## AGREEMENT

THIS AGREEMENT is made and entered into this 14TH day of August, 1990, by and between Lutheran High School Association of Greater Minneapolis, a Minnesota nonprofit corporation ("Association") and the City of Bloomington, a Minnesota municipal corporation ("City").

## RECITALS

(A) The Association has signed a Purchase Agreement dated April 30, 1990, as amended, with Independent School District No. 271 ("School District") to purchase the Northgate Elementary School site ("School Site"). The legal description for the School Site located at 8201 Park Avenue South in the City of Bloomington, Hennepin County, Minnesota is as follows:

> Lot 2, Block 1, Smith Park 1st Addition, according to the plat thereof on file or of record in the office of the Registrar of Titles in and for said Hennepin County, Minnesota

The School Site property is further subject to utility, drainage, public utility, and road easements.

(B) The Association shall retain ownership of the School Site and desires to grant to City use of that portion of the School Site which contains a soccer field (which portion is hereinafter referred to as the "Premises"). The Premises is legally described on Exhibit A attached hereto and is graphically depicted on Exhibit B attached hereto.

(C) The City desires to be granted use of the Premises and the Association is willing to grant such use to the City

upon the terms and conditions set forth herein.

(D) This Agreement defines the terms and conditions of the grant of use of the Premises to the City by Association.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and undertakings contained herein, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

(1) CONTINGENCY

This Agreement and the undertakings, promises, and covenants set forth herein are contingent upon the acquisition of the School Site by the Association from the School District in accord with the Purchase Agreement between those parties.

(2) GRANT OF USE TO CITY

(A) Upon the closing of the acquisition of the School Site by the Association from the School District, the Association shall grant to City the following use of the Premises for a basic term of twenty (20) years together with two (2) successive renewal terms of five (5) years each, with all other rights reserved to the Association, as follows:

(i) Association shall grant to City the right of first refusal to purchase the Premises in accord with the terms and conditions of paragraph 3 below.

(ii) Association shall grant to City the use of the Premises during the months of June and July and the first half of August of each

year for summer soccer or other athletic activities, subject only to such use by Association of the Premises to conduct summer athletic camps not to exceed one week each during the months of June and July prior to 6:00 p.m. and as scheduled by Association and notice thereof given to City.

(iii) Association shall grant to City limited use of the Premises for football, soccer, or other athletic activities during the months of April and May of each year, subject to the prior use and right of Association to exclusive use of the Premises on each school day until 6:00 o'clock p.m. during the period from April 1 through May 30 of each year. Association will provide to City annually a schedule of anticipated usage by Association for such periods.

(iv) City shall have the right to install, use, and maintain a scoreboard, field goal posts, and bleachers on the Premises in locations mutually satisfactory to the parties. Association may provide combination football-soccer field goal parts for use on the Premises and which shall be installed by City.

year for summer soccer or other athletic activities, subject only to such use by Association of the Premises to conduct summer athletic camps not to exceed one week each during the months of June and July prior to 6:00 p.m. and as scheduled by Association and notice thereof given to City.

(iii) Association shall grant to City limited use of the Premises for football, soccer, or other athletic activities during the months of April and May of each year, subject to the prior use and right of Association to exclusive use of the Premises on each school day until 6:00 o'clock p.m. during the period from April 1 through May 30 of each year. Association will provide to City annually a schedule of anticipated usage by Association for such periods.

(iv) City shall have the right to install, use, and maintain a scoreboard, field goal posts, and bleachers on the Premises in locations mutually satisfactory to the parties. Association may provide combination football-soccer field goal parts for use on the Premises and which shall be installed by City.

(v) The City shall have the right, in the event that a track is ever installed upon the Premises, to use such track for practices and competitions and upon terms and provisions mutually satisfactory to the parties.

(vi) The parties may agree upon the installation of fencing on the Premises in locations and upon terms and provisions mutually satisfactory to the parties.

(B) The conditions of the rights of use granted above to the City by Association are as follows:

(i) The dates and times of the above usage shall be established on an annual basis by the parties. The Association shall have first priority on scheduling for all such usage.

(ii) The City shall not be charged any separate fee for the above usage of the Premises by the City.

(iii) City and Association shall jointly undertake to crown, seed, and irrigate the playing field on the Premises at such time or times as the parties shall mutually agree and as necessary funds are available. Any use by either party during such period of crowning and seeding the playing field

of the Premises shall be subject to such repairs and alteration.

(iv) The City shall be responsible for all maintenance of the Premises for the period from April 1 through August 15 of each year, which maintenance shall consist of the following: seeding, sodding, fertilizing, mowing and repair of the grounds and maintenance of any City-made improvements, including any fencing. Such maintenance of grounds and improvements shall be done in the same manner, extent and frequency as with other City play grounds. The final mowing of the Premises by City hereunder shall be within three (3) days of August 15 of each year. The parties shall mutually determine questions of needed maintenance and repair. The Association shall be responsible for maintaining any improvements, fixtures or personalty (including scoreboard, field goal posts, and bleachers) it may place on the Premises. In the event that City shall utilize any such improvements, the City may participate in the maintenance and repairs of any such improvements. Each party shall be responsible for its own game

preparations (e.g. lining of the fields).

(v) Each party recognizes that the Premises is to be used by the other and shall use all reasonable efforts to minimize or correct damages to the Premises which may affect its reasonable use by the other and for the purposes intended.

(C) Upon closing of the acquisition of the School Site by Association from School District, the parties shall execute and deliver a recordable Use Agreement in the form attached hereto as Exhibit C (the "Use Agreement").

(3) RIGHT OF FIRST REFUSAL TO PURCHASE

(A) The Association grants to City the right of first refusal to purchase (the "Right of First Refusal") the Premises in accord with the terms and conditions of this Agreement and the Use Agreement. Where language in this paragraph or Agreement refers to the "Association," it shall be interpreted to mean the current owner of the School Site if the owner is other than the Association.

(B) The Right of First Refusal shall be exercised, if at all, by City upon the proposed sale of School Site and the Premises to a third party by Association. The Association shall declare such intention of proposed sale in writing to the City pursuant to the Use Agreement.

(C) The City shall have thirty (30) days from receipt of the Notice of Declaration from Association in order to exercise the Right of First Refusal. The City shall

exercise the Right of First Refusal to purchase the Premises in writing by notice sent to the Principal of the Association.

(D) From the date notice of the exercise of the Right of First Refusal is received by Association, the City shall have a period of six (6) months within which to complete and close upon the acquisition. At the time of any such closing, Association shall deliver to City marketable title to the Premises, subject only to public easements of record, easements of record, and any rights reserved to Association for land exchange pursuant to this Agreement or the Use Agreement.

(E) In the event that the Right of First Refusal is not exercised by the City or is not closed upon within the time limits specified above, the Right of First Refusal shall terminate and shall no longer be effective with respect to the Premises.

(F) Upon exercise of the Right of First Refusal, the City shall pay the Association the fair market value of the Premises. In the event the parties cannot agree upon the fair market value of the Premises, they shall refer the matter to a committee of appraisers for a decision that shall be binding upon the parties. The committee shall be comprised of an appraiser selected by the Association, an appraiser selected by the City, and a third appraiser selected by both parties. Each party shall bear the expenses of its own appraiser, and the parties shall share equally the expenses of the third appraiser.

(G) For purposes of valuation, the Premises shall be valued in conjunction with the School Site parcel utilizing the same zoning as that parcel. The date of valuation shall be the date the Option was exercised. Valuation shall assume that all special assessments are paid.

(H) All special assessments levied at the date of the exercise of the Right of First Refusal by the City shall be paid by the Association. Any special assessments which are levied after the exercise of the Right of First Refusal shall be the responsibility of the City. Taxes, if any, due and payable on the date of exercise of the Right of First Refusal shall be paid in accord with the terms of this Agreement. Taxes which become due and payable thereafter shall be the sole responsibility of the City.

(4) TITLE AND CLOSING.

In the event that City exercises its Right of First Refusal to purchase the Premises, within a reasonable time after notice thereof the Association shall furnish the City with abstract of title for the Premises certified to date and including proper searches, including bankruptcies, and state and federal judgments and liens. The City will be allowed twenty (20) days after receipt of the updated abstracts to examine same and to make any objections to the marketability of title to the Premises, said objections to be made by written notice or to be deemed waived. If any objections are so made to the marketability of title to the Premises, the Association shall immediately commence and diligently endeavor to complete

all actions necessary to cure such objections and shall be allowed 180 days after the making of such objections by the City to cure such objections and make the Premises good and marketable in the Association. Pending the correction of title, the closing and payments hereunder shall be postponed, but upon correction of title and within ten (10) days after written notice of such correction given by the Association to the City, the parties shall perform the agreement according to its terms. If the title to the Premises is not good and marketable of record in the Association and is not made so within one hundred eighty (180) days after the date of making written objections thereto, or is not good and marketable of record in the Association at the closing date, the City may either:

(A) Terminate the Right of First Refusal by giving written notice to the Association in which event the Right of First Refusal shall become null and void; or

(B) Elect to accept the title in its unmarketable condition by giving written notice to the Association, in which event the City may hold back adequate funds from the purchase price to cure the defects and apply said holdback funds for the cost of curing such defects, including attorney's fees, and pay the unexpended balance to the Association.

(5) WATERMAIN

An old water line owned by the City lies below the north end of the building on the School Site. This line was abandoned and a new line built in 1989 at the City's expense in

conjunction with a prior purchase agreement between the School District, the City, and a third party. The City again agrees to assume the cost of this relocation as part of this Agreement.

(6) EXCHANGE OF LAND

The Association and the City agree to an exchange of lands at no additional consideration to either party.

(A) Upon the completion of a replatting of the School Site and adjacent City lands, the Association shall transfer to the City fee title to a strip of land measuring approximately 31' x 275' and encompassing the existing parking lot located on the School Site. Such strip shall hereinafter be referred to as "Parcels 1."

(B) Upon the completion of a replatting of the School Site and adjacent City lands, the City shall transfer to the Association fee title to a strip of land measuring approximately 20' x 428' and lying adjacent to the easterly boundary of the Premises. Such strip shall hereinafter be referred to as "Parcel 2."

(C) The locations of Parcels 1 and 2 are as depicted on Exhibit D hereto. The exact dimensions of said parcels shall be determined by mutual agreement of the parties based upon their review of the locations of the improvements, trees, and other on-site items of concern, as shown by survey(s). The City shall for this purpose obtain, at its expense, a survey of the School Site and adjacent City lands; a copy of the survey shall be provided to the Association at no cost.

(D) Title to the parcels of land to be exchanged by the parties hereunder shall be good and marketable title, subject only to public easements of record.

(E) In connection with the land exchange, the Association shall execute a recordable Use Agreement with respect to Parcel 2. Such agreement shall, insofar as is relevant and applicable, contain the same provisions with respect to Parcel 2 as Exhibit C hereto contains with respect to the Premises.

(7) PLATTING

For the purposes of the land exchanges and the creation of a separate lot for the Premises, the School Site and the adjacent City lands shall be replatted.

(A) The City shall assume responsibility for such platting and for the costs and expenses thereof.

(B) The Association agrees to cooperate as necessary for the completion of the replatting process. Such cooperation will include execution of the plat and dedication of easements reasonably required in connection with the plat approval, including easements for existing public improvements such as the tennis courts and watermain.

(C) The platting process is intended to result in the creation of separate lots for the Premises, Parcels 1 and 2, the remaining portion of the School Site, and the remaining portion of the City's adjacent lands.

(8) ADJACENT PUBLIC LANDS

(A) The Association desires to utilize the tennis,

baseball and softball facilities of the City on the adjacent public lands for the athletic and recreational programs of Association. The City acknowledges this interest and expresses its willingness to make these City facilities available for use by the Association on the same basis and for the same fees (if any) as the fields are used by other City residents and organizations.

(B) It is understood, however, that, while the City will make reasonable, good faith efforts to accommodate the Association's scheduling needs for these facilities, the needs of the Association will by necessity be addressed within the larger context of community-wide needs for use of the facilities or for possible alternative uses of or sale of the facilities by the City. Due to these various needs and uncertainties, the City cannot guarantee that the facilities will be available in the future at all times desired by the Association. The Association understands and accepts these limitations.

(C) Before the City shall change or eliminate any of the athletic facilities presently existing on the adjacent public lands (to wit: one tennis court facility, 1 baseball field, 4 softball fields, seasonal shelter building, and playground apparatus) it shall notify the Association of such changes and conduct a public hearing thereon if requested to do so by the Association.

(D) In addition, should the City modify the existing athletic facilities on the adjacent lands such that the

modifications result in a playground containing less than one tennis court facility, one baseball field, and two softball fields, then the Association shall have the right to terminate all use rights of the City pursuant to the Use Agreement.

(E) The City recognizes that the Association may desire in the future to utilize the Premises for a track facility and that location of such a facility might require some impingement into adjacent public lands. The City states that it will entertain future requests of the Association for an easement permitting such impingement and will not unreasonably deny such a request upon review of the proposal and any impacts it may have on existing and future uses of the public lands.

(9) NOTICES

All documents to be delivered and all correspondence and notices to be given in connection with this Agreement shall be in writing and given by personal delivery or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

| | |
|---|---|
| If to the City: | City Manager<br>City of Bloomington<br>2215 West Old Shakopee Road<br>Bloomington, Minnesota 55431 |
| With a copy to: | City Attorney<br>City of Bloomington<br>2215 West Old Shakopee Road<br>Bloomington, Minnesota 55431 |
| If to the Association: | Chairman of the Board<br>Lutheran High School Association<br>8201 Park Avenue South<br>Bloomington, MN 55420 |

With a copy to:

Principal
Lutheran High School Association
8201 Park Avenue South
Bloomington, MN 55420

Each such mailed notice or communication shall be deemed to have been given to or served upon, the party to whom it is addressed on the date the same is deposited in the United States registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner above provided.

Either party hereto may change such party's address for the service of notice hereunder by written notice of said change to the other party hereto, in the manner above specified ten (10) days prior to the effective date of said change.

