

Exhibit B

(File Name: _____)

Revised

Authority (C.F. or A.O.)

LEASE NO. PR/86

DATE: _____

LESSOR: CITY OF SAINT PAUL

LESSEE: Market House Condominium Association

CITY OF SAINT PAUL



LEASE AGREEMENT

1) **Leased Premises.** The LESSOR, in consideration of the covenants and agreements herein contained, and other good and valuable consideration does hereby lease, demise and let unto LESSEE the premises hereinafter referred to as the "Leased Premises," that certain real estate on 5th Street East, Saint Paul, Minnesota, which is legally described as the Subject Property in Exhibit A to the Stipulation by and between Lessor, as Petitioner, and Lessee, as Respondent, in that matter captioned The City of St. Paul vs. Market House Condominium Association, et al., Ramsey County District Court, File No. 62-CV-12-9159, to which this Lease is attached as Exhibit B ("Stipulation").

2) **Term of Lease.** This lease shall be in effect for a term commencing and ending on the dates indicated below, unless terminated earlier by the LESSOR as provided herein.

Term (Months/Years)	Commencing Date	Ending Date
_____	<u>February 28, 2013</u>	<u>May 31, 2013</u>

3) **Use of Premises.** The LESSEE shall use and occupy the Leased Premises for the following purpose:
Parking for the residents of the Market House Condominium.

Space may be used for this purpose and for no other purpose without the prior written consent of LESSOR

- 4) **Rent.** Rent shall consist of Basic Rent and such Additional Rent as may apply. LESSEE shall pay all rent in advance, on the first day of the term of the lease and on the first day of each payment period thereafter as indicated in the Payment Schedule below:

a) **Basic Rent**

Total Basic Rent During Lease Term	Payment Schedule		
	(Payment Period	Commencing Date	\$ per Period)
\$1.00			\$

b) **Additional Rent.** Additional Rent means all amounts, other than Basic Rent provided for in paragraph (4-a) above, that LESSEE shall be obligated to pay under this paragraph or other provisions of this Lease. Additional Rent shall include, but is not limited to, the following fees, costs and expenses:

- i) all utilities, including water, electric, gas, telephone, sewage and garbage collection and disposal;
- ii) costs for the repairs, improvements or alterations required to be made by the LESSEE in paragraph 11 of this Lease; and
- iii) property insurance premium and/or uninsured losses as set forth in paragraph (6) of this Lease.

In the event that LESSEE does not make such payments (or any payments required to be paid as Additional Rent), LESSOR may make the payments at its option, and the payments so paid become Additional Rent, and are due and payable by the LESSEE after written notice of same to the LESSEE by LESSOR.

LESSEE shall make all payments of Basic Rent and Additional Rent to LESSOR at the following address:

to be determined by LESSOR

The applicable account number for City Finance Accounting Code is:

to be determined by LESSOR

All Basic and Additional Rent shall be payable on the date certain provided herein, or if no date certain is provided, within 30 days of the billing date. The LESSOR shall charge interest of 1.5% per month on any Basic or Additional Rent remaining unpaid beyond the due date as here provided.

- 5) **Right of Entry.** At all times during the term of this lease, the LESSOR shall have the right, by itself, its agents and employees, to enter into and upon the Leased Premises during reasonable business hours or, in the event of an emergency, at any time for any legitimate purpose.
- 6) **Insurance.** The LESSEE shall acquire during the term of this lease the following coverage:

- i) The LESSEE shall be responsible for the self insurance of, or the acquisition of Commercial Property Insurance on its personal property.
 - ii) COMMERCIAL GENERAL LIABILITY INSURANCE including blanket contractual liability coverage, personal injury liability coverage and broad form property damage liability endorsement with a combined single limit of not less than \$1,500,000 per occurrence, \$3,000,000 aggregate, shall be purchased by the LESSEE. Such insurance shall: (a) name the City of Saint Paul as additional insured; (b) be primary with respect to LESSOR'S insurance or self-insurance; (c) not exclude explosion, collapse and underground property damage; (d) be written on an "Occurrence Form" policy basis; and (e) not contain an "aggregate" policy limit unless specifically approved in writing by LESSOR.
 - iii) AUTOMOBILE LIABILITY INSURANCE with minimum limits of \$1,000,000 combined single limit and \$2,000,000 aggregate, covering hired, non-owned and owned automobiles.
 - iv) The LESSEE shall supply to LESSOR current insurance certificates for policies required in Paragraph (7). The said certificates shall certify whether or not the agent has errors and omissions insurance coverage.
 - v) The limits cited under each insurance requirement above establish minimums; and it is the sole responsibility of the LESSEE to purchase and maintain additional insurance that may be necessary in relation to this lease.
 - vi) Nothing in this contract shall constitute a waiver by the LESSOR of any statutory limits or exceptions on liability.
 - vii) LESSEE shall place the insurance with responsible insurance companies authorized and licensed to do business in the State of Minnesota and approved by LESSOR, and shall deliver copies of the policies to LESSOR on the date of LESSEE'S execution of this agreement. The policies required in paragraph (7) shall be endorsed to indicate that the insurer shall give the LESSOR notice of any changes or cancellation per the terms of the policy.
 - viii) Insurance limits shall be subject to the tort claims liability limits as set forth in chapter 466 of Minnesota Statutes.
- b) Waiver of Subrogation. LESSOR waives its right of subrogation for damage to the Building, contents therein, loss of use thereof, and/or loss of income, up to the amount of insurance proceeds collected. LESSEE waives its right of subrogation for damage to property in the Leased Premises, loss of use thereof, loss of income and/or accounts receivable, up to the amount of their respective insurance proceeds collected. The parties shall notify their respective insurance companies, in writing, of the provisions of this

