

RIVERCENTRE PEDESTRIAN LINK COOPERATIVE AGREEMENT

THIS AGREEMENT (AGREEMENT) is entered into as of the 23RD day of May, 2000 by and among Ramsey County, a political subdivision of the State of Minnesota (the COUNTY), the City of Saint Paul, a home rule charter city and a municipal corporation of the State of Minnesota (the CITY), the Port Authority of the City of Saint Paul, a body corporate and politic organized pursuant to Chapter 469 of the laws of Minnesota (the PORT AUTHORITY), Capital City Properties, a Minnesota nonprofit corporation (CCP), and the Saint Paul Convention and Visitors Bureau Foundation, a Minnesota nonprofit corporation (CVB FOUNDATION).

WITNESSETH:

WHEREAS, the parties hereto are desirous of the CITY and the COUNTY acquiring property for and designing and constructing a pedestrian connection between the RiverCentre Complex and the existing skyway system in Landmark Tower (the PROJECT) in the CITY as an extension of the RiverCentre Complex; and

WHEREAS, the CITY's participation in the PROJECT is (i) to contribute to the PROJECT the sum of \$2,250,000, representing \$2,000,000 proceeds from the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota Sales Tax Revenue Bonds (Civic Center Project), Series 1993 (the SALES TAX BONDS), and \$250,000 in earnings on such bond proceeds (the CITY CONTRIBUTION), (ii) to contribute \$150,000 already paid to consultants for conceptual design work, for a total contribution of \$2,400,000, and (iii) to co-own the PROJECT and to lease the COUNTY'S share of the PROJECT from the COUNTY, and (iv) to review and approve Project Documents; and

WHEREAS, the PORT AUTHORITY's participation in the PROJECT is to provide to the COUNTY for part of the CITY'S share of the PROJECT \$700,000 (the PORT AUTHORITY CONTRIBUTION) in cash for purposes of completing the PROJECT, and in conjunction with the County and in consultation with the CITY to design and construct the PROJECT and to acquire real property rights on behalf of the CITY and convey such rights to the CITY; and

WHEREAS, CCP's participation in the PROJECT is to provide to the COUNTY for part of the CITY'S share of the PROJECT \$300,000 (the CCP CONTRIBUTION) in cash for purposes of completing the PROJECT; and

WHEREAS, the CVB FOUNDATION's participation in the PROJECT is to provide to the COUNTY for the CITY'S share of the PROJECT cash in the amount of \$498,000 solicited from private donors and collected on or prior to March 31, 2000 (the CVB FOUNDATION CONTRIBUTION) for purposes of completing the PROJECT and to provide to the CITY pledges solicited from private donors for which cash was not received until after March 31, 2000 (the CVB FOUNDATION PLEDGES) for purposes of defraying certain CITY obligations to the COUNTY; and the CVB FOUNDATION CONTRIBUTION and CVB FOUNDATION PLEDGES shall in the aggregate total at least \$1,000,000; and

WHEREAS, the COUNTY's participation in the PROJECT is to assist the CITY by providing a financing mechanism with the Minnesota Public Facility Authority's (MPFA) Transportation Revolving Loan Fund (TRLF), to take ownership of the portion of the PROJECT financed by the MPFA LOAN described below; to lease the COUNTY'S share of the PROJECT to the CITY; and, in conjunction with the PORT and in consultation with the CITY, to design and construct the PROJECT; and

WHEREAS, the COUNTY has applied to the MPFA for a loan (the MPFA LOAN) to be drawn on in an amount which, when added to the CONTRIBUTED FUNDS as defined in Section 1.1 hereof, shall not exceed the total sum of ten million dollars, (\$10,000,000.00) to finance design and construction of the PROJECT, and will enter into a lease of the PROJECT to the CITY (the FACILITY LEASE) in exchange for the CITY's agreement to pay rent in an amount necessary (1) to repay the MPFA LOAN and (2) to avoid a tax levy by the COUNTY in the respect of the MPFA LOAN; and

WHEREAS, the relative co-ownership shares in the PROJECT shall be determined based on the costs paid by the COUNTY, being costs paid by proceeds of the MPFA LOAN, and by the CITY, being all other costs; and

WHEREAS, the PROJECT shall be constructed in accordance with all applicable state and CITY codes and standards:

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

ARTICLE I. FINANCE

1.1 APPROVAL OF AGREEMENT; DEPOSIT OF FUNDS. This Agreement shall be submitted for approval by the Ramsey County Board of Commissioners following execution and delivery hereof by all other parties. Within ten (10) calendar days from the date this Agreement is approved by the Ramsey County Board of Commissioners: (a) this Agreement shall be executed and delivered by the COUNTY to the other parties; (b) the CITY shall remit to the COUNTY the CITY CONTRIBUTION; (c) the PORT AUTHORITY shall remit to the COUNTY the PORT AUTHORITY CONTRIBUTION unless otherwise elected by the PORT pursuant to Article 2.1 hereof; (d) CCP shall remit to the COUNTY

the CCP CONTRIBUTION; and (e) the CVB FOUNDATION shall remit to the COUNTY that portion of the CVB FOUNDATION CONTRIBUTION collected through March 31, 2000. The CITY CONTRIBUTION, the PORT AUTHORITY CONTRIBUTION, the CCP CONTRIBUTION, and the CVB FOUNDATION CONTRIBUTION shall collectively be referred to herein as the CONTRIBUTED FUNDS.

1.2 ESTABLISHMENT OF PROJECT FUND. Upon receipt of the CONTRIBUTED FUNDS, the COUNTY, through its Budget and Accounting Department, shall establish an accounting fund (the PROJECT FUND), pursuant to its standard accounting procedures, for the accounting and disbursement of all monies. The COUNTY shall provide all financial services in connection with the PROJECT, including administering the PROJECT FUND.

1.3 ADDITIONAL CVB FOUNDATION CONTRIBUTIONS; CVB FOUNDATION PLEDGES. The CVB FOUNDATION shall remit quarterly to the CITY all cash collected with respect to the CVB FOUNDATION PLEDGES after March 31, 2000.

1.4 MPFA LOAN. The COUNTY shall apply to the MPFA for the MPFA LOAN in an amount contemplated by this agreement. The COUNTY shall use reasonable efforts to meet all conditions for issuance of the MPFA LOAN, including the issuance of a general obligation note evidencing its repayment obligation with respect to the MPFA LOAN. The MPFA LOAN and any notes or bonds issued in connection therewith shall be amortized and repaid over a period not to exceed thirty (30) years. When and as received, the COUNTY shall deposit loan

proceeds made to the COUNTY by the MPFA under the MPFA LOAN into the PROJECT FUND. The COUNTY shall have no obligation to enter into the MPFA LOAN Agreement unless on or prior to the date of the MPFA LOAN the CITY shall have delivered to it an opinion of independent counsel to the CITY in a form acceptable to the County Attorney that includes an opinion of such counsel that this Agreement, the Ground Lease and the Facility Lease have been duly and validly authorized by the CITY, and assuming due authorization and execution thereof by the CITY, COUNTY, and the other parties thereto, are valid instruments legally binding on the CITY and enforceable in accordance with their terms, subject to customary qualifications relating to laws affecting creditors' rights. The COUNTY agrees to perform all of its obligations and duties under the MPFA LOAN agreement. The COUNTY is not obligated to apply for any advances from the MPFA LOAN until such time as the bids received by the COUNTY for construction of the PROJECT result in a total PROJECT cost that does not exceed ten million dollars (\$10,000,000.00), including a reasonable reserve for contingencies and including any sums heretofore paid by the CITY to its consultants.

- 1.5 PROJECT COSTS. Funds on deposit in the PROJECT FUND shall be applied by the COUNTY to the costs of the PROJECT (the PROJECT COSTS). PROJECT COSTS are defined as: (1) the acquisition cost of real property interests necessary for completion of the Project including without limitation purchase prices, appraisals, closing costs, title insurance premiums, real property taxes, surveys, soil borings, environmental reports, and filing fees; and reasonable outside

counsel fees for acquisition of real property interests by the right of eminent domain; (2) the expense of preparation of the plans and specifications and of all other architectural, engineering, testing and construction management services incurred and to be incurred in the planning, construction and completion of the PROJECT; (3) the cost of acquisition and installation of all items of fixtures and personal property included in the PROJECT; (4) premiums on all insurance relating to construction during the period before completion of the PROJECT, to the extent that such premiums are not paid by a contractor; (5) the contract price of all labor, services, materials, supplies, equipment and remodeling furnished under a construction contract between the COUNTY and a contractor; (6) the budgeted cost of all other labor, services, materials, supplies and equipment and permits and licenses necessary to complete the acquisition, construction and installation of the PROJECT; (7) bond counsel fees and independent financial advisor fees in an amount not to exceed \$50,000.00 of the COUNTY relating to the MPFA LOAN; (8) fees of the CITY'S independent counsel in rendering the opinion required by Section 1.4; (9) without limitation by the foregoing, all other expenses which under generally accepted accounting principles constitute necessary capital expenditures for the PROJECT and are authorized by the MPFA LOAN agreement to be paid from the proceeds of the MPFA LOAN; and (10) all advances, payments and expenditures made or to be made by the CITY with respect to any of the foregoing expenses. PROJECT COSTS do not include any CITY, COUNTY or PORT staff time, CITY, COUNTY or Port Attorney office

time, and COUNTY bond counsel fees and independent financial advisor fees in excess of \$50,000.

- 1.6 PROJECT BUDGET. The COUNTY shall be responsible for establishing the Project budget in the COUNTY'S Accounting System. Budget adjustments to the PROJECT BUDGET shall be requested by the Project Manager and approved by the COUNTY Budget & Accounting Director.
- 1.7 DISBURSEMENTS FROM PROJECT FUND. Upon written request by the PORT to the COUNTY, the COUNTY shall disburse to the PORT or a third party as directed by PORT, funds on deposit in the PROJECT FUND for any purposes related to the PORT's responsibilities outlined in this Agreement that are in the PROJECT BUDGET. The COUNTY'S Director of Budget and Accounting or his or her successor shall have the discretion to disburse monies for payment of PROJECT COSTS from either proceeds of the MPFA loan or CONTRIBUTED FUNDS. Monies from CONTRIBUTED FUNDS shall be disbursed within 10 business days of the PORT's request and any PORT request for payments from MPFA LOAN funds will comply with deadlines set by the MPFA. The PORT shall obtain disbursement of these funds in accordance with procedures established by the Ramsey County Budget and Accounting Division of the Ramsey County Manager's Office. Such procedures will provide that the COUNTY will disburse funds after the PORT has reviewed the claim and authorized the COUNTY to pay contract vendors or other persons. The COUNTY will require that the PORT provide reasonable documentation to support the requested disbursements to the third party. The COUNTY shall not

draw or remit to the COUNTY or any person any funds on deposit in the PROJECT FUND except with the written request or consent of the PORT, and for payment of PROJECT COSTS. Upon completion of the PROJECT and final payment of all PROJECT COSTS, any CONTRIBUTED FUNDS which have not been spent shall be returned to the CITY.

1.8 INVESTMENT OF PROJECT FUND MONIES. The CITY shall have the right and responsibility to direct the investment of funds on deposit in the PROJECT FUND through written directions. In directing such investments the CITY shall be mindful not to cause the SALES TAX BONDS to become arbitrage bonds, and in this regard the CITY may need to restrict the yield on the investments. The COUNTY shall report to the CITY on investments of funds on deposit in the PROJECT FUND in sufficient detail to permit the CITY to comply with arbitrage and rebate requirements relating to the SALES TAX BONDS. The PROJECT FUND in the CITY'S records shall be identified as a sub-account of the Construction Fund established for the SALES TAX BONDS as to the CITY CONTRIBUTION, and the CITY shall observe with respect thereto the Joint Pledge Agreement relating to the SALES TAX BONDS.

1.9 APPLICATION OF PROJECT FUND EARNINGS. Earnings on the CONTRIBUTED FUNDS shall be credited to the PROJECT FUND but shall not be expended on the PROJECT, except as hereafter stated. Prior to completion of the PROJECT, interest earned on CONTRIBUTED FUNDS shall be applied to change orders or other PROJECT COSTS as approved by the PORT and COUNTY. Upon completion of the PROJECT, the interest earned on the

CONTRIBUTED FUNDS but not previously expended shall be returned to the CITY.

