**Agenda - Executive Policy Committee - May 21, 2003**

**Report - Standing Policy Committee on Property and Development - May 12, 2003**

**Item No. 1 Proposed One-Year Lease Agreement - Alexander Dock - Paddlewheel Riverboats Ltd.**
**File FI-2.3(32) (Vol. 8)**

STANDING COMMITTEE RECOMMENDATION:

On May 12, 2003, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and recommended:

1. That subject to the Tenant paying its existing outstanding rental account in full:

   A. That a one-year lease agreement between the City and Paddlewheel Riverboats Ltd. for the use of the north half of the Alexander Dock be approved in accordance with terms and conditions as outlined in the attached Schedule "A".

   B. That a one-year lease agreement between the City and Paddlewheel Riverboats Ltd. for the temporary installation and use of a ramp over a portion of the south half of the dock be approved in accordance with terms and conditions as outlined in the attached Schedule "B".

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the execution of any documents related thereto.

**Pursuant to Section 205(2) of The City of Winnipeg Charter, the disposal of land used for park or cemetery purposes requires approval by a vote of two-thirds of all Members of Council.**

**Agenda - Executive Policy Committee - May 21, 2003**

**Report - Standing Policy Committee on Property and Development - May 12, 2003**

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On May 12, 2003, the Standing Policy Committee on Property and Development concurred in the administrative recommendation, and submitted its recommendation to Executive Policy Committee and Council.

**Re:** **Alexander Dock – Proposed One-Year Lease Agreements - Paddlewheel Riverboats Ltd.**

**For submission to:** **Standing Policy Committee on Property and Development**

**Original report signed by:** **Director of Planning, Property and Development**

**Report date:** May 1, 2003

**Recommendation(s):**

1. That subject to the Tenant paying its existing outstanding rental account in full:

   A. That a one-year lease agreement between the City and Paddlewheel Riverboats Ltd. for the use of the north half of the Alexander Dock be approved in accordance with terms and conditions as outlined in the attached Schedule "A";

   B. That a one-year lease agreement between the City and Paddlewheel Riverboats Ltd. for the temporary installation and use of a ramp over a portion of the south half of the dock be approved in accordance with terms and conditions as outlined in the attached Schedule "B";

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

## REPORT SUMMARY

**Key Issues:**

- The City, in concurrence with CentreVenture Development Corporation, entered into short-term lease agreements with Paddlewheel Riverboats Ltd. to use the Alexander Docks and adjacent lands for riverboat purposes as a result of having to relocate the riverboat operation from the Provencher Bridge Site.

- Paddlewheel Riverboats Ltd. have requested that the City approve a one-year extension of the two expired agreements for the 2003 operating season.

- The Planning, Property and Development Department is, by this report, recommending that two new one year leases be approved subject to this tenant paying its existing outstanding rental account in full.

**Implications of the Recommendation(s):**

**General implications:**

| | |
|---|---|
| X | **None** |
| | **For the organization overall and/or for other departments** |
| | **For the community and/or organizations external to the City of Winnipeg** |
| | **Involves a multi-year contract** |

**Comment(s):**

- 

**Policy implications:**

| | |
|---|---|
| X | **No** |
| | **Yes** |

**Comment(s):**

- 

**Environmental implications:**

| | |
|---|---|
| X | **No** |
| | **Yes** |

**Comment(s):**

- 

**Human resources implications:**

| | |
|---|---|
| X | **No** |
| | **Yes** |

**Comment(s):**

- 

**Financial implications:**

| | |
|---|---|
| X | **Within approved current and/or capital budget** |
| | **Current and/or capital budget adjustment required** |

**Comment(s):**

- 

**REASON FOR THE REPORT:**

Paddlewheel Riverboats Ltd. have requested that the City approve a one-year extension of the two expired agreements for the 2003 operating season. The Planning, Property and Development Department is, by this report, seeking the approval of the Standing Policy Committee on Property and Development to the terms and conditions of two new one year leases.

**HISTORY:**

At its meeting held on February 28, 2001, Council approved the terms and conditions of a two year lease agreement between the City and Paddlewheel Riverboats Ltd. for the interim use of a portion of the Alexander Dock.

The particulars of the Lease Agreement were as follows:

| | |
|---|---|
| Owner: | City |
| Tenant: | Paddlewheel Riverboats Ltd. |
| Location: | City-owned lands and right of ways outlined as proposed lease on Misc. Plan No. 7806/11 |
| Description: | Alexander Dock, Riverbank and street right of ways |
| Purpose: | Riverboat operations |
| Commencement: | May 1, 2001 |
| Term: | Until March 31, 2003 |
| Rental: | $11,719.00 per/annum plus realty taxes |
| Cancellation: | On default of covenants |

Subsequent to the Council approval, the Planning, Property and Development Department obtained a structural evaluation of the dock and estimated costs to repair the north half of the Dock. Based on the estimate of repair, the Department re-negotiated the proposed terms of lease including: an adjustment to the rent rate from $11,719.00 to $18,000.00 per year, and, that the City would be responsible to undertake dock repairs at its sole cost.

At its meeting held on April 5, 2001, the Standing Policy Committee on Property and Development considered a subsequent Departmental report dated March 29, 2001 and approved the following recommendations:

> *"1. The proposed revised terms and conditions of the lease as outlined in the report dated March 29, 2001, be approved.*
>
> *2. The Director of Planning, Property and Development be authorized to undertake the repairs (as outlined in the aforesaid report) to the Alexander Dock with the costs associated therewith to be charged to the Land Operating Reserve Account."*

The Planning, Property and Development Department subsequently completed repairs to the north half of the Alexander Dock, and, it executed a Lease Agreement with Paddlewheel Riverboats Ltd. on June 28, 2001.

