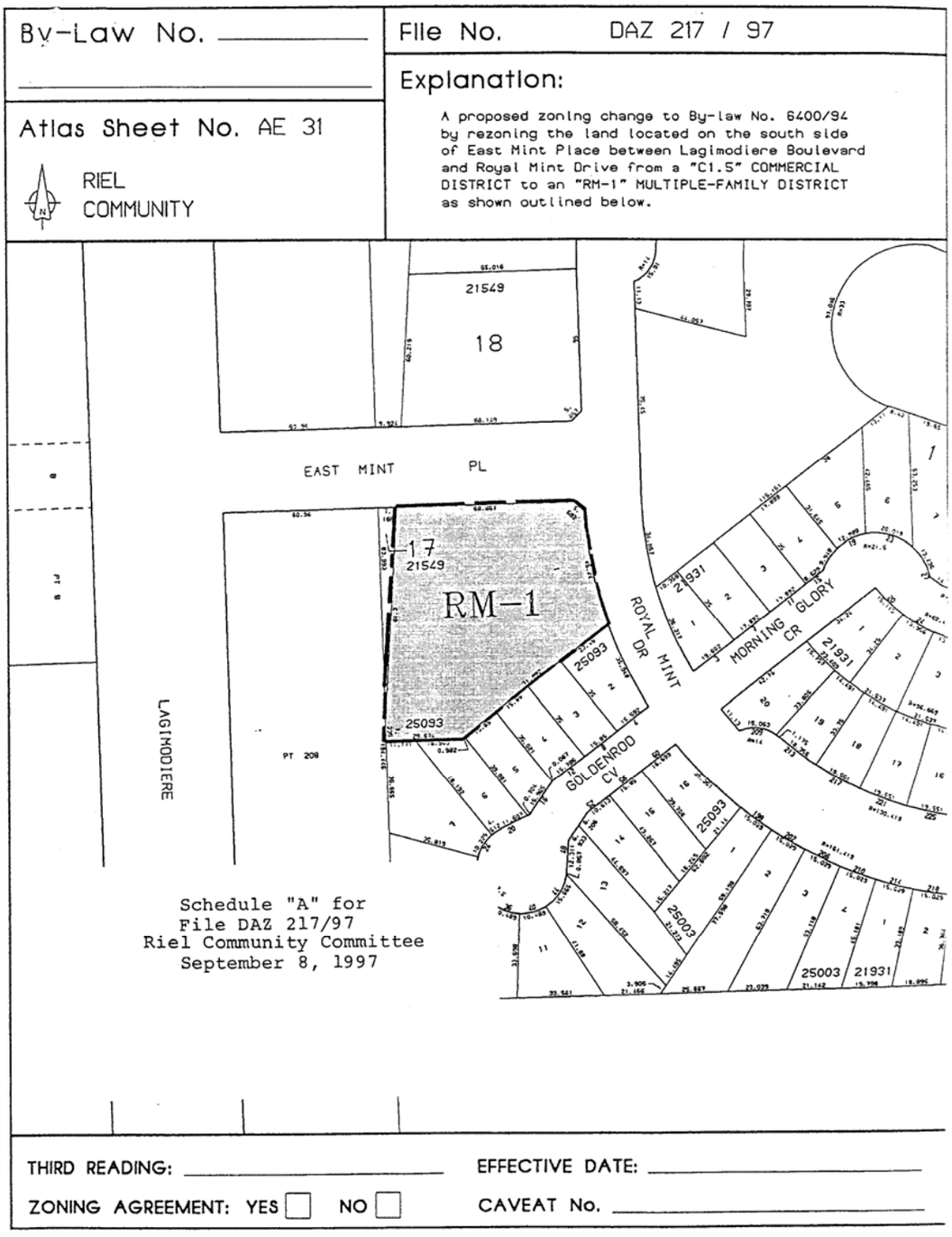
_____
for Director of Land and Development Services

Certified as to form:

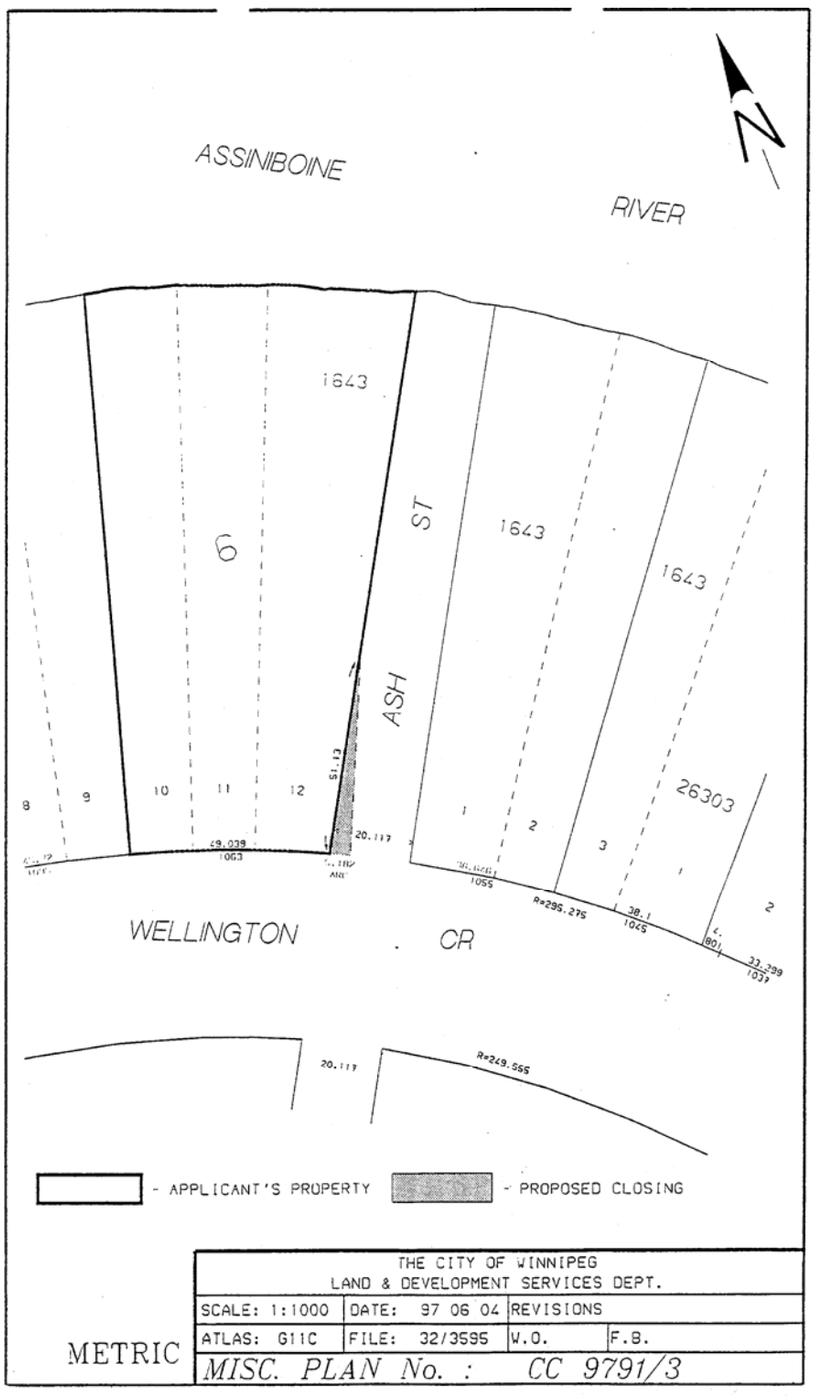
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for City Solicitor/Manager of Legal Services

File No. DAZ 209/94 JMF

1115 - Schedule “A” referred to in Clause 8 of the Report of the Committee on Planning and Community Services dated September 30, 1997



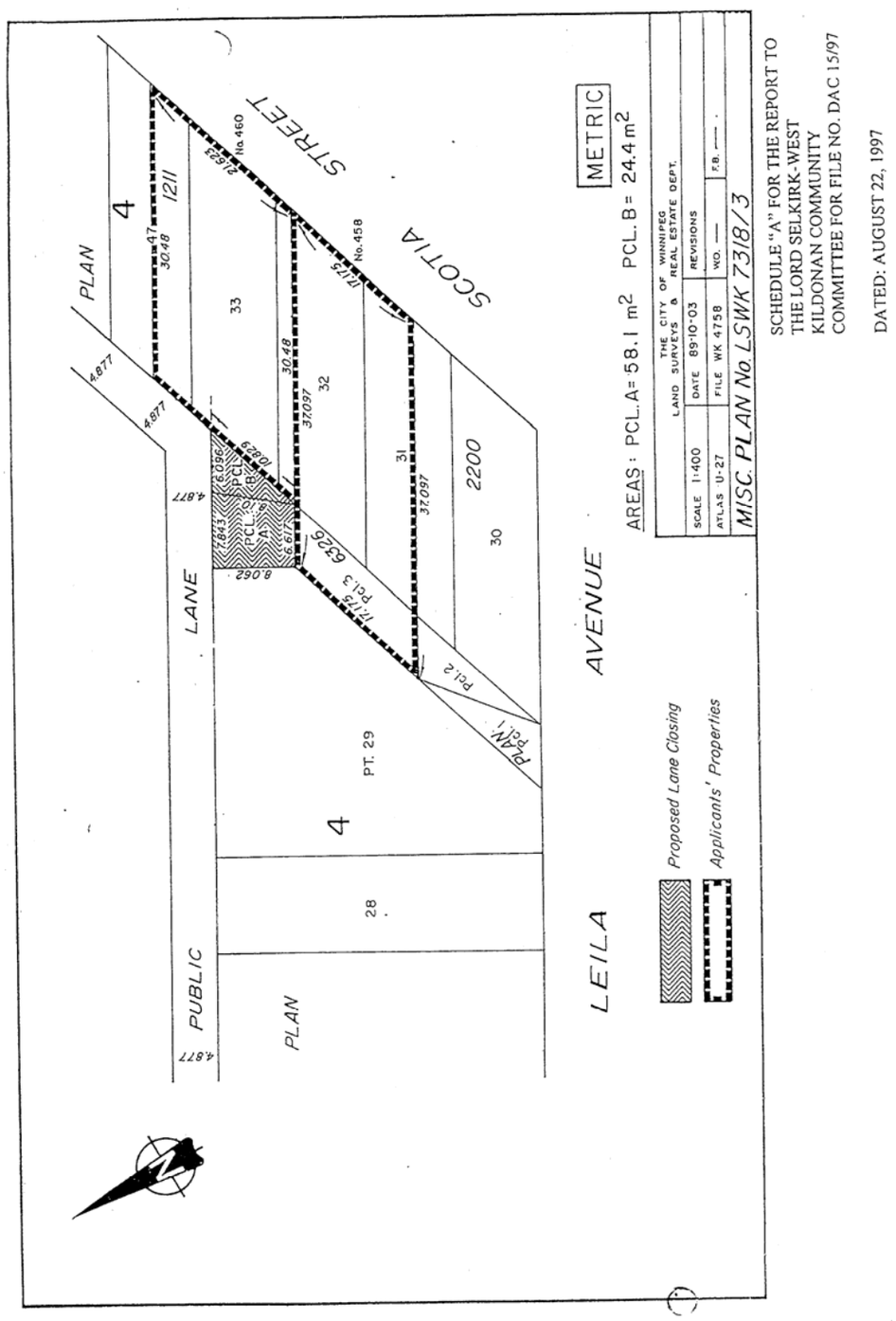
1116 - Schedule “A” referred to in Clause 11 of the Report of the Committee on Planning and Community Services dated September 30, 1997



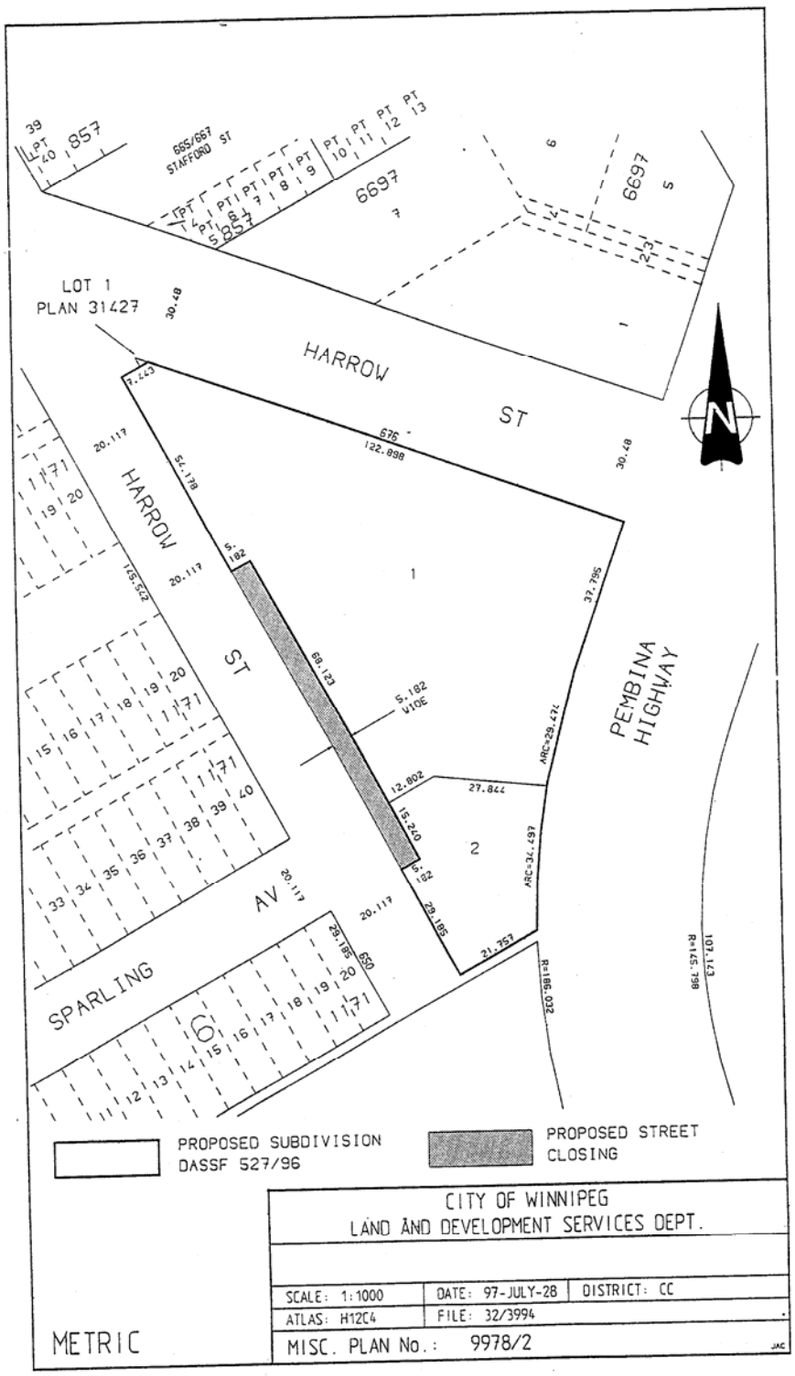
SCHEDULE "A" FOR THE REPORT TO THE CITY CENTRE COMMUNITY COMMITTEE FOR FILE NO. DAC 12/97

DATED: AUGUST 21, 1997

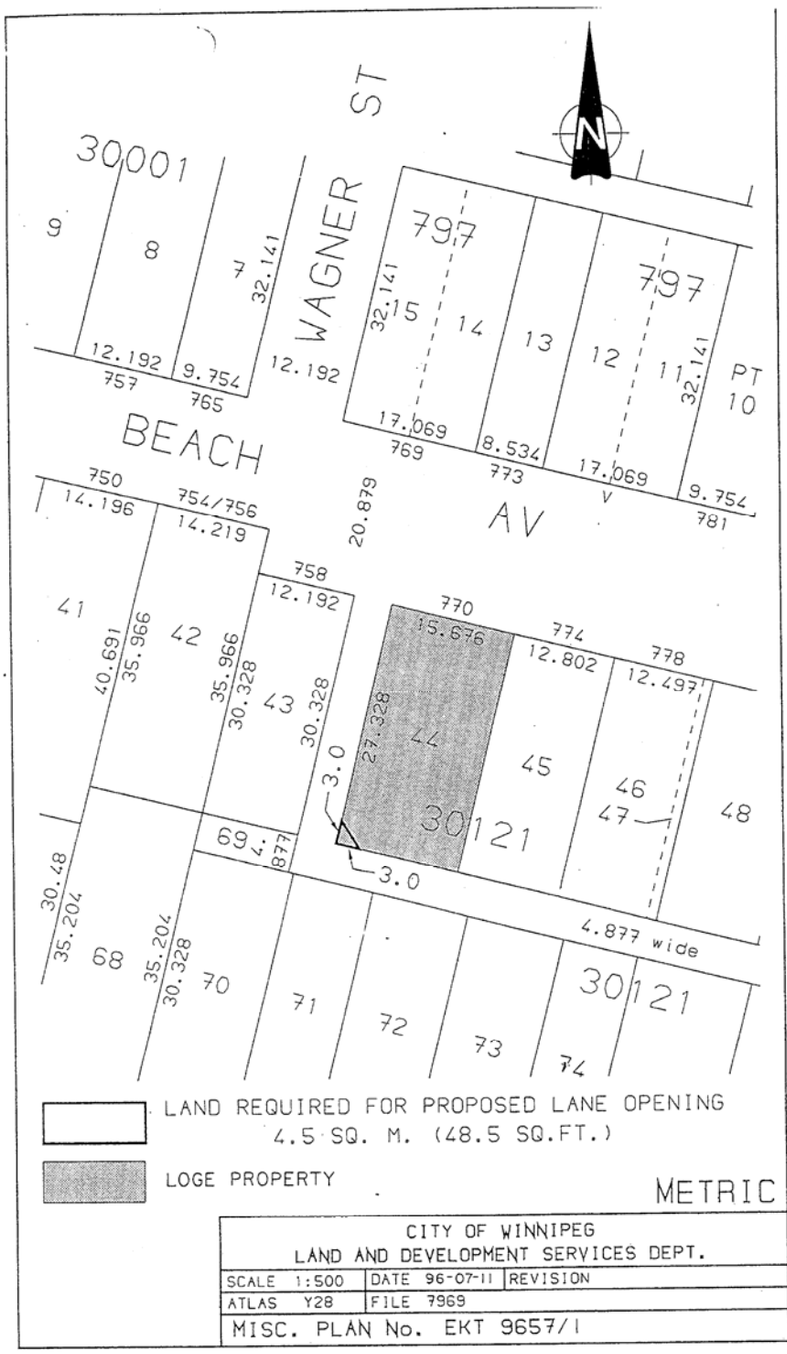
1117 - Schedule “A” referred to in Clause 12 of the Report of the Committee on Planning and Community Services dated September 30, 1997