(10) ASSIGNMENT

This agreement shall be binding upon and inure to the benefit of each of the parties hereto, their respective successors and assigns. This Agreement may not be assigned by either party with the prior written consent of the other, and such consent shall not be unreasonably withheld.

(11) AUTHORIZATION

The Association and the individuals executing this Agreement on behalf of the Association warrant to the City that the execution and performance of this Agreement by the Association has been duly authorized by all necessary action on the part of the Association.

(12) COMPLETE AGREEMENT

This is a final agreement between the parties and

contains their entire agreement and supercedes all previous understandings and agreements, oral and written, relative to the subject matter of this agreement.

(13) CONTROLLING LAW

This Agreement has been made and entered into under the laws of the State of Minnesota and said laws shall control the interpretation thereof.

(14) CAPTIONS

The paragraph heading or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

LUTHERAN HIGH SCHOOL ASSOCIATION OF GREATER MINNEAPOLIS, A MINNESOTA NONPROFIT CORPORATION ("ASSOCIATION")

DATED: 8/14/90

By: James R. Spitzack

Its: Secretary

DATED: 8/14/90

By: Gregory C. Haddad

Its: Facilities Chairperson

CITY OF BLOOMINGTON, A MINNESOTA MUNICIPAL CORPORATION ("CITY")

DATED: 8/14/90

By:

Its: Mayor

DATED: 8/14/90

By:

Its: Manager

EXHIBIT A

Legal Description of the "Premises"

The "Premises" is that portion of Lot 2, Block 1, SMITH PARK 1ST ADDITION, HENNEPIN COUNTY, MINNESOTA, legally described as follows:

Beginning at the Northeast corner of said Lot 2; thence S 0°30'24" W assumed bearing along the east line of said Lot 2 a distance of 150.01 feet; thence S 0°31'28" W along the east line of said Lot 2 a distance of 278.00 feet; thence S 89°59'58" W parallel with the north line of said Lot 2 a distance of 208 feet; thence N 0°35'36" W a distance of 428 feet, more or less, to the north line of said Lot 2; thence N 89°59'58" E a distance of 208 feet, more or less, along the north line of said Lot 2 to the point of beginning and there terminating.

EXHIBIT B

Depiction of the "Premises"

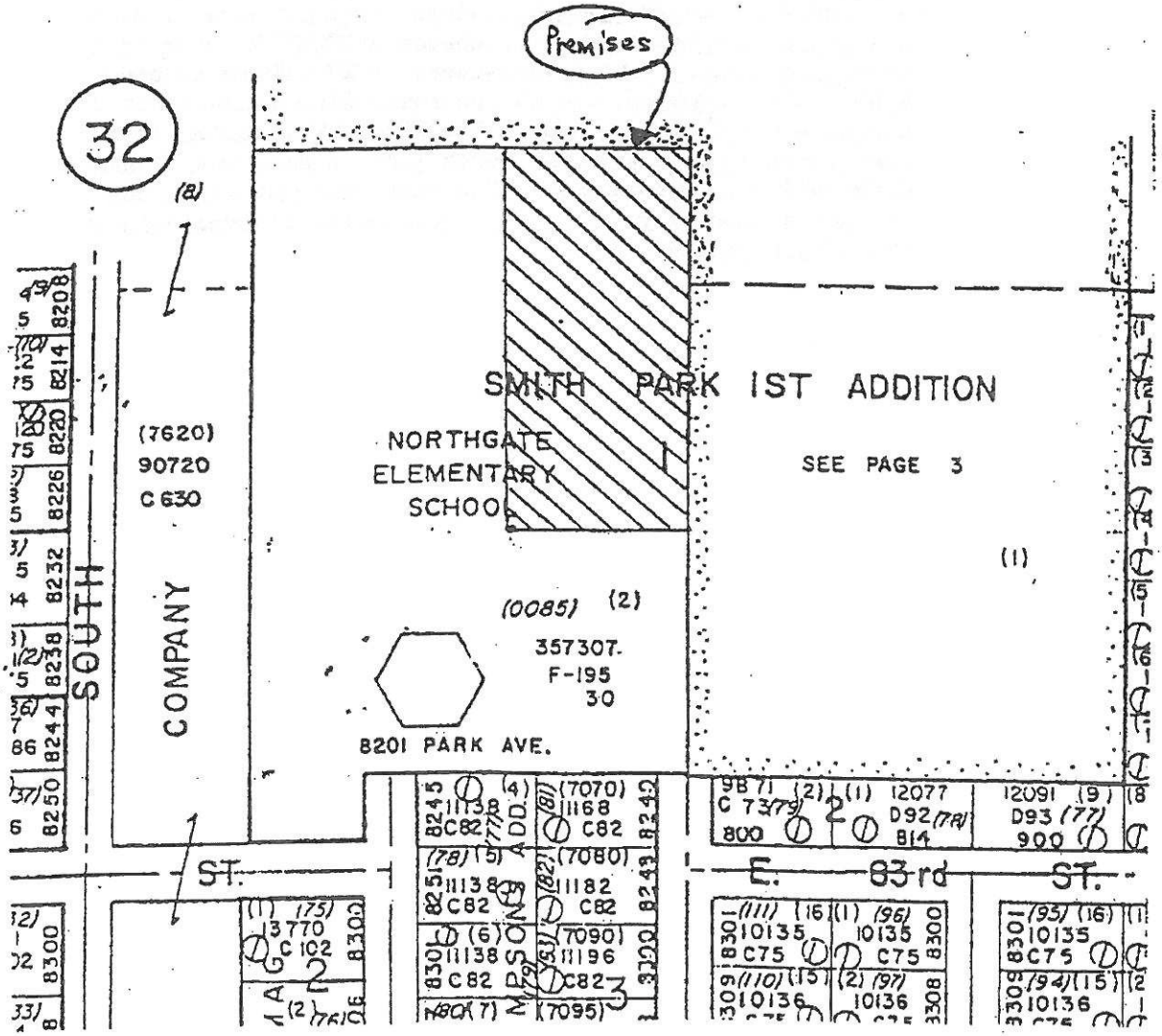


EXHIBIT D

Locations of "Parcels 1 and 2"

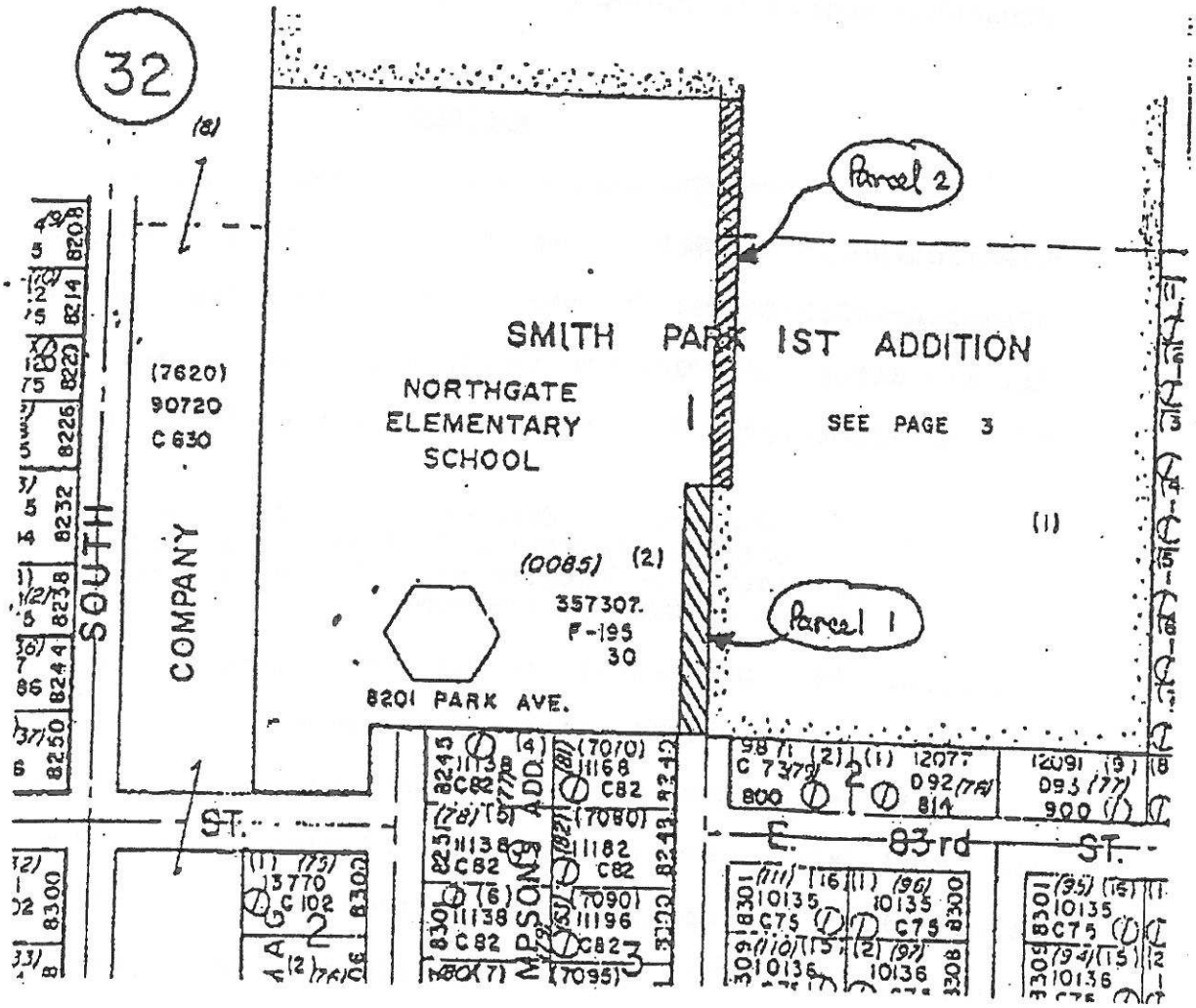


EXHIBIT C

5697202

1987 — AND PRIOR TAXES PAID
DEPT. OF PROPERTY TAX & PUBLIC RECORDS
TRANSFER ENTERED
AUG 30 1990
HENNEPIN COUNTY MINN.
DEPUTY

USE AGREEMENT

THIS USE AGREEMENT, is made and entered into this 14TH day of August, 1990, by and between Lutheran High School Association of Greater Minneapolis, a Minnesota nonprofit corporation ("Association") and the City of Bloomington, a Minnesota municipal corporation ("City").

RECITALS

(A) The Association has acquired from Independent School District No. 271 ("School District") the former Northgate Elementary School site ("School Site"). The legal description for the School Site located at 8201 Park Avenue South in the City of Bloomington, Hennepin County, Minnesota, is as follows:

> Lot 2, Block 1, Smith Park 1st Addition, according to the plat thereof on file or of record in the office of the Registrar of Titles in and for said Hennepin County, Minnesota

The School Site property is further subject to utility, drainage, public utility, and road easements.

(B) Association shall retain ownership of the School Site and is willing to grant to City use of that portion of the School Site which contains a soccer field (which portion is hereinafter referred to as the "Premises"). The Premises is legally described on Exhibit A attached hereto and is graphically depicted on Exhibit B attached hereto.

(C) The City desires to be granted use of the Premises and the Association is willing to grant such use to the City

upon the terms and conditions set forth herein.

(D) Association and City entered into that certain Agreement dated the ____ day of August, 1990, regarding this grant of use to City (the "Agreement") and this Use Agreement sets forth the terms and conditions of such use of the Premises pursuant thereto.

NOW, THEREFORE, in consideration of the Premises and of the mutual covenants and undertakings contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

(1) GRANT OF USE TO CITY.

Association, subject to the terms and conditions herein, does grant to City the use of the Premises for athletic events and athletic competitions and related uses and purposes and for no other use or purpose and as such specific uses are more fully hereinafter set forth. All other rights of use, ownership, possession, and occupancy are reserved to the Association. Premises are described on Exhibit A attached hereto and are graphically depicted on Exhibit B attached hereto.

(2) TERM.

City shall have the use of the Premises from Association, upon the terms and conditions herein contained, for an initial use term of twenty (20) years commencing on August 15, 1990, and ending on August 15, 2010, unless sooner terminated as herein provided. At the expiration of the term and of any successive renewal term herein granted, if

immediately prior thereto, this Use Agreement shall be in force and effect and City shall not be in default at the time, then, subject to the provisions hereof, City shall have and hereby is given the option to renew and extend this Use Agreement for two (2) additional use terms of five (5) years each, upon the same terms, covenants, and conditions as those herein contained. The renewal shall be exercised by City upon written notice to Association not later than nine (9) months prior to the termination of the term of this Use Agreement or of any extension or renewal term thereof.

(3) GRANT OF SPECIFIC USES TO CITY.

During the term of this Use Agreement, and subject to the terms and conditions hereof, Association grants to City the following specific uses of the Premises, as follows:

(a) City shall have the use of the Premises during the months of June and July and the first half of August of each year for summer soccer or other athletic activities, subject only to such use by Association of the Premises to conduct summer athletic camps not to exceed one week each during the months of June and July prior to 6:00 p.m. and as scheduled by Association and notice thereof given to City.

(b) City shall have limited use of the Premises for football, soccer, or other athletic activities during the months of April and May of each year,

subject to the prior use and right of Association to exclusive use of the Premises on each school day until 6:00 o'clock p.m. during the period from April 1 through May 30 of each year. Association will provide to City annually a schedule of anticipated usage by Association for such periods.

(c) City shall have the right to install, use, and maintain a scoreboard, field goal posts, and bleachers on the Premises in locations mutually satisfactory to the parties. Association may provide combination football-soccer field goal posts for use on the Premises and which shall be installed by City.

(d) The City shall have the right, in the event that a track is ever installed upon the Premises, to use such track for practices and competitions and upon terms and provisions mutually satisfactory to the parties.

(4) CONDITIONS OF RIGHTS OF USE.

Conditions of the rights of use granted herein by Association to City shall include the following:

(a) The dates and times of the uses granted herein shall be established on an annual basis by the parties. The Association shall have first priority on scheduling for all such usage.

