Agenda – Council – March 25, 2015

Report – Standing Policy Committee on Property and Development – March 10, 2015

Item No. 16 Proposed Amendment to the Encroachment Agreement between the City and Allredekopp Ltd. for Lands in the Stadacona Street Right-of-Way between Riverton Avenue and Gordon Avenue (Elmwood-East Kildonan Ward)

STANDING COMMITTEE RECOMMENDATION:

On March 18, 2015, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the following to Council:

1. That the proposed terms and conditions attached as Schedule `A` for an amendment to the encroachment agreement dated August 15, 2007 in favour of Allredekopp Ltd. and identified as "Amended Area for Access Purposes" on Misc. Plan no.13025/4 be approved. (hereinafter referred to as `Amended Area`)

2. That the City amend the encroachment agreement, attached to this report as `Schedule B`, and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the amendment to the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. 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 – March 10, 2015

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 18, 2015, 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 March 10, 2015, 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 Amendment to the Encroachment Agreement between the City and Allredekopp Ltd. for Lands in the Stadacona Street Right-of-Way between Riverton Avenue and Gordon Avenue**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Erickson	M. Pittet	N/A	M. Jack A/CAO

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule `A` for an amendment to the encroachment agreement dated August 15, 2007 in favour of Allredekopp Ltd. and identified as "Amended Area for Access Purposes" on Misc. Plan no.13025/4 be approved. (hereinafter referred to as `Amended Area`)

2. That the City amend the encroachment agreement, attached to this report as `Schedule B`, and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the amendment to the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. 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

Encroachment By-law 692/74, General Regulations, 4. (1) d, states:

"Where the encroachment is of an unusual or commercial nature that it be referred to the Director of Land and Development Services of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council."

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions of an amendment to the encroachment agreement dated August 15, 2007, in favour of Allredekopp Ltd.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general, policy, regulatory, environmental, financial or human resource implications to entering into an encroachment agreement shown on the attached Miscellaneous Plan No. 13025/4.

The purpose of the proposed amendment is to establish an area of unimpeded access for the owners of the neighbouring property (Riverwood Church) at 270 Gordon Avenue, who recently purchased these lands from Allredekopp Ltd. Riverwood Church are planning to construct a new roadway access in the Amended Area, and the amendment`s purpose is to guarantee access to Riverwood Church throughout the life of the encroachment agreement.

HISTORY

Allredekopp Ltd. has maintained an encroachment agreement with the City of Winnipeg since 2007 for the area identified as `Leased Area` on misc. plan no. 13025/4.

In 2012, Allredekopp Ltd. sold a portion of its holdings to Riverwood Church. These lands abutted the encroachment area, which spanned the entire length of Riverwood Church`s new holdings, making access to Stadacona Street impossible without crossing the encroachment area.

In 2013, members of the neighbouring Riverwood Church at 270 Gordon Avenue contacted the Property Management Branch in the hopes of securing a guarantee that they could utilize the amended area throughout the duration of the encroachment agreement in lieu of their plan to construct an access off of Stadacona Street. This request was solely dependent on Allredekopp Ltd.'s consent, which was granted.

The Planning, Property and Development Department has negotiated proposed terms and conditions of an amendment to the encroachment agreement dated August 15, 2007 in favour of Allredekopp Ltd.

This report seeks approval of the amendment to the encroachment agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 22, 2014

Project Name:

Proposed Amendment to the Encroachment Agreement between the City and Allredekopp Ltd. for Lands in the Stadacona Street Right-of-Way between Riverton Avenue and Gordon Avenue

COMMENTS:

There are no financial implications associated with the recommendations in this report.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department as to legal issues

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Municipal Accommodations
Prepared by:	Nolan Winters
Date:	February 18, 2015
File No.:	MA2014-235
Property Mgmt. No:	8194

