

AGENDA
MAPLEWOOD CITY COUNCIL
MANAGER WORKSHOP
5:30 P.M. Monday, April 25, 2016
City Hall, Council Chambers

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. UNFINISHED BUSINESS

1. MCC Theatre Lease Discussion – Ashland Productions

E. NEW BUSINESS

1. Abatement Bond for Park Improvements

F. ADJOURNMENT

RULES OF CIVILITY FOR THE CITY COUNCIL, BOARDS, COMMISSIONS AND OUR COMMUNITY

Following are rules of civility the City of Maplewood expects of everyone appearing at Council Meetings - elected officials, staff and citizens. It is hoped that by following these simple rules, everyone's opinions can be heard and understood in a reasonable manner. We appreciate the fact that when appearing at Council meetings, it is understood that everyone will follow these principles:

Speak only for yourself, not for other council members or citizens - unless specifically tasked by your colleagues to speak for the group or for citizens in the form of a petition.

Show respect during comments and/or discussions, listen actively and do not interrupt or talk amongst each other.

Be respectful of the process, keeping order and decorum. Do not be critical of council members, staff or others in public.

Be respectful of each other's time keeping remarks brief, to the point and non-repetitive.

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AGENDA REPORT

TO: Melinda Coleman, City Manager

FROM: DuWayne Konewko, Parks & Recreation Director

SUBJECT: MCC Theatre Lease Discussion - Ashland Productions

DATE: April 25, 2016

Introduction

Ashland Productions has rented the Maplewood Community Center (MCC) theatre space continuously since 2001. Ashland has been on a month-to-month lease arrangement since January (2016) to allow time for the City and Ashland to negotiate a new lease agreement. The lease agreement with Ashland was approved by the City Council in 2010 and was for a period of five years beginning in January of 2011.

Staff brought this item to a City Council workshop last August (2015) and Council was supportive of the direction of the discussions. City Staff and the City Attorney have drafted and reviewed the draft agreement over the past several months with comments and concerns worked into this draft which is attached for Council's review and discussion.

Background

Ashland was founded by Frank Asenbrenner in 1997. Mr. Asenbrenner was a former Hill-Murray principal and also served as the band director for the school. After retiring from Hill-Murray, Mr. Asenbrenner continued working on his passion of creating a successful theatre program. Working with his two daughters Barb and Peg, as well as and Rob Sutherland, he was successful in accomplishing his vision of creating a non-profit community theatre troupe – Ashland Productions. Mr. Sutherland currently serves as the Artistic Director for Ashland.

Ashland's mission statement is as follows: *Ashland Productions fosters the development of performance, leadership and life skills through youth mentorship and quality intergenerational performing arts.* Ashland is a regionally-prominent developmental creative experience tailored for youth at each level of age and experience, delivered through intergenerational mentoring, and provided at very high standard of artistic excellence in an environment of inclusiveness and acceptance.

Ashland sells approximately 16,000 tickets for their performances each year. Over 1,400 youth participated in Ashland programs this past year. Ashland currently employs four full-time employees and a full-time volunteer coordinator. Ashland is served by a ten member board of directors.

Kid City/Park & Recreation Department

Ashland's mission statement aligns itself with *Kid City* and the Parks & Recreation Department's mission to *help create a vibrant community that embraces diversity, celebrates arts and culture, values health and wellness, and promotes stewardship of the environment.* Ashland utilizes performing arts as a vehicle to instill leadership and facilitates the development of lifelong skills through mentorship opportunities. This speaks directly to *Kid City* with regard to the Pop-Up Laughter Museums that bridge communities through the universal act of laughter and Kid Council that uses improv and theatre techniques to dream up solutions to City challenges.

Lease Agreement Discussion

Staff has been discussing the proposed lease agreement extension with Ashland for the past nine-months and both parties have tentatively approved the attached lease agreement. The following points serve to summarize the major provisions in the draft lease agreement:

- The lease would be for an initial five year period with one five-year option to extend the lease.
- The lease would have an effective start date of June 1, 2016.
- Ashland will assume responsibilities for operating the theatre.
- The City is responsible for maintaining the theatre space.
- The lease agreement will include a revenue sharing provision whereby the City is paid a portion of the revenue received for additional non-Ashland theatre performances.
- Ashland will be providing the City \$0.25 for each Ashland performance ticket sold.
- The annual lease payment for 2016 will increase 28.6% from \$34,200 to \$44,000 per year with annual increases of 2% thereafter.
- The City is committed to making theatre specific improvements to the theatre in an amount not to exceed \$110K with a completion date of June 1, 2017.
- Both parties have option to terminate lease agreement with a minimum of a 12 month advance notice and not before 4 years.
- Reciprocity agreement for use of “each-other’s” spaces within the MCC provided space is available and the request is within two weeks to one-month notice.

If Council is supportive of the draft lease agreement, staff will finalize any proposed changes and place on the consent agenda for Council consideration at the May 9, 2016 City Council meeting.

Recommendation

The discussion regarding Ashland’s Lease Agreement is informational only. No formal action by the council is required.

Attachments

1. Draft Lease Agreement between the Maplewood Community Center (City of Maplewood) and Ashland Productions, Inc.
2. MCC Theatre Lease Discussion – Ashland Power Point Presentation

**MAPLEWOOD COMMUNITY CENTER
&
ASHLAND PRODUCTIONS, INC.**

LEASE for:

**2100 White Bear Avenue
Maplewood MN 55110**

By and Between

**City of Maplewood
(Landlord)**

And

**Ashland Productions, Inc.
(Tenant)**

**DRAFT COPY
April 25, 2016**

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DRAFT

LEASE SUMMARY SHEET

1. Landlord: City of Maplewood
2100 White Bear Avenue
Maplewood Community Center
Maplewood, MN 55109
Contact Person: DuWayne Konewko
Office: 651-249-2330

2. Tenant: Business Name: Ashland Productions, Inc.
Contact Person: Rob Sutherland
Phone: 651-274-8020

3. Tenant's Address: 2100 White Bear Ave
Maplewood, MN 55109

4. Premises: 2100 White Bear Avenue
Maplewood, MN 55109

5. Term of Lease: 60 Months (5 Years)

6. Rentable Square Footage: Exhibit A

7. Summary of Initial Base Rent for Year 1

Total Initial Base Rent and Operating Expense Rent:
\$44,000.00 per Year/12 = \$3,667.00 per Month

8. Security Deposit: The City shall hold \$3,500 in deposit from Ashland.

This Lease Summary Sheet information is incorporated into and made a part of the Lease Agreement attached hereto. In the event of any conflict between any Summary Sheet information and the Lease Agreement, the Lease Agreement shall control.

THE MAPLEWOOD COMMUNITY CENTER LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter called the "Lease Agreement") made as of May , 2016, by and between **the City of Maplewood** , having offices at **1830 County Road B, East, Maplewood, MN 55109** (hereinafter called the "Landlord"), and **Ashland Productions, Inc., 2100 White Bear Avenue, Maplewood, MN 55109** (hereinafter called the "Tenant").

WITNESSETH

Landlord does hereby lease and let unto Tenant, and Tenant does hereby lease from Landlord, that area outlined in **Exhibit A (Floor Plan)** attached hereto, and by this reference incorporated herein, and described as the, "Lease Space," which is hereinafter called the "Premises") at 2100 White Bear Avenue (hereinafter called the "Building(s)") in the City of **Maplewood**, County of **Ramsey**, State of **Minnesota**. The term "Maplewood Community Center," as it is used herein, and the common area for use by Tenant covered under this Lease, shall consist of and be limited to the common area located within the Land, Building(s) and improvements (hereinafter referred to as, "Maplewood Community Center").

ARTICLE 1.1A - TERM

To have and to hold said Premises for a term of 5 years and 0 months, commencing June 1st, 2016 and terminating May 31, 2021 (hereinafter called the "Term") upon the payment of rents and subject to the conditions set forth in this Lease Agreement, and the Exhibits attached hereto.

ARTICLE 1.1B – COMMENCEMENT OF TERM AND POSSESSION

i. POSSESSION –

It is acknowledged that possession and occupancy by Tenant prior to the beginning of the Term is the reality, and such possession or occupancy shall in all respects be the same as that of a Tenant under this Lease Agreement, and the terms, conditions and obligations of Tenant required under this Lease Agreement shall continue and be in full force and effect.

If Landlord shall be delayed in delivery of possession of the Premises to Tenant or delayed in completing the Landlord Installed Improvements due to Tenant's failure to agree to the Plans or delay caused by a party employed by or the agent of Tenant, then in such case the lease term and payment of rents shall be accelerated by the number of days of such delay, and the payment of rents shall commence the same as if the term of the Lease had commenced as provided herein.

Upon possession of the premises by Tenant, Landlord shall have no responsibility or liability for loss or damage to fixtures, facilities, equipment or inventory installed or left on the Premises. By occupying the Premises as a Tenant, or taking possession to install fixtures, facilities, equipment or inventory, or to perform finishing work, Tenant shall be conclusively deemed to have accepted the same and to have acknowledged that the Premises are in the condition required by this Lease Agreement. Landlord will be responsible to maintain Theater shell including seating, seat markings, house lights, carpet, door hardware, railings, etc. in working order for the term of this lease agreement.

ii. TERM

The actual commencement date of the Term shall be the earliest of:

1) June 1st, 2016,

2) The first of the month following the signing of the new lease. In the interim, current lease rates shall apply.

Landlord shall have the right to amend the commencement date referenced in Section 1.1A above as provided in this section or the said date may be amended if agreed to by both parties in writing.