At its meeting held on July 5, 2001, the Standing Policy Committee on Property and Development considered the Department's report dated June 29, 2001 and approved the following recommendations:

> *"1. The Director of Planning, Property and Development be authorized to enter into an agreement with the Paddlewheel Riverboat Ltd. for the proposed installation of a ramp and use of same over the southerly portion of the Alexander Dock in accordance with the terms and conditions outlined in the report dated June 29, 2001; the Agreement to provide for such other terms and conditions deemed necessary by the City Solicitor/Manager of Legal Services to achieve the intent of the Standing Policy Committee and to protect the City's interests.*
>
> *2. The existing Lease Agreement with Paddlewheel Riverboats Ltd. for the northerly portion of the Alexander Dock and adjacent lands, be amended to include the requirements of the Winnipeg Police Services as outlined in the report dated June 29, 2001."*

The particulars of the resulting Lease Agreement were as follows:

| | |
|---|---|
| Owner: | City |
| Tenant: | Paddlewheel Riverboats Ltd. |
| Location: | Access via a ramp to be constructed over a southerly portion of the Alexander Dock Structure as shown on Misc. Plan No. 7806/12 |
| Description: | Alexander Dock |
| Purpose: | Riverboat operations |
| Commencement: | May 1, 2001 |
| Term: | Until March 31, 2003 |
| Rental: | $500.00/annum plus realty taxes |
| Cancellation: | Upon (5) days notice of default |

By letter dated February 13, 2003, Paddlewheel Riverboats Ltd. requested that the City extend the existing Lease Agreements for one more operating season.

By e-mail dated February 28, 2003, the Manager of Downtown Improvement and Departmental Projects indicated that the draft 2003 Capital Budget had an allocation of $350,000.00 towards the Alexander Dock site to be considered for approval by Council at its meeting to be held on March 28, 2003. These proposed works would need to be contemplated in any proposed lease terms for the associated dock and lands.

By e-mail dated March 27, 2003, CentreVenture Development Corporation indicated that it had no concerns with extending the lease agreement with Paddlewheel Riverboats Ltd. by one year, but that it wanted to be apprised as to the final terms and conditions of agreement.

On March 28, 2003, Council approved $700,000 for the Riverbank Access Park and Dock Network of which, $350,000 was allocated towards the restoration of the Alexander Docks.

**DISCUSSION:**

**1. Leasing Issues associated with the Paddlewheel Riverboats Ltd. request for One Year Extension of Lease Agreement dated June 28, 2001:**

In reviewing the request for a one-year extension to the Lease Agreement(s) dated June 28, 2001 and March 6, 2002 respectively, the Planning, Property and Development Department considered the following issues:

A. Waterfront Drive and Riverbank and Dock Stabilization Project

B. Planned Repairs to the Alexander Dock in 2003

C. Planning, Land Use and Zoning Matters

D. Access for Splash Dash Water Taxi

E. Form of Agreement

A: Waterfront Drive and Riverbank and Dock Stabilization Project:

During 2001 and 2002 substantive access and riverbank stabilization improvements were made to create Waterfront Drive and to stabilize the City-owned lands adjacent to the Alexander Dock, and, within the riverbed. The works are substantially complete; however, certain site works including sidewalk construction, tree plantings and other improvements are planned utilizing certain portions of the Leased Premises. The expired Lease Agreement dated June 28, 2001 provided for the City to remove certain lands required for this project.

It should be noted that during 2003, construction on Waterfront Drive adjoining the subject City-owned lands will continue and that disruption may occur.

The Real Estate Division will ensure that the terms and conditions for a further one-year lease will enable the City to remove certain lands from the demised area in the proposed lease for the Waterfront Drive project and that the Tenant will have no basis for disturbance claims.

B: Planned Repairs to the Alexander Dock in 2003:

In 2001, the Planning, Property and Development Department completed major deck repairs to the north half of the Alexander Dock at a cost of $103,314.22.

For the information of the Committee, assuming the Tenant remedies the existing lease defaults, the City will have recovered $31,880.54 in 2001, $19,260.00 in rent in 2002 plus outstanding arrears of $8,853.98 totalling $28,113.98 and a further recovery of $28,649.00 in 2003 pending

approval of the proposed lease agreements totalling $88,644.27 in rent and realty taxes against the expenditure of $103,314.22 to repair the north half of the Alexander Dock in 2001.

Subsequently, the City undertook extensive riverbank and dock stabilization works involving the subject leased premises as part of the Waterfront Drive project. The City is now proceeding to repair the south half of the Alexander Dock.

In view of the approved funding to repair the south half of the Alexander Dock, the Manager of Downtown Improvement and Departmental Projects requested a fee proposal from the KGS Group, to plan, design, tender and supervise the dock remediation. The KGS Group reported that it would take approximately 3 months before the construction could proceed (including design, tender, and special order timber decking from B.C.).

Paddlewheel Riverboats Ltd. operate three riverboats between May 1 and October 31. Since 2001, the Paddlewheel Riverboat Ltd. have moored a riverboat along the north half of the Alexander Dock and another riverboat along the south half of the Alexander Dock and accessed same via a ramp as shown on the attached Misc. Plan No. 7806/12. The Department is prepared to enter into a new lease agreement for the ramp provided same could be terminated on 7 days notice. The Real Estate Division will ensure that the City has the ability to terminate the Ramp Lease Agreement in conjunction with the start of construction.

It was determined that it would be prudent to schedule the construction phase of the project toward the end of the riverboat season to minimize the impact on operations. The Department therefore recommends that the construction phase of the dock repair commence following Labour Day Monday in September 2003. As such, the Real Estate Division will ensure that the City has the right to enter the subject City-owned lands to complete the dock repair and that the Tenant will not have any basis for disturbance costs.

C: Planning, Land Use and Zoning Matters:

The Real Estate Division consulted with the Planning and Land Use and Zoning Divisions regarding the request for a one-year extension. The Divisions reviewed the status of DCU 5/98C and concluded that if the use of the lands does not change and that no new structures are planned to be constructed as part of a new lease agreement, then no approvals would be required, with the exception of Waterway and Building Permit approvals related to the Alexander Dock repairs.

It has been determined that this proposal to enter into new one year leases does not require any land use or zoning approvals.

D: Access for Splash Dash Water Taxi:

Incorporated in the proposed new terms and conditions of a one-year lease is the provision that the Splash Dash Water Taxi has access to the dock and adjacent lands, in times of high water. This use is requested by the Manager of the Downtown Improvements and Projects.

The Paddlewheel Riverboats Ltd. position on this is that a joint use of the dock is unfeasible and not compatible with their operation. The Manager of Downtown Improvements and Projects subsequently advised that given the timing of the dock improvements and the length of the

proposed lease, that no further action is required at this time and that the issue of access for Splash Dash will be considered at a later date.