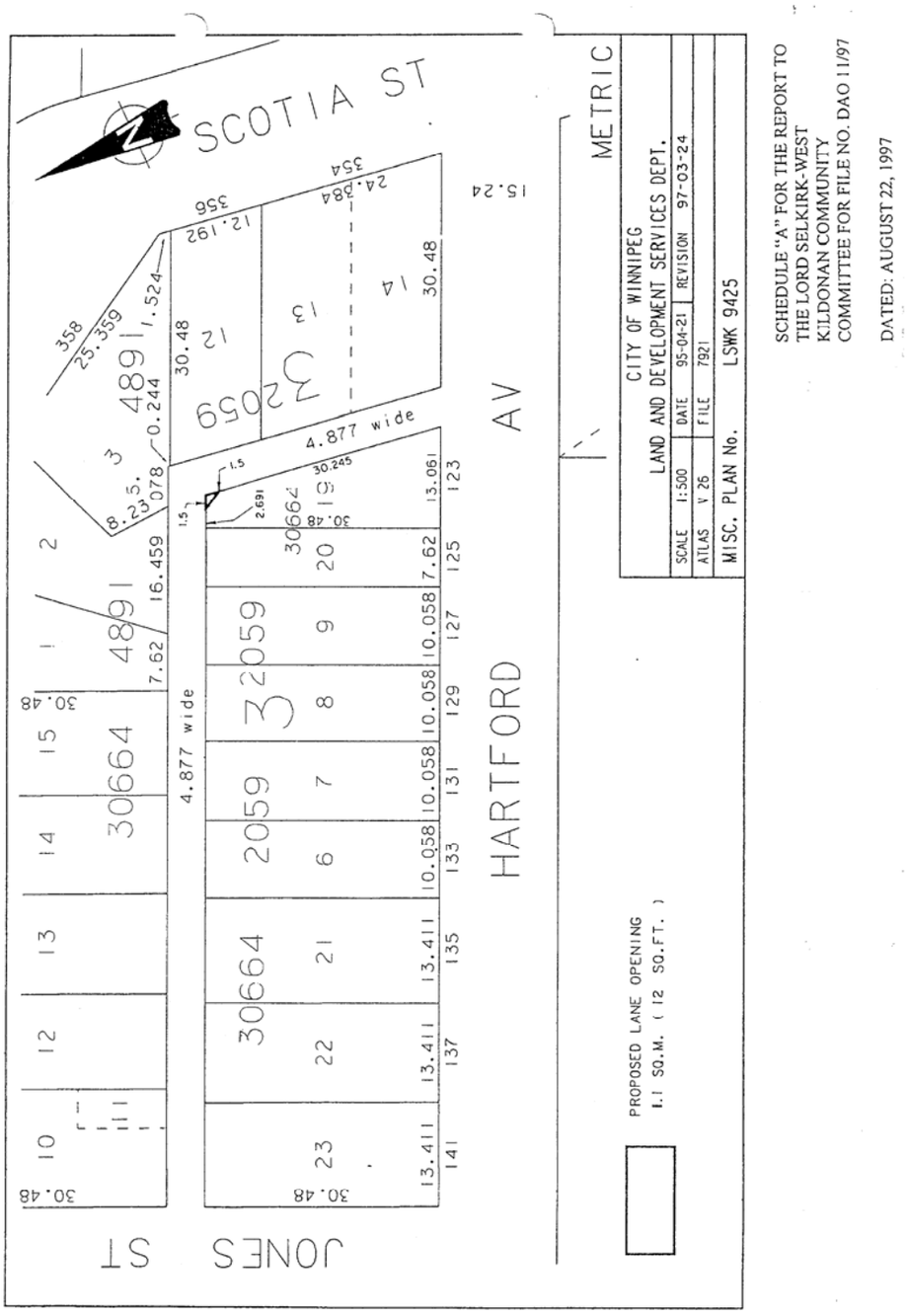
1118 - Schedule “A” referred to in Clause 13 of the Report of the Committee on Planning and Community Services dated September 30, 1997



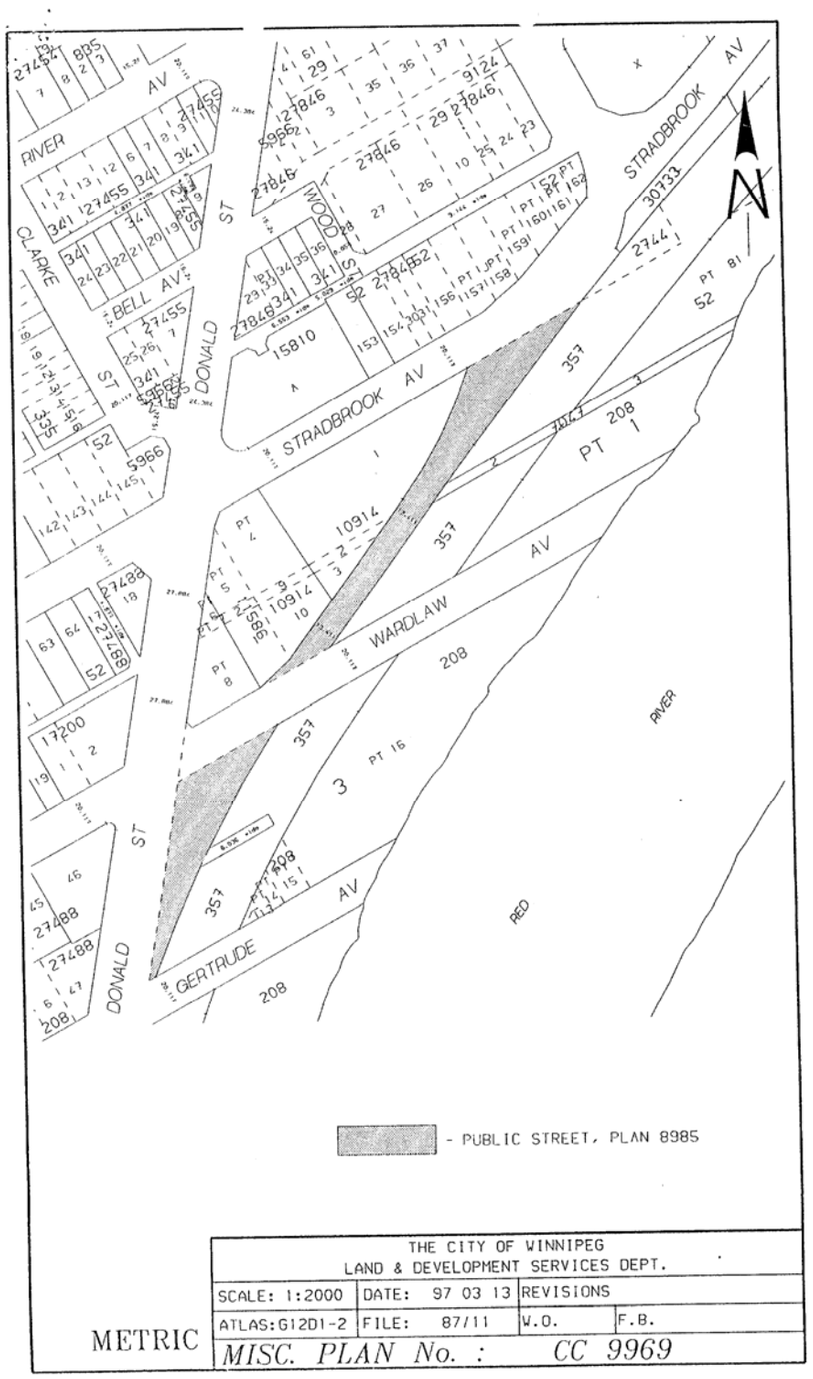
1119 - Schedule “A” referred to in Clause 14 of the Report of the Committee on Planning and Community Services dated September 30, 1997



1120 - Schedule “A” referred to in Clause 15 of the Report of the Committee on Planning and Community Services dated September 30, 1997



1121 - Schedule “A” referred to in Clause 16 of the Report of the Committee on Planning and Community Services dated September 30, 1997



1122 - Appendix “A” referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

Appendix A

Revised Lease Agreement

Ball Park

Appendix “A” referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

DATED: **1997.**

BETWEEN:

THE CITY OF WINNIPEG,

- and -

RIVERSIDE PARK MANAGEMENT INC.,

LEASE

Appendix “A” referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

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MEMORANDUM OF LEASE

ARTICLE I

PREAMBLE

WHEREAS it is the intention of the parties hereto to enable the construction of a Multi-Purpose Sports and Recreational Centre including a Youth Activity Centre, to be known as "Riverside Park" (hereinafter referred to as the "*Project*") with the co-operation of:

(a) the Tenant hereinafter referred to, which has agreed to exercise its best efforts to obtain from the Forks Renewal Corporation ("*F.R.C.*"), an interest in that portion of ~~acquire and convey to the Landlord hereinafter referred to free and clear of all caveats, encumbrances, mortgages, liens, easements and charges for the sum of One Dollar ($1.00)~~ the lands referred to in Schedule "A" hereto (hereinafter referred to as the "*Site Plan*") ~~as that portion of the F.R.C. Property~~ that lies within the limits of Parcel 2B as shown on the Site Plan; (hereinafter referred to as the "*Private Property*"), and obtain from the C.N.R. an interest in that portion of the lands referred to as the C.N.R. Property lying within the limits of Parcels 1 and 2 as shown on the Site Plan (hereinafter referred to as the "*C.N.R. Acquired Lands*"), which interests shall be granted to the Landlord for a period ending upon the date that the Landlord informs the C.N.R. or the F.R.C., as the case may be, in writing, that it no longer requires same, that the agreements or other documents granting such interests are ~~is~~ in form and content acceptable to the Landlord through its Board of Commissioners and that such interests shall permit the C.N.R. Acquired Land to be combined with the Private Property and those portions of the

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

City Property ~~and~~ referred to in Section 1(b) hereof to constitute the Land ~~and~~ to be leased to the Tenant pursuant to the terms of this Lease;

(b) the Landlord hereinafter referred to, which has agreed to lease those portions of the City Property lying within the limits of Parcels 1 and 2A referred to in the Site Plan, the Private Property and the C.N.R. Acquired ~~Easement Lands ; but excepting from the City Lands such portion thereof lying at the south east corner of Parcel 2 as the City shall determine is required for public purposes, but not exceeding such portion of said Parcel 2 as shall be required for the construction of the Project;~~ to the Tenant on the terms and conditions hereinafter set forth and to contribute all costs and fees payable to the Landlord associated with permits and other applications related to the development of the Project;

(c) the Landlord which has agreed to contribute a one time all inclusive payment of up to One Million Dollars ($1,000,000.00) to the Tenant to aid in the construction of the Project, provided that such payment is matched by the payments in the same amount made by each of the Government of Manitoba and the Government of Canada on conditions satisfactory to the Landlord and provided further that the payment by the Landlord shall not be made until the payments from the Government of Manitoba and the Government of Canada have been made in a manner satisfactory to the Landlord;

(d) the Pan American Games Society (Winnipeg 1999) Inc. which has agreed ~~to contribute the sum of Eight Hundred Thousand Dollars ($800,000.00) to the Tenant~~ to aid in the construction of the Project on the conditions

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

satisfactory to the Landlord, **such approval not to be unreasonably withheld**;

for the purpose of providing the citizens of the Province of Manitoba with a facility for sports, recreational, artistic, and cultural purposes, both professional and amateur subject to the terms hereinafter set forth in this Lease and in agreements made with respect to any of the matters set forth in this Lease and which the City shall approve.

1.01 DEMISE

THE CITY OF WINNIPEG,

(herein referred to as the "*Landlord*"),

being registered as owner, subject however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon, in Schedule 1.01 hereto of that land described as follows:

the lands referred to in subsection (b) erof Article I hereof, which lands shall be legally described as required by the Winnipeg Land Titles Office and which legal descriptions shall be set forth in Schedule "B" which shall be attached to this Lease when determined and shall replace the description of the lands set forth in this paragraph, it being understood that if the Winnipeg Land Titles Office requires a plan of subdivision for the purposes of this Lease and the Tenant requires the issuance of a leasehold title, all costs incurred in connection therewith shall be borne by the Tenant;

(herein called the "*Land*"); does hereby lease to

RIVERSIDE PARK MANAGEMENT INC., a corporation incorporated under the laws of Manitoba,

(hereinafter referred to as the "*Tenant*"),

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

the Land to be held by the Tenant for and during the Term of twenty-five (25) years to be computed from the Commencement Date and for the rent and subject to the covenants, powers, terms and conditions herein set out.

NOTWITHSTANDING anything to the contrary in this Lease set forth, the parties hereto acknowledge that the Landlord has not yet become the owner of the Private Property or obtained an interest in the C.N.R. Acquired Lands referred to subsection (b) of Article 1 hereof, and dealt with as provided in Section 5.01 hereof and as at the date of this Lease, the term the *"Land"*, as used herein, shall not include the Private Property or the C.N.R. Acquired Lands. However, under and pursuant to the provisions of Section 5.01 hereof, as soon as reasonably possible after execution of this Lease by the parties hereto, the Tenant shall exercise its best efforts to acquire and convey the Private Property to the Landlord and obtain the interest in the name of the Landlord as herein set forth covering the C.N.R. Acquired Lands, and forthwith upon the Landlord becoming the owner of the Private Property and obtaining the interest in the C.N.R. Acquired Lands, the Private Property and the C.N.R. Acquired Lands shall become part of and be included in the term the *"Lands"*.

ARTICLE II

2.01 DEFINITIONS

IN THIS Lease unless there is something in the context inconsistent therewith, the terms defined in this Section 2.01 shall have, for all purposes of this Lease and of all indentures, leases or other instruments supplemental hereto or confirmatory or amendatory hereof, now or hereafter entered into, the meanings herein specified:

(a) *"Commencement Date"* means the first day of the month following the date upon which the last of the following matters have been completed:

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(i) ~~the Private Lands have been acquired from the owners thereof and conveyed to the Landlord and~~ the Landlord has become the grantee of an interest in the Private Property and ~~easement covering the~~ C.N.R. Acquired Lands in the manner set forth in subsection (ba) of Article I hereof;

(ii) the Landlord has indicated in writing that the conditions attaching to the payment of the monies referred to in subsection (c) of Article I hereof are satisfactory to the City;

(iii) the Landlord has indicated in writing that the conditions attaching to the payment of the monies referred to in subsection (d) of Article I hereof are satisfactory to the City;

(iv) the Landlord has indicated in writing that the amateur access agreement referred to in Article XXVIIIVIII hereof among the parties thereto is satisfactory to the City;

(v) the Project Agreement referred to in this Lease and annexed hereto or marked as Schedule "C" hereto has been executed by the parties hereto;

(vi) City of Winnipeg Council has passed the necessary by-laws to open, close and relocate portions of Pioneer Avenue and close such other streets for the purpose of the Project as shown on the Site Plan;

(vii) the Tenant has obtained in the name of the Landlord and registered, if required by the Landlord to do so, all easement and access rights,

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

if any, required for ingress to and egress from the ProjecttheProjeet;

(viii) (1) the Tenant has obtained and delivered to the Landlord an unconditional letter of credit in favour of the Landlord from a bank referred to in Schedule 1 of *The Bank Act (Canada)* or equivalent security in an amount which in the sole opinion of the Landlord, acting reasonably, shall be sufficient for the Tenant to construct and complete the Project pursuant to the Project Agreement including a contingency amount to guard against any cost overruns (after deducting therefrom the monies payable to the Tenant under the provisions of subsections (c) and (d) of Article I hereof) and for the Tenant to pay for environmental remediation costs, if any, and any other costs to be incurred by the Tenant pursuant to Article VII hereof, with respect to the Lands, which letter of credit shall be satisfactory in form and content to the Landlord and will require the Bank to pay the said amount to the Landlord without direction from or request to the Tenant upon receipt from the Landlord of a letter stating that the Tenant has defaulted in its obligations under the Project Agreement and/or the obligations of the Tenant under the Lease relating to the Project Agreement and/or the obligations of the Tenant under Article VII hereof and shall further assign to the Landlord all of its rights to receive all monies outstanding pursuant to the provisions of subsections (c) and (d) of

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

Article I hereof in the event of such default and the parties required to pay such monies are hereby directed to pay all monies not yet received by the Tenant to the Landlord upon written advice from the Landlord that the Tenant has defaulted in its obligations as above set forth, without the said parties having to obtain permission from the Tenant to pay such monies to the Landlord;

(2) In order to aid the Landlord in setting the amount of the letter of credit, the Tenant agrees to provide the Landlord, upon request, with a statement of all costs which have been agreed to and fixed for the Tenant's obligations in respect of constructing the Project and obtaining the Private Land and the C.N.R. Acquired Lands and of the estimates which the Tenant has received with respect to the costs which have not yet been agreed to or fixed, provided that it is understood that the Landlord shall not be bound in any way by such statement in setting the said amount and may proceed using its own methods;

(ix) The Tenant has complied with its obligations pursuant to subsections 7.01 and 7.02 of Article VII hereof and has been permitted by the regulatory bodies referred to in said Article VII to ~~construct~~contract the Project subject to such requirements, if any, imposed by such bodies.