Anything to the contrary contained in this Lease notwithstanding, in the event that the Term of this Lease shall not have commenced within one (1) year after the date hereof, then one (1) year from the date hereof this Lease shall automatically terminate and shall be of no further force or effect.

iii. RENTS

Rents shall be paid pursuant to Exhibit B and be further paid by-way of the profit-sharing plan as shown on Exhibit C.

Should the commencement of the rental obligations of Tenant under this Lease Agreement occur for any reason on a day other than the first day of a calendar month, then in that event solely for the purposes of computing the Term of this Lease Agreement, the commencement date of the Term shall become and be the first day of the first full calendar month following the date when Tenant's rental obligation commences, or the first day of the first full calendar month following the commencement date set out in Article 1.1A (if such is other than the first date of a calendar month), whichever date is later, and the termination date shall be adjusted accordingly; provided however, that the termination date shall be the last day of a calendar month, which date shall in no event be earlier than the termination date set out in Article 1.1A. It is acknowledged that since Tenant is in possession of the Premises it is the intent of the Parties that the rent obligations shall flow uninterrupted from the prior lease to the obligations contained herein and that no gap in tenancy or rent is intended.

iv. EXTENSION OPTION

Tenant shall have one (1) five (5) year option to extend the lease at rates provided in the attached Exhibit B . Tenant would give notice of its intention to extend not less than twelve (12) months prior to lease expiration. Landlord agrees to provide Tennant with a 30 day reminder prior to the 12 month notice deadline. In the event the reminder is not provided to the Tennant the notice period to exercise the one 5 year option to extend will be reduced to less than 12 months.

v. TERMINATION OPTION

Both parties shall have the option to terminate the Lease upon not less than twelve (12) months prior notice as long as the termination date is forty-eight (48) or more months after the effective date of the lease. If Tenant terminates early Tenant will pay liquidated damages equal to the rent amount from the termination date through the end of the lease period. If the Landlord terminates early the Landlord agrees to refund a prorated amount of any Theater Specific improvement dollars invested by Tenant based on 10 year straight line depreciation from the date of the investments and the Landlord will pay liquidated damages equal to the rent amount from the termination date through the end of the lease period.

vi. USE OF OTHER SPACES (add details to Exhibit A)

Tenant shall have the right to use other spaces and areas throughout the facility when not in use by the Landlord or other clients/customers at the sole discretion of Landlord within 2 weeks' to 1 month's prior notice. In turn, the Landlord will have the right to use the Tenant's dedicated spaces for non-revenue civic events when not in use by the Tenant or profit sharing event, at the sole discretion of the Tenant within 2 weeks' to 1 month's prior notice. Landlord and Tenant will determine a mutually agreeable process for use of each other's spaces subject to approval by each party, said approval shall not be unreasonably withheld by either party.

ARTICLE 1.2 – Intentionally Omitted

ARTICLE 2 - RESTRICTIONS CONCERNING USE

. **Use and Operation.** Tenant agrees to occupy the Leased Premises upon the commencement date of the Term hereof and to operate the entire Leased Premises, unless prevented from doing so by causes beyond Tenant's control, and to conduct its business at all times in good faith, in high grade and reputable

manner. Tenant shall promptly comply with all laws, ordinances and regulations affecting the Leased Premises and promulgated by any duly constituted governmental authority and including insurance company requirements affecting the cleanliness, safety, use and occupancy of the Leased Premises. Tenant agrees that no storage of trash or discarded items, or display of items for sale shall occur on the exterior of the building.

Days and Hours of Operation. Given the nature of a Performing Arts Theatre, Tenant will occupy and use said space as Tenant sees fit, acknowledging that the building hours are:

Building Hours Monday thru Friday: 6:30 am to 11 pm

Building Hours on Saturdays & Sundays: 6:30 am to 11 pm

In any event, Tenant shall have 24 hour access/ 7 days per week.

Vacating or Abandoning Premises. In the event the Tenant should at any time vacate or abandon the Leased Premises for a period of more than sixty (60) consecutive days (except for Permitted Closures), the Landlord shall have the continuing option of terminating this Lease provided that the Tenant has not reopened the theater on the Leased Premises or given written notice of its intention to reopen within thirty (30) days and actually has reopened with said thirty (30) day period, irrespective of whether the Tenant may not otherwise be in default of the terms and provisions of this Lease. The Landlord may exercise such option to terminate this Lease by sending written notice to the Tenant of its intention, where upon the Tenant will be permitted thirty (30) days from the date of such notice to remove its personal property, fixtures, and equipment from the Leased Premises in the manner heretofore provided. Any unpaid rents that result from the Tenant abandoning the leased space prior to the expiration date will still be payable, even if the Tenant no longer occupies said space.

Hazardous Substance. Tenant agrees to not introduce any hazardous or toxic materials onto the Premises without complying with all applicable Federal, State and local laws or ordinances pertaining to the transportation, storage, use or disposal of such materials, including but not limited to obtaining proper permits. If Tenant's transportation, storage, use or disposal of hazardous or toxic materials on the Premises results in 1) The contamination of the premises or soil or surface or ground water or 2) Loss or damage to person(s) or property, then Tenant agrees to:

- i) Notify Landlord immediately of any such contamination, claim, loss or damage;
- ii) After consultation with the Landlord, clean up any such contamination in full compliance with all applicable statutes, regulations and standards; and
- iii) Indemnify, defend and hold Landlord harmless from and against any claims, suits, and causes of action, costs and fees, including attorneys' fees and costs, arising from or connected with any such contamination, claim of contamination, loss or damage or Landlord's defense of same.

This provision shall survive termination, cancellation or expiration of this Lease Agreement. For purposes of this Article, the terms "hazardous materials" or "toxic materials" shall mean any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by the city in which the Premises are located, the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the Food and Drug Administration, and any federal agencies that have overlapping jurisdiction with such federal or state agencies, or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

Smoke Free. Tenant understands the interior portions of the leased premises are smoke-free including all Tenant spaces and bathrooms. Tenant shall enforce this smoke-free condition upon all of its employees, agents, contractors, customers, and visitors. Tenant understands that the exterior spaces of the building such as parking lot, sidewalks and plazas are not smoke free.

Governmental Compliance. Landlord shall be responsible for any costs associated with complying with government regulations including but not limited to the 1992 American With Disabilities Act, 1970 Occupational Safety and Health Act and any other government laws requiring handicapped accessibility, occupational safety and for adherence to environmental standards including air quality requirements and hazardous waste as well as adherence to all State and local fire-safety codes. The cost of such compliance would not be passed on to the Tenant as a capitalized cost and the City certifies that the Leased Space complies with the aforementioned regulations. Tenant shall be responsible for all non-structural obligations related to the aforementioned regulations during the term of the Lease, with theater space and equipment safety in particular. Tenant acknowledges that Landlord has provided certification that the Leased Space has been certified as in compliance with applicable regulations applicable to theater spaces.

ARTICLE 3.1 - BASE RENT

Tenant agrees to pay to Landlord as Base Rent (hereinafter called "Base Rent") for the Premises, without notice, set-off or demand, monthly installments of rent. Said monthly installments shall be due and payable by Tenant in advance on or before the first day of each calendar month during the Term of this Lease Agreement, or any extension or renewal thereof, at the office of Landlord set forth in the preamble to this Lease Agreement or at such other place as Landlord may designate. In the event of any fractional calendar month, Tenant shall pay for each day in such partial month a rental equal to 1/30 of the Base Rent. The first month's rent shall be paid at the time of execution of this Lease. Base Rent includes the cost of all utilities, taxes, etc. for the rentable space and common areas. The Operation Expenses section was "intentionally omitted" in the lease document.

ARTICLE 3.2 – SCHEDULE OF RENTS

Effective from the commencement of the Lease term and through the termination date of this lease, the Base Rents for the premises shall be as follows:

See Exhibit B attached hereto

ARTICLE 3.3 – INTENTIONALLY OMITTED

ARTICLE 3.4 – INTENTIONALLY OMITTED

ARTICLE 3.5 - OPERATING EXPENSES – INTENTIONALLY OMITTED

ARTICLE 4 - SECURITY DEPOSIT

No additional security deposit shall be a part of this Lease. The City currently holds \$3,500 in deposits from Ashland that will serve as the security deposit for this Lease.

ARTICLE 5 - KEYS

A. Landlord has furnished Tenant with keys (electronic or otherwise) for the doors entering the Tenant's Premises. Any additional keys shall be made by Landlord at Tenant's sole expense. All such keys shall remain the property of Landlord and shall be surrendered upon termination of the Lease. Tenant agrees not to make any copies of keys to the Building(s) or Premises. Tenant shall not, without the prior written consent of Landlord, put any additional locks or other security devices on the doors of the Building(s) or Premises. Electronic key access will be provided the loading dock and interior door from rotunda to booth. Tenant will not pay for these additional keys.

ARTICLE 6 – CONSTRUCTION, OCCUPANCY AND TENANT IMPROVEMENT ALLOWANCE

A. Landlord Installed Improvements. Tenant is leasing the premises, "as-is", and the Landlord is not required to provide any additional items or improvements to said space beyond those agreed-to herein, to-wit:

Capital improvements for the leased space have been divided into two groups; Building Shell and Theater Specific improvements.

i. **Building Shell Improvements**
The Landlord will be required to make the Building Shell improvements as identified below to the Tenant spaces as soon as possible.

ii. **Theater Specific Improvements**
The Landlord will be required to make the Theater Specific improvements as identified below to the Tenant spaces on or before June 1, 2017.

