Minutes – Executive Policy Committee – September 19, 2012

Minute No. 397
Report – Standing Policy Committee on Property and Development – September 11, 2012

Item No. 10 Lease Agreement – Portion of 2370 Burrows Avenue - Garden Grove Child Care Program Inc.
(Point Douglas Ward)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

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

1. That the lease agreement between the City and Garden Grove Child Care Program Inc. be approved in accordance with the proposed terms and conditions on Schedule A.
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.

Minutes – Executive Policy Committee – September 19, 2012

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DECISION MAKING HISTORY:

The Chairperson called Deputy Mayor Swandel to the Chair and left the meeting.

Moved by Councillor Browaty,
That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On September 11, 2012, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Lease Agreement with Garden Grove Child Care Program Inc. for the use of a portion of the City-Owned property located at 2370 Burrows Avenue as shown as "Leased Area" on Misc Plan No. 14045/4**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
John Zabudney	Barry Thorgrimson	J Ferrier Acting CFO	D Joshi COO

RECOMMENDATIONS

1. That the proposed lease agreement between the City and Garden Grove Child Care Program Inc. be approved in accordance with the proposed terms and conditions attached on Schedule A.
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 property for which the Director of Planning, Property and Development has no authority. In this regard, the Department has negotiated the proposed terms and conditions for a lease agreement in favour of Garden Grove Child Care Program Inc. at 2370 Burrows Avenue, for the use of the area identified as "Leased Area" on Misc. Plan No.14045/4 as attached. This report seeks the approval of the lease as negotiated.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental, human resource or financial implications to the lease of this land as outlined in the attached Schedule "A".

The proposed lease agreement will formalize the terms and conditions for the use of the "Leased Area" as outlined on Misc. Plan. No.14045/4 which will allow the daycare to redevelop and expand the former Tyndall Park Community Centre satellite site building into a day care facility creating an additional 40 child care spaces.

The Corporate Finance Department (Risk Management Branch) reviewed the insurance requirements for this proposed occupancy and their comments have been incorporated into the terms and conditions.

HISTORY

In 1981 the Garden Grove Child Care Program Inc. opened in the Garden Grove School located at 2340 Burrows Avenue.

In January of 2011, Garden Grove Child Care Program Inc. expressed an interest in leasing the vacant former Tyndall Park Community Centre satellite building at this adjacent site located at 2370 Burrows Avenue, as referenced on the attached Misc. Plan No. 14045/4, with the intention of renovating and expanding the building to provide 40 additional child care spaces.

On March 11, 2011, The Tyndall Park C.C. Board of Directors passed a motion to formally divest the Community Centre of the building located at 2370 Burrows Avenue and requested transfer of the operation of the facility to the City of Winnipeg. The removal of the Garden Grove Satellite Site from the Community Centre Inventory would allow for the City property to be able to be considered for lease by the group.

At its meeting held on June 22, 2011, Council concurred in the recommendation of the Executive Policy Committee to remove the Tyndall Park Community Centre Satellite Site located at 2370 Burrows Avenue from the Community Centre Inventory.

The Planning, Property and Development Department have since negotiated proposed terms and conditions for a Lease Agreement in favour of Garden Grove Child Care Program Inc. for use as a day care centre.

The Ward Councillor has been consulted and is supportive of the lease with the Garden Grove Child Care Program Inc.

A proposed Lease Agreement with Garden Grove Child Care Program Inc. is recommended for approval in accordance with the proposed terms and conditions as outlined herein.

FINANCIAL IMPACT

Financial Impact Statement **Date:** August 13, 2012

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

Proposed Lease Agreement in favour of Garden Grove Child Care Program Inc; for the use of a portion of the City-Owned property located at 2370 Burrows Ave.

	2012	2013	2014	2015	2016 to 2021
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	251	1	1	1	6
Net Cost/(Benefit)	$ (251)	$ (1)	$ (1)	$ (1)	$ (6)
Less: Existing Budget Amounts	(251)	(1)	(1)	(1)	(6)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenue in 2012 consist of an initial admin fee of $250 + nominal rent of $1/year. From 2013 onward, revenue consists of only the $1/year.

