Submission of Riverside Park Management Inc.

to

Executive Policy Committee

September 17, 2008

Fillmore Riley LLP
Barristers and Solicitors
1700 – 360 Main Street
Winnipeg, MB R3C 3Z3

Mark Newman

Tel: (204) 957-8325

HISTORY

Riverside Park Management Inc. ("Riverside") is the lessee pursuant to a lease agreement with the City of Winnipeg.

Riverside is a non-profit corporation created to facilitate the construction of the baseball park for the 1999 Pan An Games. Through its lease of the lands where the baseball park is located, it assures ongoing access for amateur sports and various community organizations including the Boy Scouts, Girl Scouts, Manitoba Baseball Association and other charitable endeavours.

The lease covers certain lands located to the South of Pioneer Avenue and to the West of Waterfront Drive.

Lands surrounding the Forks and Canwest Global Park have been the subject of ongoing planning.

In July 2002, Council received a report relating to interim uses of surrounding lands pending more permanent development.

The report recommended, and Council agreed, that on an interim basis, the surrounding lands would be used for parking and Parcel 4 was accordingly made the subject of a lease.

The rent was $1.00 per year plus taxes.

The terms and conditions of the lease were to be such that the operation of the land for parking would be economically feasible to Riverside. As part of the lease Riverside paid for construction of berms, levelling, drainage and gravelling of the lot.

The renewal of the lease for a further 3 years was premised on the following:

a) no permanent development plan for the land having been completed, therefore allowing for the continued interim use on a temporary basis;

b) the terms and conditions of the lease continuing to be such that the operation by Riverside was economically feasible;

c) Riverside could not construct buildings or other structures or improvements (paving and electrification of parking stalls) on the land;

d) Riverside was required to make the lands, or portions thereof, available for City required uses such as film or construction (Provencher Bridge);

e) the City could terminate the lease on 6 months notice.

USE OF THE LAND

The land is used for parking purposes. The demand for parking at this location has historically been quite limited due in part to its distance from buildings requiring parking. Also the absence of electric plugs makes the lot less attractive.

More recently, Riverside has been put in the position of competing with the Winnipeg Parking Authority which offers reduced rates. It is grossly unfair that Riverside must now compete with the Winnipeg Parking Authority which has lower taxes and therefore a competitive advantage.

Representations were made to Riverside that the assessment value would remain at historical levels and Riverside therefore had the expectation that the taxes, which it must pay under the lease, would be at approximately the same level.

Riverside learned for the first time in June of 2006, that taxes would be more than double the historical levels and therefore appealed the assessment.

THE ASSESSMENT SYSTEM

Every four years a new assessment is created for all properties in the City of Winnipeg.

For the years 2002 – 2005, the assessment was based on value in 1999.

A new assessment came into force in 2006, based on value in 2003.

The new assessment for 2006 was issued by the City of Winnipeg in May, 2005. This assessment, absent a physical change to the property, would remain in force for the years 2006 – 2009 inclusive.

The assessed values for 2006 as issued by the City of Winnipeg in May 2005, and the comparable assessment for the same parcels of land for the years 2002 – 2005, is as follows:

	2002 Assessment	2006 Assessment
Lot G	$ 848,000.00	$ 848,000.00
Lot G1	197,000.00	197,000.00
Lot F1	169,000.00	169,000.00
Lot F2	66,400.00	66,400.00
Lot Z1	270,000.00	270,000.00
Total:	$1,550,400.00	$1,550,400.00

Historically, the land had been valued at the same level as the immediately surrounding lands, approximately $6.00 per square foot.

The immediately surrounding vacant lands are valued as follows:

106 Waterfront Drive - Comparables
2002 and 2006 Values

Map	Square Footage	2002 Assessment	2006 Assessment	Assessment Square Foot
A	70,400	$ 406,000.00	$ 406,000.00	$5.77
B	21,336	128,000.00	128,000.00	6.00
C	189,200		1,137,000.00	6.01
D	36,432	218,000.00	218,000.00	5.98
E	74,800	441,000.00	441,000.00	5.90

* Parcel C did not exist in its present form in 2002.

