Agenda - Council – April 25, 2012

Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – April 13, 2012

Item No. 1 Easement Located within a portion of Stephen Juba Park, east side of Waterfront Drive at James Avenue - Sunstone Boutique Hotels Ltd. (Point Douglas Ward)

STANDING COMMITTEE RECOMMENDATION:

On April 13, 2012, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submits the following to Council:

1. That a long term easement in favour of Sunstone Boutique Hotels Ltd. or nominee over a portion of the City-owned parkland (Stephen Juba Park) identified on the attached Misc. Plan No. 12596/14, be approved in accordance with the proposed terms and conditions in the attached Schedule "A" and any other terms and conditions deemed necessary by the Director of 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.

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

Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – April 13, 2012

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 18, 2012, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On April 13, 2012, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Permanent Easement Located within a portion of Stephen Juba Park, east side of Waterfront Drive at James Avenue, and south of proposed Boutique Hotel in favour of Sunstone Boutique Hotels Ltd. or Nominee**

Critical Path: **Standing Policy Committee on Downtown Development, Heritage and Riverbank Management**
Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	n/a	D Joshi COO

RECOMMENDATIONS

1. That a long term easement in favour of Sunstone Boutique Hotels Ltd. or nominee over a portion of the City-owned parkland (Stephen Juba Park) identified on the attached Misc. Plan No. 12596/14, be approved in accordance with the proposed terms and conditions in the attached Schedule "A" and any other terms and conditions deemed necessary by the Director of 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 City Policy, all sales of property designated or acquired for park or cemetery purposes require approval of at least 2/3 of all members of Council. The subject easement falls under this City Policy.

IMPLICATIONS OF THE RECOMMENDATIONS

- The proposed easement will limit the City's ability to build on that portion of the parkland within the easement area and the area of spatial separation (located in Stephen Juba Park).

- There are no regulatory or human resources implications associated with this report.

HISTORY

In 2011, the Department negotiated a long term land lease with Sunstone Boutique Hotels Ltd. for the construction and operation of a multi-storey Boutique Hotel and restaurant on City-owned property north of and adjacent to the easement area.

In December of 2011, the Department was contacted by Sunstone with a 'green plan' requesting use of the subject City property for the purpose of: (a) installing, at Sunstone's expense, a geothermal field below grade to provide heating and cooling to their adjacent Boutique Hotel and restaurant development (b) an area of 462m2 is required for a spatial separation to meet City of Winnipeg building code requirements pertaining to the development of the Boutique Hotel and redevelopment of the Harbourmaster Building and (c) a fire lane access for emergency vehicles.

The term of the easement would be equal to the term of the land lease (70 years). Within the easement, a newly developed plaza area (to be installed and maintained at the expense of Sunstone) and active transportation pathways on a portion of the easement areas are to be left open to the public at all times.

The Department is supportive of this private sector initiative that would promote a carbon free agenda and provide an additional amenity to the Stephen Juba Park.

The proposed Easement Area was circulated to the Parks, Waterways and Community Initiatives Division of the Planning, Property and Development Department, the Parks and Open Spaces Division of the Public Works Department and the Water and Waste Department and their comments have been included into the proposed terms and conditions of the Easement outlined in Schedule "A", attached.

The Department is recommending approval of the Easement in accordance with the proposed terms and conditions herein.

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 12, 2012

Project Name: **First Year of Program** **2012**

Proposed Easement Agreement Located on Parkland (Stephen Juba Park), East side Waterfront Drive at James Street, in favour of Sunstone Boutique Hotels Ltd. or nominee

	2012	2013	2014	2015	2016
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	501	501	501	501
Net Cost/(Benefit)	$ (501)	$ (501)	$ (501)	$ (501)	$ (501)
Less: Existing Budget Amounts	(501)	(501)	(501)	(501)	(501)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenues consist of the annual rental amount of $1 + an annum administration fee of $500.