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

CONSULTATION

In preparing this report there was consultation with:

Corporate Finance Department
Legal Services Department
Public Works, Parks and Open Space Division

SUBMITTED BY

Department:	Planning, Property & Development
Division:	Real Estate Division
Prepared by:	Marlene Haderer, Real Estate Officer
Date:	August 15, 2012
File No.	5291/4

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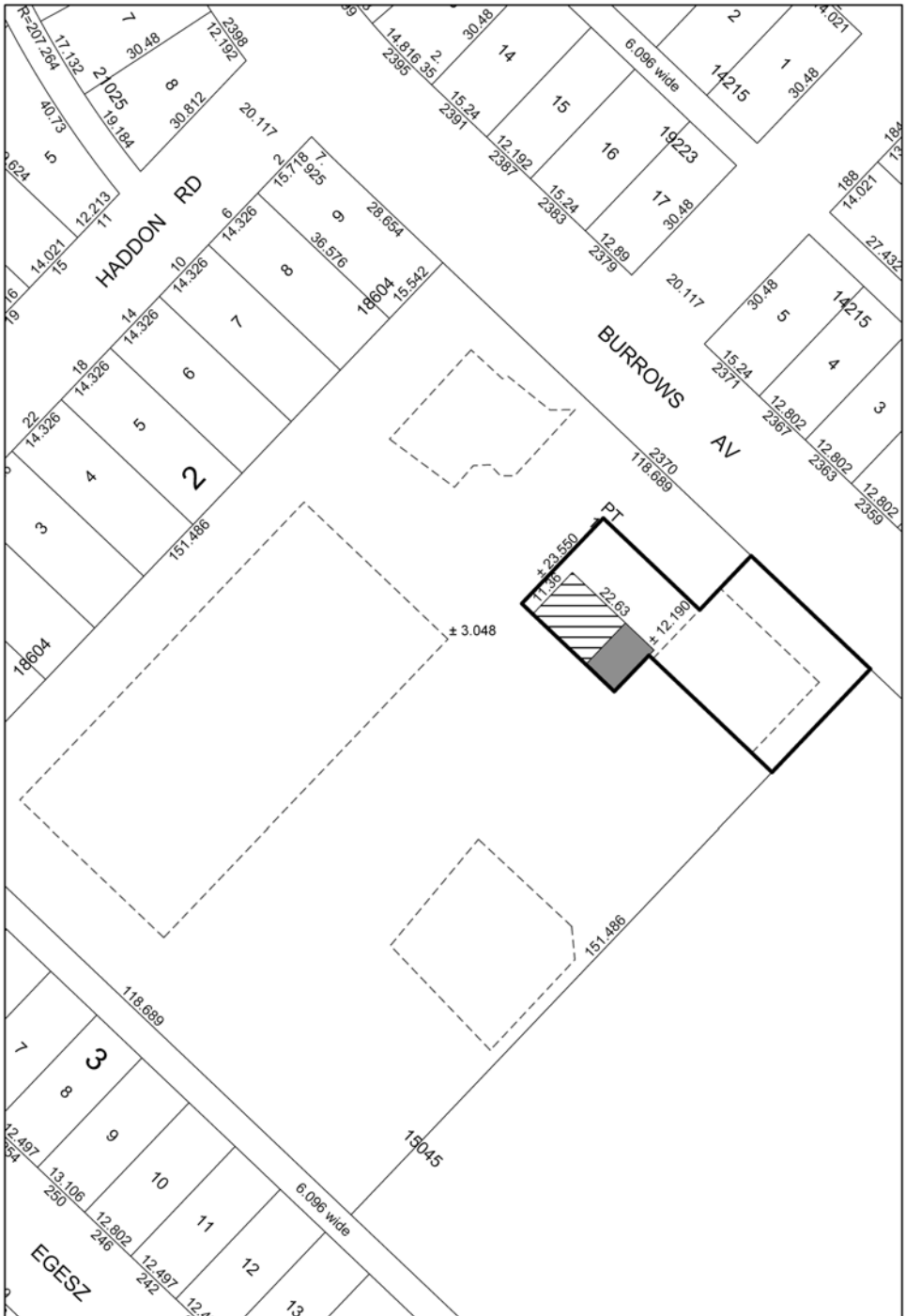