Map	Square Footage	2002 Assessment	2006 Assessment	Assessment Square Foot
F	250,800	$1,550,400.00	$1,550,400.00	6.18
		(revised March 2006)	$3,965,000.00	$15.81

Unbeknownst to Riverside, on March 22, 2006, the City of Winnipeg pursuant to Section 14(2) of The Municipal Assessment Act, revised the assessment from approximately $6.00 per square foot to $15.81 per square foot.

Section 14(2) of The Municipal Assessment Act provides as follows:

> **City Assessor may amend rolls**
> 14(2) The City Assessor may at any time, for the purpose of correcting an error or omission, amend the latest revised real or personal property assessment roll or business assessment roll, as the case requires, of The City of Winnipeg as certified, amended and revised by the City Assessor.

The legality of the use of Section 14(2) to revise an assessment to increase value, absent physical changes, or an error, is questionable. There was no change of any kind to the property physically. The City of Winnipeg combined the five roll numbers into one.

The value was appealed and in December 2007, the value was fixed at $12.00 per square foot.

Riverside immediately approached the City of Winnipeg to address the parking lot whose operation was no longer feasible at taxes more than double what was anticipated.

AMENDMENT OF THE LEASE

A number of meetings occurred between the City of Winnipeg Administration and representatives of Riverside in January and February of 2008.

Matters discussed in these meetings included:

a) the infeasibility of operating the parking lot with taxes at a level more than double the historic level contrary to the intent of City Council;

b) the representation by the City of Winnipeg during the renewal negotiations as to the level of value and the consequent level of taxes;

c) the misrepresentation by the City of Winnipeg as to the level of taxes based on the taxes being more than double that of historical levels;

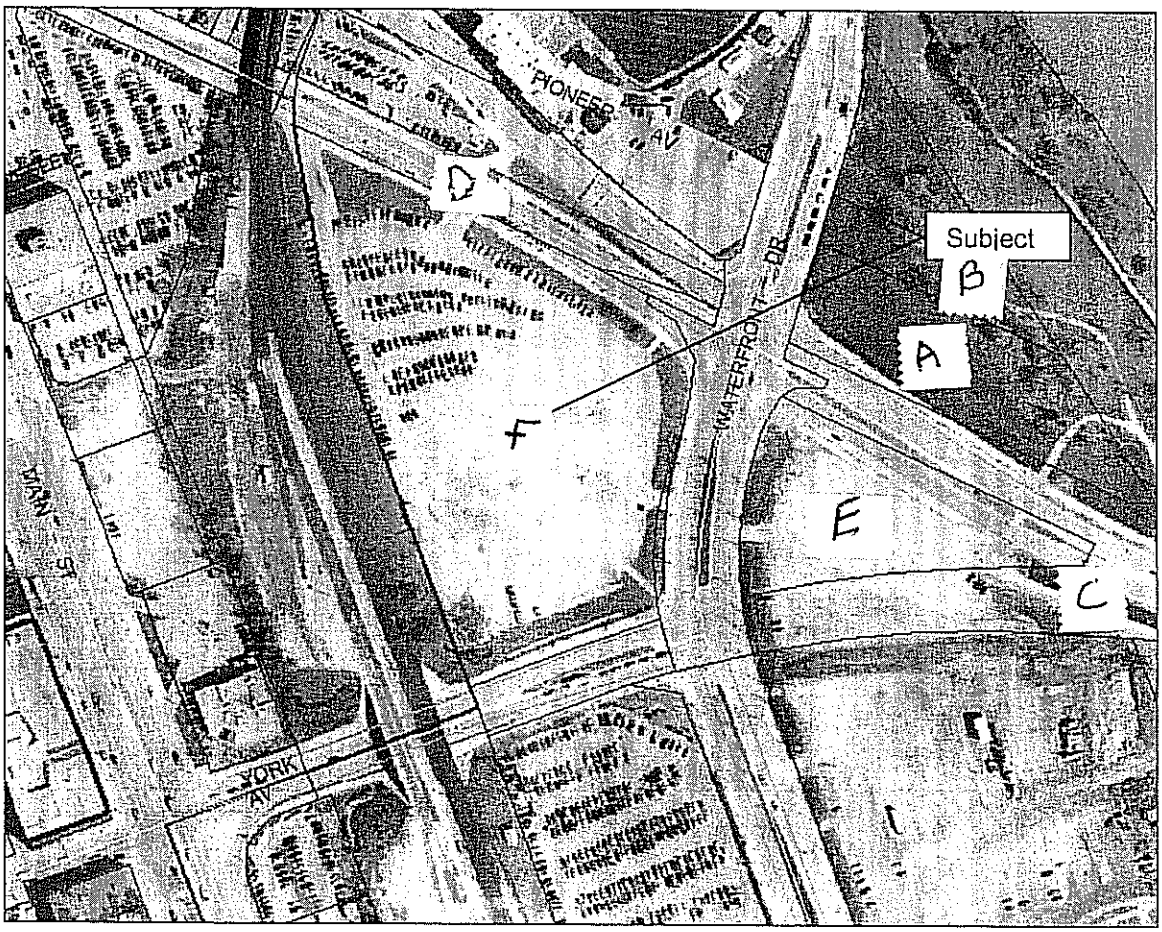
d) the needs for the City of Winnipeg to take a portion of the land leased to Riverside for purposes of the Canadian Museum of Human Rights and the Forks Renewal Corporation.

