

EASEMENT AGREEMENT

[Version 4, Feb. 21, 2019 CAO]

This Easement Agreement (“Easement Agreement”) is made and entered into in Saint Paul, MN as of this ___ day of _____, 2019, by and between the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, a body corporate and politic under the laws of the State of Minnesota ("HRA") and Minnesota Public Radio, a Minnesota corporation ("MPR").

RECITALS

WHEREAS, HRA is the owner of that certain real property located in Ramsey County, Minnesota, legally described and as depicted on Exhibit A attached hereto and made a part hereof (the "HRA Parcel"); and

WHEREAS, MPR is the owner of that certain real property located in Ramsey County Minnesota, legally described on Exhibit B attached hereto and a part hereof (the "MPR Parcel"); and

WHEREAS, the HRA Parcel is subject to easements, encumbrances and agreements as described in Exhibit C attached hereto and made a part hereof (the “HRA Parcel Encumbrances”); and

WHEREAS, MPR has requested that HRA grant to MPR an easement on the HRA Parcel for ingress and egress, for the placement of a light tree and electrical line as depicted on Exhibit D attached here and made a part hereof (the "Light Facilities") for the purposes of lighting a mural located on the exterior of the building on the MPR Parcel, and other purposes, and HRA is willing to grant such easements upon the terms and conditions stated in this Easement Agreement.

NOW, THEREFORE, in consideration of the sum of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. **Grant of Easements by HRA.** Subject to the termination provisions set forth in this Easement Agreement and the HRA Parcel Encumbrances, the HRA hereby grants and conveys to MPR, , the following rights and easements over and across the HRA Parcel:

a. **Access Easement.** A nonexclusive perpetual easement in common with others to use the HRA Parcel for the passage of vehicles and pedestrians for purpose of ingress and egress to and from the MPR Parcel to Wabasha Street (the “Access Easement”).

b. **Trash/Dumpster.** A nonexclusive perpetual easement for storing one or more trash receptacles/dumpsters used in connection with the MPR Parcel at the

location shown in yellow on Exhibit E attached hereto and made a part hereof (“Trash Easement”). This location is situated in the northeast corner of the HRA Parcel.

c. **Loading Dock Easement.** A nonexclusive perpetual easement for automobile, van and truck parking for temporary loading and unloading of items from the loading dock now and hereafter existing on the MPR Parcel on the adjacent area of the HRA Parcel (the “Loading Dock Easement”).

d. **Light Easement.** A nonexclusive and perpetual easement for the Light Facilities (“Light Easement”). With prior written consent of the HRA, which consent is in the HRA’s sole discretion, MPR shall have the right to relocate the Light Facilities at MPR’s sole cost and expense. The Light Easement shall terminate automatically if the improvements on the HRA Parcel are destroyed, substantially damaged or removed for any reason. MPR shall maintain the Light Facilities in good condition and repair at all times. All construction, operation and maintenance costs of the Light Easement shall be at the sole costs of MPR and MPR shall not allow any mechanic’s liens to be filed against the HRA Parcel.

e. **Reservation of Rights.** The parties acknowledge that HRA owns the parking ramp adjacent to the HRA Parcel and that from time to time it may become necessary for HRA to have access to the portion of the HRA Parcel , temporarily limiting the rights and easements conveyed in this Easement Agreement in order to make repairs or replacements to the parking ramp. Upon a fourteen-days’ prior written notice from HRA to MPR and to facilitate the making of repairs or replacements to the adjacent parking ramp, MPR agrees the easement granted hereunder may be temporarily limited as required by the HRA in making such repairs or replacements. HRA and MPR shall work together in good faith to allow MPR to continue to access the theatre and loading dock over the HRA Parcel during any such repairs or replacements while accommodating HRA’s construction schedule. HRA agrees to repair any damage to the HRA Parcel caused by such repairs or replacements

f. **Removal of Signs.** MPR agrees to promptly remove at its expense all parking signs on the HRA’s parking ramp and to restore any damage to the HRA’s parking ramp caused by such sign removal.

2. **Duration.** The rights and easements granted herein by HRA to MPR, begin on the date hereof and shall remain in effect for the life of the current structures on the MPR Parcel and shall terminate as of the date the structures on the MPR Parcel are substantially destroyed or damaged by any means and MPR has not provided to the HRA written notice of intent to restore within one hundred eighty days, or MPR has not commenced restoration within one year after such destruction or damage. Further, the easement for the Light Facilities granted herein shall terminate in the event that the MPR Parcel is not used as a theatre or events venue for a continuous period of 120 days or more, as extended by events of force majeure, substantial renovations to the MPR Parcel or in connection with the repair or restoration of a casualty or

MPR defaults in the performance of any obligation under this Easement Agreement and such default remains uncured after 30 days written notice to cure is given by the HRA.