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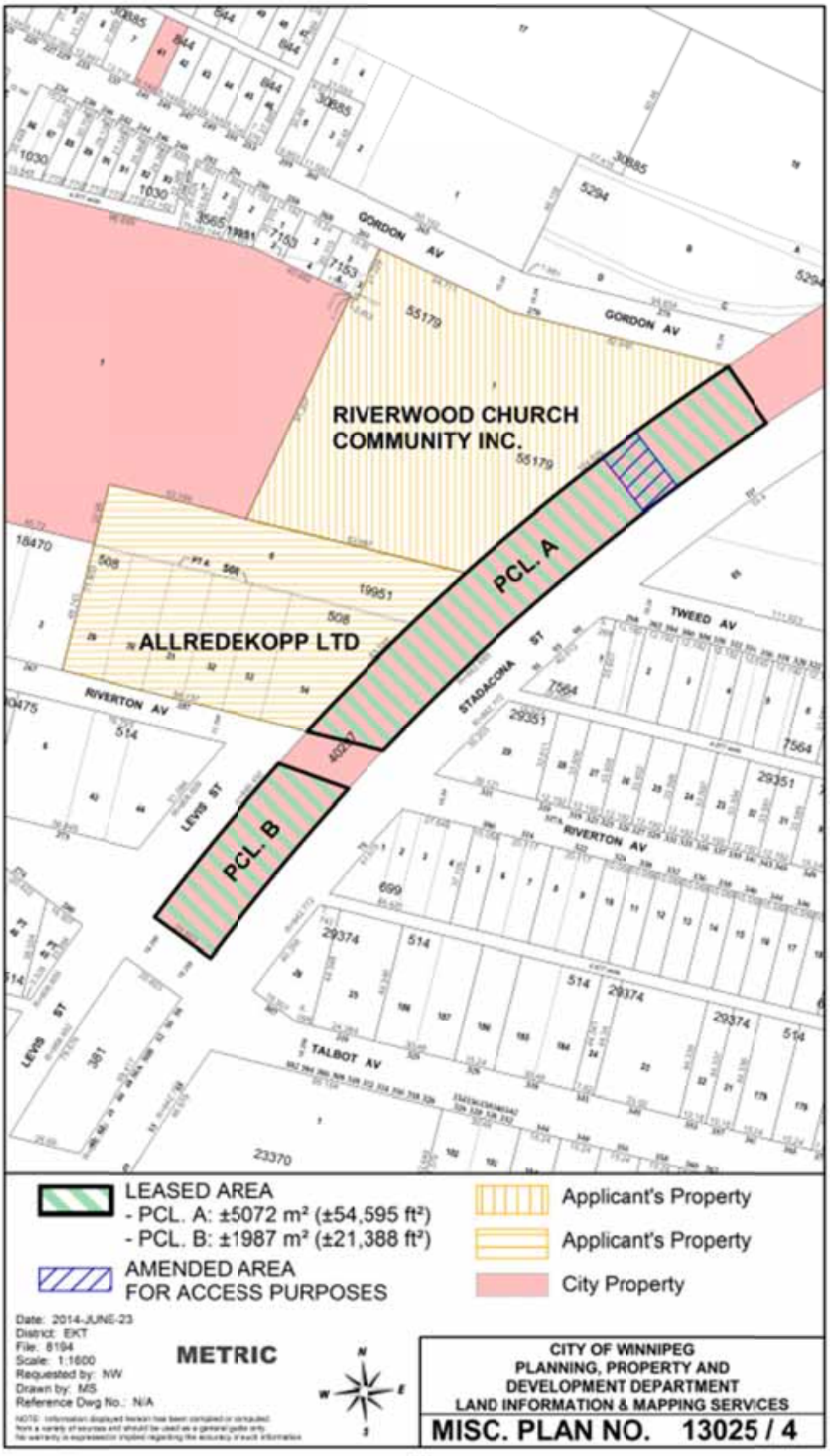

RIVERWOOD CHURCH
COMMUNITY INC.
55179
ALLREDEKOPP LTD
19951
PCL. A
PCL. B
GORDON AV
TWEED AV
RIVERTON AV
TALBOT AV
STADACONA ST
LEVIS ST
LEASED AREA
- PCL. A: ±5072 m² (±54,595 ft²)
- PCL. B: ±1987 m² (±21,388 ft²)
AMENDED AREA
FOR ACCESS PURPOSES
Applicant's Property
Applicant's Property
City Property
Date: 2014-JUNE-23
District: EKT
File: 8194
Scale: 1:1600
Requested by: NW
Drawn by: MS
Reference Dwg No.: N/A
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13025 / 4

