

Minnesota Department of Transportation
Office of Land Management
Transportation Building Mailstop 631
395 John Ireland Boulevard
St. Paul, Minnesota 55155-1899
612 296-9744

S.P.: 6235 (10=113) 901 *02-002
PARCELS: 103, 103A, 104 and 105

LEASE NO. H-05895
(62D003)

COMMERCIAL LEASE

THIS LEASE is made between the State of Minnesota, Department of Transportation ("Landlord"), and The City of Saint Paul ("Tenant").

Mail Lease to: Dave Nelson
Real Estate Manager
Real Estate Division
Room 218, City Hall
St. Paul, MN 55102

IT IS AGREED:

1. In consideration of payment of the rent hereinafter specified to be paid by Tenant, and the covenants and agreements herein contained, Landlord hereby leases to Tenant that certain property ("PREMISES") in the County of Ramsey, State of Minnesota, described as follows:

Address of Premises: The West side of I-35E between Granite Street and Cayuga Street, Saint Paul, MN

Type of Property: Commercial - Vacant Land

Legal Description:

All of Lot 14, Block 1, Edmund Rice's Second Addition to the City of Saint Paul, according to the plat thereof now on file and of record in the office of the Register of Deeds in and for Ramsey County.

All those parts of the following described tracts lying westerly of a line 28 feet distant westerly of and parallel to the centerline of the west frontage road to T.H. 35E known as L'Orient street:

Lot 15, Block 1, Edmund Rice's Second Addition to the City of Saint Paul, according to the plat thereof now on file and of record in the office of the Register of Deeds in and for Ramsey County, Lot 23 and that part of Lot 22, Auditor's Subdivision Number 8, Saint Paul, Minnesota; according to the plat thereof on file and of record in the office of the Register of Deeds in and for Ramsey County, lying east of the northerly extension of the west line of Lot 14, of Block 1, of Edmund Rice's Second Addition to the City of Saint Paul.

This Lease includes improvements, if any, and is in effect for the term of 36 months commencing on May 1, 1996 and ending on April 30, 1999, with the right of termination in both Landlord and Tenant as hereinafter set forth.

2. RENT. Tenant shall pay to Landlord as rent for the Premises the sum of \$1,420.00, for the entire term of the Lease. Payments shall be made as follows: A payment of \$905.00, \$430.00 for the period commencing on May 1, 1996 and ending on April 30, 1997 and \$475.00 for the period commencing on May 1, 1997 and ending on April 30, 1998 due with the signing of this Lease. A payment for \$515.00 due on May 1, 1998 for the period commencing on May 1, 1998 and ending on April 30, 1999. Future rent payments are to be mailed or delivered to Landlord's finance office as follows:

Department of Transportation
Office of Financial Management
Accounting Department
395 John Ireland Blvd., Mailstop 215
St. Paul, MN 55155-1889

Make checks payable to:
Commissioner of Transportation

3. USE OF PREMISES. Tenant shall use the Premises for the following purpose only: Recreational playground area (known as the Cayuga Playground).

It shall be the sole responsibility of Tenant to comply with all laws, regulations, or ordinances imposed by any jurisdiction governing the use of the Premises. Failure to comply will not relieve Tenant of the obligation to pay rent. Tenant's use of the Premises must not interfere with the public's use of any adjacent highway.

Signs or displays will be restricted to those indicating proprietorship and type of activities conducted on the Premises, and will be subject to regulation by Landlord as to number, size, location, and design.

4. MAINTENANCE AND REPAIRS. Tenant shall keep the Premises in good condition at Tenant's own expense, and shall not call on Landlord to make any improvements or repairs.

5. CHARGES AND EXPENSES. Tenant shall pay when due all utility charges and any other charges or expenses connected with Tenant's use of the Premises.

6. NOTICES. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when served personally on Landlord or Tenant, or when made in writing and deposited in the United States Mail and addressed as follows: To Tenant at the mailing address above stated and to Landlord, Department of Transportation, Office of Land Management, Transportation Building Mailstop 631, 395 John Ireland Boulevard, St. Paul, Minnesota, 55155-1899. The address to which notices are mailed may be changed by written notice given by either party to the other.