3. **Indemnity.** MPR hereby agrees to indemnify, defend and hold HRA harmless from and against every demand, claim, cause of action, judgment and expense (including reasonable attorneys' fees) and all loss and damage, including damage or injury to persons or property, arising from use of the HRA Parcel by MPR, its agents, employees or contractors.

4. **Insurance.** MPR shall acquire and keep in effect during the term of this Easement Agreement at its sole cost comprehensive general liability insurance, including personal injury liability coverage and broad form property damage liability endorsement with a combined single limit of not less than \$2 million per occurrence or in such other amounts as reasonably requested by HRA from time to time. Such insurance shall name the HRA and the City of Saint Paul, Minnesota (City) as an additional insured and be written on an occurrence form policy basis. MPR shall place the insurance with a responsible insurance company authorized and licensed to do business in the State of Minnesota and approved by HRA, and shall deliver copies of the policies to HRA on the date of MPR's execution of this Easement Agreement and by each renewal date thereafter. The policies required in this paragraph shall be endorsed to indicate that the insurer shall not cancel or change the insurance without first giving the HRA 30 days written notice. Each coverage afforded the HRA and City shall expressly include the duty to defend and duty to indemnify the HRA and City.

5. **Maintenance and Snow Removal.** The HRA shall not be responsible for maintaining, improving or repairing any damage to the HRA Parcel caused by any event MPR shall at its expense be responsible for maintaining the HRA Parcel in good condition and repair, including ordinary resurfacing of the HRA Parcel and other necessary capital improvements (, and MPR shall be responsible for snow and ice removal.

6. **Repairs.** In the event that MPR, its agents, employees, or contractors cause any damage to the HRA Parcel (reasonable wear and tear excepted), then MPR shall be responsible at its own expense for repairing such damage.

7. **Legal Effect.** Each of the easements and rights created by this Easement Agreement are appurtenant to the MPR Parcel and HRA Parcel and constitute covenants running with the land and may not be transferred, assigned or encumbered except as an appurtenance to such parcels.

8. **Notice.** Any statement of expense, notice, demand or request which either party is required or desires to give or make or communicate to the other party shall be in writing and shall be given or made or communicated to such other party by the United States registered or certified mail, addressed to the other party at the addresses given below or such other place that the party may designate to the other party in writing:

Minnesota Public Radio
45 East Seventh Street
Saint Paul, Minnesota 55101
Attn: _____

Housing and Redevelopment Authority of the
City of Saint Paul, Minnesota
1400 City Hall Annex
25 West Fourth Street
Saint Paul, Minnesota 55102
Attn: Project Services

With a copy to:
City Attorney Office
400 City Hall and Court House
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102
Attn: HRA Attorney

9. **Compliance with Laws; Negative Covenants.** It is the responsibility of MPR in the use of the HRA Parcel to comply with all laws, rules, regulations, ordinances and resolutions imposed by any federal, state or local jurisdiction affecting the use of the HRA Parcel. In addition, except for the temporary use of the Loading Dock Easement, the driving lanes of the HRA Parcel shall at all times remain open and unobstructed for fire, ambulance and emergency vehicles. MPR agrees that at no time will any trucks or other vehicles using the HRA Parcel block or obstruct any public sidewalk or street. MPR agrees not to construct any fences, barriers, structures, or other improvements or place or affix any signs on the HRA Parcel.

10. **Release of Easements.** MPR hereby releases its right to ingress and egress under that certain easement agreement made by and between Edmund W. Bazille and wife, Frederick R. Welz, Christian Fry and wife, and George Benz & Sons, dated August 30, 1909, and recorded in the office of the Register of Deeds in and for said Ramsey County, Minnesota on September 9, 1909, in Book 61 of Miscellaneous, page 289 and an alley agreement recorded September 30, 1902 in "47" Miscellaneous, page 66, agrees to execute and file of record the termination of easement agreements in the form attached hereto as Exhibit F

11. **Default by MPR and HRA's Remedies.**

Default. MPR shall be in default under this Easement Agreement if it fails to fulfill or observe any obligation, duty, covenant or agreement contained within this Easement Agreement and such failure continues for thirty (30) days (or such longer period necessary to complete work which cannot reasonably be completed within 30 days) following written notice of such default by the HRA ("Event of Default").