SCHEDULE A

PROPOSED TERMS AND CONDITIONS TO AMEND THE LEASE AGREEMENT BETWEEN THE CITY AND ALLREDEKOPP LTD. FOR PROPERTY LOCATED BETWEEN RIVERTON AVENUE AND GORDON AVENUE SOUTH-WEST OF STADACONA STREET

Shown outlined as "Amended Area for Access Purposes" on attached Misc. Plan No. 13025/4

Landlord:	City of Winnipeg
Tenant:	Allredekopp Ltd.
Purpose:	To amend the original Lease Agreement between the City of Winnipeg and Allredekopp Ltd. dated August 15, 2007.
Special Conditions:	To amend the lease agreement dated August 15, 2007 to include the following: "For the duration of the current lease, the Lessee shall provide unimpeded access to Riverwood Church Community Inc., being the owners of the neighboring property at 270 Gordon Avenue, over the area identified as "Amended Area for Access Purposes" on misc. plan 13025/4." To replace Schedule "A" in the original Lease Agreement with Misc. Plan No. 13025/4 All other terms and conditions to remain unchanged. The proposed terms and conditions of the proposed Lease Amending Agreement are subject to the final approval of the City's Standing Policy Committees and Council, or its delegated authority and the City Solicitor as to form and content.

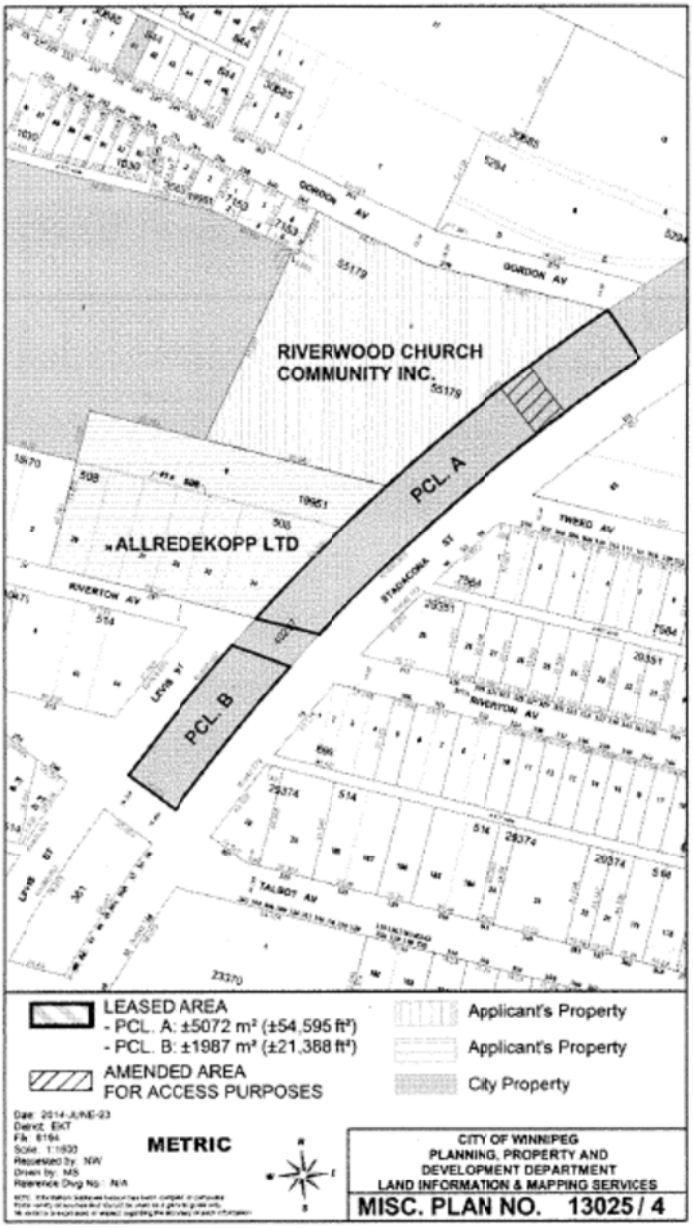
Allredekopp Ltd. hereby agrees to enter into a Lease Agreement Amendment with the City of Winnipeg for the use of the property identified as "Leased Area" on Misc. Plan 13025/4 and in accordance with the terms and conditions as outlined herein on this Schedule "A".

