Agenda – Council – November 25, 2015

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 10, 2015

Item No. 3 Lease Agreement to Allow for the Use of a Portion of City-Owned Property at 517 Pandora Avenue for the purpose of a Sports Shop (Transcona Ward)

STANDING COMMITTEE RECOMMENDATION:

On November 18, 2015, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown 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 Home Run Sports Inc. for the purpose of selling sporting goods and clothing at the Transcona East End Community Centre as identified as "Main Floor Lease Area - 746 square feet" – 517 Pandora Avenue East on Misc. Plan 14540/1 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, a monthly operating grant to the Transcona East End Community Club Inc. ("TEECC") be approved in an amount equivalent to the monthly lease revenue collected subject to Recommendation 4 hereof.

4. That the City enter into a grant agreement with the TEECC that sets out the terms and conditions of the grant to be provided by the City pursuant to Recommendation 3 hereof, including the authority for the TEECC to act as agent for the City in the collection and retention of the lease revenues that form the subject matter of the grant, and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

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.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 10, 2015

6. 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, Heritage and Downtown Development – November 10, 2015

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 18, 2015, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 10, 2015, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service, with the following amendment:

- That Recommendation 4 be deleted and replaced with the following:

    "4. That the City enter into a grant agreement with the TEECC that sets out the terms and conditions of the grant to be provided by the City pursuant to Recommendation 3 hereof, including the authority for the TEECC to act as agent for the City in the collection and retention of the lease revenues that form the subject matter of the grant, and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City."

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 517 Pandora Avenue for the purpose of a Sports Shop**

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

AUTHORIZATION

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

RECOMMENDATIONS

1. That the proposed Terms and Conditions attached as Schedule "A" for a Lease Agreement in favour of Home Run Sports Inc. for the purpose of selling sporting goods and clothing at the Transcona East End Community Centre as identified as "Main Floor Lease Area - 746 square feet" – 517 Pandora Avenue East on Misc. Plan 14540/1 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, a monthly operating grant to the Transcona East End Community Club Inc. ("TEECC") be approved in an amount equivalent to the monthly lease revenue collected subject to Recommendation 4 hereof.

4. That the City enter into a grant agreement with the TEECC 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 have negotiated the proposed Terms and Conditions of a Lease Agreement as set out in attached Schedule A in favour of Home Run Sports Inc. for the use of City-owned property at 517 Pandora Avenue East and identified as "Main Floor Lease Area – 746 square feet" on Misc. Plan No. 14540/1.

Council approval is required for all grants.

EXECUTIVE SUMMARY

Request for a Lease Agreement for the purpose of selling sporting goods at City-Owned property commonly known as Transcona East End Community Centre, as specified in the History section of this report.

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 Transcona East End Community Club will receive a monthly operating grant equivalent to the monthly lease revenues collected to help offset operating costs within the facility.

- The proposed Lease is for an initial term of five (5) years with an extension option of three (3) five (5) year renewals.

HISTORY

On February 27, 2013, Council approved the proposal to develop the multi-pad arena development at the Transcona East End Community Centre: "Transcona East End Expansion Project".

On July 17, 2014, the City entered into a funding agreement with TEECC setting out the Terms and Conditions pursuant to which City and Province of Manitoba funding is to be provided to the TEECC for the expansion project. Included in the funding agreement was a provision that the TEECC receive, among other revenues, lease revenues. Any monies remaining after the payment of certain specified costs and expenses are defined as "Annual Surplus Cash flow".

The TEECC is obliged to use 50% of the Annual Surplus Cash flow to service the principal and interest payments on debt associated with the East End Arena Expansion Project until such time as TEECC's $4.0 million share of such debt plus interest is repaid in full. Once the TEECC portion of the loan is paid in full, the TEECC will annually transfer 50% of Annual Surplus Cash Flow to a restricted capital reserve to be used exclusively for TEECC capital improvements.

Home Run Sports Inc. has expressed its interest to lease space on the main floor within the Transcona East End Community Centre 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 have negotiated proposed Terms and Conditions of a Lease Agreement in favour of Home Run Sports Inc.

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

FINANCIAL IMPACT

Financial Impact Statement

Date: September 16, 2015

Project Name:

Proposed Lease Agreement to Allow for the Use of a Portion of City-Owned Property at 517 Pandora Avenue for the purpose of a Sports Shop

First Year of Program **2015**

	2015	2016	2017	2018	2019
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	$ 3,333	$ 10,167	$ 10,667	$ 11,167	$ 11,667
Less: Incremental Revenue/Recovery	3,333	10,167	10,667	11,167	11,667
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenue in 2015 represents the first year rent of $10,000 pro-rated for the September 1 commencement date. Revenues from 2016 onward represent full-year rent increased by $500 on September 1 of each year. Direct costs represent the offsetting grant to the Transcona East End Community Centre.

"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)
Corporate Finance Department
Community Services Department
Public Works Department

OURWINNIPEG POLICY ALIGNMENT

Section 01 – A City That Works

Section 01-3 Prosperity – Direction 2: Provide a Predictable and Cost-effective Business Environment that Promotes Investment and Growth

Section 01-5 Recreation – Direction 2: Work with Community Partners to Provide Services that are Responsive to the Community's Recreation and Leisure Needs

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Municipal Accommodations
Prepared by:	Charles Osondu, Real Estate Officer
Date:	November 6, 2015
File No.:	MA2015-212

O:\Reports Directive\Municipal Accommodations\Leases\2015\MA2015-212 - Proposed Lease Agreement to Allow for the Use of a Portion of City-Owned Property at 517 Pandora Ave for the Purpose of a Sports Shop.docx

SCHEDULE A

PROPOSED TERMS AND CONDITIONS
517 PANDORA AVENUE EAST

Lessor:	1. The City of Winnipeg (hereinafter referred to as the "City")
Lessee:	2. 4671962 Manitoba Ltd. o/a Home Run Sports (hereinafter referred to as the "Lessee")
Leased Area:	3. A portion of City-owned property as shown on the attached Miscellaneous Plan No. 14540/1 identified as "Main Floor Lease Area 746 square feet – Transcona East End Community Centre ("TEECC") - 517 Pandora Avenue East" and hereinafter referred to as the "Leased Area".
Use:	4. For the purpose selling of sports equipment, apparel and memorabilia and the provision of skate sharpening, skate repair and related sporting equipment repair services and not for any other purpose except with the prior written consent of the City.
	5. Normal hours of operation are to be 12pm to 8pm Monday to Friday, 9am to 5pm Saturday and 10am to 4pm 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*.
Initial Term:	6. A five year term, commencing the first day of September 1, 2015.
Rent	7. $10,000.00 per annum plus GST with incremental increases of $500.00 + GST per year up to and including year 5, payable commencing on September 1, 2015 and then in each year of the Term thereafter.
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 Leased Area.
Legal Fee:	11. A one-time fee of $4,350.00 plus GST payable prior to the commencement date of the Lease.

Initials

Other Fees, Licenses, Taxes etc.:

12. All other license fees, business tax, levies, etc. which may be charged in respect of the use and occupation of the Leased Area.

Insurance:

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

14. 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.

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

16. 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;

17. 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;

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

19. Deductibles shall be borne by the Lessee;

20. 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;

21. 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;

22. The Lessee shall file with the City an annual Certificate of Insurance in a form satisfactory to the City's Supervisor of Insurance;

23. The City shall have the right to alter the limits and/or coverages

Initials

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.

24. The Lessee shall ensure that any contractor and/or sub-contractor hired to perform the development and maintenance of the pro shop 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;

    (b) All risks installation floater, carrying adequate limits to covers all machinery, equipment, supplies and/or materials intended to enter into and form part of any installation.

Deductibles shall be borne by the Contractor

The Contractor shall provide the Lessee and Lessor with a certificate(s) of insurance, in a form satisfactory to the City's Supervisor of Insurance, at least ten (10) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in C4.1 for the return of the executed Contract.

Cancellation:

25. 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:

26. Upon termination or cancellation of the Lease the Lessee shall remove its property from the Leased Area and leave same in a condition satisfactory to the Director of Planning, Property and Development (the "Director"). Should the Lessee default in so doing the City may remove the Lessee's property and restore the Leased Area at the sole risk and expense of the Lessee.

27. 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:

28. The Lessee is not to assign or sub-let or part with possession of all or any part of the Leased Area without the Lessee first obtaining the prior written consent of the Director. In such event,

Initials

the City in its sole discretion may cancel this agreement and enter into a new agreement;

29. 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

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

Lessee Improvements:

31. All Tenant Improvements to be performed at the sole cost, expense and effort of the Lessee, subject to prior written approval by the Director, in consultation with the TEECC.

32. All leasehold improvements upon the Leased Area shall immediately become the property of the City upon completion of construction unless otherwise stipulated by the City.

Operating Costs:

33. 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 Leased Area; (b) the cost of cleaning, maintaining and servicing the Leased Area, and (c) the cost of policing and supervising the Leased Area.

34. The Lessee will be responsible for connecting their equipment into the supplied electrical panel and meter.

Development, Maintenance and Repairs:

35. The development and maintenance of the Leased Area 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 Leased Area for its intended use.

36. In the event the Leased Area requires 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.

37. Should the Lessee fail to perform the repairs required pursuant to clause 36 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

Initials

the expenses and costs incurred.

City's Access:

38. The City shall have the right of access to the property upon giving twenty-four (24) hours' notice, unless under emergency conditions, in which case no notice shall be required 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 property, 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 property, without being responsible for any damage occasioned thereby.

Special Conditions:

39. The Lessee takes the Leased Area on an "as is" basis.

40. The Tenant 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 TEECC.

41. The Lessee shall provide The Transcona East End Community Centre an annual donation amounting to 2.5% of total sales per lease year.

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

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

44. If and whenever during the continuance of the 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 written notice to the Lessee, to terminate this Lease Agreement.

45. 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 Leased Area for any use or purpose, nor as to any environmental conditions which may exist.

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

47. The Lessee shall not file any caveat or other encumbrance against the Leased Area.

48. 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 Leased Area

Initials

by the Lessee or those permitted to use the Leased Area by the Lessee. This provision shall survive any termination, cancellation or expiration of this Agreement.

49. 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.

50. 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 Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services.

51. **All terms and conditions contained herein, are subject to the final approval of Council, or its delegated authority, and are not binding until such time as that approval is obtained.**

I/We, Scott Neiles, **being** duly

(Please print)

Authorized to act on behalf of **Home Run Sports Inc.**, hereby agree to enter into a lease agreement with the City of Winnipeg for the use of the property identified as "Main Floor Lease Area 746 square feet" on the attached Miscellaneous Plan No. 14540/1 and in accordance with the proposed terms and conditions as outlined herein.

SIGNATURE	**DATE** Sept 8 2015
SCOTT NEILS **NAME(Please print)**	CEO **POSITION**
SIGNATURE	**DATE** Sept 8/2015
Michael Hamm **NAME (Please print)**	President **POSITION**

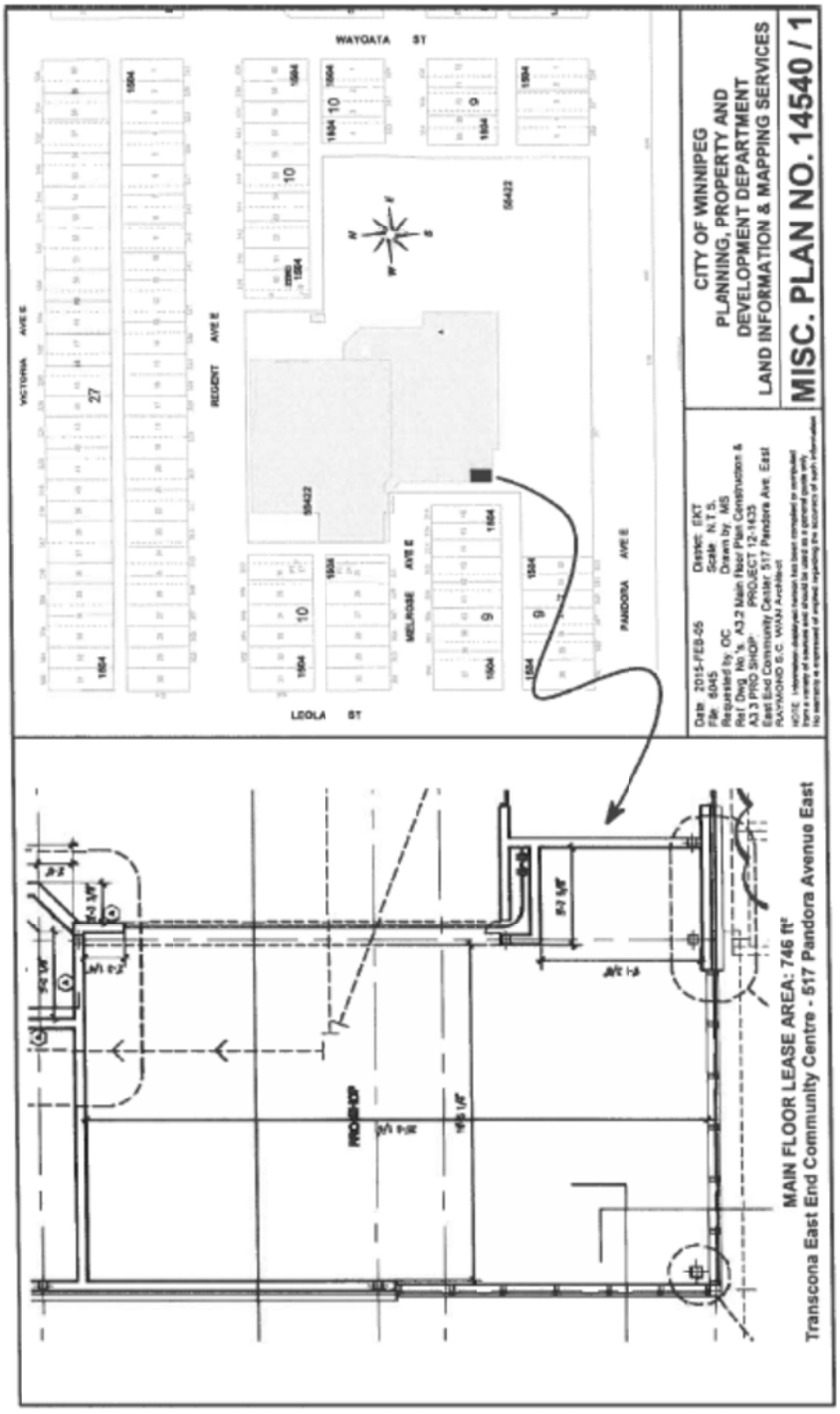
Please provide the following tenant contact information:

Contact Person:

Daytime: Scott Neiles Phone No.: 204 255 7887

After Hours: " " Phone No.: 204 981 9802

E-mail Address: SCOTT@HOMERUNSPORTS.COM .


WAYGATA ST
VICTORIA AVE E
REGENT AVE E
MELROSE AVE E
PANDORA AVE E
LEOLA ST
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14540 / 1
MAIN FLOOR LEASE AREA: 746 ft²
Transcona East End Community Centre - 517 Pandora Avenue East

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