As a consequence of these discussions and the negotiations an agreement was entered into with the City of Winnipeg on April 10, 2008, and amended April 24, 2008. A copy is attached hereto.

The Committee is asked to support the amendment of the lease in accordance with the letter of April 9, 2008, from the City of Winnipeg as amended by letter dated April 24, 2008.

ADDENDA E

SITE PLAN



RIVERSIDE PARK MANAGEMENT INC.
ONE PORTAGE AVE EAST
WINNIPEG, MANITOBA
R3B 3N3

April 28, 2008 Delivered

Planning, Property & Development Department
City of Winnipeg
65 Garry Street – 2nd Floor
Winnipeg, Manitoba
R3C 4K4

Attn: Don Armstrong, Senior Negotiator

Re: 106 Waterfront – Parking lot lease Parcel 4 – Proposed Amendment
File: 7933/A V8

Please be advised that Riverside Park Management Inc. acknowledges receipt of your letter dated April 24, 2008 outlining revisions to the agreement of April 9, 2008.

This letter shall serve as confirmation that Riverside Park Management Inc. is in agreement with the revisions as laid out in the letter of April 24, 2008, a copy which is initialed and enclosed herewith.

Please advise when the Standing Policy Committee on Downtown Development will be meeting.

Sincerely,

Jason McRae-King, CA
President
Riverside Park Management Inc.

Cc Mark Newman, Fillmore Riley

Winnipeg

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

Real Estate Division • Division des biens immobiliers

In reply please refer to / Référence à rappeler :

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

"WITHOUT PREJUDICE"

April 24, 2008

Riverside Park Management Inc.
1 Portage Avenue E.
Winnipeg, Manitoba
R3B 3N3

Attn: Mr.J.McRae-King, Chief Financial Officer

Dear Sirs:

RE: 106 WATERFRONT - PARKING LOT LEASE PARCEL 4 – PROPOSED AMENDMENT
FILE: 7933/A V8 (PLEASE QUOTE WHEN REPLYING)

This is a follow up to our conversation this morning regarding the above referenced matter.

As you are aware, the Planning, Property and Development Department is proceeding with the finalization of the Administrative Report in support of the proposed resolution to the Parcel 4 parking lot taxation matter as agreed to in your letter dated April 10, 2008.