1.10 DISBURSEMENT OF CONTRIBUTED FUNDS UPON TERMINATION OF THE PROJECT. If the PROJECT is terminated pursuant to Section 1.11 or any other section of this agreement prior to disbursement or encumbrance of all CONTRIBUTED FUNDS, any monies remaining in the PROJECT FUND after all PROJECT COSTS incurred up to the date of termination of this agreement have been paid shall be returned to the contributing entities as follows:

- a. First, monies contributed by the CVB FOUNDATION from private donors shall be refunded to the CVB FOUNDATION for return to the original private donors of the funds.
- b. Any monies remaining in the PROJECT FUND after refund of the CVB FOUNDATION contributions shall be returned to the CITY and PORT and CCP in proportion to the contributions made by the respective entities or in such other amounts as the CITY, PORT, and CCP jointly direct the COUNTY.

In no event shall the COUNTY be liable to any party to return any sums in excess of the unexpended/unencumbered amounts remaining in the PROJECT FUND.

1.11 TERMINATION OF PROJECT. In the event that: (a) the bids received by the COUNTY for construction of the PROJECT result in a total PROJECT cost that exceeds ten million dollars (\$10,000,000.00) including a reasonable contingency for changed, concealed and unforeseen conditions; or (b) the COUNTY does not

receive approval of the MPFA Loan; or (c) rejection by the CITY of any PROJECT documents pursuant to Section 2.3 of this agreement; then the CITY, COUNTY or PORT may, prior to commencement of construction, individually or jointly in writing terminate this Agreement, and except as expressly provided in Section 1.10 of this Agreement no party shall have any further rights or obligations under this Agreement.

ARTICLE 2. PORT DUTIES

2.1 ACQUISITION OF REAL PROPERTY. The PORT shall acquire, on behalf of the CITY, all permanent and temporary real property ownership and easement rights not owned or controlled by the CITY as of April 1, 2000, necessary for construction and operation of the PROJECT. Upon acquisition of such rights the PORT shall promptly transfer the acquired rights to the CITY, except for temporary rights acquired for construction purposes, which shall be retained by the PORT.

The property rights necessary for operation of the PROJECT shall collectively be referred to herein as the CORRIDOR. The PORT may pay acquisition costs from the PORT AUTHORITY contribution and the CCP CONTRIBUTION which the PORT may retain in its possession and control for acquisition purposes, or may remit the contributions to the COUNTY pursuant to Article 1.1 hereof. If the PORT retains the PORT AUTHORITY CONTRIBUTION and CCP CONTRIBUTION to pay acquisition costs, after such acquisition it shall remit all monies including interest thereon from the date of this agreement not needed for acquisition of the property rights to the COUNTY pursuant to Section 1.1 hereof.

If the PORT remits all contributed funds to the COUNTY before incurring acquisition costs it shall apply for acquisition costs reimbursements and the COUNTY shall pay from the PROJECT FUND the cost of acquisition of such rights as were not owned by the CITY prior to April 1, 2000, from the CONTRIBUTED FUNDS and in accordance with the procedures outlined in Article 1.7 of this agreement.

2.2 DESIGN AND CONSTRUCTION. The PORT, with the approval of the COUNTY and in consultation with the CITY, shall select a design consultant/architect and, according to its contracting procedures, shall enter into a contract with such consultant/architect for design, engineering, and preparation of construction plans, specifications, and public bidding documents. The design consultant/architect will perform all usual and customary architectural services, including soil testing, utility location, cost estimates, design, preparation of bid specifications, and construction supervision.

Any contract between the PORT and any design consultant, architect, construction manager, and engineer shall include provisions obligating the consultant, architect, construction manager, and engineer to defend, indemnify and hold the COUNTY and CITY and CVB Foundation harmless as third party beneficiaries of the contract. Any such contract shall also be freely assignable by the PORT to the COUNTY and such assignment shall not affect the obligations of the contractor.

The plans and specifications prepared by the PORT or its design contractor shall be the basis for the letting of bids and award of construction contracts as provided by Article 3 hereof. The PORT and its design contractor shall not design or submit to the COUNTY for such bid letting and contract award any plans which exceed ten million dollars (\$10,000,000.00) in project costs, including a reasonable reserve for changed or unforeseen conditions encountered during construction. Any plans, specifications, estimates and suggested construction contract special provisions prepared for the PROJECT by the PORT or its contractor shall be subject to review and approval by the COUNTY and the Minnesota Department of Transportation (the MnDOT) and CITY pursuant to Section 2.3.

- 2.3 CITY REVIEW. The PORT shall cause the design consultant/architect to prepare in phases appropriate for the design and construction schedule drawings, specifications, and cost estimates as stated in Section 2.2 hereof (the Project Documents), which shall be documents produced at the end of a "Schematic Design Phase," a "Design Development Phase" and a "Construction Document Phase." At the end of each phase, ten (10) copies of the documents shall be submitted to the CITY for review and approval. All the documents prepared in connection with a phase shall be submitted to the CITY at the same time. The CITY may approve or disapprove the documents. Any disapproval by the CITY of the PROJECT DOCUMENTS as presented to it by the PORT and COUNTY shall be in writing and shall be delivered to the COUNTY in accordance with Section 5.1 hereof. Such disapproval shall be deemed a termination of this

agreement by the CITY, and upon such termination this agreement and any other agreements between the parties relative to the PROJECT shall terminate, unless the COUNTY, PORT, and CITY jointly agree otherwise.

Upon such termination, the COUNTY shall pay any expenses incurred to the date of termination from CONTRIBUTED FUNDS. Any CONTRIBUTED FUNDS remaining in the PROJECT FUND shall be distributed in accordance with the provisions of Section 1.10 of this agreement. The CITY must notify COUNTY within five (5) business days of its receipt of a complete set of the PROJECT DOCUMENTS its approval or disapproval of the PROJECT DOCUMENTS. If the CITY fails to so notify the COUNTY within five (5) business days it shall be deemed to have approved the PROJECT DOCUMENTS as submitted to it.

- 2.4 TESTS. The PORT or its consultants shall conduct all tests, including but not limited to soil tests, subsurface condition tests, air and water location and quality tests, and any environmental tests required to proceed with the PROJECT. The PORT or its consultants shall locate and identify all utilities in the right of way for the PROJECT. The tests and utility survey shall be performed prior to design of the PROJECT and the PORT shall provide the results of such tests and utility survey to the PROJECT engineering/architectural consultant and the COUNTY. The PROJECT design shall to the extent possible identify the results of the tests and locate all utilities on the plans and specification so that contractors bidding on the PROJECT know the subsurface soil conditions and location of utilities affecting the PROJECT.

- 2.5 PERMITS AND APPROVALS; PUBLIC HEARING. The PORT shall hold all required public hearings and obtain all required local permits and approvals consistent with right of way acquisition and construction of the PROJECT. Such permits shall be obtained in the name of the PORT.
- 2.6 CONTRACTS SUBJECT TO APPROVAL BY COUNTY. Any contract entered into by the PORT for design, engineering, and construction supervision and management of the PROJECT shall be subject to approval by the COUNTY, upon consultation with the CITY, which approval shall not be unreasonably withheld, and encumbered against the PROJECT BUDGET.
- 2.7 INDEMNIFICATION. The CITY, COUNTY, and PORT agree to be responsible for the performance of their own obligations under this Agreement, the Ground Lease and the Facility Lease. The CITY and COUNTY and PORT each agree to defend, indemnify, and hold the other and the CVB Foundation harmless from any liability to any person or entity for any and all damages to persons or property from any cause arising from their own negligent acts and omissions under this Agreement. Nothing in this Section 2.7 or elsewhere in this Agreement shall or can be construed as a waiver by the CITY, COUNTY, or PORT of the Municipal tort liability limits set forth in Mn Stat 466.01 et seq. and any common law immunities, all of which are reserved by the CITY, COUNTY and PORT.

ARTICLE 3. COUNTY DUTIES

- 3.1 CO-OWNERSHIP OF PROJECT. The COUNTY shall own its share of the PROJECT, being the share represented by the ratio of proceeds of the MPFA

LOAN expended on PROJECT COSTS to the total of all PROJECT COSTS, subject to the ownership by the CITY of (1) the PROJECT SITE and (2) the CITY's share of the PROJECT, which is one hundred percent (100%) of the PROJECT less the COUNTY'S share. Notwithstanding any financial contribution of any other parties for the design and construction of any facilities in connection with the PROJECT, the COUNTY shall be the owner of its share of any tunnel, skyway, or other facility constructed in connection with the PROJECT, except that the COUNTY shall not own any tunnel and facility connected from the main tunnel to the Minnesota Wild Building (formerly the Minnesota Club) and any connection through the Landmark Tower, all of which are being funded separately from the PROJECT FUND.

- 3.2 GROUND LEASE. Subject to the COUNTY's receipt of the opinion of counsel to the CITY described in Section 1.4 hereof, the COUNTY shall, on or prior to the date of award of a contract for construction of the FACILITY, lease the CORRIDOR from the CITY pursuant to a GROUND Lease in the form attached hereto as Exhibit B. The County is not required to award and execute the Construction Contract until and unless the CITY has executed the GROUND LEASE.
- 3.3 LEASE OF PROJECT. Subject to the COUNTY's receipt of the opinion of counsel to the CITY described in Section 1.4 hereof, the COUNTY shall, on or prior to the date of award of a contract for construction of the FACILITY, lease its share of the PROJECT to the CITY pursuant to a FACILITY LEASE in the form attached hereto as Exhibit C. The COUNTY is not required to award and

execute the Construction Contract until the CITY has executed the FACILITY LEASE.

- 3.4 CONSTRUCTION CONTRACTS. The COUNTY will use the State of Minnesota Delegated Contract Process to prepare the construction contract special provisions, determine the construction documents, establish a bid opening date, and advertise for bids. The construction contract bid specifications and requirements will be prepared by the PORT and COUNTY or their consultants in accordance with the provisions of Article 2 hereof and upon consultation with the CITY.

The COUNTY will receive and open the bids. The PORT will review the bids and make a recommendation to the COUNTY on the award of a construction contract. The COUNTY Board will award the construction contract for the PROJECT in the COUNTY'S name. The PORT shall be expressly named in the construction contract as a third party beneficiary thereof and the PORT shall have the right to compel the specific performance of all the obligations and duties of the parties to the construction contract. The COUNTY and PORT shall provide project supervision for design and construction of the project. The COUNTY and PORT shall enter into a separate construction management agreement.

- 3.5 CONSTRUCTION CONTRACT MODIFICATIONS. Subject to the provisions of Section 3.6 hereof, any changes or modifications to the construction contract shall be negotiated and approved by and between the PORT and COUNTY and the contractor. The PORT and COUNTY or their consultants shall draft appropriate amendments to the construction contract between the COUNTY and

the contractor. The COUNTY Manager and the contractor shall sign the contract amendments, which will become a part of the contract. Such changes or modifications shall be encumbered against the PROJECT when signed by the COUNTY and the contractor. After the Construction Contract is executed, the COUNTY agrees to complete the Project, and pay all Project Costs in accordance with the PROJECT documents and any authorized change orders in excess of \$10,000,000.00 (“Overruns”). In the event of Overruns, the COUNTY may submit to the CITY a description of such additional work and documents evidencing the payment of the Overruns, and request the CITY to contribute to the payment of such Overruns. Upon receipt of the COUNTY’s request, the CITY may, in its sole discretion and by City Council action, decide to make a contribution to the Overruns but the CITY is under no obligation at law or equity to do so. Any Overruns shall not be passed on to the CITY in the form of rent or additional rent under the Facility Lease.

- 3.6 For purposes of this Agreement, the term “Design Team” means the City Design Representatives, the County Design Representatives, and the Port Design Representatives. The “City Design Representatives” means the two representatives as appointed by the Director, Department of Planning and Economic Development of the City. The “County Design Representatives” means the two representatives as appointed by the County Manager. The “Port Design Representatives” means the two representatives as appointed by the Port’s President.

The term "Basic Design" means all those drawings, specifications and cost estimates as approved by the CITY, COUNTY and PORT at the end of the Construction Document Phase that are necessary to construct a functional skyway and pedestrian connection that will be personally and structurally safe, aesthetic and low maintenance. The term "Alternatives" means all those drawings, specifications and cost estimates as approved by the CITY, COUNTY and PORT at the end of the Construction Document Phase other than the Basic Design. The Basic Design and Alternatives collectively are the Project Documents. The CITY, COUNTY and PORT shall prioritize the Alternatives before the Project Documents are let for bids.