(b) "*C.N.R.*" means Canadian National Railway Company;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(c) *"Final Project Plan"* means the approval procedures, design plan, which shall include the approval of the Landlord as to the orientation and location of the Project on the Land, drawings and specifications for the Project to be prepared by the Tenant and approved by the City, and to be attached as Schedule "A" of the Project Agreement and all additions and amendments made thereto, from time to time in accordance with the provisions set out in the said Schedule and the Project Agreement;

(d) *"Improvements"* means the buildings, structures and improvements to be designed and constructed on the Land with the baseball stadium in the Project having a seating capacity of approximately 6,029 plus standing room capacity of approximately 1,5007,566;

(e) *"Lease"* means this Memorandum of Lease;

(f) *"Impositions"* means all taxes, assessments, local improvement rates, and levies, water and sewer rates, rates and charges, business taxes, licence and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term may be assessed, levied, confirmed, imposed upon or grow, or become due or payable, out of or in respect of the Land and the Project or any part thereof or any appurtenances thereto;

(g) *"Insurers Advisory Organization"* means the corporation incorporated on April 1, 1937 as The Canadian Underwriter's Association, pursuant to Part II of the *Companies Act* (Canada) which by Supplementary Letters Patent dated July 19, 1974 changed its name to Insurers Advisory Organization and any successors thereto;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(h) *"Municipal Services"* means the water, sewer, land drainage, opening and closing and relocation of roads, riverbank stabilization, hydro services, transportation and transit requirements of the Landlord and any other services to be installed, replaced, removed or otherwise dealt with as may be reasonably required by the Landlord in or for the benefit of the Land or the Project;

(i) *"Project Agreement"* means the agreement covering the construction of the Project in accordance with the Final Project Plan to be entered into by the parties hereto, which agreement is annexed hereto as Schedule "C";

(j) *"Project"* means the Improvements, including, without limitation, all improvements, fixtures, plant and equipment of every kind and description now or hereafter affixed or attached to or situate within the Project or situate outside the Land and servicing the Project and landscaping and parking areas or structures to be developed and built on the Land (which shall include a public plaza entry area which shall incorporate no more than 33 parking stalls) and such other improvements as may be agreed upon from time to time by the Landlord and Tenant;

(k) *"Replacement Cost"* means the cost of repairing, replacing or reinstating any items of property with materials of like kind and quantity on the same or a similar site, without deduction for physical, accounting or other depreciation, as agreed by the Landlord and Tenant, or failing agreement, as determined by an independent quantity surveyor as agreed upon between the Tenant and the Landlord;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(l) *"Substantial Completion"* means substantial completion of construction of the Project, determined under the provisions of *The Builders' Liens Act* of Manitoba, in accordance with the Project Agreement;

(m) *"Sublessee"* means any person, firm or corporation to whom the Tenant has granted any rights pursuant to the provisions of this Lease with respect to any part of the Project whether by way of lease, sublease, grant of licence, grant of concession, or otherwise;

(n) *"Term"* means the term as provided for in this Lease;

(o) *"Unavoidable Delay"* means any cause beyond the control of a party which prevents the performance by such party of any obligations hereunder and not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by such party (excluding financial inability), but including, without limiting the generality of the foregoing, strikes or other labour or industrial disturbances, act of the public enemy, war, riot, sabotage, blockade, embargo, shortage of materials and supplies, shortage of labour, lightning, earthquake, fire, storm, hurricane, flood, washout, explosion, act of God, and delays caused by any party hereto (other than the party relying upon such Unavoidable Delay), or by breach of contract by persons with whom a party hereto has contracted.

2.02 INTERPRETATION

All of the provisions of this Lease shall be deemed and construed to be covenants as though the words importing such covenants were used in each separate provision hereof. Should any provision or provisions of this Lease be illegal or not

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said illegal or unenforceable provision or provisions had never been included.

2.03 TITLES

The titles of Articles appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or any provision hereof.

2.04 GENDER

Where the context permits or requires, the singular shall include the plural and the neuter gender shall include the masculine or feminine genders.

2.05 TIME OF ESSENCE

Time shall be of the essence of this Lease.

ARTICLE III
POSSESSION

3.01 DELIVERY OF OF LAND

The Landlord shall deliver possession of the Land to the Tenant on the Commencement Date and title to or an interest in portions of the Land as hereinbefore set forth, as the case may be, shall be in the Landlord's name, provided that the Tenant shall not have the right to have issued to it a foundation or building permit with respect to the Project until the Commencement Date. Provided that if the Commencement Date does not commence by the time required by the Pan American Games Society (Wpg. 1999) Inc. (*"Pan Am"*) for the Tenant to commence construction of the Project, provided that

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

notice of such time requirement shall be given to the Tenant at least sixty (60) days prior; to the said time, or such later date as may be approved in writing by the Landlord in its sole and absolute discretion, this Lease shall terminate and end and the parties hereto shall be released from all rights and obligations hereunder and under any agreements referred to herein as may have been entered into by them, and neither party hereto to such agreements shall have any rights against the other party or parties thereto.

3.02 TITLE TO DEVELOPMENT

Title to the leasehold estate in the Land and ownership of the Project, and all alterations, additions, changes, substitutions or improvements thereto shall at all times during the Term hereby granted be vested in the Tenant, notwithstanding any rule of law as to immediate vesting of the title to and ownership of the structures on the Land in the City of Winnipeg as owner of the freehold.

ARTICLE IV
TENANT'S COVENANT TO CONSTRUCT

4.01 Simultaneously with the execution of this Lease, the parties hereto will enter into the Project Agreement and the Tenant shall develop and construct the Project in accordance with the Project Agreement, and, subject to its rights and obligations under the Project Agreement, the Landlord will permit, cooperate with and do nothing to impede the Tenant carrying out such activities and plans and insofar as it legally can or may, the Landlord shall assist in all reasonable ways, including issuing all such permits, applications or other documents as owner of the Land which the Tenant may reasonably require; provided, however, that the Tenant shall indemnify the Landlord and save it harmless with respect to any and all liabilities and obligations accrued to the Landlord as a result of the Landlord signing, as owner, such permits, applications or other documents. Such indemnification shall not extend to the out-of-pocket expenses of the Landlord, or

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

the cost of professional consultants employed by the Landlord, relating to reviewing such materials prior to the Landlord signing same or other costs incurred by the Landlord pursuant to its obligations hereunder, or to any liabilities and obligations accrued to the Landlord in its capacity as an approving authority in connection with such permits, applications and documents.

4.02 **CONSTRUCTION**

The Tenant shall proceed diligently to construct and finish the Project as required herein and in the Project Agreement and in accordance with the Final Project Plan. In constructing and finishing the Project, the Tenant shall comply with all applicable building codes and the requirements of all applicable governmental authorities and except for all permits and licences fees, payable as a disbursement to the City on a one-time basis, payment for which shall be waived by the Landlord, shall obtain the permits and licences required from the City, shall pay for all labour, materials, services and other work or expenses in connection therewith, and shall keep the Land free and clear of all liens for labour performed or materials furnished or other work or services in connection therewith, and will defend at its own costs and expense each and every lien or *lis pendens* asserted or filed against the Land or any part thereof on account of the construction of the Project, and each and every judgment made or entered against the Land or any part thereof, and will forever save harmless and keep indemnified the Landlord from and against any and every claim, expenses, demand, suit or cause of action, including counsel and attorney's fees, arising out of or connected with any act or omission of the Tenant or any of the agents or employees of the Tenant in and about the construction of the Project, or arising out of or in connection with the assertion or filing of any lien or lis pendens against the Land or any portion thereof for or on account of labour performed or material furnished or services rendered in or about the construction of the Project.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

4.03 MUNICIPAL SERVICES

Subject to the Tenant complying with Article VII hereof and subject to receiving permission to construct the Project and to any conditions placed upon the Landlord by the regulatory bodies referred to in said Article VII, the Landlord shall permit the construction, installation, replacement, removal or treatment of the Municipal Services on any portion thereof as may be required hereunder and under the Project Agreement and their connection with the municipal system of services, in accordance with applicable municipal regulations and standards, provided that the opening, closing and relocation of roads as required shall be subject to City of Winnipeg Council having passed the necessary by-laws in connection therewith and provided further that the Tenant shall satisfy all requirements of the Landlord regarding transportationtransportion and transit both within the Land and the nearby streets as a result of the Project, as the Landlord shall in its sole discretion decide upon. The Tenant shall pay all costs with respect to such construction, installation, replacement, removal, treatment, connection and transportation and transit requirements as shall be required as aforesaid.

4.04 TENANT'S OBLIGATIONS DURING CONSTRUCTION

At all times during construction of the Project and until the Tenant has been granted an occupancy permit with respect to the Project, the Tenant shall:

(a) confirm that there has been placed, in the names of the Landlord and the Tenant, insurance against perils insured under an all risks builders' risk broad form policy in amounts sufficient to ensure that in the case of damage or destruction of the Project, the proceeds of such insurance policies will be sufficient to restore the Project to the state in which it was before such damage or destruction;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(b) confirm that there has been placed, in the names of the Landlord and the Tenant, a one hundred percent (100%) performance bond or bonds and fifty percent (50%) labour and material bond or bonds to ensure, in the case of default by the building contractor and/or subcontractor or subcontractors referred to in the Project Agreement, completion of the Project and the payment of all amounts owed by the defaulting contractor and/or subcontractor or subcontractors for labour or materials, by another contractor;

(c) prepare and provide to the Landlord regular monthly status reports on the progress of the construction of the Project relating to the work schedule as described in the Project Agreement;

(d) permit the Landlord to inspect the Land and the Project at any reasonable time and from time to time during its construction, PROVIDED THAT such inspection does not unduly disrupt the progress of construction and is conducted in accordance with reasonable safety and construction rules;

(e) comply with all statutory requirements as to amounts to be held back out of payments to be made with respect to work;

(f) ensure that the Project is constructed in a good and workmanlike manner in accordance with the Project Agreement;

(g) enforce the timely performance of all contracts entered into by or on behalf of the Tenant for the construction of the Project.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

ARTICLE V

PRIVATE PROPERTY AND C.N.R. ACQUIRED LANDS

5.01 The Tenant will at its sole cost and expense proceed to negotiate the purchase ~~of the Private Property and the obtaining~~ of the land interests ~~easement rights~~ with regard to the Private Property and C.N.R. Acquired Lands as hereinbefore described as soon as reasonably possible following the execution of this Lease by both parties and at such time as ~~the Private Property has been conveyed to the Landlord and~~ as the said land interests in the Private Property and ~~easement rights to~~ the C.N.R. Acquired Lands have been obtained in the name of the Landlord, all as hereinbefore set forth, the Private Property and the C.N.R. Acquired Lands shall be included in the term the "*Land*" as used herein.

ARTICLE VI

RENT

6.01 **AMOUNT**

On the Commencement Date and on each anniversary of the Commencement Date during the Term, the Tenant shall pay to the Landlord by cheque the amount of One Dollar ($1.00) as rent.

6.02 **NET LEASE**

Except as provided in Article VIII, it is the purpose and intent of the Landlord and the Tenant that the rent shall be absolutely net to the Landlord, so that the Lease shall yield, net, to the Landlord, the rent specified in Section 6.01 and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Project or the Land, or both, or in connection with any business carried on therein or thereon by or under the Tenant shall be paid by the Tenant, and that the Landlord shall be indemnified

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

and saved harmless by the Tenant from and against the same and the Tenant hereby covenants with the Landlord accordingly.

6.03 NO SET-OFFS

Except as otherwise provided in this Lease, the Tenant shall pay, without notice, without previous demand therefor and without abatement, deduction or set-off, all rent to be paid hereunder; and except as otherwise provided in this Lease, the Tenant hereby waives and renounces any and all existing and future claims and set-offs against the rent and agrees to pay such rent regardless of any claim or set off which may be asserted by the Tenant or on its behalf.

ARTICLE VII
ENVIRONMENTAL AND ARCHAEOLOGICAL ISSUES

7.01 The Tenant acknowledges having received notice that a hydro building was located on a portion of the Land, and notwithstanding the same, the Tenant shall, at its sole expense, comply with the requirements of The Manitoba Department of the Environment, the *Canadian Environmental Assessment Act* (which will have to be complied with in order to receive federal funding) and Western Economic Diversification Canada (as the responsible Federal Authority with respect to funding matters) and will cause environmental remediation, if required, to be completed prior to the commencement of the construction of the Project and will provide written confirmation to the Landlord from the above noted regulatory bodies that their requirements have been met and that all environmental remediation, if required, has been completed to the satisfaction of said bodies.

7.02 The Tenant shall, at its sole expense, comply with the requirements of the *Heritage Resources Act* with respect to the impact of the Project on heritage resources

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

and human remains and will provide written confirmation to the Landlord from the authorities under the *Heritage Resources Act* that their requirements have been met prior to the commencement of the construction of the Project.

7.03 The Tenant covenants with the Landlord not to bring or permit to be brought or come onto the Land any pollutants, dangerous substances, liquid or solid wastes, industrial wastes, toxic substances, hazardous wastes, hazardous materials, hazardous substances or contaminants ("*Hazardous Substances*").

7.04 The Tenant hereby indemnifies and saves harmless the Landlord from and against any and all:

(a) liabilities, losses, claims, damages (including, without limitation, lost profits, consequential damage, interest, penalties, fines and monetary sanctions) and costs; and

(b) lawyers' (on a solicitor and his own client basis) and accountants' fees fees and expenses, court costs and all other out-of-pocket expenses;

incurred or suffered by the Landlord by reason of, resulting from, in connection with or arising in any manner whatsoever out of any Hazardous Substances which were brought by any person or came in any manner onto the Land after the Commencement Date and during the Term of this Lease.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

ARTICLE VIII

IMPOSITIONS

8.01 PAYMENT OF IMPOSITIONS

From and after the time the Tenant is permitted access to the Land, the Tenant will pay or cause to be paid (except as hereinafter in Section 8.02 provided) (and by instalments if such method of payment is permitted) all Impositions. In the last year of the Term, all Impositions shall be appropriately apportioned between Landlord and Tenant having regard to the portions of the Term falling within the periods with respect to which the Impositions are imposed.

8.02 EXCLUSIONS

Nothing in this Lease contained shall require or be construed to obligate the Tenant to pay any franchise, excise, estate, inheritance, succession, capital levy, business or transfer tax of the Landlord, if any, or any income, profits tax upon the income of the Landlord, if any.

8.03 APPEAL OF IMPOSITIONS

The Tenant shall have the right from time to time to appeal any assessment of the Land and the Project or the legality or amount of any Impositions for which the Tenant is responsible under this Lease, levied on the Land or the Project in any year, or for the cancellation, reduction or refund of any such Imposition, provided that any such appeal shall be at no direct cost to the Landlord. In the event of such appeal by the Tenant, it shall first either pay the Imposition in question under protest, or furnish to the Landlord security (by bond or otherwise), satisfactory to the Landlord (acting reasonably) for its payment in the event of the failure of such appeal. Notwithstanding the furnishing of such security and the lack of decision of such appeal, the Tenant shall pay such

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

Imposition (if it is imposed on the Land or the Project) in each case to avoid before any fine, penalty, interest or cost may being added thereto for the non-payment thereof. The Landlord shall have the full power and authority to apply or request the application of any security so furnished to payment of any unpaid Imposition to prevent the sale or forfeiture of the Tenant's estate in the Land or the Project for non-payment thereof, without liability on the Landlord, however, for any failure so to apply any amount so deposited unless the Tenant in writing requests the application of such amount to the payment of the particular Imposition with reference to which they were deposited. Any surplus remaining in the hands of the Landlord after the Imposition for which the deposit was made has been paid in full shall be repaid to the Tenant unless the Tenant shall be in default in the payment of rent or other charges to be made under the provisions of this Lease and in case of such default such surplus shall be applied thereto. Upon the termination of any such proceedings, the Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which shall have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith. **Notwithstanding anything hereinbefore contained, it is understood that the Tenant shall not be obliged to post security with respect to any Impositions by the City unless such Impositions are of general application in nature.**

8.04 INDEMNITY

The Tenant shall save the Landlord harmless and indemnify the Landlord with respect to all suits, costs, actions, claims and demands of any kind whatsoever arising out of or in any way in connection with any Impositions or assessments appealed by the Tenant and/or with any such appeal.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

8.08 **EVIDENCE OF PAYMENT**

The Tenant, upon request of the Landlord, shall, furnish to the Landlord within thirty (30) days after the date when any Imposition upon the Land or the Project would become overdue, such evidence reasonably satisfactory to the Landlord evidencing the payment thereof.

8.09 **CHANGES IN METHOD OF TAXATION**

If, because of changes in the method of levying or collecting of any Imposition to be paid under the provisions of this Lease by either the Landlord or the Tenant, or because any new tax, assessment, rate, levy, fee or charge is levied or imposed in lieu of or in addition to those contemplated by the provisions of this Lease, the Landlord and the Tenant hereby agree to negotiate an amendment or new provision for this Lease as is necessary to deal with such change in an equitable manner so as to obviate any injustice or inequity which shall have arisen, given the principles set forth in Section 8.02.