During the review process, a query arose with respect to the City's representation in the letter dated April 9, 2008 under Bullet No.3 wherein it was proposing to allow the Tenant to use the surrendered lands at no cost. Upon review, it was suggested that the City should be collecting a fee equivalent to the proportionate tax for the use of lands during the 50 – 4 hour periods in 2006, 2007 and 2008. As such, it is proposed that the City collect a payment equivalent to the this use in 2006, 2007 and 2008 as follows:

Year	Parcel 4	Realty Taxes	Proportionate Share for Baseball Games
2006	Surrendered lands	$168,788.31	$1,927.00 See Note 1
2007	Surrendered lands	$169,732.81	$1,937.98 See Note 2
2008	Surrendered lands	$169,732.81	$1,937.98 See Note 3
Total			$5,802.96 plus GST

Note 1: This amount was calculated as follows: Realty tax of $168,788.31 times .50 of land area divided 365 days times 1/6 of use per day times 50 games in 2006 = $1927.00

Note 2: This amount was calculated as follows: Realty tax of $169,732.81 times .50 of land area divided 365 days times 1/6 of use per day times 50 games in 2006 = $1937.98

Note 3: This amount was calculated as follows: Realty tax of $168,788.31 times .50 of land area divided 365 days times 1/6 of use per day times 50 games in 2006 = $1937.98

As such, the Department is proposing an amendment to it's letter dated April 9, 2008 as follows:

To delete:

- Confirm that as a condition of Riverside Park Management Inc. providing the surrender of 50% of the Leased Lands and not pursuing any claims for misrepresentation or claims pending in the Court of Appeal relating to the absence of an equitable assessment of the Leased Lands, the City will confirm that insofar as Riverside Park Management Inc. is concerned, all outstanding real property taxes for 2006 and 2007 estimated at $185,159.10, together with GST and interest thereon, have been satisfied in full and that no amount is outstanding from Riverside Park Management Inc. relative to the lease of Parcel "4";

- "By way of a separate agreement, to allow the Tenant to use the surrendered lands for vehicle parking during the presentation of exhibition, regular and post season games in the daytime, afternoon or evenings during the baseball season at no cost and the right to collect and retain all parking revenues thereto and shall terminate on the expiry of the lease for the remaining Leased Lands all to be determined by the City Solicitor; and,"

To insert:

- Confirm that as a condition of Riverside Park Management Inc. providing the surrender of 50% of the Leased Lands and not pursuing any claims for misrepresentation or claims pending in the Court of Appeal relating to the absence of an equitable assessment of the Leased Lands, the City will confirm that insofar as Riverside Park Management Inc. is concerned, all outstanding real property taxes for 2006 and 2007 estimated at $185,159.10, less an amount for the proportionate realty taxes due on the use of the surrendered lands for baseball games in 2006 and 2007 together with GST and interest thereon, have been eliminated or written- off in full and that no amount is outstanding from Riverside Park Management Inc. relative to the lease of Parcel "4";

- "By way of a separate agreement, to allow the Tenant to use the surrendered lands for vehicle parking during the presentation of exhibition, regular and post season games in the daytime, afternoon or evenings during the baseball season at a cost equivalent to the amount of realty taxes attributable to the proportionate use for baseball games plus GST , and, the right to collect and retain all parking revenues thereto and shall terminate on the expiry of the lease for the remaining Leased Lands all to be determined by the City Solicitor; and,"

Your earliest response is hereby requested to facilitate the finalization of this Report.