E: Form of Agreement:

The Legal Services Division advises that the Lease Agreements dated June 28, 2001 and March 6, 2002 cannot be extended being as they have expired. Should it be decided to allow Paddlewheel Riverboats Ltd. to utilize the Alexander Dock and adjoining lands for one more year, new lease agreements would be required.

**The Proposed Terms and Conditions of Lease Agreements:**

The Tenant is currently in default of its expired agreements and owes the City $7,514.60. This debt is for realty tax and applicable GST monies due pursuant to its expired leases that have been withheld by the Tenant in anticipation that the assessed value and resulting realty tax imposition would be reduced. The Tenant has been advised that pursuant to its lease contracts these monies are due and payable in full. Any recovery thereto as a result of assessment adjustments will stem from a process separate and apart from the lease.

On the condition that all arrears are paid in full, the Department has prepared the proposed terms and conditions for two separate one year (term) Lease Agreements between the City and Paddlewheel Riverboats Ltd. as follows:

Lease Agreement No. 1 (North portion of the dock and adjacent lands)

| | |
|---|---|
| Owner: | City |
| Tenant: | Paddlewheel Riverboats Ltd. |
| Location: | City-owned lands and right of ways outlined as "Proposed Lease" on Misc. Plan No. 7806/11 |
| Description: | Alexander Dock, Riverbank and street right of ways |
| Purpose: | Riverboat operations |
| Commencement: | May 1, 2003 |
| Term: | Until March 31, 2004 |
| Rental: | $18,000.00 plus realty taxes |
| Cancellation: | By City on Tenant default of covenants |
| Special Conditions: | -Access for City over demised premises to repair south half of the Alexander Dock.<br>-Right to remove certain lands adjoining Waterfront Drive for Waterfront Drive Project. |

A copy of the proposed terms and conditions is attached as Schedule "A".

Lease Agreement No.2 (Ramp over south portion of the dock and accessing lands)

| | |
|---|---|
| Owner: | City |
| Tenant: | Paddlewheel Riverboats Ltd. |

| | |
|---|---|
| Location: | Access via "Proposed Overhead Ramp" to be constructed over a southerly portion of the Alexander Dock Structure and "Proposed Gravel Path" as shown on Misc. Plan No. 7806/12 |
| Description: | Alexander Dock |
| Purpose: | Riverboat operations |
| Commencement: | May 1, 2003 |
| Term: | Until March 31, 2004, or as may be earlier terminated by the City for the purposes of commencing the dock repairs and any and all associated works to the south half of the Alexander Dock. |
| Rental: | $500.00/annum plus realty taxes |
| Cancellation: | By the City upon seven (7) days written notice; by the City upon (5) days notice of default. |

A copy of the proposed terms and conditions is attached as Schedule "B".

The proposed rent rate is the same as approved in 2001 which includes a return on the cost and improving the north half of the dock. Being as no additional improvements, excluding riverbank stabilization, have been undertaken, the Department is comfortable with the proposed rent rate and terms and conditions for the one year term.

Departmental Opinion:

The Planning, Property and Development Department is recommending the approval of the proposed leases for the following reasons:

- Being as the proposed lease is for a one year term, CentreVenture has no objection to the proposed one year extension of the lease agreement between the City and Paddlewheel Riverboats Ltd. dated June 28, 2001;
- The proposed lease would enable this tour boat operator to continue to provide this service;
- There is currently no known alternative project that would require the use of this site.

## Financial Impact Statement

**Date:** May 1, 2003

**Project Name:**

Alexander Dock - Proposed One Year Lease Agreements - Paddlewheel Riverboats Ltd.

**First Year of Program** 2003

| | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|---|---|---|---|
| **Capital** | | | | | |
| Capital Expenditures Required | $ - | $ - | $ - | $ - | $ - |
| Less: Existing Budgeted Costs | - | - | - | - | - |
| Additional Capital Budget Required | $ - | $ - | $ - | $ - | $ - |
| **Funding Sources:** | | | | | |
| Debt - Internal | $ - | $ - | $ - | $ - | $ - |
| External | - | - | - | - | - |
| Grants (Identify) | - | - | - | - | - |
| Reserves, Equity, Surplus, Other | | - | - | - | - |
| Total Funding | $ - | $ - | $ - | $ - | $ - |
| Total Additional Capital Budget Required | $ - | | | | |
| Total Additional Debt Required | $ - | | | | |
| **Current Expenditures/Revenues** | | | | | |
| Direct Costs | $ - | $ - | $ - | $ - | $ - |
| Less: Incremental Revenue/Recovery | 28,649 | - | - | - | - |
| Net Cost/(Benefit) | $ (28,649) | $ - | $ - | $ - | $ - |
| Less: Existing Budget Amounts | (28,649) | - | - | - | - |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:**

The proposed recovery is comprised of the base rental of $18,000 and $500.00 respectively plus relaty taxes of $8,274.00 and GST for a total of $28,649.00.

"Original signed by"
Gord Courage, Manager
Support Services Division

**IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:**

Public Works Department

Manager of Downtown Improvements and Departmental Projects

CentreVenture Development Corporation

This report submitted by:

Planning, Property and Development Department
Division: Real Estate
Prepared by: D. Armstrong
PPD File #: 38/752 (IV)

Document name: o:\reports directive\real estate\leasing\(da) paddlewheel.doc

**Schedule "A"**

1. The Lessee hereby covenants and agrees;

(a) Lessee hereby leases and takes from the City the leased premises as shown on the attached Misc. Plan 7806/11 for the term commencing as of May 1, 2003 and ending March 31, 2004 subject, however, to cancellation as hereinafter set out.