ALLREDEKOPP LTD.

Sept 3/2014
Date

v:\nolan winters\encroachments\6194 allredekopp\t&c lease amendment.doc

SCHEDULE A



OK

SCHEDULE B

THIS AGREEMENT made in duplicate, the 15th day of August, 2007

AGREEMENT HEADER
(Attach to Front of Agreement)

BETWEEN:

THE CITY OF WINNIPEG,
(hereinafter called the ***"City"***),

YARDI PROPERTY CODE: Lev001
YARDI TENANT CODE: 911002

OF THE FIRST PART,

- and -

ALLREDEKOPP LTD.
duly registered to carry on business in Manitoba,
(hereinafter called the ***"Lessee"***),

OF THE SECOND PART.

WHEREAS the City is the owner of certain parcels of land shown shaded and identified as ***"City Property"*** on Misc. Plan No. 13025/1 attached hereto as Schedule 'A' (hereinafter called the ***"City's Property"***);

AND WHEREAS the Lessee has since January 1, 2007, been using and has applied to the City to lease those portions of the City's Property shown shaded, outlined in heavy black line and identified as ***"PCL. A"*** and ***"PCL. B"*** respectively, on Schedule 'A' (hereinafter jointly and severally called the ***"Leased Lands"***) for the purpose of vehicular parking in conjunction with and onloading to the Lessee's lands and premises lying immediately adjacent to the City's Property and shown hatched and identified as ***"Applicant's Property"***) on Schedule "A";

AND WHEREAS the City's Standing Policy Committee on Property and Development at its meeting of February 27, 2007, approved the terms and conditions of a Lease as herein contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the rents, covenants and conditions hereinafter reserved and contained on the part of the Lessee to be paid, kept, observed and performed, the City has demised and leased and by these presents doth demise and lease unto the Lessee the Leased Lands;

TO HAVE AND TO HOLD the Leased Lands commencing on the 1st day of January, 2007 and continuing thereafter on an annual basis as herein provided for (herein called the ***"term"***) and subject to the following terms and conditions:

1. The preamble hereto shall and does form an integral part of this Agreement.
2. The Lessee does hereby covenant and agree with the City that it shall pay:
   (a) to the City, rent in the amount of SIX THOUSAND ONE HUNDRED ($6,100.00) DOLLARS per annum, plus applicable Goods and Services

Tax (herein called the ***"rent"***), due on the 1st day of January in each year during the currency of this Lease Agreement, the first of such instalments being due and payable on the 1st day of January 2007; Provided that after the first year, the rent shall be such as may be determined from year to year upon review by the City which rent in any event, shall not be less than that paid for the previous year;

(b) to the taxing authority or any authority having jurisdiction, each year during the term when the same become due and payable, all taxes, including real property taxes, local improvement taxes, rates, duties and assessments and other charges that may be levied, rated, charged, or assessed against or in respect of the Leased Land and all improvements, equipment and facilities of the Lessee on the Leased Land or any part or parts thereof and every tax and license fee in respect of any and every business carried on thereon in respect of the use or occupancy thereof by the Lessee (and any and every sub-tenant or licensee) including, without limitation, any business transfer tax, value-added tax, goods and services tax, sales tax or any other tax levied, assessed or imposed in respect of this Lease or in respect of the rental of space by the Lessee under this Lease, whether characterized as a business transfer tax, value-added tax, goods and services tax, sales tax or otherwise, whether any such taxes, assessment or license fees are charged by any municipal, parliamentary, school or other body and the Lessee will indemnify and keep indemnified the City from and against payment for all loss, costs, charges and expenses, occasioned by, or arising from any and all such taxes, rates, duties, assessments, license fees, franchise fees and any and all taxes which may in future be levied in lieu of such taxes, whether foreseen or unforeseen;

(c) 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 Leased Premises, whether such fees and taxes are charged by any municipal, provincial or federal authority or otherwise; and

(d) all utilities and operating expenses in connection with its use and occupation of the Leased Lands.