Leased Area 1573 sq.m. +/-

Existing Building

Proposed Building Addition

METRIC

Date: 2011-DEC-20
District: LSWK
File: 5291
Scale: 1:1250

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. 14045 / 4

SCHEDULE A

PROPOSED TERMS AND CONDITIONS OF LEASE AGREEMENT FOR THE CITY-OWNED PROPERTY LOCATED AT 2370 BURROWS AVENUE, SHOWN AS 'LEASED AREA' ON MISC. PLAN NO. 14045/4, (hereinafter referred to as "Leased Area')

Lessor:	City of Winnipeg
Tenant:	Garden Grove Child Care Program Inc.
Leased Area:	Shown and identified as 'Leased Area' on attached Misc. Plan No. 14045/4, including the land, building and parking lot, on an 'as is' basis
Use:	A Children's Non-Profit Daycare Centre and for no other purposes whatsoever;
Term:	One Ten (10) year term commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	Payable in advance on March 1 in each and every year during the said term; Annual Rental of ONE ($1.00) DOLLAR plus applicable GST, plus an annual administrative fee of $250.00 plus applicable GST
Cancellation:	The proposed lease may be terminated on 365 days written notice by either party. Should the City cancel the proposed lease by written notice during the initial Term of 10 years, the City shall be responsible to reimburse the Tenant for an amount equivalent to one-tenth of the Tenant's initial capital improvement expenditures representing each year remaining in the Term at the time of cancellation, which amount shall be limited to a total maximum reimbursement of $382,500.00 based on an estimate of Four-Hundred and Fifty Thousand Dollar ($450,000) for total capital improvement expenditures. If the tenant's initial capital improvement expenditures total is less than the estimated value, then the total maximum reimbursement will be reduced based on the calculations set out herein. The Tenant's initial capital improvement expenditures at the Commencement of the Term for the purposes of calculation in this clause will be determined on the Commencement Date and will be subject to the final approval of the City's Director of Planning, Property & Development, acting reasonably. For greater certainty, the value to be reimbursed will be calculated from the date the Tenant is required to yield up possession of the Leased Lands to the expiry date of the 10 year Term. If the cancellation date falls during the middle of a Lease Year, the one-tenth amount for that year will be prorated to the amount of days remaining in that Lease Year. If the amount calculated to be reimbursed exceeds the total maximum reimbursement amount payable by the City of $382,500.00, the City shall only be responsible to pay to the Tenant the total maximum reimbursement amount of $382,500.00. Should the Tenant be in default of the terms and conditions of the lease agreement, the City shall provide the Tenant with 15 days notice to remedy the default along with a description of the nature of the default. Should the Tenant not remedy the default to the satisfaction of the City, the City at its sole discretion may terminate the lease agreement immediately upon the expiration of the 15

days with no responsibility to reimburse the tenant for their initial capital improvement expenditures.

Renewal: Provided the Tenant is not in default of the provisions of the Lease, two – five year options to renew on the same terms and conditions, except for rent and this renewal option.

Tenant's Responsibilities:

1. In addition to the payment aforesaid, the Tenant shall pay all license fees, realty taxes and business tax which may be charged in respect of the use and occupation of the Leased Area by the Tenant and any goods and services tax charged in respect of fees payable under this Lease Agreement or in respect of the rental of space under this Lease Agreement, whether such fees and taxes are charged by any municipal, provincial or federal authority or otherwise;
2. Tenant to pay all utilities, including but not limited to hydro, gas, water and telephone from the date of approval of these terms and conditions by the Council or its delegated authority;
3. The Tenant shall be responsible to satisfy itself that zoning of the Leased Area permits the use as a daycare. The Tenant shall at its sole cost, effort and expense, obtain all necessary permits and shall comply promptly with all laws, by-laws, ordinances, rules, regulations, orders, requirements and recommendations of any and all federal, provincial, municipal and other governmental authorities or associations or insurance underwriters or agents which may be applicable to the Tenant or to the manner of use of the Leased Area;
4. Tenant shall pay for the removal of snow from Leased Area including, but not limited to the parking lot, main entrance to the daycare and all sidewalks leading to and from the main entrance and parking lot;
5. Tenant shall pay for all maintenance and repairs, including capital repairs and replacements to the mechanical, electrical and plumbing systems to the building and/or improvements on the Leased Area, including maintenance and repairs to the building addition contemplated thereon. In addition, upon reasonable notice from the City, the Tenant shall conduct any and all reasonable repairs to the Leased Area required including those caused by vandalism, or by the negligence of the Tenant, its servants, employees, invitees and/or agents (except those due to normal wear and tear); and all such repairs shall be made at the sole effort, cost and expense of the Tenant; and all work in respect thereto shall be performed by the Tenant and shall be performed by the Tenant and/or its designated contractor in a good and workmanlike manner;
6. Tenant shall reimburse the City for any and all costs incurred by the City in making good any loss or damage to the Leased Area and/or utilities caused as a result of the Tenant's use of the Leased Area and without limiting the generality of the foregoing, caused as a result of any negligent or willful act of the Tenant, its contractors, agents, servants or employees;
7. The City acknowledges that it is the intent of the Tenant to add on to the existing building. The Tenant shall not erect nor permit the erection of any buildings or structures, nor undertake any improvements to the Leased Area without having first obtained the prior written consent of the Director of the Planning, Property and Development Department. It shall not be unreasonable of the City as a condition of such approval to require the Tenant to post a performance bond in the full amount of the contract price of the work to be done. Any such improvements shall be at the sole