(b) To pay the City as rental for the leased premises the sum of **EIGHTEEN THOUSAND DOLLARS ($18,000.00)** plus applicable Goods and Services Tax, payable in equal monthly payments during the one year term of this agreement, the first such payment to become due and to be paid on the 1st day of May, 2003. The City's Director of Planning, Property and Development (hereinafter called the ***"Director"***) may, acting reasonably, increase the annual rent to take effect upon thirty (30) days notice as prescribed herein which increase, as determined from time to time by a certified land appraiser acting on behalf of the City, shall correspond to any increase in market value rent for the leased premises due to any enhanced use of that part of the leased premises currently identified as "Open Space" on Schedule "A" attached hereto but, in any event, annual rent shall not be less than ($) Eighteen Thousand ($18,000.00) Dollars;

(c) To pay to the City on demand as additional rent an amount equal to the realty taxes on the leased premises and any improvements thereon including local improvement levies as though the entire leased premises were included in the City's realty assessment roll;

(d) To pay to the City in addition to the foregoing all license fees and business taxes, including Goods and Services Tax, which may be charged in respect of rent payable under the lease or in respect of the leased premises, whether such fees

and taxes are charged by any municipal, provincial or federal authority or otherwise;

(e) Subject to any works contemplated by the City hereunder, to accept the leased premises in an "As Is" condition and acknowledge that the City has made no representation whatsoever as to the fitness of the leased premises for the intended use of the Lessee;

That, unless otherwise agreed to in writing by the Director, the leased premises will be used by the Lessee at its sole cost and expense in conjunction with its riverboat and tour operation which use shall be restricted as follows:

(i) that part of the leased premises shown coloured pink on Schedule "A" hereto shall be used only for parking purposes; and

(ii) that part of the leased premises shown coloured brown on Schedule "A" hereto shall be used only for docking purposes; and

(iii) that part of the leased premises shown coloured blue on Schedule "A" hereto shall be used only for access purposes; and

(iv) that part of the leased premises shown coloured green on Schedule "A" hereto shall be used only as open space;

To comply with all applicable laws, by-laws, and regulations of any federal, provincial or municipal authority pertaining to the use and occupancy of the leased premises by the Lessee and shall obtain all necessary permits;

(h)That commencement of this Lease is subject to the Lessee obtaining:

such conditional use and/or zoning variance approval as may be required by the City to permit the proposed use of the leased premises;

Waterways Permit pursuant to The City of Winnipeg Waterways By-law with respect to the proposed use of the leased premises;

The City of Winnipeg Downtown Design Board approval in respect of any construction permitted hereunder;

and does hereby further agree to comply with all conditions which may be contained in such permits and approvals and such conditions shall be deemed to be part of this Lease as if fully set out herein;

(i) That it shall at its own expense maintain the leased premises in a neat and tidy condition satisfactory to the Director, acting reasonably and, without limiting the generality of the foregoing, ensure that the dock forming part of the leased premises and shown coloured brown and identified as "Alexander Dock – Section No. 2 on Schedule "A" hereto (hereinafter called the ***"Alexander Dock"***) is maintained in a condition required to facilitate the Lessee's safe use and occupancy of the leased premises, during the lease term, all at no expense to the City;

(j) Upon commencement of riverboat tours contemplated by this Agreement, not to restrict the public from free pedestrian access to the leased premises, subject to the Lessee's requirement for reasonable security and safety;

(k) To permit access to the leased premises by the City's Emergency Services and Police Services Departments at all times during the term of this lease for emergency purposes;

(l) 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 Lessee or otherwise caused by reason or in any way attributable to the Lessee's use of the leased premises, or the construction, maintenance, existence or use of the any buildings erected thereon, or in any way connected therewith or otherwise by reason of the exercise by the Lessee of the use hereby granted or the performance of or failure to perform its obligations hereunder;

(m) That should the City's Branch 1 Aqueduct, 250 mm land drainage sewer outfall and 1500 mm combined sewer outflow located within the leased premises (hereinafter called the ***"City installations"***) be damaged due to any act or failure to act on the part of the Lessee or any of its employees, agents, licensees, invitees, tenants or third parties or anyone carrying out activities on its behalf during construction, renovation or repair works at the leased premises, or at any time thereafter, it will:

(i) act expeditiously to prevent further damage to the City installations and advise the City's Water and Waste Department immediately;

(ii) allow the City's Director of Water and Waste Department to handle all engineering and construction aspects of the repair;

(iii) compensate the City for all costs associated with such repair or any subsequent restoration works required; and

(iv) not hold the City liable or responsible for any delay in completion of the repairs to the City installations;

(n) To reserve to the City the right to enter upon the leased premises, with or without equipment, upon twenty-four (24) hours prior notice to the Lessee, acting reasonably, except in an emergency situation where no notice shall be required, for any City purposes, including but not limited to maintenance, reconstruction, repair and operation of the City installations and associated structures located herein, including the right to exclude all others from the portion of the leased premises required for such work for as long as may be necessary to carry out such work;

(o) To pay all utility and operating expenses in connection with the use of the leased premises;

Not to erect or permit the erection of any building or structures on the leased premises without the prior written consent of the Director;

(q) To comply with all municipal, provincial and federal laws, by-laws and regulations and further, to obtain all necessary approvals and permits, including without limitation a Rivers and Streams Permit as may be required and to provide evidence of same to the Director prior to occupying the leased premises;

(r) In performing and completing any construction, renovation or repair work as may be approved hereunder, to ensure the contractor or builder complies with all by-laws and regulations and maintains and keeps in force during the construction period, insurance protecting both the City (with the City named as additional insured) and the Lessee against all claims arising out of any such construction, renovation or repair work;

(s) To discharge any builder's liens which may be registered against the leased premises and relating to the Lessee's occupancy hereunder. If the Lessee fails to do so, the City may charge the costs involved to the Lessee;

(t) To repair any damage caused to the adjoining City owned lands at its sole cost due to its use or works associated with the leased premises.

(u) To provide contracted or staff members for site security and other such measures as may be required to reduce vandalism and to improve the safety of the patrons entering and leaving the leased premises, as may be required, to the satisfaction of the Director.

