Minutes – Executive Policy Committee – July 8, 2015

Report – Standing Policy Committee on Property and Development – June 26, 2015

Item No. 7 Proposed Lease Agreement to Allow for the Use of a Portion of City-Owned Property at 745 Kingsbury Avenue for the purpose of a Sports Shop

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

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 a lease agreement in favour of ICETIME Sports for the purpose of selling sporting goods and clothing at the main floor of the Seven Oaks Arena Complex as identified as "Main Floor Lease Area 1190 square feet" on Misc. Plan No. 12815/6 and 91 sq. ft. of appurtenant storage space, be approved.

2. That the City enters into a lease agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That for the time period equivalent to the term of the lease, for this and any subsequent lease agreements entered into for the premises shown as "Leased Area" on Schedule "A" attached hereto, an annual operating grant to the Garden City Community Centre ("GCCC") be approved in an amount equivalent to the annual lease revenue collected subject to Recommendation 4 hereof.

4. That the City enter into a grant agreement with GCCC that sets out the terms and conditions of the grant to be provided by the City pursuant to Recommendation 3 hereof.

5. That the Director of Planning, Property and Development be authorized to negotiate and approve the final terms and conditions of the lease agreement and grant 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.

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

Pursuant to Council Policy, leases of parkland over five years in length require approval by two-thirds of all Members of Council.

Report – Standing Policy Committee on Property and Development – June 26, 2015

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On June 26, 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 Lease Agreement to Allow for the Use of a Portion of City-Owned Property at 745 Kingsbury Avenue for the purpose of a Sports Shop**

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

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
B. Erickson	M. Pittet	M. Ruta	M. Jack COO

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule "A" for a lease agreement in favour of ICETIME Sports for the purpose of selling sporting goods and clothing at the main floor of the Seven Oaks Arena Complex as identified as "Main Floor Lease Area 1190 square feet" on Misc. Plan No. 12815/6 and 91 sq. ft. of appurtenant storage space, be approved.

2. That the City enters into a lease agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That for the time period equivalent to the term of the lease, for this and any subsequent lease agreements entered into for the premises shown as "Leased Area" on Schedule "A" attached hereto, an annual operating grant to the Garden City Community Centre ("GCCC") be approved in an amount equivalent to the annual lease revenue collected subject to Recommendation 4 hereof.

4. That the City enter into a grant agreement with GCCC that sets out the terms and conditions of the grant to be provided by the City pursuant to Recommendation 3 hereof.

5. That the Director of Planning, Property and Development be authorized to negotiate and approve the final terms and conditions of the lease agreement and grant 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.

6. 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 Planning, Property, and Development Department has negotiated the proposed terms and conditions of a Lease Agreement as set out in attached Schedule A in favour of ICETIME Sports for the use of a portion of City-owned property at 745 Kingsbury Avenue and identified as "Main Floor Lease Area 1190 square feet" on the attached Miscellaneous Plan No. 12815/5 plus 91 sq. ft. of appurtenant storage space

Council approval is required for all grants.

IMPLICATIONS OF THE RECOMMENDATIONS

- The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to entering into a Lease Agreement as set in the attached Terms and Conditions.

- The Garden City Community Centre will receive an annual operating grant equivalent to the annual lease revenues collected to help offset operating costs within the facility.

- The proposed lease is for an initial term of ten (10) years and in the event the options to renew are exercised, a total of twenty-five (25) years.

HISTORY

On March 26, 2014, Council approved the proposal to develop the multi-pad arena development at the Garden City Community Centre: "The Seven Oaks Arena Project" ("SOAP").

On June 27, 2014, the City entered into a funding agreement with GCCC setting out the terms and conditions pursuant to which City and Province of Manitoba funding is to be provided to the GCCC for the construction of the SOAP. Included in the funding agreement was a provision that the GCCC receive, among other revenues, lease revenues. Any monies remaining after the payment of certain specified costs and expenses are defined as "Annual Surplus Cashflow".

The GCCC is obliged to use 50% of the Annual Surplus Cashflow to service the principal and interest payments on debt associated with the SOAP until such time as GCCC's $5.67 million share of such debt plus interest is repaid in full. Once the GCCC portion of the loan is paid in full, the GCCC will annually transfer 50% of Annual Surplus Cash Flow to a restricted capital reserve to be used exclusively for GCCC capital improvements.

ICETIME Sports has expressed its interest to lease space on the main floor within the Seven Oaks Arena Complex for the purpose of selling sports goods and clothing.

The application was circulated to applicable City departments and public utilities for consideration and comments. All comments and concerns have been incorporated into the signed terms and conditions.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed lease and their comments have been incorporated into the terms and conditions.

The Planning, Property, and Development Department has negotiated proposed terms and conditions of a Lease Agreement in favour of ICETIME Sports.

This report seeks approval of the Proposed Terms and Conditions as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: May 5, 2015

Project Name:

Proposed Lease Agreement to Allow for the Use of a Portion of City-Owned Property at 745 Kingsbury Avenue for the purpose of a Sports Shop

First Year of Program **2015**

	2015	2016	2017	2018	2019 to 2025
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	$ 11,516	$ 18,013	$ 20,411	$ 21,818	$ 145,746
Less: Incremental Revenue/Recovery	12,016	18,513	20,911	22,318	148,746
Net Cost/(Benefit)	$ (500)	$ (500)	$ (500)	$ (500)	$ (3,000)
Less: Existing Budget Amounts	(500)	(500)	(500)	(500)	(3,000)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenue consists of annual lease revenue, the 2015 amount pro-rated for a April 1 commencement date, and an annual lease admin fee of $500. Direct costs each year represent a grant to the Garden City Community Centre in an amount equivalent to annual lease revenue. The municipal realty taxes and any other fees payable to the City by the tenant are immaterial or not determinable at this time and have been excluded from this analysis.

"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
Risk Management, Corporate Finance
Garden City Community Centre
Community Services Department

SUBMITTED BY

Department: Planning, Property and Development
Division: Municipal Accommodations
Prepared by: Charles Osondu
Date: May 22, 2015
File No. MA2015-086

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PROPOSED TERMS AND CONDITIONS FOR A RETAIL SPORTS STORE LEASE AGREEMENT ON THE MAIN LEVEL OF THE TO BE CONSTRUCTED SEVEN OAKS ARENA COMPLEX AT 745 KINGSBURY AVENUE

Use:	1. For the purpose of selling sporting goods and clothing, subject to the limitations herein, only and not for any other purpose except with the prior written consent of the City.
	2. Normal hours of operation are to be 11 am to 9 pm Monday to Friday, 9am to 9pm Saturday and 9am to 6 pm on Sunday. Additional hours are permitted providing such additional hours are in compliance with the *Sunday and Holiday Shopping By-law* of the City of Winnipeg and the provincial *Retail Businesses Holiday Closing Act*.
Lessor:	3. The City of Winnipeg (hereinafter referred to as the "City")
Lessee:	4. ICETIME Sports (hereinafter referred to as the "Lessee")
Leased Area:	5. A portion of City-owned lands as shown on the attached Miscellaneous Plan 12815/5 identified as "Main Floor Lease Area 1190 square feet" at 745 Kingsbury Avenue" and hereinafter referred to as the "Lands".
Term:	6. A ten year term, commencing the first day of April 1, 2015.
Rent:	7. $12.00/Sq.ft. April 1, 2015 to August 31, 2015 $13.00/Sq.ft. September 1, 2015 to Feb 29, 2016 $15.00/Sq.ft. March 1, 2016 to Feb 28, 2017 $17.00/Sq.ft. March 1, 2017 to Feb 28, 2018 $18.00/Sq.ft. March 1, 2018 to Feb 28, 2021 $20.00/Sq.ft. March 1, 2021 to Feb 28, 2025 $6.00/Sq.ft.- Storage Space (91 Sq. ft.) per annum with incremental increases of $0.20 year/sq. ft. up to year 10 commencing on April 1, 2015 and then in each year of the Term thereafter. All rental amounts are subject to GST.
Renewal:	8. Three (3) five (5) year options to renew on the same terms and conditions accepting the rent which shall be negotiated at the then current market rates but may not be less than the rent during the final year of the previous term.
Admin Fee:	9. Annual fee of $500.00 plus GST payable on the commencement date and the anniversary of the commencement date in each year of the Term thereafter.
Taxes:	10. Lessee is responsible for all realty taxes, municipal taxes, school taxes, local improvements, license fees, business tax, etc. which may be charged in respect of the use and occupation of the Lands.
Other Fees, Licenses, Taxes, etc.:	11. All other license fees, business tax, levies, etc. which may be charged in respect of the use and occupation of the Lands.

Insurance:

12. The Lessee shall purchase and keep in force during the full term of the agreement the following insurance coverage:

13. Commercial general liability insurance including but not limited to protection for claims of bodily injury and property damage, personal and advertising injury liability and products and completed operations liability in the inclusive amount of two million dollars ($2,000,000) per occurrence. Such liability policy to include the City of Winnipeg as an additional insured and contain evidence of a cross liability clause, contractual liability clause, and tenants legal liability for a limit commensurate with the space occupied, and shall not contain any special limitations on the scope of coverage afforded the City, its officers, officials, employees, agents or volunteers.

14. A broad form property insurance policy, for the full replacement cost insuring all contents, equipment, stock and Lessee's improvements;

15. 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 ($2,000,000.00) 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;

16. All property policies written on behalf of the Lessee shall contain a waiver of any subrogation right which the Lessee insurers may have against the City and against those for whom the City is, in law, responsible, whether any such damage is caused by the act, omission or fault of the City or by those for whom the City, is, in law, responsible;

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

18. Deductibles shall be borne by the Lessee;

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

20. The Lessee shall provide written notice to the City of any material changes to their policies within thirty (30) days of the change taking effect;

21. The Lessee shall file with the City an annual Certificate of Insurance in a form satisfactory to the City Risk Manager;

22. 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 Lease and for any subsequent renewals thereof, provided that the City shall give the Lessee reasonable notice and shall request reasonable change.

23. The Lessee shall ensure that any contractor and/or sub-contractor the Lessee hires to perform work on the Leased Area shall provide and maintain the following insurance coverage at all times;

    (a) Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) inclusive, with The City of Winnipeg to be added as an additional insured, cross liability clause, contractual liability, unlicensed motor vehicle liability, non-owned automobile and products and completed operations cover to remain in place at all times during the performance of the work;

Cancellation:

24. 90 days written notice by either party, or immediately upon the tenant being in default of the proposed terms and conditions of the Lease Agreement.

Termination:

25. Upon termination or cancellation of the Lease the Lessee shall remove its property from the Lands and leave same in a condition satisfactory to the City's CAO or Delegate. Should the Lessee default in so doing the City may remove the Lessee's property and restore the Lands at the sole risk and expense of the Lessee.

26. Notwithstanding the forfeiture or termination of this agreement in any manner herein provided for, the Lessee shall be and remain liable to the City for all payments due and obligations and liabilities to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeiture or termination and for the fulfillment of all obligations on the part of the Lessee to be observed and performed upon and after the said termination.

Assignment or Sub-let:

27. The Lessee is not to assign or sub-let or part with possession of all or any part of the Lands without the Lessee first obtaining the prior written consent of the City's CAO or Delegate. In such event, the City in its sole discretion may cancel this agreement and enter into a new agreement;

28. And further the Tenant acknowledges and agrees that:

    1) Upon its making application for such consent by the City the Lessee shall pay to the City a non-

refundable administrative fee of Five Hundred ($500.00) Dollars, plus applicable Goods and Services Tax, or such amount as may from time to time be determined by the City in its sole discretion acting reasonably.

Signage

29. The Lessee shall not paint, display, inscribe, place or affix any sign, symbol, notice or lettering of any kind anywhere on the Lands, without the prior written approval of the City, acting in consultation with the GCCC as to design, size and location, which approval the City may in its absolute, sole and uncontrolled discretion withhold.

Lessee Improvements

30. All Tenant Improvements to be performed at the sole cost, expense and effort of the Lessee, subject to prior written approval by the City's CAO or Delegate, in consultation with the GCCC.

31. All leasehold improvements upon the Lands shall immediately become the property of the City upon completion of construction unless otherwise stipulated by the City.

Operating Costs:

32. Unless otherwise specified herein, the Lessee is to pay all operating costs, including but not limited to: (a) the cost of all utilities, excepting hydro, water and heat, consumed on the Lands; (b) the cost of cleaning, maintaining and servicing the Lands, and (c) the cost of policing and supervising the Lands.

Development, Maintenance and Repairs:

33. The development and maintenance of the Lands will be performed at the sole cost, expense and effort of the Lessee, including, but not limited to, obtaining all permits required to develop, occupy and utilize the Lands for its intended use.

34. In the event that the Lands require repair, the Lessee shall perform at its sole cost, expense and effort required repairs within thirty (30) days of written notice provided by the City.

35. Should the Lessee fail to perform the repairs required pursuant to clause 34 herein, the City may, at its option, perform the required repairs and any and all costs incurred by the City in the making of the repairs, including but not limited to the hiring of third party contractors, shall be due and payable, by the Lessee to the City, immediately upon receipt, by the Lessee, of notice of the expenses and costs incurred.

City's Access:

36. The City shall have the right of access to the Lands including the multiplex at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment

for any purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, safety, protection, preservation or improvement of the Lands, and for doing any work to maintain, operate, repair, inspect or rehabilitate its existing water mains, sewer lines and appurtenances in or near to the Lands, without being responsible for any damage occasioned thereby.

Special Conditions:

37. The Lessee takes the Lands on an "as is" basis.

38. Ninety One (91) sq. ft. of additional storage space for seasonal sport products will be provided to the Tenant by the City, at a rental rate of SIX Dollars ($6.00) per square foot, per annum, plus GST with incremental increase of $.20 per year/sq. ft. up to year TEN (10).

39. The Lessee shall be permitted, once per lease year, to hold a barbecue and tent sale, during its normal hours of operation, in the parking lot adjacent to the premises, provided that the Lessee shall first obtain, from General Manager of the Garden City Community Centre, the written confirmation of the availability of the parking lot facilities for the date and time proposed and that under no circumstances will the sale, provision, distribution, service or consumption of alcohol be permitted.

40. The Lessee shall produce and sell Garden City Community Centre merchandise and shall donate to the Garden City Community Centre 20% of the net profit.

41. The Lessee shall make a donation in the amount of $1000 (retail value before taxes) per lease year, of merchandise to the Garden City Community Centre.

42. The Lessee shall provide the Garden City Community Centre with merchandise for special events at the Lessee's cost plus fifteen per cent (15%).

43. The Lessee shall provide Garden City Community Centre teams a ten per cent (10%) discount on merchandise and skate sharpening prices.

44. The Lessee shall maintain, at its own expense, the Leased Area in a safe, clean and tidy condition to the satisfaction of the City acting in consultation with the GCCC.

45. The Lessee shall not carry any retail inventory of soccer equipment or soccer accessories in their retail store. The Lessee may sell custom orders of soccer team jerseys, accessories or equipment. The Lessee shall be allowed to quote on any custom order requests it receives and may also actively market and advertise custom order services

to the public.

46. The Lessee acknowledges and agrees that it is intended that this Lease shall be an absolutely net and carefree lease to the City.

47. The tenant shall be responsible for the evacuation of all volunteers, staff and invitees during any emergency.

48. The Lessee shall have two identified and designated parking stalls. One stall will be at the rear of the building and will be electrified. The other stall will be located near the front door of the arena but will not be electrified. All other staff and patrons will have access to "scramble" parking in the facility's parking lot.

49. In the event of total destruction or partial destruction of the Subject Property and any Leasehold Improvements located thereon, as determined in accordance with the terms herein by fire, explosion, lightning, flood, windstorm or hail or act of God, then in that event this Agreement shall terminate at the option of the City with effect from the date upon which such total destruction or partial destruction occurs. Thereupon, the Lessee shall immediately surrender the Subject Property and all its interest therein to the City and the Lessee shall pay Rent/Fees only to the time of such total destruction or partial destruction and the City may re-enter and repossess the Subject Property discharged of this Agreement. Upon such termination the Lessee shall remain liable to the City for all sums accrued and due to the City pursuant to the terms hereof to the date of such total destruction or partial destruction.

50. In the event of partial destruction of the Subject Property and any Leasehold Improvements located thereon, as determined in accordance with the terms herein by fire, explosion, lightning, flood, windstorm or hail or act of God, and if the City does not opt to terminate this Agreement in accordance with the terms herein then in that event, the Subject Property may be partially used for the operation as set out herein, while the repairs are being made, if safe to do so in the opinion of the City. Then, in that event, the Rent/Fees shall abate in the proportion that the part of the Subject Property rendered unusable bears to the whole of the Subject Property.

51. The City's Chief Financial Officer, or delegate in writing, shall, in his sole discretion determine whether the extent of damage to the Subject Property and any Leasehold Improvements located thereon is deemed to be total destruction or partial destruction. The City shall make the

determination based on inspections and advice from certified professionals, including without limitation, City of Winnipeg engineers and adjusters. The Lessee shall be notified, in writing, by the City as to the determination of total destruction or partial destruction and as to whether the City will be exercising the option to terminate this Agreement as set out herein, within forty-five (45) days of the date that the damage occurred

52. The Lessee acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, conditions or suitability of the Lands for any use or purpose, nor as to any environmental conditions which may exist.

53. The Lessee shall comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority.

54. The Lessee shall not file any caveat or other encumbrance against the Lands.

55. The Lessee shall release, indemnify and save the City harmless from and against any and all claims for damages or injuries, including death that may arise from the use of the Lands by the Lessee or those permitted to use the Lands by the Lessee. This provision shall survive any termination, cancellation or expiration of this Agreement.

56. The Lessee shall not release into the environment, or deposit, discharge, place or dispose of, at on, or near the premises and/or adjoining City land, any dangerous goods as that term is defined in *The Dangerous Goods Handling and Transportation Act*, R.S.M. 1987, c.D12, as amended, replaced or substituted from time to time.

57. The Lessee shall enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the CAO or Delegate and City Solicitor/Director of Legal Services deem necessary and in a form satisfactory to the City Solicitor/Director of Legal Services.

58. **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 City Solicitor/Director of Legal Services as to form and content.**

Ice Time Sports hereby agrees to enter into a lease agreement with the City of Winnipeg for the use of the property identified as "Main Floor Lease Area 1190

square feet" on the attached Misc. Plan No. 12815/5 (Schedule "A") and in accordance with the proposed terms and conditions as outlined herein.

Ice Time Sports

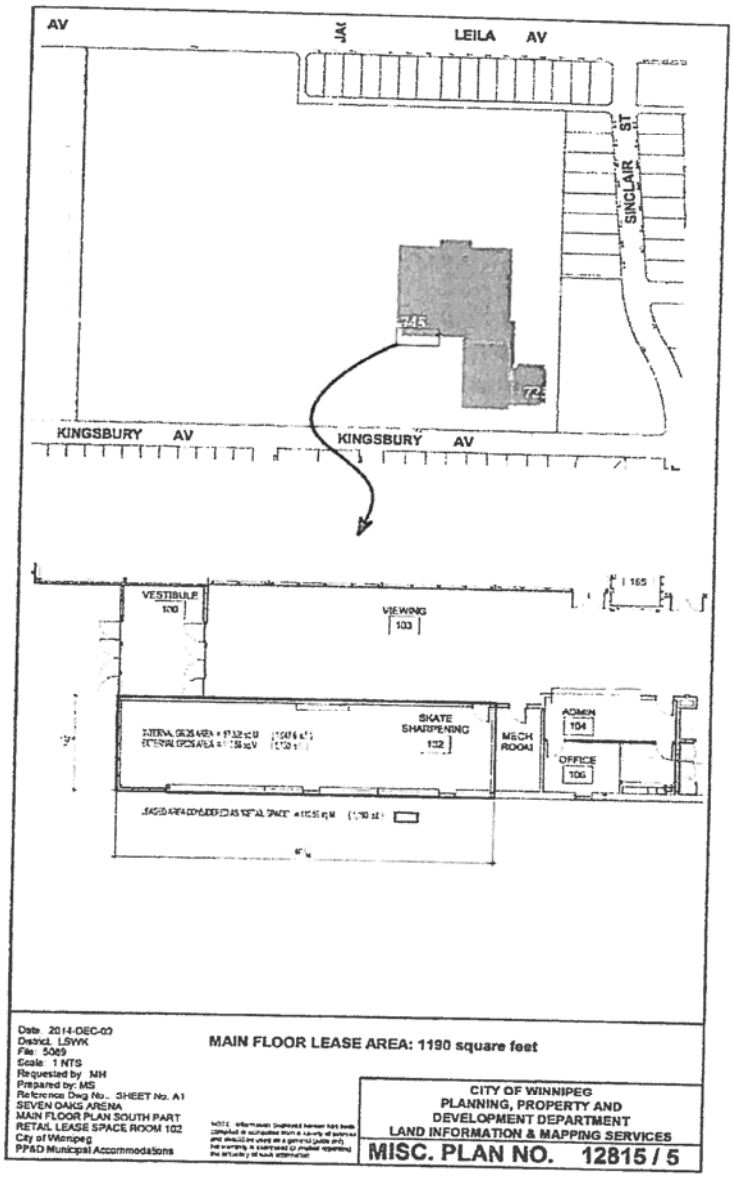
Per: _____
Name: GARY MCDONALD
ICE TIME SPORTS INC
Date MARCH 27/15

I am/~~We~~ are authorized to bind the Corporation

_____
WITNESS
Name: MARTINO VERGATTA
Address: 725 KINGSBURY AVE. MARCH 27/15

V:\Charles Osondu\5095-745 Kingsbury Avenue-ICE TIME\Final T's and C's.docx

SCHEDULE A


AV
LEILA AV
SINCLAIR ST
745
KINGSBURY AV
KINGSBURY AV
VESTIBULE
100
VIEWING
103
165
SKATE SHARPENING
102
MECH ROOM
ADMIN
104
OFFICE
106
Date: 2014-DEC-03
District: LSWK
File: 5069
Scale: 1 NTS
Requested by: MH
Prepared by: MS
Reference Dwg No.: SHEET No. A1
SEVEN OAKS ARENA
MAIN FLOOR PLAN SOUTH PART
RETAIL LEASE SPACE ROOM 102
City of Winnipeg
PP&D Municipal Accommodations
MAIN FLOOR LEASE AREA: 1190 square feet
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12815 / 5