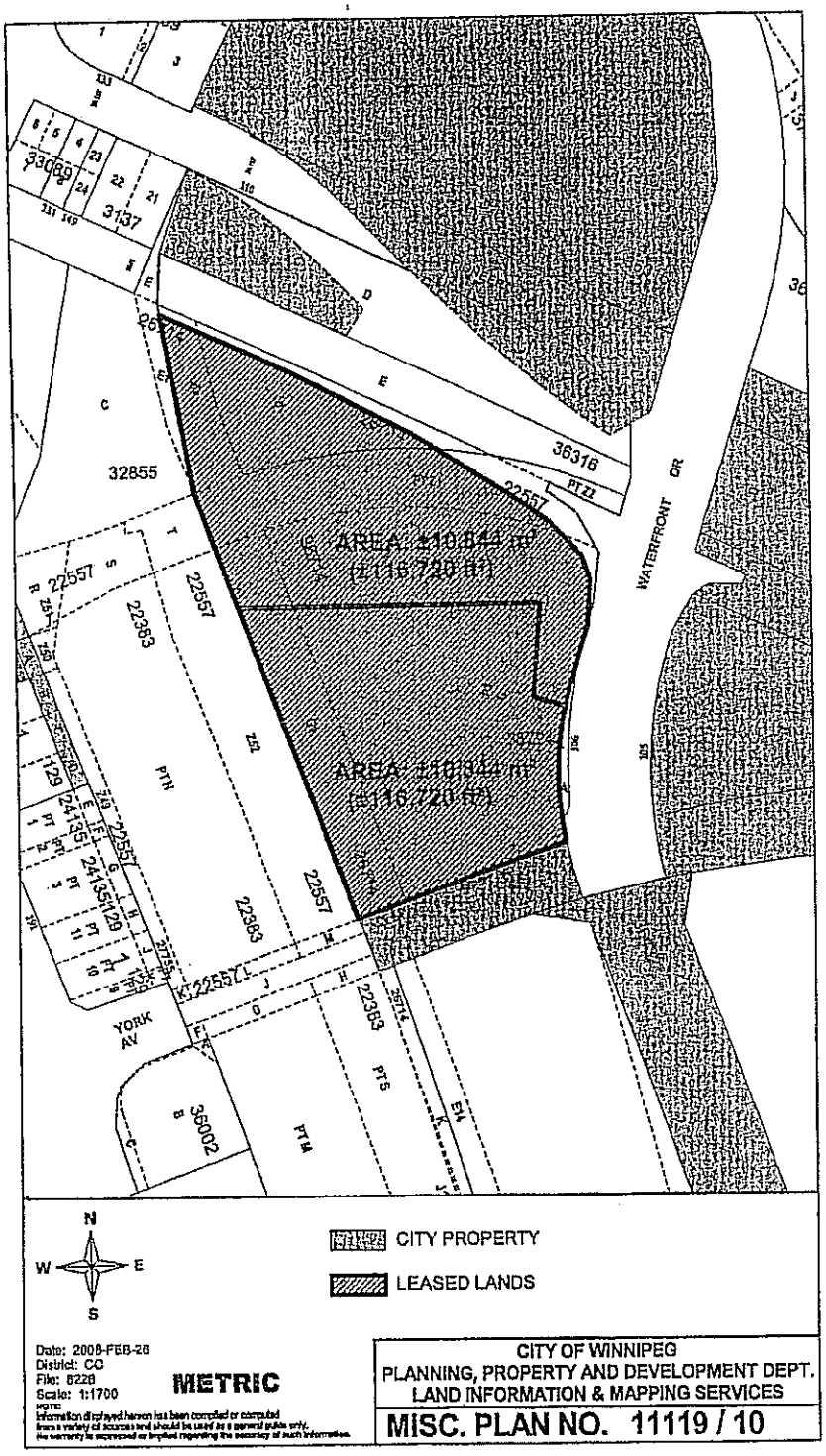
Please note that the proposal is not a binding contract and is subject to the Standing Policy Committee on Downtown Development approval and other approvals as may be required and all documentation associated thereto relating to the settling of terms must be in a form satisfactory to the City Solicitor and Riverside Park Management Inc.

I trust that the above addresses all of the issues relative to Riverside Park Management Inc.'s use of Parcel 4 and if you should have any questions or concerns, please call me at 986-3811.