paragraph; and, if either cannot waive its subrogation rights, such party shall immediately notify the other party, in writing.

- 7) **Cancellation or Termination.** Subject to Section 26 herein, this lease is non-renewable and shall terminate effective midnight, May 31, 2013, without further notice.
- 8) **Notice.** All notices herein provided to be given, or that may be given by either party to the other, shall be deemed to have been fully given when served personally on LESSOR or LESSEE, or when made in writing and deposited in the United States Mail, certified and postage prepaid, and addressed to the LESSEE care of J. Patrick Brinkman, Felhaber, Larson, Fenlon & Vogt, P.A., 220 South Sixth Street, Suite 2200, Minneapolis, MN 55402, and to the LESSOR at the Real Estate Division, 25 W. 4th St., 1000 City Hall Annex, Saint Paul, Minnesota 55102, with copy to Peter G. Mikhail, Kennedy & Graven, Chartered, 200 South Sixth Street, Suite 470, Minneapolis, MN 55402. The address to which the notice shall be mailed may be changed by written notice given by either party to the other. Nothing herein shall preclude the giving of such address change notice by personal service.
- 9) **Assignment and Subletting.** LESSEE shall not assign or sublet this Lease, except that LESSEE may rent or license parking stalls to residents of the Market House Condominium (subject to the terms of this Lease and the Stipulation).
- 10) **Maintenance and Repairs.** LESSEE shall, at its own cost and expense, be responsible for all repairs, maintenance and upkeep of the Leased Premises, including but not limited to emergency repairs of any kind; routine maintenance and repair to keep the Leased Premises in good repair, safe and in compliance with applicable fire, health, building and other life-safety codes; and all repairs and maintenance needed to keep the buildings or structures on the Leased Premises in good condition, including without limitation all electrical, lighting, mechanical systems, grounds, fences and roads within the Leased Premises. The foregoing obligations shall bind the LESSEE regardless of the cause of the damage or condition necessitating the repair or maintenance.
- 11) **Payments in Case of Default.** LESSEE shall pay LESSOR all costs and expenses, including reasonable attorney's fees in any action brought by LESSOR to recover any rent due and unpaid hereunder, or for the breach or default of any of the covenants or agreements contained in this Lease, or to recover possession of said property, whether such action progresses to judgment or not.
- 12) **Surrender of Premises.** The LESSEE, at the expiration of said term, or any sooner termination of this lease, shall quit peacefully and surrender possession of said property and improvements thereon to LESSOR in as good order and condition as the property was delivered to the LESSEE.
- 13) **Indemnity.** The LESSEE agrees to indemnify, defend, save and hold harmless the City of Saint Paul and any agents, officers and employees thereof from all claims, demands, actions or causes of action of whatsoever nature or character, arising out of or by reason of the Lease of the herein described Leased Premises by the LESSOR to the LESSEE, or the use or condition of the

Leased Premises or as a result of the operations or business activities taking place on the Leased Premises. It is fully understood and agreed that LESSEE is aware of the conditions of the Leased Premises and leases the same "as is."

14) **Holdover.** Any holdover after the expiration of the term of this Lease shall be allowed only after receiving the written consent of the LESSOR, and on such additional terms and conditions as the parties agree to in writing. All other terms and conditions of this Lease shall be applicable.

15) **Pollution and Contaminants.** LESSEE agrees to comply with all ordinances, laws, rules and regulations enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants and the disposal of refuse, solid wastes or liquid wastes.

