Agenda - Council – February 24, 2010

Report - Standing Policy Committee on Property and Development – February 2, 2010

Item No. 11 Sale - Barber House Lands (99 to 105 Euclid) - SISTARS Community Economic Development Co-op Inc. (Mynarski Ward) eFile FI-2.4(34)

STANDING COMMITTEE RECOMMENDATION:

On February 17, 2010, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That the Council decision dated March 22, 2006, approving the sale of the subject City property shown on Misc. Plan No. 10963/2 to Sistars Economic Development Co-op Inc. at a price of $1.00 for the development of a child care facility, be rescinded:

2. That the sale of the subject City property as shown on Misc. Plan No. 10963/2 to Sistars Economic Development Co-op Inc. be approved at a price of $1.00 for the development of a child care facility, subject to:

    A. The Purchaser providing:

        i the submission of a viable Business Plan to the satisfaction of the Director of Planning, Property and Development Department, and

        ii evidence that funding has been secured in order to complete the proposed development (as revised) satisfactory to the Director of Planning, Property and Development.

    B. The terms and conditions of sale being in accordance with the City's policy on the sale of land to non-profit organizations and substantially in accordance with the terms and conditions as set-out in Schedule "A" to the report of the Winnipeg Public Service dated January 5, 2010, and any other such terms and conditions that are deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services in order to protect the interests of the City.

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

Report - Standing Policy Committee on Property and Development – February 2, 2010

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 17, 2010, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On February 2, 2010, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

ISSUE: **To Seek Council Approval of the Sale of Barber House Lands (99 to 105 Euclid) to SISTARS Community Economic Development Co-op Inc.**

Critical Path: **Standing Policy Committee on Property and Development**
EPC
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Klassen	D. Joshi	n/a	

RECOMMENDATIONS

1. That the previous Council authority dated March 22, 2006, approving the sale of the subject City property shown on Misc. Plan No. 10963/2 to Sistars Economic Development Co-op Inc. at a price of $1.00 for the development of a child care facility, be rescinded:

2. That subject to the approval of Recommendation #1, the sale of the subject City property as shown on Misc. Plan No. 10963/2 to Sistars Economic Development Co-op Inc. be approved at a price of $1.00 for the development of a child care facility, subject to:

   (a) The Purchaser providing (i) the submission of a viable Business Plan to the satisfaction of the Director of Planning, Property and Development Department, and (ii) evidence that funding has been secured in order to complete the proposed development (as revised) satisfactory to the Director of Planning, Property and Development.

   (b) The terms and conditions of sale being in accordance with the City's policy on the sale of land to non-profit organizations and substantially in accordance with the terms and conditions as set-out in Schedule "A" attached, and any other such terms and conditions that are deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services in order to protect the interests of the City.

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

IMPLICATIONS OF THE RECOMMENDATIONS

- The Public Service would be in a position to sell the subject City property to Sistars Economic Development Co-op Inc. ("Sistars"), at a price of $1.00, with terms and conditions being in accordance with the City's policy on the sale of land to non-profit organizations and any other terms and conditions that are deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Manager of Legal Services in order to protect the interests of the City.

- Provisions for the redevelopment of Barber House, a Grade II Heritage Building, will be provided for in the Sale Agreement.

- The City will contribute $40,000.00 towards the remediation of lead impacted soils on the City property.

