

Exhibit A

(File Name: PW/61)

Revised

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

LEASE NO. _____ PW/61

DATE: _____

LESSOR: _____ CITY OF SAINT PAUL

Department of Public Works

25 West Fourth Street, Saint Paul, Minnesota, 55102

LESSEE: _____ TK 1 LLC

633 Minnehaha Ave W, Saint Paul, Minnesota, 55104-1623



CITY OF SAINT PAUL LEASE AGREEMENT

- 1) **Leased Premises.** LESSOR, in consideration of the payment of the Basic Rent and Additional Rent hereinafter specified to be paid by LESSEE, and the covenants and agreements herein contained, does hereby lease, demise and let unto LESSEE the premises hereinafter referred to as the “Leased Premises” and located within real property owned by LESSOR at 630 Pierce Butler Route, Saint Paul, Minnesota, 55104, Parcel ID No. 26-29-23-44-0016, (“City Property”). The City Property is legally described and depicted in Exhibit A attached hereto. The Leased Premises is depicted in Exhibit B attached hereto;

Together with improvements and structures, if any, located thereon.

- 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 LESSOR as provided herein.

Term (Months/Years)	Commencing Date	Ending Date
<u>3 years</u>	<u>December 1, 2018</u>	<u>November 30, 2021</u>

This lease may be renewed for up to two (2) one-year terms, subject to prior written approval by LESSOR.

- 3) **Use of Leased Premises.** LESSEE shall use and occupy the Leased Premises for the following purpose:

Parking for employees and customers of businesses located at the property owned by LESSEE and adjoining the Leased Premises to the south, 633 Minnehaha Avenue West, Saint Paul, Minnesota 55104;

and for no other purpose without the prior written consent of LESSOR.

- 4) **Possession of Leased Premises.** Possession of the Leased Premises shall occur immediately following approval of a parking variance for the Leased Premises by LESSOR’S Department of Safety and inspections (DSI), which is anticipated to occur on or about November 5, 2018.
- 5) **Condition of Leased Premises.** LESSEE shall take possession of the Leased Premises in its “as is” condition. LESSOR will not make any improvements or repairs to the Leased Premises prior to, on or subsequent to commencement of this lease.
- 6) **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)
\$7,200.00	Annual	December 1, 2018	\$2,400.00

and other valuable consideration

- b) **Additional Rent.** Additional Rent means all amounts, other than Basic Rent provided for in Paragraph (6a) 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) costs for the repairs, improvements or alterations required to be made by LESSEE in Paragraph (14) of this lease;
 - ii) all taxes on realty or personalty, general or special; all public rates, dues, charges and assessments, general or special, of any kind upon the Leased Premises; and
 - iii) property insurance premium and/or uninsured losses as set forth in Paragraph (10) 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 LESSEE with the payment of Basic Rent next required after written notice of same to LESSEE by LESSOR.

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

Department of Public Works - 25 W. 4th St., Rm 1500, Saint Paul, MN 55102

The applicable account number for City Finance Accounting Code is:
to be determined by LESSOR