(b) The City shall not be charged any separate fee for the above usage of the Premises by the City.

(c) City and Association shall jointly undertake to crown, seed, and irrigate the playing field on the Premises at such time or times as the parties shall mutually agree and as necessary funds are available. Any use by either party during such period of crowning and seeding the playing field of the Premises shall be subject to such repairs and alteration.

(d) The City shall be responsible for all maintenance of the Premises for the period from April 1 through August 15 of each year, which maintenance shall consist of the following: seeding, sodding, fertilizing, mowing and repair of the grounds and maintenance of any City-made improvements, including any fencing. Such maintenance of grounds and improvements shall be done in the same manner, extent and frequency as with other City play grounds. The final mowing of the Premises by City hereunder shall be within three (3) days of August 15 of each year. The parties shall mutually determine questions of needed maintenance and repair. The Association shall be responsible for maintaining any improvements, fixtures or personalty (including scoreboard, field goal posts, and bleachers) it may place on the Premises. In the event that City shall utilize any such improvements, the City may participate in the

maintenance and repairs of any such improvements. Each party shall be responsible for its own game preparations (e.g. lining of the fields).

(e) Each party recognizes that the Premises is to be used by the other and shall use all reasonable efforts to minimize or correct damages to the Premises which may affect its reasonable use by the other and for the purposes intended.

(5) OBLIGATIONS OF CITY.

In addition to the obligations of City set forth in paragraph 4 hereof or elsewhere in this Use Agreement, City further agrees that it shall:

(a) Observe such rules and regulations as from time to time may be put in effect by Association for the general safety, comfort, or convenience of users of the Premises.

(b) Not use or permit the use of the Premises for any unlawful or immoral purposes and shall strictly conform to all laws, ordinances, and governmental regulations applicable to such use.

(c) At the termination of this Use Agreement in any manner whatsoever, quit and deliver up the use of the Premises to Association peaceably and quietly in as good order and condition as the same are now in or hereafter may be put in by the parties, reasonable use and wear thereof excepted.

(d) Not either voluntarily or by operation of law,

(7) INSURANCE; INDEMNIFICATION

(a) Each party hereto shall maintain its own liability insurance coverage with respect to the Premises in the following minimum amounts: $200,000 per person/ $600,000 per occurrence. It is understood that the City may provide self-insurance for some or all of such amounts and coverage.

(b) The parties further agree to the following hold harmless and indemnification provisions:

(i) The City agrees to hold harmless and indemnify the Association against all claims for personal injury or property damage occurring on the Premises during the periods of use reserved to the City pursuant to this agreement and during other periods of actual use by the City, its employees, agents, and permittees. Excepted from this provision are claims occurring during any period of actual use of the Premises by the Association, its employees, agents, students, and permittees, and claims resulting from the actions of any of these persons.

(ii) The Association agrees to hold harmless and indemnify the City against all claims for personal injury or property damage occurring on the Premises during periods of use reserved to the Association pursuant to this agreement and during other periods of actual use by the Association, its employees,

assign, transfer, mortgage, pledge, hypothecate, or encumber this Use Agreement or any interest therein. Furthermore, other than informal use by residents and normal scheduled use for athletic competitions and practices, the City shall not permit any other persons to occupy or use the Premises or any portion thereof without the prior written consent of Association, which consent shall not be unreasonably withheld.

(e) City shall not place or permit to be placed any projecting sign, marquee or display on the Premises without the prior written consent of Association, which consent shall not be unreasonably witheld.

(f) Not make any alteration of or addition to the Premises without the prior written approval of Association, which approval shall not be unreasonably withheld.

(6) LIENS.

City shall pay, before any lien attaches, all costs and expenses of any work, labor, or materials furnished to or performed upon the Premises by or under the authority of City as required or permitted by this Use Agreement, and City shall defend, indemnify, and hold Association and the Premises harmless from any and all claim, lien, liability, or expense, including attorneys' fees arising from or by reason of the exercise or purported exercise of any rights, privilege, or authority granted to, or obligation imposed upon, City hereunder.

agents, students, and permittees. Excepted from this provision are claims occurring during any period of actual use of the Premises by the City, its employees, agents, and permittees, and claims resulting from the actions of any of these persons.

(8) RIGHT OF FIRST REFUSAL TO PURCHASE

(A) The Association hereby grants to City the right of first refusal to purchase (the "Right of First Refusal") the Premises in accord with the terms and conditions of this Agreement and the Use Agreement. Where language in this paragraph or Agreement refers to the "Association," it shall be interpreted to mean the current owner of the School Site if the owner is other than the Association.

(B) The Right of First Refusal shall be exercised, if at all, by City upon the proposed sale of School Site and the Premises to a third party by Association. The Association shall declare such intention of proposed sale in writing to the City pursuant to the Use Agreement.

(C) The City shall have thirty (30) days from receipt of the Notice of Declaration from Association in order to exercise the Right of First Refusal. The City shall exercise the Right of First Refusal to purchase the Premises in writing by notice sent to the Principal of the Association.

(D) From the date notice of the exercise of the Right of First Refusal is received by Association, the City shall have a period of six (6) months within which to complete

and close upon the acquisition. At the time of any such closing, Association shall deliver to City marketable title to the Premises, subject only to public easements of record, easements of record, and any rights reserved to Association for land exchange pursuant to the Agreement or the Use Agreement.

(E) In the event that the Right of First Refusal is not exercised by the City or is not closed upon within the time limits specified above, the Right of First Refusal shall terminate and shall no longer be effective with respect to the Premises.

(F) Upon exercise of the Right of First Refusal, the City shall pay the Association the fair market value of the Premises. In the event the parties cannot agree upon the fair market value of the Premises, they shall refer the matter to a committee of appraisers for a decision that shall be binding upon the parties. The committee shall be comprised of an appraiser selected by the Association, an appraiser selected by the City, and a third appraiser selected by both parties. Each party shall bear the expenses of its own appraiser, and the parties shall share equally the expenses of the third appraiser.

(G) For purposes of valuation, the Premises shall be valued in conjunction with the School Site parcel utilizing the same zoning as that parcel. The date of valuation shall be the date the Option was exercised. Valuation shall assume that all special assessments are paid.

(H) All special assessments levied at the date of the exercise of the Right of First Refusal by the City shall be

paid by the Association. Any special assessments which are levied after the exercise of the Right of First Refusal shall be the responsibility of the City. Taxes, if any, due and payable on the date of exercise of the Right of First Refusal shall be paid in accord with the terms of this Agreement. Taxes which become due and payable thereafter shall be the sole responsibility of the City.

(9) TITLE AND CLOSING.

In the event that City exercises its Right of First Refusal to purchase the Premises, within a reasonable time after notice thereof the Association shall furnish the City with abstract of title or registered property abstract for the Premises certified to date and including proper searches, including bankruptcies, and state and federal judgments and liens. The City will be allowed 20 days after receipt of the updated abstracts to examine same and to make any objections to the marketability of title to the Premises, said objections to be made by written notice or to be deemed waived. If any objections are so made to the marketability of title to the Premises, the Association shall immediately commence and diligently endeavor to complete all actions necessary to cure such objections and shall be allowed 180 days after the making of such objections by the City to cure such objections and make the Premises good and marketable in the Association. Pending the correction of title, the closing and payments hereunder shall be postponed, but upon correction of title and within 10 days after written notice of such correction given by the

Association to the City, the parties shall perform the agreement according to its terms. If the title to the Premises is not good and marketable of record in the Association and is not made so within 180 days after the date of making written objections thereto, or is not good and marketable of record in the Association at the closing date, the City may either:

(A) Terminate the Right of First Refusal by giving written notice to the Association in which event the Right of First Refusal shall become null and void; or

(B) Elect to accept the title in its unmarketable condition by giving written notice to the Association, in which event the City may hold back adequate funds from the purchase price to cure the defects and apply said holdback funds for the cost of curing such defects, including attorney's fees, and pay the unexpended balance to the Association.

(10) WATERMAIN.

An old water line owned by the City lies below the north end of the building on the School Site. This line was abandoned and a new line built in 1989 at the City's expense in conjunction with a prior purchase agreement between the School District, the City, and a third party. The City again agrees to assume the cost of this relocation as part of this Agreement.

(11) ADJACENT PUBLIC LANDS.

(A) The Association desires to utilize the tennis, baseball and softball facilities of the City on the adjacent public lands for the athletic and recreational programs of Association. The City acknowledges this interest and expresses

its willingness to make these City facilities available for use by the Association on the same basis and for the same fees (if any) as the fields are used by other City residents and organizations.

(B) It is understood, however, that, while the City will make reasonable, good faith efforts to accommodate the Association's scheduling needs for these facilities, the needs of the Association will by necessity be addressed within the larger context of community-wide needs for use of the facilities or for possible alternative uses of or sale of the facilities by the City. Due to these various needs and uncertainties, the City cannot guarantee that the facilities will be available in the future at all times desired by the Association. The Association understands and accepts these limitations.

(C) Before the City shall change or eliminate any of the athletic facilities presently existing on the adjacent public lands (to wit: one tennis court facility, 1 baseball field, 4 softball fields, seasonal shelter building, and playground apparatus) it shall notify the Association of such changes and conduct a public hearing thereon if requested to do so by the Association.

(D) In addition, should the City modify the existing athletic facilities on the adjacent lands such that the modifications result in a playground containing less than one tennis court facility, one baseball field, and two softball fields, then the Association shall have the right to terminate

all use rights of the City pursuant to the Use Agreement.

(12) SURRENDER OF USE AND HOLDING OVER. Upon expiration of the Use Term herein, whether by lapse of time or otherwise, City shall promptly and peacefully surrender use of the Premises to Association.

(13) DEFAULT AND REMEDIES.

(a) Events of Default. In the event that: The City fails to perform any obligation to be performed by it by the terms of the Agreement or this Use Agreement and fails to cure such default within thirty (30) days of written notice thereof; or City defaults in any of the covenants, agreements, stipulations or conditions herein contained and fails to cure such default within thirty (30) days of written notice thereof, the occurrence of such event shall be a breach of this Use Agreement and considered a default hereunder.

(b) Remedies in Default. Upon the occurrence of an event of default as set forth in this paragraph 13, the Association shall, at its option, at any time thereafter, give thirty (30) day written notice by certified mail to City, specifying such event of default and stating that the term and use hereby granted shall expire and terminate on the date specified in such notice. Thereafter, City shall surrender the use of the Premises to Association.

(c) Cumulative Rights. No right or remedy herein conferred upon or reserved to Association is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every

all use rights of the City pursuant to the Use Agreement.

(12) SURRENDER OF USE AND HOLDING OVER. Upon expiration of the Use Term herein, whether by lapse of time or otherwise, City shall promptly and peacefully surrender use of the Premises to Association.

(13) DEFAULT AND REMEDIES.

(a) Events of Default. In the event that: The City fails to perform any obligation to be performed by it by the terms of the Agreement or this Use Agreement and fails to cure such default within thirty (30) days of written notice thereof; or City defaults in any of the covenants, agreements, stipulations or conditions herein contained and fails to cure such default within thirty (30) days of written notice thereof, the occurrence of such event shall be a breach of this Use Agreement and considered a default hereunder.

(b) Remedies in Default. Upon the occurrence of an event of default as set forth in this paragraph 13, the Association shall, at its option, at any time thereafter, give thirty (30) day written notice by certified mail to City, specifying such event of default and stating that the term and use hereby granted shall expire and terminate on the date specified in such notice. Thereafter, City shall surrender the use of the Premises to Association.

(c) Cumulative Rights. No right or remedy herein conferred upon or reserved to Association is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every

other right or remedy given herein or not hereafter existing at law or in equity or by statue.

(d) Effect of Waiver of Forbearance. No waiver by Association of any breach by City of any of its obligations, agreement, or covenants hereunder shall be a waiver of any subsequent breach or of any obligation, agreement, or covenant, nor shall any forbearance by Association of its rights and remedies with respect to such or any subsequent breach constitute such a waiver.

(14) NOTICES.

All documents to be delivered and all correspondence and notices to be given in connection with this Use Agreement shall be in writing and given by personal delivery or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

| | |
|---|---|
| If to the City: | City Manager<br>City of Bloomington<br>2215 West Old Shakopee Road<br>Bloomington, Minnesota 55431 |
| With a copy to: | City Attorney<br>City of Bloomington<br>2215 West Old Shakopee Road<br>Bloomington, Minnesota 55431 |
| If to the Association: | Chairman of the Board<br>Lutheran High School Association<br>8201 Park Avenue South<br>Bloomington, MN 55420 |
| With a copy to: | Principal<br>Lutheran High School Association<br>8201 Park Avenue South<br>Bloomington, MN 55420 |

Each such mailed notice or communication shall be deemed to have been given to or served upon, the party to whom it is addressed on the date the same is deposited in the United States registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner above provided.

Either party hereto may change such party's address for the service of notice hereunder by written notice of said change to the other party hereto, in the manner above specified ten (10) days prior to the effective date of said change.

(15) FORCE MAJEURE.

Association and City shall be excused from performing any obligation or undertaking provided in this Use Agreement in the event and for so long as the performance of any such obligation is prevented or delayed, retarded, or hindered by act of God, fire, earthquake, flood, explosion, actions of the elements of war, invasion, insurrection, riot, mob violence, sabotage, inability to procure equipment, facilities, materials, or supplies in the open market, failure of power, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of government, or civil or military authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of Association or City.

(16) ASSIGNMENT.

This agreement shall be binding upon and inure to the benefit of each of the parties hereto, their respective

successors and assigns. This Agreement may not be assigned by either party without the prior written consent of the other, and such consent shall not be unreasonably withheld.

(17) AUTHORIZATION.

The Association and the individuals executing this Use Agreement on behalf of the Association warrant to the City that the execution and performance of this Use Agreement by the Association has been duly authorized by all necessary action on the part of the Association.

(18) COMPLETE AGREEMENT.

This is a final agreement between the parties and contains their entire agreement and supercedes all previous understandings and agreements, oral and written, relative to the subject matter of this agreement.

(19) CONTROLLING LAW.