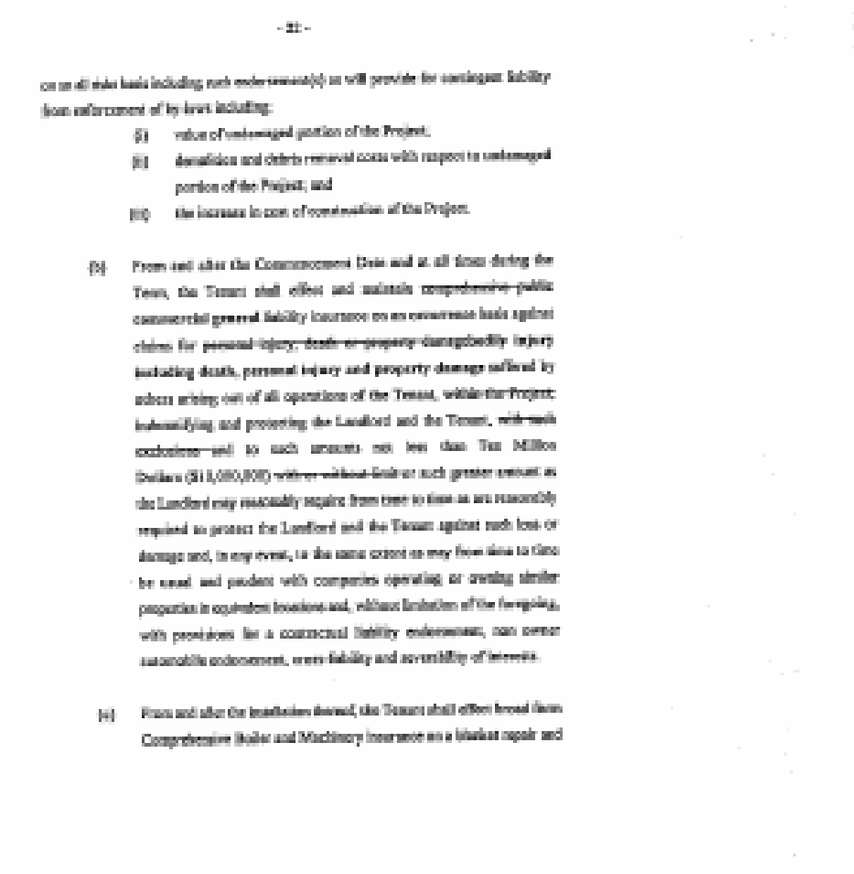
ARTICLE IX

INSURANCE

9.01 **TENANT'S COVENANTS RESPECTING INSURANCE**

(c) From and after the Commencement Date, and at all times during the Term, the Tenant shall insure and keep insured the Project and Tenant's and Landlord's property located therein or thereon (it being understood that the Project, notwithstanding the provisions of Section 3.02 hereof, shall not be deemed to be the Tenant's property for the purposes of this Article IX), in an amount equal to one hundred percent (100%) of the Replacement Cost

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)



- 21: -

on an all risks basis including such endorsement(s) as will provide for contingent liability from enforcement of by-laws including:

(i) value of undamaged portion of the Project;

(ii) demolition and debris removal costs with respect to undamaged portion of the Project; and

(iii) the increase in cost of construction of the Project.

(h) From and after the Commencement Date and at all times during the Term, the Tenant shall effect and maintain comprehensive public commercial general liability insurance on an occurrence basis against claims for personal injury, death or property damage bodily injury including death, personal injury and property damage suffered by others arising out of all operations of the Tenant, within the Project, indemnifying and protecting the Landlord and the Tenant, with such endorsements and in such amounts not less than Ten Million Dollars ($10,000,000) with or without limit or such greater amount as the Landlord may reasonably require from time to time as are reasonably required to protect the Landlord and the Tenant against such loss or damage and, in any event, to the same extent as may from time to time be usual and prudent with companies operating or owning similar properties in equivalent locations and, without limitation of the foregoing, with provisions for a contractual liability endorsement, non owner automobile endorsement, cross liability and severability of interests.

(i) From and after the installation thereof, the Tenant shall effect broad form Comprehensive Boiler and Machinery insurance on a blanket repair and

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

replacement basis ~~with combined limits of Ten Million Dollars ($10,000,000) or such greater amount as the Landlord may reasonably require;~~ **in an amount equal to one hundred percent (100%) of the Replacement Cost of the facility** on all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others on behalf of the Tenant in the Project, or relating to, or serving the Project.

(d) The Tenant shall, when required to do so by notice in writing from the Landlord, obtain reasonable insurance coverage with an insurance company and in the amounts and on terms having the prior approval of the Landlord, sufficient to protect the Landlord from all liability in respect of pollution arising from the activities of the Tenant on the Land.

(e) The Tenant will take out and maintain other insurance in amounts and upon terms reasonable for a prudent tenant to provide as determined by the Landlord and its insurance advisors acting reasonably or its mortgagee.

(f) If any policies for such insurance shall contain any co-insurance clause, it shall only be a stated amount co-insurance clause pursuant to which the insurer and the Tenant agree as to the replacement cost of the property insured and stating what minimum amount of coverage must be carried by the Tenant in order to satisfy the insurer's co-insurance requirements and to permit full recovery by the Tenant up to the amount insured in the event of loss.

(g) All such insurance shall be taken out with insurers, and shall contain terms and conditions that are, in both cases, in accordance with prudent risk management practices for first class developments.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(h) Each insurance policy referred to in Article IX will name the Landlord and any persons, firms or corporations designated by the Landlord as additional named insureds as their interests may appear; will contain, as appropriate, a waiver of rights of subrogation against the Landlord and the Tenant or cross-liability clause protecting the Landlord and other insureds designated by it against claims by the Tenant as if the Landlord and other insureds designated by it were separately insured and protecting the Tenant against claims by the Landlord and other insureds designated by it as if the Tenant were separately insured; and will contain a clause that the insurers will not cancel or change or refuse to renew the insurance without first giving the Landlord thirty (30) days prior written notice. All policies of insurance will be with insurers authorized and licensed to carry on business in the Province of Manitoba and the Tenant will see that there is delivered to the Landlord copies or certificates of the policies. If the Tenant fails to take out or keep in force any policy of insurance referred to in this Article IX, the Landlord may do so and pay the premium, and in that event the Tenant will pay to the Landlord the amount so paid as premium, plus ten percent (10%) for overhead as additional rent and it will be due and payable on the first day of the month following the payment by the Landlord. Each of the said insurance policies shall be non-contributing with and shall apply only as primary and not as excess to any other insurance available to the Landlord.

(i) Subject to Section 9.01(h) and (l) hereof, all insurance proceeds payable on account of damage or destruction to the Project ~~and Land~~, shall be paid to the Landlord, and such proceeds, less the reasonable cost, if any, to the Landlord to obtain payment thereof, together with interest earned thereon

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

as hereinafter set forth shall be applied by the Landlord to the payment of the cost of repairing, restoring or rebuilding the Project ~~and Land~~ so damaged or destroyed (hereinafter referred to as the "*Work*") and shall be paid out from time to time to the Tenant, as the Work progresses, subject to reasonable conditions which may be imposed by the Landlord, including, without limitation, any reasonable conditions that may be required to ensure that:

(i) reasonable plans and specifications shall be prepared for the Work and approved by the Landlord, which approval shall not be unreasonably or unduly withheld, it being understood that to the extent feasible, said plans and specifications shall provide for such Work that, upon completion thereof, the Premises shall be as required pursuant to Article XII hereof;

(ii) progress payments shall be made, subject to proper lien holdbacks, for all of the Work completed to date in compliance with the approved plans and specifications, provided that the amount of insurance proceeds in the hands of the Landlord and all interest earned thereon shall be applied to the last of the monies owing with respect to the Work (it being understood and agreed that all monies owing with respect to the Work less the said insurance proceeds and interest shall first be paid by the Tenant) so that upon payment of the said insurance proceeds and interest, the completed Work shall have been paid in full;

(iii) all requirements of all governmental authorities will be complied with by the Tenant.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(j) It is understood that all proceeds of insurance which may be held by the Landlord pursuant to this Section 9.01, before final disposition thereof, shall be invested in an interest bearing account in Canada (the "*Fund*"), to be chosen by the Landlord as it, in its absolute discretion, shall determine, and the Fund and all interest earned thereon shall be paid out as above set forth, provided always that the Landlord shall not be accountable for such Fund, except as bare trustee thereof, or for determining the rate or rates of interest thereon, or for the proper application of any amount paid over from the Fund as above set forth.

(k) In the event that this Lease is terminated pursuant to Section 12.02 hereof:

(i) all insurance proceeds referred to in Section 9.01(i) hereof except for insurance proceeds payable on account of the Tenant's property referred to in Section 9.01(a) shall be paid to and retained by the Landlord for its own use absolutely; and

(ii) all insurance proceeds payable on account of the Tenant's Property referred to in Section 9.01(a) shall be paid to and retained by the Tenant for its own use absolutely;

(l) If there is any excess of insurance proceeds or interest over and above the cost of repairing, restoring or rebuilding the Project as hereinbefore set forth, such excess shall be retained by the Landlord for its own use absolutely.

(m) The Tenant shall duly and punctually pay all premiums and other sums of money payable for maintaining any such insurance as aforesaid.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(n) The Tenant shall deposit with the Landlord prior to access to the Land and thereafter from time to time upon demand such reasonable evidence (which may include copies of policies) as may be required to confirm that the insurance coverage required to be maintained hereunder is in effect.

(o) The Tenant shall advise the Landlord of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Tenant fails to effect and to keep such insurance in force, or should such insurance not be approved by the Landlord and if the Tenant does not rectify such situation within forty-eight (48) hours after written notice by the Landlord to the Tenant the Landlord shall have the right, without assuming any obligation in connection therewith, to effect such insurance at the cost of the Tenant and all outlays by the Landlord shall be immediately payable by the Tenant to the Landlord, without prejudice to any other rights and recourses of the Landlord hereunder. No such insurance taken out by the Landlord shall relieve the Tenant of its obligations to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.

(p) Each of the policies for such insurance shall be non-contributing with and shall apply only as primary and not as excess to any other insurance available to the Landlord.

9.02 WORKERS COMPENSATION

At all times during the Term the Tenant, at its own expense, shall procure and carry or cause to be procured and carried and paid for full Workers Compensation coverage as required by law in respect of all workmen, employees, servants and others

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

engaged by or for the Tenant, in or upon any work, non-payment of which would create a lien on the Land or the Project.

ARTICLE X

REPAIRS AND MAINTENANCE

10.01 The Tenant, at its own expense, shall maintain and keep the Land and Project and all other buildings or other structures or improvements to be erected or constructed thereon by the Tenant, in good order, neat appearance, good repair and sanitary and safe condition and shall alone be responsible for all repairs and replacements thereto which the Landlord may deem to be reasonably necessary, whether or not the same be structural or otherwise, it being understood that the Landlord shall not be responsible for any repairs or replacements of any nature whatsoever. The Tenant shall further, at its own expense, keep and maintain the Land and the Project in all respects as may now or hereafter be prescribed or required by any governmental authority and shall, at its own expense, make any alterations or improvements which may hereafter be prescribed or required by any governmental authority. **Notwithstanding anything in this Section 10.01 contained, it is agreed that if the Landlord requires the Tenant to make an expenditure for structural repairs to the Land or Project within the last five (5) years of the term of this Lease, the Landlord and Tenant shall first agree upon the number of years over which such expenditure shall be amortized, taking into account the benefit to be received by the Landlord and the Tenant for such expenditure, and the amortized portion of such expenditure which is to be expensed during the term of the Lease shall be borne by the Tenant and the amortized portion of such expenditure which is to be expensed after the end of the term of the Lease shall be borne by the Landlord.**

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

10.02 The Tenant shall not allow any refuse, garbage or other objectionable material to accumulate in or about the Land or the Project and will keep the Land and the Project in a clean condition.

10.03 The Landlord and any employee, servant or agent of the Landlord shall be entitled at any reasonable time and from time to time to enter and examine the state of maintenance, repair, decoration and order of the Land and the Project and any improvements hereafter made to the Land.

10.04 OBLIGATIONS SUBJECT TO ARTICLE XII

Notwithstanding anything contained in this Article X, the obligations of the Landlord and the Tenant set out in this Article X shall be subject to the provisions of Article XII.

ARTICLE XI

CHANGES AND ALTERATIONS

11.01 TENANT'S RIGHTS

Subject to obtaining the prior written approval of the Landlord, not to be unreasonably withheld and notwithstanding anything provided in Sections 10.01 and 12.01 hereof but after Substantial Completion, the Tenant shall have the right at any time or times to make any replacements, alterations, additions, changes, substitutions or improvements in or to the Project and the Land subject to the provision that the work will not be incompatible with the design, operation and use of the Project and the Land described herein and in the Project Agreement.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

11.02 MANNER OF COMPLETING WORK

All replacements or substitutions or other work undertaken by or for the Tenant once begun shall be done in a safe, good and workmanlike manner, and shall be prosecuted with reasonable diligence to completion, free and clear of any and all builders' liens or other liens, conditional sales contracts, chattel mortgages or similar claims or encumbrances against the Land, or the Project, and such shall be completed in all respects in accordance with the law.

Conduct of all work and any replacements or substitutions shall meet or exceed the requirements of all municipal, provincial, federal and other governmental authorities including all applicable building code requirements and the requirements of the Insurers Advisory Organization.

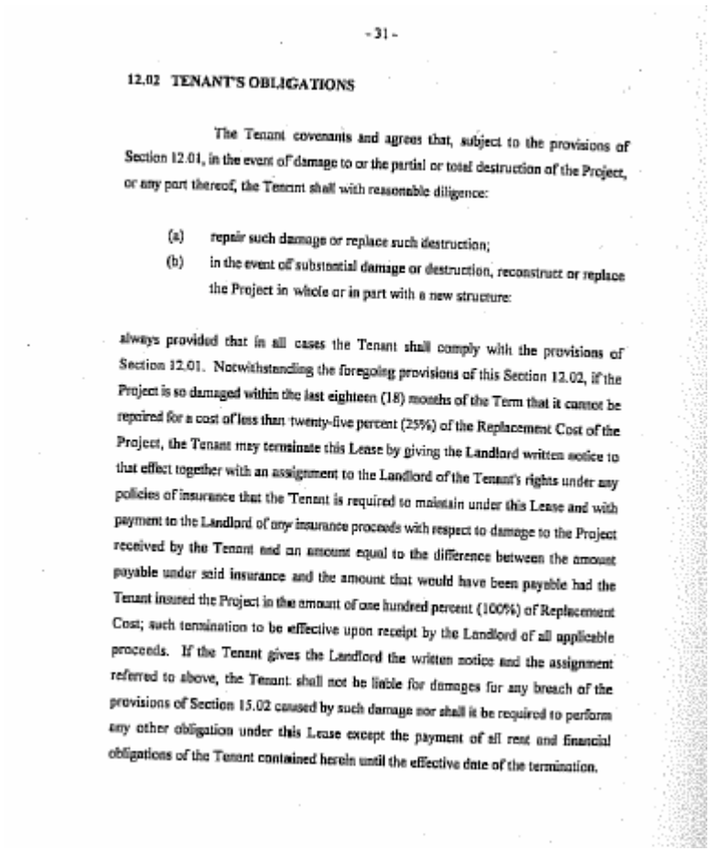
ARTICLE XII

DAMAGE OR DESTRUCTION

12.01 CONSEQUENCES

The partial destruction or damage or complete destruction of the Project by any cause, against which the Tenant is required to insure pursuant to Article IX, shall not terminate this Lease or entitle the Tenant to surrender possession of the Land or to demand any abatement or reduction of the rent or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding. Provided, however, that the foregoing provisions shall not prevent the Tenant from terminating this Lease or surrendering possession of the Land if the Project is damaged by any cause against which the Tenant is not required to insure pursuant to Article IX and such damage cannot reasonably be repaired within ninety (90) days after the commencement of such repairs.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)



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12.02 TENANT'S OBLIGATIONS

The Tenant covenants and agrees that, subject to the provisions of Section 12.01, in the event of damage to or the partial or total destruction of the Project, or any part thereof, the Tenant shall with reasonable diligence:

(a) repair such damage or replace such destruction;

(b) in the event of substantial damage or destruction, reconstruct or replace the Project in whole or in part with a new structure:

always provided that in all cases the Tenant shall comply with the provisions of Section 12.01. Notwithstanding the foregoing provisions of this Section 12.02, if the Project is so damaged within the last eighteen (18) months of the Term that it cannot be repaired for a cost of less than twenty-five percent (25%) of the Replacement Cost of the Project, the Tenant may terminate this Lease by giving the Landlord written notice to that effect together with an assignment to the Landlord of the Tenant's rights under any policies of insurance that the Tenant is required to maintain under this Lease and with payment to the Landlord of any insurance proceeds with respect to damage to the Project received by the Tenant and an amount equal to the difference between the amount payable under said insurance and the amount that would have been payable had the Tenant insured the Project in the amount of one hundred percent (100%) of Replacement Cost; such termination to be effective upon receipt by the Landlord of all applicable proceeds. If the Tenant gives the Landlord the written notice and the assignment referred to above, the Tenant shall not be liable for damages for any breach of the provisions of Section 15.02 caused by such damage nor shall it be required to perform any other obligation under this Lease except the payment of all rent and financial obligations of the Tenant contained herein until the effective date of the termination.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

12.03 COMPLIANCE

Any repair, replacement, demolition, restoration or reconstruction of the Project or any part thereof pursuant to the provisions of this Article XII shall be made or done in compliance with the provisions of Articles X and XI hereof.

