Report - Standing Policy Committee on Property and Development - July 3, 2003

Item No. 18 Leave and License Agreement at 1717 Waverley Street - McNaught Pontiac Buick Cadillac GMC Ltd.
File ED(32)

STANDING COMMITTEE RECOMMENDATION:

On July 16, 2003, 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 a Leave and License Agreement in favour of McNaught Pontiac Buick Cadillac GMC Ltd. (McNaught Pontiac) for the development of a vehicle display area, shown outlined and identified as "Leave & License Area" on Misc. Plan No. 11748/1 as well as the site currently occupied by an unauthorized pylon sign, be approved in accordance with the proposed terms and conditions contained in the administrative report dated June 18, 2003, and incorporating the following:

   A. McNaught Pontiac to have the same uses on the subject City property as permitted by the Leave and License Agreement to Murray Chevrolet Oldsmobile on the northeast corner of Bishop Grandin Boulevard and Waverley Street.

   B. Should McNaught Pontiac come to an agreement with the owner of the unauthorized pylon sign or construct any other sign in the leased area, the terms and conditions be subject to approval by the Director of Planning, Property and Development.

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

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

Report - Standing Policy Committee on Property and Development - July 3, 2003

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 16, 2003, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 3, 2003, the Standing Policy Committee on Property and Development concurred in administrative recommendation No. 1 as amended, namely:

- McNaught Pontiac to have the same uses on the subject City property as permitted by the Leave and License Agreement to Murray Chevrolet Oldsmobile on the northeast corner of Bishop Grandin Boulevard and Waverley Street;

- McNaught Pontiac be permitted to lease the "Leave & License Area" outlined on Misc. Plan No. 11748/1 as well as the site currently occupied by an unauthorized pylon sign; and

- Should McNaught Pontiac come to an agreement with the owner of the unauthorized pylon sign or construct any other sign in the leased area, the terms and conditions be subject to approval by the Director of Planning, Property and Development,

and submitted the matter to Executive Policy Committee and Council.

Re: **Proposed Leave & Licence Agreement at 1717 Waverley Street – McNaught Pontiac Buick Cadillac GMC Ltd.**
City Centre Community
River Heights - Fort Garry Ward

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

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

Report date: June 18, 2003

Recommendation(s):

1. That Council approve a Leave and License Agreement in favour of McNaught Pontiac Buick Cadillac GMC Ltd. for the development of a vehicle display area, shown outlined and identified as "Leave & License Area" on Misc. Plan No. 11748/1, attached, in accordance with the within proposed terms and conditions and any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department and by the City Solicitor/Manager of Legal Services to protect the City's interests.

2. That in the event the applicant does not accept the proposed terms and conditions, and execute the proposed Leave and License Agreement, that the Director of the Planning, Property and Development Department be authorized to initiate appropriate action to cause the applicant to restore the lands within the Waverley Street right-of-way, which have been altered without authority, to their original vacant condition.

3. 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:

- McNaught Pontiac Buick Cadillac GMC Ltd. (hereinafter referred to as McNaught Motors) made application to the Zoning and Permits Branch to use a portion of Waverley Street as shown on the attached Misc. Plan No.11748/1 for the purpose of car display associated with its adjacent business.
- The terms and conditions for the proposed Leave and Licence Agreement have been determined by the Planning, Property and Development Department in accordance with policy, practice and similar to like agreements throughout the City, the most comparable agreement being located across the street from the subject property.

- McNaught Motors has advised it does not accept the proposed terms and conditions; rather it wants an agreement for $1.00 without requirement to pay realty taxes, for a 25 year term and a renewal term of an additional 25 years under the same terms.
- The applicant has accessed the r.o.w. without authority and has commenced prior preparation of these lands. The applicant has been put on notice that this has been done without appropriate authority in place and is done at its sole risk and expense.
- The Department recommends that the terms and conditions as proposed herein, which are typical to these forms of agreements, be approved so as to respect existing practice and policy and so as not to establish an unacceptable precedent.
- In the event that McNaught Motors will not accept the proposed terms and execute the proposed Leave and License Agreement, the Department is recommending that the Director be authorized to initiate the appropriate actions to cause the applicant to restore the right-of-way lands to their original vacant condition.