This Agreement has been made and entered into under the laws of the State of Minnesota and said laws shall control the interpretation thereof.

(20) CAPTIONS.

The paragraph heading or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

(21) COPIES.

This Use Agreement shall be executed in multiple copies and in a form suitable for recording with the Hennepin County Recorder.

IN WITNESS WHEREOF, the parties have executed this Use Agreement the day and year first above written.

LUTHERAN HIGH SCHOOL ASSOCIATION OF GREATER MINNEAPOLIS, A MINNESOTA NONPROFIT CORPORATION ("ASSOCIATION")

DATED: August 14, 1990

By: James R. Spitzack
Its Secretary

DATED: August 14, 1990

By: Gregory C. Hasseldahl
Its: Facilities Chairperson

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

On this 14th day of August, 1990, before me, a notary public within and for said county, personally appeared James R. Spitzack and Gregory C. Hasseldahl to me known and known to be the persons described in and who executed the foregoing instrument as Secretary and Facilities Chairperson, respectively, of Lutheran High School Association of Greater Minneapolis, a Minnesota nonprofit corporation named therein, and severally acknowledged before me that they executed the same as such officers, in the name of and for and on behalf of said corporation.

Sandra S. Nesdahl
Notary Public

Sandra S. Nesdahl
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires Nov. 4, 1990

CITY OF BLOOMINGTON, A MINNESOTA MUNICIPAL CORPORATION ("CITY")

DATED: 8/14/90

By: _____
Its: Mayor

DATED: 8/14/90

By: _____
Its: Manager

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

On this 14th day of August, 1990, before me, a notary public within and for said county, personally appeared Neil Peterson and John Pidgeon to me known and known to be the persons described in and who executed the foregoing instrument as Mayor and Manager, respectively, of City of Bloomington, a Minnesota Municipal Corporation named therein, and severally acknowledged before me that they executed the same as such officers, in the name of and for and on behalf of said corporation.

Eric R. Berg
Notary Public

ERIC R. BERG
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Commission Expires Jan. 22, 1996

This Document was Drafted by:
Lutheran High School Association
of Greater Minneapolis, Inc.
8201 Park Avenue South
Bloomington, MN 55420

EXHIBIT A

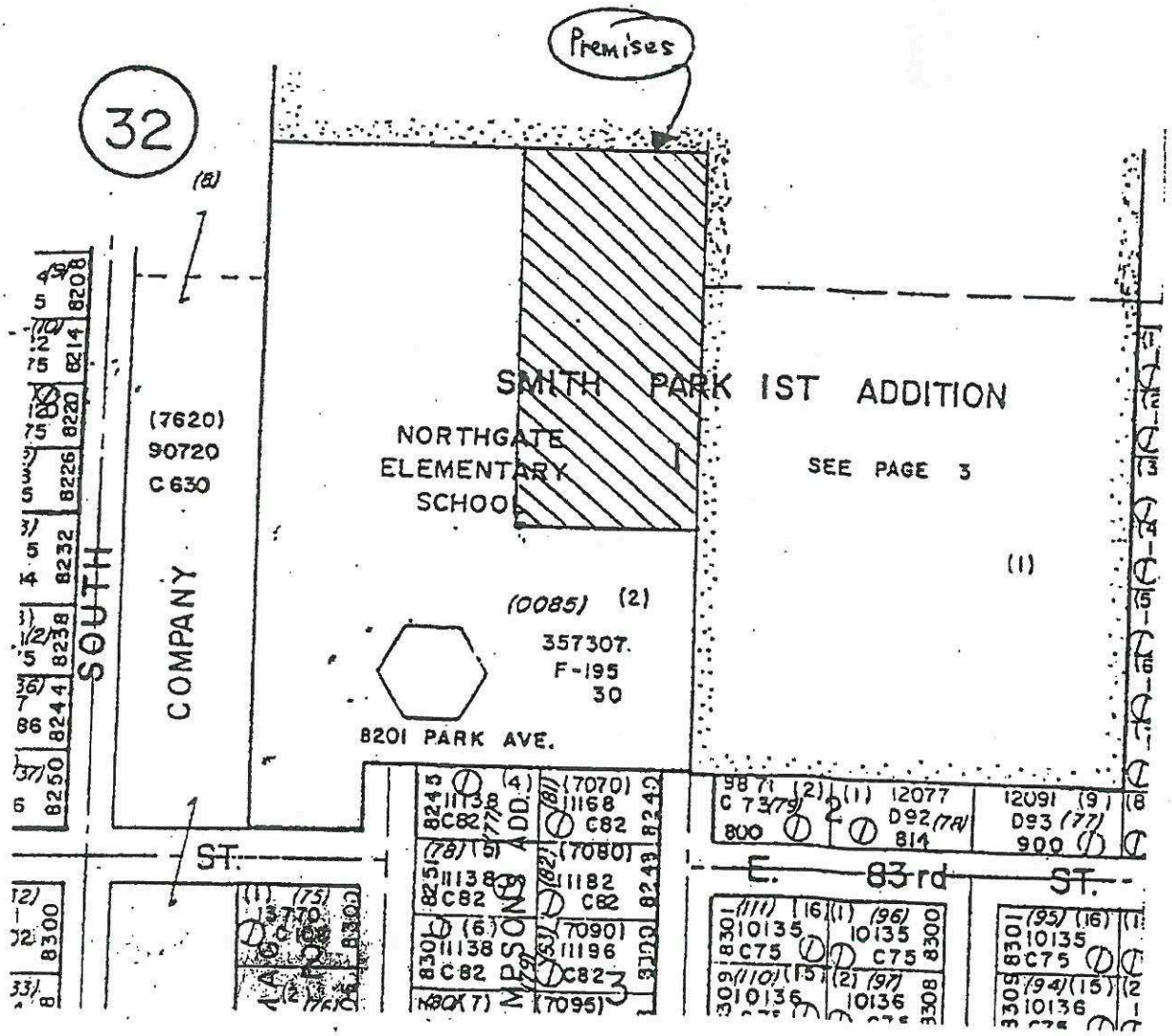
Legal Description of the "Premises"

The "Premises" is that portion of Lot 2, Block 1, SMITH PARK 1ST ADDITION, HENNEPIN COUNTY, MINNESOTA, legally described as follows:

Beginning at the Northeast corner of said Lot 2; thence S 0°30'24" W assumed bearing along the east line of said Lot 2 a distance of 150.01 feet; thence S 0°31'28" W along the east line of said Lot 2 a distance of 278.00 feet; thence S 89°59'58" W parallel with the north line of said Lot 2 a distance of 208 feet; thence N 0°35'36" W a distance of 428 feet, more or less, to the north line of said Lot 2; thence N 89°59'58" E a distance of 208 feet, more or less, along the north line of said Lot 2 to the point of beginning and there terminating.

EXHIBIT B

Depiction of the "Premises"



5697202

30AUG90 9:50 C5697202 DOC #21.00

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED AND OR
RECORDED ON

90 AUG 30 AM 9:50

AS DOCUMENT # 5697202

A. Evan Carlson CO. RECORDER

DEPUTY

Enclosure C-1 ii

5697202

1989 AND PRIOR TAXES PAID
DEPT. OF PROPERTY TAX & PUBLIC RECORDS
TRANSFER ENTERED
AUG 30 1990
HENNEPIN COUNTY MINN.
DEPUTY

USE AGREEMENT

THIS USE AGREEMENT, is made and entered into this 14TH day of August, 1990, by and between Lutheran High School Association of Greater Minneapolis, a Minnesota nonprofit corporation ("Association") and the City of Bloomington, a Minnesota municipal corporation ("City").

RECITALS

(A) The Association has acquired from Independent School District No. 271 ("School District") the former Northgate Elementary School site ("School Site"). The legal description for the School Site located at 8201 Park Avenue South in the City of Bloomington, Hennepin County, Minnesota, is as follows:

> Lot 2, Block 1, Smith Park 1st Addition, according to the plat thereof on file or of record in the office of the Registrar of Titles in and for said Hennepin County, Minnesota

The School Site property is further subject to utility, drainage, public utility, and road easements.

(B) Association shall retain ownership of the School Site and is willing to grant to City use of that portion of the School Site which contains a soccer field (which portion is hereinafter referred to as the "Premises"). The Premises is legally described on Exhibit A attached hereto and is graphically depicted on Exhibit B attached hereto.

(C) The City desires to be granted use of the Premises and the Association is willing to grant such use to the City

upon the terms and conditions set forth herein.

(D) Association and City entered into that certain Agreement dated the ____ day of August, 1990, regarding this grant of use to City (the "Agreement") and this Use Agreement sets forth the terms and conditions of such use of the Premises pursuant thereto.

NOW, THEREFORE, in consideration of the Premises and of the mutual covenants and undertakings contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

(1) GRANT OF USE TO CITY.

Association, subject to the terms and conditions herein, does grant to City the use of the Premises for athletic events and athletic competitions and related uses and purposes and for no other use or purpose and as such specific uses are more fully hereinafter set forth. All other rights of use, ownership, possession, and occupancy are reserved to the Association. Premises are described on Exhibit A attached hereto and are graphically depicted on Exhibit B attached hereto.

(2) TERM.

City shall have the use of the Premises from Association, upon the terms and conditions herein contained, for an initial use term of twenty (20) years commencing on August 15, 1990, and ending on August 15, 2010, unless sooner terminated as herein provided. At the expiration of the term and of any successive renewal term herein granted, if

immediately prior thereto, this Use Agreement shall be in force and effect and City shall not be in default at the time, then, subject to the provisions hereof, City shall have and hereby is given the option to renew and extend this Use Agreement for two (2) additional use terms of five (5) years each, upon the same terms, covenants, and conditions as those herein contained. The renewal shall be exercised by City upon written notice to Association not later than nine (9) months prior to the termination of the term of this Use Agreement or of any extension or renewal term thereof.

(3) GRANT OF SPECIFIC USES TO CITY.

During the term of this Use Agreement, and subject to the terms and conditions hereof, Association grants to City the following specific uses of the Premises, as follows:

(a) City shall have the use of the Premises during the months of June and July and the first half of August of each year for summer soccer or other athletic activities, subject only to such use by Association of the Premises to conduct summer athletic camps not to exceed one week each during the months of June and July prior to 6:00 p.m. and as scheduled by Association and notice thereof given to City.

(b) City shall have limited use of the Premises for football, soccer, or other athletic activities during the months of April and May of each year,

subject to the prior use and right of Association to exclusive use of the Premises on each school day until 6:00 o'clock p.m. during the period from April 1 through May 30 of each year. Association will provide to City annually a schedule of anticipated usage by Association for such periods.

(c) City shall have the right to install, use, and maintain a scoreboard, field goal posts, and bleachers on the Premises in locations mutually satisfactory to the parties. Association may provide combination football-soccer field goal posts for use on the Premises and which shall be installed by City.

(d) The City shall have the right, in the event that a track is ever installed upon the Premises, to use such track for practices and competitions and upon terms and provisions mutually satisfactory to the parties.

(4) CONDITIONS OF RIGHTS OF USE.

Conditions of the rights of use granted herein by Association to City shall include the following:

(a) The dates and times of the uses granted herein shall be established on an annual basis by the parties. The Association shall have first priority on scheduling for all such usage.

(b) The City shall not be charged any separate fee for the above usage of the Premises by the City.

(c) City and Association shall jointly undertake to crown, seed, and irrigate the playing field on the Premises at such time or times as the parties shall mutually agree and as necessary funds are available. Any use by either party during such period of crowning and seeding the playing field of the Premises shall be subject to such repairs and alteration.

(d) The City shall be responsible for all maintenance of the Premises for the period from April 1 through August 15 of each year, which maintenance shall consist of the following: seeding, sodding, fertilizing, mowing and repair of the grounds and maintenance of any City-made improvements, including any fencing. Such maintenance of grounds and improvements shall be done in the same manner, extent and frequency as with other City play grounds. The final mowing of the Premises by City hereunder shall be within three (3) days of August 15 of each year. The parties shall mutually determine questions of needed maintenance and repair. The Association shall be responsible for maintaining any improvements, fixtures or personalty (including scoreboard, field goal posts, and bleachers) it may place on the Premises. In the event that City shall utilize any such improvements, the City may participate in the

maintenance and repairs of any such improvements. Each party shall be responsible for its own game preparations (e.g. lining of the fields).

(e) Each party recognizes that the Premises is to be used by the other and shall use all reasonable efforts to minimize or correct damages to the Premises which may affect its reasonable use by the other and for the purposes intended.

(5) OBLIGATIONS OF CITY.

In addition to the obligations of City set forth in paragraph 4 hereof or elsewhere in this Use Agreement, City further agrees that it shall:

(a) Observe such rules and regulations as from time to time may be put in effect by Association for the general safety, comfort, or convenience of users of the Premises.

(b) Not use or permit the use of the Premises for any unlawful or immoral purposes and shall strictly conform to all laws, ordinances, and governmental regulations applicable to such use.

(c) At the termination of this Use Agreement in any manner whatsoever, quit and deliver up the use of the Premises to Association peaceably and quietly in as good order and condition as the same are now in or hereafter may be put in by the parties, reasonable use and wear thereof excepted.

(d) Not either voluntarily or by operation of law,

(7) INSURANCE; INDEMNIFICATION

(a) Each party hereto shall maintain its own liability insurance coverage with respect to the Premises in the following minimum amounts: $200,000 per person/ $600,000 per occurrence. It is understood that the City may provide self-insurance for some or all of such amounts and coverage.

(b) The parties further agree to the following hold harmless and indemnification provisions:

(i) The City agrees to hold harmless and indemnify the Association against all claims for personal injury or property damage occurring on the Premises during the periods of use reserved to the City pursuant to this agreement and during other periods of actual use by the City, its employees, agents, and permittees. Excepted from this provision are claims occurring during any period of actual use of the Premises by the Association, its employees, agents, students, and permittees, and claims resulting from the actions of any of these persons.