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

CONSULTATION

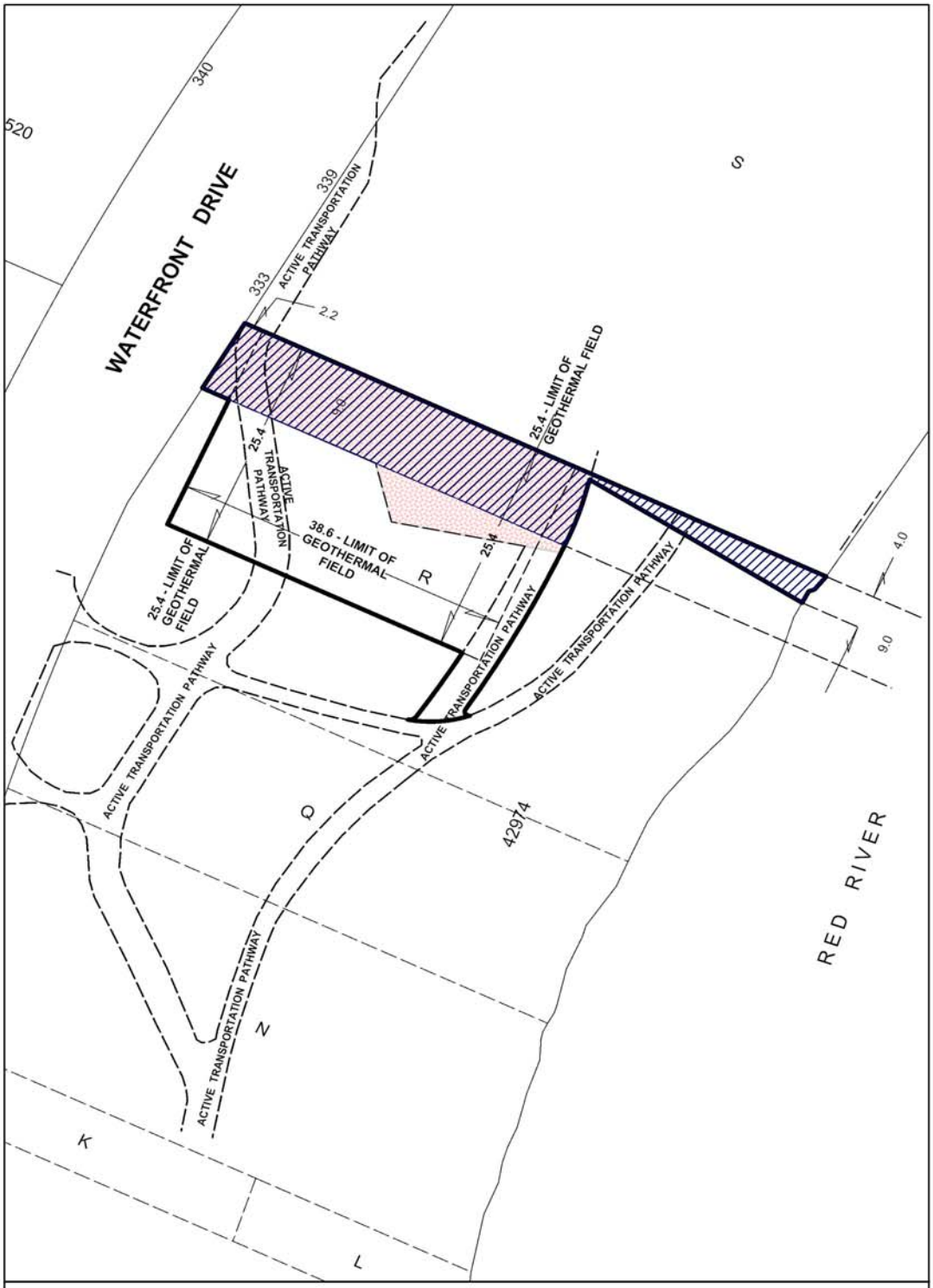
In preparing this report there was consultation with:

Not applicable

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	Barry Lucyk
Date:	March 21, 2012
File No.	320 2 V2

o:\reports directive\real estate\leasing\(bl) waterfront drive easement for geothermal.doc


WATERFRONT DRIVE
340
520
339
333
ACTIVE TRANSPORTATION PATHWAY
2.2
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25.4 - LIMIT OF GEOTHERMAL FIELD
3.0
25.4
ACTIVE TRANSPORTATION PATHWAY
38.6 - LIMIT OF GEOTHERMAL FIELD
R
25.4
25.4 - LIMIT OF GEOTHERMAL FIELD
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9.0
ACTIVE TRANSPORTATION PATHWAY
ACTIVE TRANSPORTATION PATHWAY
ACTIVE TRANSPORTATION PATHWAY
ACTIVE TRANSPORTATION PATHWAY
Q
42974
RED RIVER
N
ACTIVE TRANSPORTATION PATHWAY
K
L
Easement Area: ±1171.3 m².
Area of Spatial Separation: ±462 m²
Limit of PUBLIC PLAZA
N
W
E
S
Date: 2012-FEB-29
Revised Date: 2012-MAR-07
District: CC
File: 320 2 V2
Scale: 1:550
METRIC
NOTE:
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12596 / 14

Schedule "A"

Proposed Terms and Conditions for Easement Agreement on City Owned Property, Shown As "Easement Area" On Attached Misc. Plan No. 12596/14 hereinafter referred to as "Easement Area"