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):

- The Real Estate Division has not carried out an Environmental Site Assessment of the subject property.

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:

In general, The City of Winnipeg cannot grant the lease of land comprising of public right-of-way unless by first legally closing the public right-of-way. The City has, however, the power to permit or license the use of public right-of-way subject to the continuing pleasure of Council.

The Department herein proposes the terms and conditions of a Leave and License Agreement in favour of McNaught Pontiac Buick Cadillac GMC Ltd. respecting the use of a portion of the Waverley Street right-of-way and is seeking Council's approval accordingly.

HISTORY:

On October 30, 2002 the City's Zoning and Permits Branch advised the Real Estate Division that McNaught Pontiac, Buick Cadillac GMC Ltd. (hereinafter referred to as McNaught Motors) had applied for permission to establish a vehicle display in a 5,161 square meter area encroaching onto the northwest corner of Waverley Street and Bishop Grandin Boulevard. The Real Estate Division was requested to negotiate the rental rate and terms and conditions of a Leave and License Agreement pursuant to Section 4(1)(c) of the City of Winnipeg Encroachment By-law No. 692/74.

In early November 2002, the Area Planner advised the Real Estate Division that he had some concerns in regard to McNaught's proposed use of the land and would require additional time to review the matter. On November 22, 2002 the Area Planner advised that the matter had been reviewed and he would be prepared to support the proposed development of the subject area.

In December of 2002 a review of market rates in the subject area was performed to determine the market rent rates for the proposed Leave and License Agreement.

In February 2003, it was determined that a Pattison Outdoor advertising sign was also encroaching into the subject right-of-way. Pattison Outdoor was advised of the unauthorized encroachment and that the City was in the process of negotiating a proposed Leave and License Agreement for the subject right-of-way with McNaught Motors. Pattison was further advised that it would have to enter into a separate agreement with the City for the placement of the pylon sign in the right-of-way. Pattison advised that it had a "business relationship" with GM dealers in Canada and it would be in contact with McNaught Motors to discuss a possible arrangement that could possibly facilitate the need for only one agreement (the subject proposed agreement with McNaught Motors), which would incorporate a provision for the sign to remain in this

location. Such agreement would need to be acceptable to the City. Given that by April 2003 the Real Estate Division had not received any further communication from either party, it contacted McNaught Motors and enquired as to the status pertaining to the sign. McNaught Motors advised that it was yet to be resolved and requested the City to forward the terms and conditions for the proposed lease of the subject property.

The Real Estate Division e-mailed to McNaught Motors the proposed terms and conditions for the proposed Leave and License Agreement on April 8, 2003. Given that the proposed use is accessory to the applicant's adjacent business, the proposed net rental rate was established in accordance with the City's standard criteria for such agreements, on the basis of 10% return of market value. The proposed rate was reflective of the current property values in the immediate subject area and the proposed terms and conditions are similar to other commercial type leases in the area (i.e. Dan Murray Chev Olds, located directly across from the subject property). The terms provided that the Tenant would be responsible to pay all development and ongoing operating and maintenance costs as well as applicable equivalent to realty tax charges for the leased area. The term of agreement was 5 years with one renewal for a further five years, assuming there would be no Tenant default, with the rate being subject to review.

In its e-mail the Real Estate Division further advised that the matter of the pylon sign was still outstanding. McNaught Motors was requested to advise if any resolve to this issue had been determined. McNaught Motors was also advised that this matter would require consideration and approval of the various committees of the City (i.e. Community Committee, Standing Policy Committee on Property and Development, Council).

On April 16, 2003, McNaught Motors responded by letter, copy attached as Schedule "A", stating that it had not anticipated the costs to develop the subject area and that its primary purpose of the proposed use of the land was to "*enhance the appearance of these lands, with no cost to the City of Winnipeg, and to do so with the least possible cost to ourselves*." McNaught Motors proposed it would be prepared to enter into a 25 year lease @ $1.00 per annum (includes realty taxes), with an additional 25 year renewal term subject to the same terms and conditions. It would be prepared to be responsible only for the costs of developing and the on-going maintenance of the subject property.