12.04 COMMENCEMENT OF REPAIRS

The Tenant covenants to commence to restore or repair any loss or damage within sixty (60) days after the occurrence thereof except as otherwise provided in this Lease.

ARTICLE XIII

COMPLIANCE WITH LAWS AND GOVERNMENTAL REGULATIONS

13.01 LAWS AND ORDINANCES

Throughout the Term, the Tenant, at its sole cost and expense, will promptly comply with all present and future laws, by-laws, ordinances, orders, rules, regulations and requirements of all federal, provincial and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which are, from time to time, applicable to the Project or to the use or manner of use of the Project or to the owners, tenants or occupants thereof, whether or not any such laws, by-laws, ordinances, orders, rules, regulations or requirements shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Project.

13.02 RIGHT TO CONTEST

The Tenant shall have the right to contest, after prior written notice to the Landlord, by appropriate legal proceedings diligently conducted in good faith, in the

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

same of the Tenant or the Landlord or both, without cost or expense to the Landlord, the validity or application of any law, by-law , ordinance, order, rule, regulation or requirement of the nature referred to in Section 13.01 and the Tenant may delay compliance therewith until the final determination of such proceeding; provided such delay does not result in the Landlord incurring any penalty, fine or liability or result in any lien, charge or demolition or other order against the Land or the Project, unless, in case of any such penalty, fine, lien or charge, the Tenant furnishes to the Landlord reasonable security against any loss or injury by reason of such contest or delay.

ARTICLE XIV

LIENS

14.01 VACATION OF LIENS

The Tenant shall throughout construction and during the Term at its own cost and expense cause any and all statutory liens, builders' liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged by or for the Tenant or anyone on its behalf which may be registered against or otherwise affect the Project, to be paid, satisfied, released, cancelled and vacated within thirty (30) days after the Tenant has notice that a claim for lien has been made or after the Landlord shall have sent to the Tenant written notice by registered mail of any claim for any such lien, whichever occurs earlier. Provided, however, that in the event of a *bona fide* dispute by the Tenant of the validity or correctness or any claim for any such lien, the Tenant shall not be bound by the foregoing, but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into Court the amount claimed and such costs as the Court may direct and registering all such documents as may be necessary to vacate such lien, or providing such other security in respect of such claim as the Landlord may in writing approve.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

14.02 STATUTORY HOLDBACKS

In all cases where work is being done on the Project or any part thereof, the Tenant shall comply with all statutory requirements as to amounts to be held back out of payments to be made with respect to such work, and the Landlord shall in its sole discretion, if it deems it necessary or desirable to do so, require the Tenant to deposit with the Landlord sufficient monies or a sufficient letter of credit to protect the Landlord from its liability under the *Builders Lien Act* of Manitoba.

ARTICLE XV

USE AND OPERATION OF LAND

15.01 USE

The Tenant shall use the Project and the Land only for a facility for **sports, recreational, artistic and cultural purposes, both professional and amateur, a sports memorabilia store, a restaurant and a sports bar (the nature of the restaurant and sports bar to be in keeping with the general public nature of the Project)**:

~~(a) sports, recreational, artistic and cultural purposes, both professional and amateur;~~ and shall not use or occupy the Project or any part thereof for gambling purposes without the consent of the Landlord first had and obtained or any uses prohibited by any applicable governmental law, by-law, regulation, ordinance or restriction. The Tenant shall not use or occupy the Project or any part thereof for any unlawful purpose or in any manner which in law may constitute a nuisance or which may make void or voidable any policy of insurance then in force in respect thereof, or permit its use, temporary or otherwise, for the purposes of dealing in pornographic or erotic material or any other sexual use offensive to the Landlord.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

15.02 MANAGEMENT

The Tenant will manage, operate and maintain or cause to be managed, operated and maintained the Project in a manner commensurate with similar projects economically, diligently, efficiently and effectively to the best of its ability. The Tenant shall ensure that all areas of the Project and Land are accessible to the public to the greatest extent possible within constraints required for proper security, maintenance and prudent management practices.

15.03 FINANCIAL ENCUMBERING OF THE ~~DEVELOPMENT~~ PROJECT

The Tenant shall not in any manner financially encumber the Project or any portion thereof without the prior written consent of the Landlord, which consent may be arbitrarily withheld by the Landlord in its sole and absolute discretion.

ARTICLE XVI
INDEMNIFICATION

16.01 TENANT'S INDEMNIFICATION

The Tenant will indemnify and save harmless the Landlord against and from all liabilities, obligations, damages, penalties, claims, costs (including reasonable professional fees), fines, suits, demands and actions and causes of action which may be imposed upon or incurred by or asserted against the Landlord by reason of or arising in any way in connection with any breach, violation or non-performance by the Tenant of any covenant, term or provision of this Lease or the occupation of the Project and the Land by the Tenant or its servants, agents, employees, Subtenants or assignees. In case any action or proceeding is brought against the Landlord by reason of any such liability, obligation, damage, penalty, claim, costs, fines, suits, demands or actions or causes of

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

action, the Landlord shall in a timely way give written notice thereof to the Tenant and shall permit the Tenant to resist or defend such action or proceeding, and the Tenant upon written notice from the Landlord will at the Tenant's expense resist or defend such action or proceeding. Nothing in this Article XVI contained shall obligate or require the Tenant to indemnify or save the Landlord harmless from any such liability, obligation, damage, penalty, claim, costs, fines, suits, demands or actions or causes of action incurred by or assessed against the Landlord by reason of or arising in any way in connection with the negligence of the Landlord, its servants, agents or employees.

16.02 LANDLORD'S INDEMNIFICATION

The Landlord will indemnify and save harmless the Tenant against and from all liabilities, obligations, damages, penalties, claims, costs (including reasonable professional fees), fines, suits, demands and actions and causes of action which may be imposed upon or incurred by or asserted against the Tenant by reason of or arising in any way in connection with any breach, violation or non-performance by the Landlord of any covenant, term or provision of this Lease. In case any action or proceeding is brought against the Tenant by reason of any such liability, obligation, damage, penalty, claim, costs, fines, suits, demands or actions or causes of action, the Tenant shall in a timely way give written notice thereof to the Landlord and shall permit the Landlord to resist or defend such action or proceeding, and the Landlord upon written notice from the Tenant will at the Landlord's expense resist or defend such action or proceeding. Nothing in this Article XVI contained shall obligate or require the Landlord to indemnify or save the Tenant harmless from any such liability, obligation, damage, penalty, claim, costs, fines, suits, demands or actions or causes of action incurred by or assessed against the Tenant by reason of or arising in any way in connection with the negligence of the Tenant, its servants, agents or employees.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

ARTICLE XVII

CONVEYANCE BY LANDLORD

17.01 AGREEMENT BY TRANSFEREE

If the Landlord or any successor owner of the Landlord's interest in the Land shall convey or otherwise dispose of its interest in the Land, all liabilities and obligations on the part of the Landlord or any successor owner asof the Landlord under this Lease accruing after such conveyance or disposal shall terminate upon such conveyance or disposal, if such transferee enters into an agreement by which such transferee agrees to be bound by and performis capable of performing all of the covenants, provisions and obligations of the Landlord herein contained.

ARTICLE XVIII
ASSIGNING AND SUBLETTING

18.01 RIGHT TO SUBLET OR ASSIGN

The Tenant may at any time, and from time to time, sublet to a Subtenant or assign the Project or any portion thereof, provided that no such sublease or assignment shall purport to give to the Subtenant or assignee any rights or privileges greater than those granted to the Tenant under this Lease and provided further that such sublease or assignment shall not be entered into by the Tenant without receiving the prior written consent of the Landlord, not to be unreasonably withheld. Notwithstanding the foregoing, it is understood and agreed that the Landlord's approval shall not be required with respect to temporary service facilities relative to individual or seasonal events, such as food, beverage or merchandise points of sale operating only during such events.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

18.02 DEEMED ASSIGNMENT

If the shares of the Tenant or the shares of any corporation which controls the Tenant are transferred by sale, assignment, bequest, inheritance, operation of law or other disposition, or issued by subscription or allotment, or cancelled or redeemed, so as to result in a change in the effective voting or other control of the Tenant or of any corporation which controls the Tenant by the person or persons holding control on the date of execution of this Lease or if other steps are taken to accomplish a change of control of the Tenant, then the Tenant will promptly notify the Landlord, in writing, of the change, which will be considered to be an assignment of this Lease in which Section 18.01 applies. The Tenant will make available to the Landlord or its lawful representatives all corporate books and records of the Tenant and of any corporation which controls the Tenant for inspection at all reasonable times, to ascertain to the extent possible whether there has been a change of control of the Tenant.

ARTICLE XIX

19.01 TERMINATION

If:

(a) construction of the Project has not begun by the time required by Pan Am for the commencement of construction pursuant to Section 3.01 hereof **and such requirement has not been waived by Pan Am**; or

(b) the Winnipeg Goldeyes **or a comparable professional baseball team** does not commence occupation of the Project for the purposes of playing baseball during **the season following completion of the Project for reasons other than an unavoidable delay~~their 1999 baseball league season~~**; or

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(c) after having commenced occupation of the Project for the purpose of playing baseball, the Winnipeg Goldeyes **or a comparable professional baseball team** cease to occupy the Project ~~on a continuing basis~~ for such purpose **for three (3) full baseball seasons**; or

(d) the Tenant is in default pursuant to its obligations under the amateur access agreement referred to in Article XXVIII hereof and does not cure such default within thirty (30) days of receipt of notice of such default;

(e) the Tenant defaults under the terms of the Project Agreement or any other agreements referred to herein to which it is a party, and does not **consecure** such default **to be remedied** in accordance with the Project Agreement or such other agreements; or

(f) the Term hereby granted or any goods and chattels of the Tenant located in the Land shall at any time be seized or taken in execution or attachment by any creditor of the Tenant and such execution or attachment shall not have been stayed within thirty (30) days, **or the Tenant has not reasonably demonstrated to the Landlord that such seizure is in the best interest of the Tenant and does not constitute a substantial detriment to the Landlord**; or

(g) the Tenant shall make a general assignment for the benefit of creditors, or if it shall institute proceedings to subject itself to the *Winding-Up Act* or to be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file an application or petition or answer or consent seeking reorganization or readjustment of its indebtedness under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any present or future law of

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

Canada or any province thereof relating to bankruptcy or insolvency, or shall consent to the filing of any such application or petition, or shall consent to the appointment of a receiver, or if the Tenant or its directors shall pass any resolution authorizing the dissolution or winding-up of the Tenant; or

(h) a receiver, interim receiver, receiver-manager, trustee or liquidator of all or substantially all of the Tenant's property if such part includes the Tenant's interest in the Project or its property therein, shall be appointed for the Tenant, or if a judgment, decree or order shall be made or entered by a Court of competent jurisdiction adjudging it a bankrupt or insolvent, or subject to the provisions of the *Winding-Up Act* or the *Bankruptcy and Insolvency Act*, or determining that proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any present or future law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Tenant; or

(i) any action, either voluntary or involuntary, shall be taken or commenced to terminate the corporate existence of the Tenant or the existence of the Winnipeg Goldeyes;

then this Lease and the Term granted hereunder shall at the option of the Landlord immediately become terminated.

The provisions of this Article XIX shall be effective in the case of any such action being taken by or with respect to any of the persons, firms or corporations which may, from time to time, constitute the Tenant.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

ARTICLE XX

DEFAULT

20.01 RIGHT TO REMEDY AND RE-ENTRY

If the Tenant shall be in default under any provision of this Lease (including, without in any way limiting the generality of the foregoing, the obligations of the Tenant under Article XII hereof), the Landlord shall give notice to the Tenant forthwith upon such default coming to the attention of the Landlord and in such notice the Landlord shall state the nature of the default and require the same to be remedied and the Tenant shall have from the receipt of such notice:

(a) ten (10) days in the case of default in insuring or in the payment of rent or any other amounts of money payable by the Tenant under the provisions hereof; or

(b) thirty (30) days in the case of default under any other provision;

within which to remedy such default. Provided that such thirty (30) day period shall be reasonably extended if:

(c) the default is of a nature which cannot be remedied in thirty (30) days and the Tenant upon receipt of such notice commences to rectify the default and proceeds diligently with such rectification; or

(d) if the default is one which the Tenant has a right to require a Subtenant to rectify and if the Tenant upon receipt of such notice promptly notifies such Subtenant and thereafter takes such action as may be necessary to obtain rectification by such Subtenant or failing rectification by such Subtenant proceeds itself with such rectification diligently.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

If, after the expiration of the times above limited, the default has not been remedied, the Landlord may thereupon, at its option, either by itself or its lawfully authorized agent, enter and re-enter into and upon the Project and the Land or any part thereof in the name of the whole and have again, repossess and enjoy its former estate free and clear of all claims of the Tenant and this Lease and the Term granted hereunder shall be terminated, and the Project shall be forfeited to and become the property of the Landlord as liquidated damages without compensation therefor to the Tenant.

20.02 RE-LET

If and whenever the Landlord is entitled to re-enter the Land and the Project and terminate this Lease pursuant to Section 20.01 hereof, the Landlord may at its option, without notice to the Tenant and without effecting a re-entry and termination, and as the agent in name of the Tenant, take possession of the Land and Project together with all the improvements, fixtures and furnishings thereon and as the agent and in the name of the Tenant, make such repairs and alterations as the Landlord, in its sole discretion, deems necessary or advisable and sublet the Land and the Project together with all or any of such improvements, fixtures and furnishings on whatever terms the Landlord may deem appropriate, in which case the Tenant shall continue to be liable for the performance of all its obligations under this Lease including the payment of rent and amounts payable hereunder, the Landlord shall be entitled to enforce all the covenants of any Subtenant and to collect and receive all rent and other amounts payable by any Subtenant and apply them against all indebtedness of the Tenant to the Landlord from time to time existing, and the Tenant shall pay any deficiency to the Landlord when and as from time to time demanded. No such taking possession of the Land or Project by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to the Tenant or left on the Land or Project. Notwithstanding any such re-letting without termination, the Landlord may at any time

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

thereafter elect to terminate this Lease for a breach hereunder by the Tenant. Should the Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant the cost of re-entering the Land or Project, including reasonable solicitors' fees.

20.03 SUE FOR RENTS

The Landlord may nevertheless, in addition to the foregoing remedies, sue for rents or other monies owing by the Tenant to the Landlord hereunder or both sue for rents and such monies and enjoin or obtain damages for or to enforce the curing of breaches of any conditions or covenants of this Lease.

20.04 CONDONING

No condoning, excusing or overlooking by the Landlord or the Tenant of any default, breach or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder respectively in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant in respect of any such continuing or subsequent default or breach and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing. All rights and remedies of the Landlord in this Lease contained shall be cumulative and not alternative.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

ARTICLE XXI

END OF TERM

21.01 SURRENDER

At the end of the Term hereby granted, whether by forfeiture, default, effluxion of time or otherwise, the Tenant shall surrender the Land and the Project thereon to the Landlord in the condition in which they are required to be kept by the Tenant under the provisions of this Lease except as herein otherwise expressly provided, free and clear of all mortgages, liens, charges, caveats, leases (including leasehold titles) and encumbrances, except as expressly permitted by the Landlord in its sole and absolute discretion.

21.02 ACCEPTANCE BY LANDLORD

Except as herein provided no surrender of this Lease by the Tenant prior to the end of the Term by effluxion of time shall be valid unless accepted in writing by the Landlord.

21.03 ADJUSTMENTS

At the end of the Term hereby granted, by effluxion of time but not otherwise, the Landlord shall pay to the Tenant the value of any unexpired insurance premiums upon the Project and the parties will pro rata adjust, apportion and allow between themselves all Impositions and items of rents, taxes, water rates and other matters of a similar nature applicable to the Project, to the intent and purpose that the Tenant shall bear the burden thereof until it shall deliver up possession of the Land on the termination of the Lease but not afterwards.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

21.04 ORDERLY TRANSITION

At the end of the Term hereby granted, by effluxion of time or otherwise, the Tenant shall cooperate with the Landlord to effect an orderly transition of the Project and, without limiting the generality of the foregoing, shall deliver to the Landlord all records and information relative to the operation of the Project including maintenance and service contracts, leases, subleases and all agreements relating to security and operating procedures.

ARTICLE XXII
OVERHOLDING

22.01 It is agreed that upon the termination of this Lease, by effluxion of time, and if the Tenant remains in possession of the Land and the Project thereon with or without the consent of the Landlord and without any further written agreement, a tenancy from year to year shall not be created by implication of law, but the Tenant shall be deemed to be a monthly tenant only at a rental payable in advance at the rate of One Dollar ($1.00) per month and otherwise upon and subject to the same terms and conditions as herein contained.

~~ARTICLE XXII~~

~~23.01 DISTRESS~~

~~The Tenant hereby irrevocably waives and renounces the benefit of any present or future legislation of the Legislature of the Province of Manitoba taking away or diminishing the Landlord's right of distress and agrees with the Landlord that notwithstanding any such enactment, all goods and chattels which are the property of the Tenant and are from time to time on the Land, shall be subject to distress for rent.~~

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

ARTICLE XXIII~~V~~

MISCELLANEOUS

~~24.01~~23.01 NOTICES

Any notice required or permitted to be given or permitted to be given hereunder shall be effectively given in writing and mailed to the Tenant, addressed to:

or upon the Landlord, addressed to:

by registered mail, postage prepaid, delivered or sent by telecopier to such address. If such notice is mailed, it shall be deemed to be given on the fourth business day following that on which the letter containing the notice is posted. if such notice is transmitted by telecopier, it shall be deemed to be given on the next business day following the date it was sent. The Landlord or the Tenant may change its address for notice purposes from time to time by notice given in accordance with this provision.