Remedies. Whenever an MPR Event of Default exists under this Easement Agreement, the HRA may take any one or more of the following remedial steps:

a. The HRA may terminate the Light Easement, but not the Access Easement, Loading Dock Easement or Trash Easement;

b. The HRA may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any obligation, duty, agreement, covenant, representation or warranty of MPR under this Easement Agreement, or to otherwise compensate the HRA for any damages on account of such Event of Default.

The HRA is entitled to recover its reasonable attorney's fees and costs in the enforcement of any of its remedies hereunder. Subject to the limitation in subparagraph (a) above, no remedy conferred upon or reserved to the HRA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Easement Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the HRA to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

12. **Miscellaneous.**

a. **Severability.** If any provision of this Easement Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Easement Agreement (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Easement Agreement will be valid and enforceable to the fullest extent permitted by law.

b. **Governing Law.** This Easement Agreement will be construed in accordance with the laws of the State of Minnesota.

c. **Captions.** The captions of the paragraphs of this Easement Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

d. **Time.** Time is of the essence of this Easement Agreement.

e. **Binding Effect.** The provisions of this Easement Agreement will be binding on and inure to the benefit of MPR and the HRA and their respective successors and assigns.

f. **No Partnership.** Nothing contained in this Easement Agreement and no action by the parties hereto shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, partnership, joint venture or any association between the parties.

g. **Entire Agreement.** The parties acknowledge that this Easement Agreement represents the full and entire agreement of the parties relating to the use of the HRA Parcel. This Easement Agreement supersedes and replaces any prior agreements, written and verbal, and any amendments or modifications to this Easement Agreement must be in writing and executed by both parties to be effective.

h. **Waiver.** No waiver of any default by either party will be implied from the failure by either party to take action in respect of such default.

i. **Title.** The HRA makes no representations or warranties of title. MPR is relying on its own investigation and inspection of title.

j. **MPR's Limited Remedy on HRA's Default.** If the HRA fails to fulfill or observe any obligation, duty, covenant or agreement contained within this Easement Agreement and such failure continues for thirty (30) days (or such longer period necessary to complete work which cannot reasonably be completed within 30 days) following written notice of such default by MPR, then MPR's sole remedy shall be an action to enforce performance and observance of the obligation of HRA. MPR has no right to make any claim for any damages of any kind against the HRA and MPR's remedies are strictly limited to the foregoing.

k. **Condition of HRA Parcel.** The HRA makes no representations or warranties as to the condition of the HRA Parcel. MPR acknowledges that it is relying on its own investigation and inspection as to the condition of the HRA Parcel and assumes all risk of personal injury and property damage resulting from the use of the HRA Parcel by MPR, its agents, employees or contractors. MPR releases and agrees not to sue the HRA or the City of Saint Paul for any claims arising out of the condition of the HRA Parcel at any time prior to, on or after the date of this Easement Agreement.

l. **Recording of Affidavit Upon Termination.** Upon termination of this Easement Agreement in any manner specified herein, the HRA may submit an affidavit from its legal counsel or officer evidencing such termination, and such affidavit shall constitute prima facie evidence of the facts set forth therein.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date first above written.

MINNESOTA PUBLIC RADIO

By _____
Its _____

STATE OF MINNESOTA)

) ss.

COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of Minnesota Public Radio, a Minnesota corporation, on behalf of the corporation.

Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date first above written

HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF SAINT PAUL,
MINNESOTA

By _____
Its Executive Director

By _____
Its Chair

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the Executive Director of the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SAINT PAUL, MINNESOTA, a body corporate and politic under the laws of the State of Minnesota, on behalf of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota.

Notary Public

APPROVED AS TO FORM:

Assistant City Attorney

This document was drafted jointly by:
Office of the City Attorney
400 City Hall
15 West Kellogg Boulevard
Saint Paul, Minnesota 55102

And
Stinson, Leonard Street LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402

EXHIBIT A

(HRA Parcel)

EXHIBIT B

(MPR Parcel)

Parcel 1

Unit Nos. B1, B2, B3, B4, B5, B6, B7, B8, 1A, 1B, 1C, 1D, 1E, 1F and 1G, Common Interest Community Number 646, Fitzgerald Condominiums, Ramsey County, Minnesota.

Being Registered land as is evidenced by Certificate of Title No. 563954.

Parcel 2

Tracts A and D, Registered Land Survey No. 370, according to the recorded plat thereof, Ramsey County, Minnesota.