On April 25, 2003, McNaught Motors was verbally advised that its April 16, 2003 offer was unacceptable to the Department and that the Real Estate Division would only be prepared to give a favourable recommendation to the proposed Leave and License Agreement if the rental rates represent current market values and the terms and conditions were consistent with other commercial leases in the area.

McNaught Motors was further advised that the land area available for the proposed leave and license was being reviewed by the City's Public Works Department and once this area was verified a new set of proposed terms and conditions would be forwarded accordingly.

On May 6, 2003, the Real Estate Division contacted Pattison Outdoor and enquired as to the status of its discussion with McNaught Motors in regard to the pylon sign within the subject property. Pattison advised that these talks have not progressed and indicated its wish to have the sign remain at this location, making enquiry as to what steps would be required to facilitate this.

The Real Estate Division advised that it would consider a proposed billboard agreement that would be consistent with other such billboard agreements within the City. However, Pattison Outdoor would first have to make an Encroachment Application with the City's Zoning and Permits Branch, and that final approval of the agreement would be subject to consideration and approval of the various committees of the City of Winnipeg. To date the Real Estate Division has not received any requests from the Zoning and Permits Branch to negotiate a Leave and License Agreement with Pattison Outdoor for the advertising sign.

On May 6, 2003, the Real Estate Division forwarded to McNaught Motors the revised proposed terms and conditions, which are briefly outlined as follows:

Leased Area:	3,090.5 m^2, (33,266.3 sq. ft), shown as "Leave & License Area", on attached Misc. Plan No. 11748/1. *(note that the area excludes the pylon sign site)*
Term:	One 5 year term, plus one option to renew for an additional 5 year term, subject to there being no default of the agreement by the Tenant.
Commencement:	The date City Council approves the final terms and conditions of the proposed Leave and Licence Agreement.
Net Rent Rate:	1st 5 year term - $6,300.00/Annum, subject to GST. Renewal Option – rate to be reviewed, but in no event will it be less than the rent charged in the 5th year of the initial term.
Added Rent:	Pay amount equivalent to Municipal and School Taxes, subject to GST. (Estimated 2003 tax equivalent $1,830.00).
Cancellation:	180 days written notice by either party, or immediately by the City in the event of Tenant default.
Insurance:	General Liability Insurance in an amount of not less than two million dollars ($2,000,000.00), cross liability clause naming the City of Winnipeg as an additional insured.
Proposed Use:	To be used for the Tenants purpose of establishing a vehicle display area & associated landscaping (to be developed in accordance with drawing submitted and determined standards satisfactory to the City)
Permits/Licenses:	The tenant will be responsible for obtaining all required permits and/or licenses related to development and use of the subject property.
Other:	Pattison Outdoor will be provided access across the Leave and License area for the purpose of changing, maintenance, repair, etc. of its billboard sign. *(assumes an agreement will be forthcoming)* Any other such terms and conditions that the Director of the Planning, Property and Development Department and the City Solicitor/Manager of Legal Services may require to protect the City's interests.

The terms and conditions of the proposed Leave and License Agreement are subject to the final consideration and approval of City Council.

McNaught Motors was advised that Pattison Outdoor had indicated that it intended to make application for Leave and License Agreement in regard to its pylon sign. The Real Estate Division further advised that if the proposed Leave and License application came forward that every effort would be made to mitigate potential conflict of the content of signboard advertising with the McNaught Motors operation. (i.e. a restrictive covenant in the agreement with Pattison pertaining to automotive-related advertising and display.)

The Real Estate Division during a site inspection identified that McNaught Motors had performed preliminary development work within the subject area (i.e. land grading, elevated display pads, underground electrical wiring) without authority and prior to entering into a formal agreement with the City for the use of the land. McNaught Motors was advised that these improvements remained at the sole risk and responsibility of McNaught Motors and further, should a formal agreement not be forthcoming the subject area would have to be returned to its former state at McNaught Motors sole effort and expense.