~~24.02~~23.02 PERSONAL DELIVERY

Any notice, demand, approval, consent or request which shall be given as provided in Section 234.01 upon the Landlord or the Tenant shall be sufficiently given for all purposes hereunder on the day on which it was so personally served.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

24:0323.03 LANDLORD'S CERTIFICATE

The Landlord agrees at any time and from time to time, upon not less than twenty (20) days prior notice by the Tenant, to execute, acknowledge and deliver to the Tenant a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the rent and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge, information and belief of the Landlord, the Tenant is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the Landlord may have knowledge, information or belief, being intended that any such statement may be relied upon by any prospective purchaser of this Lease or the unexpired portion of the Term hereof, or any assignee thereof. Failure of the Landlord to execute and deliver such statement at the time specified shall not relieve the Tenant of the obligation to pay the rent or perform any of the covenants of this Lease.

24:0423.04 TENANT'S CERTIFICATE

The Tenant shall promptly and whenever requested by the Landlord from time to time, acting reasonably, execute and deliver to the Landlord (and if required by the Landlord, to any mortgagee of the Landlord's interest in the Land designated by the Landlord) a certificate in writing as to the then status of this Lease (or any Sublease if required by the Landlord) including as to whether the Lease (or Sublease) is in full force and effect, is modified or unmodified, confirming the rental payable hereunder (or thereunder) and the state of the accounts between the Landlord and Tenant (or the Tenant and any Subtenant) the existence or non-existence of defaults, and any other matters pertaining to this Lease (or any Sublease) as to which the Landlord shall request a certificate.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

~~24.0823.08~~ **JURISDICTION**

This Lease shall be governed by the laws of the Province of Manitoba and the Courts of such province shall adjudicate any matters arising out of this Lease other than those matters to be determined by reference to arbitration.

ARTICLE XXIV

CONDITION OF AND TITLE TO LAND

~~25.01 CONDITION OF AND TITLE TO LAND~~

24.01 Subject to Section 1.01 hereof, the Landlord warrants that its title to the Land is such as to enable the Landlord to enter into this Lease.

ARTICLE XXVI

QUIET ENJOYMENT

~~26.01 QUIET ENJOYMENT~~

25.01 The Tenant, upon paying the rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Land and the Project during the term of this Lease without hindrance or molestation by anyone claiming by, through or under the Landlord as such, subject, however to the exceptions, reservations and conditions in the other provisions of this Lease and in the Project Agreement.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

ARTICLE XXVII

REMEDIES

2726.01 **PAYMENT BY LANDLORD**

If the Tenant shall at any time fail to pay any rent or Imposition in accordance with the provisions of Articles VI and VIII, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Article IX, or shall fail to make any other payment or perform any other act on its part to be made or performed, then (notwithstanding anything to the contrary contained in this Lease) the Landlord, after ten (10) days' notice to the Tenant (or without notice in case of an emergency or in the case of default under the Tenant's covenant to insure) and without waiving or releasing the Tenant from any obligation of the Tenant contained in this Lease, may (but shall be under no obligation to):

(a) subject to the provisions of Section 8.03, pay any Imposition payable by the Tenant pursuant to the provisions of Article VIII or any other costs payable by the Tenant hereunder;

(b) take out, pay for and maintain any of the insurance policies provided for in Article IX; or

(c) make any other payment or perform any other act on the Tenant's part to be made or performed as in this Lease provided;

and may enter upon the Project for any such purpose, and take all such action thereon, as may be necessary therefor.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

2726.02 PAYMENTS CONSTITUTE RENT

All sums so paid by the Landlord and all costs and expenses including all reasonable legal fees incurred by the Landlord in connection with the performance of any such act, together with interest thereon at an interest rate per annum equal to three percent (3%) over the prime rate fixed, from time to time, by The Toronto-Dominion Bank, at its Main Branch, in Winnipeg, calculated and compounded monthly, not in advance, from the respective dates of the Landlord's making of each such payment or incurring of each such cost and expense, shall constitute additional rent payable by the Tenant under this Lease and shall be paid by the Tenant to the Landlord forthwith upon demand, and the Landlord shall not be limited, in the proof of any damages which the Landlord may claim against the Tenant arising out of or by reason of the Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by the Tenant and which would have been payable upon such insurance, but the Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss, to the extent of any deficiency in the insurance required by the provisions of this Lease, damages, costs and expenses of suit suffered or incurred by reason of damage to, or destruction of, the Project occurring during any period when the Tenant shall have failed to provide insurance as aforesaid. However, any such damages so recovered by the Landlord shall be subject to the provisions of Article XII.

2726.03 TIME OF ESSENCE

Time shall be of the essence for this Lease and all rents and other payments to be made by the Tenant shall be paid by the Tenant on the dates provided herein. Interest at the rate of three percent (3%) over the prime rate fixed, from time to

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

time, by The Toronto-Dominion Bank, at its Main Branch, in Winnipeg, shall be paid by the Tenant on all rents not paid on the due date.

2726.04 No failure by the Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by the Tenant, and no breach thereof, shall be waived, terminated, altered or modified except by a written instrument executed by the Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

2726.05 **REMEDIES AT LAW OR EQUITY**

In the event of any breach or threatened breach by the Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, the Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right or remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Lease.

2726.06 **RIGHTS**

Each right and remedy of the Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise and shall not preclude the simultaneous or later exercise by the Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

by statute or otherwise, or the exercise of the beginning of the exercise by the Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE XXVIII

AMATEUR ACCESS AGREEMENT

28.27.01 In consideration of the benefit to the City by becoming owner of the Project upon termination of this Lease and in consideration of the Tenant agreeing to enter into an amateur access agreement to permit amateurs to have the use of the Project on such terms and conditions as are agreed upon and as are acceptable to the Landlord, the Landlord agrees to furnish yearly funding during each year of the Term to the Tenant in an amount equal to the:

(a) municipal portion of real property taxes (excluding any school taxes) paid on that portion of the Land and Project which relates to the presentation of baseball games, meaning the area of the Land and Project necessary for baseball games, such as the playing surface, dugouts, locker rooms, stands, bleachers and the like, as determined by the Landlord in its sole and absolute discretion; plus

(b) the amusement tax (or any tax imposed in replacement or substitution for amusement tax) remitted to the City of Winnipeg relating to the Winnipeg Goldeyes baseball games during such year.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

ARTICLE XXVIII

SUCCESSORS AND ASSIGNS

~~29.01 SUCCESSORS AND ASSIGNS~~

28.01 The covenants and agreements herein contained shall bind and enure to the benefit of the Landlord, its successors and assigns, and the Tenant, its Successors and permitted assigns, except as otherwise provided herein, and cannot be changed or terminated orally.

ARTICLE XXIX

APPROVAL OF LANDLORD

~~2930~~.01 Wherever the approval or opinion of the Landlord is ~~referred to required~~ in this Lease, it shall mean the approval or opinion of the Landlord through its Board of Commissioners or their designate.

~~ARTICLE XXXI~~

~~SIGNAGE~~

~~(provisions for signage approval to be prepared and inserted)~~

~~31.01~~

The parties hereto have duly executed this Lease on the _____ day of _____, 1997.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

THE CITY OF WINNIPEG

Per: _____
Mayor

Per: _____
City Clerk

RIVERSIDE PARK MANAGEMENT INC.

Per: _____

Per: _____

CERTIFIED AS TO FORM:

_____
City Solicitor

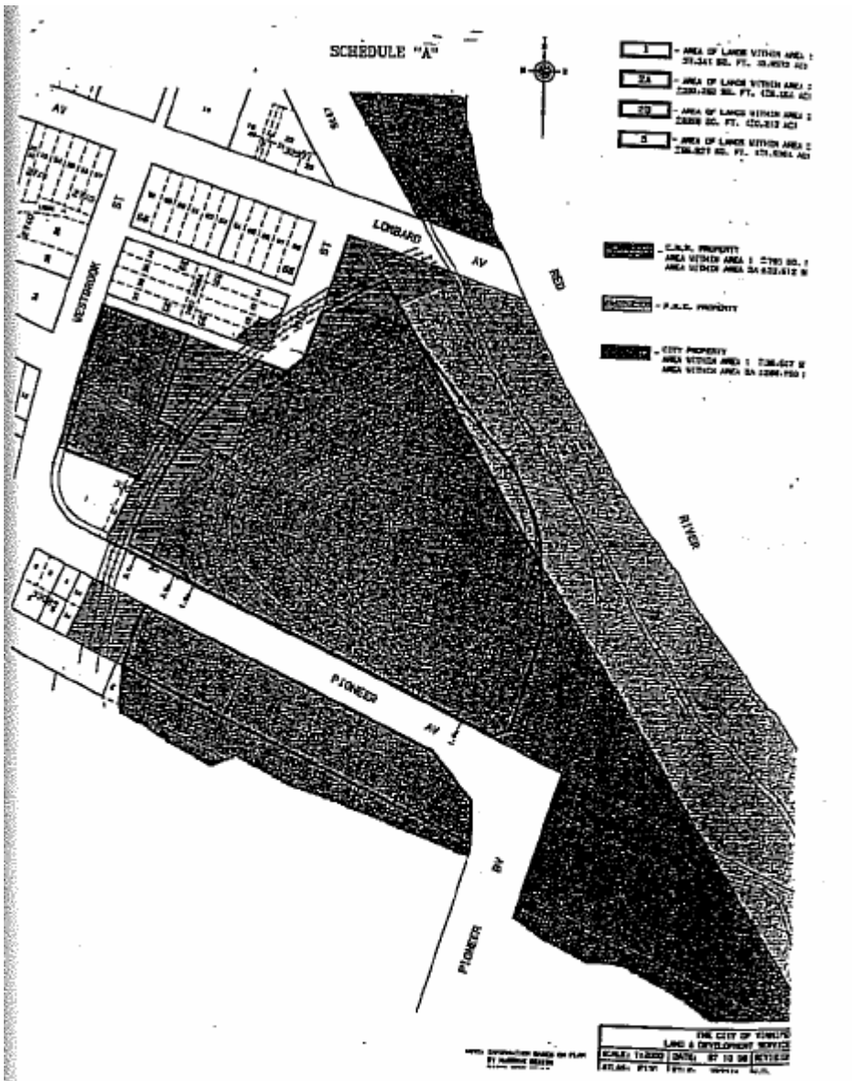
CERTIFIED AS TO FINANCIAL DETAIL:

_____
Chief Commissioner

CERTIFIED AS TO FINANCIAL DETAIL:

_____
City Treasurer

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)



Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated tober 15, 1997 (continued)

Appendix “A” referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

SCHEDULE "B"

(legal description of the Land to be inserted)

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

Schedule "C"

DATED:

BETWEEN:

THE CITY OF WINNIPEG,
(hereinafter referred to as the "*City*"),

OF THE FIRST PART,

- and -

RIVERSIDE PARK MANAGEMENT INC.
(hereinafter referred to as the "*Developer*"),

OF THE SECOND PART.

PROJECT AGREEMENT

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

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Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

THIS PROJECT AGREEMENT made the day of , 19 .

BETWEEN:

THE CITY OF WINNIPEG,
(hereinafter referred to as the *"City"*),

OF THE FIRST PART,

- and -

RIVERSIDE PARK MANAGEMENT INC.
(hereinafter referred to as the *"Developer"*),

OF THE SECOND PART.

WHEREAS:

A. Pursuant to the lease as defined herein, the City has leased to the Developer certain lands in the City of Winnipeg as more particularly described in the said lease for the purpose of the Developer constructing thereon a multi-purpose Sports and Recreational Centre including a Youth Activity Centre to provide a facility for sports, recreational, artistic and cultural purposes, both professional and amateur, all as set forth in the said lease;

B. Under the provisions of the said lease, the parties hereto have agreed to enter into this agreement, being the Project Agreement referred to in the said lease.

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree with each other as follows:

1.00 DEFINITIONS

1.01 In this Agreement:

"Architect" means the architect qualified to practice in Manitoba and retained by the Developer to design and supervise construction of the Project and to certify work in place in respect of the construction of the Project;

"City" means The City of Winnipeg or any successor municipality thereto;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

"Construction Start Date" means the date which is _____ days following the Commencement Date as determined under the provisions of the Lease;

"Final Project Plan" means the approval procedures, design plan, drawings and specifications for the Project to be prepared by the Developer and approved by the City and to be attached as Schedule "A" of this Agreement and all additions and amendments made thereto, from time to time in accordance with the provisions set out in the said Schedule and this Agreement;

"Improvements" means the buildings, structures and improvements to be designed and constructed on the Land with the baseball stadium in the Project having a seating capacity of approximately 7,500;

"Lease" means the lease of the Land bearing even date with this Agreement between the City, as landlord, and the Developer, as tenant, a copy of which lease is attached hereto as Schedule "B";

"Project" means the Improvements, including, without limitation, all improvements, fixtures, plant and equipment of every kind and description now or hereafter affixed or attached to or situate within the Project or situate outside the Land and servicing the Project and landscaping and parking areas or structures to be developed and built on the Land and such other improvements as may be agreed upon from time to time by the Landlord and Tenant;

"Substantial Completion" means substantial performance of the construction of the Project as same is determined by the Architect in accordance with the Final Project Plan and the provisions of *The Builders' Liens Act* of Manitoba and sufficient to ensure the issuance of a building occupancy permit by the City; and

All other capitalized terms used in this agreement shall have ascribed to them the same definitions as are set forth in the Lease.

2.00 OBLIGATIONS OF THE CITY

2.01 Obligations of the City

As soon as reasonably possible following the Commencement Date of the Lease, the City shall provide vacant possession of the Land to the Developer, pursuant to the Lease, so as to permit the Developer to obtain appropriate permits.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

3.00 OBLIGATIONS OF THE DEVELOPER

3.01 Obligations of the Developer

The Developer shall:

~~(a) erect as soon as possible, and in any case before the Construction Start Date, in a conspicuous location on hoarding to be erected along _____, an announcement sign with respect to the Project, which sign shall be provided by the City at the City's cost;~~

(ab) within _____ days following the Commencement Date of the Lease, complete any drawings and details and outline any specifications or construction and service requirements necessary to obtain zoning, urban design review and development application approval from the City for the Project and submit such documents to the City its approval prior to submission to the relevant department or departments of the City;

(bc) within _____ days following the Commencement Date of the Lease:

(i) complete and provide to the City working drawings and specifications sufficient to undertake the construction of the Project in accordance with the Final Project Plan; and

(ii) complete all necessary revisions to the schedule of development for the Project;

(cd) obtain from all contractors and subcontractors of the Developer such performance bonds and labour and material payment bonds as the City may reasonably require to ensure completion of the construction of the Project pursuant to the terms of this Agreement;

(de) provide the coordination and the consultants necessary to determine and satisfy the requirements of the City relating to the Project, including, but not limited to the requirements of the public utility authorities and of all other authorities with respect to traffic, transportation, vehicles and pedestrian access, relocation and supply of site services and easements;

(ef) keep the City reasonably informed of its progress with respect to the Project both before and after the Construction Start Date;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(fg) obtain all permits, approvals, licences and certificates necessary to commence construction of the Project;

(gh) obtain and maintain, in the name of the City and the Developer, as their interests may appear until Substantial Completion, insurance against perils insured under an all risks builders' risk broad form policy in amounts sufficient to ensure that in the case of damage or destruction of the Project, the proceeds of such insurance policies will be sufficient to restore the Project to the state in which it was before such damage or destruction and comprehensive general liability insurance in the amount and on the terms set forth in Article IX of the Lease;

(hi) commence construction of the Project as soon as practicable after the Commencement Date of the Lease and, in any event, no later than the Construction Start Date;

(ij) provide to the City copies of all work schedules, project cost budgets, progress reports and notices required by the City as and when such documents are required and provide written notice of Substantial Completion to the City when Substantial Completion occurs;

(jk) permit the City to inspect the Project at any reasonable time and from time to time during the construction to ensure that the Project complies with the Final Project Plan, provided that such inspection does not unduly disrupt the progress of construction and is conducted in accordance with reasonable safety and construction rules of the Developer;

(kl) ensure that the construction of the Project complies with the Final Project Plan and the drawings and specifications approved by the City pursuant to Article 4.00;

(lm) make all changes or modifications to the Final Project Plan required by any federal, provincial or municipal laws, regulations and codes. If any of such changes or modifications relate to matters which the City is entitled to approve pursuant to this Agreement, the prior written approval of the City shall be obtained in accordance with Article 4.00;

(mn) proceed expeditiously with the construction of the Project in a good and workmanlike manner so as to achieve conformity with the plans,

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

specifications and working drawings included in the Final Project Plan and exercise its best efforts to ensure that Substantial Completion occurs on or before the last day of the _____ month following the Commencement Date of the Lease, subject to Unavoidable Delay;

(no) promptly comply with all present and future laws, ordinances, orders, rules and regulations of municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which are, from time to time, applicable to the Project or to the construction of the Project or to the owners, tenants, contractors or subcontractors thereof, whether or not any such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Project;

(op) cause any and all statutory liens, builder's liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged by or for the Developer or anyone on its behalf which may be registered against the Land or which otherwise affect the Project, to be paid, satisfied, released, cancelled and vacated within thirty (30) days after:

(i) a claim for lien has been registered;

