Minutes – Executive Policy Committee – February 16, 2011

Minute No. 150
Report – Standing Policy Committee on Downtown Development – February 15, 2011

Item No. 1 Lease Agreement - East Side Waterfront Drive at Pacific Avenue – Sunstone Boutique Hotels Ltd. (Point Douglas Ward)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development and submits the following to Council:

1. That the Land Lease Agreement for the area shown as 'Subject City Property' on Misc. Plan No. 12596/6 in favour of Sunstone Boutique Hotels Ltd. or nominee, for the construction and operation of a multi-storey boutique hotel, be approved in accordance with the proposed terms and conditions outlined in Schedule A to the report of the Winnipeg Public Service dated February 9, 2011, subject to the property being rezoned, and any other conditions deemed necessary by Legal Services, to protect the interests of the City.

2. 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 Downtown Development – February 15, 2011

DECISION MAKING HISTORY:

Moved by Deputy Mayor Swandel,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than 96 hours preceding the committee meeting, be considered by Committee.

Carried

Moved by Deputy Mayor Swandel,

That the recommendation of the Standing Policy Committee on Downtown Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On February 15, 2011, the Standing Policy Committee on Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Land Lease of East Side Waterfront Drive at Pacific Avenue – Sunstone Boutique Hotels Ltd. or nominee**

Critical Path: **Standing Policy Committee on Downtown Development, Executive Policy Committee, Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Thorgrimson	D. Joshi	M Ruta	M Ruta A/CAO

RECOMMENDATIONS

1. That the proposed Land Lease Agreement for the area shown as 'Subject City Property' on Misc. Plan No. 12596/6 attached in favour of Sunstone Boutique Hotels Ltd. or nominee, for the construction and operation of a multi-storey boutique hotel, be approved in accordance with the proposed terms and conditions outlined in Schedule A attached, subject to the property being rezoned, and any other conditions deemed necessary by Legal Services to protect the interests of the City;

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

REASON FOR THE REPORT

In accordance with the Council Order of July 18, 1979, the Standing Policy Committee on Property and Development shall authorize the leasing or rental of City properties for which the Director of Planning, Property and Development has no authority.

On March 24, 2004, Council established the Standing Policy Committee on Downtown Development. The Standing Policy Committee has jurisdiction over matters related to asset management, development control, land acquisition, land development and planning and land use in the area defined as Downtown.

In accordance with Council Order of September 9, 1987, leases of park land over five years in length are to be referred to Council for approval by at least two-thirds majority.

IMPLICATIONS OF THE RECOMMENDATIONS

- The Department has determined that there may be policy, regulatory implications to the lease of these lands as set out in the attached Schedule "A".
- Acceptance of the proposal and subsequent signing of the lease agreement commits the City to a long term contract (50 years).
- A hotel will be a conditional use in the Downtown Living Sector.

HISTORY

At its meeting on July 16, 2008 Council approved the Lease of the Alexander Dock/Harbourmaster sites to The Gatehouse Development Company LLP.

In January 2009, The Gatehouse Company advised it would not be moving forward with the intended project and the lease agreement was cancelled.

CentreVenture has continued to market this property as a site with specific redevelopment potential.

The proposed project consists of a multi storey boutique hotel, associated parking and the redevelopment of the Harbourmaster building into a restaurant or similar use. As rezoning is required to permit these uses, a public consultation process will be required as part of the rezoning application.

A large portion of the site is not developable (approximately 60%) as Manitoba Hydro has an easement for an underground transmission line and the City also requires an easement for an existing aqueduct.

The rental incentive incorporated into the lease agreement takes into consideration the costs the lessee will incur to extend the waste water services to the property and the responsibility to provide any and all flood protection to the subject property.

The benefits of entering into a long-term lease agreement with Sunstone Boutique Hotels Ltd. or nominee include:

- The Developer is experienced in completing successful projects in the immediate area (Sky Waterfront Condominiums)
- New construction estimated at $11 Million which, upon completion, will provide new revenue with Municipal Realty and Business Taxes for the City.
- Increasing the overall value of the City's property, and
- The project will provide additional hotel rooms near the Canadian Museum for Human Rights.

FINANCIAL IMPACT

Financial Impact Statement **Date:** January 27, 2011

Project Name: **First Year of Program** **2011**

Proposed Land Lease in Favour of Sunstone Boutique Hotels Ltd. or nominee for a Boutique Hotel on Waterfront Drive at Pacific Avenue.