HISTORY

- In March, 2006, Council approved the sale of the subject City property shown on Misc. Plan No. 10963/2 to Sistars Economic Development Co-op Inc. at a price of $1.00 for the development of a child care facility and coffee shop/laundry/training centre.
- In September, 2006, and January, 2007, the Standing Policy Committee on Property and Development approved an extension of time(s) for the Purchaser to satisfy its due diligence conditions and to extend the date for commencement of the construction of the complex.
- In July, 2006, a Phase One Environmental Assessment (ESA) was completed by Sistars on the property. A Phase Two Assessment determined that some remediation was required due to the presence of lead in some of the soils, which had been deposited by others on a portion of the site. The consultant suggested the most economical and viable means remediation was to provide cover material for the site. The Public Service advised Sistars that the City would contribute up to $40,000.00 towards the cost of remediation (as the City would have to pay this cost if the site was not sold to Sistars and developed), provided that Sistars developed the site in such a manner as to satisfy the Province of Manitoba – Manitoba Conservation, that the site had been adequately remediated.
- While the Public Service has been in ongoing contact with Sistars since June of 2007, Sistars had been unable to confirm sources of financing for the project.
- In July, 2009, at Sistars request, the Public Service met with Sistars and the Province of Manitoba Intergovernmental Affairs/ Neighbourhoods Alive at which time a scaled down version of the earlier child care facility project was presented. The original plans for an ancillary coffee shop, laundry/training centre uses have been removed from the new project. Phase Two of the project would include the restoration of Barber House.

- In October, 2009, Sistars requested the Public Service to renew the proposed sale of the subject City property shown on Misc. Plan No. 10963/2 to Sistars for $1.00, for the development of a child care facility (as revised).
- Sistars have advised that they have confirmed funding of $1,457,806.00 to cover the capital cost of the new project.
- The Public Service has consulted with the Ward Councillor, who is supportive of the sale.

FINANCIAL IMPACT

Financial Impact Statement **Date:** January 15, 2010

Project Name: **First Year of Program** **2010**

Proposed Sale of Barber House Lands (99 to 105 Euclid) to SISTARS Community Economic Development Co-op Inc.

	2010	2011	2012	2013	2014
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 40,000	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 40,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	40,000	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: The City's contribution of $40,000 toward the remediation of the site is to be funded from the Land Operating Reserve Fund.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this Report there was consultation with:

n/a

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by	Barry Lucyk
Date:	January 5, 2010
File No.	40/447 V3

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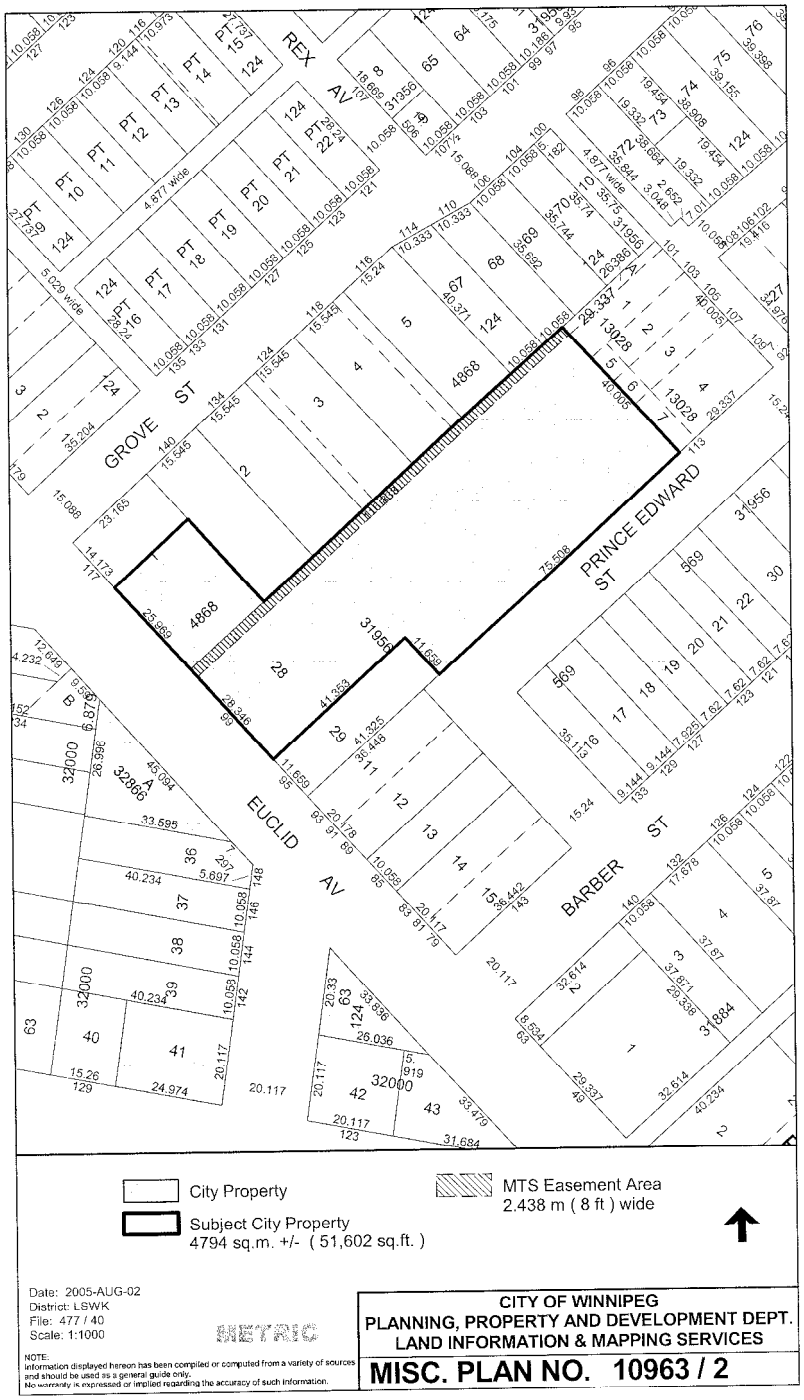

