

Special Greenwood City Council Meeting

Monday, June 22, 2009 5:00 PM

Council Chambers 20225 Cottagewood Road Deephaven, MN 55331 952-474-6633

AGENDA

- 5:00 PM 1. Call to Order/Roll Call/ Approval of Agenda
- 5:00 PM 2. Consider SouthShore Center Lease Agreement
- 6:00 PM 3. Adjournment

Subject: FW: South Shore Center Lease

Date: Tuesday, June 9, 2009 1:52 PM

From: Brian Heck City of Shorewood <bheck@ci.shorewood.mn.us>

To: Kristi Luger City of Excelsior kluger@ci.excelsior.mn.us, Jessica Loftus City of Tonka Bay jloftus@cityoftonkabay.net, Roberta Whipple Greenwood@visi.com, Dana Young DanaYoung@mchsi.com

Cc: Paul Skrede pslaptop@mchsi.com, Debra Kind d.kind@mchsi.com, Ken tonkabayken@mchsi.com, gmiller17@msn.com, Biff Rose idarose@mchsi.com, Chris Lizee chrislizee@mchsi.com, Jeff Bailey oldbail@mchsi.com, Jeff Bailey Jeff.bailey@target.com, Laura Turgeon lrturgeon@visi.com, Richard Woodruff dick.woodruff@yahoo.com, Scott Zerby scott@zerby.com

All,

Attached is the Lease document for the SouthShore Center that was adopted by the Shorewood Council last night. The original indemnification language was cleaned up and language added limiting Shorewood to its statutory caps under MS 466.

The Council is asking that you present this to your Council for consideration and to notify me regarding what, if any, action your council takes.

Thank you for your time and consideration. Please contact me if you have questions.

**BRIAN W. HECK
CITY ADMINISTRATOR
CITY OF SHOREWOOD
5755 COUNTRY CLUB RD.
SHOREWOOD, MN 55331**

**OFFICE: 952-960-7905
MOBILE: 952-463-5836**

From: Tietjen, Mary D. [mailto:mtietjen@Kennedy-Graven.com]

Sent: Tuesday, June 09, 2009 1:05 PM

To: Brian Heck

Subject: South Shore Center Lease

Brian,

Attached is the Lease with the revisions discussed by the Council last night. I did not add anything regarding incorporating the Recitals - after the discussion last night about the Recitals creating binding obligations, I thought it best to leave that alone. I also left Para. 4 as "Nature of Occupancy." After a bit more thought, I think "Permitted Use" suggests some type of land use, which is not really the intent of that section. If you have thoughts on it, let me know.

The indemnification language is as close as I could get it to the original and still have it make sense. I think it looks pretty good now. The last couple of sentences deal with the limitation on Shorewood's liability - I tried to make it clear that the City's maximum liability would be the max applicable to it under 466.04 and that the City will pay any claims on behalf of itself FIRST - only then do we indemnify others. With that in mind, tell me if it makes sense.

I also re-numbered the paragraphs.

Other questions, let me know.

Mary

Mary D. Tietjen
Kennedy & Graven, Chartered
200 South Sixth Street
470 U.S. Bank Plaza
Minneapolis, MN 55402
612.337.9277 (direct)
612.337.9310 (fax)

THE INFORMATION CONTAINED IN THIS MESSAGE IS CONFIDENTIAL AND MAY ALSO BE ATTORNEY-CLIENT PRIVILEGED. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE,

DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY REPLY EMAIL, AND DELETE THE ORIGINAL.

THANK YOU!

AGREEMENT FOR THE LEASE

AND OPERATION OF THE SOUTHSHORE COMMUNITY CENTER

THIS LEASE AND OPERATION AGREEMENT, is made this ___ day of July, 2009, between the City of Deephaven, the City of Excelsior, the City of Greenwood, the City of Shorewood, and the City of Tonka Bay (the "Cities" or "Landlord"), and the City of Shorewood ("Tenant").

RECITALS

WHEREAS, the Cities desire to provide a Center for use by senior citizens for education, cultural participation, socializing, recreation, arts, crafts, music and similar programs of enrichment; and

WHEREAS, the Cities desire that the Landlord undertake its best efforts to make the Center widely available to all citizens and residents; and

WHEREAS, the Cities desire to provide a congregate dining facility to serve the needs of senior citizens; and

WHEREAS, the Cities desire to provide a facility to be used by citizens for municipal use, community organizations, meetings, banquets, receptions, reunions and similar public and private events and other community-based activities such as those commonly provided at community centers throughout the area; and

WHEREAS, the Cities agree that it is to their mutual benefit that Tenant operate the Center consistent with the terms of this Lease for the purpose of providing the most efficient service to the public and avoiding future conflict regarding the Center's operation;

NOW, THEREFORE, the parties do hereby agree and covenant as set forth below:

IN CONSIDERATION OF the mutual covenants and promises as hereinafter set forth, the parties agree as follows:

1. Premises. Landlord hereby leases to Tenant and Tenant takes from Landlord, subject to the terms and conditions of this Lease, a building and land situated at 5735 Country Club Road, containing approximately 26,000 square feet of space and legally described on Exhibit A attached hereto ("Premises"), together with a permanent easement for the non-exclusive use of forty-seven (47) parking stalls, entrances, restrooms and exits adjacent to the Premises.