	2011	2012	2013	2014	2015 to 2045
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	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	501	1	1	1	1,095,750
Net Cost/(Benefit)	$ (501)	$ (1)	$ (1)	$ (1)	$ (1,095,750)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (501)	$ (1)	$ (1)	$ (1)	$ (1,095,750)

Additional Comments: Incremental lease revenues from 2011 to 2045 are as detailed in Schedule "A". Lease revenues from 2046 to 2060, to be based on future market value appraisals, are not reasonably determinable at this time and have been excluded from this analysis. Similarily, future municipal and business taxes are not reasonably estimable at this time and have also been excluded from this analysis. Any regulation fee revenues (e.g. rezoning, surveys, etc.) are not material and are therefore excluded as well.

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

CONSULTATION

In preparing this report there was consultation with:

Legal Services, as to legal provisions
Risk Management, as to insurance provisions

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	Barry Lucyk
Date:	February 9, 2011
File No.	38/752 V10

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Schedule "A"

Proposed Terms and Conditions
City Owned Property, Shown As "Subject City Property"
On Attached Misc. Plan No. 12596/6
hereinafter referred to as "Leased Lands"

Tenant:	Sunstone Boutique Hotels Ltd. or nominee, hereinafter referred to as "Sunstone"
Landlord:	The City of Winnipeg, hereinafter referred to as "City"
Leased Lands:	Shown as "Subject City Property" on the attached Misc. Plan No. 12596/6, commonly referred to as the Harbourmaster Building and Lands, to be leased in an "as is" condition, including the existing improvements.
Size:	approx. 70,023 sq. ft.
Use:	Development of a multi storey boutique hotel, associated parking and redevelopment of Harbourmaster building into a restaurant building or similar use; and for no other purposes.
Term:	Fifty (50) year term. Term to commence 60 days after satisfaction or waiving of conditions and approval from Council or April 16, 2011, whichever is the later.
Renewal Term:	2 (10) year options to renew on same terms and conditions, except rent and further renewal.
Admin. Fee:	A one-time lease administration fee of $500.00 plus GST.
Rent Rate:	Years 1 – 6: $1.00 per year + GST Years 6 - 15: $49,000.00 per annum + GST Years 16 – 20: $56,350.00 per annum + GST Years 21 – 25: $64,800.00 per annum + GST Years 26 – 35: Landlord and Tenant each to obtain their own: (a) market value appraisal on the value of the "Leased Lands" at the end of year 24 of the Term and (b) discount rate applicable to land leases for similar type commercial property having a term of 25 years or less. In the event that the parties cannot agree upon the market value and/or the discount rate applicable to the Leased Lands, the matter will be arbitrated in accordance with the Arbitration Act of Manitoba. The Rent Rate in years 26-35 shall equal the market value appraisal times the discount rate, but in any event not less than the previous period of the term, plus GST. Years 36 – 45: Landlord and Tenant each to obtain their own market value appraisal on (a) the value of the "Leased Lands" at the end of year 34 of the Term and (b) discount rate applicable to land leases for similar

type commercial property having a term of 15 years or less. In the event that the parties cannot agree upon the market value and/or the discount rate applicable to the Leased Lands, the matter will be arbitrated in accordance with the Arbitration Act of Manitoba. The Rent Rate in years 36-45 shall equal the market value appraisal times the discount rate, but in any event not less than the previous period of the term, plus GST.

Years 46 – 50: Landlord and Tenant each to obtain their own market value appraisal on (a) the value of the "Leased Lands" at the end of year 44 of the Term and (b) discount rate applicable to land leases for similar type commercial property having a term of 5 years or less. In the event that the parties cannot agree upon the market value and/or the discount rate applicable to the Leased Lands, the matter will be arbitrated in accordance with the Arbitration Act of Manitoba. The Rent Rate in years 46-50 shall equal the market value appraisal times the discount rate, but in any event not less than the previous period of the term, plus GST.

Realty Taxes: Tenant is responsible for all municipal taxes, school taxes, local improvements, etc.

Cancellation: Upon default of Tenant Covenants under lease.