REX AV
GROVE ST
PRINCE EDWARD ST
EUCLID AV
BARBER ST
4868
31956
City Property
Subject City Property
4794 sq.m. +/- (51,602 sq.ft.)
MTS Easement Area
2.438 m (8 ft) wide
Date: 2005-AUG-02
District: LSWK
File: 477 / 40
Scale: 1:1000
METRIC
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only.
No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 10963 / 2

File No. 477/40 v3

THIS AGREEMENT made in duplicate as of _____day of _____, 2010

BETWEEN:

THE CITY OF WINNIPEG,

(hereinafter called the ***"City"***),

OF THE FIRST PART,

- and -

SISTARS COMMUNITY ECONOMIC DEVELOPMENT CO-OP
(hereinafter called the ***"Purchaser"***),

OF THE SECOND PART.

WHEREAS the City is the registered owner of land shown shaded and identified as ***"SUBJECT CITY PROPERTY"*** on Misc. Plan No. 10963/2 attached hereto as Schedule "A", (hereinafter called the ***"Land"***), the size of the lands may be modified to reflect the requirements for a transit corridor;

AND WHEREAS the Purchaser wishes to develop a Child Care Centre complex (the ***"Complex"***) on the Land and is prepared to purchase the Land from the City upon mutually acceptable terms and conditions;

AND WHEREAS the City is prepared to sell the Land to the Purchaser and to permit the Purchaser to develop the Complex;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the foregoing and of the mutual covenants herein contained, the parties hereto hereby covenant and agree, each with the other, as follows:

1. The preamble hereto shall form an integral part of this Agreement.

2. The City hereby agrees to sell to and the Purchaser hereby agrees to purchase the Land from the City for the sum of **ONE ($1.00) DOLLAR**, plus applicable Goods and Services Tax (hereinafter called the ***"purchase price"***), the receipt of which is hereby acknowledged.

3. The date of possession shall be sixty (60) days following receipt by the City of notice in writing of the satisfaction and waiving of the due diligence conditions as set out herein.

4. The Lands are presently owned by the City of Winnipeg and are therefore tax-exempt. The Lands will no longer be tax exempt on and after the date of possession or the transfer of title, whichever is the earlier. The Purchaser is responsible for payment of the Property Taxes applicable to the Lands on and after the date of possession or transfer of title, whichever is the earlier, and will be sent a statement of, and demand payment of, Property Taxes in accordance with the provisions of *The Municipal Assessment Act* and *The City of Winnipeg Charter*. No adjustments for Property Taxes will be made on the Statement of Adjustments.