After the construction contract is awarded, any proposed changes or modifications to the Project Documents or construction contract shall be submitted to the Design Team for its review to determine the impact on the quality, scope, cost and design of the Project Documents and Project. The Design Team shall use its best efforts to resolve the issues raised by the proposed changes or modifications and to stay within the original PROJECT budget of \$10 million, plus interest earnings and additional contributions, but not compromise or lessen the quality, scope and design of the Project Documents and PROJECT. No changes or modifications shall be made to the Project Documents or construction contract that alter, amend or reduce the quality, scope and design of the Project Documents and PROJECT except as follows: a) changes or modifications to the Basic Design shall require the unanimous written consent of the Design Team members, and b) changes or

modifications to the Alternatives shall require the majority written consent of the Design Team members.

- 3.7 CONTRACT PAYMENTS. For payments made pursuant to the construction contract between the COUNTY and the construction contractor, billings from the contractor will be submitted to the PORT or its designee for approval. The COUNTY shall pay such payments in accordance with the procedures and requirements of the MPFA LOAN.
- 3.8 COMPLIANCE WITH MPFA LOAN. The COUNTY shall obtain all approvals of and otherwise comply or assure compliance with the requirements of the MPFA for the grant of the MPFA LOAN.
- 3.9 The COUNTY and PORT shall require that all warranties and guarantees in any contracts for design and construction of the FACILITY shall be freely assignable and shall be assigned to the CITY on completion of construction. The PORT shall without charge cooperate with the CITY and COUNTY in pursuit of any breach of warranty or contract claims the CITY may bring pursuant to such warranties or guarantees.

ARTICLE 4. CITY DUTIES

- 4.1 GROUND LEASE. Prior to award and execution by the COUNTY of any contract for construction of the facility the CITY shall lease the CORRIDOR to the COUNTY pursuant to a GROUND LEASE in the form attached hereto as Exhibit B. The City's skyway ordinance shall apply thereto. Neither the COUNTY or the PORT shall be obligated to enter into any contract for

construction of the FACILITY until the GROUND LEASE is executed by the CITY.

4.2 FACILITY LEASE. Prior to award and execution by the COUNTY of any contract for construction of the facility the CITY shall lease from the COUNTY the COUNTY's share of the PROJECT pursuant to a FACILITY LEASE in the form attached hereto as Exhibit C. Neither the COUNTY or the PORT shall be obligated to enter into any contract for construction of the FACILITY until the FACILITY LEASE is executed by the CITY and COUNTY.

4.3 4.3 CITY DESIGN PARTICIPATION. The COUNTY and PORT and the design consultant selected pursuant to Section 2.2 of this Agreement shall consult with and seek the advice of the CITY during preparation of the design documents for the FACILITY. The CITY shall also have the rights and obligations with respect to design of the FACILITY as stated in Section 2.3 of this agreement.

ARTICLE 5. MISCELLANEOUS

5.1 NOTICES. Any notice required herein shall be deemed effective if it is personally delivered or deposited in the United States mail, certified, postage prepaid, return receipt required, to the COUNTY or CITY at the following addresses:

COUNTY:

Paul Kirkwold
Ramsey County Manager
250 Courthouse
St. Paul, MN 55102

CITY:

Margot Fehrenbacher
1300 City Hall Annex
25 West 4th Street
St. Paul, MN 55102

With a copy to:

David F. MacMillan
Assistant Ramsey County Attorney
50 West Kellogg Boulevard, Suite 560
St. Paul, MN 55102

With a copy to:

Peter J. McCall
Assistant City Attorney
400 City Hall
St. Paul, MN 55102

Peter White
140 City Hall
St. Paul, MN 55102

PORT AUTHORITY AND CCP:

Ken Johnson
1900 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102

CVB FOUNDATION:

Eileen McMahon
Convention and Visitors Bureau
175 West Kellogg Boulevard
Suite 502
St. Paul, MN 55102

With a copy to:

Terry Garvey
Assistant City Attorney
St. Paul Port Authority
1900 Landmark Towers
St. Paul, MN 55102

Any party may designate an additional or another address upon giving notice to the other party pursuant to this paragraph. Notice given in any manner other than as stated herein, shall be deemed effective only upon receipt by the party to whom such notice is given.

- 5.2 INTERPRETATION. This Agreement constitutes the entire understanding between the parties. It may be amended or modified only in a writing signed by COUNTY, CITY, and PORT, and as to issues affecting the CVB contributions, the CVB. The paragraph headings are for convenience only and shall not enter into the interpretation hereof.

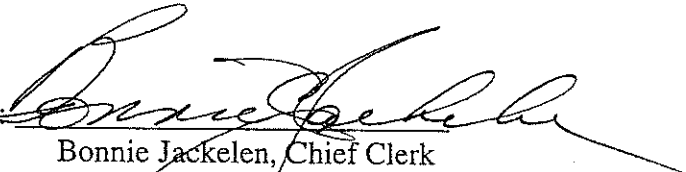
- 5.3 WAIVER. All waivers of the provisions of this Agreement must be in writing and signed by the party to be charged with the waiver.
- 5.4 ADDITIONAL DOCUMENTS. Each of the parties, without further consideration, agrees to execute such additional documents as may reasonably be necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective parties hereunder.
- 5.5 HEADINGS. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.
- 5.6 PARTIES. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. No party hereto may assign its rights or obligations hereunder without the prior written consent of all other parties hereto.
- 5.7 COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.
- 5.8 RELATIONSHIP OF PARTIES. No partnership, joint venture, or principal-agent is established among the parties under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RAMSEY COUNTY

By: 

Rafael Ortega, Chair
Board of Commissioners

By: 
Bonnie Jackelen, Chief Clerk
Board of Commissioners
2000-164
5/23/00

Funds are Available:

Account No. _____

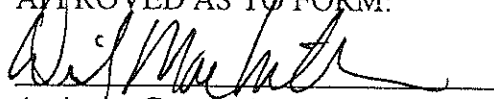
Amount: _____

Budgeting & Accounting

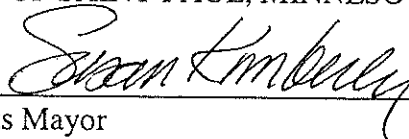
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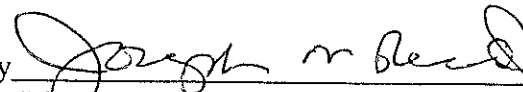

Risk Manager 5-16-00

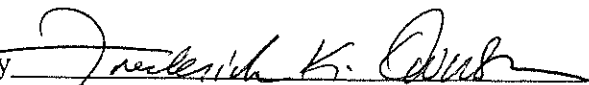
APPROVED AS TO FORM:


Assistant County Attorney

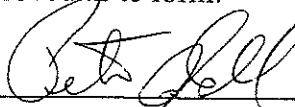
CITY OF SAINT PAUL, MINNESOTA

By 
Its Mayor

and by 
Its Director, Office of Financial Services

and by 
Its City Clerk

Approved as to form:


Assistant City Attorney

PORT OF AUTHORITY OF THE CITY OF
SAINT PAUL

By *Jean A. Dwyer*
Chair

and by *Lori Fitts*
~~Secretary~~ Commissioner

CAPITAL CITY PROPERTIES

By *[Signature]*
Chair ~~CEO~~

and by _____
Secretary

SAINT PAUL CONVENTION AND
VISITORS BUREAU FOUNDATION

By *[Signature]*
Chair

and by *[Signature]*
Secretary

EXHIBIT B

GROUND LEASE

THIS LEASE (hereinafter, together with any supplements, amendments, or exhibits hereto, referred to as the LEASE) is made as of _____, 2000, between the City of Saint Paul, Minnesota, a home rule charter city and a municipal corporation under the laws of the State of Minnesota (the CITY) and Ramsey County, a political subdivision of the State of Minnesota (the COUNTY).

RECITALS

WHEREAS, the CITY owns or will acquire certain real property interests (the CORRIDOR) more particularly described in Exhibit A which is attached hereto and incorporated herein by reference, and

WHEREAS, the City desires to lease to the COUNTY and the COUNTY desires to lease from the CITY the CORRIDOR for the purpose of constructing, operating, leasing or sub-leasing a pedestrian connection between the RiverCentre Complex and the existing skyway system beginning in Landmark Towers in the CITY, as part of the RiverCentre complex.

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration the receipt and sufficiency of which is hereby acknowledged by the parties, the CITY and COUNTY hereby agree as follows:

ARTICLE 1 – CORRIDOR.

Section 1.1 DEMISE

The CITY hereby lets and demises to the COUNTY, which hires and takes from the CITY, the CORRIDOR (including all easements and other rights appurtenant thereto described on Exhibit A hereto). The CITY reserves a public skyway easement in and to the CORRIDOR and the CITY'S skyway ordinance is applicable thereto.

ARTICLE 2 – TERM

Section 2.1 TERM

The term of this lease shall run for a period of thirty-five (35) years commencing as of the date hereof (the TERM).

Section 2.2. EXTENSION TERMS

The COUNTY shall have the option (OPTION) to extend the term of this LEASE for a period of five (5) years, subject to the following conditions:

- a) The extension shall cover the entire CORRIDOR.
- b) The OPTION shall be excised by the COUNTY by written notice delivered to the CITY not later than twelve (12) months prior to the expiration of the term of this LEASE.
- c) Upon exercise of the OPTION, all terms and conditions of this LEASE shall be extended and remain in effect for the duration of the option period.

ARTICLE 3 – RENT

The COUNTY shall pay the CITY One Dollar (\$1.00) per year during the Term hereof, as rent for the CORRIDOR. Rent shall be payable in arrears, with the first payment due on the

first anniversary of the date this LEASE is approved by the Ramsey County Board of Commissioners and succeeding payments due annually on subsequent anniversary dates. Failure of the CITY to demand payment with 60 days after the due date shall be deemed a waiver by the CITY of that annual payment.

ARTICLE 4 – TAXES, ASSESSMENTS, ETC.

The CITY shall pay, before any fine, penalty, additional interest or cost may be added for non-payment, and shall indemnify the COUNTY and hold the COUNTY harmless from and against any real estate, personal property, sales, use, ad valorem, leasing, income, or other tax, special assessment, water, sewer, or other charges or levies which may be imposed by any entity against the CORRIDOR or the COUNTY as a consequence of this LEASE.

ARTICLE 5 – SURRENDER AT END OF TERM

Upon the expiration or earlier termination of this LEASE, the COUNTY shall peaceably and quietly leave, yield up and surrender the premises to the CITY. Upon such expiration or earlier termination, the COUNTY's right, title, and interest in any skyways, tunnels, or other structures constructed within the CORRIDOR, including the PROJECT, shall terminate as of the date the expiration or earlier termination is effective and any such skyway, tunnel, or other structure shall become the property of the CITY.

ARTICLE 6 – CONDEMNATION

Section 6.1 TOTAL TAKING

If any public authority takes under condemnation or threat of condemnation the entire CORRIDOR, then the term of this lease shall cease as of the day the condemning authority acquires possession of the CORRIDOR. Upon such termination, the COUNTY will have no further right, title or interest in the CORRIDOR, and no further obligations hereunder.

Section 6.2 PARTIAL TAKING

If any public authority takes under condemnation or threat of condemnation any part of the CORRIDOR which renders the remainder unusable for the purpose contemplated in Article 7 hereof, this LEASE shall terminate and the terms of this LEASE shall cease as of the day the condemning authority acquires possession of the CORRIDOR. Provided, however, that the CITY, may, in its sole discretion and at its sole cost and expense provide alternate connections or facilities which will enable those parts of the CORRIDOR not taken in condemnation to form and be used as a continuous pedestrian CORRIDOR as contemplated herein. The CITY shall, at its sole cost and expense, design and construct any tunnels, skyways, or other facilities necessary to complete such connection.

In the event a public authority takes under condemnation or threat of condemnation part of the CORRIDOR, where such taking does not materially impair the remainder of the CORRIDOR being used as a continuous pedestrian CORRIDOR as contemplated herein, this LEASE shall remain full force and effect. The CITY shall design and construct, at its cost, any modifications to the tunnel or skyway necessary, and such modifications shall be part of the CITY's share of ownership of the tunnel or skyway.

Notwithstanding any provision of the LEASE to the contrary, this LEASE shall not terminate prior to termination of that certain FACILITY LEASE, dated as of the date hereof, by the COUNTY, as landlord, and the CITY, as tenant (the FACILITY LEASE).

Section 6.3 COMPENSATION

So long as no Event of Default under the FACILITY LEASE on the part of the CITY has occurred and is continuing, the CITY shall be entitled to receive any award of damages or other compensation paid by any public authority as and for damages or compensation

resulting from condemnation or threat of condemnation of the CORRIDOR. If any Event of Default under the FACILITY LEASE on the part of the CITY has occurred and is continuing, the COUNTY shall be entitled to receive any award of damages or other compensation paid by any public authority as and for damages or compensation resulting from condemnation or threat of condemnation of the CORRIDOR.