The landlord has agreed to invest \$110,000.00 in the Capital improvements to the Leased Space (see list below) by 6-1-2017 in the priority order to be set by Tenant.. The Landlord’s investment in Capital improvements will be \$110,000.00 but will not exceed \$110,000.00. If the Capital improvements are not completed by 6-1-2017 the rent due from Ashland to the City will be reduced by \$1000 per month from 6-1-2017 until the Capital improvements are completed.

Capital Improvements to the Leased Space	
Theater Specific	Shell Building
Replace MCC owned Syc lights	Replace/Repair door hardware
Replace MCC owned Wash lights	Fix broken seats and renumber
Add 50'x5.33' Lighting and Sound Balcony	Add card key access to dock and booth doors
Mount Speakers	
Add curtain stage right	
Shelving and hooks for light storage stage right	
Replace carpet in Theater	

B. Tenant Installed Improvements.

The additional tenant installed improvements identified above will be implemented once Ashland has raised their desired \$52,350.00. Ashland will make their best effort to raise these funds, but is not required.

ARTICLE 7 – SIGNS

Landlord shall provide and maintain a directional sign identifying the Tenant’s name at the south building entrances. Signage shall be at Landlord’s cost. Tenant has the right, at its expense, to install and maintain one sign affixed to or adjacent to the exterior front of the Leased Premises. All Signs are subject to approval by the City and subject to the requirements of the City’s Sign Code, and any costs associated with a CUP or any other special permit is the sole responsibility of the Tenant.

Except as agreed to herein, Tenant agrees not to erect or place any signs or objects upon the roof of the Building(s) or to paint or otherwise deface the exterior walls of the Building(s). And, provided further, the Tenant will, upon the termination or expiration of this Lease, remove any and all signs or paintings as shall have been erected, placed or printed upon the Building(s) by Tenant. Such removal will be made in a manner as to avoid injury, defacement or overloading of the Building(s) and other improvements. Tenant shall not erect or install any advertising media or window or door lettering or placards or other signs without Landlord’s prior written consent.

Tenant shall have 10 min. per hour to advertise on the Landlord’s electronic monument sign. Tenant shall also have access to the City’s time to the Clear Channel billboards on Hwy 36 and I-694 in the City of Maplewood.

ARTICLE 8 - UTILITIES AND SERVICE

A. **Individual and Common Utilities.** The Leased Premises are constructed to utilize centrally located heating and air conditioning systems. Landlord agrees to the maintenance of the air conditioning and heating systems for the Leased Premises. The gas and electric utility services serving the premises are commonly metered under one account and included in the common area utilities.

Landlord agrees to cause mains, conduits, and other facilities to be provided to supply gas, water and electricity to the Leased Premises. Access to the equipment / maintenance room must be accessed via the Tenant's space and at any time and without notice, the Landlord has the right to enter the leased premises with the intention to access the maintenance room to perform both scheduled and emergency repairs.

B. **Termination of Service.** Landlord reserves the right without notice to Tenant to cut off and discontinue gas, water, sewer, electricity, air conditioning, heating, ventilating, antenna service and any or all other services on one hundred and forty four (144) hours verbal notice without liability to Tenant unless the shutdown interferes with scheduled performances critical uses of the space, whenever and during any periods where reasonably necessary to make repairs or alterations; provided, however, that no notice shall be required in an emergency. No such action by Landlord or disturbance of possession shall be deemed an election by Landlord to terminate this Lease.

C. **Non-Liability of Landlord for Interruption.** Landlord shall not be liable in damages or otherwise if the furnishing by Landlord or by any other supplier or any utility service or other service to the Leased Premises shall be interrupted or impaired by fire, accident, riot, strike, act of God, the making of improvements or necessary repairs or by any causes beyond Landlord's control; provided, however, that if the Leased Premises are untenable for more than three (3) business days, the Base Rent shall abate retroactively to the date the Leased Premises became untenable until the Leased Premises becomes Tenatable once again.

D. **Lamps and Bulbs.** Except as otherwise provided, Tenant agrees to furnish, at its sole cost and expense, all lamps, bulbs, tubes, starters and ballasts in connection with the specialty theater lighting of the Leased Premises. Any additional lighting needs or fixtures will be the sole responsibility of the Tenant for specialty theater lighting and the Landlord for any additional lighting it may need for its non-theater purposes.

E. **Roof Access.** Tenant shall have no right of access to the roof of the Premises or the Building without Landlord permission and shall not install, repair or replace any aerial or other device on the roof of the Premises or the Building without the prior written consent of Landlord.

F. **Landlord Mechanical Rooms and Access.** Landlord shall have access to the mechanical rooms that are located with the Tenants leased area, if any. Landlord does not have to notify Tenant prior to entering, as some repairs may need immediate attention.

G. **Janitorial Services.** Landlord shall provide janitorial services for the Leased Premises. Tenant shall have use of a dumpster.

ARTICLE 9 - CARE OF PREMISES

A. Tenant agrees that it will not abuse walls, ceilings, partitions, floors, wood, stone, iron work; nor use plumbing for any purpose other than that for which constructed; nor make or permit any noise or odor objectionable to the public, to other occupants of the Maplewood Community Center or the Landlord, to emit from the Leased Premises; nor create, maintain or permit a nuisance thereon; nor do any act tending to injure the reputation of the Maplewood Community Center; nor place or permit any radio or television, loud speaker or sound amplifier, or any phonograph or other devices similar to any of the foregoing on the roof or outside of the Maplewood Community Center or at any place where the same may be seen or heard outside of the Tenants Leased Premises; nor where loading or delivery areas are provided, use or permit to be used other areas for delivery or pick-up of merchandise or supplies to or from the Leased Premises except in the normal sound levels of the theater performances. Tenant shall keep the Leased Premises and loading platform areas allowed for the use of Tenant, clean and free from rubbish and dirt at all times. Tenant shall dispose of trash in the manner prescribed from time to time by Landlord. Tenant shall not install public telephones, newspaper machines,

vending machines, signage, or other fixture or improvement on the exterior walls of the Demised Premises or place same on sidewalks in front of or surrounding the Demised Premises. In addition, Tenant agrees to abide by such rules and regulations as may from time to time be reasonably promulgated by Landlord;

B. If Tenant shall fail to keep and preserve the Premises in the state of condition required as provided herein, the Landlord may at its option put or cause the same to be put into the condition and state of repair required by Landlord, and in such case the Tenant, on demand, shall pay the cost thereof. Tenant has 30 (thirty) days to cure any issue or deficiency that the Landlord has communicated to Tenant via writing to the address as listed on the Signature Page of this lease. Failure to cure or pay as required in this section shall constitute a material breach of this Lease.

ARTICLE 10 - REPAIRS

A. Landlord shall keep the foundations, exterior walls (except plate glass or glass or other breakable materials used in exterior walls) and roof in good repair, and if necessary or required by proper governmental authority, make repairs, modifications or replacements thereof. The cost of such repairs, modification or replacement, shall be paid by Landlord. Landlord shall not be required to make any such repairs, modifications or replacements which become necessary or desirable by reason of the negligence of Tenant, its agents, servants or employees

B. Except as provided herein, the Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or any equipment, facilities or fixtures therein contained, including any equipment serving the Leased Premises solely even if located outside the Leased Premises, which shall at all times be kept in good order, condition and repair by Tenant, and in a clean, sanitary and safe condition. All repairs of the HVAC system, plumbing lines and pipes, and electrical fixtures and service will be the responsibility of the Landlord.

C.

ARTICLE 11 - INSPECTION

The Landlord or its employees or agents shall have the right without any diminution of rent or other charges payable hereunder by Tenant to enter the Premises at all reasonable times for the purpose of exhibiting the Premises to prospective Tenants or purchasers, inspection, cleaning, repairing, testing, altering or improving the same or said Building(s), but nothing contained in this Article shall be construed so as to impose any obligation on the Landlord to make any repairs, alterations or improvements. Landlord shall not be liable to Tenant, in any manner, for any expense, loss or damage by reason of any entry hereof, nor shall the exercise of such right be deemed an eviction or disturbance of Tenant's use or possession.

ARTICLE 12 - COMMON AREAS

A. The term "Common Areas" shall be defined as that portion of the Maplewood Community Center which is designed for, or, presently or hereinafter available for, lease or use to/by other tenants guests or invitees.

B. Landlord hereby grants to Tenant, its employees, agents, customers and invitees, the nonexclusive right for and during the Term of this Lease and any renewal thereof to use the Common Areas from time to time constituted. Such use is to be in common with Landlord and all tenants of Landlord, its and their employees, agents, customers, invitees and others to whom Landlord has or may hereafter grant rights, except when the same are being repaired.

C. Landlord agrees to manage, operate and maintain during the Term of this Lease all common facilities within the MCC. The manner in which such facilities shall be maintained shall be at the discretion of Landlord, who shall have the right to adopt and promulgate reasonable nondiscriminatory rules and regulations, from time to time. Landlord shall have the right to use portions of the Common Areas for the purpose of displays, promotions, programs, games, or other uses which may be of interest to all or part of the general public, customers or invitees. Landlord shall have the right to close portions of the Common Areas from time to time for repairs, to prevent accruing of public rights therein and for any other legitimate purpose.

D. Landlord and Tenant agree that Landlord will not be responsible for any loss, theft or damage to vehicles, or the contents thereof, parked or left in the parking areas of the Building(s) and Tenant agrees to so advise its employees, visitors or invitees who may use such parking areas.