5. The Purchaser shall:

   (a) Accept title to the Land subject to any and all exceptions, reservations or encumbrances expressed or implied in the City's title;

   (b) Complete the purchase of the Land and shall be bound by the terms and conditions as herein set forth failing which the Purchaser shall forfeit in favor of the City all monies paid by it to the City pursuant to this Agreement;

   (c) Be responsible for all costs including without limitation legal and professional fees, land transfer tax and applicable Goods and Services Tax incurred by it in obtaining possession of and title to the Land;

   (d) At its sole cost, effort and expense, cause to be prepared and registered any plans and other documents required to permit its proposed ownership structure;

   (e) Not register or cause to be registered a caveat or other encumbrances against the City's title to the Land.

6. The sale of the Land shall be subject to the following:

   (a) Any and all applicable zoning by-laws and/or town planning schemes of the City and amendments thereto;

   (b) Any easement over, under, in or upon that portion of the Land as may be required by a public utility, including but not limited to The Manitoba Hydro-Electric Board, MTS Allstream Inc., Centra Gas (Manitoba) Inc. for the maintenance of existing facilities in the Land, if any, or for the development of new facilities in, under, over or upon the Land (hereinafter called the ***"Easement Area"***), together with the right to enter in, on, under or upon the Land at any time with or without equipment for said purposes. The Purchaser is aware and acknowledges that MTS Allstream Inc. requires an easement in the area shown as "MTS Easement Area" on Misc. Plan No. 10963/2 attached.

The Purchaser shall not erect or cause to be erected in, on, over or upon the Easement Area any building or structure without the prior written consent of such public utility requiring such easement;

In the event of abandonment or relocation of any of the public utilities' facilities, all costs shall be borne by the Purchaser and shall be a matter between the Purchaser and such public utility or utilities as the case may be;

The Purchaser hereby covenants, agrees and undertakes to enter into agreements satisfactory to the said utility, utilities as may be required in this respect;

The Purchaser hereby acknowledges and agrees that the City may grant such easements as herein contemplated before the transfer of the Land in favor of the Purchaser is completed.

7. The Land shall be conveyed to the Purchaser in an *"as is"* condition and the City has made no representations, warranties or guarantees of any nature or kind whatsoever as to the Land's suitability for the use intended by the Purchaser, nor as to any environmental conditions which may exist.

8. The Purchaser hereby agrees to indemnify and save harmless the City from and against any and all claims arising from or in any way attributable to the existence of contaminants of any kind whatsoever at, in, under or upon the Land.

9. The Purchaser agrees to commence construction of the Complex on or before August 31, 2010. Should construction of the Complex not be commenced by Augusts 31, 2010, the title to the Land shall revert back to the City at the Purchaser's sole cost and expense free and clear of any and all encumbrances except those herein contemplated or hereafter placed by, through, against or under the City, or now existing, provided that where construction is delayed as a result of *force majeure*, the time limit shall be extended by a time period equal to the time period lost as a result of the reasons aforesaid.

The Purchaser shall provide the City, on or before the date of possession with a Quit Claim and a Transfer of Land transferring the Land back to the City free and clear of any and all encumbrances except those herein contemplated or now existing, executed on behalf of the Purchaser, in a form satisfactory to the Acting City Solicitor.

10. Construction of the Complex, including providing the City with a copy of a letter from Manitoba Conservation advising that the Purchaser has completed soil remediation on the Land, must be fully completed on or before November 30, 2011. In the event the Purchaser fails to fully complete construction of the Complex in accordance with the plans approved by the City and provide a letter from Manitoba Conservation confirming that the soil remediation has been completed to the satisfaction of Manitoba Conservation, on or before November 30, 2011, the title to the Land shall revert back to

the City at the Purchaser's sole cost and expense free and clear of any and all encumbrances except those herein contemplated or hereafter placed by, through, against or under the City, or now existing, provided that where construction is delayed as a result of *force majeure*, the time limit shall be extended by a time period equal to the time period lost as a result of the reasons aforesaid.