ARTICLE 7 – USE OF CORRIDOR

Section 7.1 PERMITTED USE

The COUNTY shall use the CORRIDOR solely for the construction, operation, maintenance, and repair of a public pedestrian tunnel or skyway or combination thereof (the PROJECT), and related purposes. All advertising or other rental of space which will not close the PROJECT to public use thereof shall belong solely to the CITY. During any period of time in which the COUNTY has control of the CORRIDOR and the CITY is not in possession pursuant to the FACILITY LEASE, the COUNTY may construct, operate, maintain and repair the PROJECT on the CORRIDOR .

ARTICLE 8 – NO MERGER; ASSIGNMENT, SUBLETTING, ETC.

Section 8.1 NO MERGER

There shall be no merger of this LEASE nor of the leasehold estate created by this LEASE with the fee estate in the CORRIDOR by reason of the fact that the same entity may acquire or own or hold, directly or indirectly, (a) this LEASE on the leasehold estate or any estate created by assignment or sublease, and (b) the fee estate or any other easement or estate in the CORRIDOR, and no such merger shall occur until all entities having an interest in the CORRIDOR or this LEASE or any sublease or assignment hereof shall join in a written instrument affecting such merger.

Section 8.2 ASSIGNMENT, SUBLETTING, ETC.

At any time and from time to time the COUNTY may assign, pledge or otherwise transfer its interest in this LEASE, and all or any part of the CORRIDOR may be sublet, upon such terms as the COUNTY, in its discretion, may require.

ARTICLE 9 – QUIET ENJOYMENT

The COUNTY shall enjoy the CORRIDOR during the term of this LEASE free from any interest by the CITY, or any person or entity claiming by, through, or under the CITY.

ARTICLE 10 – CANCELLATION

On or after March 1, 2030, the COUNTY in its sole discretion and without penalty may terminate this LEASE and its obligations hereunder with or without cause, upon sixty (60) days written notice to the CITY. Upon such cancellation, the COUNTY's right, title, and interest in any skyways, tunnels, or other structures constructed within the CORRIDOR, including the PROJECT, shall terminate as of the date cancellation is approved by the Ramsey County Board of Commissioners and any such skyway, tunnel, or other structure shall become the sole property of the CITY. If the CITY exercises its purchase option under the FACILITY LEASE, this LEASE shall be cancelled upon the effective date of the purchase.

If the COUNTY fails to complete the PROJECT by June 1, 2002, ("Date of Completion"), in accordance with the approved Project Documents and any authorized change orders, then the CITY may terminate this LEASE upon sixty (60) days written notice to the COUNTY, provided that the COUNTY has the right during such sixty (60) day period to diligently pursue completion of the PROJECT and complete the PROJECT within three hundred sixty-five (365) days from the CITY's notice or as soon thereafter as practicable.

The Date of Completion shall be extended for such period of time that any delays to construction are caused by events of *force majeure*. For purposes of this LEASE, *force majeure* shall include any cause beyond the COUNTY's control, construction delays caused by material shortages, strikes or acts of nature, contractor or sub-contractor defaults, or any other event not caused by the action or inaction of the COUNTY. Upon such termination of this LEASE, the COUNTY's right, title and interest in any skyways, tunnels or other structures constructed within the corridor, including the PROJECT, shall terminate and any such structures shall become sole property of the CITY.

ARTICLE 11 – NOTICES

All notices which may be given under this LEASE by the CITY to the COUNTY shall be deemed to be properly given only if delivered or if sent by United States registered or certified mail to the COUNTY, at the address of the COUNTY hereinabove stated, or at such other address as the COUNTY shall have furnished to the CITY in writing. All notices which may be given under this LEASE by the COUNTY to the CITY shall be deemed to be properly given only if delivered personally or if sent by United States registered or certified mail to the CITY at the address of the CITY hereinabove stated, or at such other address as the CITY shall have furnished to the COUNTY in writing.

Except as otherwise herein provided, any communication provided for herein shall become effective only upon and at the time of receipt by the person to whom it is given, unless such communication is mailed by registered or certified mail, in which case it shall be deemed to have been received on (a) the fifth business day following the mailing thereof, or (b) the day of its receipt, if a business day, or the next succeeding business day, whichever of (a) or (b) is earlier, or on such other date as shall be required by applicable law.

ARTICLE 12 – SEPARABILITY

If any term or provision of this LEASE or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this LEASE, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this LEASE shall be valid and enforced to the fullest extent permitted by law.

ARTICLE 13 – MISCELLANEOUS

Neither this LEASE nor any term or provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

The captions in this LEASE are for convenience or reference only and shall not define or limit any of the terms or provisions hereof.

This LEASE may be executed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

This LEASE and each and every covenant thereof shall inure to and be binding upon and shall be for the benefit of the parties hereto and their respective successors and assigns, subject to the provisions of this LEASE. In the event of the recording of this LEASE or any memorandum hereof, such instrument, upon the CITY's request following the expiration or earlier termination of this LEASE, the COUNTY shall execute and deliver an instrument that is reasonable in form and that memorializes the occurrence of such expiration or termination. Whenever either party's consent is expressly required hereunder, such consent shall not be unreasonably withheld, conditioned or delayed and any reasons advanced for the failure to unconditionally grant such consent shall be stated with specificity in writing.

ARTICLE 14 – LEGAL DESCRIPTION

The COUNTY shall prepare a legal description of the CORRIDOR, which shall be attached as Exhibit A hereto. If this LEASE is executed before the legal description is prepared, the COUNTY shall nevertheless prepare the description, and the parties shall enter into an amendment to this LEASE incorporating the legal description into this LEASE . This LEASE shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have executed this LEASE .

RAMSEY COUNTY

By: _____
Its Chair

By: _____
Its Chief Clerk

STATE OF MINNESOTA)
) §
COUNTY OF RAMSEY)

The foregoing was acknowledged before me this ____ day of _____, 2000, by _____ and _____, the _____ and _____ of _____, a _____ under the laws of _____, on behalf of the _____

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

CITY OF ST. PAUL

By: _____
Its Mayor

By: _____
Its Director, Office of Financial Services

By: _____
Its City Clerk

STATE OF MINNESOTA)
) §
COUNTY OF RAMSEY)

The foregoing was acknowledged before me this ____ day of _____, 2000,
by _____ and _____,
the _____ and _____
of _____, a _____
under the laws of _____, on behalf of the _____

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

EXHIBIT C

FACILITY LEASE

THIS LEASE (hereinafter, together with any amendments, supplements or attachments, the "LEASE") is made as of _____, 2000, between the City of Saint Paul, Minnesota, a home rule charter city and a municipal corporation under the laws of the State of Minnesota (the "CITY") and Ramsey County, a political subdivision of the State of Minnesota (the "COUNTY").

RECITAL

WHEREAS, the COUNTY will co-own with the CITY a pedestrian connection and link consisting of tunnels, skyways, and related equipment (the PROJECT) connecting the RiverCentre Complex with the Saint Paul skyway system at Landmark Tower in the CITY as an extension of the RiverCentre Complex; and

WHEREAS, the PROJECT is situated on real property owned or to be acquired by the CITY or on real property that the CITY has easement rights to, which has been leased to the COUNTY by a separate lease for a period of thirty-five (35) years, commencing the date hereof and ending on _____, 2035; and

WHEREAS, the PROJECT will be constructed pursuant to the RiverCentre Pedestrian Link Cooperative Agreement, dated as of _____, 2000, by and among the COUNTY, the CITY, the Port Authority of the City of Saint Paul, Capital City Properties, and the Saint Paul Convention and Visitors Bureau Foundation and pursuant to a Loan Agreement, dated _____ (the LOAN AGREEMENT), between the County and the Minnesota Public Facilities Authority (MPFA), pursuant to which the MPFA has agreed to make a loan (the LOAN)

for construction of the PROJECT from its Transportation Revolving Loan Fund (TRLF) to the COUNTY; and

WHEREAS, the share of the PROJECT owned by the COUNTY will be in the ratio that costs of the PROJECT paid from proceeds of the LOAN bear to all costs of the PROJECT; and

WHEREAS, under this LEASE the CITY is leasing the COUNTY's share of the PROJECT; and

WHEREAS, the LOAN is to be secured and repaid by the rental payments of the CITY to the COUNTY under the terms of this LEASE; and

WHEREAS, the parties hereto agree that but for the CITY's agreement herein to pay rent the COUNTY would not have obtained the LOAN or co-owned the PROJECT; and

WHEREAS, the parties hereto desire to enter into this LEASE of the PROJECT:

NOW THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the COUNTY and CITY hereby agree as follows:

ARTICLE 1. PROJECT

Section 1.1 Demise

The COUNTY hereby lets and demises unto the CITY, and the CITY hires and takes from the COUNTY, the COUNTY's share of the following:

- a) a lease of the real property interests of the COUNTY in the real property described on Exhibit A attached hereto (the PROJECT SITE); and

- b) the PROJECT, together with all easements and other rights appurtenant to the PROJECT; and
- c) all fixtures and plumbing, mechanical and electrical equipment owned by the COUNTY on the PROJECT SITE serving the improvements.

ARTICLE 2. TERM

Section 2.1 Term

The term of this LEASE shall run for a period of thirty (30) years, commencing as of the date hereof.

Section 2.2 Extension Term. CITY shall have the option (an "Extension Option") to extend the term of this LEASE for ten (10) years with respect to all, but no less than all, of the COUNTY's share of the PROJECT, in accordance with the following provisions:

- (a) Such option shall be exercisable by written notice (an "Extension Notice") delivered to the COUNTY not later than twelve (12) months prior to the expiration of the term of this LEASE. The delivery of the Extension Notice shall constitute a binding commitment by the CITY to extend the term for the period designated in such notice subject to the terms and conditions hereof. If the CITY fails to deliver the Extension Notice in accordance with such time restriction, the Extension Option contemplated by this Section 2.2 shall be deemed waived and of no further force and effect. The rate of rent payable by the CITY during the subject Extension Term upon the entirety of the PROJECT shall be an amount equal to the "Extension Market Rate" in effect as of the commencement date of the subject Extension Term.

(b) For purposes hereof the phrase "Extension Market Rate" means the fair market rent for the COUNTY's share of the PROJECT as of the commencement date of the subject Extension Term, based on the rental rates then generally available to a third party or the CITY for similarly situated and sized space in the City of St. Paul (taking into account the age, location and quality of the buildings and the length of the terms and the sizes and level of improvement of the spaces demised under such leases to a third party or the CITY).

(c) The COUNTY shall, within thirty (30) days after receipt of the Extension Notice, give the CITY written notice ("COUNTY's Extension Rate Notice") of the COUNTY's determination of the Extension Market Rate. If the CITY does not agree with the COUNTY's determination of the Extension Market Rate, the CITY shall give the COUNTY written notice of that disagreement within fifteen (15) days of receipt of the COUNTY's Extension Rate Notice, stating the amount which the CITY believes the Extension Market Rate should be and the basis for such belief, and the COUNTY and the CITY shall endeavor in good faith to agree on the Extension Market Rate. If the COUNTY and CITY have not agreed as to the Extension Market Rate within thirty (30) days after the CITY's receipt of the COUNTY's Extension Rate Notice, either party may deliver to the other party a written demand (the "Appraisal Demand") that the Extension Market Rate be determined by an appraiser, which demand shall include the names of at least three (3) reputable real estate appraisers who are members of the American Institute of Real Estate Appraisers or of a successor body hereafter constituted and exercising similar functions (referred to hereinafter as "AIREA") and who have no affiliation with either party and who have not less than 10

years of experience in appraising commercial and industrial properties in the Twin Cities Metropolitan Area. The appraiser shall be chosen through the mutual agreement of the COUNTY and the CITY, which agreement shall be reached within twenty (20) days after the delivery of the Appraisal Demand. Provided an agreement upon the appraiser is so reached, the appraiser shall be directed to complete the appraisal of the Extension Market Rate of the PROJECT as of the date of the commencement of the subject Extension Term within forty-five (45) days of such appraiser's appointment. The appraiser's determination of the Extension Market Rate shall be binding upon the parties. In the event the parties are unable to agree upon the identity of an appraiser within twenty (20) days of the delivery of the Appraisal Demand, each party shall, within twenty-five (25) days of the delivery of the Appraisal Demand, appoint its own appraiser, subject to the above qualifications. Such appointment shall be confirmed in a writing identifying the appraiser delivered to the other party within said twenty-five (25) day period. If either of the parties fails to appoint an appraiser within said twenty-five (25) day period, then the one appraiser appointed shall be the sole appraiser and the provisions of this subsection (c) relating to more than one appraiser shall not apply. If each party appoints an appraiser, a third appraiser shall be jointly appointed by the first two appraisers. If the first two appraisers are unable to agree on a third appraiser within ten (10) days after the appointment of the second appraiser, then the highest ranking available officer of the Minnesota chapter of the AIREA who is not affiliated with either party shall appoint the third appraiser. If the determinations of any two or all three of the appraisers shall be identical, such amount shall be the Extension Market Rate. If the

determination of all three appraisers shall be different in amount, the highest appraised value shall be averaged with the middle appraised value (said average being hereinafter referred to as "Sum A"), the lowest appraised value shall be averaged with the middle appraised value (said average being hereinafter referred to as "Sum B") and the Extension Market Rate shall be determined as follows:

- A. If neither Sum A nor Sum B differ from the middle appraised market rental by more than ten percent (10%) of such middle appraised market rental, then the Extension Market Rate shall be deemed to be the average of the three appraisals.
- B. If either Sum A or Sum B (but not both of said Sums) differs from the middle appraised market rental by more than ten percent (10%) of such middle appraised market rental, then the Extension Market Rate shall be the average of the middle appraised market rental and the appraised market rental closest in amount to said middle appraised market rental.
- C. If both Sum A and Sum B differ from the middle appraised market rental by more than ten percent (10%) of such middle appraised market rental, the Extension Market Rate shall be the middle appraised market rental.