ARTICLE 13 - ASSIGNMENT AND SUBLETTING.

A. Tenant shall not assign this Lease Agreement, or sublease all or any part of the Premises, or permit the use of the Premises by any party other than Tenant, without the prior written consent of Landlord. When Tenant requests Landlord's consent to such assignment or sublease, it shall notify Landlord in writing of the name and address of the proposed assignee or subtenant and the nature and character of the business of the proposed assignee or subtenant and shall provide financial information, including financial statements of the proposed assignee or subtenant. Tenant shall also provide Landlord with a copy of the proposed sublet, assignment agreement. Landlord shall have the option (to be exercised within thirty days from the submission of Tenant's request) to cancel this Lease Agreement as of the commencement date stated in the proposed sublease or assignment.

B. Landlord's right to assign this Lease Agreement is and shall remain unqualified upon any financing, refinancing, sale or transfer of the Building(s) and, providing the mortgagor or purchaser succeeds to the interests of Landlord under this Lease Agreement, Landlord shall thereupon be entirely freed of all obligations of the Landlord hereunder and shall not be subject to any liability resulting from any act or omission or event occurring after such conveyance. Tenant agrees to atone to any such assignee or transferee of Landlord's interest in this Lease Agreement or the Building(s).

C. No approval necessary to assign or sublease to an entity controlled or merged with Tenant provided that the Tenant or its successor of equal or greater net worth remains a guarantor of the lease and a proper assignment and assumption agreement is executed.

ARTICLE 14 - LOSS BY CASUALTY

A. If the Premises are destroyed or rendered un-tenantable, either wholly or in part, by fire or other casualty, Landlord may, at its option, (i) terminate this Lease Agreement effective as of the date of such damage or destruction, or (ii) restore the Premises to their previous condition, and during restoration rent shall be abated in the same proportion as the un-tenantable portion of the Premises bears to the whole thereof, and this Lease Agreement shall continue in full force and effect assuming the restoration lasts no longer than 30 days. If the damage is due, directly or indirectly, to the fault or neglect of Tenant, or its officers, contractors, licensees, agents, servants, employees, guests, invitees or visitors, there shall be no abatement of rent, except to the extent Landlord receives proceeds from any applicable insurance policy of Tenant to compensate Landlord for loss of rent.

B. If the Building(s) shall be destroyed or damaged by fire or other casualty insured against under Landlord's fire and extended coverage insurance policy to the extent that more than fifty percent (50%) thereof is rendered un-Tenantable, or if the Building(s) shall be materially destroyed or damaged by any other casualty other than those covered by such insurance policy, notwithstanding that the Premises may be unaffected directly by such destruction or damage, Landlord may, at its election, terminate this Lease Agreement by notice in writing to Tenant within sixty (60) days after such destruction or damage. Such notice shall be effective thirty (30) days after receipt thereof by Tenant. No rent shall be required after the use of the space by the tenant is prohibited.

C. Other than rental abatement provided in paragraph A of this Article, no damages, compensation or claim shall be payable by Landlord for inconvenience or loss of business arising from interruption of business, repair or restoration of the Building(s) or Premises. Landlord shall not be responsible to the Tenant for damage to or destruction of Tenant's fixtures, furniture, furnishings, floor coverings, equipment, or improvements made by Tenant in, on or about the Premises.

D. Landlord's obligations, should it elect to repair, shall be limited to the base Building(s),

common areas and the interior improvements installed by Landlord. Anything herein to the contrary notwithstanding, if the Premises are destroyed or damaged during the last twelve (12) months of the Term of this Lease Agreement, then Landlord may, at its option, cancel and terminate this Lease Agreement as of the date of the occurrence of such damage.

ARTICLE 15 – THIS SECTION INTENTIONALLY OMITTED

ARTICLE 16 – THIS SECTION INTENTIONALLY OMITTED

ARTICLE 17 – SURRENDER OF PREMISES

On the last day of the Term of this Lease Agreement or on the sooner termination thereof in accordance with the terms hereof, Tenant shall peaceably surrender the Premises in good condition and repair consistent with Tenant's duty to make repairs as provided in this Lease Agreement. If the Leased Premises are not surrendered at the end of the term or the sooner termination thereof, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Leased Premises, including without limitation, claims made by any succeeding tenant founded on such delay.

On or before said last day, Tenant shall at its expense remove all of its equipment from the Premises, repairing any damage caused thereby, and any property not removed shall be deemed abandoned. All alterations, additions and fixtures other than Tenant's trade fixtures, which have been made or installed by either Landlord or Tenant upon the Premises shall remain as Landlord's property and shall be surrendered with the Premises as a part thereof, or shall be removed by Tenant, at the option of Landlord, in which event Tenant shall at its expense repair any damage caused thereby and restore the premises to its original condition, except for normal wear and tear.

It is specifically agreed that any and all new telephonic, coaxial, internet, or other computer, word-processing, facsimile, or electronic wiring installed by Tenant from the start of this lease term within the Premises (hereafter "Wiring") shall be removed at Tenant's cost at the expiration of the Term, unless Landlord has specifically requested in writing that said Wiring shall remain, whereupon said Wiring shall be surrendered with the Premises as Landlord's property.

If the Premises are not surrendered at the end of the Term or the sooner termination thereof in the condition above described, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding Tenant founded on such delay, as well as claims made by Landlord for recovery of costs associated with restoration of the Premises to the condition required under this Agreement.

Tenant shall promptly surrender all keys for the Premises to Landlord at the place then fixed for payment of rental and shall inform Landlord of combinations on any locks and safes on the Premises.

Any Tenant property left in the Premises after expiration or termination of the Lease shall be disposed of by Landlord as Landlord deems expedient, without accounting or liability to Tenant.

ARTICLE 18 - NON-PAYMENT OF RENT, DEFAULTS AND HOLDING OVER

A. **Default.** If any one or more of the following occurs:

1. A rent payment or any other payment due from Tenant to Landlord shall be and remain unpaid in whole or in part for more than five (5) days after written notice that the same is due and payable;
2. Tenant or Tenant's guests shall violate or default on any of the other covenants, agreements, rules and regulations, stipulations or conditions herein, or in any parking agreement(s) or other agreements between Landlord and Tenant relating to the Premises, and such violation or default shall continue for a period of thirty (30) days after written notice from Landlord of such violation or default (plus such additional time for Tenant to cure said default as is reasonably required

as determined in Landlord's reasonable discretion);

3. If Tenant shall commence or have commenced against Tenant proceedings under a bankruptcy, receivership, insolvency or similar type of action, and said proceedings are not dismissed, and any receiver, trustee or liquidator appointed therein discharges, within sixty (60) days after the institution of said proceedings; or

4. The making by Tenant of an assignment for the benefit of its creditors.

then it shall be optional for Landlord, without further notice or demand, to cure such default or to declare this Lease Agreement forfeited and the said Term ended, or to terminate only Tenant's right to possession of the Premises, and to re-enter the Premises, with or without process of law, using such force as may be necessary to remove all persons or chattels there from, and Landlord shall not be liable for damages by reason of such re-entry or forfeiture; but notwithstanding re-entry by Landlord or termination only of Tenant's right to possession of the Premises, the liability of Tenant for the rent and all other sums provided herein shall not be relinquished or extinguished for the balance of the Term of this Lease Agreement and Landlord shall be entitled to periodically sue Tenant for all sums due under this Lease Agreement or which become due prior to judgment, but such suit shall not bar subsequent suits for any further sums coming due thereafter. Tenant shall be responsible for, in addition to the rentals and other sums agreed to be paid hereunder, the cost of any necessary maintenance, repair, restoration, re-letting (including related cost of removal or modification of Tenant improvements) or cure as well as reasonable attorney's fees incurred or awarded in any suit or action instituted by Landlord to enforce the provisions of this Lease Agreement, regain possession of the Premises, or the collection of the rentals due Landlord hereunder. Tenant agrees to pay interest at the highest permissible rate of interest allowed under the usury statutes of the State of Minnesota, or in case no such maximum rate of interest is provided, at the rate of 18% per annum, whichever is higher, on all rentals and other sums due Landlord hereunder not paid within five (5) days from the date same become due and payable.

B. Late Payment Charge. Tenant hereby acknowledges that late payment to Landlord of Base Rent, or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease Agreement, the exact amount of which will be extremely difficult to ascertain. Tenant shall be liable to Landlord for the payment of a late charge if not received after 10 days from the time the rent is due, in the amount of 10% of the rental installment or other sum due Landlord hereunder, and all unpaid balances shall bear interest at an interest rate of prime plus 3% per annum from the date when the same is due hereunder until the same shall be paid, plus any attorneys' fees and costs incurred by Landlord by reason of Tenant's failure to pay said amount, if said payment has not been received within five (5) days from the date said payment becomes due and payable, or cleared by Landlord's bank within three (3) business days after deposit. The parties agree that such late charges and interest charges represent a fair and reasonable estimate of the costs that Landlord will incur by reason of Tenant's late payment. Landlord's acceptance of such late charges and interest charges shall not constitute a waiver of Tenant's default with respect to such overdue amount or stop Landlord from exercising any of the other rights and remedies granted hereunder. Each right or remedy of Landlord provided for in this Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease Agreement now or hereafter existing at law or in equity or by statute or otherwise.