cost and responsibility of the Tenant and shall remain with and at the Leased Area following the termination, cancellation or expiry of the Lease Agreement at no cost to the City;

8. Tenant shall be solely responsible to pay and complete all improvements to the Leased Area and to meet the Provincial Daycare Regulations and Codes;

9. Tenant shall not at any time, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in, or upon the Leased Area or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling and the Tenant shall not do, omit or suffer or permit to be done or omitted in, on or upon the Leased Area of any part thereof, anything whatsoever which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the City or the owners or occupiers of neighbouring properties;

10. Tenant shall 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 Area or the Tenant;

11. Tenant shall at its sole cost, effort and expense, obtain all necessary permits and shall comply promptly with all laws, by-laws, ordinances, rules, regulations, orders, requirements and recommendations of any and all federal, provincial, municipal and other governmental authorities or associations or insurance underwriters or agents which may be applicable to the Tenant or to the manner of use of the Leased Area;

12. Tenant shall ensure that access to and use of the Leased Area is maintained and conducted in a careful manner in accordance with good industry standards and in compliance with the provisions of any applicable environmental, health and/or safety statutes, regulations, orders or directives of any government or governmental agency having jurisdiction over such operations;

13. Tenant shall not, without the prior written approval of the City first having been obtained which approval shall not be unreasonably withheld, sublet or assign the Leased Area or any part thereof. The Tenant hereby acknowledges and agrees that any consent by the City to an assignment or sub-let of this Lease Agreement shall not relieve the Tenant of its obligations for the payment of rent and the performance of the terms and conditions on the part of the Tenant to kept and performed;

14. The Tenant shall provide and maintain the following insurance coverage at all times during the duration of the Term:

    Commercial general liability insurance, in the amount of at least two million dollars ($2,000,000) all inclusive, with The City of Winnipeg added as an additional insured; such liability policy to also contain a cross-liability clause, contractual liability, tenant's legal liability and products and completed operations cover;

    An All risks property insurance policy, for the full replacement cost insuring all building, contents, equipment and tenant's improvements; Policy to include the City as Loss Payable;

    Boiler and Machinery Breakdown insurance policy, for the full replacement cost of the facility and all boilers, pressure vessels (fire and unfired), air conditioning equipment, mechanical and electrical equipment, transformers, electrical switch gears, motors, compressors, refrigeration and equipment and miscellaneous electrical apparatus owner or operated by the Landlord; Policy to include the City of Winnipeg as a Loss Payable;

Automobile liability insurance for owned and non-owned automobiles used for or in connection with the Lease in the amount of at least two million dollars ($2,000,000) to remain in place at all times during the full term of the Lease Agreement; such insurance may be met through the commercial general liability cover where applicable;

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

Deductibles shall be borne by the Tenant;

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

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;

The City shall have the right to alter the limits and/or coverage's as reasonably required from time to time during the continuance of this lease agreement and for any subsequent renewals thereof; provided that the City shall give the Tenant reasonable notice and shall request reasonable change;

15. The Tenant shall, at its sole cost and expense, indemnify and save the City harmless 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 claim through or under the Tenant or otherwise caused by reason of or in any way attributable to the Tenant's use of the Leased Area or the construction, maintenance, existence or use of any works constructed thereon or in any way connected therewith or otherwise by reason of the exercise by the Tenant of the use hereby granted or the performance of or failure to perform its obligations hereunder, or by reason of:

    (1) any breach, violation, non-observance or non–performance of any covenant, condition or agreement in this Lease Agreement contained and on the part of the Tenant to be kept, observed or performed;

    (2) any loss or damage to property, whether belonging to the Tenant or otherwise and any injury to person or persons, including death resulting at any time therefrom, arising out of or in connection with the Tenant's use or occupation of the Leased Area and/or by or through anything done or omitted to be done by the Tenant or any assignee, sub-tenant, contractor, agent, servant or employee of the Tenant, and

    (3) any repairs, improvements, installations or alterations which the Tenant may make or cause to be made upon or to the Leased Area, including without limitation, claims for liens in respect of wages, work, services or materials, liability for dame to property and liability for injury to person or persons;

    and such indemnities shall survive the expiry or sooner determination of the term thereof;

16. Tenant may not install advertising without the City's written approval;

17. Tenant shall be and remain at all times during the currency of this Lease Agreement and any subsequent renewals thereof, liable to the City for all payments due and obligations and

liabilities, including any damages, repairs or utility arrears, up to the date of termination, cancellation or expiry for any reason whatsoever, of this Lease Agreement, and for the fulfillment of all obligations contained in this Lease Agreement on the part of the Tenant to be observed and performed upon or after such termination, cancellation or expiry;

18. Tenant shall not file or permit to be filed any caveat or other encumbrance against the Leased Area or any part thereof;

19. Tenant shall submit annually and no later than May 1st of each year to the City an audited financial statement of its operation;

20. Tenant shall provide, at its expense, annually to the City a copy of a valid Daycare License and Fire Inspection Report;

21. The Tenant acknowledges and agrees that the Tyndall Park Community Centre shall have access to the water utility for the purpose of flooding the outdoor hockey/skating rink on the adjacent City owned lands and the Tenant agrees to bill the Tyndall Park Community Centre directly for the water consumed by the Tyndall Park Community Centre for this purpose;

22. The Tenant acknowledges and agrees that Tyndall Park Community Centre shall have access to the parking lot within the Leased Area year round, solely for the purpose of access to Community Centre programming on adjacent City land. The Tenant agrees that it is a condition precedent to entering into this lease agreement that the Tenant come to a written agreement with the Tyndall Park Community Centre directly to share the cost of maintenance and snow removal of the parking lot.

City's Responsibilities:

23. It is intended that this is a net lease and that the City shall be responsible for structural repairs to the building only.

Other Conditions:

24. The Tenant acknowledges and agrees that there is an existing parking lot within the Leased Area, whereby access to the parking lot is currently via the adjacent Winnipeg School Division No. 1 property. The Winnipeg School Division No. 1 has advised they are no longer agreeable to allowing such access to the City land over their property. Accordingly, the Tenant shall, at its expense, and as part of its capital plan to expand the existing building on the Leased Area, provide a separate approach to the parking lot from Burrows Avenue, all in accordance with City bylaws;

25. Provided that the City gives not less than twenty-four (24) hours notice to the Tenant, except in the case of an emergency, and that the Tenant's use of the Leased Area is not unreasonably interfered with, the City shall be entitled to enter upon the Leased Area at all reasonable times, with or without equipment:

    a) to view the state of the repair of the Leased Area, and the Tenant shall repair within 10 days notice in writing given by the City. If the Tenant fails to repair according to notice the City may do such work at the sole cost and expense of the Tenant; or

    b) to effect such repairs as pursuant to this Lease Agreement it is responsible for, together with the right to exclude all others for as long as may be necessary to carry out such work; or

    c) to inspect, maintain, repair and/or replace its utilities in or near the City's property;

    d) for any other reasonable purposes;

without being responsible for any damage to the improvements upon the Leased Area made by the Tenant occasioned thereby, except in cases where such loss, costs, expenses, claims and/or demands are caused by the direct negligence of the City or its servants, employees or agents;

And further, the City shall not be responsible in any way for any injury to any person or for any loss of or any damage to any property belonging to the Tenant or other occupants of the Leased Area or to their respective invitees, licensees, agents, servants or other person(s) or group(s) from time to time attending at the Leased Area while such person or property is in or about the Leased Area except as may be caused by the negligence of the City, its servants, employees or agents;