In response to the Divisions letter, in its letter dated May 6, 2003 (copy attached as Schedule "B"), McNaught Motors advised the Real Estate Division that it was of the opinion the proposed development and use of the subject property was not commercial in nature. It stated that the other City leases in the area (Dan Murray) is paved and fenced as a vehicle display area. McNaught Motors claims that its proposed use would only be "adding to the esthetic value of its property".

As well, McNaught Motors advised that it felt that the existing advertising sign draws attention away from the primary objective of the dealership and requested that the sign be removed.

DISCUSSION:

By virtue of the Leave and License Agreement as proposed, McNaught Motors will have exclusive rights to the subject property, pending resolve of the advertising sign issue, for the term of the agreement. It is McNaught Motor's choice to develop the subject property for landscaping and "limited" vehicle display purposes, however there is nothing preventing McNaught Motors from expanding its development of the subject property in a similar manner as done by Dan Murray Chev Olds on the Licensed City right-of-way lands situated across the street.

The proposed License to utilize the subject right-of-way lands also allows McNaught Motors to fully maximize its own property for the development of vehicle storage/display purposes. McNaught Motors can control the use of the Licensed area; beautification of the lands will enhance the appearance of its adjacent property from the Waverley Street frontage; the use of the lands for feature display purposes is in direct support of its adjacent business; use of the r.o.w.

lands frees up space on the adjacent property for other uses such as vehicle storage and parking that would otherwise perhaps have been used for feature display and/or beautification purposes.

Although there is a recognized benefit to the City in the minimal amount of saved maintenance costs of this part of Waverley Street right-of-way over the life of the agreement, the same would be true of any situation where the City has entered into a Leave and License and other similar forms of agreements in both residential and commercial situations. Therefore, it is not reasonable to reduce the rental in this situation.

It should be recognized that the proposed area for the subject Leave and License excludes that portion of lands applicable to the pylon sign. Being that there is an acknowledged "business relationship" between the GM Dealers of Canada and Pattison Outdoor, the Real Estate Division is of the opinion that ideally it would be preferred that McNaught Motors (a GM dealer) and Pattison Outdoor mutually resolve the issue of the advertising sign. This would ensure that the City is not seen as interfering with or compromising the existing business relationship between the parties. However, in the event there is no imminent and satisfactory resolve of the matter, the Division will pursue appropriate action to either have the sign regularized with appropriate authority or removed from the right-of-way.

For the Committee's information the proposed Leave and License has been circularized as a result of the application for an encroachment, which included Councilor Angus. However, the matter has not yet been presented to the Community Committee for its consideration.

The Department recommends that the terms and conditions as proposed herein, which are typical to these forms of agreements, be approved so as to respect existing practice and policy and so as not to establish an unacceptable precedent.

In the event that McNaught Motors will not accept the proposed terms and execute the proposed Leave and License Agreement, the Department is recommending that the Director be authorized to initiate the appropriate actions to cause the applicant to restore the right-of-way lands to their original condition.

Financial Impact Statement

Date: June 18, 2003

Project Name:

Proposed Leave & Licence Agreement at 1717 Waverley Street – McNaught Pontiac Buick Cadillac GMC 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	2,710	8,130	8,130	8,130	8,130
Net Cost/(Benefit)	$ (2,710)	$ (8,130)	$ (8,130)	$ (8,130)	$ (8,130)
Less: Existing Budget Amounts	(2,710)	(8,130)	(8,130)	(8,130)	(8,130)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

The projected revenue assumes that the agreement will commence Sept. 1, 2003, therefore is prorated for 4 mos in yr 1. Subsequent years rent and estimated equivalent to realty tax are projected on the assumption that there is no change to the assessment estimate or mill-rate. These r.o.w. lands are not on the tax roll, therefore the assessment is an estimate.