(ii) the Developer has notice that a claim for lien has been made; or

(iii) the City has sent to the Developer written notice by registered mail of any claim for any such lien;

whichever shall be the earliest; provided, however, that in the event of a bona fide dispute by the Developer of the validity or correctness or any claim for such lien, the Developer shall not be bound by the foregoing, but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into Court the amount claimed and such costs as the Court may direct and registering all such documents as may be necessary to cancel such lien, or providing such other security in respect of such claim as the City may in writing approve, provided that such approval shall not be unreasonably withheld or delayed;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(pq) comply with all statutory requirements as to amounts to be held back out of payments to be made with respect to work;

(qr) procure, carry and pay for or cause to be procured and carried and paid for full Workers Compensation coverage in respect of all workers, employees, servants and others working on the construction of the Project, non-payment of which would create a lien on the Land;

(rs) comply with the Final Project Plan;

(st) comply with the drawings and specifications for the Project approved by the City pursuant to Article 4.00;

(tu) obtain all services, utilities, conduits and connections required for the Project, including water, hydro-electricity, telephone, sewage (both sanitary and storm drainage), gas and telecommunication services;

(uv) ensure that the discharge of all rainwater runoff from the Land be attenuated to the satisfaction of the Commissioner of Works and Operations of the City;

(vw) not request or be entitled to make service connections to the dedicated high pressure firefighting watermain, which connections are contrary to the City policy;

(wx) ensure that access to all fire hydrants within the Land are maintained at all times to the satisfaction of the Fire Chief of the City;

(xy) prior to the removal of excavated materials from the Land, advise the Commissioner of Works and Operations for the City of the volumes to be disposed of at City land-fill sites, provide a schedule of quantities and types of materials to be disposed on City land-fill sites and pay the full cost of disposal on City land-fill sites as determined by the Commissioner of Works and Operations;

(yz) prior to the use of any street within the City for the removal of excavated materials from the Project, obtain from the Commissioner of Works and Operations of the City a list of designated haul roads and exercise its best efforts to ensure that all its contractors use only those roads;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(pq) comply with all statutory requirements as to amounts to be held back out of payments to be made with respect to work;

(qr) procure, carry and pay for or cause to be procured and carried and paid for full Workers Compensation coverage in respect of all workers, employees, servants and others working on the construction of the Project, non-payment of which would create a lien on the Land;

(rs) comply with the Final Project Plan;

(st) comply with the drawings and specifications for the Project approved by the City pursuant to Article 4.00;

(tu) obtain all services, utilities, conduits and connections required for the Project, including water, hydro-electricity, telephone, sewage (both sanitary and storm drainage), gas and telecommunication services;

(uv) ensure that the discharge of all rainwater runoff from the Land be attenuated to the satisfaction of the Commissioner of Works and Operations of the City;

(vw) not request or be entitled to make service connections to the dedicated high pressure firefighting watermain, which connections are contrary to the City policy;

(wx) ensure that access to all fire hydrants within the Land are maintained at all times to the satisfaction of the Fire Chief of the City;

(xy) prior to the removal of excavated materials from the Land, advise the Commissioner of Works and Operations for the City of the volumes to be disposed of at City land-fill sites, provide a schedule of quantities and types of materials to be disposed on City land-fill sites and pay the full cost of disposal on City land-fill sites as determined by the Commissioner of Works and Operations;

(yz) prior to the use of any street within the City for the removal of excavated materials from the Project, obtain from the Commissioner of Works and Operations of the City a list of designated haul roads and exercise its best efforts to ensure that all its contractors use only those roads;

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

(zaa) maintain the designated haul roads and other roads, if any, used, clear of clay, waste materials and any other materials which may be deposited on those streets by contractors' vehicles removing material from the Land, all to the satisfaction of the Commissioner of Works and Operations of the City;

(aabb) comply with any and all requirements of the City relating to the development and construction of the Project;

(bbcc) provide for the removal from the Land of all garbage and construction debris and shall provide all reasonable security, temporary light, heat, water, sanitary sewage, storm drains and power during construction of the Project;

(ccdd) construct adequate hoarding, and other necessary protection against construction operations for such streets as directed by the City and for other tenants, and their invitees, employees and agents on or near the Land, which hoarding and protection shall be approved by the City, acting reasonably;

(ddee) comply with all reasonable rules and regulations set by the City with respect to the Project;

(eeff) make available for inspection by the City and its auditors, from time to time, and at reasonable times and intervals, all books and records maintained by the Developer in connection with the Project and such other information and material as may be required by such auditors for the purpose of their audit and otherwise give such cooperation as may be required by such auditors for the purpose of their audit or as may be necessary for such auditors to carry out their duties on behalf of the City; and

(ffgg) make available to the City a reasonable number of copies of the "as built" drawings for the Project.

3.02 Damage to Watermain

If the existing domestic and high pressure watermains owned by the City are damaged by the Developer, its employees, agents, contractors or sub-contractors during the course of construction of the Project or during the period ending one year after completion thereof, as certified by the Commissioner of Works and Operations of the City, and such damage or leakage resulted from such construction then the Developer shall maintain and restore such watermains to at

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

least the functional equivalent of such watermains as they existed prior to the commencement of construction of the Project. Each of the Developer and the City acknowledges that such watermains are susceptible to construction damage, particularly through soil movement resulting from excavation and construction.

4.00 APPROVAL OF PLANS AND SPECIFICATIONS

4.01 Approval

All drawings and specifications required to implement or amend the Final Project Plan shall be approved by the City, ~~acting reasonably,~~ and within fifteen (15) working days after receipt of such drawings and specifications for approval, the City shall give notice to the Developer in writing that it approves or that it withholds its approval (or that it approves parts thereof and which parts it withholds its approval of), and set forth, in reasonable detail, its reasons for withholding its approval. All approvals of drawings and specifications will be given in accordance with the Final Project Plan and the procedures set forth in this Article 4.00 and the City's approval of drawings and specifications shall be based upon their conformance with the Final Project Plan.

4.02 Deemed Approval

If the City does not provide the required notice to the Developer within the time limit herein set forth, the City shall be conclusively deemed to have approved the items submitted to it. If within the time limit set forth in Article 4.01 the City gives to the Developer written notice that it withholds its approval of certain items, together with its reasons for withholding its approval then, subject to Article 4.03, the Developer shall revise such items and re-submit them to the City for approval pursuant to Article 4.01.

~~4.03 Referral to Arbitration~~

~~If the City does not approve any drawings or specifications submitted by the Developer and the Developer is unwilling to revise such drawings and specifications then the matter shall be referred to arbitration pursuant to Article 6.00 hereof.~~

5.00 INDEMNIFICATION

5.01 Indemnification by Developer

The Developer hereby indemnifies and saves the City harmless of and from any and all liabilities of any nature or kind relating to or arising from the construction of the Project. Without limiting the generality of the foregoing, the

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

Developer shall be responsible for any and all damage to property owned by third parties resulting from the construction of the Project.

5.02 Immediate Repair of Damage

The Developer shall immediately repair all damage arising from the construction of the Project caused by it or its agents to any property owned by third parties or the City, including without limitation, any damage to the public and private roadways adjacent to the Land, landscaping (including trees and fountains) of adjacent property, damage to adjacent property resulting from inadequate shoring and the Developer shall restore same to the condition which existed immediately prior to the commencement of construction of the Project by the Developer. If the Developer does not immediately repair such damage, the City shall have the right but not obligation to repair such damage after giving seven (7) days prior written notice to the Developer and the Developer shall immediately reimburse the City for all reasonable costs and expenses incurred by the City in performing the Developer's obligation.

~~**6.00 ARBITRATION**~~

~~**6.01 Appointment of Arbitrators**~~

~~If the City and the Developer do not agree as to any of the matters which, if no agreement is reached upon them, are by the provisions of this Agreement to be determined by arbitration, any such disagreement shall be referred to three (3) arbitrators one of whom shall be chosen by the City, one by the Developer and the third by the two so chosen.~~

~~**6.02 Failure to Appoint**~~

~~If within fifteen (15) days of notification that a matter is to be referred to arbitration under Article 6.01, the party receiving the notice fails to appoint an arbitrator or the two arbitrators appointed by the parties do not agree upon a third arbitrator, then the party not in default in making the required appointment or either one of the arbitrators appointed by the parties may apply to a Judge of the Court of Queen's Bench of Manitoba for the appointment of an arbitrator to represent the party in default in making the required appointment of the third arbitrator or both of such arbitrators.~~

~~**6.03 Compliance with Act**~~

~~The arbitration shall be conducted upon the terms and conditions and subject to the provisions of *The Arbitration Act* of the Province of Manitoba and shall be final and binding on the parties hereto.~~

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

67.00 REMEDIES ON DEFAULT

67.01 Deemed Default

If the Developer defaults under the terms of the Lease or any other agreements referred to herein to which it is a party, and the Developer has not remedied or commenced to rectify the default in accordance with the Lease or such agreements, then the Developer shall be deemed to have defaulted under the terms of this Agreement.

67.02 Remedies

If the Developer defaults under the terms of this Agreement or under the terms of the Lease and the City terminates the Lease under the provisions thereof or if the Lease is terminated under Article XIX of the Lease, then the City shall have whatever remedies that are available under the Lease or any other agreement to which the Landlord and the Tenant are parties and generally at law and without limiting the foregoing, the City may, at its option:

(a) either by itself or its lawfully authorized agent or nominee, enter and re-enter into and upon the Land and Project or any part thereof in the name of the whole and have again, repossess and enjoy its former estate free and clear of all claims of the Developer and the Project shall be forfeited to and become the property of the Landlord as liquidated damages without compensation therefor to the Developer;

(b) immediately acquire all of the right, title and interest of the Developer in any and every agreement, lease, license and easement granted to the Developer in connection with the Project, including all construction contracts, development agreements, performance bonds, labour and material bonds, all manufacturer's warranties and guarantees received by the Developer in respect of the Project, and commitments for the financing of the construction of the Project together with all documents evidencing or related to such rights and the Developer hereby appoints the City its attorney for the purpose of effecting the assignment of any of such rights, title and interest from the Developer to the City; and

(c) terminate this Agreement and any of the agreements referred to herein.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

78.00 DAMAGES

78.01 Damages

The Developer acknowledges that if the Developer does not, for any reason, proceed with the development of the Land and the construction of the Project in accordance with the Final Project Plan and the terms of this Agreement, then the City will suffer damages and the Developer shall indemnify and save harmless the City from any such damages.

89.00 MISCELLANEOUS PROVISIONS

89.01 Press Releases

All press releases and notices to the public, including site signs in connection with or related to this Agreement and the development contemplated by it will be approved by the parties before being made, which approval, if reasonably possible will relate not only to the content of the press release or notice, in each case, but also to the date and time of its being made and the media utilized; provided that the Developer shall be entitled to disseminate information as to the progress of the Project in its normal course of its business and its public relations.

89.02 Notice

Any notice required or permitted to be given hereunder shall be effectively given if in writing and mailed to the City at:

or to the Developer and the Covenantors at:

by registered mail, postage prepaid, delivered or sent by telecopier to such address. If such notice is mailed, it shall be deemed to be given on the fourth business day following that on which the letter containing the notice is posted. If such notice is transmitted by telecopier, it shall be deemed to be given on the next business day

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

following the date it was sent. Any party to the Agreement may change its address for notice purposes from time to time by notice given in accordance with this provision.

89.03 Entire Agreement

This Agreement, the Lease and all of the documents referred to therein constitute the entire agreement between the parties. There are not and shall not be any verbal statements, representations, warranties, undertakings or agreements between the parties except as otherwise agreed to in writing.

89.04 Time of Essence

Time shall be of the essence of this Agreement.

89.05 Headings

The captions and headings in this Agreement are for convenience of reference only and shall not be referred to in connection with or affect the scope, intent or interpretation of any provision hereof.

89.06 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.

89.07 Governing Law

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Manitoba and each of the parties hereto hereby attorn to the jurisdiction of the Province of Manitoba.

89.08 Severability

Each provision of this Agreement is intended to be severable and if any term or provision of this Agreement is determined to be invalid or illegal for any reason whatsoever, such invalidity or illegality shall not affect the validity of the remainder of this Agreement.

89.09 Prohibition

No member of the House of Commons of Canada shall directly or indirectly have an interest in this Agreement or any part thereof or make any commission pursuant to this Agreement or be entitled to any benefit to arise therefrom.

Appendix "A" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997 (continued)

89.10 No Assignment

This Agreement shall not be assignable by either of the parties hereto, except that the Developer shall be entitled to assign this Agreement to any associated, affiliated or related corporation with the prior written consent of the City, not to be unreasonably withheld, provided that the Developer shall remain bound by the covenants set forth in this Agreement.

89.11 No Unreasonable Delay

Except as herein otherwise provided, no party hereto shall unreasonably withhold or delay any approval or consent required to be given pursuant to this Agreement. Any such approval or consent shall be deemed not be have been unreasonably delayed if it is given as expeditiously as possible, having regard to the circumstances.

89.12 Further Assurances

The parties hereto shall and will at all times and from time to time hereafter and upon every reasonable written request so to do, make, do, execute, deliver or cause to be made, done, executed and delivered any and all such further acts, deeds, assurances and things as may be required for more effectually implementing and carrying out the true intent and meaning of this Agreement.

89.13 Provisions of Lease Relating to this Agreement

It is understood and agreed that all schedules hereto and all provisions of the Lease relating to the construction of the Project shall form part of this agreement including, without limitation Articles IV and VII of the Lease.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

THE CITY OF WINNIPEG
Per: _____

Per: _____

RIVERSIDE PARK MANAGEMENT INC.
Per: _____

Per: _____

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

Appendix B

Parking Lot Lease (Parcel 3)

Appendix “B” referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

THIS LEASE made in duplicate, effective the 1st day of May, 1998,

BETWEEN:

THE CITY OF WINNIPEG
(hereinafter called the "*City*")

- and -

RIVERSIDE PARK MANAGEMENT INC.
(hereinafter called the "*Tenant*")

WITNESSETH that in consideration of the rents and covenants hereinafter contained, on the part of the Tenant to be paid, observed and performed, the City by these presents, does demise and lease unto the Tenant, all that parcel of land, including any structures thereon, shown illustrated and identified as Area 3 (plus or minus 1.5364 acres) on Misc. Plan No. CC 9985/9 attached hereto as Schedule "A", which lands shall be legally described as determined by the City and required by the Winnipeg Land Titles Office and which legal description shall be set forth in Schedule "B", which shall be attached to this Lease when determined and shall replace the description of the land set forth in this paragraph, it being understood that if the Winnipeg Land Titles Office requires a plan of subdivision for the purposes of this Lease, all costs incurred in connection therewith shall be borne by the Tenant (hereinafter referred to as the "*demised premises*");

TO HAVE AND TO HOLD the demised premises unto the Tenant for a term of five (5) years, commencing on the 1st day of May, 1998, which period shall automatically be extended for further successive terms of one (1) year each, unless terminated as hereinafter provided.

TAYLOR McCAFFREY
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10/16/97 12:00 PM

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

YIELDING AND PAYING THEREFOR annual rent in the sum of ONE ($1.00) DOLLAR unto the City, payable in advance, the receipt of which is hereby acknowledged by the City, together with additional rent as hereinafter provided.

1. The Tenant hereby covenants and agrees with the City as follows:

(a) To pay to the City as additional rental, an amount equal to the total of such taxes, rates, local improvements and charges assessed for the demised premises including any buildings thereon in the same manner as if the demised premises had been entered into the assessment roll of the City as privately owned and subject to taxes;

(b) In addition to the payment aforesaid, to pay all license fees and business tax which may be charged in respect of the use and occupation of the demised premises by the Tenant and any goods and services tax charged in respect of rent payable under the Lease or in respect of the rental of space under the Lease, whether such fees and taxes are charged by any municipal, provincial or federal authority or otherwise;

(c) To comply with all provisions of law including without limitation, federal and provincial legislative enactments, building by-laws, and any other governmental or municipal regulations which relate to the partitioning, equipment, operation or use of the demised premises, and to make any repairs, replacements, alternations, additions, changes, substitutions or improvements of or to the demised premises. The Tenant shall further comply with all police, fire and sanitary regulations imposed by any federal, provincial or municipal authorities, or made by fire insurance underwriters and observe and obey all governmental and municipal

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

regulations and other requirements governing the conduct of any business conducted in the demised premises;

(d) Not to erect or permit the erection of any building or other structure, save and except the improvements herein contemplated, upon the demised premises without the prior written consent of the Director of the City's Land and Development Services (hereinafter called the "*Director*");

(e) Subject to the provisions of Clause 2(f) hereof, to use the demised premises at the Tenant's sole cost and expense for parking purposes only and not to use or permit the demised premises or any part thereof to be used for any other purposes;

(f) To indemnify and keep indemnified the City from and against all claims, actions or proceedings, for loss, injury, damages or compensation by any person, firm or corporation, whether to real or personal property wheresoever situated, or by any member, employee, agent, licensee, invitee, tenant or third party whether claiming through or under the Tenant or to the Tenant's use of the demised premises, or the construction, maintenance, existence or use of any buildings erected thereon, or in any way connected therewith or otherwise by reason of the exercise by the Tenant of the use hereby granted or the performance of or failure to perform its obligations hereunder.

To further safeguard the City, the Tenant shall purchase and keep in force during the full term of the Lease, a Comprehensive General Liability Policy including, but not limited to, the following provisions:

i) The City of Winnipeg to be named as additional insured;

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ii) the policy to contain a cross-liability clause;

iii) minimum limits of $1,000,000.00 all inclusive;

and the Tenant shall file with the City a certified copy of the Policy in a form satisfactory to the City Solicitor.

The City shall have a right to alter the limits and/or coverages as required in the City's sole discretion from time to time during the continuance of the Lease;

(g) Not to file any Caveat or other encumbrance against the demised premises;

(h) To maintain, at its own expense, the demised premises in a neat and tidy manner to the satisfaction of the Director;

(i) Not to assign this Lease nor sublet the demised premises without the prior written consent of the City's Committee on Finance and Administration (hereinafter called the "*Committee*").