2. Term. The term of this Lease shall commence on July 1, 2009 and shall terminate on December 31, 2012. The term of this Lease shall renew for successive three-year terms unless the Tenant or Landlord provides written notice in accordance with Section 3 of this agreement.

3. Termination. The Tenant may terminate this Lease at any time for any reason upon 90 days written notice to the Landlord. Landlord may terminate this Lease upon 90 days written notice to Tenant only in the event of default by Tenant as described in paragraph 14.

4. Nature of Occupancy. Tenant shall use the Premises for use by senior citizens for educational and recreational activities, including, but not limited to, arts, crafts, music and other various

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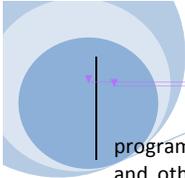
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programs of enrichment. The Center shall also be used by citizens for banquets, receptions, reunions and other public and private events and other community-based activities such as those commonly provided at community centers throughout the area.

5. Rent. The Tenant agrees to pay the Landlord as rent for the Premises the amount of one and 00/100 dollars (\$1.00) per year during the term of this Lease agreement.

6. Utilities. The Tenant shall pay all the charges for all public utility services rendered or furnished to the Premises, including, but not limited to, heat, air conditioning, water, gas, electricity and sewer, garbage or waste removal, telephone and any other expenses arising out of or incidental to the use and occupancy of the Premises.

7. Insurance. The Tenant shall keep and hold property, casualty, and general liability insurance naming the Landlord as additional insureds, subject to any limits specified under Minnesota State Statutes Chapter 466.

8. Repairs, Maintenance, and Alterations. Tenant agrees to maintain the Premises in good order, condition and repair during the term of this Lease, including plowing and maintenance of the parking area referred to in Paragraph 1 above. Tenant shall repair or replace at its own expense any improvement or part thereof on the Premises necessary to so maintain it, and to return the Premises at the end of the term of this Lease in the same condition as it was received, reasonable wear and tear, casualty losses and acts of God excepted. Any improvements, expansion or structural modifications made by the Tenants to the Premises shall become the property of the Landlord at the termination of the Lease. Tenant shall obtain written approval from 2/3rds of the Landlord before undertaking any expansion or structural modification of the Premises.

9. Compliance with Laws and Regulations. In its operation of the Center, Tenant shall comply with all statutes, ordinances, rules, orders, regulations and requirements of all federal, state, city and local governments and their agencies.

10. Signs. Tenant shall have the right to install and maintain signs advertising Tenant's business, provided the signs conform to law and to the requirements of all appropriate governmental authorities.

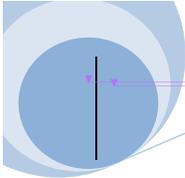
11. Management of Center. Tenant may, at its sole discretion, enter into an agreement with a contractor of its choosing or hire staff as Tenant deems reasonable for the operation and management of the Center; furthermore, the Tenant may enter into long-term rental agreements and partnerships as it deems appropriate and in keeping with the intended use of the Center as provided for in Section 4 above.

12. Rental Fees. Tenant, in its sole discretion, may determine rental rates and any other fees or costs associated with use and rental of the Center. Tenant shall retain all revenue generated through the operation of the Center.

13. Destruction of Premises. Tenant shall give immediate notice to Landlord of any damage to or destruction of the Premises.

14. Default. The following shall constitute a default by Tenant and breach of this Lease:

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(a) Failure to perform the terms, covenants and conditions of this Lease within ten (10) days after notice of breach and request for performance is given by Landlord.

(b) Failure of the Tenant to use the Premises as provided in Section 4.

15. Indemnification. Tenant agrees to defend, indemnify and hold harmless the Landlord from any and all claims, liability, loss, damage, and costs (including reasonable attorneys' fees), arising out of the conduct or management by, or on behalf of, Tenant relating to the activities upon or occupancy of the Premises during the term of this Lease. Tenant will further indemnify and save harmless the Landlord against any and all claims arising from: any breach or default on the part of Tenant in the performance of this Lease; any violation or failure to comply with any applicable law, ordinance or regulation; any act or negligence of Tenant or any of its agents, contractors, employees, or invitees; or from any accident, injury or damage caused to any person, firm or corporation occurring on or about the Premises during the term of this Lease. In the event of an action against Landlord for any such claim, Tenant will, upon notice from Landlord, defend such action with legal counsel reasonably satisfactory to Landlord. Nothing herein shall be deemed a waiver by Tenant of the limitations on liability set forth in Minnesota Statutes Chapter 466.04. Tenant shall not be obligated to indemnify Landlord in any amounts in excess of the limitations on liability applicable to Tenant under Minnesota Statutes Chapter 466.04, less any amounts Tenant is required to pay on behalf of itself, its officers, employees and agents for claims arising out of the same occurrence.