The Extension Market Rate as determined in accordance with the provisions of this Section 2.2(c) shall be binding upon the parties. All necessary and reasonable costs and expenses of any appraisals performed pursuant to this Section 2.2 shall be shared equally by the COUNTY and CITY, and all agreements with appraisers appointed in accordance with this

Section 2.2 shall provide that such appraisals be completed within forty-five (45) days of such appointment.

To the extent that the Extension Option is effectively exercised, the COUNTY and CITY shall execute and deliver an amendment to this LEASE that is reasonable in form and that memorializes the occurrence and effect of such extension, which amendment shall be executed and delivered within ten (10) days following the determination of the Extension Market Rate.

(d) The CITY shall have no further options to extend the term of this LEASE beyond the expiration date of the Extension Term, if any. The COUNTY shall not be obligated to perform any leasehold improvement work in the PROJECT or give the CITY an allowance for any such work or for any other purposes for any Extension Term. Except for the rate of Net Rent, for options that have been waived or expired and except as otherwise provided herein, all of the terms and provisions of this LEASE shall remain the same and in full force and effect during each Extension Term. Notwithstanding the foregoing, the Extension Option contemplated by this Section 2.2 shall automatically terminate and become null and void and of no further force and effect upon the earlier to occur of (i) the expiration or termination of this LEASE, (ii) the termination of the CITY's right to possession of the PROJECT, or (iii) the failure of the CITY to timely or properly exercise the Extension Option.

ARTICLE 3 – RENT

Section 3.1. Base Rent. The CITY shall pay base rent to the COUNTY in an amount equal to 105% of the payments due by the COUNTY to the MPFA under the COUNTY's Series 2000 Note, dated as of _____, 2000 (the NOTE), which principal amount shall not exceed \$6.2 million. The base rent shall be due and payable to the COUNTY five (5) working days prior to the date payments are due on the Note. If the CITY shall pay the COUNTY in a timely manner all of the lease payments required by this LEASE, then the COUNTY agrees that the COUNTY shall give a credit or return to the CITY a sum equal to the payments made by the CITY over 100% for the prior year(s) on an annual basis.

Section 3.2. Rent Schedule. The COUNTY and the CITY acknowledge that as of the date of the execution of this LEASE neither the exact amount of the LOAN nor its repayment schedule is known. At such time as the LOAN is approved and a repayment schedule is established between the MPFA and the COUNTY, the COUNTY shall prepare a rental payment schedule and amendment to this LEASE incorporating the schedule into the LEASE, which amendment shall be approved by the CITY and COUNTY. Failure of either the CITY or COUNTY to approve such amendment shall not abate or affect the obligation of the CITY to pay rent as stated in Sections 3.1 and 3.2 hereof.

Section 3.3. Additional Rent. The CITY will also pay, as additional rent, all other amounts, liabilities, and obligations which the CITY assumes or agrees to pay under this LEASE, and in the event of any failure on the part of the CITY to pay the sum, the COUNTY shall have the rights,

powers, and remedies provided herein or by law or equity or otherwise in the case of non-payment of rent.

ARTICLE 4 – TAXES, ASSESSMENTS, ETC.

Section 4.1 CITY to Pay Taxes, Etc. The CITY will pay, before any fine, penalty, additional interest or cost may be added for non-payment, and agrees to indemnify the COUNTY and hold the COUNTY harmless from and against, any real estate, personal property, income, sales, use, ad valorem, value added, leasing, lease use, stamp and other taxes, assessments (including, without limitation, all installments of special assessments payable during the term hereof for public improvements or benefits commenced prior to or within the term hereof, whether or not completed or to be completed within the term hereof), water, sewer or other rents, rates and charges, excises, levies, license fees or taxes, permit fees, imposts, duties, withholdings and other authorization fees and other charges, in each case whether general or special (including all penalties, fines or interest thereon that may be due in connection with any late payment), which at any time during or in respect of the term hereof may be assessed, levied, confirmed or imposed upon or in respect of or be a lien upon the PROJECT or any part thereof or any rent, receipts or other earnings arising therefrom or any estate, right or interest therein, any occupancy, use or possession by the COUNTY or CITY of the PROJECT or any part thereof, or this LEASE (all of which are hereinafter sometimes referred to as "Imposition(s)"). The CITY may choose to pay special assessments in a lump sum, over the longest term permitted under the levy or in any other manner that avoids any fine, penalty or additional interest for non-payment; provided, notwithstanding any contrary provision herein, the CITY shall pay the entirety of all special assessments that are levied against the PROJECT as of the

date of this LEASE. The CITY will furnish to the COUNTY, from time to time upon reasonable request, official receipts or other satisfactory proof evidencing such payment. Nothing herein contained shall be construed to require the CITY to pay any franchise, estate, inheritance, income, succession, gift, capital levy or stock transfer tax of the COUNTY, or any income or excess profits tax determined on the basis of the COUNTY's general income or revenues or any tax imposed by reason of a sale of the Real Properties, provided that if at any time during the term of this LEASE a tax or excise on rents is levied or assessed against the COUNTY on the Net Rent or any additional rent, the same shall be deemed to be an Imposition, and the CITY covenants to pay and discharge such tax or excise on rent in accordance with the provisions of this Section 4.1 in respect of the payment of Impositions; provided, if any such tax or excise on rents is progressive, the CITY shall only pay the amount thereof that would have been payable if the Net Rent payable hereunder was the only rent received by the COUNTY.

Section 4.2 Contests of Impositions. The CITY at its expense may contest (in the case of any item of substantial importance, after prior written notice to the COUNTY) by appropriate legal proceedings, conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition and in the event of such contest may defer payment of any Imposition, provided that (a) such proceedings shall suspend the collection thereof from the COUNTY on the PROJECT, (b) neither the PROJECT nor any part thereof would be in any imminent danger of being forfeited, lost or subject to penalty, (c) the CITY shall have furnished such security, if any, as may be required in the proceedings, and (d) the CITY shall not enter into any

agreement with respect to the amount of any assessment or levy that will be binding upon the PROJECT for periods subsequent to the term hereof without the COUNTY's prior written consent.

Section 4.3 Apportionment. Any Imposition that is payable during a fiscal period of the taxing authority, a part of which period is included within the term of this LEASE and a part of which is included in a period of time after the expiration of the term of this LEASE, unless the CITY shall have purchased, or have a continuing interest in, the PROJECT, shall be adjusted between the COUNTY and CITY as of the expiration of the term of this LEASE, so that the CITY shall pay only that proportion of such Imposition which is currently payable during that part of such fiscal period that is included in the period of time before the expiration of the term of this LEASE.

ARTICLE 5 – MAINTENANCE AND REPAIRS

Section 5.1 Maintenance and Repairs During the Term of this Lease. After completion of construction of the PROJECT, the CITY at its expense shall keep and maintain the PROJECT (including all Equipment included as a part thereof) in good and clean order and condition, and shall make all necessary repairs, replacements and renewals thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The CITY shall indemnify the COUNTY from and against any claim, damage, cause of action, cost or expense caused by the CITY's failure to maintain, repair and replace the PROJECT as required herein. Nothing in this Section 5.1 shall or can be construed as a waiver by the CITY or COUNTY of the Municipal tort liability limits set forth in Mn. Stat. 466.01 et seq. and any common law immunities, all of which are reserved by the CITY and COUNTY. All repairs, replacements and renewals shall be at least equivalent in quality to the original work and materials. The CITY at its expense will do or cause

others to do all necessary shoring of foundations and walls of the structures and improvements located on any part of the PROJECT and (to the extent permitted by law) of the ground adjacent thereto, and all other acts or things for the safety and preservation thereof which may be necessary by reason of any excavation or other building upon any of the PROJECT and (to the extent permitted by law) on any adjoining property or street, alley or passageway. The CITY will not commit or permit any waste of any of the PROJECT or any part thereof.

With respect to the Equipment, the CITY in the course of performing its obligation to make any repairs, replacements and renewals thereto, may from time to time sell or otherwise dispose of any of the fixtures, equipment and articles of personal property (excluding leasehold estates) constituting part of the Equipment, if such properties shall, in the reasonable opinion of the CITY, then be worn out so as to be unserviceable or which will be replaced by an alteration. The CITY may also sell or otherwise dispose of any of the fixtures, equipment and articles of personal property (excluding leasehold estates) constituting part of the Equipment, if the CITY and the COUNTY shall not deem it necessary or advantageous to retain such properties in the business of operating any of the PROJECT in the manner permitted hereunder; provided, that as soon as reasonably practicable, but in any event not later than sixty (60) days after such sale or other disposition, such properties shall be replaced by, or there shall be substituted therefor, other properties, of the same character as, and of value in the operation of such PROJECT at least equal to the value (at the date of disposition) of, the properties sold or otherwise disposed of; provided further, however, that the foregoing proviso shall not be applicable (i) in the case of such properties so sold or otherwise disposed of during such fiscal year of the CITY if the aggregate value of such properties so sold or otherwise

disposed of during such fiscal year does not exceed \$50,000.00, or (ii) if the COUNTY shall consent that such replacement or substitution shall not be required.

Section 5.2 Return at End of Term; County Right to Transfer PROJECT to City. In addition to the requirements of Section 5.1, on the last day of the term of this LEASE, the CITY shall surrender the COUNTY's share of the PROJECT to the COUNTY in good repair and serviceable condition, for the COUNTY to use and occupy as a co-owner (co-tenant). For purposes hereof, and without limiting the generality of the foregoing, the COUNTY's share of the PROJECT shall be surrendered for co-owner (co-tenant) use on such date in at least the following condition:

- (a) free from all liens or encumbrances;
- (b) subject to no Impositions other than real estate taxes and installments of special assessments apportioned as provided in Section 4.3 hereof;
- (c) all buildings and structures on the PROJECT shall be in material compliance with all state and local building and fire prevention codes applicable thereto; and
- (d) all licenses and permits of any governmental authority applicable to the operation and use of the PROJECT shall be transferred to the COUNTY in part to the extent both transferable and necessary for the COUNTY's use and occupancy as a co-owner (co-tenant).

The CITY agrees that, in addition to any other remedies available to the COUNTY hereunder, it will reimburse the COUNTY for all costs and expenses incurred by the COUNTY and necessary to make the PROJECT conform to the conditions set forth in this Article 5.

Notwithstanding any provision hereof to the contrary, the COUNTY may at any time in its sole and absolute discretion, transfer all its right, title and interest in and to the PROJECT to the

CITY, and the CITY hereby agrees in such event to take ownership of the PROJECT without claim against the COUNTY and without obligation to pay any further rent or other payment with respect to the PROJECT to the COUNTY.

ARTICLE 6 – ACCEPTANCE OF AND ALTERATION TO PROJECT

Section 6.1 Acceptance of PROJECT. The CITY acknowledges that the PROJECT has not been constructed. The CITY is fully knowledgeable of the condition of the PROJECT and hereby accepts the PROJECT, for the purposes of this LEASE, in its "As-Is" condition. The CITY agrees that it bears the full risk that the PROJECT is suitable for the CITY's use, or will be upon completion of construction of the tunnel and skyway.