Insurance: The Tenant shall provide and maintain the following insurance coverage at all times during the duration of the agreement:

The Tenant shall indemnify and save harmless the Landlord against and from all liabilities, obligations, damages, claims costs, fines, suits, demands actions and causes of actions. The Tenant shall provide and maintain the following insurance coverage at all times during the duration of the contract:

Commercial general liability insurance, in the amount of at least five million dollars ($5,000,000.00) inclusive, with The City of Winnipeg added as an additional insured and a cross liability clause

All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

The Tenant shall not cancel, or cause any such policy or policies to lapse without minimum thirty (30) days prior written notice to the City of Winnipeg;

The Tenant shall provide written notice to the City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect;

The Tenant shall file with the City an annual Certificate of Insurance in a form satisfactory to the City Solicitor;

And the City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of the Agreement and for any subsequent renewals thereof, provided that the City shall give the Tenant reasonable notice and shall request reasonable change.

During the construction phase of the agreement, the Tenant shall ensure that all Contractors and/or Sub/Contractors maintain the following minimum insurances at all times during the construction of the Work:

Commercial general liability insurance, in the amount of at least five million dollars ($5,000,000.00) inclusive, with The City of Winnipeg added as an additional insured; such policy to also include a cross liability clause, contractual liability, non-owned automobile liability and products and completed operations endorsement;

Automobile Liability Insurance for owned automobiles use for or in connections with the Work in the amount of at least five million dollars ($5,000,000.00);

Provision to provide a minimum of thirty (30) days written notice of cancellation/termination.

Conditions:

1. The Tenant acknowledges and agrees that the Leased Lands is presently zoned Riverbank Sector, and the proposed development will require a rezoning to Downtown Living Sector. The acceptance of this agreement by the City is subject to the Tenant rezoning the Leased Lands to Downtown Living Sector for the development of a multi storey boutique hotel, associated parking area and redevelopment of the Harbourmaster building for commercial purposes, within 8 months from approval of this agreement by the Standing Policy Committee on Downtown Development, failing which this agreement shall be null and void.

AND obtaining a conditional use

2. The development and maintenance of the Leased Lands will be performed at the sole cost, expense and effort of the Tenant, including, but not limited to, obtaining all permits required to develop, occupy and utilize the Leased Lands for its intended use, prior to any occupation or development of the Leased Lands.

3. The Tenant acknowledges that it shall, at its sole cost and expense, pay any and all costs to extend the wastewater services to the lot line of the Leased Lands from the west limit of Waterfront Drive.

4. The Tenant acknowledges that it shall, at its sole cost and expense, provide and extend municipal services including but not limited to water, wastewater, land drainage, hydro, telephone, gas and cable services to the existing or expanded structures on the Leased Lands in accordance with all municipal regulations.

5. The Tenant shall design all structures in accordance with the City of Winnipeg flood proofing criteria as set out in the City of Winnipeg Charter and obtain a Waterways Permit. Through previous riverbank stabilization at this location by the City, an inclinometer was installed to study the performance of the riverbank through time. The final form of lease will provide for access to this installation on an as required basis. The City makes no representation or warranty in regards to riverbank stabilization.

6. The Tenant to provide access approaches at its sole cost and expense in accordance with municipal regulations.

7. The Tenant to be responsible for the costs of any alterations or improvements to the existing building structure on the Leased Lands.

8. The Tenant to maintain and keep the Leased Lands and development and all other buildings or other structures or improvements to be erected or constructed in good, order, neat appearance, good repair and sanitary and safe condition and shall alone be responsible for all repairs and replacements whether or not same is structural or otherwise, during the term of this lease.

9. No assignment of this Lease without the prior written approval of the Landlord, which shall not be unreasonably withheld.

10. The Tenant acknowledges and accepts that there is an easement for an underground Manitoba Hydro transmission line on the Leased Lands in the approximate location shown as "Manitoba Hydro Easement Location" on Misc. Plan No. 12596/7 attached and that subject to confirmation from Manitoba Hydro and/or the City of the exact location of this line and hence the associated easement will need to be clarified between the City and Manitoba Hydro and the Tenant acknowledges and accepts that the Leased Lands will be encumbered by said easement. The Tenant shall be responsible to satisfy itself that Manitoba Hydro easement will permit a surface parking lot structure on the easement area.

11. Currently, there is a gravel parking area operated by the Winnipeg Parking Authority, within a portion of the Leased Lands. Upon approval of the subject terms and conditions by the City and removal or waiving of all conditions herein by the Tenant, a 60 day cancellation notice will be forwarded to the Authority by the City.