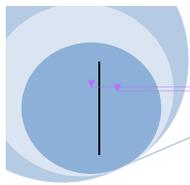
16. Quiet Enjoyment. Landlord covenants that Tenant, upon payment of rent and upon performance by Tenant of the terms, conditions and covenants of this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the entire term of this Lease; Landlord further covenants that it has good right to make this Lease for its entire term.

17. Right of Inspection. Landlord shall at all times have the right to enter upon the Premises to inspect its condition, and at its election, to make reasonable and necessary repairs thereon for the protection and preservation thereof, but nothing herein shall be construed to require Landlord to make such repairs, and Landlord shall not be liable to Tenant, or any other person or persons, for failure or delay in making said repairs, or for damages or injury to person or property caused in or by the making of such repairs, or the doing of such work. Landlord shall have the right during the last ninety (90) days of the term of this Lease to advertise the Premises for rent and to place and maintain on the Premises the usual notices and to show the Premises to prospective tenants.

18. Notices. All written notices required shall be given by certified mail to the parties at the addresses stated below:

If to Landlord:	City Administrator City of Deephaven 20225 Cottagewood Road Excelsior, MN 55331 City Manager City of Excelsior 339 Third Street Excelsior, MN 55331
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City Administrator
 City of Greenwood
 20225 Cottagewood Road
 Excelsior, MN 55331

City Administrator
 City of Shorewood
 5755 Country Club Road
 Shorewood, MN 55331

City Administrator
 City of Tonka Bay
 4901 Manitou Road
 Tonka Bay, MN 55331

If to Tenant: City Administrator

City of Shorewood
 5755 Country Club Road
 Shorewood, MN 55331

19. Binding Effect. Except to the extent otherwise provided herein, this Lease and the terms, conditions and covenants contained herein shall be binding upon and inure to the benefit of Landlord and Tenant, and their respective successors, heirs and legal representatives and assigns.

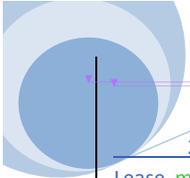
20. Governing Law. This Lease shall be construed under and governed by the laws of the State of Minnesota.

21. Severability. In the event any provision of this Lease shall be found invalid or unenforceable, that provision shall be severed from this Lease, and the remaining portions hereof shall continue in full force and effect pursuant to their terms.

22. Entire Agreement. This Lease contains the entire agreement between the parties, and any amendment hereafter made shall be ineffective to alter, modify or discharge any provision hereof unless the amendment is in writing and signed by the party against whom enforcement is sought.

23. Tenant Improvements. Any improvements made by Tenant to the Premises, except trade fixtures, shall become the property of Landlord at Landlord's option at the termination of the Lease. If Landlord does not choose to own said improvements at the termination of the Lease, Tenant shall remove said improvements at Tenant's sole cost and expense and return the Premises to the same condition it was received, normal wear and tear and acts of God excepted,

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24. Action by Landlord. Action authorized by "Landlord" under paragraphs 2, 3, or 14 of this Lease may only be taken if four of the five Cities provide written approval of such action by their respective city councils.

25. Headings. The headings used in this Lease are for convenience only and shall not have any bearing or meaning with respect to the content or context of this instrument.

IN WITNESS WHEREOF, Landlord and Tenant have respectively signed this Lease as of the date first above written.

CITY OF DEEPHAVEN

Dated: _____
By: _____
Its: City (Clerk) Administrator

Dated: _____
By: _____
Its: Mayor

CITY OF EXCELSIOR

Dated: _____
By: _____
Its: City Manager

Dated: _____
By: _____
Its: Mayor

CITY OF GREENWOOD

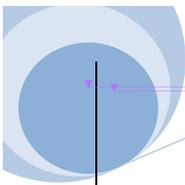
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Its: Mayor

CITY OF SHOREWOOD

Dated: _____
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Its: City (Clerk) Administrator

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Dated: _____

By: _____
Its: Mayor

CITY OF TONKA BAY

Dated: _____

By: _____
Its: City (Clerk) Administrator

Dated: _____

By: _____
Its: Mayor

TENANT:
City of Shorewood

By: _____
Its: Mayor

By:

Its Administrator

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