The COUNTY shall require that upon completion of the PROJECT the architect certify to the CITY that the PROJECT has been constructed in accordance with the approved Project Documents and any authorized change orders.

Section 6.2 Construction Warranties. It is acknowledged that the COUNTY makes absolutely no warranties or representations concerning the timing, quality or adequacy of the construction of the PROJECT (or the structures or improvements thereon or any of the Personal Property) or of its fitness for any particular use. Upon request, COUNTY shall, however, assign to CITY any warranties or representations concerning the PROJECT, if any, from any contractor, subcontractor or supplier in favor of the COUNTY. Consequently, the CITY's sole remedies at law or in equity in connection with any defect or inadequacy in the construction of the PROJECT shall be to pursue such remedies against the contractor who constructed the PROJECT and/or any of its subcontractor or suppliers, whether pursuant to the breach of a warranty or representation that has

been assigned by the COUNTY to the CITY or otherwise, and the CITY hereby waives any claims, or other rights to proceed directly, against the COUNTY in connection with any such defects or inadequacies. The COUNTY shall without charge cooperate with and assist the CITY in the pursuit of any claims against contractor, sub-contractors, or other third parties, arising from construction of the PROJECT.

Section 6.3 CITY's Work. The CITY shall, at its sole cost, transport and install all furniture, equipment and trade fixtures that it may choose to install in the PROJECT (collectively, the "CITY's Work"); provided, the CITY shall not make any Alteration or impair the structures integrity of the structures except in compliance with Section 6.4 hereof. All of the CITY's Work shall be performed in accordance with good installation practices and all applicable legal and insurance requirements. The CITY shall indemnify the COUNTY from and against any and all liabilities, damages, losses, liens, mechanic's liens, foreclosures, injury, suits, actions, and claims of any nature whatsoever, including all attorneys' fees, arising out of the CITY's Work. Nothing in this Section 6.3 shall or can be construed as a waiver by the CITY or COUNTY of the Municipal tort liability limits set forth in Mn. Stat. 466.01 et seq. and any common law immunities, all of which are reserved by the CITY and COUNTY.

Section 6.4 Alterations. The CITY may, at its expense, make such alterations of and improvements and additions to the structures, improvements and Equipment on the PROJECT as the CITY deems necessary or desirable in connection with the requirements of its operation of the PROJECT (such alterations, improvements or additions being hereafter sometimes referred to as ("Alteration(s)"); provided, any and all Alterations by the CITY on the PROJECT or any part thereof

shall be subject to the following conditions:(a) no Alteration shall be undertaken or carried on until the CITY shall have procured and paid for, so far as the same may be required, from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction, which are required for the completion of such Alteration;

(b) any Alteration shall, when completed, be of such character as not to reduce the value, utility and structural integrity of the subject PROJECT below its value, utility and structural integrity immediately before such Alteration; if any such Alterations shall affect the structural integrity of the PROJECT in any manner, such Alteration shall require the COUNTY's prior written approval, which approval shall be deemed to have been given if objections to such Alteration have not been given to the CITY within fifteen (15) days following receipt by the COUNTY of the plans and specifications described in subsection (d) below;

(c) all work done in connection with any Alteration shall be completed promptly and with reasonable due diligence and in a good and workmanlike manner in accordance with the plans and specifications delivered to, and where required, approved by the COUNTY, which approval shall not be unreasonably withheld, and in compliance with the building and zoning laws of the municipality or other governmental subdivision wherein the subject PROJECT are situated and with all laws, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof, and in accordance with the orders,

rules and regulations of the National Board of Fire Underwriters or any other body now or hereafter constituted exercising similar functions; and

(d) all Alterations costing in excess of \$150,000 or affecting the structural integrity of the subject PROJECT shall be conducted under the supervision of a qualified architect or engineer, detailed plans and specifications, with cost estimates therefor, prepared and approved in writing by such architect or engineer, shall have been filed with the COUNTY before commencement of the work.

All Alterations shall immediately become part of the PROJECT but shall increase the CITY's share of ownership of the PROJECT provided that such increase in the CITY'S ownership shall not reduce Base Rent.

Section 6.5 Mechanic's Liens. Except as set forth in Sections 6.3 and 6.4 hereof, nothing contained in this LEASE shall be construed as giving the CITY any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property, in such fashion as would permit the making of any claim against the COUNTY, or the assertion of any lien against the PROJECT, in respect thereof. The CITY shall have no authority, express or limited, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of the COUNTY or CITY in the PROJECT SITE or the PROJECT, including those who may furnish materials or perform labor for any construction or repairs. The CITY shall pay all sums legally due and payable on account of any labor performed or materials furnished in connection with any work performed on the PROJECT by the CITY or at the CITY's instance, and the CITY will shall indemnify the COUNTY from any and all loss, cost and

expense, including reasonable attorneys' fees, based on or arising out of such claims or liens asserted against the CITY's leasehold estate or against the right, title and interest of the COUNTY in the PROJECT SITE or the PROJECT. In the event any such or similar lien shall be filed, the CITY shall, within five (5) business days of receipt thereof, give notice to the COUNTY of such lien, and the CITY shall, within fifteen (15) business days after receiving notice of the filing of the lien, discharge such lien. Failure of the CITY to discharge the lien shall constitute a default under this LEASE and, in addition to any other right or remedy of the COUNTY, the COUNTY may, but shall not be obligated to, discharge the same of record by paying the amount claimed to be due, and the amount so paid by the COUNTY and all cost and expenses incurred by the COUNTY therewith, including reasonable attorneys' fees, shall be due and payable by the CITY to the COUNTY as additional rent. The CITY acknowledges that the COUNTY may post notice on the PROJECT of non-responsibility for such liens and, in such event, the CITY shall so advise all contractors, materialmen, suppliers and other persons performing work or providing services and/or supplies to the PROJECT on behalf of the CITY.

ARTICLE 7 – INSURANCE

Section 7.1 Property Insurance. The CITY agrees that after completion of construction of the PROJECT at all times during the continuance of this Lease, at its own cost and expense, to keep all the structures and improvements and Equipment now or hereafter situate on the PROJECT or any part thereof insured in the name of the CITY and COUNTY, as their respective interests may appear, under valid and enforceable policies issued by insurers of recognized responsibility and reasonably acceptable to the COUNTY against loss and damage by all risk property policy in an

amount not less than the full insurable value thereof, but in no event an amount less than that required to prevent the COUNTY or the CITY from becoming a co-insurer, or in an amount necessary to repay any balance remaining on the LOAN. The CITY shall have the right, but not the obligation, to supplement the foregoing required coverage with coverage that, in the case of the occurrence of an insured event, provides proceeds in the amount of all Net Rent and additional rent that is payable during any period that any portion of the PROJECT is untenable by reason of the occurrence of such insured event. The term "full insurable value" shall mean the actual full replacement cost, as determined at the request of the COUNTY and at the CITY'S expense by the insurer or insurers or by an expert approved by the COUNTY.

Section 7.2 Terms of Policies, Etc. Any of the insurance specified herein may be provided by the CITY under blanket insurance policies which cover properties in addition to the PROJECT, provided any such insurance of the type specified in Section 7.1 is properly allocated to each of the properties covered thereby. Any policies of insurance may contain provisions for a deductible or self-insurance by the CITY. All insurance proceeds for losses shall be payable, at the COUNTY'S election, to an insurance trustee reasonably selected by the COUNTY and the CITY to maintain and disburse such funds to assure the completion of all restoration required hereunder and otherwise as the interests of the parties appear. All policies of insurance maintained by the CITY pursuant hereto shall be written by insurers licensed to do business in Minnesota. The property insurance policy provided for in this Article 7 shall state that such policy is primary, notwithstanding any other insurance in force for the COUNTY, and shall waive subrogation against the COUNTY. The property insurance policy provided for in this Article 7 shall contain an

agreement by the insurer that such policy shall not be canceled, materially altered or reduced in amount without at least 30 days' prior written notice to the COUNTY. Upon the execution of this Lease, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this Section, the CITY shall deliver to the COUNTY duplicate originals (or certificates thereof issued by the insurers) of policies for the insurance specified in this Article 7.

In case of any loss in respect of any part of the PROJECT covered by any policy or other contract of insurance, any adjustment and settlement of such loss which shall be agreed upon between the CITY and any insurer shall be subject to the approval of the COUNTY and shall be evidenced by an Officers' Certificate furnished to the COUNTY. The CITY will furnish to the COUNTY forthwith upon the execution of this Lease and on each anniversary of such date, and at any time upon the COUNTY'S reasonable request, an Officer's Certificate containing a statement confirming the nature and amount of the insurance effected by the CITY pursuant to this Article 7 then in force, the identity of the respective insurers, and stating that said insurance complies with the covenants in this Article 7.

ARTICLE 8 – DAMAGE AND INSURANCE PROCEEDS

Section 8.1 Restoration. In the event of any material damage to or destruction of any of the PROJECT, the CITY shall promptly give written notice thereof to the COUNTY generally describing the nature and extent of such damage or destruction. Subject to section 8.3 below, in case of any damage to or destruction of any portion of the PROJECT, the CITY shall, at its expense, whether or not the insurance proceeds, if any, shall be sufficient for the purpose, repair, replace,

rebuild or otherwise restore the same as nearly as possible to its value immediately prior to such damage or destruction, such restoration to be begun promptly and to be prosecuted diligently upon the terms and conditions set forth in Section 6.4 until the completion thereof.

Section 8.2 Application of Insurance Proceeds. Except as otherwise provided herein, all moneys paid to the COUNTY or a trustee appointed by the COUNTY under policies of insurance pursuant to Article 7.2 of this Lease, by reason of damage to or destruction of any structure or other improvement situated on the PROJECT, less the actual costs, fees and expenses, if any, incurred in connection with adjustment of the loss, shall be held and disposed of as provided in Section 7.2 of this Lease and subject to the following further provisions:

(a) If the CITY is required pursuant to Section 8.1 to restore such structures or other improvements, unless a default shall have occurred and be continuing under this Lease, such monies shall be applied to the payment of the cost of restoration and shall be paid out to the CITY from time to time as the restoration progresses upon the written request of the CITY to the COUNTY, accompanied by an Officers' Certificate, dated not more than 30 days prior to such request, setting forth the following:

(i) that the sum then requested either has been paid or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished material necessary or appropriate for the restoration therein specified, and giving a brief description of such services, and materials and the several amounts so paid or due to each of said person in respect thereof, and stating that no part of such expenditures has been or is being made the basis for any

previous or then pending request for the withdrawal of insurance money, and that the sum then requested does not exceed the reasonable cost of the services and materials described in such Certificate;

(ii) that, except for the amounts, if any, stated in such Certificate to be due for services or materials, there is no outstanding indebtedness known to the persons signing such Certificate, after due inquiry which is then due for labor, wages, services, materials, or supplies in connection with such restoration which, if unpaid, might become the basis of a vendors', mechanics', laborers', materialmen's or suppliers' or other liens upon such restoration or upon the PROJECT;

(iii) specifying the additional amount, if any, required for the completion of such restoration;

(iv) that such restoration will restore the PROJECT affected to at least the value thereof which existed immediately prior to such damage or destruction; and

(v) that there exists no condition or event which at such time, or after notice or lapse of time or both, would constitute a default under this Lease.

(b) If such restoration involves expenditures in excess of \$50,000.00, the statements required by clauses (i) through (iv) of the Certificate required by Section 8.2(a) shall also be certified by the architect or engineer in charge of such restoration.

(c) Upon receipt by the COUNTY of satisfactory evidence of the character required by this Section that such restoration has been completed and has been paid for in full and that there are no liens of the character referred to in this Section 8.2, any balance of the insurance

moneys at the time held by the COUNTY shall be paid to the parties as their respective interests may appear. If the cost of such restoration shall exceed the amount of insurance proceeds, such deficiency shall be paid by the CITY

Section 8.3 CITY'S Option Not to Restore. If the PROJECT is materially damaged or destroyed, the CITY may, in its discretion, pay to the COUNTY from the insurance proceeds and other sources sufficient monies to enable the COUNTY to pay the remaining balance of principal and interest owing under the MPFA Loan, and if the CITY elects this option, the CITY shall have no obligation to restore the PROJECT and the CITY shall bear all costs of demolition or closure of the PROJECT.

ARTICLE 9 – CONDEMNATION

Section 9.1 Condemnation to Reduce or Abate Rent. Acquisition or possession of all or any part of the PROJECT by any public authority other than the entities listed in Section 9.2 below under the power of eminent domain shall abate, modify, reduce, or terminate the CITY's obligation to pay rent pursuant to Article 3 hereof to the extent the COUNTY's share of the PROJECT is not available to the CITY for use.