C. First Lien on Tenant's Property. Landlord is hereby given a first lien upon all property of Tenant which shall come in or be placed upon the Leased Premises and whether acquired by Tenant before or after the date hereof to secure the payment of rent and the performance of each and every covenant herein contained to be performed by Tenant. Upon any default hereunder and failure to cure as herein provided, Landlord, without notice or demand, may take possession of and sell such property without legal process of any kind, at public or private sale after one publication of a notice thereof in a daily newspaper published in the county where the Leased Premises are situated, not less than ten (10) days before such sale or by giving minimum notices required by law. The proceeds of such sale shall be applied first to the payment of expenses hereof, second to the discharge of the rent or other liability hereunder unpaid, and the balance, if any, to be held for the account of the Tenant. Tenant agrees to execute and record any financing statements and other documents necessary to perfect or record the lien herein granted.

D. Holding Over. Tenant will, at the expiration of this Lease Agreement, whether by lapse of time or termination, give up immediate possession to Landlord. If Tenant fails to give up possession the Landlord may, at its option, serve written notice upon Tenant that such holdover constitutes any one of (i) renewal of this Lease Agreement for one year, and from year to year thereafter, or (ii) creation of a month-to-month tenancy, or (ii) creation of a tenancy at sufferance. If Landlord does not give said notice, Tenant's holdover shall create a tenancy at sufferance. In any such event the tenancy shall be upon the terms and conditions of this Lease Agreement, except that the Base Rent shall be 110% of the Base Rent Tenant was obligated to pay Landlord under this Lease Agreement immediately prior to termination (in the case of tenancy at sufferance such Base Rent shall be prorated on the basis of a 365 day year for each day Tenant remains in possession); excepting further that in the case of a tenancy at sufferance, no notices shall be required prior to commencement of any legal action to gain repossession of the Premises. In the case of a tenancy at sufferance, Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as otherwise available to Landlord; nor shall receipt of any rent or any other act in apparent affirmation of the tenancy operate as a waiver of the right to terminate this Lease Agreement for a breach by Tenant hereof.

ARTICLE 19 - LANDLORD'S DEFAULT

Landlord shall not be deemed to be in default under this Lease Agreement until Tenant has given Landlord written notice specifying the nature of the default and Landlord does not cure such default within thirty (30) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of such a character as to reasonably require more than thirty (30) days to cure.

ARTICLE 20 - SUBORDINATION

Tenant agrees that this Lease Agreement shall be subordinate to any mortgage(s) that may now or hereafter be placed upon the Building(s) or any part thereof, and to any and all advances to be made there under, and to the interest thereon, and all renewals, replacements, and extensions thereof, provided the mortgagee named in such mortgage(s) shall agree to recognize this Lease Agreement or Tenant in the event of foreclosure provided the Tenant is not in default. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument, within ten (10) days after demand in writing, in recordable form, as required by Landlord's mortgagee. In the event of any mortgagee electing to have the Lease Agreement a prior encumbrance to its mortgage, then and in such event upon such mortgagee notifying Tenant to that effect, this Lease Agreement shall be deemed prior in encumbrance to the said mortgage, whether this Lease Agreement is dated prior to or subsequent to the date of said mortgage.

ARTICLE 21 - INDEMNITY, INSURANCE AND SECURITY

A. Tenant agrees to maintain a policy or policies of insurance, at its own cost and expense, insuring Landlord and Tenant from all claims, demands or actions for injury or death of any person in an amount of not less than \$1,000,000 and for injury to or death of more than one person in any one accident in an amount of not less than \$2,000,000 and for damage to property in an amount of not less than \$500,000, (verify all amounts are appropriate)made by or on behalf of any person or persons, firm or corporation arising from, related to, or connected with, the Leased Premises. This limit shall apply per location. Said insurance shall also provide for contractual liability coverage by endorsement. Tenant shall further provide for business interruption insurance to cover a period of not less than six (6) months. Tenant will further deposit with Landlord the policy or policies of such insurance or certificates thereof, or other acceptable evidence that such insurance is in effect, which evidence shall provide that Landlord shall be notified in writing thirty (30) days prior to cancellation, material change, or failure to renew the insurance. If Tenant shall not comply with its covenants made in this Article, Landlord may, at its option, cause insurance as aforesaid to be issued and in such event Tenant agrees to pay the premium for such insurance promptly upon Landlord's demand.

B. Tenant further covenants and agrees to indemnify and hold Landlord and Landlord's manager of the Building(s) harmless for any claim, loss or damage, including reasonable attorney's fees, suffered by Landlord, Landlord's manager or Landlord's other Tenants caused by: i) any act or omission by Tenant, Tenant's employees or anyone claiming through or by Tenant in, at, or around the Premises or the Building(s); ii) the conduct or management of any work or thing whatsoever done by Tenant in or about the Premises or from transactions of the Tenant concerning the Premises; or iii) Tenant's failure to comply with any and all

governmental laws, rules, ordinances or regulations applicable to the use of the Premises and its occupancy. In case of any action or proceeding brought against Landlord by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord. Landlord shall not be liable and Tenant waives all claims for damage to person or property sustained by Tenant or Tenant's employees, agents, servants, invitees and customers resulting from the Maplewood Community Center in which the Leased Premises are located or by reason of the Leased Premises or any equipment or appurtenances thereunto appertaining becoming out of repair, or resulting from any accident in or about the Leased Premises, or resulting from any act or neglect of any other tenant in the Maplewood Community Center. The preceding shall apply especially, but not exclusively, to the flooding of the Leased Premises and to damage caused by refrigerators, sprinkling devices, air conditioning apparatus, water, snow, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors, or noise, or the bursting or leaking of pipes or plumbing fixtures. All property belonging to Tenant or any occupant of the Leased Premises shall be there at the risk of Tenant or such other person only, and Landlord shall not be liable for damage thereto or theft or misappropriation thereof. Notwithstanding anything in this lease to the contrary, Tenant shall not be obligated to indemnify Landlord against, waive nor hold Landlord harmless from any claims for injury or damage to person or property which caused directly by Landlord's negligence or that of its officers, directors, agents, or employees or by Landlord's failure to maintain the Common Areas pursuant to this Lease or any other breach of this Lease by Landlord; and Landlord agrees to indemnify Tenant against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees, arising from the gross negligence or willful misconduct of Landlord or its agents or employees with respect to the operation or maintenance of the Common Areas; provided that the foregoing indemnity by Landlord shall not apply to the extent of loss, damage, or claims arising from any intentional or unintentional acts of Tenant, its employees, or its agents. (If Landlord does not make immediate and reasonable repairs to known deficiencies, Landlord shall be minimally liable for the tenants insurance deductibles.)

C. Tenant shall be responsible for the security and safeguarding of the Premises and all property kept, stored or maintained in the Premises. Landlord will be responsible when Landlord uses the Premises for MCC events. Landlord will make available to Tenant, at Tenant's request, the plans and specifications for construction of the Building(s) and the Premises. Tenant represents that it is satisfied that the construction of the Building(s) and the Premises, including the floors, walls, windows, doors and means of access thereto are suitable for the particular needs of Tenant's business. Tenant further represents that it is satisfied with the security of said Building(s) and Premises for the protection of any property which may be owned, held, stored or otherwise caused or permitted by Tenant to be present upon the Premises. The placement and sufficiency of all safes, vaults, cash or security drawers, cabinets or the like placed upon the Premises by Tenant shall be at the sole responsibility and risk of Tenant. Tenant shall maintain in force throughout the Term, insurance upon all contents of the Premises, including that owned by others and Tenant's equipment and any alterations, additions, fixtures, or improvements in the Premises acknowledged by Landlord to be the Tenant's. Tenant shall not carry any stock of goods or do anything in or about said Leased Premises which will increase insurance rates on said Leased Premises of the Maplewood Community Center in which the same are located. If Landlord shall consent to such use, Tenant agrees to pay as additional rental any increase in premiums for insurance against loss by risks resulting from the business carried on in the Leased Premises by Tenant. Tenant shall, at its own expense, comply with the requirements of insurance underwriters and insurance rating bureaus and government authorities having jurisdiction.

ARTICLE 22 - NOTICES

All notices from Tenant to Landlord required or permitted by any provisions of this Lease Agreement shall and be in writing and directed to Landlord by delivery, or postage prepaid, certified or registered mail, or by nationally recognized overnight courier at the address provided for Landlord in the preamble to this Lease Agreement or at such other address as Tenant shall be advised to use by Landlord. All notices from Landlord to Tenant required or permitted by any provision of this Lease Agreement shall be in writing and directed to Tenant by delivery, or postage prepaid, certified or registered mail, or by nationally recognized overnight courier at the Premises and at the address, if any, set forth prior to Tenant's signature line of this Lease Agreement. Landlord and Tenant shall each have the right at any time and from time to time to designate one (1) additional party to whom copies of any notice shall be sent.

ARTICLE 23 - APPLICABLE LAW

This Lease Agreement shall be construed under the laws of the State of Minnesota. Venue for any cause of action shall be Ramsey County.

ARTICLE 24 - MECHANICS' LIEN

In the event any mechanic's lien shall at any time be filed against the Premises or any part of the Building(s) by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record. If Tenant shall fail to cause such lien forthwith to be discharged within five (5) days after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding, and the amount so paid by Landlord and all costs and expenses, including reasonable attorney's fees incurred by Landlord in procuring the discharge of such lien, shall be due and payable in full by Tenant to Landlord on demand.