3. The Lessee shall at its sole cost, effort and expense and at all times during the currency of this Lease Agreement:

(a) use the Leased Lands for the purpose of vehicular parking in conjunction with and unloading to the Lessee's lands and premises lying immediately adjacent to the City's Property and for no other purpose whatsoever;

(b) develop, including the supply and installation of electrical power as may be required for the intended use of the Leased Lands by the Lessee, and thereafter maintain in a neat and tidy condition, including but not limited to, cleaning/sweeping, snow removal and surface repairs, the Leased Lands all to the satisfaction of the City's Director of Planning, Property and Development (hereinafter called the ***"Director"***);

(c) comply with all applicable statutes, by-laws, ordinances and regulations of any federal, provincial or municipal authority pertaining to the use and occupancy of the Leased Lands by the Lessee, and shall obtain all necessary permits and variance orders in that regard;

(d) 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, lessee, invitee, tenant or third party, whether claiming through or under the

Lessee or otherwise caused by reason of or in any way attributable to the Lessee's use of the Leased Lands or the construction, maintenance, existence or use of any structures 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; it being understood and agreed by the Lessee that in the event of any such claim, action, suit or demand being brought or made against the City, the City may give the Lessee notice thereof and if the Lessee does not, within TEN (10) DAYS thereafter forbid the City to do so, the City may, if it sees fit, compromise such claim, action, suit or demand and that if the Lessee forbids the City to make such compromise within the said period, or no such compromise be effected then, the Lessee may be made a party to such claim, action, or suit and that in all cases the Lessee will and does hereby covenant and agree to pay to the City on demand the sum or sums paid in settlement of any such claim, action, suit or demand, together with all other costs and expenses however arising out of or in connection therewith, including such as shall represent the reasonable value of any service rendered by the City Solicitor, charged on the same basis as if the said Solicitor were not receiving a salary or remuneration from the City, but was a private practitioner;

TO FURTHER SAFEGUARD THE CITY the Lessee shall 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 added as an additional insured;

(ii) The Policy to contain a Cross Liability Clause;

(iii) Minimum limits of $2,000,000.00 all-inclusive;

AND the Lessee shall file with the City a certified copy of the policy in a form satisfactory to the City Solicitor;

AND the City acting reasonably, shall have the right to alter the limits and/or coverages as required from time to time during the continuance of this Lease;

AND neither the Lessee nor the insurer under any or all policy or policies so maintained, shall at any time during the currency of this Lease cancel, materially alter or cause any or all such policy or policies to lapse without a minimum of fifteen (15) days prior written notice being delivered to the City; and

(e) Upon termination or cancellation of this Lease for any reason whatsoever, to remove, at its sole cost, effort and expense, all of its property from the Leased Lands and restore the Leased Lands to a condition satisfactory to the Director; AND in the event the Lessee defaults in so doing, the City may remove the Lessee's property and restore the Leased Lands at the sole risk and expense of the Lessee.

4. The Lessee does hereby further agree and undertake that it shall not at any time during the currency of this Agreement:

(a) use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Leased Lands or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling and The Lessee shall not do, omit or suffer or permit to be done or omitted in, on or upon the Leased Lands or 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;

(b) erect or permit the erection of any building or additional structures whatsoever on the Leased Lands, nor make any excavation therein or improvement thereon, without the written authority of the City's Director of Planning, Property and Development (hereinafter called the ***"Director"***) or such other officer as may be acting in his stead first obtained;

(c) file any caveat or other encumbrance against title to the Leased Lands; or

(d) assign or sub-let or part with possession of all or any part of the Leased Lands.

5. In the event the City declares the Leased Lands surplus to its needs, the City does hereby undertake to notify the Lessee that the Leased Lands are for sale PROVIDED THAT the Lessee does hereby acknowledge and agree that such notification does not and shall not constitute in any manner whatsoever, an obligation on the part of the City to sell the Leased Lands to the Lessee and that the City shall be free to sell the lands upon such terms and conditions and at such price as shall be determined by the City at such time as the Leased Lands become available for sale.