Section 9.2 Condemnation Not to Reduce or Abate Rent. Acquisition or possession of the COUNTY'S share of the PROJECT by the CITY, the St. Paul PORT AUTHORITY (the PORT), the St. Paul HOUSING AND REDEVELOPMENT AUTHORITY (HRA) or any other entity substantially under the control of the CITY or whose governing body is appointed in whole or in part by the CITY under the power of the eminent domain shall not abate, modify, reduce, or terminate

the CITY'S obligation to pay rent pursuant to Article 3 hereof, or to pay additional rent as specified herein.

Section 9.3 Compensation. The COUNTY and CITY will be entitled to receive and retain any and all awards for compensation for any taking, whether such taking is temporary, permanent, partial, or total in proportion to their respective shares of ownership in the PROJECT, and the CITY shall have no claim to the COUNTY's share of the proceeds of any award in condemnation. Provided, however, that the COUNTY shall promptly apply any such award to repayment of LOAN.

Section 9.4 No Duty to Restore. The COUNTY shall have no duty to restore, repair or replace the PROJECT in the event of any temporary, permanent, partial, or total taking by a condemning authority. The CITY may restore the PROJECT at its sole cost and expense, and such costs shall increase the CITY's share of ownership of the PROJECT, provided that such increase in the CITY's ownership shall not reduce Base Rent.

ARTICLE 10 – USE OF PROJECT

Section 10.1 Permitted Use. The CITY shall use the PROJECT solely for a public pedestrian tunnel or skyway or combination thereof, and related purposes. All advertising or other rental of space which will not materially impede free public use thereof shall belong solely to the CITY or its designee.

ARTICLE 11 – ADDITIONAL COVENANTS OF CITY

Section 11.1 Compliance with Orders, Etc. The CITY shall, throughout the term of this LEASE and at the CITY's sole cost and expense, promptly comply with all requirements of all laws, orders, ordinances, rules and regulations of Federal, state, county and municipal authorities, and with

any directive or certificate of occupancy of any public officer or officers, and the orders, rules and regulations of the National Board of Fire Underwriters and each other body having similar functions, and with the requirements of all policies of public liability, fire and other insurance at any time in force with respect to the PROJECT or any part thereof, which shall impose any duty upon the COUNTY or CITY with respect to any of the PROJECT or the use, occupancy or control thereof or the conduct of any business therein, whether or not any of the same require structural or extraordinary repairs or alterations.

Section 11.2 Utility Charges, Etc. The CITY will pay or cause to be paid all charges imposed on the COUNTY or CITY for all public or private utility services and all sprinkler systems and protective services at any time rendered to or in connection with the PROJECT or any part thereof.

Section 11.3 No Counterclaim, Abatement, Etc. The Parties hereto recognize that the CITY's responsibility to pay rent under this LEASE is dependent upon the CITY's effective ability to possess and control the COUNTY's share of the PROJECT. So long as the CITY has the effective ability to possess and control the COUNTY's share of the PROJECT, and is not precluded from such possession and control by the COUNTY or by other parties or conditions beyond the reasonable control of the CITY, the Rent and all additional payments under this LEASE shall be paid without notice, demand, counterclaim, setoff, deduction or defense, and without abatement, suspension, deferment, diminution or reduction. So long as the CITY has the effective ability to possess and control the COUNTY's share of the PROJECT, and is not precluded from such possession and control by the COUNTY or by other parties or conditions beyond the reasonable control of the CITY,

this LEASE shall not terminate (except as expressly provided herein), and the obligations and liabilities of the CITY under this LEASE not be affected for any reason whatsoever, including, without limiting in any way the generality of the foregoing, any damage to or destruction of the PROJECT other than by the COUNTY or any part thereof, any restriction or prohibition or prevention of or interference with any use of the PROJECT or any part thereof or any forfeiture or other loss of the PROJECT or any part thereof, any Taking or prospective Taking of the PROJECT or any part thereof or any change of grade affecting the same, any eviction or prospective eviction from the PROJECT or any part thereof by title paramount or in consequence of the act of any governmental authority or otherwise, the discontinuance of the possession or use of any appurtenances to any PROJECT or the improvements thereon, such as street vaults, outside of the boundaries of such PROJECT. To the extent allowed by law, the CITY waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this LEASE or the PROJECT or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of such Net Rent or additional rent including, without limitation, said termination payment, on account of any such occurrence. The CITY is fully familiar with, and accepts the physical condition of, the PROJECT. The CITY accepts the present title to the PROJECT, subject to any easements, encroachments, claims, liens, charges or encumbrances, whether or not stated herein and whether or not hereafter attaching thereto. The COUNTY has made no representations of whatever nature in connection with the condition of, or title to, the PROJECT SITE or PROJECT or the buildings, improvements or Equipment to be constructed thereon, and, to the extent allowed by law, the COUNTY shall not be liable for any latent or patent defect therein.

Section 11:4 Inspection of the PROJECT. The CITY will permit the COUNTY to enter and examine the condition of the PROJECT and any part thereof whenever reasonably requested. The COUNTY shall not have any duty to make any such inspection and shall not incur liability or obligation for not making any such inspection.

ARTICLE 12 – INDEMNIFICATION

The CITY will protect, indemnify and save harmless the COUNTY from and against all liabilities, obligations, claims (including, without limitation, claims involving strict or absolute liability in tort), damages, penalties, actions, costs, expenses and disbursements (including, without limitation, attorneys' fees and expenses) of any kind or nature whatsoever ("Claims") which may be imposed upon or incurred by or asserted against the COUNTY or the PROJECT or any part thereof, whether or not the COUNTY shall also be indemnified by any other person or entity, with respect to or to the extent arising out of any accident, bodily injury to any person or damage to any tangible property occurring on or about the PROJECT or any part thereof, any uses, non-uses, possession or condition of, or any work, improvements, operation, maintenance or conduct on, the PROJECT or any part thereof, and any failure on the part of the CITY to perform or comply with any of the terms hereof; provided that this indemnity in Article 13 shall not include any liability or other obligation to the extent caused by the willful misconduct or negligence of the COUNTY in the performance of the COUNTY'S obligations under this Agreement, and shall not apply to any events which occur prior to completion of construction of the PROJECT. The CITY further agrees to pay, and to indemnify the COUNTY against, all legal and other costs and charges, including attorneys' fees, lawfully and reasonably incurred by the COUNTY in obtaining possession of the COUNTY's share

of the PROJECT after the default of the CITY hereunder or after the CITY's default in surrendering possession of the COUNTY's share of the PROJECT upon expiration or earlier termination of the term of this LEASE or in enforcing any covenant or agreement of the CITY herein contained. Any amounts payable to the COUNTY under this Article 12 which are not paid within 10 days after written demand therefor by the COUNTY shall bear interest (to the extent not prohibited by applicable law) at the Overdue Rate from the date of such demand, and such amounts, together with such interest, shall constitute additional rent hereunder. The obligations of the CITY to the COUNTY pursuant to this Article 12 shall survive the termination of this LEASE and shall remain in effect until the sixth (6th) anniversary of the date of termination hereof. Nothing in this Article 12 shall or can be construed as a waiver by the CITY of the Municipal tort liability limits set forth in Mn Stat 466.01 et seq. and any common law immunities, all of which are reserved by the CITY.

The COUNTY will defend, indemnify and hold the CITY harmless from any liability to any person or entity for any damages or injuries arising from the design or construction of the PROJECT. This sentence shall not be deemed or construed as a waiver by the COUNTY of any of its statutory or common law immunities or limitations of liability. The COUNTY's duty to defend and indemnify the CITY shall not apply to damages or injuries attributable to the CITY's own negligent or willful acts.

ARTICLE 13 – DEFAULTS AND REMEDIES

Section 13.1 Events of Default. The following shall constitute an "Event of Default" hereunder:

- (a) if default shall be made in the due and punctual payment of any Rent or additional

rent payable hereunder when and as the same shall become due and payable, and, provided that such default shall continue for 60 days after written notice thereof to the CITY by COUNTY (which default shall be defined herein as a "Monetary Default"); or

(b) if default shall be made by the CITY in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing subdivision (a), and such default shall continue for more than 30 days after written notice thereof to the CITY from the COUNTY.

Section 13.2 Remedies. Upon the occurrence of any of such Events of Default, the COUNTY may, at its election and in addition to all other remedies available at law or in equity, terminate this LEASE through the delivery of 60 day written notice to that effect to the CITY, or terminate the CITY's right to possession of the COUNTY's share of the PROJECT only (other than as a co-owner or co-tenant), without terminating this LEASE. If the CITY defaults in any payment of Base Rent and as a result the COUNTY defaults in any of the terms of the LOAN AGREEMENT so as to incur a charge or penalty under the LOAN AGREEMENT, the COUNTY may add, and the CITY agrees to pay, any such charge or penalty as additional rent.

(a) Re-Entry Without Termination. Upon any termination of the CITY's right to possession of COUNTY's share of the PROJECT without termination of this LEASE, the COUNTY may, at COUNTY's option, enter into the PROJECT, remove the CITY's signs and other evidences of tenancy other than those to which the CITY remains entitled as a co-owner (co-tenant), and take and hold possession of the COUNTY's share of the PROJECT without such entry and possession terminating this LEASE or releasing the CITY, in whole

or in part, from any obligation, including the CITY's obligation to pay Net Rent, all items of additional rent and all other sums payable by the CITY hereunder (collectively, "Rent"), for the full term of this LEASE Term, except to the extent such remedy would cause this LEASE to constitute an indebtedness of the CITY. The COUNTY may, but need not, relet the COUNTY's share of the PROJECT or any part thereof for such rent and upon such terms as the COUNTY, in its sole discretion, shall determine (including the right to change the character or the use made of the COUNTY's share of the PROJECT), and the COUNTY shall not be required to accept any tenant offered by the CITY or to observe any instructions given by the CITY about such reletting. In any such case, the COUNTY may make repairs, alterations and additions in or to the COUNTY's share of the PROJECT, and redecorate the same to the extent the COUNTY deems necessary or desirable, in its sole discretion. All rentals and other sums received by the COUNTY from any such reletting shall be applied as follows: first, to the payment of any indebtedness other than rent, due hereunder from the CITY to COUNTY; second, to the payment of any costs and expenses of such alterations and repairs; third, to the payment of the COUNTY's expenses of reletting, including, without limitation, broker's commissions, attorneys' fees and lease inducements, such as moving or leasehold improvement allowances; fourth, to the payment of Rent and other charges due and unpaid hereunder; and the residue, if any, shall be held by the COUNTY and applied in payment of future Rent as the same may become due and payable hereunder. If such rentals and other sums received from such reletting during any month be less than the Rent to be paid during said month by CITY hereunder, the CITY shall pay such deficiency to the

COUNTY, except to the extent such remedy would cause this LEASE to constitute an indebtedness of the CITY. Such deficiency shall be calculated and paid monthly. Notwithstanding any such re-entry by the COUNTY, the COUNTY may at any time hereafter elect to terminate this LEASE for such previous breach.

(b) Damages in the Event of Termination. It is acknowledged that the damages that would be incurred by the COUNTY in connection with the termination of this LEASE following a default by the CITY would be difficult to estimate or ascertain. In the event the COUNTY elects to terminate this LEASE, the COUNTY may, in addition to other remedies available at law or in equity, but not to the extent such remedy would cause this LEASE to constitute an indebtedness of the CITY, recover from the CITY, as liquidated damages, an amount equal to the sum of the following: (i) all unpaid Rent that is payable by the CITY hereunder and that accrues as of the effective date of termination; plus (ii) a sum of money equal to the entire amount of Rent that would be payable under this LEASE for the term of the LEASE remaining after default which amount shall be immediately due and payable upon demand but which shall be discounted to present value sufficient to pay off and retire any bonds, notes, or other debt obligations the COUNTY has or may have incurred in connection with this LEASE in any manner.

If any statute or rule of law shall validly limit the amount of such liquidated final damages to less than the amount above agreed upon, the COUNTY shall be entitled to the maximum amount allowable under such statute or rule of law.

ARTICLE 14 – NO MERGER; ASSIGNMENT, SUBLETTING, ETC.

Section 14.1 No Merger. There shall be no merger of this LEASE nor of the leasehold estate created by this LEASE with the fee estate or any other leasehold estate in the PROJECT or any part thereof by reason of the fact that the same entity may acquire or own or hold, directly or indirectly, this LEASE or the leasehold estate created by this LEASE or any interest in this LEASE or in any such leasehold estate, and the fee estate or any other leasehold estate in the PROJECT or any part thereof or any interest in such estate, and no such merger shall occur unless and until all entities having any interest in this LEASE or the leasehold estate created by this LEASE or any interest in this LEASE or in any such leasehold estate, and the fee estate or any other leasehold estate in the PROJECT or any part thereof or any interest in such estate shall join in a written instrument affecting such merger and shall duly record the same.