Yours truly,

D. Armstrong,
Senior Negotiator

DJA/dja


AREA: ±10,844 m²
(±116,720 ft²)
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WATERFRONT DR
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CITY PROPERTY
LEASED LANDS
Date: 2008-FEB-28
District: CC
File: 8228
Scale: 1:1700
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11119 / 10

RIVERSIDE PARK MANAGEMENT INC.
ONE PORTAGE AVE EAST
WINNIPEG, MANITOBA
R3B 3N3

April 10, 2008

Delivered

Planning, Property & Development Department
City of Winnipeg
65 Garry Street – 2nd Floor
Winnipeg, Manitoba
R3C 4K4

Attn: Don Armstrong, Senior Negotiator

Re: 106 Waterfront – Parking lot lease Parcel 4 – Proposed Amendment
File: 7933/A V8

Please be advised that Riverside Park Management Inc. acknowledges receipt of your letter dated April 9, 2008.

This letter shall serve as confirmation that Riverside Park Management Inc. is in agreement with the terms as laid out in the letter of April 9, 2008, a copy which is initialed and enclosed herewith.

Please advise when the Standing Policy Committee on Downtown Development will be meeting.

Sincerely,

Jason McRae-King, CA
Riverside Park Management Inc.

Cc Mark Newman, Fillmore Riley

Winnipeg

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

Real Estate Division • Division des biens immobiliers

In reply please refer to / Référence à rappeler :

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

"WITHOUT PREJUDICE"

April 9, 2008

Riverside Park Management Inc.
1 Portage Avenue E.
Winnipeg, Manitoba
R3B 3N3

Attn: Mr.J.McRae-King, Chief Financial Officer

Dear Sirs:

RE: 106 WATERFRONT - PARKING LOT LEASE PARCEL 4 – PROPOSED AMENDMENT
FILE: 7933/A V8 (PLEASE QUOTE WHEN REPLYING)

This is a follow up to our various communications and to the meeting held on February 25, 2008 regarding the above referenced matter.

The City and Riverside Park Management Inc. entered into a lease for the use of City-owned lands located at the southwest corner of Waterfront and Waterfront Drive in accordance with the following terms and conditions:

Owner:	City
Lessee:	Riverside Park Management Inc. (RPMI)
Term:	Three (3) years commencing October 1, 2005
Purpose:	Vehicle parking
Leased Lands:	Shown as "Parcel 4 " on Misc. Plan No. 11119/4
Zoning:	C
Size:	5.95 acres
Rental:	$1.00 per year, plus applicable GST.
Realty Taxes:	Municipal and school taxes, plus applicable GST.
Insurance:	Comprehensive General Liability $2.0 Million, cross liability, City to be added as an additional insured
Lessee Resp:	All operating costs, utilities and site maintenance
Cancellation:	Six (6) months written notice by either party

In 2006, RPMI became aware of a change to the assessed value of the lands, which increased from $1.28 million to $3.96 million. As a result, the liability to pay annual realty taxes increased from $76,889 to $193,163 including GST in 2006. In response, RPMI appealed the decision to the Board of Revision on November 30, 2006, resulting in a reduction of the assessed value from $3.96 million to $1.63 million. RPMI subsequently paid the realty taxes owing for 2006 and 2007 in full.

In 2007, the Assessment and Taxation Department appealed the Board of Revision decision to the Municipal Board because it did not agree with the assessment valuation. At its meeting held on November 17, 2007, the Municipal Board considered the matter and made a ruling to increase the assessed value of Parcel 4 to $3.69 million resulting in additional taxes of $185,159.10 plus GST for 2006 and 2007.

The Chief Financial Officer and Tax Consultant for RPMI subsequently contacted the City and indicated that it was not feasible to continue leasing the subject lands for parking purposes and requested a meeting to discuss the matter and to examine alternatives to resolve the taxation issue. The Winnipeg Public Service examined various alternatives and discussed a possible amendment to the existing lease with representatives of Riverside Park Management Inc. at a meeting held on February 25, 2008. As a result of the February 25, 2008 meeting and as a follow to our March 7, 2008 letter and to your letter dated March 28, 2008 regarding the above referenced matter and to additional reconsideration of various matters by the Winnipeg Public Service, the Winnipeg Public Service has made certain amendments to the wording of the original proposal, which is now presented for your review and consideration as follows:

Riverside Park Management Inc. agrees to:

- Abandon any further actions/claims with respect to the assessment/valuation of the Leased Lands and the resulting tax impositions including claims for misrepresentation and as well claims relating to the absence of an equitable assessment of the Leased Lands relative to other lands in the area.