(ii) The Association agrees to hold harmless and indemnify the City against all claims for personal injury or property damage occurring on the Premises during periods of use reserved to the Association pursuant to this agreement and during other periods of actual use by the Association, its employees,

assign, transfer, mortgage, pledge, hypothecate, or encumber this Use Agreement or any interest therein. Furthermore, other than informal use by residents and normal scheduled use for athletic competitions and practices, the City shall not permit any other persons to occupy or use the Premises or any portion thereof without the prior written consent of Association, which consent shall not be unreasonably withheld.

(e) City shall not place or permit to be placed any projecting sign, marquee or display on the Premises without the prior written consent of Association, which consent shall not be unreasonably witheld.

(f) Not make any alteration of or addition to the Premises without the prior written approval of Association, which approval shall not be unreasonably withheld.

(6) LIENS.

City shall pay, before any lien attaches, all costs and expenses of any work, labor, or materials furnished to or performed upon the Premises by or under the authority of City as required or permitted by this Use Agreement, and City shall defend, indemnify, and hold Association and the Premises harmless from any and all claim, lien, liability, or expense, including attorneys' fees arising from or by reason of the exercise or purported exercise of any rights, privilege, or authority granted to, or obligation imposed upon, City hereunder.

agents, students, and permittees. Excepted from this provision are claims occurring during any period of actual use of the Premises by the City, its employees, agents, and permittees, and claims resulting from the actions of any of these persons.

(8) RIGHT OF FIRST REFUSAL TO PURCHASE

(A) The Association hereby grants to City the right of first refusal to purchase (the "Right of First Refusal") the Premises in accord with the terms and conditions of this Agreement and the Use Agreement. Where language in this paragraph or Agreement refers to the "Association," it shall be interpreted to mean the current owner of the School Site if the owner is other than the Association.

(B) The Right of First Refusal shall be exercised, if at all, by City upon the proposed sale of School Site and the Premises to a third party by Association. The Association shall declare such intention of proposed sale in writing to the City pursuant to the Use Agreement.

(C) The City shall have thirty (30) days from receipt of the Notice of Declaration from Association in order to exercise the Right of First Refusal. The City shall exercise the Right of First Refusal to purchase the Premises in writing by notice sent to the Principal of the Association.

(D) From the date notice of the exercise of the Right of First Refusal is received by Association, the City shall have a period of six (6) months within which to complete

and close upon the acquisition. At the time of any such closing, Association shall deliver to City marketable title to the Premises, subject only to public easements of record, easements of record, and any rights reserved to Association for land exchange pursuant to the Agreement or the Use Agreement.

(E) In the event that the Right of First Refusal is not exercised by the City or is not closed upon within the time limits specified above, the Right of First Refusal shall terminate and shall no longer be effective with respect to the Premises.

(F) Upon exercise of the Right of First Refusal, the City shall pay the Association the fair market value of the Premises. In the event the parties cannot agree upon the fair market value of the Premises, they shall refer the matter to a committee of appraisers for a decision that shall be binding upon the parties. The committee shall be comprised of an appraiser selected by the Association, an appraiser selected by the City, and a third appraiser selected by both parties. Each party shall bear the expenses of its own appraiser, and the parties shall share equally the expenses of the third appraiser.

(G) For purposes of valuation, the Premises shall be valued in conjunction with the School Site parcel utilizing the same zoning as that parcel. The date of valuation shall be the date the Option was exercised. Valuation shall assume that all special assessments are paid.

(H) All special assessments levied at the date of the exercise of the Right of First Refusal by the City shall be

paid by the Association. Any special assessments which are levied after the exercise of the Right of First Refusal shall be the responsibility of the City. Taxes, if any, due and payable on the date of exercise of the Right of First Refusal shall be paid in accord with the terms of this Agreement. Taxes which become due and payable thereafter shall be the sole responsibility of the City.

(9) TITLE AND CLOSING.

In the event that City exercises its Right of First Refusal to purchase the Premises, within a reasonable time after notice thereof the Association shall furnish the City with abstract of title or registered property abstract for the Premises certified to date and including proper searches, including bankruptcies, and state and federal judgments and liens. The City will be allowed 20 days after receipt of the updated abstracts to examine same and to make any objections to the marketability of title to the Premises, said objections to be made by written notice or to be deemed waived. If any objections are so made to the marketability of title to the Premises, the Association shall immediately commence and diligently endeavor to complete all actions necessary to cure such objections and shall be allowed 180 days after the making of such objections by the City to cure such objections and make the Premises good and marketable in the Association. Pending the correction of title, the closing and payments hereunder shall be postponed, but upon correction of title and within 10 days after written notice of such correction given by the

Association to the City, the parties shall perform the agreement according to its terms. If the title to the Premises is not good and marketable of record in the Association and is not made so within 180 days after the date of making written objections thereto, or is not good and marketable of record in the Association at the closing date, the City may either:

(A) Terminate the Right of First Refusal by giving written notice to the Association in which event the Right of First Refusal shall become null and void; or

(B) Elect to accept the title in its unmarketable condition by giving written notice to the Association, in which event the City may hold back adequate funds from the purchase price to cure the defects and apply said holdback funds for the cost of curing such defects, including attorney's fees, and pay the unexpended balance to the Association.

(10) WATERMAIN.

An old water line owned by the City lies below the north end of the building on the School Site. This line was abandoned and a new line built in 1989 at the City's expense in conjunction with a prior purchase agreement between the School District, the City, and a third party. The City again agrees to assume the cost of this relocation as part of this Agreement.

(11) ADJACENT PUBLIC LANDS.

(A) The Association desires to utilize the tennis, baseball and softball facilities of the City on the adjacent public lands for the athletic and recreational programs of Association. The City acknowledges this interest and expresses

its willingness to make these City facilities available for use by the Association on the same basis and for the same fees (if any) as the fields are used by other City residents and organizations.

(B) It is understood, however, that, while the City will make reasonable, good faith efforts to accommodate the Association's scheduling needs for these facilities, the needs of the Association will by necessity be addressed within the larger context of community-wide needs for use of the facilities or for possible alternative uses of or sale of the facilities by the City. Due to these various needs and uncertainties, the City cannot guarantee that the facilities will be available in the future at all times desired by the Association. The Association understands and accepts these limitations.

(C) Before the City shall change or eliminate any of the athletic facilities presently existing on the adjacent public lands (to wit: one tennis court facility, 1 baseball field, 4 softball fields, seasonal shelter building, and playground apparatus) it shall notify the Association of such changes and conduct a public hearing thereon if requested to do so by the Association.

(D) In addition, should the City modify the existing athletic facilities on the adjacent lands such that the modifications result in a playground containing less than one tennis court facility, one baseball field, and two softball fields, then the Association shall have the right to terminate

all use rights of the City pursuant to the Use Agreement.

(12) SURRENDER OF USE AND HOLDING OVER. Upon expiration of the Use Term herein, whether by lapse of time or otherwise, City shall promptly and peacefully surrender use of the Premises to Association.

(13) DEFAULT AND REMEDIES.

(a) Events of Default. In the event that: The City fails to perform any obligation to be performed by it by the terms of the Agreement or this Use Agreement and fails to cure such default within thirty (30) days of written notice thereof; or City defaults in any of the covenants, agreements, stipulations or conditions herein contained and fails to cure such default within thirty (30) days of written notice thereof, the occurrence of such event shall be a breach of this Use Agreement and considered a default hereunder.

(b) Remedies in Default. Upon the occurrence of an event of default as set forth in this paragraph 13, the Association shall, at its option, at any time thereafter, give thirty (30) day written notice by certified mail to City, specifying such event of default and stating that the term and use hereby granted shall expire and terminate on the date specified in such notice. Thereafter, City shall surrender the use of the Premises to Association.

(c) Cumulative Rights. No right or remedy herein conferred upon or reserved to Association is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every

other right or remedy given herein or not hereafter existing at law or in equity or by statue.

(d) Effect of Waiver of Forbearance. No waiver by Association of any breach by City of any of its obligations, agreement, or covenants hereunder shall be a waiver of any subsequent breach or of any obligation, agreement, or covenant, nor shall any forbearance by Association of its rights and remedies with respect to such or any subsequent breach constitute such a waiver.

(14) NOTICES.

All documents to be delivered and all correspondence and notices to be given in connection with this Use Agreement shall be in writing and given by personal delivery or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

| | |
|---|---|
| If to the City: | City Manager<br>City of Bloomington<br>2215 West Old Shakopee Road<br>Bloomington, Minnesota 55431 |
| With a copy to: | City Attorney<br>City of Bloomington<br>2215 West Old Shakopee Road<br>Bloomington, Minnesota 55431 |
| If to the Association: | Chairman of the Board<br>Lutheran High School Association<br>8201 Park Avenue South<br>Bloomington, MN 55420 |
| With a copy to: | Principal<br>Lutheran High School Association<br>8201 Park Avenue South<br>Bloomington, MN 55420 |

Each such mailed notice or communication shall be deemed to have been given to or served upon, the party to whom it is addressed on the date the same is deposited in the United States registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner above provided.

Either party hereto may change such party's address for the service of notice hereunder by written notice of said change to the other party hereto, in the manner above specified ten (10) days prior to the effective date of said change.

(15) FORCE MAJEURE.

Association and City shall be excused from performing any obligation or undertaking provided in this Use Agreement in the event and for so long as the performance of any such obligation is prevented or delayed, retarded, or hindered by act of God, fire, earthquake, flood, explosion, actions of the elements of war, invasion, insurrection, riot, mob violence, sabotage, inability to procure equipment, facilities, materials, or supplies in the open market, failure of power, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of government, or civil or military authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of Association or City.

(16) ASSIGNMENT.

This agreement shall be binding upon and inure to the benefit of each of the parties hereto, their respective

successors and assigns. This Agreement may not be assigned by either party without the prior written consent of the other, and such consent shall not be unreasonably withheld.

(17) AUTHORIZATION.

The Association and the individuals executing this Use Agreement on behalf of the Association warrant to the City that the execution and performance of this Use Agreement by the Association has been duly authorized by all necessary action on the part of the Association.

(18) COMPLETE AGREEMENT.

This is a final agreement between the parties and contains their entire agreement and supercedes all previous understandings and agreements, oral and written, relative to the subject matter of this agreement.

(19) CONTROLLING LAW.

This Agreement has been made and entered into under the laws of the State of Minnesota and said laws shall control the interpretation thereof.

(20) CAPTIONS.

The paragraph heading or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

(21) COPIES.

This Use Agreement shall be executed in multiple copies and in a form suitable for recording with the Hennepin County Recorder.

IN WITNESS WHEREOF, the parties have executed this Use Agreement the day and year first above written.

LUTHERAN HIGH SCHOOL ASSOCIATION OF GREATER MINNEAPOLIS, A MINNESOTA NONPROFIT CORPORATION ("ASSOCIATION")

DATED: August 14, 1990

By: James R. Spitzack
Its Secretary

DATED: August 14, 1990

By: Gregory C. Hasseldahl
Its: Facilities Chairperson

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

On this 14th day of August, 1990, before me, a notary public within and for said county, personally appeared James R. Spitzack and Gregory C. Hasseldahl to me known and known to be the persons described in and who executed the foregoing instrument as Secretary and Facilities Chairperson, respectively, of Lutheran High School Association of Greater Minneapolis, a Minnesota nonprofit corporation named therein, and severally acknowledged before me that they executed the same as such officers, in the name of and for and on behalf of said corporation.

Sandra S. Nesdahl
Notary Public

Sandra S. Nesdahl
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires Nov. 4, 1990

CITY OF BLOOMINGTON, A MINNESOTA MUNICIPAL CORPORATION ("CITY")

DATED: 8/14/90

By: _____
Its: Mayor

DATED: 8/14/90

By: _____
Its: Manager

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

On this 14th day of August, 1990, before me, a notary public within and for said county, personally appeared Neil Peterson and John Pidgeon to me known and known to be the persons described in and who executed the foregoing instrument as Mayor and Manager, respectively, of City of Bloomington, a Minnesota Municipal Corporation named therein, and severally acknowledged before me that they executed the same as such officers, in the name of and for and on behalf of said corporation.