LESSEE shall bear all costs and expenses arising from compliance with said ordinances, laws, rules, or regulations and shall indemnify, defend, save and hold harmless LESSOR from all liability, including without limitation, fines, forfeitures, and penalties arising from the failure by LESSEE to comply with such ordinances, laws, rules or regulations. LESSOR has the right to perform cleanup and charge the LESSEE as Additional Rent for such costs should the LESSEE fail to comply.

16) **Controlling Lease.** In the event there is any prior existing lease or rental agreement between LESSEE and LESSOR (or its predecessor in interest) covering the subject property, it is agreed and understood that this Lease shall cancel and terminate any prior leases or rental agreements as of the effective date of this lease.

17) **Destruction.** In the event of damage to or destruction of the Leased Premises or in the event the premises becomes untenable or unfit for occupancy due to such damage during the term of this Lease, LESSOR may at its option:

- a) terminate the lease upon fifteen (15) days' written notice to LESSEE; or
- b) within fifteen (15) days agree to permit LESSEE to restore the premises at its own expense.

18) **Events of Default.** The occurrence of any of the following events during the term of this Lease shall constitute an event of default by the LESSEE:

- a) the filing of a petition to have LESSEE adjudicated bankrupt or a petition for reorganization or arrangement under any laws of the United States relating to bankruptcy filed by LESSEE;
- b) in the event a petition to have LESSEE adjudicated bankrupt is filed against LESSEE, the failure to dismiss such petition within ninety (90) days from the date of such filing;
- c) the assets of LESSEE or of the business conducted by LESSEE on the Leased Premises be assumed by any trustee or other person pursuant to any judicial proceedings;

- d) LESSEE makes any assignment for the benefit of creditors;
- e) the failure by LESSEE to timely pay Basic Rent or Additional Rent as required by this Lease;
- f) the failure by LESSEE to observe and perform any covenant, condition or agreement on its part to be observed or performed as required by this Lease; or
- g) the failure by LESSEE or its surety to discharge, satisfy or release any lien or lien statement filed or recorded against the Leased Premises within sixty days after the date of such filing or recording, whichever date is earlier.

It is an express covenant and agreement of LESSOR and LESSEE that LESSOR may, at its election, terminate this Lease in the event of the occurrence of any of the events described in this paragraph or in paragraph (21) relating to liens by giving not less than ten days' written notice to LESSEE; and when so terminated, LESSOR may reenter the Leased Premises. It is further expressly understood and agreed that LESSOR shall be entitled upon such reentry, notwithstanding any other provision of this Lease, to exercise such rights and remedies as are provided in Paragraph (22) of this Lease.

Notwithstanding the foregoing, if the LESSEE fails to surrender possession to LESSOR upon expiration of the Lease Term, upon ex parte application by LESSOR and without further notice the Court may issue an order compelling the immediate delivery of possession of the Leased Premises to LESSOR. The parties agree that LESSOR will be irreparably harmed if LESSEE fails to timely surrender possession of the Property immediately upon expiration of the Lease Term, and that injunctive relief is appropriate in that event.

- 19) **Compliance with Laws.** The property described herein may be used for only the purposes stated herein. It is the sole and exclusive responsibility of the LESSEE in the use of the property to comply with all laws, rules, regulations or ordinances imposed by any jurisdiction affecting the use to which the property is proposed to be put. Inability or failure by the LESSEE to comply with any of said laws, rules, regulations or ordinances will be deemed a default under Paragraph 18(f).
- 20) **Non-Discrimination.** The LESSEE for itself, its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that
 - a) no person, on the ground of race, sex, color, creed, religion, age, disability, marital status, familial status, status with respect to public assistance, national origin, sexual or affectional orientation or ancestry shall be excluded from participating in, be denied the benefits of or be otherwise subjected to discrimination in the use of said facilities; sexual or affectional orientation;