- At the request of the City, and in consideration of the need to accommodate the Forks North Portage Partnership parking requirements for the Southerly 50% of the Leased Lands due to the Canadian Museum of Human Rights project, the Tenant agrees to voluntarily surrender 50% of the Leased Lands without any penalty or compensation from the City and to enter into an amending agreement whereby the size of the Leased Lands are reduced and the tenant is allowed to use the remaining northerly 50% fronting onto Waterfront as identified on the attached Misc. Plan 11119/10 with an effective date of January 1, 2008;

- To use the surrendered lands during the presentation of all exhibition, regular and post season baseball games in the daytime, afternoon or evenings during the baseball season at no cost and the right to collect and retain all parking revenues, and, to be responsible for all costs such as security and insurance related thereto all to be outlined in the amending form of agreement to be determined by the City Solicitor;

- Subject to the rights to use the remaining leased lands and the surrendered lands for the presentation of baseball games referred to in the above, the Tenant agrees to not interfere in any way with the City and/or new Tenant's management and occupation of the surrendered lands, and in particular that it will not take any steps that may impede upon the City and/or new Tenant's unrestricted pedestrian, vehicle access, parking lot management and management services as may be required by the City; and,

- To terminate any parking lot agreements with a parking lot management contractor and to make any operational, equipment or signage changes on site as may be required upon the effective date for the Amending Agreement.

City agrees to:

- Confirm that as a condition of Riverside Park Management Inc. providing the surrender of 50% of the Leased Lands and not pursuing any claims for misrepresentation or claims pending in the Court of Appeal relating to the absence of an equitable assessment of the Leased Lands, the City will confirm that insofar as Riverside Park Management Inc. is concerned, all outstanding real property taxes for 2006 and 2007 estimated at $185,159.10, together with GST and interest thereon, have been satisfied in full and that no amount is outstanding from Riverside Park Management Inc. relative to the lease of Parcel "4";
- To amend the Lease Agreement whereby the size of the Leased Lands are reduced by 50% and to allow the Tenant to use of the most northerly 50% fronting onto Waterfront as identified on the attached Misc. Plan 11119/10;

- By way of a separate agreement, to allow the Tenant to use the surrendered lands for vehicle parking during the presentation of exhibition, regular and post season games in the daytime, afternoon or evenings during the baseball season at no cost and the right to collect and retain all parking revenues thereto and shall terminate on the expiry of the lease for the remaining Leased Lands all to be determined by the City Solicitor; and,

Upon receiving a report from the City Assessor that the change has been made in accordance with the subject proposal, the City's Tax Collector is to correct the Tax Roll pursuant to s.340(1) of the City Charter to reflect the changes above with an effective date of January 1, 2008.

The above proposal is being submitted for your consideration and acceptance. Please provide a written response to the subject proposal prior to April 12, 2008.