Eric R. Berg
Notary Public

ERIC R. BERG
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Commission Expires Jan. 22, 1996

This Document was Drafted by:
Lutheran High School Association
of Greater Minneapolis, Inc.
8201 Park Avenue South
Bloomington, MN 55420

EXHIBIT A

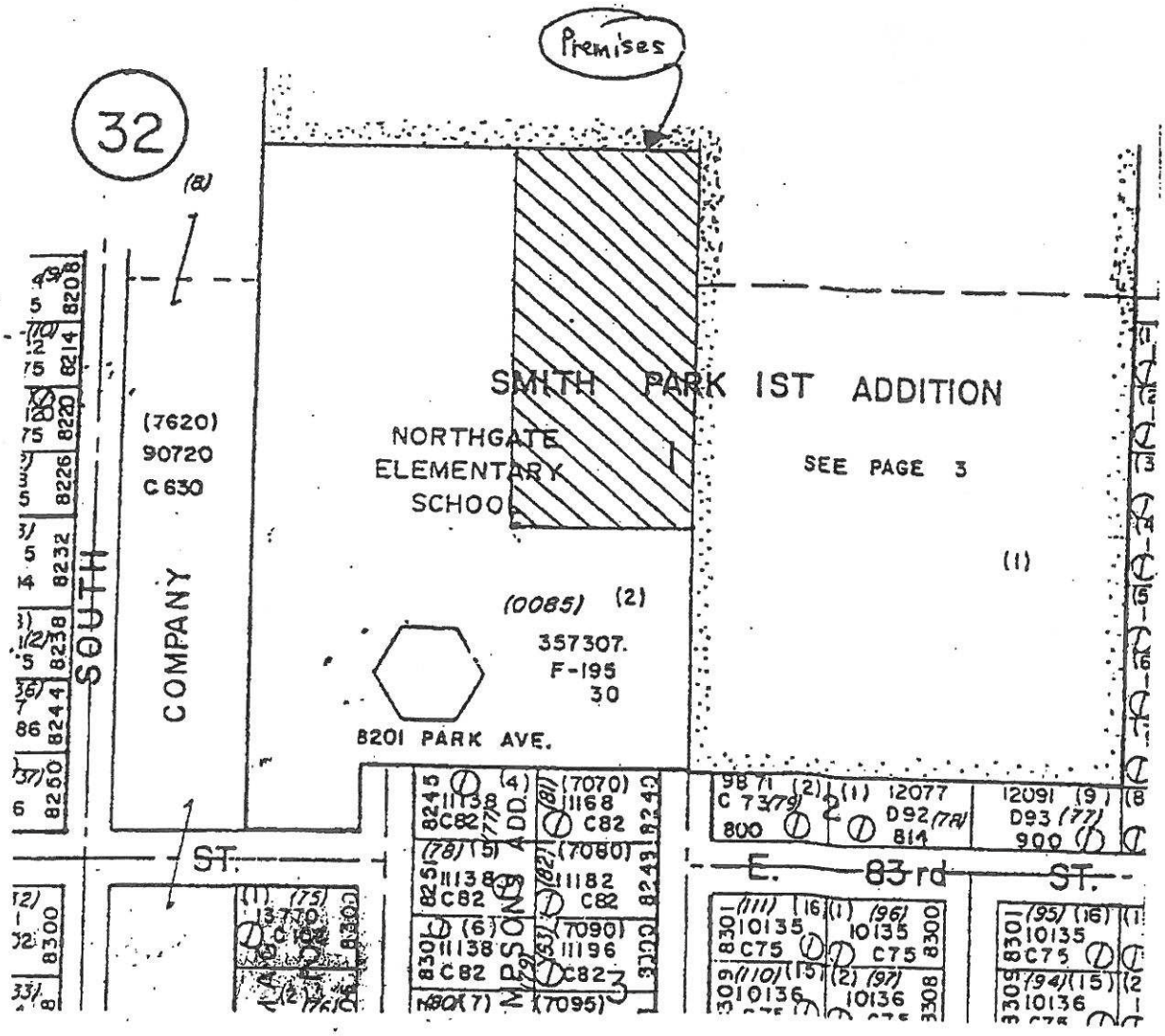
Legal Description of the "Premises"

The "Premises" is that portion of Lot 2, Block 1, SMITH PARK 1ST ADDITION, HENNEPIN COUNTY, MINNESOTA, legally described as follows:

Beginning at the Northeast corner of said Lot 2; thence S 0°30'24" W assumed bearing along the east line of said Lot 2 a distance of 150.01 feet; thence S 0°31'28" W along the east line of said Lot 2 a distance of 278.00 feet; thence S 89°59'58" W parallel with the north line of said Lot 2 a distance of 208 feet; thence N 0°35'36" W a distance of 428 feet, more or less, to the north line of said Lot 2; thence N 89°59'58" E a distance of 208 feet, more or less, along the north line of said Lot 2 to the point of beginning and there terminating.

EXHIBIT B

Depiction of the "Premises"



5697202

30AUG90 9:50 C5697202 DOC $21.00

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED AND OR
RECORDED ON
90 AUG 30 AM 9: 50
AS DOCUMENT # 5697202
R. Fran Carlson CO. RECORDER
M. Kramer DEPUTY

5697202

30AUG90 9:50 05697202 DOC $21.00

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED AND OR
RECORDED ON

90 AUG 30 AM 9:50

AS DOCUMENT # 5697202

A. Fran Carlson CO. RECORDER

DEPUTY

# CROSS PARKING AGREEMENT

This Cross Parking Agreement is made this 20th day of December, 1993, by and between LUTHERAN HIGH SCHOOL ASSOCIATION OF GREATER MINNEAPOLIS, a Minnesota corporation, 8201 Park Avenue, Bloomington, Minnesota 55420 ("Lutheran") and THE CITY OF BLOOMINGTON, a Minnesota municipal corporation, 2215 West Old Shakopee Road, Bloomington, Minnesota 55431 (the "City").

## RECITALS

Lutheran is the owner in fee simple of the real property situated in Hennepin County, Minnesota, and legally described as Lot 2, Block 1, Smith Park 2nd Addition ("Lutheran Parcel"). The City is the owner in fee simple of the real property situated in Hennepin County, Minnesota, and legally described as Lot 1, Block 1, Smith Park 2nd Addition ("City Parcel"). Pursuant to the requirements of plat approval for the plat of Smith Park 2nd Addition and final development plan approval for the Lutheran Parcel, Lutheran and the City desire to enter into a cross parking agreement permitting each party certain non-exclusive parking rights over a portion of each other's property.

NOW, THEREFORE, in consideration of the Recitals (which are incorporated herein), the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

(1) City Parking Rights. Lutheran, for the benefit of the City Parcel, hereby grants to the City non-exclusive parking rights over and across that portion of the Lutheran Parcel parking lot depicted on Exhibit A hereto ("City Parking Tract"). The City Parking Tract is located in the northwesterly portion of the Lutheran Parcel, near the City tennis courts and playground apparatus and west of the school building. It consists of two segments: (a) the northern segment, "A", which is approximately 90' by 78' in size; and (b) the southerly segment, "B", which is approximately 50' by 140' in size.

(2) Lutheran Parking Tract. The City, for the benefit of the Lutheran Parcel, hereby grants to Lutheran non-exclusive parking rights over and across that portion of the City Parcel parking lot depicted on Exhibit B hereto ("Lutheran Parking Tract"). The Lutheran Parking Tract is located in the most southerly southwestern corner of the City Parcel, consists of the existing paved parking lot at that location, and is approximately 60' by 234' in size.

(3) Maintenance, Repairs. All costs of maintaining and repairing the parking tract within each parcel shall be borne solely by the respective owner of that parcel.

(4) Use of Parking Tracts. Neither party shall allow any barrier, curbing, fencing, landscaping, or other obstruction on any portion of its parcel so as to interfere in any way with the use of the parking tract thereon.

(5) Indemnification. Each party agrees to indemnify and hold harmless the other party from any claims, suit, injury, liabilities, loss, damages, expenses, or fees, including without limitation, reasonable attorney's fees, arising out of or resulting from the use of the parking tract located on the indemnifying party's parcel, except for such matters as arise from the negligent act or omission or willful misconduct of the other party or their officials, representatives, employees, or agents.

(6) Relocation of Easement Tracts. Each party reserves the right to modify or adjust the location or configuration of the parking tracts located upon their respective parcels, should development of, or site modifications to, the parcels reasonably require such action. In such event, thirty (30) days' prior written notice of the proposed action shall be provided to the other party. The amount of parking area within the parking tract may not be modified pursuant to this provision, however.

(7) Termination. Either party may terminate this agreement upon thirty (30) days' prior written notice to the other party, if further development of the notifying party's parcel, additional parking needs of the notifying party, or a pending sale of the notifying party's parcel reasonably necessitate cancellation of the other party's parking rights in the parcel. It is understood, however, that modification of the conditions of plat approval for Smith Park 2nd Addition and of final development plan approval for the Lutheran Parcel would also be required to prevent such termination from becoming a violation of those conditions. This agreement may also be terminated without cause by either party if the condition of a cross parking agreement is ever deleted from the conditions of approval of said plat and final development approval.

(8) Miscellaneous.

(01) All headings herein are for convenience and reference only and in no way define or limit the scope or contents of this agreement.

(02) No delay or omission by Lutheran or the City in the exercise of any rights under this agreement shall impair any such right or be construed to be a waiver thereof. Any waiver by Lutheran or the City of any covenant hereof shall not be construed to be a waiver of any later breach hereof.

(03) Any notice, request, or demand required or permitted under this agreement shall be in writing and shall be deemed given when personally served or three (3) days after deposited in the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the appropriate party at the applicable address in the first paragraph of this agreement. Either party may change its address for notice purposes by notice to the other, given in the manner provided above.

(04) This agreement shall be governed and construed in accordance with the laws of the State of Minnesota and enforced in courts having venue within the State of Minnesota.

(05) If any provision of this agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this agreement or the application of such provision to any other person or circumstance shall

not be affected thereby. Each provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

(06) This agreement shall be amended or modified only by a written agreement signed by the parties hereto.

(07) The covenants herein shall run with the land and shall inure to the benefit of, and be binding on, the parties hereto and their successors and assigns, including all parties with an interest in the Lutheran Parcel and the City Parcel.

(08) Each party hereto shall maintain general liability insurance providing coverage with respect to matters occurring on their respective parcels.

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

LUTHERAN HIGH SCHOOL ASSOCIATION OF GREATER MINNEAPOLIS, a Minnesota Corporation

By: James R. Spitzack
Its: Secretary

CITY OF BLOOMINGTON, a Minnesota Municipal Corporation

By: _____
Its: Mayor

By: _____
Its: Manager

## CONSENT TO CROSS PARKING AGREEMENT

This Consent to Cross Parking Agreement is made this 29th day of November, 1993, by Lutheran Church Extension Fund-Missouri Synod, a Missouri non-profit corporation, which is the mortgagee in a certain mortgage dated August 8, 1990, and filed on August 16, 1990, with the Hennepin County Recorder as Document No. 5692691 and with the Hennepin County Registrar of Titles as Document No. 2117590.

Said mortgage affects a parcel located in Hennepin County, Minnesota, which is legally described as Lot 2, Block 1, Smith Park Second Addition. The Lutheran Church Extension Fund-Missouri Synod hereby approves and consents to the Cross Parking Agreement.

LUTHERAN CHURCH EXTENSION FUND-MISSOURI SYNOD, a Missouri non-profit corporation

By: _____
Its: President

By: _____
Its: Assistant Secretary

STATE OF ~~MINNESOTA~~ MISSOURI
ss.
COUNTY OF ST. LOUIS

The foregoing Consent to Cross Parking Agreement was acknowledged before me this 29th day of November, 1993, by Arthur C. Haake and Gerald E. Wendt, the President and Assistant Secretary, respectively, of Lutheran Church Extension Fund-Missouri Synod, a Missouri non-profit corporation on behalf of said corporation.

OFFICIAL NOTARY SEAL
SUZANNE M RYAN
Notary Public State of Missouri
ST LOUIS COUNTY
My Commission Expires JUL 15,1994