7. CANCELLATION. This Lease shall be subject to cancellation by either party at any time during the term hereof by giving the other party notice in writing at least 60 days prior to the date when the cancellation will become effective. Furthermore, this Lease shall be subject to cancellation by Landlord if the Premises become needed for highway purposes (as determined solely by Landlord) by giving Tenant notice in writing at least 10 days prior to the date when the cancellation will become effective. In the event of cancellation any unearned rent paid by Tenant will be returned.

8. INDEMNIFICATION AND RELEASE. Tenant shall defend, indemnify, save harmless, and release Landlord and Landlord's employees from and against all claims, demands, and causes of action for injury to or death

of persons or loss of or damage to property (including Tenant and Tenant's property) occurring on the Premises and connected with Tenant's use and occupancy of the Premises, regardless of whether such injury, death, loss, or damage is caused in part by:

- (i) the negligence of Landlord or
- (ii) is deemed to be the responsibility of Landlord,

because of its failure to supervise, inspect, or control the operations of Tenant or otherwise discover or prevent actions or operations of Tenant giving rise to liability to any person.

If any negligence or responsibility of Landlord is unrelated to Tenant's occupancy or use of the Premises, Tenant will not be obligated to indemnify and hold harmless as set forth above.

9. INSURANCE. Prior to execution of this Lease by Landlord, the Tenant shall provide Landlord with a properly executed certificate(s) of insurance which shall clearly evidence the insurance required below, and provide that such insurance will not be canceled, except on 30 days' prior written notice to Landlord.

- 9.1 Tenant shall maintain during the full term of this Lease commercial general liability insurance or equivalent form including Premises-Operations Liability, Products/Completed Operations Liability (if applicable), Contractual Liability, and Fire Legal Liability with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it will apply separately to this Lease.
 - 9.1.1 This insurance shall include State of Minnesota as an insured with respect to performance of Lease.
 - 9.1.2 This insurance shall be primary with respect to any insurance or self-insurance programs covering Tenant, its officers and employees.
- 9.2 Tenant shall maintain during the full term of this Lease workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$500,000 each accident.

10. FIRE INSURANCE. None required. Tenant shall make no claim against Landlord arising out of any loss to the Premises.

11. RIGHT TO ENTER. Tenant shall allow Landlord and Landlord's contractors and authorized licensees to enter upon the Premises for any of the following purposes: to survey the land, to take soil borings, to perform utility relocation or repair work, or to perform any other work which is preparatory to a highway construction project; also to make emergency repairs required for highway safety. If there is a highway bridge above any part of the Premises, Tenant shall allow Landlord to enter upon the Premises to inspect, maintain, and repair the bridge and its structural supports. If any of these operations substantially restrict the Tenant's use of the premises, rent will be reduced proportional to the restricted use of the Premises during the period of the restricted use. The reduction (or abatement) of rent will be Tenant's only claim against Landlord based on such restriction (or abatement) of use. Tenant shall allow Landlord to inspect the premises and to show the premises by appointment to prospective buyers or renters. Before entering the Premises for any of the purposes under this paragraph, Landlord will make a reasonable effort to notify Tenant, provided, however, that in case of an emergency affecting highway safety (the existence of which will be determined solely by Landlord), if Tenant is not present to permit entry onto the Premises, Landlord or its representatives may enter

without notice to Tenant, and for such entry Landlord or its representatives will not be liable to Tenant.

12. **ADJACENT HIGHWAY FACILITY.** Tenant shall not permit the storage of any substance or material on the Premises which may create a fire hazard to the adjacent highway facility (including any overhead bridge and its structural supports). If Landlord determines that Tenant is using the Premises in such a way as to create a danger to the adjacent highway facility or the traveling public thereon, and if, upon receiving notice, Tenant does not immediately remedy the danger to the satisfaction of Landlord, then Landlord may immediately cancel this Lease and take possession of the Premises. Any requirement for giving notice of cancellation set out elsewhere in this Lease will not apply to cancellation under this section. Unearned rent paid by Tenant will be returned.