12. The existing sidewalk on the east side of Waterfront Drive to be maintained or relocated, to the satisfaction of the both Directors of Public Works and Planning, Property and Development, at the expense of the Tenant.

13. Enclosed herewith, is the Tenant's rental deposit of $25,000.00 payable to the City of Winnipeg, to be deposited upon acceptance of the Terms and Conditions by the Standing Policy Committee on Downtown Development. Upon approval of the Terms and Conditions by Council and all conditions herein are satisfied, the deposit shall be retained by the City and applied towards the rental payment coming due in year 6 of the lease; or if construction has not commenced within 12 months of waiving or removal of all conditions herein, the City shall be entitled to retain the rental deposit as liquidated damages and, at the option of the City, the lease shall be terminated and be of no further effect. In the event that the terms and conditions herein are not approved by the Standing Policy Committee on Downtown Development and Council, the rental deposit shall be returned without deduction or penalty.

14. The Tenant acknowledges that the Water and Waste Department of the City of Winnipeg requires an easement for an existing aquaduct in the location shown on Misc. Plan No. 12596/8. The easement shall provide, among other things, that no permanent structures of any type to be allowed on the easement area, except for a surface parking lot, and any other terms and conditions deemed necessary by the Director of Water and Waste.

15. The Tenant acknowledges that a Plan of Survey for leasehold purposes will be required to identify the Leased Lands, and the Tenant shall prepare or cause to be prepared a Plan of Survey and pay for any and all costs of the Plan of Survey, including any registration fees to register the Plan of Survey at the Winnipeg Land Titles Office.

Other:

The Tenant to indemnify and save harmless the City from and against any and all claims for damages which may arise out of the use of the Leased Lands by the Tenant.

The City reserves the right for MTS Communications Inc., Manitoba Hydro-Electric Board and Water and Waste Department or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Leased Areas for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby.

The Tenant understands and agrees that employees, agents and servants of the City have a right of access to enter the said land, with or without equipment, for any purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, the safety, protection, preservation or improvement of the Leased Areas, and for doing any work of maintaining or repairing its utilities in or near to the Leased Areas, without being responsible for any damage occasioned thereby.

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department and by the City Solicitor/Director of Legal Services to protect the City's interests.

The registered owner, as named below, agree to enter into an appropriate Lease Agreement with the City embodying the terms and conditions named herein and in a form satisfactory to the City Solicitor/Director of Legal Services.

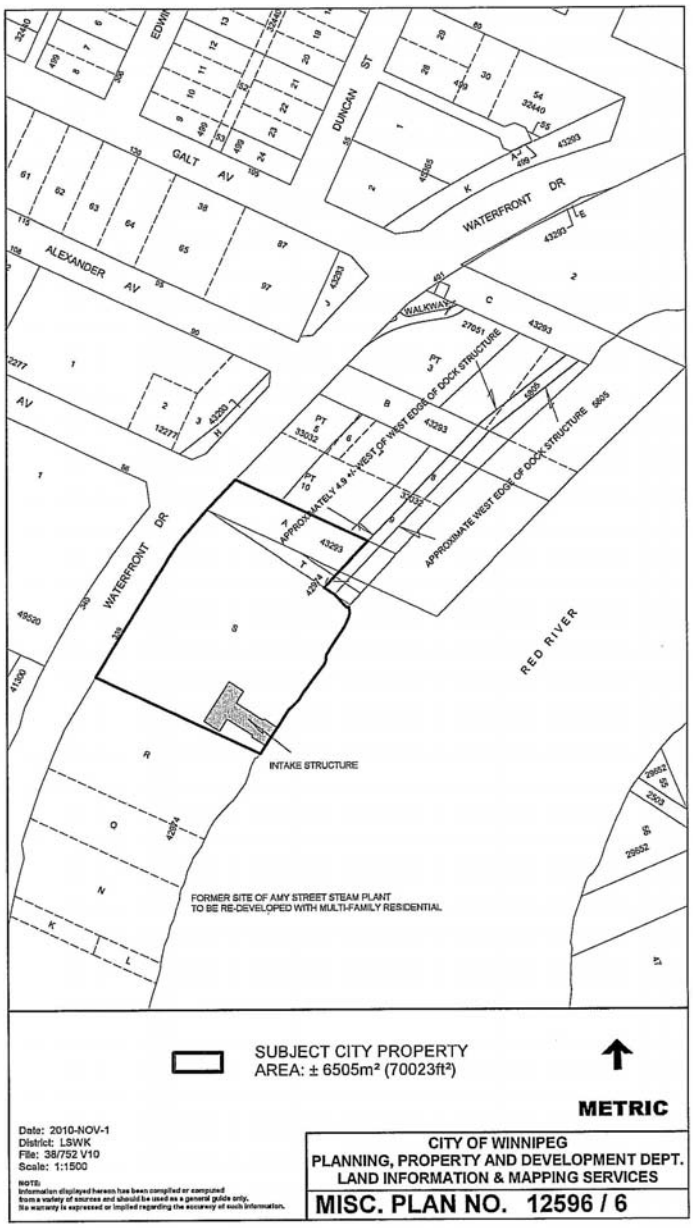
Final terms and conditions of the proposed lease are subject to the consideration and approval of City Council or its delegated authority.