- 7) **Special Conditions.** LESSEE agrees to satisfy the following special conditions of the lease:
- a) LESSEE must install fencing around the perimeter of the Leased Premises. The fencing and installation will be at LESSEE'S sole cost and will be subject to all pertinent permitting or other requirements and conditions established by DSI.
 - b) LESSEE must provide access to the Leased Premises only from the existing west parking lot within LESSEE'S property located at 633 Minnehaha Avenue West. No access to the Leased Premises from Pierce Butler Route shall be permitted.
- 8) **Taxes.** LESSEE shall be responsible for and pay all taxes and assessments against the Leased Premises, except that LESSEE may at its own expense contest and challenge the imposition or amount of any such tax or assessment as prescribed by law; provided, however, that in the event this Lease is terminated by either party, LESSOR may at its option require the LESSEE to pay such contested taxes pending appeal, to place in escrow a sum sufficient to pay said taxes, or take other action that will remove said contested taxes as an encumbrance to title or as an exception to the transferability of marketable title to the Leased Premises.
- 9) **Right of Entry.** At all times during the term of this Lease, 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.
- 10) **Insurance.**
- a) **LESSEE'S Insurance.** LESSEE shall acquire during the term of this lease the following coverage:
 - i) 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) WORKERS' COMPENSATION INSURANCE with not less than statutory minimum limits; and EMPLOYERS' LIABILITY INSURANCE with minimum limits of at least \$500,000 per accident and with an all states endorsement.
 - v) LESSEE shall supply to LESSOR current insurance certificates for policies required in Paragraph (10). The said certificates shall certify whether or not the agent has errors and omissions insurance coverage.
 - vi) 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.
 - vii) Nothing in this contract shall constitute a waiver by the LESSOR of any statutory limits or exceptions on liability.
 - viii) 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 (10) shall be endorsed to indicate that the insurer cannot cancel or change the insurance without first giving LESSOR thirty (30) days' written notice of any changes or cancellation per the terms of the policy.
 - ix) LESSEE'S purchase of such insurance does not act as a waiver of any defenses, limits or immunities provided under Minnesota Statutes Chapter 466.
- c) Waiver of Subrogation. LESSOR waives its right of subrogation for damage to the Leased Premises, contents thereon, 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.

- 11) **Cancellation or Termination.** This lease shall not be subject to cancellation and termination by LESSOR during the initial three-year term except as provided in Paragraphs 22 and 23. This lease shall be subject to cancellation and termination by LESSOR at any time following expiration of the initial three-year term by giving LESSEE notice in writing at least one hundred eighty (180) days, or thirty (30) days if a month-to-month tenancy, prior to the date when such termination shall become effective. In the event of such termination, and on the effective date of such termination, LESSOR shall return any unearned rental paid by the LESSEE without interest.
- 12) **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 LESSEE at the address stated on Page (1) and to LESSOR at the Office of Financial Services Real Estate Section, 25 W. 4th St., 1000 City Hall Annex, Saint Paul, Minnesota, 55102. 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.
- 13) **Assignment and Subletting.** LESSEE shall not assign or sublet this Lease without the written consent of LESSOR, which consent must be obtained prior to the execution of any agreement to assign or sublease the Leased Premises.
- 14) **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 and life safety codes; and all repairs and maintenance needed to keep the Leased Premises in good condition, including all grounds, fences and drive lanes 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.
- 15) **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.
- 16) **Surrender of Premises.** LESSEE, at the expiration of said term, or any sooner termination of this lease, shall quit peacefully and surrender possession of said property and its tenant build outs and trade fixtures to LESSOR in as good order and condition as the property was delivered to LESSEE. LESSOR reserves the right to accept tenant

improvements, or LESSEE must remove them.

- 17) **Indemnity and Release.** LESSEE agrees to indemnify, defend, save and hold harmless the City of Saint Paul and any agents, attorneys, 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 LESSOR to 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." LESSEE further releases, waives and covenants not to sue LESSOR from all liability, claims, demands, losses and damages on account of injury, death or damage to property arising out of the use of the Leased Premises under this Lease.
- 18) **Holdover.** Any holdover after the expiration of the term of this Lease and any renewal terms shall be allowed only after receiving the written consent of LESSOR. Said tenancy shall be deemed to be a tenancy only from month-to-month. All other terms and conditions of this lease shall be applicable.
- 19) **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 LESSEE as Additional Rent for such costs should LESSEE fail to comply.

- 20) **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.
- 21) **Destruction.** In the event of damage to or destruction of the Leased Premises or in the event the Leased 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 restore the Leased Premises within a reasonable time period following the casualty, charging the costs in excess of the insurance proceeds, if any, to LESSEE as Additional Rent; or
 - c) may direct that LESSEE promptly restore the Leased Premises to substantially the

condition existing immediately prior to such damage or destruction, and for that purpose, if such damage or destruction was caused by perils insured against the LESSOR shall make available to LESSEE pro-rata, as work progresses, the net proceeds of such insurance. If such proceeds are insufficient to pay the entire cost thereof, LESSEE agrees to pay as Additional Rent, a lump sum payment (or in a form agreed upon by LESSOR) equal to the remainder of such cost.