_____
Notary Public

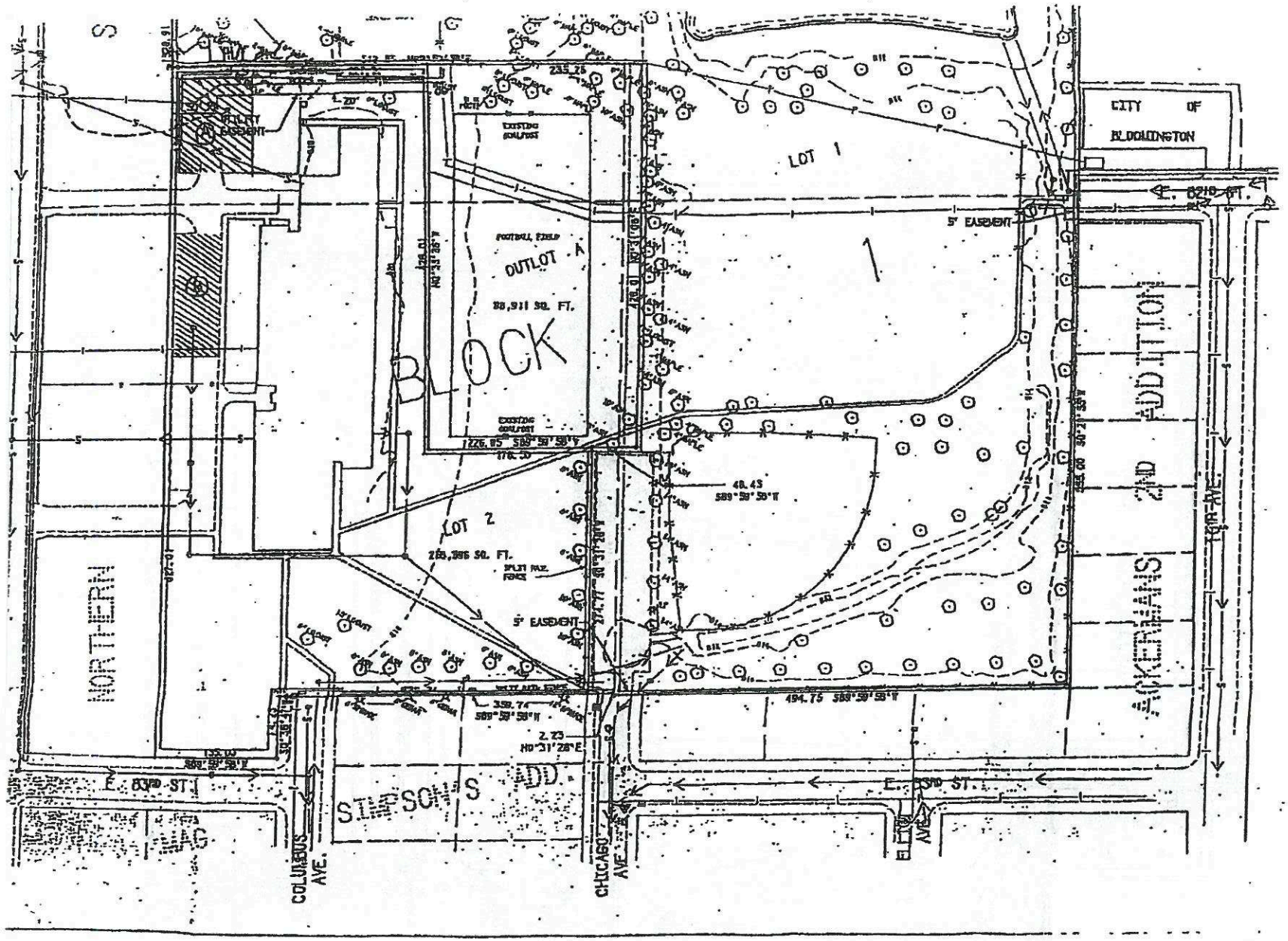



Exhibit A
CITY PARKING TRACT

SCALE

DRAINAGE AND UTILITY
ARE SHOWN THU

BEING 5 FEET IN WIDTH AND /
LINES, AND 10 FEET IN WIDTH
ADJOINING STREET LINES, UNL
INDICTED, AS SHOWN ON THE

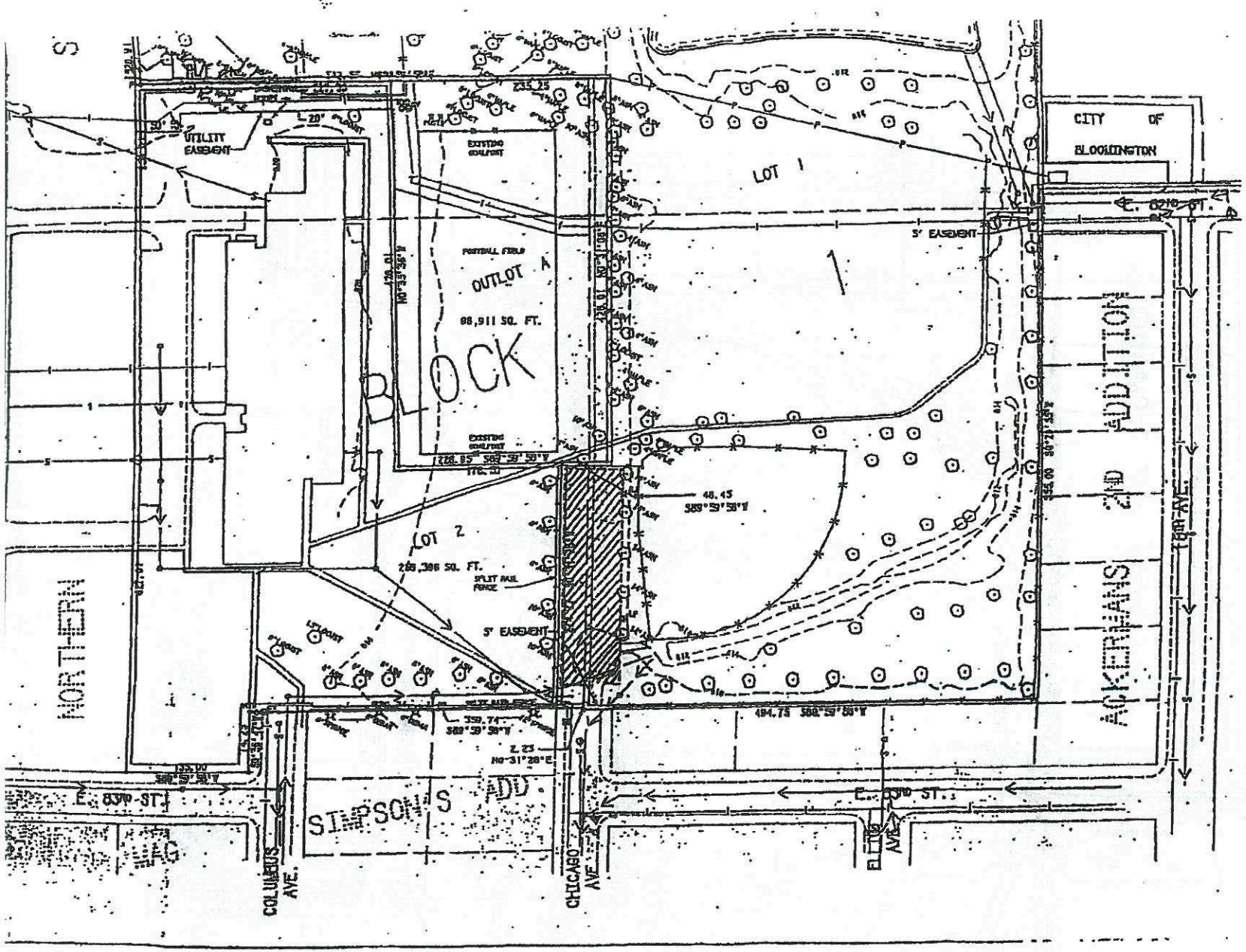



Exhibit B
LUTHERAN PARKING TRACT

N

SCALE IN.

DRAINAGE AND UTILITY
ARE SHOWN THU

BEING 5 FEET IN WIDTH AND
LINES, AND 10 FEET IN WIDT
ADJOINING STREET LINES, UN
INDICTED, AS SHOWN ON THE

# AGREEMENT BETWEEN THE CITY OF BLOOMINGTON AND LUTHERAN HIGH SCHOOL OF GREATER MINNEAPOLIS RE: SMITH PARK AND LUTHERAN HIGH SCHOOL PROPERTY IMPROVEMENTS, LEASES, EASEMENTS AND USE

THIS AGREEMENT is made this 17th day of May 1999, by and between the City of Bloomington, a municipal corporation under the laws of Minnesota, 2215 West Old Shakopee Road, Bloomington, Minnesota 55431 (hereinafter referred to as the "City"), and Lutheran High School Association of Greater Minneapolis, a non-profit association organized under the laws of Minnesota, located at 8201 Park Avenue South, Bloomington, Minnesota 55420 (hereinafter referred to as "LHSA").

## RECITALS

WHEREAS, the City recognizes the need for more recreational facilities for the benefit and enjoyment of the public; and

WHEREAS, the City and LHSA desire to share recreational facilities owned by each other and share in the related maintenance costs; and

WHEREAS, LHSA is planning to construct a new gymnasium and fine arts center and adjoining parking lots as part of its school complex at some undetermined time in the future; and

WHEREAS, the City and LHSA worked cooperatively to develop a master plan in 1998 to upgrade the facilities at Smith Park, which adjoins the Lutheran High School complex; and

WHEREAS, the City and LHSA desire to coordinate the separate construction projects in the vicinity, recognizing that each construction project will impact the other;

and

WHEREAS, the City and LHSA acknowledge that such coordination will result in savings and efficiencies in the cost of the separate construction projects; and

WHEREAS, the City and LHSA desire to share some of the costs of the improvements.

NOW, THEREFORE, in consideration of the recitals stated above and the mutual covenants stated below, the parties agree as follows.

**AGREEMENT**

1. **North Parking Lot Construction.** The City and LHSA had previously verbally agreed to split evenly (50%-50%) the cost of the following construction projects: construction of and lighting of the north and center parking lots; removal of the current northern parking lot entrance; construction of a new northern entrance to the parking lot aligned with 82nd Street; and widen the southern parking lot entrance from 24' to 30' at the curb. Based on this verbal agreement, the City contracted the Richard Knutson Co. (City Improvement Project #98-903) to perform the above construction projects. Since LHSA has now indefinitely postponed their construction plans, LHSA no longer wants to participate in the above construction projects. Accordingly, the City has entered into negotiations with the Richard Knutson Co. to amend the contract as it applies to the above construction projects. The following construction projects have been deleted from the City's contract with the Richard Knutson Co.: construction and lighting of the center parking lot; removal of the current northern parking lot entrance; construction of a new northern entrance to the parking lot aligned with 82nd Street; and widen the southern

parking lot entrance from 24' to 30' at the curb. Since LHSA opted out of above construction projects after the contract had been let with the Richard Knutson Co., LHSA shall reimburse the City for the charges associated with amending the contract and redesign charges. The City agrees to place a cap of $2,500 on the contract amendment and redesign charges that LHSA shall reimburse to the City. The City shall proceed with the construction and lighting of the north parking lot and a driveway connection to LHSA's northern parking lot driveway. The City shall solely bear all expenses associated with the construction of the north parking lot, including the connecting driveway to LHSA's northern parking lot driveway. Since the City solely bears all expenses associated with the construction of the north parking lot and driveway, LHSA will not be allowed to count the City's north parking lot towards their parking capacity calculations for future LHSA facility construction projects. However, LHSA may count the City's north parking lot towards their parking capacity calculations at some point in the future provided LHSA reimburses the City for 50% of the actual original construction costs associated with the construction of the north parking lot and driveway within 25 years from the execution of this agreement.

2. **N.S.P. Right-of-Way.** The City and LHSA are both currently negotiating with N.S.P. to acquire the transmission line right-of-way property between East 81st Street and East 83rd Street currently owned by N.S.P. Regardless of which party, the City or LHSA, acquires the N.S.P. right-of-way property, the owner shall provide an easement for $1.00 to effectuate the usage agreement as detailed in this Agreement. If neither party, the City or LHSA, acquires the N.S.P. right-of-way property, the City and

LHSA agree to negotiate necessary lease agreements and permanent easements with N.S.P. for the use of right-of-way currently owned by N.S.P. for: (a) access from Park Avenue onto and across the right-of-way to Lutheran High School and City properties; (b) placement of City constructed and owned parking lots and lighting; (c) maintenance of the parking lot and adjacent properties; (d) placement of a linear trail, 12 feet in width, along the right-of-way.

3. **Football/Soccer Field Construction.** The City and LHSA agree to split evenly the cost (50%-50%) for the renovation of the football/soccer field located on LHSA property. The renovation shall include: architectural design fees, the import of sub-soils; the grading and crowning of the field; the removal and reinstallation of the scoreboard; sodding the field; and the installation of an irrigation system. The City has contracted with the Richard Knutson Co. (City Improvement Project #98-903) for the above items with the exception of the irrigation system which LHSA will contract to install. The City agrees to place a cap of $49,100 on LHSA's share of the above construction costs, excluding the installation of the irrigation system. LHSA agrees to place a cap of $3,000 on the City's share of the irrigation system installation costs.

4. **Water Fountain, Water Spigot and Waterlines.** LHSA shall contract to install underground waterlines for the City which will serve a water fountain and water spigot (located adjacent to the baseball field) which the City will install. LHSA shall provide the water source at their building for the waterline serving the water fountain and the waterline serving the water spigot. The City agrees to cover all costs associated with the installation of the waterlines, water fountain, water spigot, and hook-up to the water

source at the LHSA building. LHSA agrees to place a cap of $1,000 on the City's cost for installing the waterlines and water hook-up. LHSA shall coordinate the installation of the waterlines with the installation of the irrigation system on the football/soccer field. LHSA agrees to be responsible for the water charges associated with the operation of the water fountain and water spigot for a period of 25 years from the execution of this agreement. LHSA agrees to grant to the City an easement for the waterline serving the water fountain and the waterline serving the water spigot. The City agrees to vacate the easement for the waterlines in the event LHSA constructs additional facilities on the east side of its existing building, on the condition that the easement vacated shall be only that part where the new building will conflict with the easement and LHSA agrees to re-connect the waterlines to its building.

5. **Football/Soccer Field Maintenance.** The City agrees to be responsible for maintaining the football/soccer field, football/soccer field irrigation system, water fountain, water spigot, waterlines and football practice area (located immediately south of the football/soccer field) for a period of 25 years from the execution of this agreement. LHSA agrees to provide the City access to that portion of LHSA school building where the irrigation controls and water hook-ups are located to facilitate City maintenance of the irrigation system, waterlines, water fountain and water spigot. LHSA shall provide the City with an emergency LHSA staff call-in list to facilitate City access to the LHSA school building when the school building is closed. LHSA agrees to be responsible for the water charges associated with the operation of the irrigation system, water fountain and water spigot for a period of 25 years from the execution of this agreement. The term

of the football/soccer field maintenance agreement shall be for 25 years from the execution of this agreement with the City and LHSA having the option to renew the football/soccer field maintenance agreement at the end of the 25 years for an additional 10 years with the same terms and conditions.

6. **Facility Lighting.** The City at its sole expense shall install underground electrical wiring, light poles and light fixtures for the following facilities on City, LHSA and N.S.P. property: new northern parking lot and driveway; trails; tennis and basketball courts/hockey rink; general skating rink; baseball field and softball field #2. In addition, the City at its sole expense shall install underground electrical wiring to facilitate future lighting of the football/soccer field, Chicago parking lot and softball field #1. LHSA agrees to grant to the City an easement for the placement of underground electrical wiring, light poles and light fixtures as described in the Smith Park Electrical Plan developed for the City by Short Elliott Hendrickson, Inc. in May, 1999. The City shall be responsible for maintaining the electric underground wiring, light poles, and light fixtures. The City shall also be responsible for all electric power costs associated with the operation of the above light fixtures. The City and LHSA shall jointly undertake to light the football/soccer field at such time or times as the parties shall mutually agree and as necessary funds are available. The City and LHSA agree to split evenly the cost (50%-50%) for lighting the football/soccer field.

7. **Athletic Field Usage.** The City and LHSA agree to share usage of the athletic fields located on City property in Smith Park and on LHSA property as detailed in the 1998 Smith Park master plan. These athletic fields include the football/soccer

field, the football practice area, the baseball field and softball fields #1 & #2. The City shall be responsible for scheduling usage and shall have first priority usage of all athletic fields located on City property in Smith Park (baseball field and softball fields #1 & #2). LHSA shall be responsible for scheduling usage and shall have first priority usage of all athletic fields located on LHSA property (football/soccer field and football practice area). The City agrees to provide LHSA usage of the baseball field and softball fields #1 & #2 as follows:

a. During the months of April, May, August, September and October weekdays prior to 6:00 p.m. or until the completion of scheduled LHSA interscholastic games.

b. Usage of the baseball field outfield during the months of August, September and October weekdays prior to 6:00 p.m. for football or soccer practices.

LHSA agrees to provide the City usage of the football/soccer field and football practice area as follows:

a. During the months of April, May, August, September and October weekdays after 6:00 p.m. or after the completion of scheduled LHSA interscholastic games.

b. During the months of April, May, June, July, August, September and October on weekends, except for those dates scheduled by LHSA for football camps, soccer camps, and LHSA interscholastic games or scrimmages. LHSA agrees to guarantee that the City shall have usage of the football/soccer field and football practice area a minimum of seven Saturdays during the months of September and October. During the months of August, September and October City usage of the football/soccer field shall be limited to games only to limit wear on the turf.

c. During the months of June and July on weekdays after 6:00 p.m.

d. During the months of June and July on weekdays prior to 6:00 p.m., except for those dates scheduled by LHSA for football camps or soccer camps.

