

Memo

From: Adrianna Hennen, Clerk-Treasurer

To: Freeport City Council

Date: 5/23/17

Re: Sacred Heart School Park Least Agreement

I recently spoke with Judy Caveny about the School Park Lease Agreement. Judy stated that she keeps hearing statements like “the City will do ‘_____’ and the school will do ‘_____’”. But these so called handshake agreements are not in the agreement. Her and I both agreed that if these are actual agreements we want to continue they should be included in the official agreement.

To begin, I would like everyone to read through the agreement and come up with any changes or additions you would like to see in the agreement. I believe the Parish board was going to do the same. We will then come together and try to agree on any changes and additions.

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 11th day of July, 2007, between THE CHURCH OF THE SACRED HEART, 106 Third Avenue NE, P.O. Box 155, Freeport, Minnesota 56331, a religious corporation under the laws of the State of Minnesota, ("Sacred Heart"), and the CITY OF FREEPORT, 125 East Main Street, P.O. Box 301, Freeport, Minnesota 56331, a municipal corporation under the laws of the State of Minnesota ("Freeport").

1. Demise. Sacred Heart does hereby lease to Freeport the premises ("Leased Premises") located at 303 Second Street NE, in the City of Freeport, Stearns County, Minnesota, described as follows:

See Attached Schedule of Real Property

for use by Freeport as a public park and playground, and related purposes.

2. Term. Freeport takes the Leased Premises from Sacred Heart upon the terms and conditions herein contained and holds the same for a term of 100 years commencing on the 1st day of August, 2007, and ending on the last day of July, 2107, the termination date, unless terminated at an earlier date as provided herein. Freeport agrees to pay an annual rent of One and 00/100's Dollars (\$1.00). The first year's rent is payable on the first day of the first month of the term of this lease, and thereafter on the first day of each August during the term of this lease.
3. Assignment or Subletting. Freeport shall not have the right during the term of this lease to assign or sublet the Leased Premises without the prior written consent of Sacred Heart.
4. Initial Condition of Premises and Leasehold Improvements. Sacred Heart agrees to deliver the Leased Premises to Freeport in a condition suitable for the uses intended. The parties will conduct an inspection of the Leased Premises prior to the commencement of the lease term, at which time Freeport will determine whether to accept the Leased Premises. If the parties agree that the Leased Premises are in a condition suitable for the uses intended, Freeport shall sign an acceptance of premises.

5. Utilities, Taxes and Services. Freeport agrees to pay for all utilities supplied to the premises and for all property taxes and special assessments related to the premises. Freeport also agrees to pay for, or provide snow removal and refuse removal.
6. Alterations and Improvements. Freeport may, at its sole discretion, make alterations and improvements to the Leased Premises. Such alterations and improvements shall be made in a good and workmanlike manner, and comply with all laws and regulations of any governmental agency having jurisdiction over the Leased Premises. Freeport shall make a good faith effort to consult with Sacred Heart prior to making any alterations or improvements to the Leased Premises. Freeport shall hold Sacred Heart harmless against all claims and demands of every kind and character, which result from or arise out of the making of such alterations and improvements.
7. Governmental Directives. Freeport, at its sole expense, shall comply with all orders of government agencies having jurisdiction over the Leased Premises, excepting only such matters as are assumed by Sacred Heart under the terms hereof.
8. Maintenance, Repair, or Replacement. Freeport shall maintain the Leased Premises, including but not limited to, equipment and landscaping in, upon or serving the same. All maintenance, repairs, and replacements shall be made promptly in a good workmanlike manner.
9. Identification Signs. Freeport may erect and maintain new signs and remove existing signs from the Leased Premises at its own expense. Freeport shall make a good faith effort to consult with Sacred Heart prior to erecting any new signs or removing any existing sign from the Leased Premises.
10. Insurance. Freeport shall maintain a policy of general liability insurance against any claims for personal injury and property damage arising out of acts or accidents occurring on or within the leased premises with policy limits in an amount to be agreed upon by the parties.
11. Indemnification and Release. Freeport hereby releases Sacred Heart from any and all liability or responsibility to Freeport, or anyone claiming through, or entered in by way of subrogation or otherwise, for any loss or damage to property caused by any of the perils insured against in the coverage required by the terms of this lease. Freeport shall indemnify and save harmless Sacred Heart from any personal injury, death, or property damage arising out of any act or occurrence committed or happening in or from the Leased Premises, except claims based on the negligence or willful conduct of the Sacred Heart.
12. Waiver of Claim for Insured Loss. The parties hereto do each hereby waive all claims and right of recovery based on negligence or breach of the covenants hereof against the other for loss occurring to the Leased Premises and the improvements, betterment's, equipment, and fixtures owned or installed by the Freeport therein, which loss is covered by an insurance policy required by the terms of this lease to be procured and maintained. This waiver is limited to the amounts actually received under such insurance policies.
13. Fire and Casualty Loss. If the Leased Premises or any part thereof, is damaged or destroyed by fire or any casualty, Freeport shall undertake repairs occasioned thereby in accordance with the terms