22) **Events of Default.** The occurrence of any of the following events during the term of this Lease shall constitute an event of default by 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; or
- h) the failure by LESSEE to satisfy any of the conditions of Paragraph 7 above.

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 27 relating to liens by giving not less than ten days' written notice to LESSEE; and when so terminated, LESSOR may reenter the Leased Premises. This lease and its Leased Premises shall not be treated as an asset of LESSEE'S estate. 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 23 of this Lease.

23) **Default Remedies.** In the event an Event of Default occurs under Paragraph 22 of this

Lease, LESSOR may exercise any one or more of the following remedies:

- a) reenter and take possession of the Leased Premises without termination of this lease, and use its best efforts to lease the Leased Premises to or enter into an agreement with another person for the account of LESSEE;
- b) terminate this lease, exclude LESSEE from possession of the Leased Premises, and use its best efforts to lease the Leased Premises to or enter into an agreement with another in accordance with applicable law;
- c) exclude LESSEE from possession of the Leased Premises, with or without terminating this lease and operate the Leased Premises itself;
- d) terminate the lease, exclude LESSEE from possession of the Leased Premises, sell all or any part of the Leased Premises on such terms and conditions as LESSOR, in its sole discretion, shall determine and retain all the proceeds of such sale for LESSOR'S own account;
- e) exercise any remedies available to it under the Minnesota Uniform Commercial Code; and/or
- f) 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 LESSEE 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 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.

- 24) **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 LESSOR, immediately become due. LESSEE further agrees that 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 LESSOR to enter judgment as provided above. LESSEE does hereby agree that 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.

- 25) **Compliance with Laws.** The Leased Premises may be used for only the purposes stated herein. It is the sole and exclusive responsibility of LESSEE in the use of the Leased Premises to comply with all laws, rules, regulations or ordinances imposed by any jurisdiction affecting the use to which the Leased Premises is proposed to be put. Inability or failure by LESSEE to comply with any of said laws, rules, regulations or ordinances will not relieve LESSEE of the obligation to pay the rental provided herein.
- 26) **Non-Discrimination.** LESSEE for itself, its personal 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 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 LESSEE shall use the premises in compliance with all other requirements imposed pursuant to the Saint Paul Legislative Code Chapter 183.
- 27) **Liens.** 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 LESSEE shall first notify LESSOR of its intention to do so and shall deposit in escrow with LESSOR a sum of money or a bond or irrevocable letter of credit acceptable to 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 LESSOR, the nonpayment of any such items subjects the Leased Premises to any loss or forfeiture, LESSOR may require LESSEE to use the escrow account to promptly pay all such unpaid items and if LESSEE fails to pay from the escrow account, LESSOR may pay and charge the LESSEE as Additional Rent.

- 28) **Eminent Domain.** In the event the entire Leased Premises are taken by eminent domain, or such portion thereof is so taken that in LESSEE'S reasonable judgment it is uneconomic thereafter to restore the Leased Premises and proceed under the terms and provisions of this Lease, LESSEE may terminate this Lease by giving to LESSOR thirty (30) days' written notice of termination, effective as of the date on which the condemning authority acquires legal title or physical possession of the Leased Premises. LESSEE hereby waives and releases any claim to or share in the Award of Compensation for the taking, notwithstanding any other provision of law, this Lease or any other agreement. LESSEE may to the extent otherwise permitted in the eminent domain proceeding, remove its own improvements at its own expense.
- 29) **Alterations.** LESSEE will not make any alterations to the Leased Premises without the written consent of LESSOR, such consent not to be unreasonably withheld. If LESSEE desires to make any such alterations, an accurate description shall first be submitted to and approved by LESSOR and such alterations shall be done by LESSEE at its own expense. All such work shall be performed under LESSOR'S supervision and any improvements made to the Leased Premises at LESSEE'S expense shall become the property of LESSOR at the end of the lease term. LESSEE agrees that all alterations will be done in a workmanlike manner and in conformance with applicable building codes, that the structural integrity and building systems of the building will not be impaired, and that no liens will attach to the premises by reason thereof.
- 30) **Amended.** This Lease may be amended only by mutual written consent of the parties hereto.
- 31) **Litigation Costs.** If LESSOR initiates action or litigation to enforce the provisions of this Lease against LESSEE, LESSOR is entitled to reimbursement from LESSEE of all reasonable costs and expenses, including reasonable attorney's fees paid or incurred by LESSOR in connection with such action or litigation.
- 32) **Entire Agreement; Governing Law; Venue.** This instrument contains the entire agreement of the parties as to its subject matter. This Lease shall be subject to and governed by the laws of the State of Minnesota, and all actions shall be venued in Ramsey County District Court.