11. It is an express condition hereof, that the Purchaser shall:

(a) Develop on the Land the Complex; PROVIDED THAT prior to the commencement of any and all work in connection therewith, it shall, at its sole cost, effort and expense:

(i) Provide to the City for approval, plans and/or specifications of all buildings and/or improvements to be erected on the Land;

(ii) Provide to the City for approval by the City's Director of Planning, Property and Development, (hereinafter called the ***"Director"***), site landscape drawings, prepared by a qualified landscape architect;

(iii) Apply for the rezoning and variances, if necessary, to permit the Purchaser's proposed development on the Land. It is understood that the approval of the sale will be subject to the Purchaser being satisfied with the conditions that are imposed as part of the rezoning process;

(iv) Obtain all necessary permits at the Purchaser's expense and comply with all laws, by-laws and regulations of any federal, provincial or municipal authority;

(v) Comply with all restrictions imposed by way of development or zoning agreements and comply with all utility easements or rights-of-way;

(vi) Ensure that the construction work is performed and completed in compliance with all applicable statutes, by-laws, ordinances and regulations of any federal, provincial or municipal authority and shall obtain all necessary permits at the Purchaser's expense. The Purchaser shall ensure that the contractor and/or builder maintains and keeps in force during the construction period insurance indemnifying the City, with the City named as additional insured, and the Purchaser against all claims arising out of the construction;

(vii) be solely responsible for all costs and expenses related to the purchase of the Land and the development of the Complex, including but not limited to realty taxes, utilities, the construction of storage lanes, accesses, off-site costs and costs related to the rezoning conditions of the Land.

12. The Purchaser is aware that the Land is zoned R 2 Residential and may require rezoning or conditional use to accommodate the Purchaser's intended use of the Land. The sale of the Land does not imply compliance with any by-laws including zoning and the Purchaser is aware that prior to construction and or occupying any buildings on the site that they must obtain all required development, building and occupancy permits.

The Purchaser is also aware that Barber House at 99 Euclid Avenue has been declared a Grade II Heritage Building and will require special treatment to maintain the Heritage nature of the building and the Purchaser agrees to comply with such requirements.

Culture, Heritage and Tourism Manitoba have provided the following information regarding the subject City Property:

"RE: Archaeological Concerns: Barber House, 99 Euclid Avenue, Winnipeg

Barber House was the focus of limited archaeological investigations in 1979. Work was limited to test excavations surrounding the existing house structure. Results indicated that additional structures were located on the property. Additionally, the artifact recoveries and architectural information from the mid to late 1880's were considered significant by the investigators. The site and land were considered to be in good condition, being little disturbed by later activities. Additional archaeological work was recommended to gain information on the history of the site, the Barber Family and the general lifeways of the mid-1800s community.

On the basis of this information the Historic Resources Branch will require an archaeological Heritage Resource Impact Assessment (HRIA) to be undertaken by an archaeological consultant prior to any development taking place that could potentially impact the subsurface heritage resources. If the HRIA study reveals significant heritage resources within areas that would be impacted by the planned development, further mitigative work may be required to retrieve this information before it is lost. In each case the cost of the impact assessment and any required mitigation work would be the responsibility of the developer."

13. The Purchaser shall not erect any buildings or structures on the Land other than those permitted to be erected or placed on the Land without the prior written approval of the Director of Planning, Property and Development.

14. The Purchaser hereby acknowledges and agrees that the City does not give any warranty as to the quality, condition or sufficiency of the Land for any use or purpose, or as to the presence or absence of hazardous substances on or under the Land and the Land is deemed to be taken by the Purchaser at its own risk with all faults and imperfections whatsoever and on a strictly as is, where is basis. Provided further that the Purchaser expressly agrees to assume any and all environmental liabilities related to the Land, including but not limited to, liability for clean up of any hazardous substances on or under the Land.