ARTICLE 25 - SECURITY INTEREST

Tenant hereby grants to Landlord a security interest in all goods, chattels, fixtures and personal property belonging to Tenant, which now is or may hereafter be placed in the Premises, to secure all rents due hereunder and all other covenants and obligations of Tenant hereunder. In the event that any security interest exists in said property which security interest is paramount and superior to the security interest herein created, Landlord may satisfy said paramount security interest and all sums paid in satisfying said security interest will be considered additional sums owed Landlord by Tenant hereunder. Tenant hereby acknowledges receipt of a true, full and complete copy of this Lease Agreement. Landlord, in the event of a default by Tenant of any covenant or condition herein contained, may exercise, in addition to any rights and remedies herein granted all the rights and remedies of a secured party under the Uniform Commercial Code or any other applicable law. Tenant agrees upon request of Landlord to execute and deliver to Landlord a financing statement evidencing such security interest. In the event Tenant fails to execute and deliver a financing statement requested by Landlord, Tenant hereby appoints and constitutes Landlord as Tenant's attorney-in-fact to do so (which power of attorney is coupled with an interest and is irrevocable), and Tenant shall be fully bound by such financing statement executed by Landlord. A copy of this Lease Agreement may be filed as a financing statement.

ARTICLE 26 - BROKERAGE

Tenant represents and warrants to Landlord that it has dealt with CRESA Partners ("Tenant's Broker") in the negotiating or making of this Lease Agreement. Tenant agrees to indemnify and hold Landlord, its agents, employees, partners, directors, shareholders and independent contractors harmless from all liabilities, costs, demands, judgments, settlements, claims and losses, including reasonable attorneys' fees and costs, incurred by Landlord in conjunction with any such claim or claims of any other broker or brokers claiming to have interested Tenant in the Building(s) or the Premises, or to have caused Tenant to enter into this Lease Agreement. Landlord represents and warrants to Tenant that neither it nor its officers or agents, nor anyone acting on its behalf, has dealt with any real estate broker in the negotiating or making of this Lease Agreement. The brokers' commission and/or finders' fees arising out of this Lease Agreement on behalf of Tenant's broker shall be paid by Tenant and no liability for any such claim shall inure to Landlord.

ARTICLE 27 – SUBSTITUTION – INTENTIONALLY OMITTED

ARTICLE 28 - ESTOPPEL CERTIFICATES, FINANCIAL STATEMENTS

Each party hereto agrees that at any time, and from time to time during the Term of this Lease Agreement (but not more often than twice in each calendar year), within ten (10) days after request by the other party hereto, it will execute, acknowledge and deliver to such other party or to any prospective purchaser, assignee or mortgagee designated by such other party, an estoppel certificate in a form acceptable to Landlord. If Tenant fails to respond within ten (10) days of receipt by Tenant of a written request by Landlord as herein provided, Tenant shall be deemed to have given such estoppel certificate as above provided, without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to any prospective purchaser, mortgagee, assignee or ground lessor of the Building(s).

ARTICLE 29 - TITLE

Landlord covenants that it has full right and authority to enter into this Lease for the full term hereof. Landlord further covenants that Tenant, upon paying the rent and upon performing the agreements of this Lease to be performed by said Tenant, will have, hold and enjoy quiet possession of the Leased Premises.

ARTICLE 30 - GENERAL

This Lease Agreement does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of Landlord and Tenant. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. The covenants of Tenant to pay the Minimum Rent are each independent of any other covenant, condition, or provision contained in this Lease Agreement. The obligations of Landlord and Tenant, respectively, under this Lease are expressly agreed by the parties to be independent covenants. If Landlord fails to perform any obligation under this Lease required to be performed by Landlord, Tenant shall have no right to: (i) terminate this Lease; (ii) avail itself of self-help or to perform any obligations of Landlord; (iii) abatement or withholding of rent or any other charges or sums payable by Tenant under this Lease; or (iv) any right of setoff." Unenforceability of any provision contained in this Lease shall not affect or impair the validity of any other provision of this Lease.

The marginal or topical headings of the several Articles, paragraphs and clauses are for convenience only and do not define, limit or construe the contents of such Articles, paragraphs or clauses. All preliminary negotiations are merged into and incorporated in this Lease Agreement. This Lease Agreement can only be modified or amended by an agreement in writing signed by the parties hereto. All provisions hereof shall be binding upon the heirs, successors and assigns of each party hereto. If any term or provision of this Lease Agreement shall to any extent be held invalid or unenforceable, the remainder shall not be affected thereby, and each other term and provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law.

If Tenant is a corporation, each individual executing this Lease Agreement on behalf of said corporation represents and warrants that they are duly authorized to execute and deliver this Lease Agreement on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease Agreement is binding upon said corporation in accordance with its terms.

No receipt or acceptance by Landlord from Tenant of less than the monthly rent herein stipulated shall be deemed to be other than a partial payment on account for any due and unpaid stipulated rent; no endorsement or statement of any check or any letter or other writing accompanying any check or payment of rent to Landlord shall be deemed an accord and satisfaction, and Landlord may accept and negotiate such check or payment without prejudice to Landlord's rights to (i) recover the remaining balance of such unpaid rent or (ii) pursue any other remedy provided in this Lease Agreement. Neither party shall record this Lease Agreement or any memorandum thereof, and any such recordation shall be a breach of this Lease Agreement, void, and without effect.

Time is of the essence with respect to the due performance of the terms, covenants and conditions herein contained. Whenever a period of time is herein provided for either party to do or perform any act or thing, that party shall not be liable or responsible for any delays due to strikes, riots, acts of God, shortages of labor or materials, national emergency, acts of a public enemy, governmental restrictions, laws or regulations, or any other cause or causes, whether similar or dissimilar to those enumerated, beyond its reasonable control and the time to do or perform such act or thing shall be extended for the period of such delay.

Submission of this instrument for examination does not constitute a reservation of or option for the Premises and this Lease Agreement shall become effective only upon execution and delivery thereof by Landlord and Tenant.

ARTICLE 31 - ADVERTISING

Tenant shall use as its advertised business address the address of the Building(s) and the name designated by Landlord therefore. Tenant's trade name set out herein shall not be changed without Landlord's prior written approval. Tenant agrees that Landlord's name or the name of the Building(s) shall not be used in any confusing, detrimental or misleading manner, and upon termination of this Lease, Tenant will cease to use Landlord's name or the name of the Building(s), or any part thereof, in any manner.

ARTICLE 32 - EXCULPATION

Notwithstanding anything in this Lease Agreement to the contrary, the covenants, undertakings and agreements herein made on the part of Landlord are made and intended not for the purpose of binding Landlord personally, or the assets of Landlord, but are made and intended to bind only the Landlord's interest in the Premises and the Building(s), as the same may, from time to time, be encumbered, and no personal liability shall at any time be asserted or enforced against Landlord or its stockholders, officers, or partners, or their respective heirs, legal representatives, successors and assigns, on account of this Lease Agreement or on account of any covenant, undertaking or agreement of Landlord in this Lease Agreement.

ARTICLE 33 – Intentionally Omitted.

ARTICLE 34 – Intentionally Omitted.

ARTICLE 35 - FLOOR AREA – Intentionally Omitted.

ARTICLE 36 - LANDLORD'S WARRANTY

Landlord covenants (i) that it has lawful title to the Maplewood Community Center and has full right, power and authority to enter into this Lease; (ii) that in the construction of the Leased Premises, the Building in which the Leased Premises are located and the Common Areas, it has complied with all applicable laws, ordinances, regulations and requirements of governmental authorities having jurisdiction thereof, including certification of the theater for theater-specific safety specifications, as the same are interpreted and enforced; (iii) no restrictive covenant, easement, lease or other written agreement to which Landlord is a party prohibits or otherwise materially affects the Leased Premises under Article 2 of this Lease; and (iv) the Leased Premises can be used by Tenant for Tenant's permitted use hereunder and Tenant's ability to so use the Premises is a condition precedent to this Lease.

ARTICLE 37 - Intentionally Omitted.

ARTICLE 38 - Intentionally Omitted.

IN WITNESS WHEREOF, this Lease Agreement has been duly executed by the parties hereto as of the day and year indicated above.

Address for Notices, if other than the Premises:

TENANT:

By _____
Name: Rob Sutherland
Its: Artistic Director

By _____
Name: Denise Mogren
Its: Managing Director

LANDLORD:

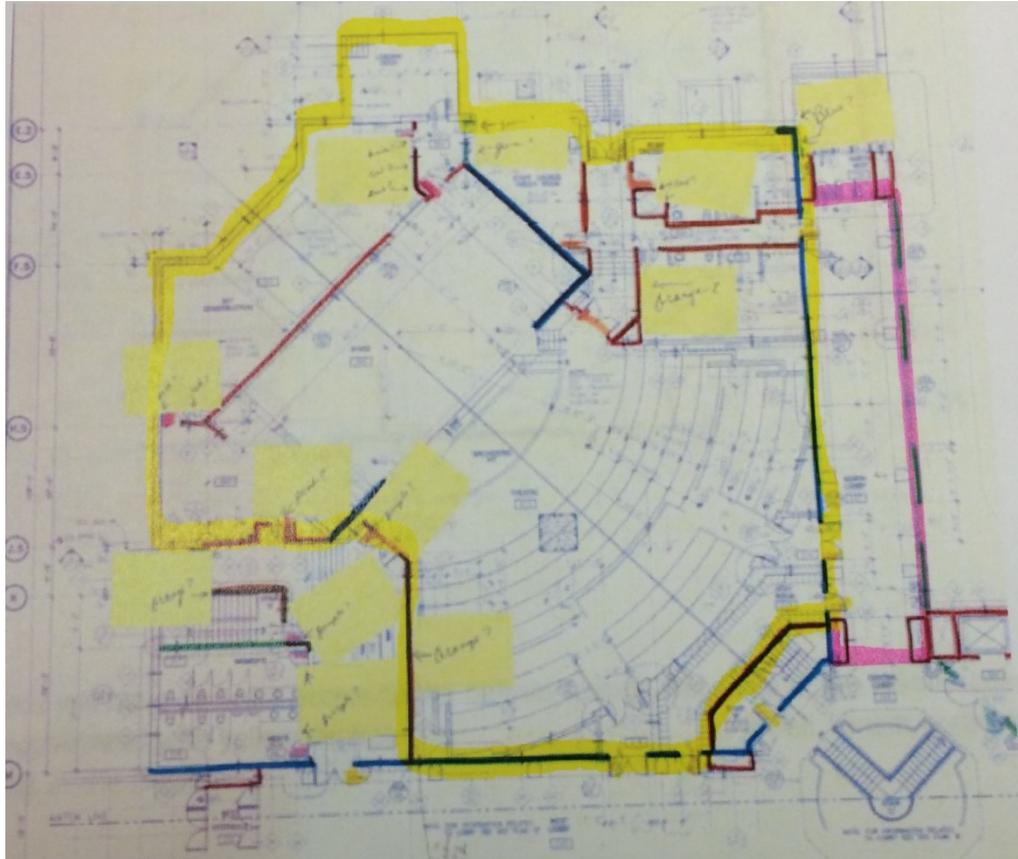
By _____
Name: Nora B. Slawik
Its: Mayor

By _____
Name: Melinda Coleman
Its: Manager

DRAFT

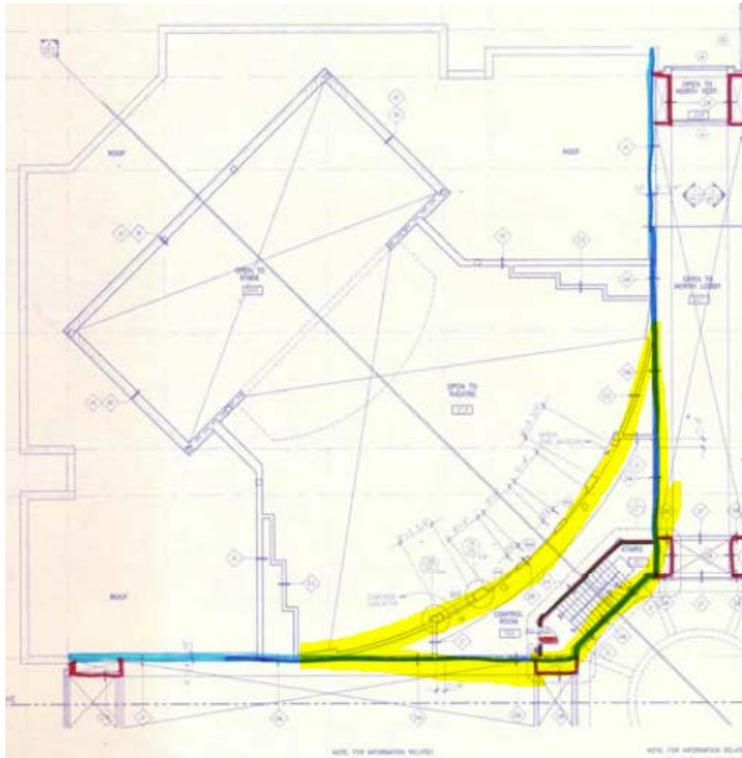
Exhibit A (Premises)

Main level



Tenant will have dedicated access to the hallway immediately east of the theater space (as highlighted with pink) for all Tenant performance events in the theater.

Office Level



Catwalk/office Level

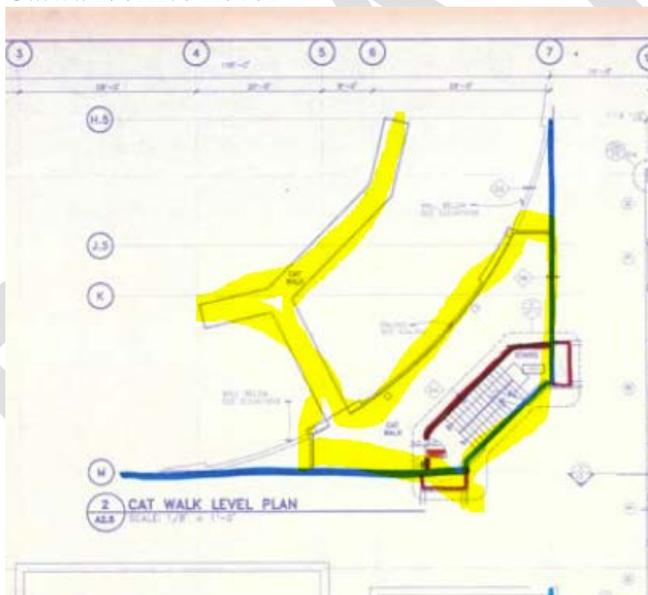


Exhibit B (Rent)

Year Num	Rent Effective Dates	Annual Rent Increase	Fixed Annual Rent with \$90K Theater Specific Capital updates by MCC (Paid monthly)
0	Through 5-31-16		\$ 34,200
	Initial Increase	%	28.7%
1	6/1/2016	28.7%	\$ 44,000
2	6/1/2017	2.0%	\$ 44,880
3	6/1/2018	2.0%	\$ 45,778
4	6/1/2019	2.0%	\$ 46,693
5	6/1/2020	2.0%	\$ 47,627
6	6/1/2021	2.0%	\$ 48,580
7	6/1/2022	2.0%	\$ 49,551
8	6/1/2023	2.0%	\$ 50,542
9	6/1/2024	2.0%	\$ 51,553
10	6/1/2025	2.0%	\$ 52,584

The new rent will be effective 6-1-2016 and will increase every 12 months after that. The \$110,000 in Capital improvements must be from the Article 6 list above or agreed to in writing in advance by the Ashland BOD.

Exhibit C (Profit Sharing)

- 1) Sharing of Ashland Ticket Sales
 - a. Ashland will share \$.25 of each Ashland performance ticket sold.
- 2) Profit Sharing on New Ticketed Theater Performance Events, non-Ashland. MCC and Ashland both desire to generate more revenue by using the theater during otherwise idle times when Ashland has not scheduled activities.
 - a. 50-60% of gross ticket sales to artist as needed to attract
 - b. Pay talent buyer up to 15% of gross ticket sales
 - c. Pay costs and split profits equally two ways between MCC, and Ashland.
- 3) Rental of theater space for non-ticketed events like business meetings, weddings, seminars, etc.
 - a. 25% of gross rent paid as booking agent fee for booking and coordinating the rental.
 - b. Profits after overhead costs will be split 50/50 between MCC and Ashland

See separate Operational Agreement for detailed assumptions and calculations used for estimates.

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Summary estimate of all three Profit Sharing elements add together

Year Num	Calendar Year	Target Annual Profit Share Increase	Low Est. of Variable Annual Profit Share	Mid Est. of Variable Annual Profit Share	High Est. of Variable Annual Profit Share			
1	2016-17		\$ 8,086	\$ 13,748	\$ 21,616			
2	2017-18	5%	\$ 8,490	\$ 14,435	\$ 22,697			
3	2018-19	5%	\$ 8,915	\$ 15,157	\$ 23,832			
4	2019-20	5%	\$ 9,361	\$ 15,915	\$ 25,023			
5	2020-21	5%	\$ 9,829	\$ 16,711	\$ 26,274			
6	2021-22	0%	\$ 9,829	\$ 16,711	\$ 26,274			
7	2022-23	0%	\$ 9,829	\$ 16,711	\$ 26,274			
8	2023-24	0%	\$ 9,829	\$ 16,711	\$ 26,274			
9	2024-25	0%	\$ 9,829	\$ 16,711	\$ 26,274			
10	2025-26	0%	\$ 9,829	\$ 16,711	\$ 26,274			
6-1-2016 thru 5-31-2017								
Sharing of Ashland Ticket Sales						Qty	Value EA	
Low Est.	Sharing of Ashland Ticket Sales at \$.25/ticket					15,000	\$ 0.25	Total for MCC \$ 3,750
Mid. Est.	Sharing of Ashland Ticket Sales at \$.25/ticket					16,000	\$ 0.25	\$ 4,000
High Est.	Sharing of Ashland Ticket Sales at \$.25/ticket					17,000	\$ 0.25	\$ 4,250
6-1-2016 thru 5-31-2017								
New performances in Theater						Est. of profits to share	Ashland 50%	MCC 50%
Low Est.	New performances in Theater					\$ 3,826	\$ 1,913	\$ 1,913
Mid. Est.	New performances in Theater					\$ 9,520	\$ 4,760	\$ 4,760
High Est.	New performances in Theater					\$ 19,026	\$ 9,513	\$ 9,513
6-1-2016 thru 5-31-2017								
Rental of theater for non-ticket events						Est. of profits to share	Ashland 50%	MCC 50%
Low Est.	Rental of theater for non-ticket events					\$ 4,846	\$ 2,423	\$ 2,423
Mid. Est.	Rental of theater for non-ticket events					\$ 9,976	\$ 4,988	\$ 4,988
High Est.	Rental of theater for non-ticket events					\$ 15,706	\$ 7,853	\$ 7,853



Maplewood Theatre Lease Discussion Ashland Productions

APRIL 25, 2016
CITY COUNCIL WORKSHOP

MCC/Ashland Partnership Background

- Ashland was founded by Frank Asenbrenner in 1997.
- Approximately 16,000 tickets for their performances are sold each year.
- Ashland has been working out of the MCC for the past fifteen years and leasing the theatre space for the previous ten years.