If a part of the Premises is situated under or adjacent to a highway bridge, Tenant acknowledges that Landlord's plowing and sweeping of the bridge may cause snow, ice, sand, or road sweepings to be pushed off the sides of the bridge or otherwise expelled off the bridge, falling onto the Premises. Tenant agrees that this risk is specifically included in the Tenant's indemnification and release of Landlord appearing elsewhere in this Lease.

13. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublet the Premises.

14. **CIVIL RIGHTS ACT.** Tenant shall not discriminate on the ground of race, color, sex, or national origin against any person in access to and use of the facilities and services operated or otherwise maintained on the Premises; and Tenant shall operate and maintain such facilities and services in compliance with Title VI of the Civil Rights Act of 1964, and Title 49, Code of Federal Regulations, Part 21.

15. **DEFAULT BY TENANT - LANDLORD'S REMEDIES.** The following occurrences are "events of default":

(a) Tenant defaults in the due and punctual payment of rent, and such default continues for five (5) days after notice from Landlord; however, Tenant will not be entitled to more than one notice for default in payment of rent during any twelve month period, and if, within twelve months after any such notice, any rent is not paid when due, an event of default shall have occurred without further notice.

(b) Tenant breaches any of the other agreements, terms, covenants, or conditions which this Lease requires Tenant to perform, and such breach continues for a period of thirty (30) days after notice by Landlord to Tenant.

At any time after the occurrence of either of the above events of default, Landlord may terminate this Lease upon giving written notice to Tenant and may then re-enter and take possession of the Premises in such manner as allowed or provided by law. Tenant shall pay Landlord all costs and expenses, including attorney's fees, in any successful action brought by Landlord to recover unpaid rent, or to recover damages for breach of any of the other covenants, agreements, terms, or conditions which this Lease requires Tenant to perform, or to recover possession of the Premises.

16. **HOLDING OVER.** If Tenant remains in possession of the Premises after the end of this Lease with the consent of Landlord, express or implied, Tenant shall occupy the Premises as a Tenant from month to month, subject to all conditions, provisions, and obligations of this Lease in effect on the last day of the term.

17. **MOVING OUT.** At the expiration or sooner termination of this Lease, Tenant shall leave the Premises in as good condition as when delivered to Tenant (except for ordinary wear and any loss covered by insurance payment to Landlord).

18. **SALE OR TRANSFER OF PREMISES.** If Landlord sells or transfers the Premises, Landlord's liability for the performance of its covenants under this Lease shall end on the date of the sale or transfer, and Tenant shall look solely to the purchaser or transferee for the performance of those covenants.

19. **RELOCATION ASSISTANCE:** Persons, businesses, farms, non-profit organizations, and other entities (hereinafter collectively referred to as Tenant) displaced by cancellation or termination of this Lease, or by moving out prior to cancellation or termination of this Lease, are not classified as "displaced persons" and are not eligible for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its amendments. By signing this Lease, TENANT affirms that they are not a displaced person.

20. **ADDITIONAL AGREEMENTS.** Landlord has accepted a statement of self-insurance by the Tenant in lieu of the Certificate of liability insurance required in Section 9.

21. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between Landlord and Tenant with respect to its subject matter and may be amended only by subsequent written agreement between them. Except for those which are set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to one another with respect to this Lease.

FILENAME:

TENANT

CITY OF SAINT PAUL

By [Signature]
Its Mayor (Asst.)

Date _____

By [Signature]
City Clerk

Date 5/13/98

By [Signature]
Director, Department of Finance & Management Services
601-03132

Date 5/5/98

By [Signature]
Director, Department of Parks & Recreation

Date _____

Approved as to form and execution

By [Signature]
Assistant City Attorney

Date 4-28-98

LANDLORD, STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
COMMISSIONER OF TRANSPORTATION

By [Signature]
Merritt H. Linzie, Director
Office of Land Management

Date 5-21-98

Approved as to form and execution

FOR THE ATTORNEY GENERAL

By Original signed by:
Lynn A. Klessig

Title Legal Assistant

Date 5/27/98