26. In the event the Tenant remains in possession of the Leased Area after the expiration of this Lease and without the execution and delivery of a new Lease or Agreement to Renew, it shall be deemed to be occupying the Leased Area as a tenant from month to month, and on the terms and conditions herein set out except as to length of tenancy; and a tenancy from year to year shall not be created by implication of law;

27. If and whenever during the continuance of this Lease Agreement and any subsequent renewals thereof, the Leased Area or any part thereof shall be destroyed or damaged by fire, lightning, explosion, tempest or act of God, the City shall have the option, exercisable within one month after such destruction and upon the giving of notice to the Tenant, to terminate this Lease Agreement;

28. The proposed terms and conditions of the proposed Lease Agreement are subject to the final approval of the City's Standing Committees and Council and to the Director of Legal Services as to form and content.

I, Jodi Ramgotra, am duly authorized to act on behalf of Garden Grove Child Care Program Inc., hereby agree to enter into a lease agreement with the City of Winnipeg for the use of the property identified as "Leased Area" on the attached Misc. Plan No. 14045/4 and in accordance with the proposed terms and conditions as outlined herein.

Jodi Ramgotra
SIGNATURE

August 7/2012
DATE

Jodi Ramgotra
NAME (Please Print)

Executive Director
TITLE

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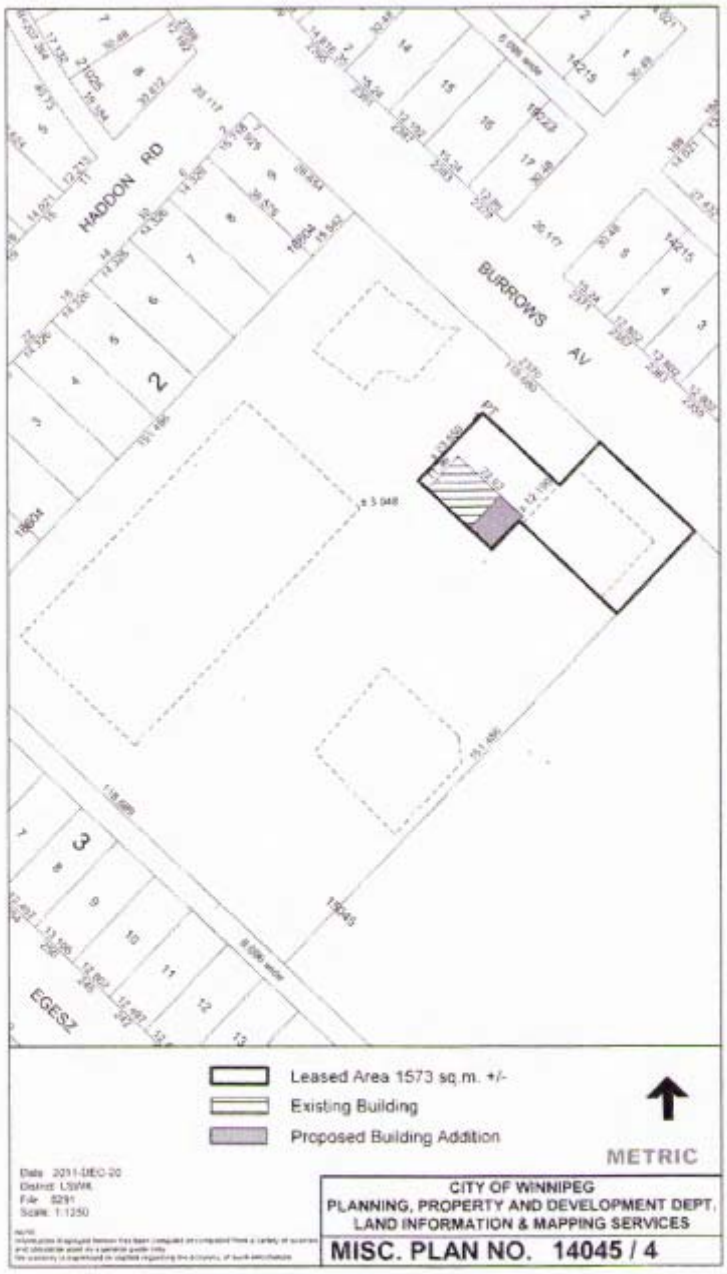

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