2. The Lessee further covenants and agrees:

That it shall not assign this Lease nor sub-let the leased premises without the prior written consent of the Director, acting reasonably;

(b) That any consent by the Director to an assignment or sub-let shall not release the Lessee of its obligations for the payment of rent and the performance of the terms and conditions contained in this Lease;

(c) To assume all costs and expenses incurred by the City in repairing actual damage to the leased premises or utilities therein caused by the Lessee's use of the leased premises;

(d) 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 premises by the Lessee, including without limitation, claims arising out of riverbank failure;

(e) To purchase and keep in force during the full term of this Lease a Comprehensive General Liability Policy including but not limited to the following provisions:

(i) The City of Winnipeg to be named as Additional Named Insured;
(ii) The policy to contain cross liability clauses;
(iii) Minimum limits of $5,000,000.00 all inclusive;
(iv) Deductibles acceptable to the City.
(v) The exclusion for watercraft will be amended so that the exclusion will not apply to vessels operated by or for the Lessee;
(vi) The policy shall provide for ninety (90) days notice to the City of cancellation or material change;

and the Lessee shall file with the City a certified copy of the said Policy in a form satisfactory to the City Solicitor/ Manager of Legal Services;

(f) To purchase and keep in force during the term of this Lease property insurance for the Alexander Dock in an amount as may be required and determined by the City's Supervisor of Insurance and Risk Management on an all risk form in the joint names of the Lessee and the City with loss payable to the City, and it shall file with the City a certified copy of the policy in a form satisfactory to the City Solicitor. The City, acting reasonably, shall have the right to alter the limits and coverages as required from time to time during the term of this Lease, as may be required;

(g) To purchase and keep in force during the term of this Lease, a proper marine protection and indemnity insurance policy for the protection of the Lessee and the City if required and it shall file with the City a certified copy of the policy in a form satisfactory to the City Solicitor;

(h) The Lessee shall be responsible for and shall repair to the satisfaction of the City any riverbank failure due to the Lessee's use of the leased premises;

(i) To provide its own security for the leased premises;

(j) Not to file any caveat or other encumbrance against the leased premises;

(k) To ensure that the access to the leased premises is conducted in a careful manner in accordance with good industry standards and in compliance with the provisions of any applicable environmental, health or safety statutes, regulations, orders or directives of any government or governmental agency having jurisdiction over such operations;

(l) To ensure that all environmental contaminants are received, handled, used, stored, treated, shipped and disposed of in the manner required from time to time by applicable laws, by-laws, regulations, rules or requirements of all authorities having jurisdiction over the leased premises or the Lessee;

(m) Not to release into the environment, or deposit, discharge, place or dispose of, at, on or near the leased premises, any dangerous goods at that term is defined in The Dangerous Goods Handling and Transportation Act, R.S.M. 1987, c.D12, as amended, replaced or substituted from time to time;

(n) To immediately notify the Director as to any infractions relative to this Lease and to provide the Director with a report on an annual basis relative to the handling and storage of any dangerous goods as referred to herein;

(o) That it shall inspect all goods delivered to the leased premises and will ensure that no pollutant is brought on the leased premises by or for the Lessee or its employees, licensees or invitees except in each case pursuant to and in accordance

with the City's prior written consent and that it shall at its own cost cause any goods, the nature of which is not known to the Lessee with certainty, to be tested by a qualified person to determine whether they are or contain any pollutant before accepting the same into the leased premises and if found to be in breach of the requirements of this subsection the City may on behalf of the Lessee rectify such breach and the Lessee shall promptly reimburse the City's for the cost of any test, analysis or inspection of goods at the leased premises which are, or which the City has reason to suspect, may be or contain a pollutant;

That if any governmental authority having jurisdiction shall require the clean up of any pollutant held, released, abandoned or placed upon the leased premises or released into the environment in the course of the Lessee's business or as a result of the Lessee's use or occupancy of the leased premises, then the Lessee shall, at its own expense prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the work required and shall provide to the City full information with respect to proposed plans and comply with the City's reasonable requirements with respect to such plans. The Lessee further agrees that if the City determines, in its own discretion, that the City, its property, its reputation or the leased premises is placed in any jeopardy by the requirement for any such work, the City may itself undertake, on prior notice to the Lessee, such work or any part thereof at the cost and expense of the Lessee;

(q) That, if requested by the City, it shall obtain a report from an independent qualified consultant designated or approved by the City verifying the complete and proper removal thereof from the leased premises or reporting as to the extent and nature of any failure to comply with the foregoing provisions as to pollution and environmental controls;

(r) That if the Lessee shall bring or create upon the leased premises any pollutants or if the conduct of the Lessee's business shall cause there to be any pollutants upon the leased premises then, notwithstanding any rule of law to the contrary, such pollutants shall be and remains the sole and exclusive property of the Lessee and shall not become the property of the City notwithstanding the degree of affixation of the pollutant or the goods containing the pollutants to the leased premises and notwithstanding the expiry or earlier termination of this Lease and at the option of the City any substance contaminated by such pollutants shall become the property of the Lessee or, at the City's option, the City shall remove same from the leased premises and make good any damage done in so doing; all at the cost and expense of the Lessee;

(s) That the obligations of the Lessee hereunder relating to pollutants shall survive the expiry or earlier termination of this Lease;

(t) That to the extent that the performance of those obligations relating to environmental matters require access to or entry upon the leased premises or any part thereof the Lessee shall have such entry and access only at such times and upon such terms and conditions as the City may from time to time specify;

(u) That the City may, at the Lessee's cost and expense, itself or by its agents, servants, employees, contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Lessee but having commenced such work, the City shall have no obligation to the Lessee to complete such work. This Clause supersedes any other provisions of this Lease to the contrary;

(v) That it hereby authorizes the City to make enquiries from time to time of any government or governmental agency with respect to the Lessee's compliance with

any and all laws and regulations pertaining to the Lessee's business and the leased premises including, without limitation, laws and regulations pertaining to pollutants and the protection of the environment; and the Lessee covenants and agrees that it shall from time to time provide to the City such written authorization as the City may reasonably require in order to facilitate the obtaining of such information;

To indemnify, defend and save the City harmless from and against any and all costs, fees, penalties and charges assessed against or imposed upon the City (as well as the City's solicitor's fees and costs) as a result of the Lessee's use, storage, treatment, disposal, transportation, generation and/or sale of pollutants and such indemnity shall survive the termination of this Lease;

(x) The Lessee shall at all times during the term keep the leased premises and, at the end of the lease term, surrender the same free from any and all pollutants resulting from its use and occupation of the leased premises. It is expressly prohibited for the leased premises to be used for the sale, storage, manufacture, processing, packaging of, or other dealing with any pollutant except if and so long as approved by the City in writing (which approval may be withdrawn at any time notwithstanding any provision of this Lease) and whenever such prior approval is given, such sale, storage, manufacture, processing, packaging thereof or other dealing therewith shall be only in accordance with the written directions of, and conditions imposed by the City from time to time and any present or future governmental requirements. The Lessee shall immediately notify the City of the existence of any pollutant at the leased premises.