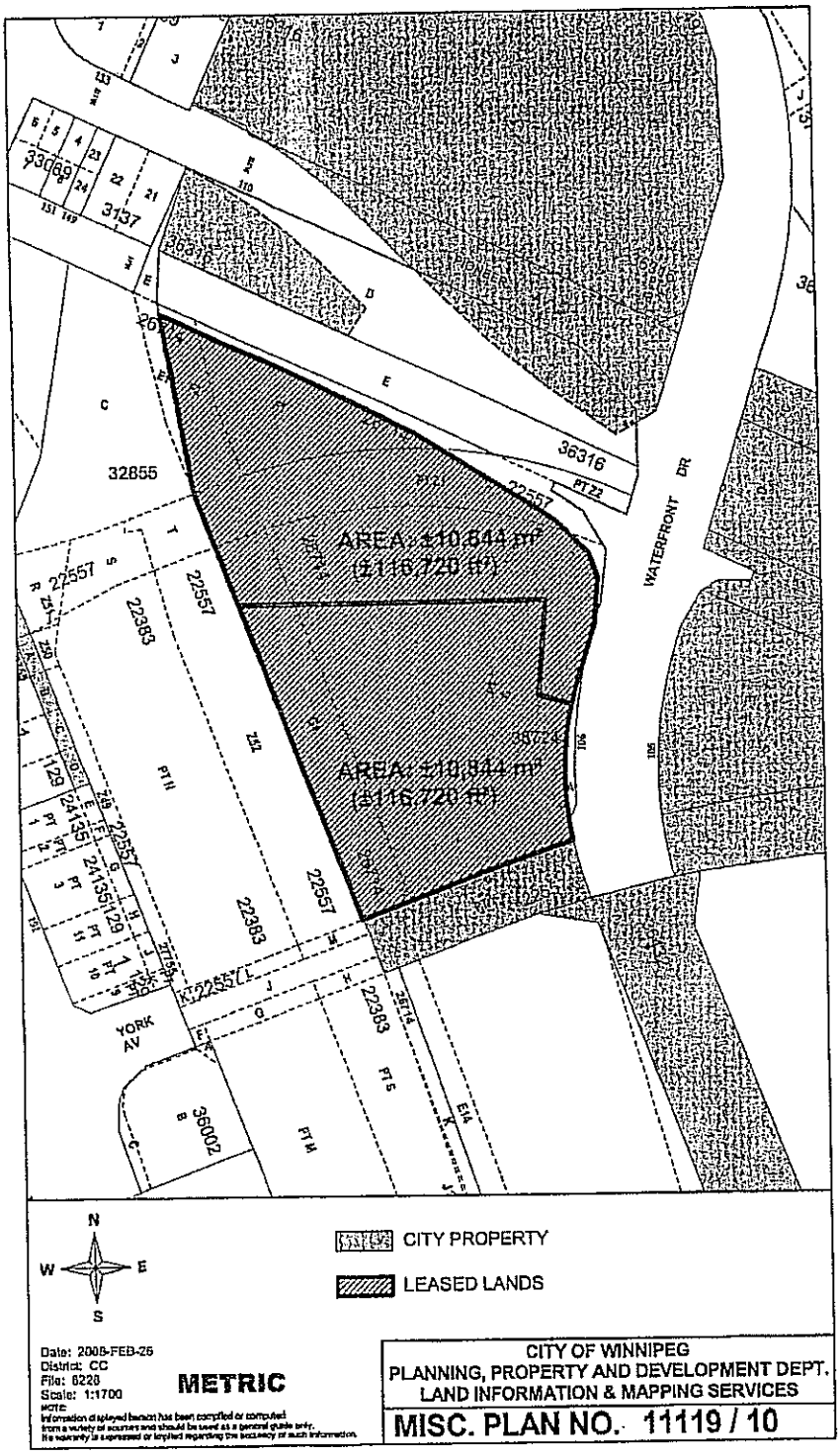
Please note that the proposal is not a binding contract and is subject to the Standing Policy Committee on Downtown Development approval and other approvals as may be required and all documentation associated thereto relating to the settling of terms must be in a form satisfactory to the City Solicitor and Riverside Park Management Inc.

I trust that the above addresses all of the issues relative to Riverside Park Management Inc.'s use of Parcel 4 and if you should have any questions or concerns, please call me at 986-3811.

Yours truly,

D. Armstrong,
Senior Negotiator

DJA/dja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WATERFRONT DR
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CITY PROPERTY
LEASED LANDS
Date: 2008-FEB-26
District: CC
File: 6228
Scale: 1:1700
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11119 / 10