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

Mayor

City Clerk

Director – Office of Financial Services

Director of Public Works

Assistant City Attorney
(Form Approval)

LESSEE: TK 1 LLC

Its

Its

Its

EXHIBIT A

Legal Description of City Property

Parcel 1:

Lots I, 2, 3, 4, 5, 6, 7 and 8, Block 12, Butterfield Syndicate Add. No. 2, Ramsey County, Minnesota.

Lots 1, 2, 3, 4, 5, 6, 7, Block 13, Butterfield Syndicate Add. No. 2, Ramsey County, Minnesota. That part of Lot 8, Block 13, Butterfield Syndicate Add. No. 2, Ramsey County, Minnesota, lying Northeasterly of a line from the Northwest corner of said Lot 8 to a point on the East line thereof 40 feet South of the Northeast corner thereof; the North 50.7 feet of Lots 24, 25, 26, 27, 28, 29 and 30; Block 13, together with those portions of Ireland Street (now Seminary Avenue) (vacated) and the alley (vacated) in Block 13 of said Addition which lies West of the West line of Dale Street and East of a line running South from the Southwest corner of Lot 8, Block I 2 to the Northwest corner of Lot 8, Block I 3; thence to a point on the East line of said Lot 8, 40 feet South of the Northeast corner thereof; thence along the East line of said Lots 8 and 23, Block I 3 to the Southeast corner of said Lot 23; all in Butterfield Syndicate Add. No. 2.

Parcel 2:

The North 39 feet of the South 40 feet of the North 90.7 feet of Lots 24, 25, 26, 27, 28, 29 and 30, Block 13, Butterfield Syndicate Add. No. 2, Ramsey County, Minnesota.

Parcel 3:

The East 1.00 foot of the North 89.70 feet of Lot 23, Block 13, Butterfield Syndicate Addition No. 2, Ramsey County, Minnesota, and all that part of the vacated alley adjoining said Lot 23 that lies between the Northerly extension across said alley of the East and West lines of said East 1.00 feet.

Parcel 4:

Those parts of Lots 8, 9 and I 0, Block 13, Butterfield Syndicate Add. No. 2, Ramsey County, Minnesota, and that part of Seminary Avenue that is described as follows:
Beginning at the Southeast corner of said Lot 8; thence West on an assumed bearing along the South line of said Lot 8 a distance of 19.06 feet to the right-of-way line of Pierce Butler Road; thence Northwesterly along said right-of-way line, being a nontangential curve concave to the Southwest and having a central angle of 33 degrees 20 minutes 00 seconds and a radius of 3 I 2.50 feet for an arc distance of 181.80 feet, the chord of said curve bears North 30 degrees 31 minutes 50 seconds West to the centerline of said Seminary Avenue; thence East, along said centerline a distance of 70.60 feet; thence South 0 degrees 01 minutes 55 seconds East a distance of 30.00 feet to the Northwest corner of said Lot 8; thence South 44 degrees 36 minutes 21 seconds East a distance of 56.18 feet to a point on the East line of said Lot 8 that is 40.00 feet South of the Northeast corner thereof; thence South 0 degrees 01 minutes 55 seconds East along said East line a distance of 84.40 feet to the point of beginning.