3. The Lessee, prior to commencement of the leased term, may at its sole cost and expense conduct or cause to be conducted an environmental assessment and/or soil testing (hereinafter referred to as "the Environmental Assessment") of the leased premises; and

(a) Upon receipt of the forty-eight (48) hours' prior notice, the City will consent to the Lessee, its employees or agents, entering on the leased premises for the purpose of the Environmental Assessment; and

(b) The Lessee may, in its sole discretion, cancel this Lease should it be determined as a result of the Environmental Assessment, that there are environmental concerns and/or contamination of the leased premises; and

(c) The Lessee shall at its sole cost, effort and expense, provide to the City, prior to the commencement date, copies of the Environmental Assessment.

4. If the term hereby granted shall be at any time seized or taken in execution or attachment by any creditor of the Lessee or its permitted assigns, or if the Lessee or its permitted assigns shall make any assignment for the benefit of any Act that may be in force for bankrupt or insolvent debtors, the current year's pro-rated rental shall immediately become due and payable and the said term shall immediately become forfeited and void;

5. Notwithstanding the forfeiture or termination of this Lease in any manner herein and provided for, the Lessee 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 obligations herein contained on the part of the Lessee to be observed and performed upon or after said forfeiture or termination.

6. Upon termination or cancellation of this Lease, whichever is earlier, all reservations, restorations, additions and improvements made by the Lessee or made by the City on the Lessee's behalf become, on affixation, the property of the City. No renovation, restoration, addition or improvement shall be removed from the leased premises before the end of the term without the prior consent in writing of the City. Upon expiration or

termination of this Lease the renovations, restorations, additions and fixed improvements excepting Lessee's trade fixtures shall become the property of the City as part of the reversion, but the Lessee shall remove all or some of the renovations, restorations, additions and fixed improvements if and to the extent requested by the City and the Lessee shall restore the leased premises to a safe condition free of hazards. Every installation, removal or restoration by the Lessee of its renovations, restorations, additions, improvements and fixtures shall be done at the sole expense of the Lessee and the Lessee promptly shall make good or reimburse the City for the cost of making good all damage to the leased premises or any part thereof caused by such installation, removal or restoration.

7. In the event a dispute shall arise between the City and the Lessee as to any matter herein contained, excepting a matter herein provided to be determined solely by the City or its consultants and excepting a dispute as to rent payable, then such dispute shall be resolved by arbitration in accordance with the provisions of The Arbitration Act of Manitoba.

8. The Lessee acknowledges that during the term of this Lease, that the construction of Waterfront Drive adjacent to the west boundary of the leased premises, (hereinafter called the ***"Waterfront Drive project"***), will cause periodic access disruptions and that noise will be generated in association with such project and therefore agrees to waive as against the City all costs and claims or actions for any disruption or disturbance relative to the use of the leased premises caused by the Waterfront Drive project.

9. The Lessee shall be granted access to the leased premises prior to commencement of the lease term in order to proceed with servicing or preparation of the site subject to indemnifying the City and providing plans and specifications for any improvements to the Director for approval.

10. Upon receiving written notice from the Director, the Lessee agrees to surrender such portion of the leased premises as required by such notice from the Director for

incorporation into the Waterfront Drive project and to provide access with or without equipment to any portion of the leased premises to implement any related riverbank stabilization works without compensation except that rent shall be adjusted as determined by the Director in respect of any surrendered lands only.

11. Any signage to be erected on the leased premises is subject to the approval of the Director.

12. The Lessee shall not file any caveat or other encumbrances against the leased premises, except as otherwise provided herein.

13. The Lessee agrees to allow the City and the public continuous and uninterrupted free access with or without vehicles and equipment over that portion of the leased premises show coloured pink and identified as “Pacific Avenue” on Schedule “A” hereto, to and from City lands adjacent to and south of the leased premises upon written request from the Director.

14. During the term of this agreement, the City may undertake repairs to the south half of the Alexander Dock that does not form part of the demised premises and if so, such repairs shall be completed in a timely manner and in accordance with a scope of work to be determined at the sole discretion of the Director, it being understood and agreed by the Lessee that there shall be no abatement or adjustment of any kind in respect of rent payable hereunder during the period of such dock repairs. The Lessee hereby grants the City free and unrestricted access to the Alexander Dock for purposes of completing such dock repairs.

15. The City agrees to enter into a facility use agreement for a portion of St John’s Park at water’s edge during periods of high water subject to terms and conditions acceptable to the parties hereto in which event, the Lessee hereby agrees to continue, without abatement, the payment of rent, additional rent and all charges due under this Agreement.

16. The City agrees to implement a geotechnical monitoring system for the riverbank adjoining the Alexander Dock at its sole cost and in the event that such geotechnical monitoring system indicates an unsafe condition, this Agreement shall be cancelled forthwith at the option of the Director and in such event, the City will cooperate with the Lessee in an effort to identify a suitable alternate site for a period equal to the balance of the lease term.

17. If the Lessee shall be in default under any provision of this Lease, the City shall give notice to the Lessee forthwith upon such default coming to the attention of the City and in such notice the City shall state the nature of the default and require the same to be remedied and the Lessee 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 Lessee 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 Lessee 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 Lessee has a right to require a subtenant to rectify and if the Lessee 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.

If, after the expiration of the times above limited, the default has not been remedied, the City may thereupon, at its option, either by itself or its lawfully authorized agent, enter and re-enter into and upon the leased premises 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 Lessee and this Lease and the lease term hereby granted hereunder shall be terminated.

18. Time shall be of the essence for this Lease and all rents and other payments to be made by the Lessee shall be paid by the Lessee on the dates provided herein.

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

Paddlewheel Riverboats Ltd.
P.O. Box 3930, Postal Station B
Winnipeg, Manitoba
R2W 5H9

or upon the City, addressed to:

The City of Winnipeg
Planning, Property and Development Department
2nd Floor – 65 Garry Street
Winnipeg, Manitoba
R3C 4K4
Attention: Director

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 (4th) 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 City or the Lessee may change its address for notice purposes from time to time by notice given in accordance with this Clause.

20. This Lease shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and permitted assigns.

*The subject terms and conditions of proposed Lease Agreements are subject to the addition of any other additional terms as requested by the City Solicitor and to Council approval.*

**Schedule "B"**

1. The Lessee hereby covenants and agrees:

    (a) The Lessee hereby leases and takes from the City the ramp and gravel path as shown on the attached Misc. Plan 7806/12 for the term commencing as of May 1, 2003 and ending March 31, 2004 subject; however, to cancellation as hereinafter set out.