6. It is hereby understood and agreed between the parties hereto that:

(a) the City has made no representation or warranty as to the condition or sufficiency of the City's Property including but not limited to the Leased Area for the Lessee's intended use thereof and the Lessee is leasing the Leased Area in an "as is" condition at the Lessee's own risk and with all faults and imperfections whatsoever;

(b) either party may cancel this Lease by giving to the other, written notice naming therein a date at least one hundred and eighty (180) days from the giving of such notice, upon which this Lease shall terminate, and on the day so named in either such notice, as the case may be, all rights and privileges granted herein shall absolutely cease and determine;

(c) notwithstanding anything herein above contained if the Lessee is in default in observing or carrying out any terms and conditions of this Lease, and such default continues for a period of Ten (10) days after notice to remedy, the City, through its Director, may cancel this Lease forthwith and the Lessee, its employees or agents shall immediately vacate the Leased Lands;

(d) if the term hereby granted shall at any time, be 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 creditors or becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, the current year's rental shall immediately become due and payable and the said term shall immediately become forfeited and void;

(e) notwithstanding forfeiture or termination of this Lease in any manner herein provided for, the Lessee shall be and remain liable to the City for all payments due and obligations and liabilities incurred hereunder and for the fulfilment of all obligations herein contained on the part of the Lessee to be observed and performed upon or after said forfeiture or termination; AND upon forfeiture or termination of the Lease in the manner provided herein above, the City shall not be required to reimburse the Lessee for any improvements placed on the Leased Lands by the Lessee or anyone on behalf of the Lessee;

(f) upon termination of this Lease Agreement in any such manner as aforesaid, the Lessee shall:

(1) peaceably surrender and yield up the Leased Lands unto the City;

(2) within Thirty (30) days, at its sole cost, effort and expense forthwith demolish and/or remove any and all improvements installed, constructed and/or erected by it pursuant to this Agreement, remove all material, debris and rubbish and clean and restore the Leased Lands to a level and condition satisfactory to the Director and in the event the Lessee defaults in so doing, the City may do the said demolition, removal and restoration work at the sole risk and expense of the Lessee; and

(3) the Lessee shall pay to the City the entire cost and expense which may be incurred by the City in carrying out any such demolition, removal, restoration and/or disposal in pursuance of the provisions of this Agreement;

(g) any notice in writing hereinbefore provided for shall be sufficiently served upon the party hereto to whom it is addressed, on the date same is delivered if the same is personally delivered, or on the third business day following the date of mailing if the same is mailed in an envelope by registered or certified mail, postage prepaid, addressed to the party to whom such notice is to be given, as follows:

AS TO THE CITY:

Attn: Director File No. 8194

THE CITY OF WINNIPEG
Planning, Property and Development Department
2nd Floor - 65 Garry Street
Winnipeg, Manitoba
R3C 4K4

or to such other address as the City may from time to time so advise.

AS TO THE LESSEE:

Attn: Edwin Redekopp

ALLREDEKOPP LTD.
287 Riverton Avenue
Winnipeg, Manitoba
R2L 0N2

or to such other address as the Lessee may from time to time so advise.

AND any such notice, if forwarded by mail, whenever mailed, shall be deemed to be served on the fifth (5th) business day next following the date it is so mailed;

(h) the employees, agents and servants of the City shall have a right of access to enter upon the City's Property, including without limitation, the Leased Lands, with or without equipment:

(1) to view the state of repair of the Leased Lands, and the Lessee shall within TEN (10) DAYS of the City giving to the Lessee notice to repair, repair the Leased Lands in accordance with such notice. In the event the Lessee fails to repair in accordance with such notice as aforesaid, the City may do such work at the sole cost and expense of the Lessee; or

(2) for the purpose of maintaining and/or repairing its utilities in or near to the City's Property; or

(3) for any other purpose;

without being responsible for any damages to the Leased Lands or the Lessee's property occasioned thereby;

AND the Lessee shall assume all loss, injury and damage to the property of the Lessee arising out of the doing of any act or thing by the City as herein contained;

(i) this Lease shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and permitted assigns; and

(j) whenever in this Lease the context so requires or permits, the singular number shall be read as if the plural was expressed and the masculine gender as if the feminine or neuter and vice versa, as the case may be, were expressed.

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the day and year first above written.