The term of the athletic field usage agreement shall be for 25 years from the execution of this agreement with the City and LHSA having the option to renew the athletic field

usage agreement at the end of the 25 years for an additional 10 years with the same terms and conditions.

8. **Tennis and Basketball Courts; Hockey Rink.** LHSA agrees to enter into a lease agreement with the City for $1.00 allowing the placement by the City of two public tennis courts, one basketball court, and in the winter, one hockey rink on LHSA property to the north of the football field as detailed in the 1998 Smith Park master plan. The City agrees to pay for the cost of the construction of the courts and rink and LHSA shall not be responsible for any such payment. The tennis courts shall be lighted and can be flooded during the winter months for a hockey rink. By leasing the property, the City agrees to indemnify LHSA pursuant to this Agreement. The City agrees to vacate the existing tennis court easement. The City also agrees to be responsible for maintaining the tennis and basketball courts along with the hockey rink in winter months pursuant to this agreement. Once the courts and rink are constructed, the City agrees to the following use of the facilities:

a. LHSA shall have use of the tennis courts weekdays prior to 6:00 p.m. during the months of September, October, April, and May. The general public will be allowed access to the tennis court during the above dates and times whenever LHSA is not using the courts.

b. LHSA shall have the use of the basketball court weekdays prior to 3:00 p.m. during the months of September, October, April, and May. The general public will be allowed access to the basketball court during the above dates and times whenever LHSA is not using the court.

c. LHSA shall have use of the hockey rink weekdays prior to 3:00 p.m. from December 20 through February 15 (weather permitting). The general public will be allowed access to the hockey during the above dates and times whenever LHSA is not using the rinks.

The term of the lease agreement shall be for 25 years from the execution of this agreement with the City and LHSA having the option to renew the lease agreement at the end of the 25 years for an additional 10 years with the same terms and conditions.

9. **General Skating Rink.** LHSA agrees to enter into a lease agreement with the City for $1.00 allowing the placement by the City in the winter of a general skating rink on LHSA property to the west and north of the tennis/basketball courts (where the tennis courts were previously located and the future fine arts center is proposed to be located). The City agrees to pay for the cost of the grading of the general skating rink area and LHSA shall not be responsible for any such payment. The term of the lease shall be for one year from the execution of this agreement with an annual roll-over clause with the same terms and conditions. Either the City or LHSA may terminate the general skating rink usage agreement upon sixty (60) days written notification. By leasing the property, the City agrees to indemnify LHSA pursuant to this Agreement. The City agrees to vacate the existing tennis court easement. The City also agrees to be responsible for maintaining the general skating rink in winter months. Once the general skating rink area is constructed, LHSA shall have use of the general rink weekdays prior to 3:00 p.m. from December 20 through February 15 (weather permitting). The general public will be allowed access to the general skating rink during the above dates and times whenever LHSA is not using the rink.

10. **Indemnification.** The City agrees to defend, indemnify, and hold harmless LHSA and its officials, employees, and agents, from any and all claims, causes of action, lawsuits, damages, including reasonable attorney fees, arising out of claims

from accidents or injuries from the City's and general public's use of Smith Park and the following LHSA property: football/soccer field, football practice area, parking lots, general skating rink, tennis and basketball courts, hockey rink, waterline easement, underground electrical wiring easement , light posts and light fixtures easement. LHSA agrees to defend, indemnify, and hold harmless the City and its officials, employees, and agents, from any and all claims, causes of action, lawsuits, damages, including reasonable attorney fees, arising out of claims from accidents or injuries from LHSA's use (includes use by LHSA and direct subsidiaries of LHSA) of Smith Park and the above listed LHSA property. In entering into this indemnification agreement, the City does not waive the governmental immunity and damage caps afforded government in Minnesota law. The City and LHSA shall maintain general comprehensive insurance in amounts at least equal to the statutory limits for cities under Minnesota Statutes, Section 466 during the terms of this agreement. The term of the indemnification agreement shall be for 25 years from the execution of this agreement with the City and LHSA having the option to renew the indemnification agreement at the end of the 25 years for an additional 10 years with the same terms and conditions.

11. **Joint Use of Parking Facilities.** The City and LHSA agree to jointly use the parking lots located along Park Avenue on LHSA, City, and N.S.P. properties between 81st and 83rd Streets. The City and LHSA also agree to coordinate event schedules to minimize parking conflicts. The term of the parking facilities agreement shall be for 25 years from the execution of this agreement with the City and LHSA having the option to renew the parking facilities agreement at the end of the 25 years for

an additional 10 years with the same terms and conditions. The parties agree to execute the necessary easements to effectuate this agreement. If either party acquires the N.S.P. portion of the property, the owner shall provide an easement for $1.00 to effectuate this usage agreement.

12. **Maintenance of Parking Lots.** The City and LHSA shall separately maintain their parking lots along Park Avenue on LHSA, City, and N.S.P. property between 81st and 83rd Streets.

13. **Relocation of Water Main.** The City and LHSA agree to evenly split (50%-50%) the cost of the relocation of the 16-inch water main currently located on the future site of the LHSA's proposed fine arts center. The City agrees to contract for the water main relocation and LHSA shall reimburse the City for 50% of the associated costs, currently estimated at $13,860. In the event of unforeseen cost over runs, the City agrees to place a cap of $2,000 of LHSA's share of these cost over runs. The City also agrees to vacate the existing drainage and utility easement for the existing water main located on LHSA property. The drainage and utility easement vacated shall be only that part of LHSA property from which the water main is relocated.

14. **Assessment and Billing.** The City shall assess LHSA in an amount not to exceed $67,460 no later than October 15, 1999. This amount includes LHSA's share of football/soccer field construction costs, architectural fees, contract amendment charges, redesign charges and water main relocation costs (including any unforeseen cost over runs for the water main relocation). The City agrees to assess LHSA for the above costs over a period not to exceed 10 years at an annual interest rate of 7%. LHSA shall make

payments following the County's tax collection schedule which requires payments twice a year in equal installments for the term of the assessment. LHSA may pay off the balance of the assessment at any time during the term of the assessment with no pre-payment penalties, thus saving the balance of interest charges. LHSA shall bill the City in an amount not to exceed $4,000 no later than October 15, 1999. This amount includes the City's share of football/soccer field irrigation system installation system. The City agrees to remit payment to LHSA within 60 days of receipt of billing.

15. **Amendment.** This Agreement may be amended, in writing, as the parties may mutually agree.

16. **Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

17. **Governing Law.** The City and LHSA agree that this Agreement shall be governed by Minnesota law.

18. **Remedies.** The parties agree that whenever any default of obligations by one of the parties occurs, the other party may take whatever action at law or in equity may appear necessary for the enforcement of this Agreement.

19. **Appendix.** The August 14, 1990, agreement between LHSA and the City regarding maintenance of the football/soccer field is incorporated into this agreement by reference and is attached to this Agreement in the Appendix.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF BLOOMINGTON

By: _____
Its Mayor

By: _____
Its Manager

Reviewed and approved by the City Attorney.

_____
City Attorney

STATE OF MINNESOTA )
)SS.
COUNTY OF HENNEPIN )

This instrument was acknowledged before me on this 20th day of May 1999, by Coral S. Houle and Mark E. Bernhardson the Mayor and Manager of the City of Bloomington, Minnesota, under the law of the State of Minnesota, on behalf of the City of Bloomington.

_____
Notary Public

LAURE L. LESPERANCE
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Jan. 31, 2000

LUTHERAN HIGH SCHOOL
ASSOCIATION OF GREATER
MINNEAPOLIS

By: Dallas Olde

Its: Board Chair

STATE OF MINNESOTA )
)SS.
COUNTY OF HENNEPIN )

This instrument was acknowledged before me on this s 17th day of May, 1999, by Dallas Olde of Lutheran High School Association of Greater Minneapolis.

Claudia J. Becker
Notary Public

CLAUDIA J. B...
NOTARY PUBLIC - Minnesota
My Comm. Expires Jan. 31, 2000

*PARKPROJ\SPAGR512.DOC*

Enclosure C-1 v

# ADDENDUM TO AGREEMENT BETWEEN THE CITY OF BLOOMINGTON AND LUTHERAN HIGH SCHOOL OF GREATER MINNEAPOLIS RE: SMITH PARK AND LUTHERAN HIGH SCHOOL PROPERTY IMPROVEMENTS, LEASES, EASEMENTS AND USE

THIS ADDENDUM AGREEMENT is made this 26TH day of JUNE 2000, by and between the City of Bloomington, a municipal corporation under the laws of Minnesota, 2215 West Old Shakopee Road, Bloomington, Minnesota 55431 (hereinafter referred to as the "City"), and Lutheran High School Association of Greater Minneapolis, a non-profit association organized under the laws of Minnesota, located at 8201 Park Avenue South, Bloomington, Minnesota 55420 (hereinafter referred to as "LHSA").

## RECITALS

WHEREAS, the City and LHSA have previously entered into an agreement dated May 17, 1999 (the "Agreement"), for the improvements, leases, easements and uses of Smith Park/LHSA property for recreational and athletic purposes; and

WHEREAS, pursuant to the Agreement the City paid LHSA a total of $7,706 for the City's share of the expenses for Smith Park/LHSA property survey work and the installation of an irrigation system on the LHSA football/soccer field; and

WHEREAS, pursuant to the agreement LHSA has been assessed a total of $52,636 for LHSA's share of the expenses for football/soccer field construction costs, architectural fees, contract amendment charges, redesign charges and water main relocation costs; and

WHEREAS, this Addendum is created for the purpose of revising Chapter 6 of the Agreement titled Facility Lighting to facilitate the installation, operation and maintenance of athletic field lighting on the football/soccer field. In Chapter 6, the Agreement currently states in part that "**The City and LHSA shall jointly undertake to light the football/soccer field at such time or times as the parties shall mutually agree and as necessary funds are available. The City and LHSA agree to split evenly the cost (50%-50%) for lighting the football/soccer field.**" As it is the desire of both the City and LHSA to proceed immediately with lighting the football/soccer field, this Addendum is required.

NOW, THEREFORE, in consideration of the recitals stated above and the mutual covenants stated below, the parties agree as follows.

1. **Football/Soccer Field Lighting.** LHSA shall contract to furnish and install light poles and fixtures that meet the City's specifications for athletic field lighting. LHSA shall obtain a minimum of three price quotes for the football/soccer field lighting and shall award the contract to the vendor with the lowest responsible price quote. Per the Agreement, the City and LHSA agree to split evenly the cost (50%-50%) for lighting the football/soccer field. LHSA agrees to place a cap of $30,000 on the City's share of the costs for lighting the football field. LHSA agrees to install the football/soccer field lighting by December 31, 2000. LHSA shall bill the City once the football/soccer field lighting has been installed to the mutual satisfaction of LHSA and the City. The City agrees to remit payment

within 30 days of receipt of billing and upon acceptance by the City of the lighting installed.

2. **Football/Soccer Field Lighting Electrical Service.** Per the Agreement, the City at its sole expense has installed underground electrical wiring and controls to service the football/soccer field lighting. The controls for the football/soccer field are located in the electrical service building in Smith Park. LHSA at its sole expense shall connect the light poles and fixtures to the existing underground electrical wiring and controls. LHSA shall utilize a licensed electrician to complete this work and shall comply with all appropriate electrical codes. The City shall provide a copy of the football/soccer field electrical wiring plans and specifications to LHSA. The City shall issue a key to LHSA for the Smith Park electrical service building.

3. **Football/Soccer Field Lighting Maintenance.** While LHSA shall own the football/soccer field light poles and fixtures, the City agrees to be responsible for the routine maintenance of the football/soccer field lighting beyond the manufacturer's warranty. Routine maintenance shall include parts, labor and lamps. The City shall not be responsible for repairs or replacement of poles or fixtures due to catastrophic events or acts of God. LHSA agrees to grant an easement to the City for the purpose of maintaining the lighting on the football/soccer field. The City shall be responsible for all power costs associated with the operation of the football/soccer field lighting. The term of this Addendum shall coincide with the term of the Agreement (25 years from the execution of the Agreement with the City and LHSA having the option to renew

the football/soccer field lighting maintenance agreement at the end of 25 years for an additional 10 years with the same terms and conditions.)

4. **Football/Soccer Field Lighting Usage.** LHSA may use the football/soccer field lighting for events scheduled on the football/soccer field. The usage schedule of the football/soccer field is defined in the Agreement. LHSA agrees to comply with City policy that requires athletic field lighting be shut off by 11:00 p.m. The controls for the football/soccer field are located in the electrical service building in Smith Park. The City shall issue a key to LHSA for the Smith Park electrical service building to facilitate LHSA's access to the football/soccer field lighting controls. The only time LHSA may gain access to the Smith Park electrical service building is for use by LHSA for LHSA events at the football/soccer field.

5. **Other.** Except to the extent that this Addendum modifies the Agreement, all other provisions of the Agreement shall remain in force.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum the day and year first above written, subject to the terms and conditions set forth herein

CITY OF BLOOMINGTON

By: _____
Its Mayor

By: _____
Its Manager

Reviewed and approved by the City Attorney.

_____
City Attorney

STATE OF MINNESOTA )
)SS.
COUNTY OF HENNEPIN )

This instrument was acknowledged before me on this 26th day of June, 2000, by Gene Winstead and Mark Bernhardson the Mayor and Manager of the City of Bloomington, Minnesota, under the law of the State of Minnesota, on behalf of the City of Bloomington.

_____
Notary Public

KAREN M. KRAEMER
NOTARY PUBLIC - MINNESOTA
My Comm. Expires Jan 31, 2005

LUTHERAN HIGH SCHOOL
ASSOCIATION OF GREATER
MINNEAPOLIS

By: Dallas Aldore

Its: Board Chair

STATE OF MINNESOTA )
)SS.
COUNTY OF HENNEPIN )

This instrument was acknowledged before me on this 19th day of JUNE, 2000, by DALLAS OLDRE of Lutheran High School Association of Greater Minneapolis.

Claudia J. Becker
Notary Public

CLAUDIA J. BECKER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

*PARKPROJ\SPAGRADD*