    (b) To pay the City, annual, as rental for the ramp and gravel path, the sum of **FIVE HUNDRED ($500.00) DOLLARS** plus applicable Goods and Services Tax, payable in equal monthly payments each year during the lease term, the first such payment to become due and to be paid as of May 1, 2003;

    (c) To pay to the City on demand as additional rent an amount equal to the realty taxes on the ramp and gravel path and any improvements thereon including local improvement levies as though the entire leased premises were included in the City's realty assessment roll;

    (d) To pay to the City in addition to the foregoing all license fees and business taxes, including Goods and Services Tax, which may be charged in respect of rent payable under this Lease or in respect of the ramp and gravel path, whether such fees and taxes are charged by any municipal, provincial or federal authority or otherwise;

    (e) To use the ramp and gravel path to cross the southerly portion of the Alexander Dock in connection with the operation of its paddlewheel riverboat and bus tour operations only. No storage of equipment or vehicles will be permitted;

    (f) To install bollards as may be necessary to moor a boat on the remaining portion of the Alexander Dock;

(g) To prevent private parties and staff from using the surface of the southerly portion of the Alexander Dock;

(h) To maintain the ramp and gravel path at its sole cost and expense to the satisfaction of the Director;

(i) 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 ramp and gravel path by the Lessee;

(j) To purchase and keep in force during the full term of this 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;

(ii) The policy to contain cross liability clauses;

(iii) Minimum limits of $5,000,000.00 all inclusive;

(iv) Deductibles acceptable to the City;

(v) The exclusion for watercraft will be amended so that the exclusion will not apply to vessels operated by or for the Lessee;

(vi) The policy shall provide for ninety (90) days notice to the City of cancellation or material change;

and the Lessee shall file with the City a certified copy of the said policy in a form satisfactory to the City Solicitor/Manager of Legal Services.

2. Upon seven (7) days written notice to the Lessee from the Director, this agreement may be terminated.

3. In the event this Lease is terminated as aforesaid, the Lessee shall at its sole cost, effort and expense remove the ramp and gravel path within the seven (7) day notice period and peaceably surrender and yield up vacant possession of the leased premises to the City in good and substantial state of repair which the Lessee is required to maintain.

4. If the Lessee shall be in default under any provision of this Lease, the Director shall give notice to the Lessee forthwith upon such default coming to the attention of the Director and in such notice the Director shall state the nature of the default and require the same to be remedied and the Lessee shall have form the receipt of such notice Five (5) days in the case of default in insuring or in the payment of rent or any other amounts of money payable by the Lessee under the provisions hereof within which to remedy such default.

   If, after the expiration of the time above limited, the default has not been remedied, the City may thereupon, at its option, either by itself or its lawfully authorized agent, enter and re-enter into and upon the leased premises 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 Lessee and this Lease and the lease term hereby granted hereunder shall be terminated.

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

   Paddlewheel Riverboats Ltd.
   P.O. Box 3930, Postal Station B
   Winnipeg, Manitoba  R2W 5H9

   or upon the City, addressed to:

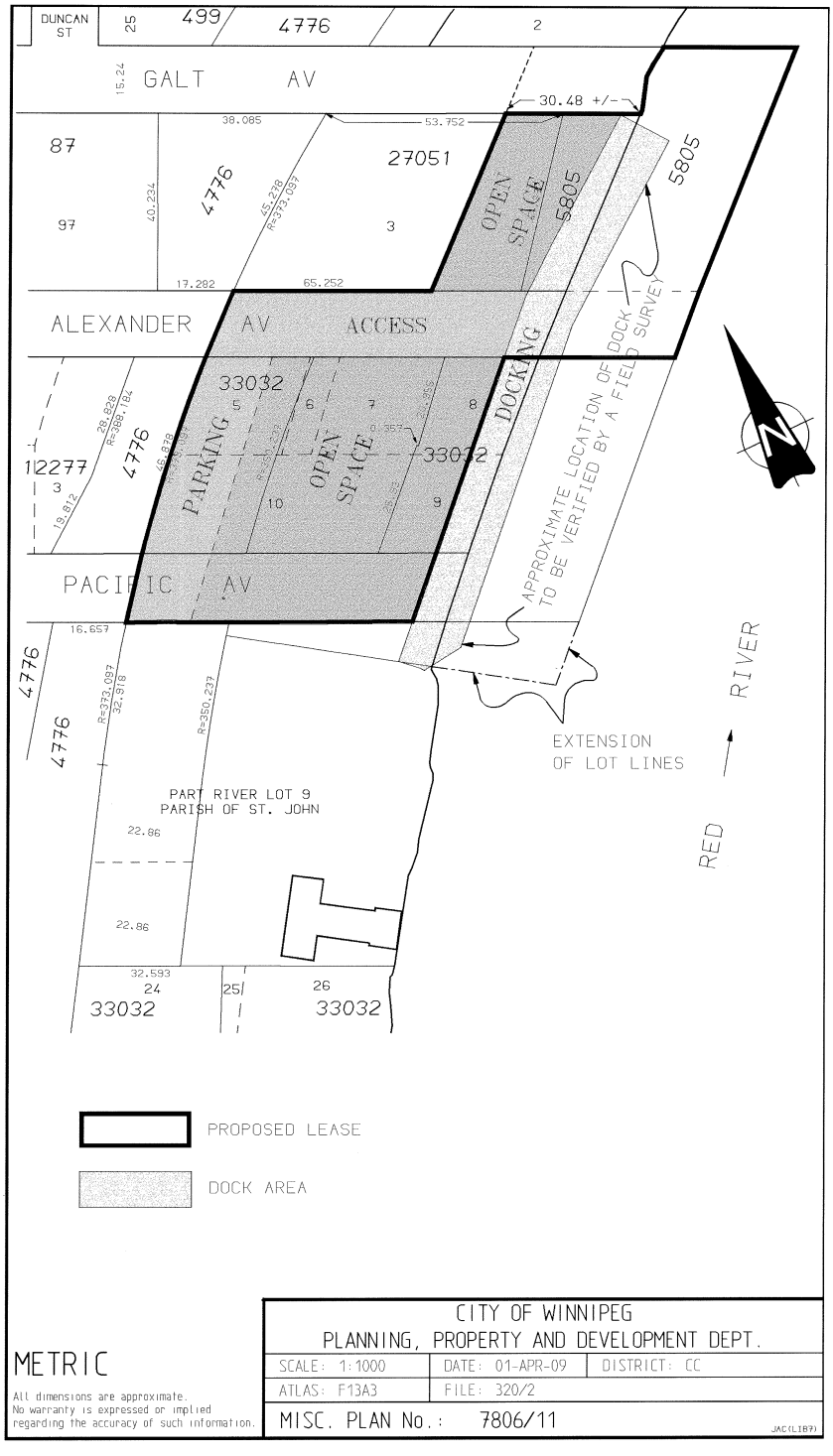
   The City of Winnipeg

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

6. Time shall be of the essence of this Lease and all rents and other payments to be made by the Lessee shall be paid by the Lessee on the dates provided herein.

