MEMORANDUM

MCDA

File

December 10, 1992

REPORT TO THE COMMISSIONERS

FROM: Jay Jensen, Executive Director

SUBJECT: Granting of Easement and License Agreement - Public Hearing
Orpheum Expansion and Renovation Project
926-928 Hennepin Avenue

GRANTEE: Clifford L. and Laura M. MacKenzie and Douglas L. and Alice M. Trainer
916-918 Hennepin Avenue
Minneapolis, MN 55403

Previous Directives: On March 13 and March 27, 1992, the City Council authorized the Agency to undertake certain actions on the Orpheum Theatre Expansion and Renovation Project, including acquisition of the parking lot located at 926-28 Hennepin Avenue. On October 23, 1992, the City Council approved $8.6 million Limited Tax Supported Development Revenue Bonds for the Orpheum Expansion Project. On October 23, 1992, the MCDA Board of Commissioners authorized the MCDA to enter into a construction agreement with Knutson Construction.

Neighborhood Group Review: The Hennepin Avenue Advisory Board is briefed monthly on activities at the Orpheum Theatre.

Comprehensive and Community Improvement Plan Compliance: Utilization of the Orpheum Theatre as an entertainment facility is consistent with the Metro 2000 Plan (pgs. 38-39). The location of the theatre falls within the entertainment emphasis area map shown on page 32 of the Plan.

Impact on MCDA Budget: Authorization to enter into the Easement and License Agreement will not impact the MCDA budget.

Impact on MCDA Performance Management Framework: The project meets the PMF criteria.

Transition Period Principles: The proposed activity accomplishes the goals of an existing redevelopment project.

Affirmative Action: N/A

RECOMMENDED ACTION:

It is recommended that the MCDA Board of Commissioners:

1) Adopt the attached resolution granting an easement to 916-918 Hennepin Avenue; and

2) Adopt the attached resolution granting a license agreement to 916-918 Hennepin Avenue; and

3) Authorize the Executive Director or other appropriate official to execute all documents necessary to effect the Easement and License agreements.

In March, 1992, the City Council approved conceptual plans for the expansion and renovation of the Orpheum Theatre. On October 23, 1992, the City Council adopted a Supplemental Bond Resolution and Indenture, following a public hearing on September 21, 1992 and continued to October 5 and October 19, 1992, giving preliminary and final approval of $8.6 million Minneapolis Community Development Agency, Limited Tax Supported Development Revenue Bonds, Common Bond Fund Series 1992, for the Orpheum Expansion Projected.

Plans for the Orpheum project include construction of a two-bay loading dock and dressing room facility on a portion of the parking lot located at 926-28 Hennepin Avenue (purchased by the Agency in May, 1992 for the project). There currently exists an easement for the benefit of the Speakeasy Bar located at 916-918 Hennepin Avenue ("Grantee"), which runs between the Orpheum Theatre building and the parking lot. The easement is ten feet in width and extends along the wall of the theatre stagehouse, from Tenth Street to the back of the Grantee's property (see Exhibit A).

To facilitate the Expansion project, the Grantee has agreed to release this existing easement in exchange for 1) a non-exclusive easement on and over the northeasterly five feet of the parking lot, for the purposes of access to and maintenance and repair of the exterior wall of the Grantee Building; 2) a non-exclusive easement over and across the northeasterly five feet of the parking lot, for the purposes of pedestrian ingress, egress and access to and from the Grantee Property; and 3) a License Agreement permitting delivery services across the Agency's parking lot (see Exhibit A). Copies of the Easement Agreement and License Agreement are attached as exhibits to their respective resolution.

The Easement Agreement runs with the land and is binding upon and inures to the benefit of both parties, their successors and assigns. The Easement Agreement automatically terminates on January 31, 2020.

The License Agreement cannot be assigned or transferred to any other party without the prior written consent of the Agency, and the Agreement automatically terminates on January 1, 2020. In addition, the Agency may terminate the Agreement with 60 days written notice in the event the benefiting party breaches the Agreement.