Grantee:	Sunstone Boutique Hotels Ltd. or nominee, hereinafter referred to as "Sunstone"
Grantor:	The City of Winnipeg, hereinafter referred to as "City"
Easement Area:	Shown as "Easement Area" on the attached Misc. Plan No. 12596/14, to be provided to Sunstone in an "as is" condition.
Size:	1171.3 sq. metres +/-

Use within Easement

Area:	Development of an underground geothermal heating and cooling system, fire lane access to allow access for emergency vehicles and a spatial separation area in conjunction with the development of a low rise hotel complex and a restaurant in the former Harbourmaster building on the adjacent lands north of the subject Easement area and for no other purpose.
Term:	Subject to Sunstone entering into a lease agreement with the City on the adjacent land to the north, term to be identical to that contained in the said lease agreement including commencing 60 days after satisfaction or waiving of conditions and approval from Council, whichever is the later; and ending on December 31, 2061.
Renewal Term:	Subject to Sunstone exercising its right of renewal of a lease agreement on the adjacent lands to the north with the City, Sunstone to have a maximum of 2 (10) year options to renew on same terms and conditions, except rent and further renewal.
Admin. Fee:	Annual easement administration fee of $500.00 plus GST.
Rent Rate:	$1.00 plus GST.
Cancellation:	Upon default of Sunstone Covenants in the Easement Agreement.
Insurance:	Sunstone shall indemnify and save harmless the City against and from all liabilities, obligations, damages, claims costs, fines, suits, demands actions and causes of action. Sunstone shall provide and maintain the following insurance coverage at all times during the duration of the contract: Sunstone shall provide and maintain the following insurance coverage at all times during the duration of the Easement Agreement:

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;

Sunstone 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;

Sunstone 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;

Sunstone 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 Sunstone reasonable notice and shall request reasonable change.

During construction and/or maintenance of the geothermal field, plaza and pathways, Sunstone shall ensure that all Contractors and/or Sub Contractors maintain the following minimum insurances at all times during the period of 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 connection 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. Sunstone acknowledges and agrees that the pathways and the plaza area within the Easement Area are to be left open and available to the public at all times.

2. Sunstone acknowledges and agrees to accept the Easement Area in its present condition.

3. Sunstone acknowledges and agrees that all of the proposed works to be completed within the Easement Area, including but not limited to permits, demolition, removals, construction of the geothermal field, public plaza space, decorative concrete pavings, sculpture, sod and plantings, tree removals and replacements and asphalt pathways are at the expense of

Sunstone, and to be in accordance with plans submitted and approved by the Directors of Public Works and the Planning, Property and Development Departments. Grantee to obtain all necessary permits and permissions including but not limited to development permits, waterways permit and approach permit.

4. Sunstone shall design all structures in accordance with the City of Winnipeg flood proofing criteria as set out in the City of Winnipeg Charter and, if necessary, obtain a Waterways Permit. The City makes no representation or warranty in regards to riverbank stabilization.

5. Sunstone to maintain and keep the public plaza area furniture, lighting and other structures or improvements to be erected or constructed in the Easement Area 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 Easement Agreement. All improvements to meet the "2010 City of Winnipeg Accessibility Design Standard". Lighting levels on pathway and plaza to be approved by the Director of Public Works and by the Director of Planning, Property and Development thru the Urban Design Review Process.

6. No assignment of this Easement Agreement without the prior written approval of the City, which approval may be unreasonably withheld or made subject to such conditions as the City may require.

7. Sunstone to be responsible for snow clearing in the public plaza and the hard surface walkways in the Easement Area, to a standard at least equal to that of the City pathways in adjacent Stephen Juba Park. All new plantings in the public plaza area to be the responsibility of Sunstone for maintenance, repairs and replacements during the term of the Easement Agreement.

8. City and Sunstone both acknowledge that no buildings or structures will be constructed within the Area of Spatial Separation and the Limit of the Geothermal Field as shown on Misc. Plan No. 12596/14.

9. Sunstone to submit a lot grading plan to the Water and Waste Department and Parks and Open Spaces Division of the Public Works Department for approval if Sunstone plans to change the grading of the lands in any way. The Land Drainage and Flood Protection Branch will require that all construction stay off the Primary Dyke. Existing City irrigation water service line, to the Stephen Juba Park, on the west side of the Easement area, must not be disturbed.

Other:

Sunstone 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 Easement Area by Sunstone.

The City is not to be held responsible for any damages or injuries (including death) caused by emergency vehicles accessing the Easement Area.

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 Easement Area for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby.

Sunstone understands and agrees that employees, agents and servants of the City have a right of access to enter the said Easement Area, 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 Easement Area, and for doing any work of maintaining or repairing its utilities in or near to the Easement Area, without being responsible for any damage occasioned thereby. City to notify Sunstone in writing 24 hours prior to any digging or excavation work to be carried out by the City within the Limit of the Geothermal Field, except in the case of emergency, in which case no notice shall be required.