7. This Lease shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and permitted assigns.

*The subject terms and conditions of proposed Lease Agreements are subject to the addition of any other additional terms as requested by the City Solicitor and to Council approval.*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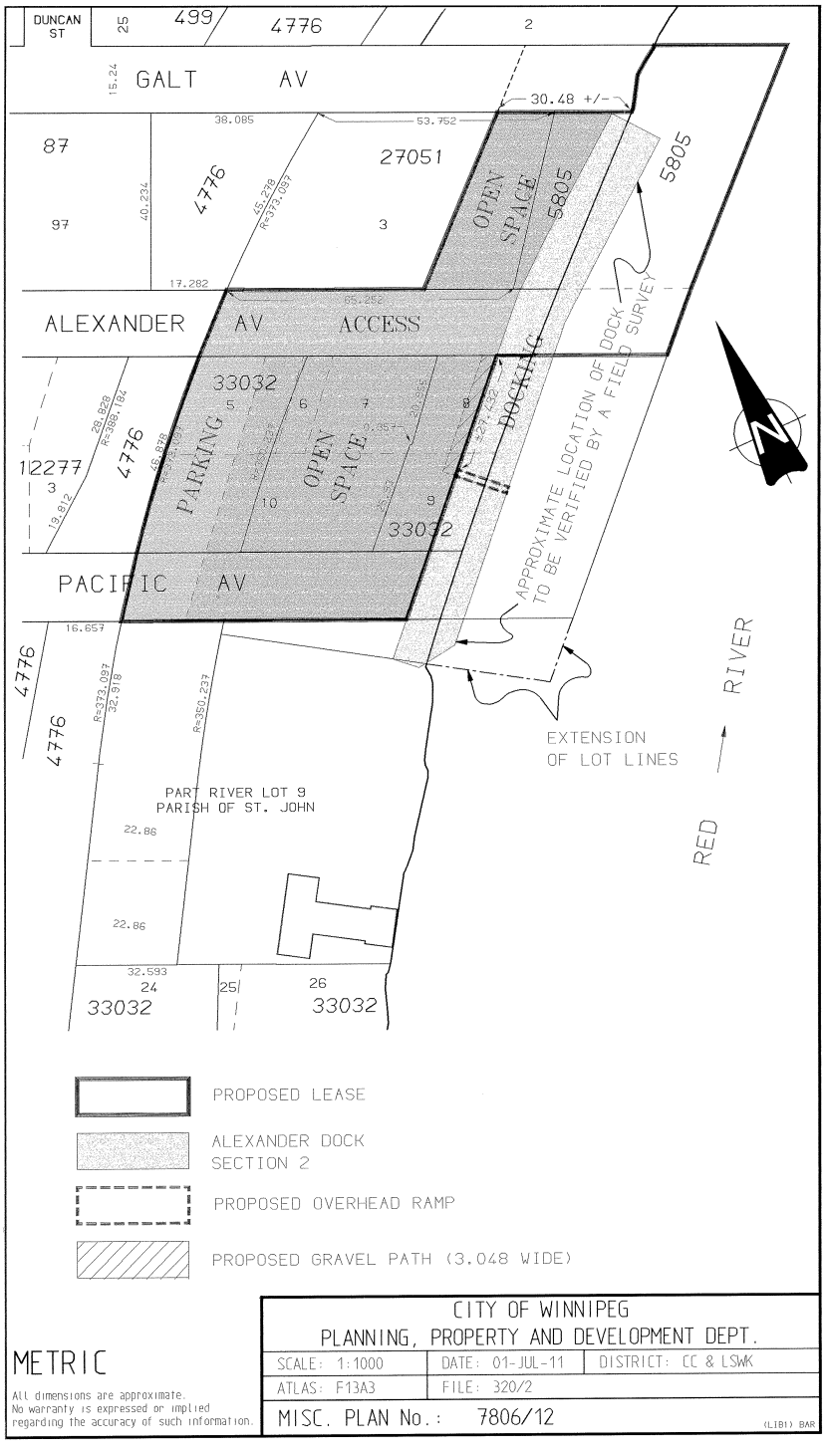
GALT AV
ALEXANDER AV
ACCESS
PACIFIC AV
OPEN SPACE
PARKING
DOCKING
APPROXIMATE LOCATION OF DOCK TO BE VERIFIED BY A FIELD SURVEY
EXTENSION OF LOT LINES
RED RIVER
PART RIVER LOT 9
PARISH OF ST. JOHN
PROPOSED LEASE
DOCK AREA
METRIC
All dimensions are approximate.
No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
SCALE: 1:1000
DATE: 01-APR-09
DISTRICT: CC
ATLAS: F13A3
FILE: 320/2
MISC. PLAN No.: 7806/11


DUNCAN ST
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APPROXIMATE LOCATION OF DOCK TO BE VERIFIED BY A FIELD SURVEY
EXTENSION OF LOT LINES
RED RIVER
PART RIVER LOT 9
PARISH OF ST. JOHN
PROPOSED LEASE
ALEXANDER DOCK SECTION 2
PROPOSED OVERHEAD RAMP
PROPOSED GRAVEL PATH (3.048 WIDE)
METRIC
All dimensions are approximate.
No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
SCALE: 1:1000
DATE: 01-JUL-11
DISTRICT: CC & LSWK
ATLAS: F13A3
FILE: 320/2
MISC. PLAN No.: 7806/12
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