- b) that in connection with the construction or maintenance of any improvements on said lands and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors;
 - c) that such discrimination shall not be practiced against the public in its access in and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest and recreation) constructed or operated on the Leased Premises; and
 - d) that the LESSEE shall use the premises in compliance with all other requirements imposed pursuant to the Saint Paul Legislative Code Chapter 183.
- 21) **Liens.** The LESSEE shall not permit mechanic's liens or other liens to be filed or established or to remain against the Leased Premises for labor, materials or services furnished in connection with any additions, modifications, improvements, repairs, renewals or replacements made to the Leased Premises, or for any other reason; provided that if the LESSEE shall first notify the LESSOR of its intention to do so and shall deposit in escrow with the LESSOR a sum of money or a bond or irrevocable letter of credit acceptable to the LESSOR equal to the amount of the claim of lien, LESSEE may in good faith contest any such claims or mechanic's or other liens filed or established and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest. If, in the opinion of the LESSOR, the nonpayment of any such items subjects the Leased Premises to any loss or forfeiture, the LESSOR may require the LESSEE to use the escrow account to promptly pay all such unpaid items and if LESSEE fails to pay from the escrow account, the LESSOR may pay and charge the LESSEE as Additional Rent.
- 22) **Default Remedies.** In addition to the rights available to the Lessor under the Stipulation, in the event an Event of Default occurs under paragraph (18) of this Lease, LESSOR may exercise any one or more of the following remedies:
- a) reenter and take possession of the Premises without termination of this Lease, and use its best efforts to ease the Premises to or enter into an agreement with another person for the account of LESSEE;
 - b) terminate this lease and exclude LESSEE from possession of the Premises;
 - c) exclude LESSEE from possession of the Premises, with or without terminating this Lease and operate the Premises itself;
 - d) take whatever action at law or in equity may appear necessary or appropriate to collect the Basic Rent and Additional Rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the LESSEE under this Lease.

- e) in exercising any of its remedies set forth in this Section, the LESSOR may, whether or not the Lease is then in effect, hold the LESSEE liable for the difference between the payments and other costs for which the LESSEE is responsible under this Lease.

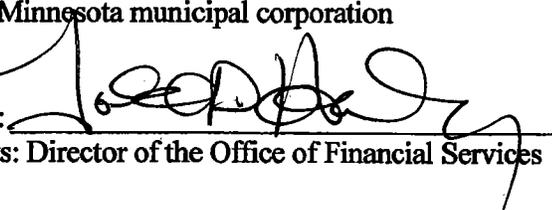
No remedy herein conferred upon or reserved to LESSOR is intended to be exclusive of any other available remedy or remedies, but each such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or thereafter existing at law or in equity by statute. No delay or omission to exercise any such right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the LESSOR to exercise any remedy reserved to it in this Provision, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

- 23) **Default of Payment.** LESSEE agrees that, should it default on any payment owing and due to be paid to LESSOR as provided in this agreement, including but not limited to Basic Rent and Additional Rent, then the remaining unpaid balance shall, at the option of the LESSOR, immediately become due. Said LESSEE further agrees that the LESSOR may, at its option and without notice to LESSEE, enter judgment against LESSEE in Ramsey County District Court for the amount of the unpaid balance. And LESSEE does hereby confess judgment in the amount of the unpaid balance due upon default, and does authorize the LESSOR to enter judgment as provided above. LESSEE does hereby agree that the LESSOR, at its option, may enter a judgment, at any time within one year of the time the last payment shall have come due, for the full amount of the unpaid balance due pursuant to the confession of judgment provided herein.
- 24) **Alterations.** The LESSEE shall not make any alterations to the premises.
- 25) **Amended.** Anything herein contained to the contrary notwithstanding, this Lease may be terminated, and the provisions of this Lease may be, in writing, amended by mutual consent of the parties hereto.
- 26) **Extension.** This Lease may be extended, one or more times, under the circumstances and subject to the terms and conditions described in the Stipulation.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year in this Lease first above written.

LESSOR:

CITY OF SAINT PAUL,
a Minnesota municipal corporation

By: 

Its: Director of the Office of Financial Services

By: 
Its: Director of Parks and Recreation


City Attorney (Form Approval)

LESSEE:

MARKET HOUSE CONDOMINIUM ASSOCIATION,
a non-profit Minnesota corporation

By _____

Print or Type Name of Signer

Its _____

By _____

Print or Type Name of Signer

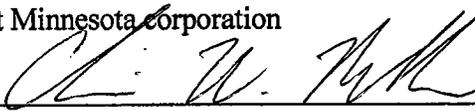
Its _____

By: _____
Its: Director of Parks and Recreation

City Attorney (Form Approval)

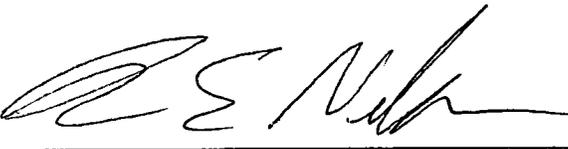
LESSEE:

MARKET HOUSE CONDOMINIUM ASSOCIATION,
a non-profit Minnesota corporation

By: 

Chris W. Mellen
Print or Type Name of Signer

Its Treasurer

By: 

Ron E. Nelson
Print or Type Name of Signer

Its President