The Purchaser and the City acknowledge that a portion of the Lands requires remediation of the soil. The Purchaser agrees to be responsible for remediation of the soil to the satisfaction of Manitoba Conservation and to complete such remediation on or before November 30, 2011. Upon completion of the remediation on or before November 30, 2001, and upon receipt of notice from Manitoba Conservation that remediation of the Land by the Purchaser has been completed to the satisfaction of Manitoba Conservation, the City will provide Forty Thousand ($40,000.00) Dollars to the Purchaser towards the cost of the remediation of the Land.

For the purposes of this Agreement, hazardous substance or substances shall include any contaminants as defined or pursuant to any federal or provincial law, by-law, regulation or order.

Furthermore, the Purchaser agrees that it has been advised that soil conditions in Winnipeg are of the glacial till variety which are composed of Lacustrine Clays with Silt Intrusions. The Purchaser shall be responsible for any increased costs of development due to this random stratification and that the Purchaser and its agents indemnify the City against all claims respecting the issue arising out of the development of the Land by the Purchaser or its agents.

15. The Purchaser agrees that the City may register and maintain a caveat against the Land to ensure the performance of the covenants on the part of the Purchaser herein set forth, and the Purchaser agrees to grant and does hereby grant to the City an interest in the Land according to the tenor of this Agreement.

16. It is understood and agreed that this sale is subject to the Purchaser satisfying the following due diligence conditions on or before one hundred and twenty (120) days from the date of approval of the sale:

(a) Obtaining the necessary zoning, variances and conditional uses to be able to develop the Land for its purposes;

(b) Arranging suitable financing for the project;

Should the City not be advised in writing of the satisfaction or waiving of the due diligence conditions on or before one hundred and twenty (120) days from the date of approval of the sale, this Agreement becomes null and void and the City is at liberty to deal with the Land as it deems appropriate.

17. The Purchaser agrees that the sale of the Land shall be subject to the City's policy for the sale of lands to non-profit organizations and to be implemented as follows:

(a) Where it is proposed that City lands be leased or sold at less than market value to non-profit organizations for a project which is a public benefit, the following eligibility criteria will apply:

(i) The organization must provide a facility operated in its entirety by a non-profit organization for non-profit uses;

(ii) The organization must provide for activities, which are compatible with the City's needs;

(iii) The organization must provide facilities for which there is a current and projected need in that location;

(iv) The organization must provide reasonable access to all Winnipeg residents without discrimination;

(v) The organization must provide access without the charging of initiation fees, membership fees or other costs, which are incompatible with like facilities or organizations;

(vi) The organization must provide evidence of available funding and commitment to complete the project and assurance that no ongoing operating subsidies from the City will be required over the life of the development.

(b) That where lands are made available at less than market value that they revert back to the City at the conclusion of the economic life of the project or in the event that the Land shall not continue to be used as the Complex.

18. Time shall be in every aspect and particular of the essence of this Agreement which shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns and successors in title to the lands affected thereby.

19. The parties hereto shall sign such further and other documents and do and perform or cause to be done and performed such further and other acts and things as may be necessary to give full effect to this Agreement.

20. None of the provisions of the Agreement shall merge with the conveyance of the Land.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

THE CITY OF WINNIPEG
Per:

_____
Director, Planning, Property and Development

SISTARS COMMUNITY ECONOMIC DEVELOPMENT CO-OP

Per:_____

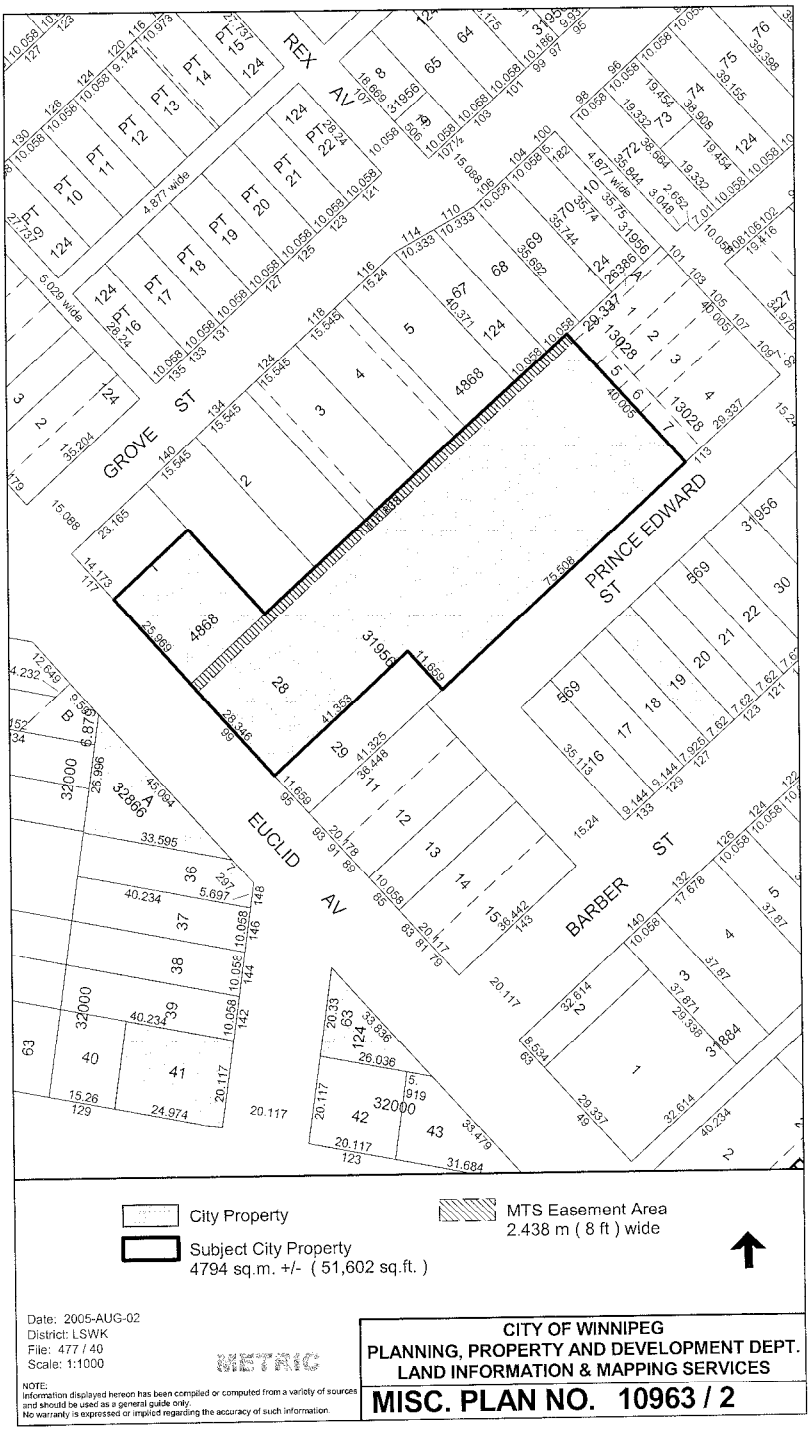
Per:_____

Approved:

_____
Planning, Property and Development

Certified as to form:

_____
for Acting City Solicitor/Manager of Legal Services


REX AV
GROVE ST
PRINCE EDWARD ST
EUCLID AV
BARBER ST
City Property
Subject City Property
4794 sq.m. +/- (51,602 sq.ft.)
MTS Easement Area
2.438 m (8 ft) wide
Date: 2005-AUG-02
District: LSWK
File: 477 / 40
Scale: 1:1000
METRIC
NOTE:
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No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 10963 / 2