Release of the existing easement is integral to the Orpheum Expansion project. Therefore, staff recommends the Board of Commissioners authorize the Executive Director to enter into a new Easement Agreement and License Agreement, thereby facilitating release of the existing easement.

RECOMMENDED ACTION:

It is recommended that the MCDA Board of Commissioners:

1) **Adopt the attached resolution granting an easement to 916-918 Hennepin Avenue; and**

2) **Adopt the attached resolution granting a license agreement to 916-918 Hennepin Avenue; and**

3) **Authorize the Executive Director or other appropriate official to execute all documents necessary to effect the Easement and License agreements.**

This report was prepared by Kevin Dockry. For information please call 673-5015.

KD167

RESOLUTION

of the

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By _____

Granting of Easement Agreement
Orpheum Theatre Expansion and renovation Project
926-928 Hennepin Avenue

WHEREAS, the Minneapolis Community Development Agency, hereinafter known as the Agency, is the owner of Lot 6, Auditor's Subdivision No. 126, Hennepin County, Minnesota ("Agency Property"); and

WHEREAS, Clifford L. Mackenzie and Laura M. Mackenzie, husband and wife and Douglas L. Trainer and Alice M. Trainer, husband and wife, hereinafter collectively known as Grantee, are the owners of Lot 5, Auditor's Subdivision No. 126, Hennepin County, Minnesota ("Grantee Property"); and

WHEREAS, the Agency has agreed to grant a nonexclusive easement on and over a portion of the Agency Property (said portion hereinafter known as the "Walkway Easement Area" and as legally described below) for purposes of access to and maintenance and repair of the exterior wall of the Grantee Building, and a nonexclusive easement over and across the Walkway Easement Area for the purposes of ingress, egress and access to and from the Grantee Property; and

WHEREAS, said Walkway Easement Area is known as that portion of Agency Property situated in the City of Minneapolis, County of Hennepin, State of Minnesota to wit:

<u>LEGAL DESCRIPTION</u>

(Description of Walkway Easement Area)

The northeasterly 5.00 feet of that part of Lot 6, Auditor's Subdivision No. 126, files of the Registrar of Titles, Hennepin County, Minnesota, which lies northeasterly of the southeasterly extension of the northeasterly line of Lot 4, said Auditor's Subdivision No. 126.

WHEREAS, pursuant to due notice thereof published in Finance and Commerce on Saturday, November 28, 1992, a public hearing on granting of said easement and the provisions thereof, was duly held on December 10, 1992, at the Minneapolis City Hall, 350 South 5th Street, Room 319, at 2:00 p.m., in the City of Minneapolis, County of Hennepin, State of Minnesota.

NOW, THEREFORE, BE IT RESOLVED, that for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency agrees to grant said easement; and

BE IT FURTHER RESOLVED, that the granting of said easement is hereby determined to be in accordance with the Agency's approved disposal program; and

BE IT FURTHER RESOLVED, that said easement be and the same is hereby accepted, subject to the execution of the Easement Agreement attached hereto as Exhibit A. Furthermore, that the Executive Director or other appropriate official of the Agency be and is hereby authorized to execute and deliver said agreement to the Grantee; provided, however, that this Resolution does not constitute such an agreement and no agreement shall be created until executed by the Executive Director or other appropriate official.

BE IT ALSO FURTHER RESOLVED, that the Chairman and Secretary, or any other two Commissioners of the Agency, be and the same are hereby authorized to execute and deliver conveyance of said land to the Grantee in accordance with the provisions of said executed agreement; provided, however, that this Resolution does not constitute such conveyance and no such conveyance shall be created until executed by the Chairman and Secretary, or any other two Commissioners of the Agency.

RECORD OF COMMISSION VOTE													
Commissioner	Aye	Nay	NV	Abs	Ovrd	Sust	Commissioner	Aye	Nay	NV	Abs	Ovrd	Sust
Dziedzic							Niland						
Cherryhomes							Rainville						
Johnson							Sayles Belton						
Campbell							Scallon						
Cramer							Schulstad						
Hilary							Scott						
Niemiec													
Vote: N V - Not Voting, Abs - Absent, Ovrd - