Minute No. 171
Report - Standing Policy Committee on Property and Development - January 17, 2005

Item No. 4 Lease - 233 Provencher Boulevard to the Festival du Voyageur
Files FI-2.2(35) and FI-2(35)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That Council rescind its decision of December 17, 2003, with respect to the Acquisition and Development of land in North St. Boniface including the Club Le Rendez-Vous property.

2. That the City of Winnipeg not proceed with the proposed acquisition of the Club Le Rendez-Vous property at 768 avenue Tache, shown as “Subject Property” on Misc. Plan No. 11065/01.

3. 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 - January 17, 2005

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 19, 2005, 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 January 17, 2005, the Standing Policy Committee on Property and Development concurred in administrative Recommendation 1 and submitted to the Executive Policy Committee and Council that Council rescind its decision of December 17, 2003, with respect to the Acquisition and Development of land in North St. Boniface including the Club Le Rendez-Vous property and that the City of Winnipeg not proceed with the proposed acquisition of the Club Le Rendez-Vous property at 768 avenue Tache, shown as "Subject Property" on Misc. Plan No. 11065/01.

STANDING COMMITTEE DECISION:

On January 17, 2005, the Standing Policy Committee on Property and Development concurred in administrative Recommendations 2 and 3 as outlined in the report from the Director of Planning, Property and Development dated January 13, 2005, with the following amendment, namely:

- Delete the words "Exhibit 'A'" in the last line of Recommendation 2. and substitute therefore the words "Appendix 'B'".

Re: Proposed Lease of 233 Provencher Boulevard to the Festival du Voyageur
Riel Community
St. Boniface Ward

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

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

Report date: January 13, 2005

Recommendation(s):

1. Subject to approval of Recommendations 2. and 3. herein, that the City of Winnipeg not proceed with the proposed acquisition of the Club Le Rendez-Vous property at 768 Avenue Tache, shown as "Subject Property" on the attached Misc. Plan No. 11065/01.

2. That a lease of the City-owned premises known as 233 Provencher Boulevard, shown on the attached Misc. Plan No. 12063/1, to the Festival du Voyageur Inc. (Festival) be approved for a five-year period at a nominal rental of $1.00 per annum with the tenant being responsible for all costs of occupancy, including realty and any other applicable taxes, but excluding any upgrades or repairs to major building components that the City may require, and in accordance with the attached Exhibit "A", subject to:
    a) the closing of a sale of the Club Le Rendez-Vous property by the Festival to a private entity for residential redevelopment;
    b) approval by Council of a rezoning of the Club Le Rendez-Vous property to an appropriate residential use; and
    c) the execution of a Zoning Agreement that will extinguish any commercial rights on the Club Le Rendez-Vous property.

3. Subject to a successful sale of the Club Le Rendez-Vous property to a private entity for redevelopment, and its rezoning to an appropriate residential designation in accordance with terms approved by Council, that the City Solicitor be authorized to withdraw the City's Caveat currently registered against title to the Club Le Rendez-Vous, regarding an Option to Purchase the said property.

4. 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:

- On December 17, 2003, Council adopted a motion providing, among other things, that the Director of Planning, Property and Development be authorized to negotiate the acquisition of the Club Le Rendez-Vous property, at a price not to exceed market value, for the purposes of conversion to residential housing; and that a Request for Proposal Call for residential development of the Club Le Rendez-Vous site be prepared.
- The Festival is a non-profit organization that wishes to sell the subject Club Le Rendez-Vous facility at 768 Avenue Tache in order to pay out its indebtedness to La Caisse Populaire St. Boniface.
- From a planning perspective, the City of Winnipeg supports residential redevelopment of the Club LeRendez-Vous site because the existing commercial uses have generated activities that are disruptive to the adjacent area.
- In accordance with Council's instructions of December 17, 2003, the Planning, Property and Development Department negotiated a purchase price and conditions with the Festival for the acquisition of Club Le Rendez-Vous.
- While the Festival would prefer that the City acquire the subject property as initially contemplated, an alternative approach has been identified, which provides a high degree of assurance that the City will achieve its desired land use objectives at a lower cost for the City.
- The alternative proposal involves the issuance of a Request for Proposals (RFP) by the Festival for redevelopment of this property. The Festival is prepared to do all things reasonable and within its control to ensure that the property is redeveloped for residential use, in exchange for a five-year lease of the City owned 233 Provencher Boulevard at a nominal rental of $1.00 per annum.

Implications of the Recommendation(s):

General implications:

	None
	For the organization overall and/or for other departments
X	**For the community and/or organizations external to the City of Winnipeg**
	Involves a multi-year contract

Comment(s):

The recommendations of this report facilitate residential redevelopment of the Club Le Rendez-Vous property. The provision of a favorable lease to this cultural organization will support the continued operation of the Festival.

Policy implications:

X	**No**
	Yes

Comment(s):

Environmental implications:

X	**No**
	Yes

Comment(s):

No environmental issues are anticipated, however this proposal includes terms for the City's protection.

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):

The discounted present value of this proposed five-year lease is $238,000.00, which represents the lost opportunity cost to the City.

REASON FOR THE REPORT:

In accordance with Council's direction of December 17, 2003, the Director of Planning, Property and Development was authorized to negotiate the acquisition of the Club Le Rendez-Vous property, at a price not to exceed market value, for the purposes of conversion to residential housing.

This report outlines the results of these negotiations and recommends an alternative, which has a high degree of probability for ensuring redevelopment of the subject property to residential housing.

HISTORY:

The subject property consists of two parcels. 768 Avenue Tache, which is located on the north-east corner, and the other on the south-east corner of Rue Aubert and Avenue Tache, as shown on the attached Misc. Plan No. 11065/01.

The Standing Policy Committee on Property and Development, at its meeting held on September 30, 2003, referred an expression of interest from Qualico Developments (Winnipeg) Ltd. concerning Club Le Rendez-Vous and other City owned properties to the Director of the Planning, Property and Development Department for review and report back.

The Administration conducted an initial review of Qualico's proposal and reported on the results as instructed, for the information of, and consideration by, the Standing Policy Committee on Property and Development at its meeting held on December 4, 2003.

Council, on December 17, 2003, concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. *That the unsolicited expression of interest from Qualico Developments (Winnipeg) Ltd. be received as information and Qualico be advised the City is not currently able to entertain such a proposal.*
2. *That the Director of Planning, Property and Development be authorized to negotiate the acquisition of the Club Le Rendez-Vous property, at a price not to exceed market value, for the purposes of conversion to residential housing and that the Land Operating Reserve be used to fund the acquisition.*
3. *That, subject to community and Provincial approval, the Building Communities program be utilized to demolish the structures and prepare the site for residential conversion.*
4. *That a Request for Proposal Call for residential development of the Club LeRendez-Vous site be prepared.*
5. *That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.*

Particulars of the subject property are as follows:

Location:	North-east and south-east corners of Ave. Tache and Rue Aubert
Legal Description:	Lots 407, 409 & 411, Plan 64; and Pcls. A, B, C, D, E & H, together with right-of-way appurtenant to Pcl. H over Pcl. G, Plan 22412 WLTO (S Div) R.L.76 St. Boniface
Certificates of Title:	1276685, 1127799 & 1127797
Registered Owner:	Festival Du Voyageur Inc.
Realty Roll Numbers:	06-060157000; 060170500 & 060171000
Assessment:	$436,000.00 (1999)
Zoning:	Pt. "C-2" & pt. "C-1" Commercial, & Zoning Agreement DAZ 268/86 restricting use to commercial club, which may include a banquet hall and amusement facilities as approved under DCU 15/82 & DAV 22/86, and uses accessory and incidental thereto.
Size:	297' x 132' = 39, 204 sq. ft.; & irregular 30,246 sq. ft. Total = 6 452 m2 (69,450 sq. ft. or 1.59 acres)
Description:	768 Avenue Tache is a 1-storey with mezzanine commercial/recreational facility and offices originally built in 1955 and reportedly renovated in 1982; the main floor is 8,943 sq. ft. in area. This building is in very good condition for its age. This site also includes a wood frame garage structure and parking for a reported 55 cars. The gravel-surfaced lot on the south side of Rue Aubert is reported to contain parking for 84 cars plus an older industrial storage building.

A 1986 Zoning Agreement, DAZ 268/86, limits the use of the land located on the north side of Rue Aubert to a commercial club, which may include a banquet hall and amusement facilities as approved under Conditional Use and Variance orders DCU 15/82 and DAV 22/86, as well as uses accessory and incidental thereto. This Agreement runs with the land.

Under previous policy outlined in the North St. Boniface Secondary Plan, part of the Club Le Rendez-Vous site was designated for future commercial use with the remainder to be utilized for residential purposes. At recent public hearings relating to the Secondary Plan review process, the Residents Association and local property owners clearly noted that commercial uses such as banquet facilities and private clubs, as well as most other types of commercial development, are no longer appropriate land uses at this location. These commercial uses are viewed as major traffic and noise generators, and are therefore not compatible with the adjoining residential neighbourhood. In response to these concerns, amendments to the Secondary Plan are being considered to restrict use of this land to future low to medium density residential development.

Based upon the Council motion of December 17, 2003, referred to above, Council's intent is to have this property redeveloped for residential uses.

The Festival du Voyageur is a non-profit organization that wishes to sell the subject Club Le Rendez-Vous facility at 768 Avenue Tache in order to pay out its indebtedness to La Caisse Populaire St. Boniface.

Pursuant to Council's instructions of December 17, 2003, the Planning, Property and Development Department negotiated the proposed acquisition of the subject property, which included a purchase/sale, a one-year leaseback plus an eight-year rent-free lease of 233 Provencher Boulevard.

Following further discussions, the Festival agreed to an alternative approach, which provides a high degree of assurance that the City will achieve its desired land use objectives at a lower cost for the City. The Festival advised that it was prepared to issue a Request for Proposals (RFP) to redevelop this property and to do all things reasonable and within its control to ensure that the property is redeveloped for residential use, in exchange for a five-year lease of the City owned 233 Provencher Boulevard.

The building at 233 Provencher Boulevard had been leased on a month-to-month basis to the Provincial Department of Child and Family Services, who gave notice of termination effective August 31, 2004.

DISCUSSION:

Alternative 1 - Proposed City Acquisition:

The conditions of the negotiated purchase of the Club Le Rendez-Vous are contained in Appendix "A". In summary, they are as follows:

• Cash payment of	$465,000.00
• Present value of 8 year lease of 233 Provencher to Festival for $1.00	$360,000.00
Total Cost to City of Winnipeg	$825,000.00

The cost of demolition of the existing buildings on the property is estimated to be $145,000.00 plus approximately $55,000.00 for associated real estate costs. This will result in a cash outlay for acquisition and preparation for resale for residential development of $465,00.00 plus $145,000.00 plus $55,000.00, for a total of $665,000.00.

The Festival is of the opinion that the market value of this property is in the order of $778,000 for its existing use as a commercial club. This opinion is based on a written appraisal in that amount and a conditional Offer to Purchase from Entreprises Riel Inc. in an amount of $700,000.

The Department is of the opinion that the market value of this property "as if" vacant land to be redeveloped with multiple family residential development would be approximately $565,000.00.

Based upon this estimated value, the net cash cost to the City following resale of the property will be the acquisition cost of $665,000.00 less the estimated resale recovery of $565,000.00, resulting in a net cash cost of $100,000.00. In addition, there is a lost opportunity cost of $360,000.00 associated with lease of 233 Provencher Blvd.

There is expectation that this property will appreciate in value over time, which could reduce this potential cash cost. However, the timing and magnitude of this appreciation would only be speculative at this time.

Alternative 2 – Direct Sale by the Festival for Residential Development:

The Festival has provided confirmation that they are agreeable to sell the property for residential development in return for a five-year lease of 233 Provencher Boulevard for $1.00. They have provided written agreement to the recommendations contained within this report. The terms and conditions of the proposed lease are attached as Appendix "B".

This option provides a high level of assurance for residential development. Although this option does not provide the certainty of Alternative 1, it can be achieved at a lower cost.

The zoning provisions that are recommended to take effect, should the sale of the Club Le Rendez-Vous property be finalized, will ensure that the property can only be developed for residential purposes. There is a risk, considered to be small, that a sale may not be finalized. In this event, the City would have to consider other options to ensure residential development.

The City has a caveat registered against this property in respect of an Option to Purchase. This Option to Purchase was acquired by the City as a condition of Council's granting a Community Incentive Grant to the Festival du Voyager Inc. Removal of the City's Caveat regarding the aforesaid Option is necessary to facilitate a sale to a private entity.

CONCLUSION:

Alternative 2 is recommended because it achieves the City's land use objectives with a high degree of assurance at the least cost to the City. The cost of this alternative, based upon the net present value of the five-year lease at 233 Provencher Boulevard, is estimated to be $238,000.00.

Alternative 1, while providing a higher degree of certainty for residential development, has an estimated net cash cost based upon current appraisals of $100,000.00 plus an additional lost opportunity cost of $122,000.00.

Financial Impact Statement

Date: January 13, 2005

Project Name:

Proposed Lease of 233 Provencher Boulevard to the Festival du Voyageur

First Year of Program 2005

	2005	2006	2007	2008	2009
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	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

There is a lost opportunity cost of $238,000.00 for the provision of a five year lease in favour of the Festival du Voyageur for a nominal charge of $1.00.

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

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

Legal Services.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Ray Klassen & Ian McKay
PPD File #: 5975/C/11 V-3

Document name: o:\reports directive\real estate\acquisition\(vm)festivalrendezvous06.doc

APPENDIX "A"

THIS AGREEMENT made in duplicate, this day of A.D., 2004,

BETWEEN:

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

OF THE FIRST PART.

- and -

FESTIVAL du VOYAGEUR INC.,
duly registered to carry on business in Manitoba,
(hereinafter called the ***"Vendor"***),

OF THE SECOND PART.

WHEREAS the Vendor is the registered owner of land and commercial buildings municipally known as 768 Tache Avenue, in the City of Winnipeg, in Manitoba, legally described as **LOTS 407, 409 and 411, PLAN 64 WLTO (S Div) in RL 76 PARISH OF ST BONIFACE, PARCELS A and B PLAN 22412 WLTO in RL 76 PARISH OF ST BONIFACE and PARCELS C, D, E and H, PLAN 22412 WLTO together with a Right-of-Way for all purposes as appurtenant to said Parcel H over and upon Parcel G on said Plan, in RL 76 PARISH OF ST BONIFACE** shown outlined in heavy black line and identified as **"SUBJECT PROPERTY"** on Misc. Plan No 11065/01 attached hereto (herein called the ***"Vendor's Property"***);

AND WHEREAS the City is desirous of purchasing the Vendor's Property upon certain terms and conditions herein contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT:

1. The preamble hereto shall and does hereby form an integral part of this Agreement.

2. The parties hereto acknowledge and agree that the transaction of purchase and sale herein contemplated is conditional upon the approval of City Council and/or its delegated authority (herein called the ***"City's approval"***) and that nothing herein contained shall be construed as placing any duty or obligation upon the City to approve such transaction.

3. In consideration of the mutual covenants and agreements herein contained, the Vendor agrees to sell and convey to the City and the City agrees to purchase the Vendor's Property for an all-inclusive purchase price of **FOUR HUNDRED AND SIXTY-FIVE THOUSAND ($465,000.00) DOLLARS** (herein called the ***"Purchase Price"***).

4. It is hereby understood and agreed by the Vendor that:

   (a) the date for possession, payment of purchase price and tax adjustment shall be _____, 2004, or such other date as is mutually acceptable to the parties hereto but in any event, shall not be later than ninety (90) days following the City's approval if so given (herein called the ***"possession date"***); and

   (b) the Purchase Price shall include all fixtures on the premises including without limiting the generality thereof, all fitted carpets, electrical light fixtures, heating, plumbing and ventilating equipment, fire and smoke detection equipment, all of which are represented by the Vendor, to be free and clear of any encumbrances, liens, rental, financing or conditional sale contracts, and the Vendor agrees to allow the City access, prior to the date of possession, at its sole cost, effort and expense, to inspect the said fixtures and equipment.

5. Except as provided herein, the Purchase Price shall be payable only after all conveyances, documents and evidence required by the City Solicitor have been furnished by the Vendor.

6. The Purchase Price shall be paid in full payment and satisfaction for all estates and interests described in the title for the Vendor's Property.

7. The Vendor hereby covenants and agrees:

(a) that the Vendor's Property will not be conveyed, disposed of or encumbered in any manner whatsoever except subject to this Agreement;

(b) that the Vendor's Property will be conveyed to the City free and clear of any and all leasehold interests, maintenance agreements, liens, charges and encumbrances save and except Caveat Numbers 2778450, 1978719, 1908892 and 1017701, any public utility caveats or such other encumbrances as may be registered through, by or against the City;

(c) to consent on a Real Owner Application in the form similar to that which is attached to this Agreement and identified as **Schedule "A"** to add the City as the Real Owner of the Vendor's Property on the assessment rolls of the City of Winnipeg;

(d) to declare on or before closing whether or not it is a registrant pursuant to *The Excise Tax Act* and if yes:

(1) to advise the City of its registrant number; and

(2) to self-assess any applicable G.S.T. payable by it in respect to its sale of the Vendor's Property as herein contemplated;

(e) that any commissions and/or appraisal fees, professional fees and disbursements and applicable taxes incurred by the Vendor with respect to the sale of the Vendor's Property shall be the sole responsibility of the Vendor;

(f) that until possession of the Vendor's Land is delivered to the City, it shall remain at the sole risk and responsibility of the Vendor; and

that in the event of substantial damage to the Vendor's Land prior to possession being so delivered to the City, the City may, at its sole and unfettered discretion, elect to accept the proceeds of any insurance on the Vendor's Land and complete the purchase or alternatively, cancel the purchase, and in the event of cancellation, all monies paid by the City to the Vendor in compliance with this Agreement shall forthwith be returned to the City without deduction or penalty, and thereafter neither of the parties hereto shall have any further rights or liabilities hereunder.

8. The Vendor hereby declares that to the best of its knowledge and belief:

   (a) there are no outstanding orders, notices or requests for information and there are no existing, pending or threatened actions of an environmental, fire, health, labour or police nature as regards the Vendor's Property issued by a municipal, provincial or federal government or other authority having jurisdiction and there are no matters under discussion with any such authorities relating to such orders, notices, requests or actions;

   (b) the Vendor's Property complies with all existing building codes, zoning restrictions, by-laws and/or town planning schemes, fire regulations and health codes, and is free from any outstanding work orders whatsoever; AND the Vendor hereby undertakes and agrees to provide to the City at no cost and for the City's use, evidence of such compliance as the City may reasonably request;

   (c) there are no waste disposal sites on the Vendor's Property nor has the Vendor's Property ever been used as a landfill or waste disposal site or for temporary storage of special wastes on an interim basis pending treatment or disposal;

   AND the Vendor hereby undertakes and agrees to provide to the City at no cost and for the City's use copies of any and all Environmental Audit and/or soil testing reports pertaining to the Vendor's Property in the Vendor's possession;

   AND FURTHER the Vendor hereby covenants and agrees to permit the City, its servants, employees and/or agents to enter upon the Vendor's Property at any time prior to the closing date for the purposes of conducting at the sole cost, effort and expense of the City, an Environmental Site Assessment; and

   (d) the Vendor's Property has not been substantially renovated.

9. The City hereby acknowledges and agrees that in the event the City, at its sole effort, cost and expense, conducts or causes to be conducted an environmental site assessment of the Vendor's Property, it shall:

   (a) ensure that all work done in connection with such environmental site assessment is completed not later than the closing date;

   (b) maintain the Vendor's Property in a safe condition at all times during the conduct of any work done in pursuance of this Clause;

   (c) restore the Vendor's Property to the same condition as it was prior to its entering in or upon same in pursuance of this Clause; and

(d) indemnify and save harmless the Vendor from and against all damages and claims arising out of or in any way attributable to the conduct of any such environmental site assessment.

FURTHER, in the event it is determined as a result of such environmental site assessment that there are environmental concerns and/or contamination of the Vendor's Property, and the City advises the Vendor in this respect on or before the possession date, the City, at its sole option, shall be entitled to cancel the sale and the Vendor shall forthwith return to the City all monies paid by the City to that date, without deduction.

10. The City hereby covenants and agrees that:

(a) in consideration for the agreement on the part of the Vendor to convey the Vendor's Property to the City as herein contemplated, the City will:

(1) enter into a Lease Agreement with the Vendor in the form attached hereto and identified as **Schedule "B"**, it being understood the date for commencement of the Lease shall be the date of possession as herein before stipulated; and

(2) enter into a Lease Agreement with the Vendor in the form attached hereto and identified as **Schedule "C"**, it being understood and agreed that the date for commencement of the Lease shall be as is mutually agreed upon between the parties hereto and as soon as practically possible following the expiration of the existing Lease Agreement for property municipally known as 233 Provencher Boulevard, in the City of Winnipeg, in Manitoba as identified in said **Schedule "C"**.

(b) it will self-assess any goods and services tax payable in respect of the transaction herein contemplated. The City's G.S.T. registrant number is R121682967;

(c) concurrent with its execution of this Agreement, execute a Real Owner Application as *"Applicant"* in respect of the Vendor's Property, in the form attached hereto and marked as **Schedule "A"**; and

(d) to be solely responsible for all costs incurred by it, including but not limited to legal and professional fees and land transfer tax, in satisfying all of its obligations under this Agreement.

11. Time shall be in every aspect and particular of the essence of this agreement which shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns and successors in title to the land herein described.

IN WITNESS WHEREOF the parties hereto have executed these presents in the manner appropriate to each, the day and year first above written.

FESTIVAL du VOYAGEUR INC.

Per: _____
Name: *(affix corporate*
Title: *seal)*

Per: _____
Name:
Title:

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

_____

THE CITY OF WINNIPEG

Per: _____
for DIRECTOR **of Planning, Property and Development**

Approved:

_____
Planning, Property and Development Department

Certified as to form:

_____
for CITY SOLICITOR

THIS IS SCHEDULE A referred to in the Purchase and Sale Agreement made in writing the day of , A.D., 2004, between **THE CITY OF WINNIPEG** (the ***"City"***) and **FESTIVAL du VOYAGEUR INC.** (the ***"Vendor"***).

File No. R.13/2004(9)

REAL OWNER APPLICATION

TO THE CITY ASSESSOR

The City of Winnipeg Roll No. 06060157000, 06060170500, 06060171000

1. **THE CITY OF WINNIPEG** requests that its name appears in the Assessment Roll of The City of Winnipeg in respect to the following property, pursuant to Section 12(1) of "The Municipal Assessment Act", Cap. M 226 S.M.

2. Description of property and Interest being acquired:

LOTS 407, 409 AND 411 PALN 64 WLTO (S DIV), PARCELS A AND B PLAN 22412 WLTO, AND PARCELS C, D, E AND H PLAN 22412 WLTO TOGETHER WITH A RIGHT OF WAY FOR ALL PURPOSES AS APPURTENANT TO SAID PARCEL H OVER AND UPON PARCEL G ON SAID PLAN IN RL 76 PARISH OF ST BONIFACE	**FEE SIMPLE**

shown outlined in heavy black line and identified as ***"SUBJECT PROPERTY"*** on Misc. Plan No. 11065 hereto attached

3. Mailing Address 510 Main Street, Winnipeg, Manitoba, R3B 1B9

4. Place of Residence Winnipeg, Manitoba

5. Name and Address of Current Registered Owner: FESTIVAL du VOYAGEUR INC., 768 Av. Tache, Winnipeg, Manitoba R2H 2C4

6. Description of buildings on property: Commercial Buildings

7. Date Applicant is Responsible for Taxes: , 2004.
8. Purchase Price: $465,000.00

Registered Owner: **FESTIVAL du VOYAGEUR INC.**

Per: *"Authorized Signatory"*
Name:

APPENDIX "B"

(233 Provencher Boulevard) File No. R.13/2004(9)

THIS AGREEMENT made in duplicate, this day of , A.D., 2004;

BETWEEN:

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

OF THE FIRST PART.

- and -

FESTIVAL du VOYAGEUR INC.,
duly registered to carry on business in Manitoba,
(hereinafter called the ***"Lessee"***),

OF THE SECOND PART.

draft

WHEREAS the City is or is entitled to be the registered owner of land and commercial buildings shown outlined in heavy black line and identified as **"CITY PROPERTY"** on Misc. Plan No. 12063/1 attached hereto (herein called the ***"City's Property"***);

AND WHEREAS within the City's Property is located the land and commercial building municipally known as 233 Provencher Boulevard and identified on said Misc. Plan No. 12063/1 (herein called the ***"demised premises"***);

AND WHEREAS the Lessee has applied to the City to lease the demised premises for use as an office and storage space for the Lessee's business operations;

AND WHEREAS the City agrees to permit the Lessee to lease the demised premises as hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants hereinafter contained on the part of the Lessee to be paid, observed and performed, the City hereby permits the Lessee on its behalf;

TO HAVE AND TO HOLD the demised premises for a term of five (5) years commencing in accordance with the provisions of Sub-Clause 3(a) herein;

YIELDING AND PAYING THEREFOR rent in the amount of **ONE ($1.00) DOLLAR**, plus applicable Goods and Services Tax, unto the City, for the said term, payable in advance.

1. THE LESSEE HEREBY COVENANTS AND AGREES WITH THE CITY AS FOLLOWS:

(a) it shall pay to the City an amount equal to the total of such taxes, rates, including local improvements, and charges assessed for the demised premises in the same manner as if the demised premises had been entered on the assessment roll of the City of Winnipeg as privately owned and subject to taxes;

(b) in addition to the payment aforesaid, it shall pay all licence fees and business tax which may be charged in respect of the use and occupation of the demised premises by the Lessee and any goods and services tax charged in respect of fees payable under this Lease Agreement or in respect of the rental of space under this Lease Agreement, whether such fees and taxes are charged by any municipal, provincial or federal authority or otherwise.

(c) except as otherwise herein provided, at all times during the currency of this Lease Agreement and any subsequent renewals thereof, it shall be totally responsible for all costs in connection with the Lessee's use and occupancy of the demised premises including, without limiting the generality of the foregoing, garbage removal, snow removal from all sidewalks, stairs and entryways, operating, caretaking,

maintenance, including glazing and decorating, utility and security costs and general maintenance of the demised premises and operating equipment related thereto; AND to keep and maintain the demised premises in a clean and sanitary condition satisfactory to the City's Director of Planning, Property and Development or such other officer as may be acting in his stead (herein called the ***"Director"***) and in accordance with the requirements of all municipal, provincial and federal laws thereto pertaining; AND to return the demised premises to the City in a condition in which the Lessee is required to maintain same, ordinary wear and tear excepted.

(d) upon reasonable notice from the City, it shall conduct any and all reasonable repairs to the demised premises required including those caused by vandalism, or by the negligence of the Lessee, its servants, employees, invitees and/or agents (except those due to normal wear and tear); and all such repairs shall be made at the sole effort, cost and expense of the Lessee; and all work in respect thereto shall be performed by the Lessee and/or its designated contractor in a good and workmanlike manner.

(e) subject to sub-clause 2(c) it shall reimburse the City for any and all costs incurred by the City in making good any loss or damage to the demised premises and/or utilities caused as a result of the Lessee's use of the demised premises and without limiting the generality of the foregoing, caused as a result of any negligent or wilful act of the Lessee, its contractors, agents, servants or employees.

(f) it shall use the demised premises for an office and storage space for the Lessee's business operations and for no other purposes whatsoever.

(g) it shall not erect nor permit the erection of any buildings or structures, nor undertake any improvements to the demised premises without having first obtained the prior written consent of the Director.

AND IT IS HEREBY UNDERSTOOD AND AGREED by the Lessee that any such improvements shall be at the sole cost and responsibility of the Lessee and shall remain with and at the demised premises following termination of this Lease Agreement and any subsequent renewals thereof.

(h) it shall not at any time, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in, or upon the demised premises 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 demised premises 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.

(i) it shall ensure that all environmental contaminants are received, handled, used, stored, treated, shipped and disposed of in the manner required from time to time by applicable laws, by-laws, regulations rules or requirements of all authorities having jurisdiction over the demised premises or the Lessee.

It is hereby further acknowledged and agreed by the Lessee that it shall not at any time release into the environment or deposit, discharge, place or dispose of at, on or near the demised premises 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.

(j) it shall at its sole cost, effort and expense, obtain all necessary permits and shall comply promptly with all laws, by-laws, ordinances, rules, regulations, orders, requirements and recommendations of any and all federal, provincial, municipal and other governmental authorities or associations or insurance underwriters or agents which may be applicable to the Lessee or to the manner of use of the demised premises.

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

(l) it shall at all times during the continuance of this Lease Agreement and any subsequent renewals thereof, 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, licensee, 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 demised premises, or the construction, maintenance, existence or use of any buildings or structures erected thereon, with or without the permission of the City, or in any way connected therewith, or otherwise by reason of the exercise by the Lessee of the use hereby granted, or the performance or failure to perform its obligations hereunder, it being understood and agreed that in case any such claim, action, suit or demand be 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 action or suit and that in all cases, the Lessee will and does hereby covenant and agreed 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. For greater clarity, the Lessee shall not be liable for any claims arising from or through the City's responsibilities with respect to the demised premises.

TO FURTHER SAFEGUARD THE CITY the Lessee shall purchase and keep in force during the full term of this Agreement, a Comprehensive General Liability Policy, including but not limited to the following provisions:

- The City of Winnipeg to be added as an additional insured;
- the policy to contain a Cross-Liability clause;
- minimum limits of $2,000,000.00, all inclusive;
- the policy to provide for Tenant's/Licensee's Legal Liability;

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 shall have a right to alter the limits and coverages as required from time to time during the continuance of this Agreement;

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 Agreement, 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 Solicitor.

(m) it shall not, without the prior written approval of the Director first had and obtained, which approval shall not be unreasonably withheld, sublet or assign the demised premises or any part thereof, PROVIDED THAT the Lessee hereby acknowledges and agrees that any consent by the City to an assignment or sub-let of this Lease Agreement shall not relieve the Lessee of its obligations for the payment of rent and the performance of the terms and conditions on the part of the Lessee to be kept and performed.

(n) it shall be and remain at all times during the currency of this Lease Agreement and any subsequent renewals thereof, liable to the City for all payments due and obligations and liabilities, including any damages, repairs or utility arrears, up to the date of termination for any reason whatsoever, of this Lease Agreement, and for the fulfilment of all obligations contained in this Lease Agreement on the part of the Lessee to be observed and performed upon or after such termination.

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

(1) to view the state of repair of the demised premises, and the Lessee shall repair within 10 days notice in writing given by the City. If the Lessee fails to repair according to notice, the City may do such work at the sole cost and expense of the Lessee;

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

(3) to inspect, maintain, repair and/or replace its utilities in or near the demised premises; and

(4) for any other reasonable purposes;

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

AND FURTHER, the City shall not be responsible in any way for any injury to any person or for any loss of or any damage to any property belonging to the Lessee or other occupants of the demised premises or to their respective invitees, licensees, agents, servants or other person(s) or group(s) from time to time attending at the demised premises while such person or property is in or about the demised premises except as may be caused by the direct negligence of the City, its servants, employees or agents.

(p) it shall not file or permit to be filed any caveat or other encumbrance against the demised premises or any part thereof.

2. THE CITY COVENANTS AND AGREES WITH THE LESSEE AS FOLLOWS:

(a) that save as otherwise herein provided, the Lessee shall have the exclusive use of the demised premises including, without limiting the generality of the foregoing, the land, parking facilities and other improvements located in, on or upon the demised premises.

(b) that provided the Lessee is not in default of any of its obligations herein contained, it shall at all times during the currency of this Lease Agreement and any subsequent renewals thereof, have quiet enjoyment of the demised premises.

(c) notwithstanding that the Lessee is responsible for the general maintenance and repair of the demised premises and operating equipment, the City shall at its sole cost, effort and expense, attend to any upgrades or repairs of the major building components such as the plumbing, heating, ventilation, cooling, mechanical, roof and structural components of the demised premises that the City, in its sole and unfettered discretion, may consider necessary to preserve the capital asset and where a general repair would be insufficient in the circumstances.

3. IT IS HEREBY MUTUALLY AGREED BETWEEN THE CITY AND THE LESSEE AS FOLLOWS:

(a) the commencement date of this Lease Agreement (hereinafter called the ***"commencement date"***) shall be the thirtieth (30th) day following notice being given to the Lessee by the City that the demised premises is available for occupancy, provided that the commencement date shall only occur during the months of June, July and/or August unless otherwise agreed to by the Lessee.

(b) during the term of this Lease Agreement and any subsequent renewals thereof, the Lessee shall be entitled to the use of five (5) vehicle parking spaces to be located within the boundaries of the City's Property, such location to be determined from time to time by the City.

(c) if at any time during the currency of this Lease Agreement and subsequent renewals thereof, or after the dissolution or determination thereof, any dispute, difference of question shall arise between the parties as to any matter arising hereunder, which the parties are unable to resolve by agreement, the same shall be submitted to arbitration in accordance with the provisions of The Arbitration Act of Manitoba and any statutory modification or re-enactment thereof.

(d) this Lease Agreement may be terminated by the Lessee at any time by giving written notice to the City naming therein a date at least one hundred and eighty (180) days from the giving of such notice upon which date this Lease Agreement and all rights contained therein, shall cease and terminate.

(e) other than in the case of default by the Lessee of any of its obligations herein contained, the City shall be entitled to terminate this Lease Agreement only in the event that it becomes necessary to accommodate future redevelopment of the City's Property or any part thereof; AND IN THAT EVENT, the City shall and does hereby undertake to:

(1) provide written notice to the Lessee naming therein a date at least one hundred and eighty (180) days from the giving of such notice upon which this Lease Agreement and all rights contained therein as same pertains to the demised premises, shall cease and terminate provided that such date for termination shall not be earlier than June 1 or later than August 31; and

(2) make available to the Lessee comparable space within the St. Boniface/St. Vital community, under the same terms and conditions and for the same period of time as remains under this Lease Agreement.

(f) without in any manner whatsoever restricting any other rights and remedies which the City may have in the case of breach, non-observance or non-performance on the part of the Lessee of any covenant, proviso, condition, restriction or stipulation of this Lease Agreement contained, the City shall if the Lessee defaults in performing or observing other covenants in this Lease Agreement and the City has given the Lessee written notice

of such default with reasonable and sufficient particulars of the default and requiring the same to be remedied within Thirty (30) Days after the receipt of such notice of default or such other longer period as may be reasonably necessary and agreed to by the City, and if the Lessee fails to remedy such default within the period stipulated in the aforesaid notice, the City may forthwith terminate this Lease Agreement and enter the demised premises and repossess the same.

(g) 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.

(h) 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 demised premises by the Lessee or anyone on behalf of the Lessee.

(i) upon termination or cancellation of this Lease the Lessee shall at its own expense, remove all its property from the demised premises and shall restore the demised premises to the same condition as at the date of commencement, normal wear and tear excepted; AND in the event the Lessee defaults in so doing, the City may remove the Lessee's property and restore the demised premises at the sole risk and expense of the Lessee.

(j) in the event the Lessee remains in possession of the demised premises after the expiration of this Lease and without the execution and delivery of a new Lease or Agreement to Renew, it shall be deemed to be occupying the demised premises as a tenant from month to month at twice the rent herein mentioned prorated in relation to the periods of time during which the Tenant is an overholding tenant, and on the terms and conditions herein set out except as to length of tenancy; AND a tenancy from year to year shall not be created by implication of law.

(k) that if and whenever during the continuance of this Lease Agreement and any subsequent renewals thereof, the demised premises or any part thereof shall be destroyed or damaged by fire, lightning, explosion, tempest or act of God, the City and the Lessee shall each have the option, exercisable within One (1) Month after such destruction and upon the giving of notice to the Lessee, to terminate this Lease Agreement.

(l) any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by personal delivery or delivered by a nationally recognized overnight courier service, to the applicable address set forth below:

AS TO THE LESSEE:

Festival du Voyageur Inc.
233 Provencher Boulevard
Winnipeg, Manitoba
R2H 2C4

AS TO THE CITY:

The City of Winnipeg

510 Main Street
Winnipeg, Manitoba
R3B 1B9

Attention: Planning, Property and Development Department
File No. 5975/C/11 V-2

AND any notice, if delivered, shall be deemed to have been validly and effectively given and received on the date of delivery.

AND FURTHER, by giving to the other party at least ten (10) days notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this sub-Clause.

(m) this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

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

FESTIVAL du VOYAGEUR INC.

Per: _____
Name: *(affix corporate*
Title: *seal)*

Per: _____
Name: *(affix corporate*
Title: *seal)*

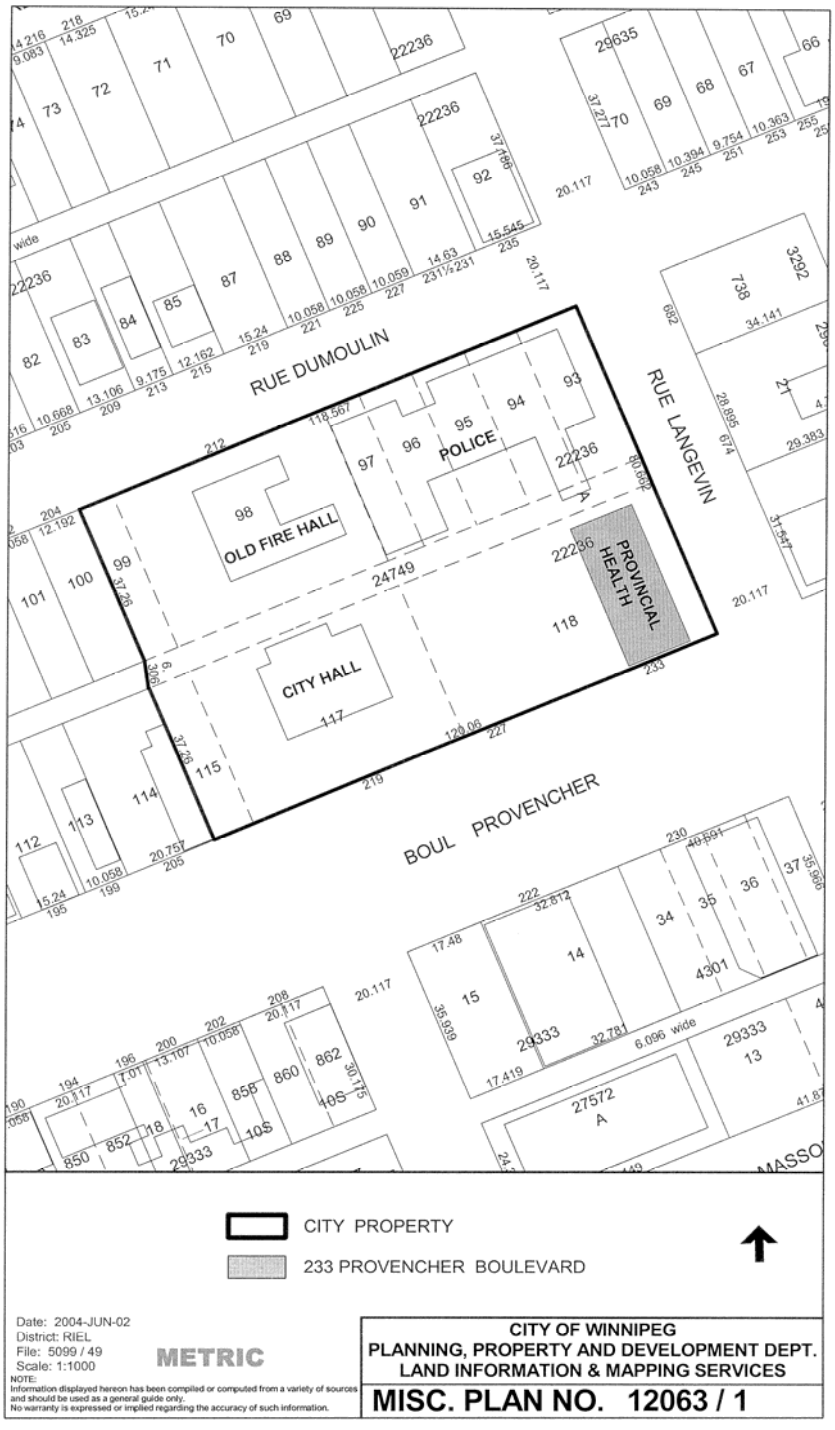
THE CITY OF WINNIPEG

Per: _____
for DIRECTOR of Planning, Property and Development

Approved: *Certified as to form:*

_____ _____

Planning, Property and Development Department *for CITY SOLICITOR*


RUE DUMOULIN
RUE LANGEVIN
BOUL PROVENCHER
POLICE
OLD FIRE HALL
CITY HALL
PROVINCIAL HEALTH
CITY PROPERTY
233 PROVENCHER BOULEVARD
Date: 2004-JUN-02
District: RIEL
File: 5099 / 49
Scale: 1:1000
METRIC
NOTE:
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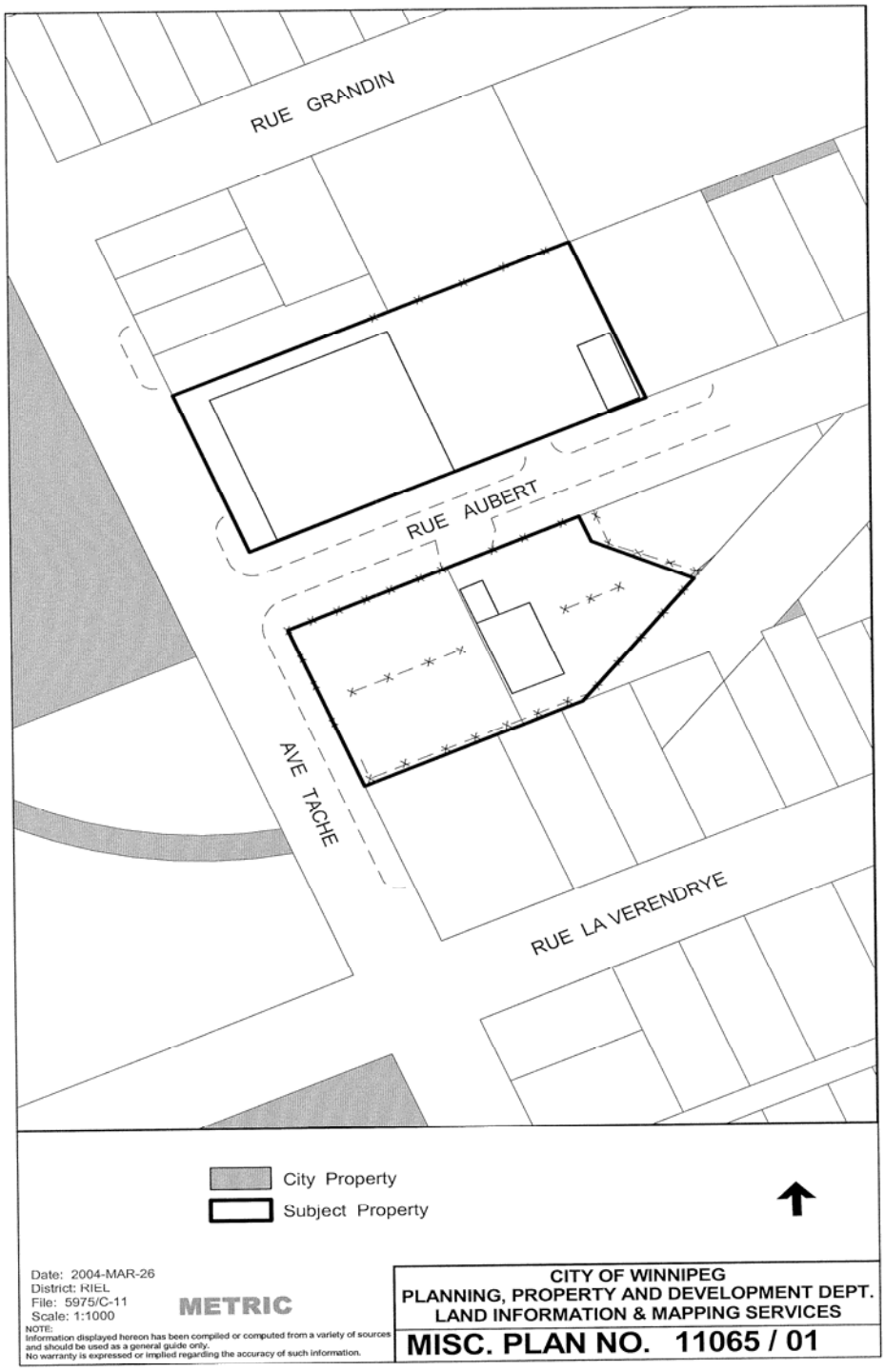
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12063 / 1


RUE GRANDIN
RUE AUBERT
AVE TACHE
RUE LA VERENDRYE
City Property
Subject Property
Date: 2004-MAR-26
District: RIEL
File: 5975/C-11
Scale: 1:1000
METRIC
NOTE:
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 11065 / 01