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

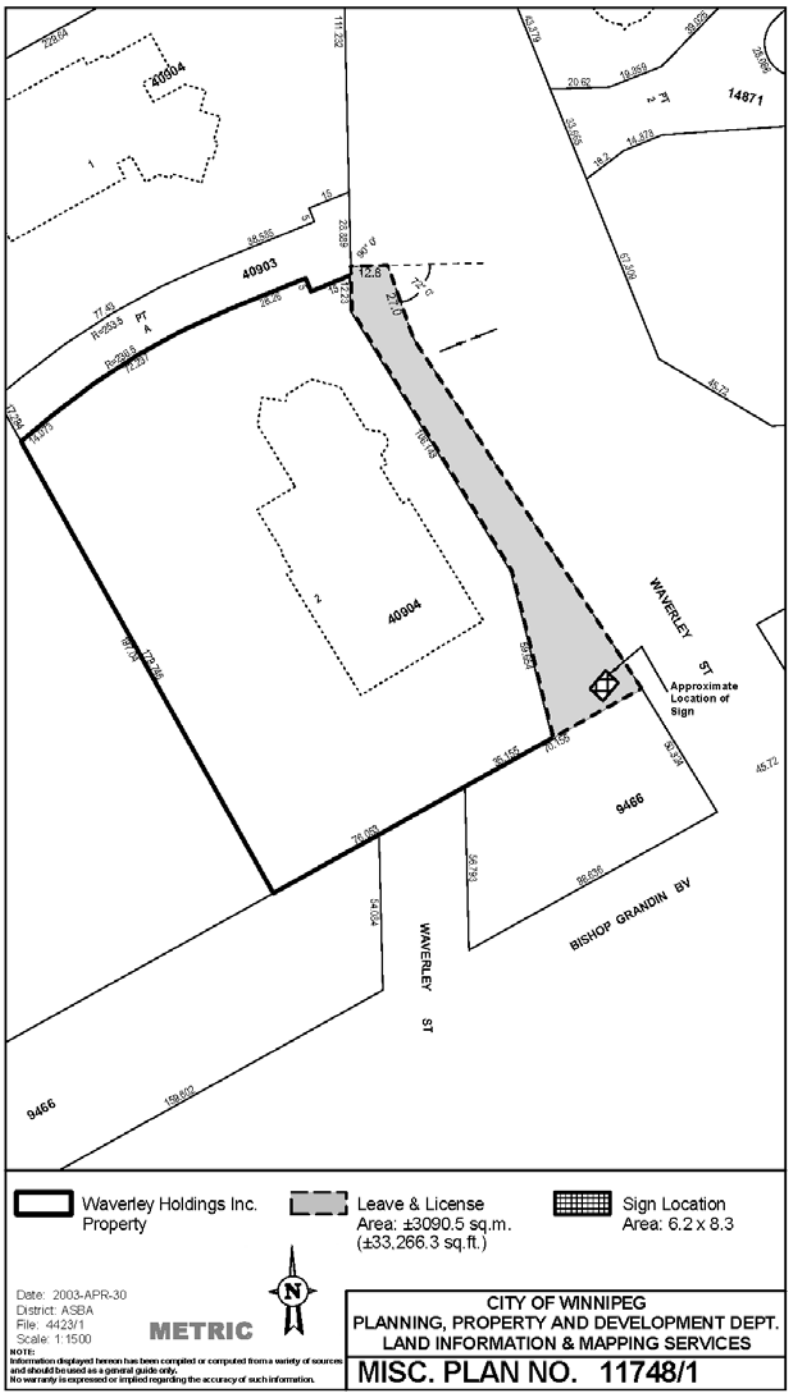
IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

No consultation was required.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate Division
Prepared by: S. A. Anderson
PPD File #: 5848

Document name: Reports Directive/RealEstate/Leasing/(sa)Waverley Leave and Liscense with McNaught Pontiac.doc