ARTICLE 15 – RIGHTS AND REMEDIES RESERVED, ETC.

Section 15.1 No Waiver. Any failure of the COUNTY to insist in any one or more cases upon the strict performance of any of the terms or covenants of this LEASE, or to exercise any right, power, remedy or option herein contained, shall not be construed as a waiver or relinquishment for the then remaining term of this LEASE of such term, covenant, right, power, remedy or option. A receipt by the COUNTY of full or partial rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach. No waiver, change, modification or discharge by either party hereto of any provision of this LEASE shall be deemed to have been made or shall be effective unless expressed in writing and signed by both the COUNTY and CITY. No waiver of any breach

shall affect this LEASE, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

Section 15.2 Specific Performance. In addition to the other remedies in this LEASE and by law provided, the COUNTY shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this LEASE or to a decree compelling performance of any of such covenants, conditions or provisions.

Section 15.3 Remedies Cumulative. Each right, power and remedy of the COUNTY provided for in this LEASE shall be cumulative and concurrent and shall be in addition to every other rights power or remedy provided for in this LEASE or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the COUNTY of any one or more of the rights, powers or remedies provided for in this LEASE or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the COUNTY of any or all such other rights, powers or remedies.

Section 15.4 Covenants. Every term, condition, agreement or provision contained in this LEASE shall be deemed to be a covenant of the CITY.

ARTICLE 16 – COUNTY'S RIGHT TO PERFORM CITY'S COVENANTS

If the CITY shall fail to make any payment or perform any act required to be made or performed hereunder (except in the case of contests permitted by Section 4.2), the COUNTY, upon reasonable notice to or demand upon the CITY (except in the case of emergency, in which case no notice or demand shall be required), and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act

for the account and at the expense of the CITY, and may enter upon the PROJECT or any part thereof for such purpose and take all such action thereon as either of them may consider necessary or appropriate for such purpose. No such entry shall be deemed an eviction of the CITY. All sums so paid by the COUNTY and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon (to the extent not prohibited by applicable law) interest rate on the bonds from the date of payment or incurring, shall constitute additional rent hereunder and shall be paid by the CITY to the COUNTY on demand.

ARTICLE 17 – CITY'S PERMITS

The COUNTY agrees that it will cooperate with the CITY in securing from any public authority any permits or licenses which may be required by the CITY for the conduct and operation of the PROJECT, provided that if the COUNTY shall incur any costs, expenses, or penalties thereby, the CITY shall reimburse the COUNTY therefor. The CITY shall not seek any municipal approvals for subdivision, rezoning or similar changes in applicable land use restrictions or grant easements or other rights of access and use of the PROJECT to the public without the COUNTY's prior written consent, which will not be unreasonably withheld or delayed, and the COUNTY shall cooperate with the CITY in securing any such approvals; provided, the CITY shall reimburse the COUNTY for any costs, expenses or penalties the COUNTY thereby incurs.

ARTICLE 18 – QUIET ENJOYMENT; DISCLAIMER

Section 18.1 Quiet Enjoyment. The CITY, upon paying the Net Rent and all additional rent and other charges herein provided for and performing and complying with all other terms of this LEASE on its part to be performed or complied with, shall enjoy the COUNTY's share of the PROJECT during the term of this LEASE free from any interference by the COUNTY or any person claiming by, through or under the COUNTY.

Section 18.2 Disclaimer. The covenant set forth in Section 18.1 is in lieu of all other covenants and warranties of the COUNTY, whether written, oral or implied. With respect to this LEASE, the PROJECT or any part thereof, the COUNTY shall not be deemed to have modified in any respect the obligations of the CITY pursuant to Section 11.3 hereof. The CITY is fully familiar with, and accepts the physical condition of, the PROJECT and all parts thereof. The CITY accepts the present title to the PROJECT and all charges or encumbrances, whether or not stated herein and whether or not hereafter attaching thereto. CITY EXPRESSLY AGREES TO LEASE THE PROJECT AND EACH PART THEREOF "AS IS" AND "WHERE IS." COUNTY SHALL NOT BE DEEMED TO HAVE MADE, AND COUNTY HEREBY DISCLAIMS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY REPRESENTATION OR WARRANTY, OTHER THAN AS SET FORTH IN SECTION 18.1, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE, REPAIR OR CONDITION OF THE PROJECT AND EACH PART THEREOF, THE ADEQUACY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSES OF THE PROJECT AND EACH PART THEREOF, THE QUALITY

OF THE MATERIAL AND WORKMANSHIP OF THE PROJECT AND EACH PART THEREOF, OR THE CONFORMITY OF THE PROJECT AND EACH PART THEREOF TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER, SALES AGREEMENT OR CONSTRUCTION CONTRACT RELATING THERETO; NOR SHALL THE COUNTY BE LIABLE FOR ANY LATENT OR PATENT DEFECT THEREIN OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION AND STRICT OR ABSOLUTE LIABILITY IN TORT). The COUNTY hereby authorizes the CITY, at the CITY's expense, to assert for the COUNTY's account, during the term of this LEASE, so long as no Event of Default shall have occurred hereunder, any of the COUNTY's rights under any applicable manufacturer, contractor or seller's warranty, and the COUNTY and PORT agrees to cooperate with the CITY in asserting such rights; provided however, that the CITY shall indemnify the COUNTY and hold the COUNTY harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the COUNTY in connection with, as a result of, or incidental to, any action by the CITY pursuant to the foregoing authorization. Any amount received by the CITY as payment under any such warranty shall be applied to restore the PROJECT to the condition required by Article 5 hereof.

ARTICLE 19 – TRUE LEASE; NOT GENERAL OBLIGATION OF CITY; PURCHASE OPTION

Section 19.1 True Lease. Notwithstanding any provision hereof to the contrary, this LEASE is a true lease and not a capital lease. Except as set forth in Section 19.3 below, the CITY has no right or obligation to acquire the PROJECT pursuant to the terms of this LEASE or otherwise.

Section 19.2 . Obligation. Payments to be made by the CITY hereunder are not limited to any particular source or sources. This LEASE is not an indebtedness or obligation of the CITY, and the responsibilities of the City hereunder are not general obligations and the full faith, credit and resources of the City have not been pledged hereto.

Section 19.3 Purchase Option. The CITY shall have the option at any time or from time to time to purchase the COUNTY's share of the PROJECT and cancel the ground lease pursuant to which the COUNTY has obtained an interest in the site of the PROJECT, for the lesser of the fair market value of the COUNTY's share of the PROJECT or the amount set forth on Schedule A attached hereto as the Parties' good faith estimate today of the depreciated fair market value of the COUNTY's share of the PROJECT at future times, but only if such purchase price is at the time sufficient to pay or prepay the LOAN.

ARTICLE 20 – NOTICES

All notices which may be given under this LEASE by the COUNTY to the CITY shall be deemed to be properly given only if delivered or if sent by United States registered or certified mail to the CITY, at the address of the CITY hereinabove stated, or at such other address as the CITY shall have furnished to the COUNTY in writing. All notices which may be given under this LEASE by the CITY to the COUNTY shall be deemed to be properly given only if delivered or sent by United States registered or certified mail to the COUNTY at the address of the COUNTY hereinabove stated, or at such other address as the COUNTY shall have furnished to the CITY in writing.

Any communication provided for herein shall become effective only upon and at the time of receipt by the person to whom it is given, unless such communication is mailed by registered or certified mail, in which case it shall be deemed to have been received on the fifth business day following the mailing thereof, or the day of its receipt, if a business day, or the next succeeding business day, whichever of (a) or (b) is earlier, or on such other date as shall be required by applicable law.

ARTICLE 21 – SURRENDER

Upon the expiration or earlier termination of this LEASE, the CITY shall peaceably and quietly leave, yield up and surrender the COUNTY's share of the PROJECT to the COUNTY as provided in Sections 5.2, and 6.4 hereof and in the same condition in which the PROJECT were originally received from the COUNTY hereunder, except as repaired, rebuilt, restored, altered or added to as provided in or required by any provision of this LEASE and except for ordinary wear and tear, but in either case, broom clean and free of occupants. Except to the extent inconsistent with its rights as a co-owner (co-tenant), the CITY shall remove from the COUNTY's share of the PROJECT on or prior to such expiration or earlier termination all property situated thereon which is not owned by the COUNTY or subject to the lien of any mortgage, and at its sole cost and expense shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Except to the extent inconsistent with its rights as a co-owner (co-tenant), property not so removed by the CITY shall become the property of the COUNTY, which may thereafter cause such property to be removed from the PROJECT and disposed of, but the cost of any such removal and disposition as well as the cost of repairing any damage caused by such removal shall be borne by the

CITY. If the CITY retains possession of COUNTY's share of the PROJECT other than as permitted for a co-owner (co-tenant), or any part thereof, after such termination, then the COUNTY may, at its option, serve written notice upon the CITY that such holding over constitutes the creation of a month to month tenancy upon the terms and conditions set forth in this LEASE; provided, however, that the monthly Net Rent shall, in addition to all other sums which are to be paid by the CITY hereunder, whether or not as additional rent, be equal to 150% of the Net Rent being paid monthly to the COUNTY under this LEASE immediately prior to such termination. Regardless of the COUNTY's election to extend this LEASE on a month-to-month basis, the CITY shall also pay to the COUNTY all damages sustained by the COUNTY resulting from such retention of possession by the CITY, including those arising as a consequence of the loss of any proposed subsequent the CITY for any portion of the PROJECT.

ARTICLE 22 – SEPARABILITY

Each and every covenant and agreement of the CITY contained in this LEASE shall be for all purposes construed to be a separate and independent covenant and agreement, and the breach of any such covenant or agreement by the COUNTY shall not to any extent discharge or relieve the CITY from the CITY's obligation to perform each and every covenant and agreement of this LEASE to be performed by the CITY. If any term or provision of this LEASE or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this LEASE, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this LEASE shall be valid and enforced to the fullest extent permitted by law.

ARTICLE 23 – MISCELLANEOUS

Neither this LEASE nor any term or provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

The captions in, and the table of contents preceding this LEASE, are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

This LEASE may be executed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

This LEASE and each and every covenant thereof shall inure to and be binding upon and shall be for the benefit of all the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the provisions of this LEASE. In the event of the recording of this LEASE or any memorandum hereof, such instrument, upon the COUNTY's request following the expiration or earlier termination of this LEASE, the CITY shall execute and deliver an instrument that is reasonable in form and that memorializes the occurrence of such expiration or termination.

Whenever either party's consent is expressly required hereunder, such consent shall not be unreasonably withheld, conditioned or delayed and any reasons advanced for the failure to unconditionally grant such consent shall be stated with specificity in writing.

This LEASE shall be governed by and construed in accordance with the laws of the State of Minnesota.

ARTICLE 24-TERMINATION

If the COUNTY fails to complete the PROJECT by June 1, 2002, ("Date of Completion"), in accordance with the approved Project Documents and any authorized change orders, then the CITY may terminate this LEASE upon sixty (60) days written notice to the COUNTY, provided that the COUNTY has the right during such sixty (60) day period to diligently pursue completion of the PROJECT and complete the PROJECT within three hundred sixty-five (365) days from the CITY's notice or as soon thereafter as practicable. The Date of Completion shall be extended for such period of time that any delays to construction are caused by events of *force majeure*. For purposes of this LEASE, *force majeure* shall include any cause beyond the COUNTY's control, construction delays caused by material shortages, strikes or acts of nature, contractor or sub-contractor defaults, or any other event not caused by the action or inaction of the COUNTY. Upon such termination of this LEASE, the COUNTY's right, title and interest in any skyways, tunnels or other structures constructed within the corridor, including the PROJECT, shall terminate and any such structures shall become sole property of the CITY.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

RAMSEY COUNTY

By: _____
Rafael Ortega, Chair
Board of Commissioners

By: _____
Bonnie Jackelen, Chief Clerk
Board of Commissioners

Funds are Available:

Account No. _____

Amount: _____

Budgeting & Accounting
INSURANCE APPROVED:

Risk Manager

APPROVED AS TO FORM:

Assistant County Attorney

CITY OF SAINT PAUL, MINNESOTA

By _____
Its Mayor

and by _____
Its Director, Office of Financial Services

and by _____
Its City Clerk

Approved as to form:

Assistant City Attorney