THE CITY OF WINNIPEG

Per: _____
for DIRECTOR of Planning, Property and Development

ALLREDEKOPP LTD.

Per: _____
Name: EDWIN REDEKOPP
Title: SECRETARY
(affix corporate seal)

_____
Witness:
Name: _____
(please print)
Address: _____

_____

Per: _____
Name:
Title:

Approved:

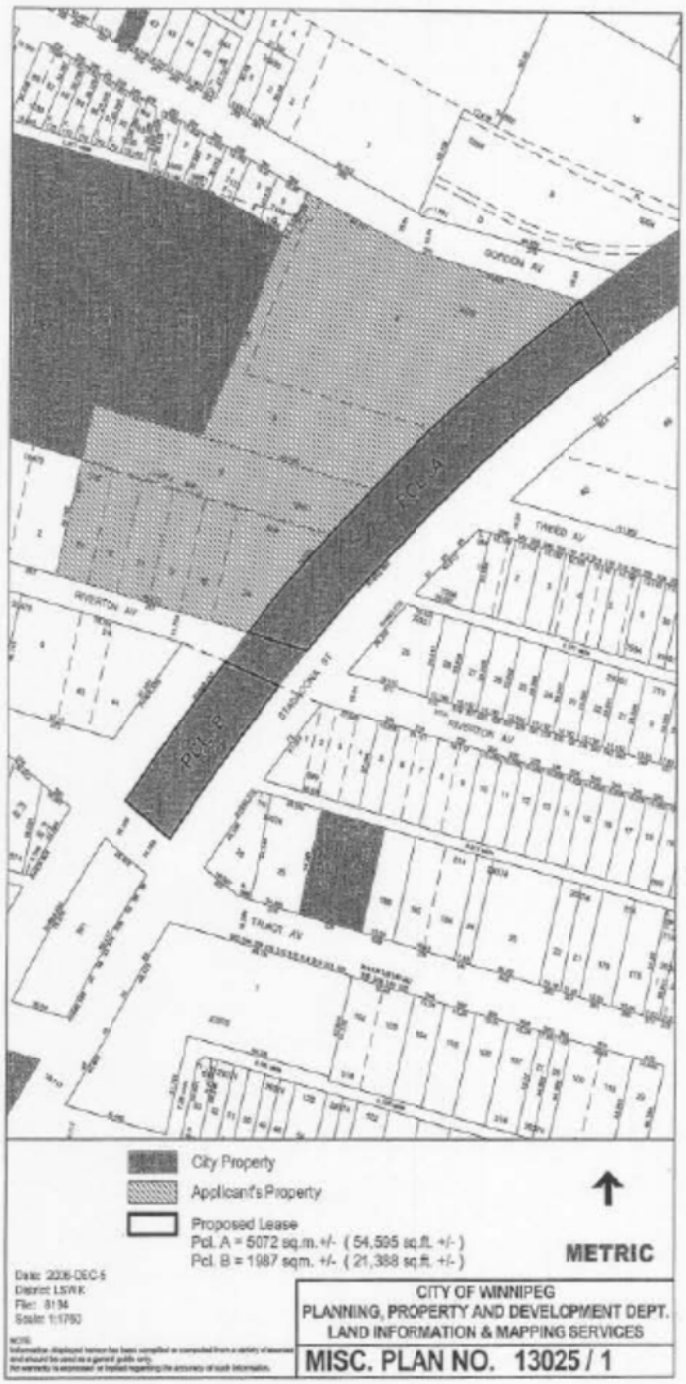
_____
Planning, Property and Development Department

Approved:

_____ 2007-06-27
DIRECTOR of PUBLIC WORKS

Certified as to form:

_____
for CITY SOLICITOR/MANAGER OF LEGAL SERVICES


GORDON AV
TWEED AV
RIVERTON AV
STAGECOACH ST
PCL B
PCL A
TRACT AV
City Property
Applicant's Property
Proposed Lease
Pcl. A = 5072 sq.m. +/- (54,595 sq.ft. +/-)
Pcl. B = 1987 sqm. +/- (21,388 sq.ft. +/-)
METRIC
Date: 2006-DEC-5
District: LSWK
File: 8194
Scale: 1:1750
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13025 / 1