40904
40903
40904
14871
9466
9466
WAVERLEY ST
WAVERLEY ST
BISHOP GRANDIN BV
Approximate Location of Sign
Waverley Holdings Inc. Property
Leave & License Area: ±3090.5 sq.m. (±33,266.3 sq.ft.)
Sign Location Area: 6.2 x 8.3
Date: 2003-APR-30
District: ASBA
File: 4423/1
Scale: 1:1500
METRIC
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only.
No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11748/1

Schedule "A"

April 16, 2003

Zoning and Permits Branch
31 – 30 Fort Street
Winnipeg, MB R3C 4X7

ATTENTION STEWART ANDERSON

Dear Mr. Anderson:

RE: WAVERLEY STREET LEAVE AND LICENCE
McNAUGHT PONTIAC BUICK CADILLAC LTD.

Thank you for your e-mail of April 8, 2003.

Our interest in acquiring the subject leave and license agreement is founded on the information that the City of Winnipeg policies and procedures, regarding the maintenance of public rights-of-way, is not compatible with the use of our lands. We understand that this area is not to be landscaped or maintained other than the occasional attempt at weed control. As you are aware from our discussions and from your own familiarity with our development, this would have a significant negative impact on the viability of our development.

Our primary purpose is to enhance the appearance of these lands, with no cost to the City of Winnipeg, and to do so with the least possible cost to ourselves. When we acquired the property for our dealership, we did not budget for costs relative to lands beyond our own property. As it came to our attention that we would be faced with the rural maintenance standards of the surrounding city-owned lands, we decided that we had better adjust our thinking or be faced with the considerable negative impact on our efforts.

We are now faced with the capital costs of the improvements to the lands and the annual maintenance costs of these improvements. Our

utility of these lands can not support these costs, yet we feel we must incur these costs to protect our initial investment.

In order to amortize the capital costs and to justify the additional costs outlined above, we are asking the City of Winnipeg for the following considerations:

We are prepared to live with a cancellation clause to the agreement if the City of Winnipeg ever requires any or all of these lands for its purposes.

We are prepared to be responsible for all costs relative to the development and maintenance of these lands to a reasonable standard to be determined by your Director of Planning.

We believe that the City of Winnipeg should accept $1.00 per year for a twenty-five year term with a right to re-new for a further 25 years under the same terms and conditions. This amount should include property taxes.

Our justification is that the City of Winnipeg shall enhance the property it owns at this marquis corner without cost to itself to develop or maintain. Whatever maintenance standards the City of Winnipeg would provide in the alternative would certainly have some costs.

I think that you will also agree that our utility of these lands will not be as great as our costs under this scenario.

Please respond at your earliest possible convenience. We are anxious to clean up the appearance of these lands as soon as possible.

Thank you for your consideration in this matter.

Sincerely,

Gordon A. McNaught
Dealer Principal

/iv

Schedule "B"

McNAUGHT
PONTIAC·BUICK·CADILLAC·GMC
1717 Waverley Street, Winnipeg, Manitoba R3T 6A9
T 204.786.3811 F 204.775.4077

COPY

May 6, 2003

Stewart Anderson
Real Estate Division
Planning, Property, & Development Dept.
2nd Floor, 65 Garry Street
Winnipeg, MB R3C 4K4

Dear Mr. Anderson:

RE: PROPOSED LEAVE & LICENSE AGREEMENT
FILE 4423/1

Thank you for your letter which we received today. We appreciate your opinion in regards to this matter.

If indeed our intended use of the subject property was consistent with the use of other City of Winnipeg lands leased to other parties in the immediate area, the terms you propose might be reasonable because as you have mentioned before "we are not reinventing the wheel."

As you are aware, the neighbouring property's primary use is commercial. They have paved and fenced their leased property and use it entirely as a vehicle display area. We, on the other hand, would be primarily adding to the esthetic value of our property by landscaping the proposed leased land.

The other issue is the Pattison sign. As you are aware from our previous discussions, we find this use incompatible with our use of said property. It draws attention away from our primary objective which is to feature the dealership. We urgently want it removed.

Please reconsider this matter based on this clarification. We are looking forward to your response.

Sincerely,

Gordon A. McNaught
Dealer Principal

GM/lv