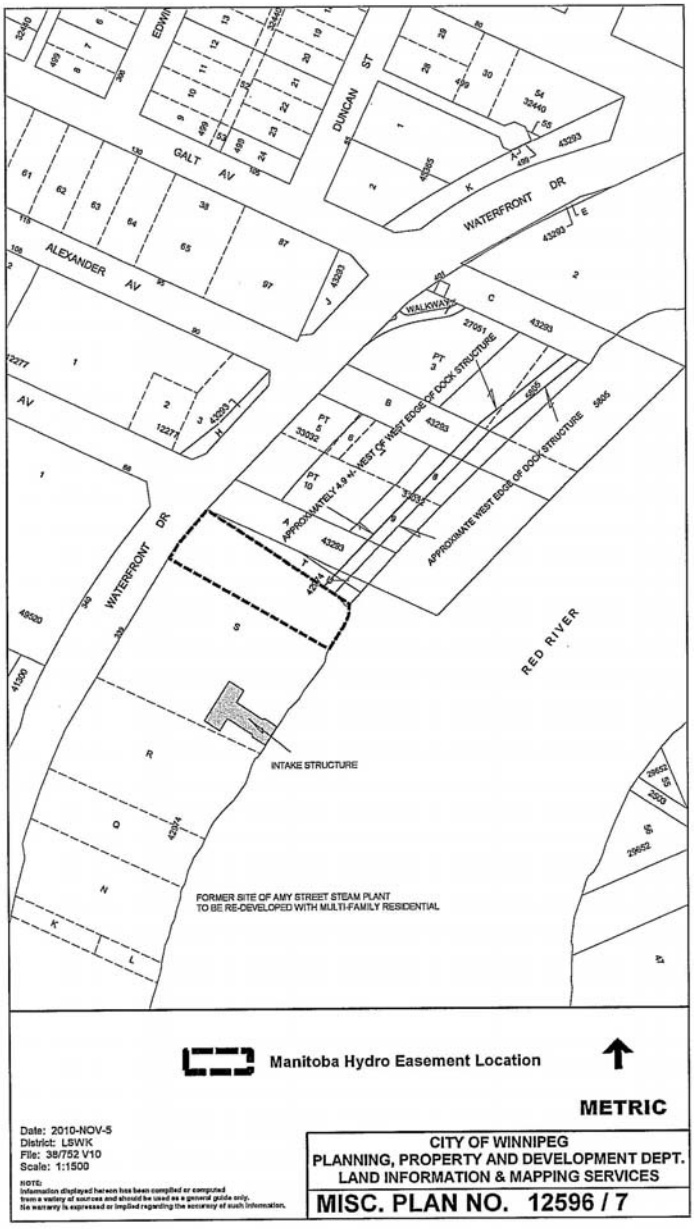
Sunstone Boutique Hotels Ltd. hereby agrees to enter into a lease agreement with the City of Winnipeg for the use of the City owned lands identified as "Subject City Property" on Misc. Plan No. 12596/6 attached, in accordance with the proposed terms and conditions as outlined herein on this Schedule "A".