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.

Sunstone agrees that if the installation of the Geothermal field does not proceed, the limits of the Easement Area will be revised to the satisfaction of both parties.

Sunstone agrees to enter into an appropriate Easement 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 Easement Agreement are subject to the consideration and approval of City Council or its delegated authority.

Sunstone Boutique Hotels Ltd. hereby agrees to enter into an Easement Agreement with the City of Winnipeg for the use of the City owned lands identified as "Easement Area" and "Area of Spatial Separation" on Misc. Plan No. 12596/14 attached, in accordance with the proposed terms and conditions as outlined herein on this Schedule "A".
Sunstone Boutique Hotels Ltd.

Per: _____

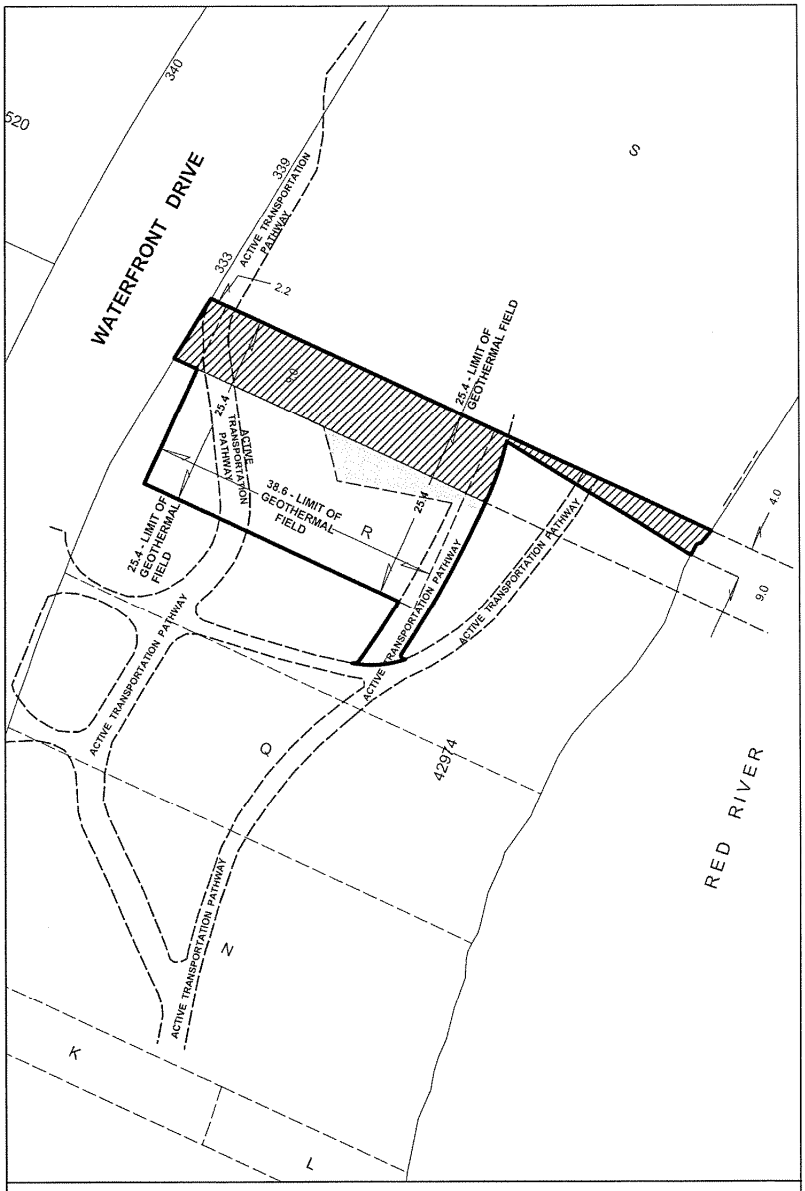
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Name: Bill Casey

Title: VICE PRES

Date: MARCH 12, 2012

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WATERFRONT DRIVE
340
520
339
333
ACTIVE TRANSPORTATION PATHWAY
2.2
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9.0
25.4 - LIMIT OF GEOTHERMAL FIELD
25.4
38.6 - LIMIT OF GEOTHERMAL FIELD
R
4.0
9.0
Q
42974
RED RIVER
N
K
L
Easement Area: ±1171.3 m².
Area of Spatial Separation: ±462 m²
Limit of PUBLIC PLAZA
N
W
E
S
Date: 2012-FEB-29
Revised Date: 2012-MAR-07
District: CC
File: 320 2 V2
Scale: 1:550
METRIC
NOTE:
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12596 / 14

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