That part of Lot 3, Block 7, of Bazil and Guerin's Addition to St. Paul, described as beginning at a point on the Northwestern line of said Lot 3, distant 4.73 feet Northeastly from the most Westerly corner of said lot; thence Southwesterly to said most Westerly corner; thence Southeastly along the Southwesterly line of said lot to a point thereon distant 118.85 feet Northwesternly from the most Southerly corner of said lot; thence Northeastly deflecting to the left 86 degrees 02 minutes 30 seconds, a distance of 5.61 feet to an intersection with a line extending Southeastly from said point of beginning at an angle of 96 degrees 57 minutes 30 seconds from said Northwesternly line of said Lot 3, as measured from West to East; thence Northwesternly to said point of beginning, Ramsey County, Minnesota.

Being Registered land as is evidenced by Certificate of Title No. 325362.

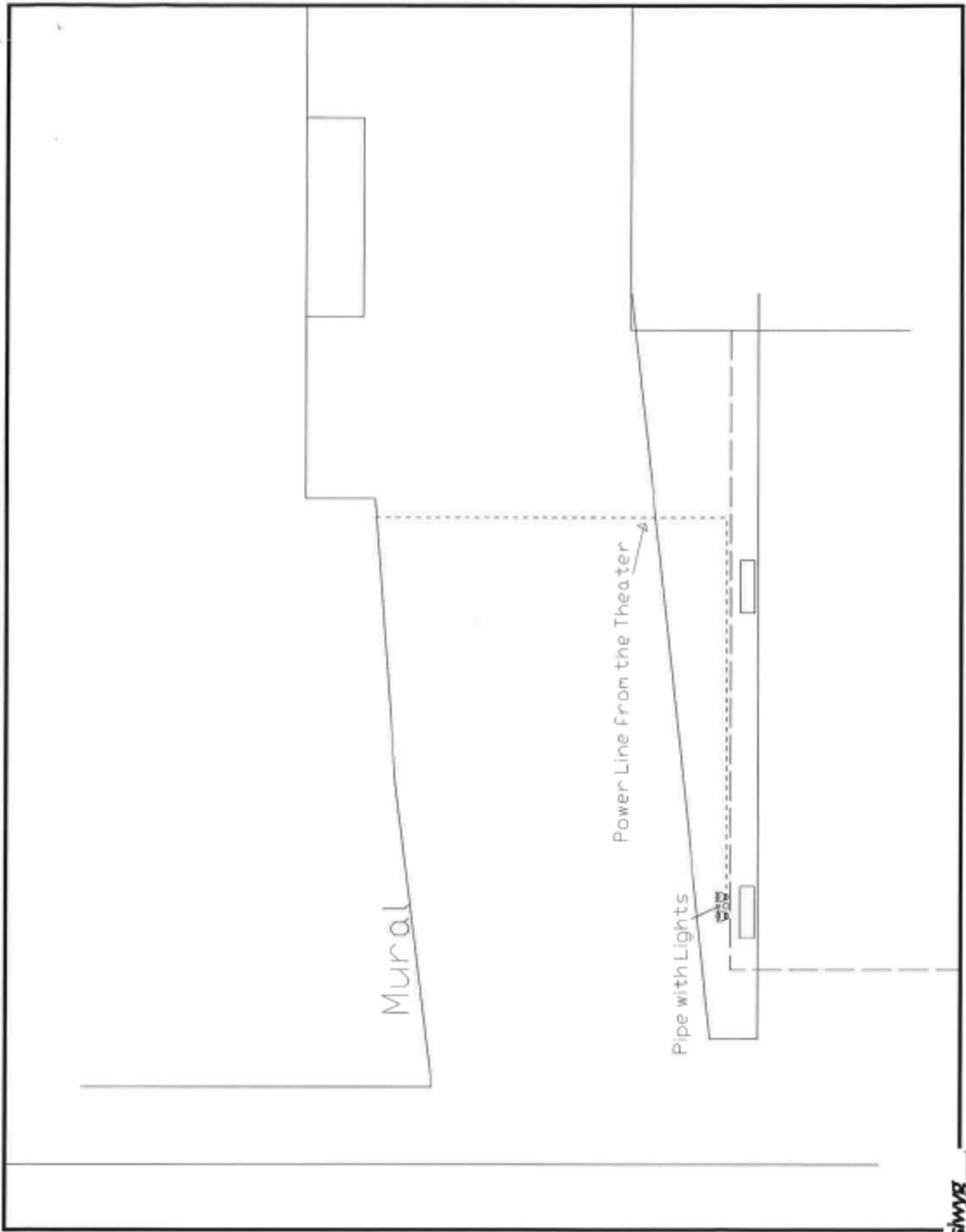
EXHIBIT C

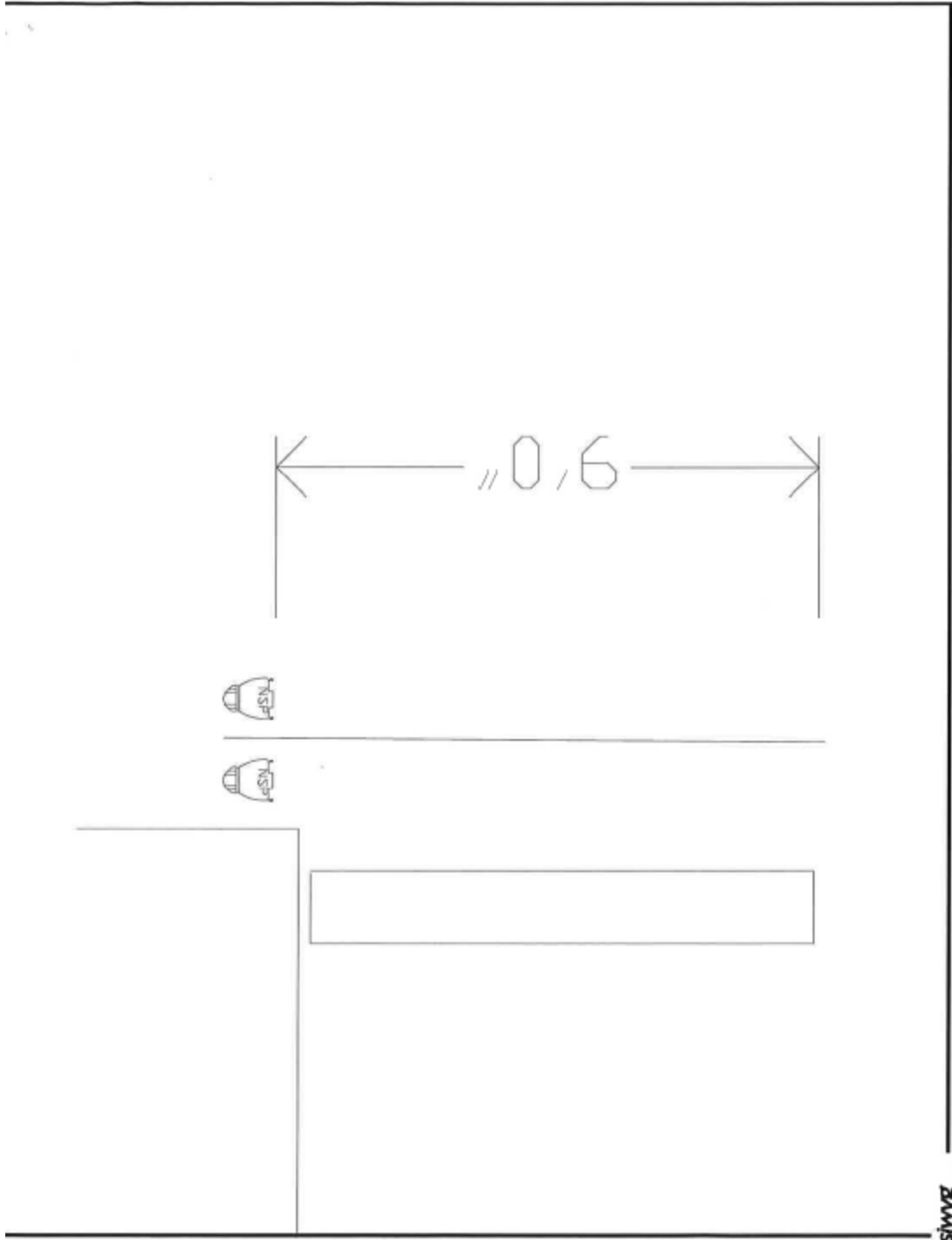
HRA Parcel Encumbrances

1. Those matters appearing on Certificate of Title No. 556055.
2. Those matters filed of record in the Office of the Ramsey County Recorder.
3. Those matters shown on a survey of the HRA Parcel.

EXHIBIT D

Light Facilities Easement Area





mysiwyg_{report}

Exhibit E

Location for Trash/Dumpster

Exhibit F

Termination of Easements