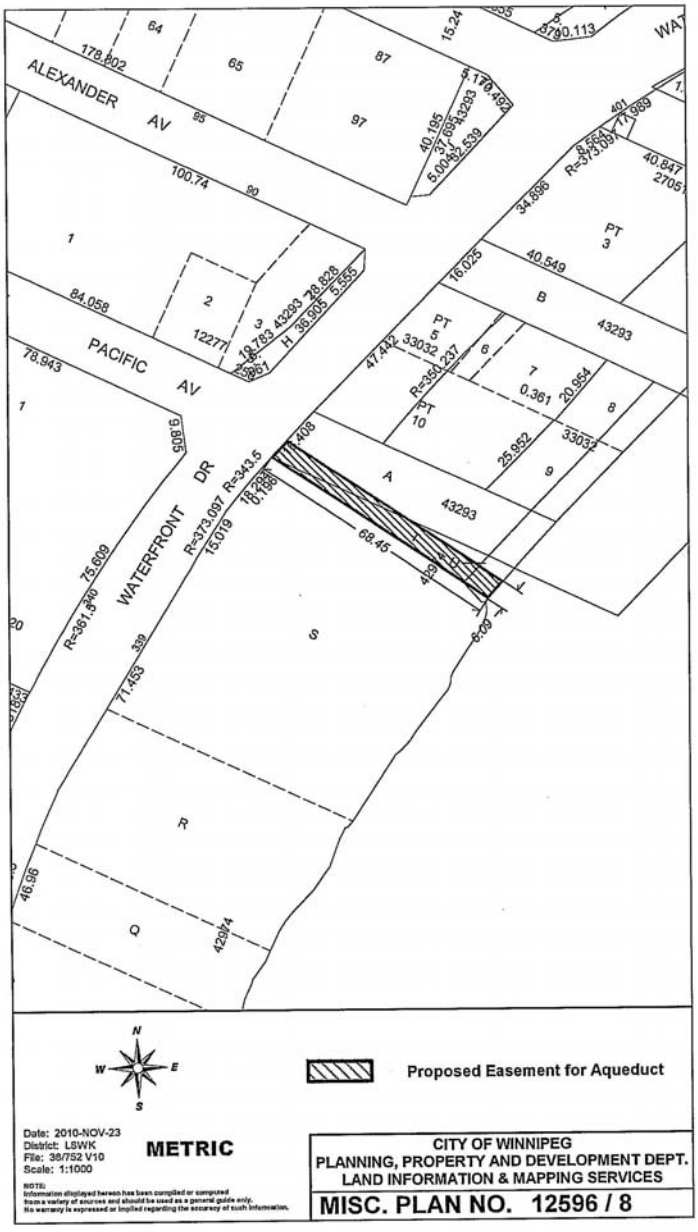
Sunstone Boutique Hotels Ltd.

per: MICHAEL EVANS Date Dec 23/10

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GALT AV
DUNCAN ST
WATERFRONT DR
ALEXANDER AV
WALKWAY
APPROXIMATELY 4.9 +/- WEST OF WEST EDGE OF DOCK STRUCTURE
APPROXIMATE WEST EDGE OF DOCK STRUCTURE
RED RIVER
INTAKE STRUCTURE
FORMER SITE OF AMY STREET STEAM PLANT
TO BE RE-DEVELOPED WITH MULTI-FAMILY RESIDENTIAL
SUBJECT CITY PROPERTY
AREA: ± 6505m² (70023ft²)
METRIC
Date: 2010-NOV-1
District: LSWK
File: 38/752 V10
Scale: 1:1500
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. 12596 / 6


DUNCAN ST
GALT AV
ALEXANDER AV
WATERFRONT DR
WALKWAY
APPROXIMATELY 4.9 +/- WEST OF WEST EDGE OF DOCK STRUCTURE
APPROXIMATE WEST EDGE OF DOCK STRUCTURE
RED RIVER
INTAKE STRUCTURE
FORMER SITE OF AMY STREET STEAM PLANT
TO BE RE-DEVELOPED WITH MULTI-FAMILY RESIDENTIAL
Manitoba Hydro Easement Location
METRIC
Date: 2010-NOV-5
District: LSWK
File: 38/752 V10
Scale: 1:1500
NOTE:
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12596 / 7


ALEXANDER AV
PACIFIC AV
WATERFRONT DR
Proposed Easement for Aqueduct
Date: 2010-NOV-23
District: LSWK
File: 38/752 V10
Scale: 1:1000
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12596 / 8