Ashland/Kid City

➤ **Mission Statement:**

Ashland Productions fosters the development of performance, leadership and life skills through youth mentorship and quality intergenerational performing arts.

- Ashland's mission statement aligns itself with Kid City.
- Bridges communities through the universal act of laughter and Kid Council that uses improv and theatre techniques to dream up solutions to City challenges.



Lease Agreement Discussion

- The following points summarize the major provisions in the draft lease agreement.
 - The lease agreement expired December 31, 2015.
 - The proposed lease agreement would have an effective start date of June 1, 2016.
 - Lease is for five-year period with one five-year option to extend.



Lease Agreement Discussion

- Ashland would assume responsibility for operating the theatre.

- The City is responsible for maintenance of the theatre space.

- Revenue Sharing Provision:
 - The City is paid a portion of revenue received for additional non-Ashland performances.

 - Ashland will provide the City \$0.25 for each performance ticket sold.



Lease Agreement Discussion

- Annual lease payment increase of 28.6% for 2016.
 - Annual increases of 2% thereafter

- City committed to making theatre specific improvements.
 - City contribution capped at \$110K

 - June 1, 2017 completion date



Lease Agreement Discussion

- Both parties have the option to terminate the lease with a minimum of a 12 month advance **and** not before four years.
- Reciprocity agreement for use of “each-other” spaces within the MCC (provided space is available **and** the request is made within two weeks to one month).



Next Steps

- Fall Concert Series is set – nine performances scheduled beginning in September and concluding in December.
- Currently working on the Spring Concert Series.
- Theatre stage and counter weight rigging system is compliant.
- Staff is working with Ashland to draft an operational agreement regarding profit sharing.
- Monthly meetings between City staff and Ashland.



Question & Answer



MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: DuWayne Konewko, Parks and Recreation Director
Jim Taylor, Parks Manager

DATE: April 25, 2016

SUBJECT: Abatement Bond Sales for Park Improvements

Introduction

Staff spent over two years working with residents, businesses, City Council, Parks System Plan Task Force, Parks and Recreation Commission, and our consultants to create a Parks Systems Master Plan that provides us with a 20 year vision.

Background

Staff began working on the plan in October of 2012. The first phase of the process included a thorough engagement of our residents, businesses, and parks and recreation users to listen and document all comments and concerns about Maplewood's Parks System. At the completion of this phase in January of 2014 the City Council adopted the findings. In March of 2014, City Council authorized staff to begin phase two of this process and contract with Hoisington Koegler Group for the completion of the Parks Systems Master Plan. This phase involved using findings from phase 1 of this project coupled with current benchmarking data, results from a city park system survey, and the comparison of Maplewood's current system against standards from the National Parks and Recreation Association. Staff also incorporated best practices from other communities. In total, staff and consultants hosted 29 meetings, 2 online questionnaires, 1 business survey, and 1 community wide statistically valid survey.

The main overarching goal of the planning process was to educate and raise awareness about the importance of parks and recreation in Maplewood and to ensure that future investment in the system meet the needs of the community. Staff feels this was accomplished through the extensive community process structure.

In addition, the plan provided strategies for all areas of Parks and Recreation and also spoke to implementation methods. The project approach was an inclusive process, was forward thinking, and vision driven planning.

At the time of adoption specific prioritization was given to improvements in the parks system. With more projects than funding available, prioritization was necessary to guide where funds would be allocated. As part of this prioritization process, it was identified that the **Maintenance and Reinvestment** portion of the plan would be the highest priority and essential to the future health of the parks system. **The Maintenance and Reinvestment** recommendation identifies \$7,000,000 of improvements to our existing system. This accomplishes the highest priority we heard from our residents of "Take Care of What We Have".

Since the adoption of the plan in January of 2015, staff has been working on an implementation strategy for the **Maintenance and Reinvestment** priority. In the 2016-2020 Capital Improvement Plan, \$1 Million dollars a year was allocated to these improvements. Upon doing research and meeting with Springsted – Public Sector Advisors, it was decided the best funding source for these projects would be Equipment Certs. and Abatement Bonds. Staff is recommending a first round of \$2,000,000 over the next two years starting in 2016 and concluding in 2017. This will be the first part of a five year plan. The plan would consist of the following projects:

2016

Amount	Financing Method	Improvements
\$250,000	Equipment Cert.	Goodrich Playground Replacement

2017

Amount	Financing Method	Improvements
\$600,000	Abatement Bonds	Wakefield Building Replacement
\$150,000	Abatement Bonds	Sherwood Playground Replacement
\$400,000	Abatement Bonds	Hazelwood Building Replacement
\$350,000	Abatement Bonds	Hazelwood Playground Replacement (Univer. Designed)
\$250,000	Abatement Bonds	Hazelwood Field Improvements

This timeline is important to give us the ability to engage and solicit input from our many stakeholders for each of these projects. Staff believes it is extremely imperative that the public is engaged!

Joining us at the workshop will be a representative from Springsted to discuss the Equipment Cert and Abatement Bond Process.

Recommendation

Staff recommends discussion on the implementation of the Parks System Master Plan by using Abatement Bonds and Equipment Certs. No formal action is required by council.

Attachments

1. Tax Abatement in Minnesota (MN Statutes 469.1812-1815)

Tax Abatement in Minnesota

MN Statutes 469.1812-1815



In 1997, legislation authorizing the use of tax abatement in Minnesota was passed by the State legislature. Amendments to the statute were approved in many of the past years. The statutory language defining tax abatement is quite brief and is contained in MN Statutes 469.1812 to 469.1815.

Section 469 refers to the capture or deferral of property taxes due as "tax abatement." Under Minnesota law, taxes due on real property subject to tax abatement must still be paid as due. If tax abatement is in place, the appropriate portion of the taxes can be captured for authorized uses. Just what the appropriate portion is depends on which governmental entities hold public hearings and adopt abatement resolutions. A participating city, county, or school district is required to act separately to determine the use of its share of property taxes.

Unlike tax increment, tax abatement can be used to capture taxes on land and existing buildings as well as new improvements. The captured taxes must be used to offset the costs agreed to under an abatement agreement.

Qualifications

Any political subdivision, including statutory cities, home rule charter cities, towns, counties, and school districts, is authorized to abate property taxes on selected parcels if:

- The benefits gained equal or exceed the cost to the political subdivision, and
- The abatement is in the public interest because it does one of the following:
 - increases or preserves the tax base;
 - provides employment opportunities;
 - provides or helps acquire or construct public facilities;
 - helps redevelop or renew blighted areas;
 - helps provide access to services for residents of the political subdivision;
 - finances or provides for public infrastructure;
 - phases in a property tax increase on the parcel resulting from an increase of 50% or more in one year on the estimated value of the parcel, other than an increase due to improvement of the parcel; or
 - stabilizes the tax base through equalization of property tax revenues for a specified period of time with respect to property subject to valuation under Minnesota Rules, chapter 8100.

Duration and Restrictions

- Cities, counties, and school districts as combined jurisdictions may grant an abatement for no longer than 15 years (8 year maximum if no initial duration is specified), or for no longer than 20 years if two or fewer jurisdictions participate.
- No back-to-back abatements. Eight years must pass before a new abatement can be applied.
- In any given year, the total amount of property taxes abated by a political subdivision for all parcels may not exceed the greater of (1) 10% of the subdivision's net tax capacity, or (2) \$200,000.
- Taxes may be abated on the entire net tax capacity of a parcel including land or areas subject to the area-wide fiscal disparities tax.
- Property in a tax increment financing district is not eligible for abatement.
- The property owner does not have to consent to the abatement.

Tax Abatement in Minnesota MN Statutes 469.1812-1815



Page 2

Process

- A political subdivision may grant an abatement only after a public hearing has been held.
- Notice of the hearing must be published in a newspaper of general circulation more than 10 days but less than 30 days prior to the hearing.
- The notice must identify the property for which abatement is under consideration and specify the total estimated amount of property taxes to be abated.
- The governing body must adopt a resolution specifying the terms of the abatement.
- The resolution must also contain a statement as to the nature and extent of the public benefits that are expected to be received.
- The political subdivision must add to its levy amount each year the total estimated amount of all current year abatements granted (not subject to levy limits).
- The total property taxes shall be levied on the property and shall be due and payable to the county as if a tax abatement was not in place.
- The political subdivision will pay the abatement to the property owner, lessee, or a representative of the bondholders or will retain the abatement to pay public infrastructure costs, in accordance with the abatement resolution.

Tax Abatement Bonds

- A political subdivision may issue bonds or other obligations to provide an amount equal to the sum of the abatements.
- The bonds may be general obligations of the political subdivision if the governing body of the political subdivision elects to pledge the full faith and credit of the subdivision in the resolution issuing the bonds.
- The maximum principal amount of the bonds may not exceed the estimated sum of the abatements through the authorized term.
- The bonds are issued in accordance with Chapter 475 and are excluded from the calculation of the net debt limit.
- The proceeds of bonds may be used to (1) pay for public improvements that benefit the property (that is abated), (2) to acquire and convey land or other property, (3) to reimburse the property owner for the cost of improvements made to the property, or (4) to pay the costs of issuance of the bonds.