EXHIBIT B-1

Depiction of Leased Premises

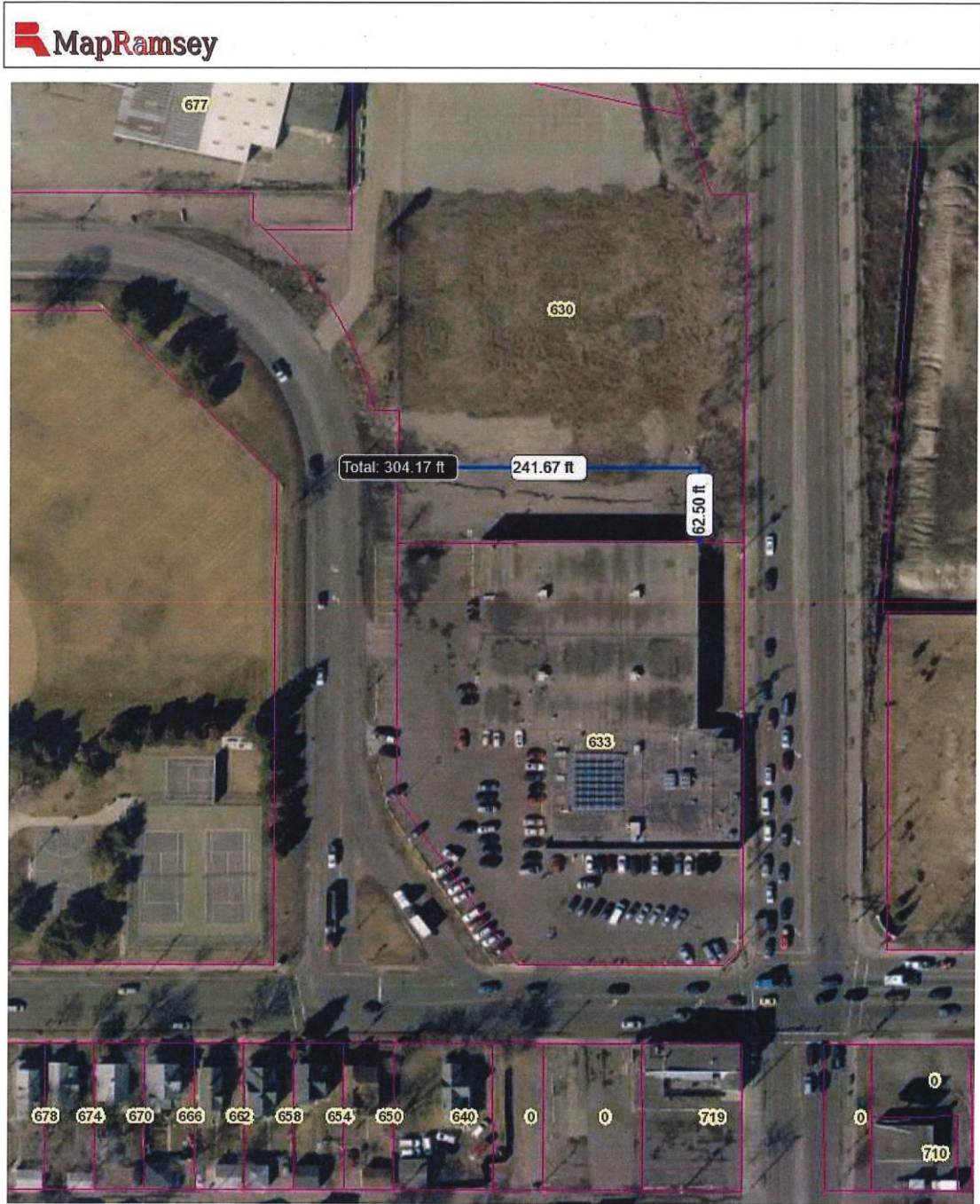


EXHIBIT B-2 (continued)

Depiction of Leased Premises