herein stated. If the repairs can be completed within six (6) months after the loss, Freeport shall repair the premises unless within sixty (60) days after said loss Freeport gives Sacred Heart written notice of intent to terminate this lease, in which event the lease shall be terminated as of the date of such loss. If the repairs cannot be completed within six (6) months of such loss, this lease shall automatically terminate as of the date of such loss. The number of days which is reasonably contemplated at the time of damage or destruction is the time required to settle the insurance claims, if any, together with the time required to repair in the ordinary course of business. Notwithstanding anything to the contrary herein, if at any time more than fifty percent (50%) of the improvements on which the Leased Premises are a part are damaged or destroyed by fire or other casualty covered by the extended coverage endorsement or any other casualty, this lease shall automatically terminate. Freeport shall be responsible for carrying its own insurance on its improvements for fire and extended coverage.

14. Removal of Improvements and Fixtures. Present improvements, equipment, or fixtures installed by Sacred Heart in the Leased Premises and used for park or playground purposes, or otherwise, may be removed by Freeport. Personal property, equipment, or fixtures placed upon the Leased Premises by Freeport, may be removed by Freeport at the termination of this lease if, and only if, removal may be accomplished without damage to the premises. All improvements, equipment, and fixtures remaining on the Leased Premises after the termination of this lease shall become the property of Sacred Heart.
15. Sale of Property. Sacred Heart shall have the right to sell this property at any time during this lease, and in that case, this lease shall run with the land.
16. Terminal Conditions of Premises. At the termination of this lease, Freeport shall return the Leased Premises in as good condition as when Freeport took possession, except only ordinary wear and tear.
17. Condemnation. If the whole of the Leased Premises is taken under power of eminent domain or is sold to any entity having the power of eminent domain under the threat of condemnation, this lease shall terminate at the time at which the eminent power is exercised. In the event of such taking or sale of only part of the Leased Premises which shall substantially interfere with Freeport's use of occupancy thereof, Freeport may terminate this lease by giving Sacred Heart written notice of such sale or issuance of award.
18. Hazardous Substances. Freeport shall not cause or permit the escape, disposal, or release of any biologically or chemically active or other hazardous substances or materials. Freeport shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry on the storage and use of such substances or materials, nor allow such substances or materials to be brought onto the premises.
19. Termination. Beginning on the tenth anniversary of the commencement date, this Lease may be terminated by either party, without cause, upon two (2) years written notice directed to the other party pursuant to Paragraph 21 below-written.