Any consent by the Committee to an assignment or sub-let shall not relieve the Tenant of its obligations for the payment of rent and the performance of the terms and conditions contained in the Lease;

(j) To be totally responsible for any damage to (including risk of loss, injury or damage to) the demised premises including any damage to the City's utilities and appurtenances thereto or facilities (herein called the "*facilities*") located therein or thereon, caused by the Tenant or any of its employees, agents, licensees, invitees, tenants or third party;

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

(k) Not to cause, permit or suffer anything to be done or continued in or upon the demised premises or any part thereof which may be or become a nuisance or annoyance or cause damage or inconvenience to the City or to the owners, users or occupiers of neighbouring land or lands;

(l) Not to do or suffer any waste or damage to the demised premises;

(m) Not to, except so far as may be reasonably necessary for maintaining the demised premises for parking as herein provided, commit any waste thereon, or sell or take off the demised premises any clay, soil or turf of any kind;

(n) Not to create or permit any condition on the demised premises that could present a threat to human health or to the environment. The Tenant shall indemnify and hold harmless the City from any suit or claim growing out of any damages alleged to have been caused, in whole or in part, by an unhealthy, hazardous or dangerous condition caused by, contributed to, or aggravated by the Tenant's or subtenant's violation of any laws, ordinances, regulations or requirements pertaining to solid or other wastes, chemicals, oil and gas, toxic, corrosive, or hazardous materials, air, water, (surface or ground water) or noise pollution, and the storage, handling, use or disposal of any such material. The Tenant shall bear the expense of all practices of work, preventative, or remedial, which may be required because of any condition of the demised premises caused by the Tenant or use of the demised premises by the Tenant or those claiming by, through or under the Tenant, during the Tenant's period of occupancy or during the Tenant's ownership or use prior to the date of this Lease. The Tenant expressly agrees that the indemnification and hold harmless obligations it

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

hereby assumes shall survive cancellation of this Lease. The Tenant agrees that the statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until the City discovers any such health or environmental impairment, and the Tenant hereby knowingly and voluntarily waives the benefits of any shorter limitation period;

(o) The Tenant shall, at its sole expense, comply with all governmental requirements related to environmental matters, with respect to the demised premises and will cause environmental remediation, if required, to be completed prior to May 1, 1998, and will provide written confirmation to the City from all relevant governmental bodies that the requirements have been met and that all environmental remediation, if required, has been completed to the satisfaction of said bodies; provided, however, that the Tenant shall have the right to terminate this Lease prior to May 1, 1998, by written notice to the City, should the Tenant not desire to remedy any remediation that may be required;

(p) From and after the commencement date of this Lease, the City shall have the right, but not the duty, to enter upon the demised premises from time to time to inspect the demised premises for environmental contamination and in the course thereof to conduct soil and ground water testing. The City may enter the demised premises during regular business hours of the Tenant without prior notice, and may enter the demised premises during periods other than regular business hours either with prior written consent of the Tenant or without if the City reasonably believes that an emergency exists on the demised premises. The City shall conduct any such inspections or testing so as to minimize interference with the Tenant's

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

business operations. The City's entry on to the demised premises pursuant to this clause shall not relieve the Tenant from any payment required to be made to the City under this Lease;

(q) to be responsible for any permitted demolition at the demised premises at no cost to the City.

(r) The Tenant, having received notice from the City that the City is planning a replacement of the Provencher Bridge which may require some realignment of City streets surrounding or adjacent to the demised premises during the term of this Lease and accepting that there is an onus on the Tenant to co-operate with the City in the said alignment should it become necessary at any time during the term of the lease, the Tenant shall, upon request of the City, ~~re-convey~~ **surrender** to the City such minor portion or portions of the demised premises that the City, in its sole discretion, deems necessary for the above purposes.

The parties agree each with the other as follows:

(a) The City shall retain the right to enter upon and make full use of the demised premises at any time with or without equipment:

i) to view the state of maintenance and repair of the demised premises, and the Tenant shall maintain and repair according to notice in writing given by the Director. If the Tenant fails to maintain and repair according to notice, the City may do such work at the sole cost and expense of the Tenant; or

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ii) for the purpose of maintaining, renewing, repairing, altering or replacing the facilities in, on, over, upon or near to the demised premises, including the right to exclude all others for as long as may be necessary to carry out such work; or

iii) for any other purposes

without being responsible for any damage to improvements upon the demised premises made by the Tenant occasioned thereby, except in cases where such loss, costs, expenses, claims and/or damages are caused by the direct negligence of the City or its agents or employees;

(b) Notwithstanding anything to the contrary herein contained, in the event of the Tenant not complying with the terms and conditions contained in this Lease and such default continues for a period of ten (10) days after notice to remedy such default, this Lease is subject to immediate cancellation by the Director;

(c) If the term hereby granted shall be at any time seized or taken in execution or attachment by any creditor of the Tenant or its permitted assigns, or if the Tenant or its permitted assigns shall make any assignment for the benefit of creditors or become bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, and the said term shall immediately become forfeited and void;

(d) Notwithstanding the forfeiture or termination of this Lease in any manner herein provided for, the Tenant shall be and remain liable to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeiture or termination and for the fulfillment of all

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

obligations herein contained on the part of the Tenant to be observed and performed upon or after such forfeiture and termination.

(e) Notwithstanding anything to the contrary herein set forth or implied, it shall be a specific condition of this Lease that the Tenant shall complete the following improvements to the demised premises, as soon as reasonably possible following May 1, 1998 and prior to the right of the Tenant to use the demised premises for the purposes set forth herein:

i) perimeter landscaping to the satisfaction of the City;

ii) ingress and egress approaches as required by the City;

iii) land drainage as required by the City; and

iv) hard surfacing of the portion of the demised premises closest to the railway, as required by the City (being no more than fifty (50%) percent of the demised premises).

(f) The Tenant shall have the right to demolish any structures upon the demised premises or alternatively to use such structures for or in conjunction with the Project referred to in the Stadium Lease (as hereinafter defined), provided that the Tenant shall not have the right to sublease or otherwise permit occupation of any of the structures on the demised premises to any other person, firm or corporation for any commercial use.

(g) Each party shall have the right to terminate this Lease at the expiration of the first five (5) years of this Lease or on any anniversary date thereafter, by giving at least twelve (12) months prior notice in writing to the other,

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997

provided that the City shall not be entitled to terminate this Lease pursuant to this paragraph unless the demised premises are required for City purposes.

(h) The parties acknowledge that, contemporaneously with the execution of this Lease, the parties have entered into a lease dated the day of , 1997, a copy of which is attached hereto as Schedule "C" relating to the use of adjacent lands (hereinafter called the "*Stadium Lease*") and, should the Stadium Lease be terminated for any reason whatsoever, this Lease shall thereupon be terminated forthwith without notice.

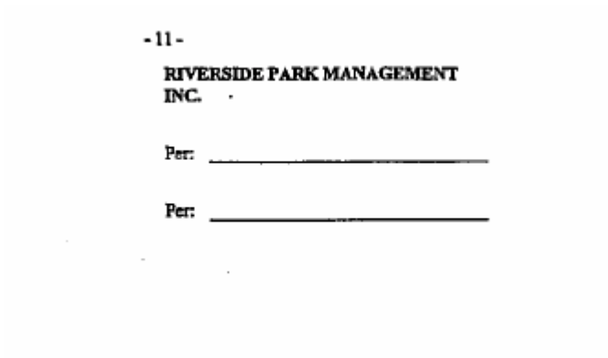
(i) Upon termination or cancellation of this Lease in any such manner afore-said, the Tenant shall at its own expense, remove all its property and other materials from the demised premises and restore the demised premises to a condition satisfactory to the Director. Should the Tenant default in so doing, then in such event the City may remove the Tenant's property and other materials at the sole risk and expense of the Tenant and the Tenant shall pay to the City the entire cost and expense which may be incurred by the City in carrying out any such work or removal and/or disposal, and for the restoration of the demised premises to its satisfaction.

IN WITNESS WHEREOF the parties have executed these presents this day of , 1997

THE CITY OF WINNIPEG

Per: _____
Director, Land and Development Services

Appendix "B" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997



- 11 -

RIVERSIDE PARK MANAGEMENT INC.

Per: _____

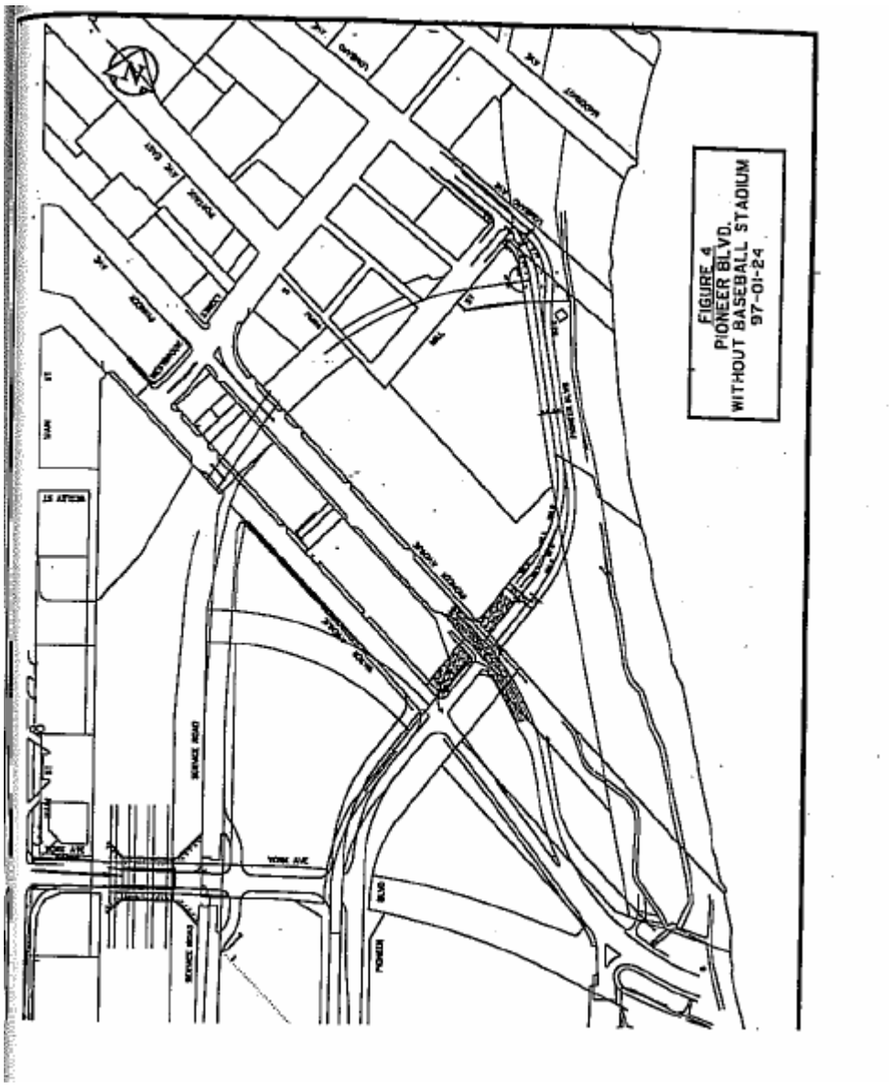
Per: _____

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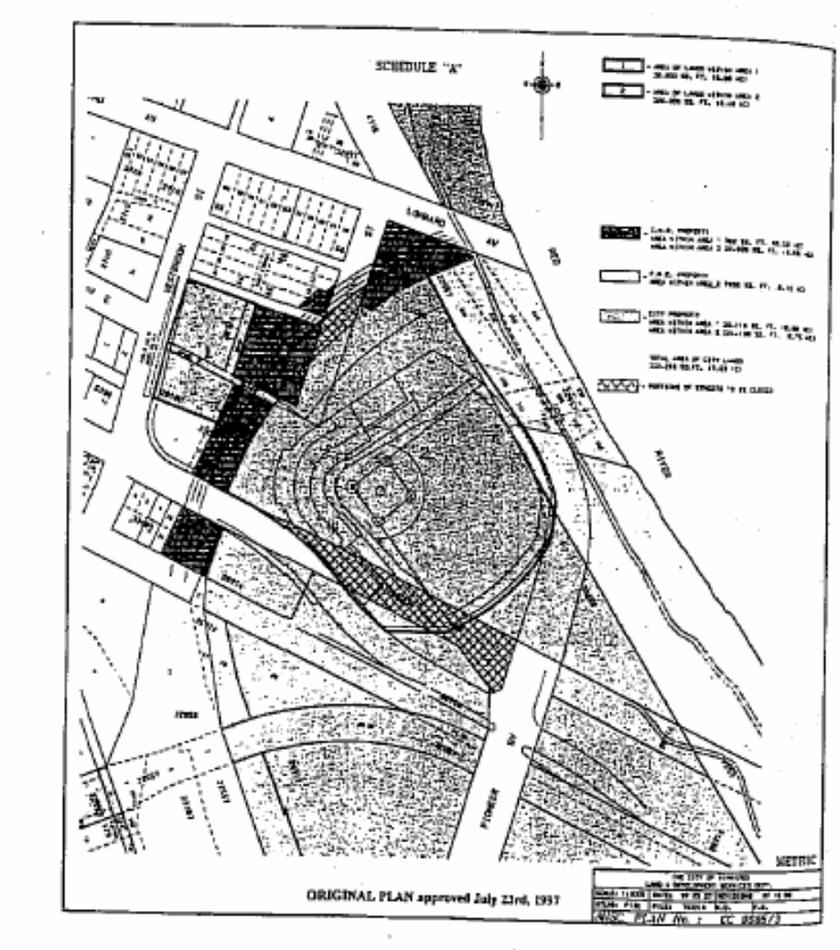
SCHEDULE "B"

(LEGAL DESCRIPTION TO BE INSERTED AS REQUIRED PURSUANT TO THE FIRST PARAGRAPH OF THIS LEASE)

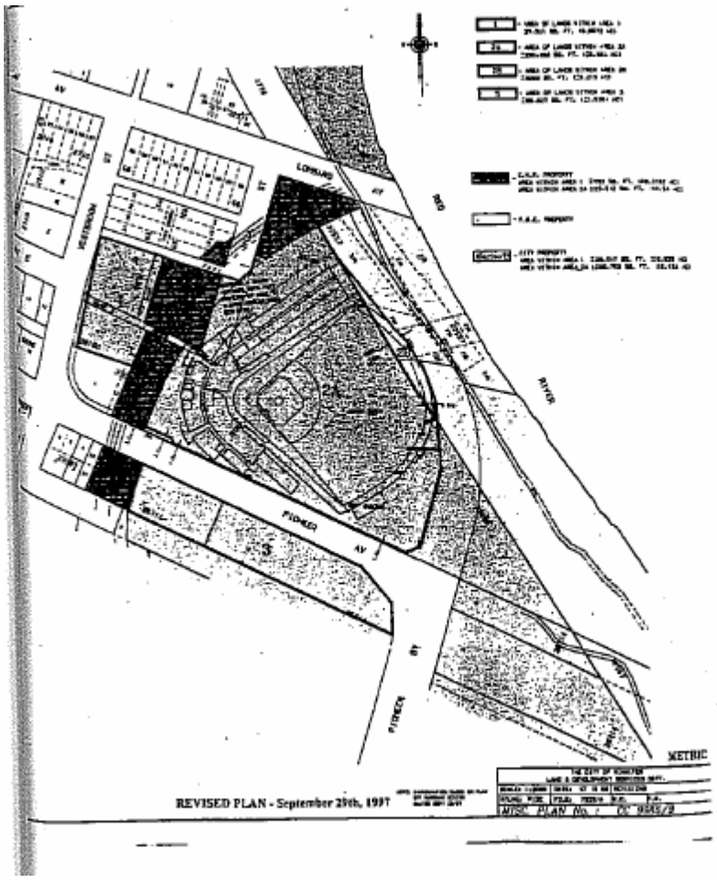
Appendix "C" referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997



Appendix “C” referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997



Appendix “C” referred to in Clause 4 of the Report of the Executive Policy Committee dated October 15, 1997



Appendix "A" referred to in Clause 3 of the Report of the Committee on Protection, Planning, and Culture dated October 6, 1997

Community Incentive Grant Program - West Broadway Development Corporation
File PR-2.6(33) (Vol. 4)

5. The Committee on Protection, Parks and Culture has considered an application from the West Broadway Development Corporation for a Community Incentive Grant in the amount of $15,294.34 to assist with the costs of the West Broadway Neighbourhood Revitalization project.

The application does not meet the eligibility criteria contained in the Community Incentive Grant Program, inasmuch as the West Broadway Development Corporation is not a non-profit community recreation or sport organization or a non-profit organization offering recreation services.

On July 8, 1997, the City Centre Community Committee recommended that a Community Incentive Grant in the amount of $15,294.34, not to exceed a maximum of fifty percent (50%) of the total project cost, be approved for the purpose requested.

The Committee on Protection, Parks and Culture concurred in the recommendation of the City Centre Community Committee, and therefore recommends:

I. That the criteria for the Community Incentive Grant Program be waived in this instance.

II. That a Community Incentive Grant in the amount of $15,294.34, not to exceed fifty percent (50%) of the total project cost, be approved to the West Broadway Development Corporation for the purpose requested, subject to the following conditions:

(a) Confirmation of other funding sources;

(b) Approval of final plans and specifications for the project by the Director of Parks and Recreation; and

(c) The applicant entering into a formal agreement with the City of Winnipeg.

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