20. Remedies.

- A. Should Freeport breach any of the terms of this lease other than the covenant to pay the rent as contained in paragraph 2 above, Sacred Heart shall give Freeport notice of such breach and Freeport shall commence to cure such breach within ninety (90) days following the giving of such notice, and shall diligently proceed with and complete the curing of such breach within a reasonable period of time. If Freeport fails to cure such breach after notice as hereinabove provided, Sacred Heart shall have the right to cure such breach, and upon doing so, Freeport shall, upon demand, reimburse Sacred Heart for the cost of curing such breach.
- B. Should Sacred Heart breach any of the covenants or obligations of this lease, Freeport shall give Sacred Heart notice of such breach. Sacred Heart shall commence to cure such breach within ninety (90) days following the giving of such notice, and shall diligently proceed with and complete the curing of such breach within a reasonable time. If Sacred Heart fails to cure such breach after notice as hereinabove provided, Freeport shall have the right to cure such breach, and upon doing so, Sacred Heart shall, upon demand, reimburse Freeport for the cost of curing such breach, or Freeport may, at its option, set-off such costs against future rent.
- C. If Freeport fails to pay the rent herein reserved, or assigns this lease without Sacred Heart's prior written consent, or breaches any of the other covenants or obligations of this lease and fails to cure such breach after notice as hereinabove provided, Sacred Heart shall have the option to terminate this lease upon three (3) months written notice directed to the other party pursuant to Paragraph 21 below-written.
- D. Except as to notice required by the terms of this paragraph, the foregoing remedies are not intended to limit or qualify such other remedies as the parties may have at law or in equity. All remedies shall be cumulative to the use of any or all others.

21. Notice. All communications, demands, and notices required to be given or served under this lease agreement shall be in writing, and shall be deemed to have been duly given or served if delivered in person to the other party or their duly authorized agent, or if deposited in the U.S. Mail, postage prepaid, for mailing by certified mail, return receipt requested to the address as shown above

22. Waiver and Surrender. The receipt of rent by Sacred Heart with knowledge of any breach of this lease by Freeport or of any default on the part of Freeport in observance or performance of any of the obligations or covenants of this lease shall not be deemed to be a waiver of any provision of this lease, nor failure on the part of Sacred Heart to enforce any obligation or covenant herein contained, nor any waiver of any right hereunder by the same in the event of any subsequent breach or default. The receipt by Sacred Heart of any rent or other sums of money or other consideration hereunder paid by Freeport after the termination, in any manner, of Freeport's right of occupancy or of the term herein demised, or after giving by Sacred Heart of any notice hereunder to effect such termination, shall not reinstate, continue or extend the term hereof, or Freeport's right of occupancy, or in any manner impair the effect of any notice of termination as may have been given hereunder by Sacred Heart to Freeport prior to the receipt of any sum of money or other consideration, unless so agreed to in writing and signed by the parties. No act of surrender during

the term hereof shall be deemed a release of the Freeport from its obligations hereunder, except only an agreement, in writing, signed by the parties.

23. Covenants of Freeport. Freeport shall keep the Leased Premises in good order and condition.
24. Successors. All covenants, obligations and agreements of this lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Sacred Heart and Freeport, without hereby affecting the restrictions imposed upon Freeport's right to assign this lease or sublet the premises under the terms of this lease.
25. Dispute Resolution. Any claim, controversy, or dispute arising out of this Lease not resolved within ninety (90) days following notice of the dispute shall be submitted first and promptly to mediation. Each party shall bear its own costs of mediation. If mediation does not result in settlement within ninety (90) days after the matter was submitted to mediation, either party may pursue its legal remedies. The mediation shall be conducted in Stearns County, Minnesota.
26. Laws of Minnesota. This agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this agreement shall be venued in the County of Stearns, State of Minnesota.
27. Validity. The unenforceability or invalidity of any provision of this agreement as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other persons, or circumstances, and all provisions, hereof, in all other respects, shall remain valid and enforceable.
28. Severability. The provisions of this Lease are severable and in the event any paragraph, subparagraph, sentence, word or other portion of this agreement is declared illegal or unenforceable, the remainder of this agreement shall be binding upon the parties.
29. Headings. The section headings herein are for convenience only and are not to be construed to be part of or limit or affect the terms.
30. Entire Agreement. This Lease represents the entire agreement between the parties; there are no agreements, understandings, or undertakings except as set forth herein. All prior negotiations and writings between the parties and their representatives are superseded hereby. This Lease may not be amended, modified, or supplemented except by a writing, duly and properly executed; no term, condition, or covenant hereof may be waived other than by such writing.
31. Binding. This agreement is binding on and enforceable by and against the parties, their successors, legal representatives and assigns.
32. Counterparts. This agreement may be simultaneously executed in any number of counterparts, each of which will be executed and delivered, but will constitute one and the same instrument, and each of said counterparts shall for all purposes be deemed to be an original.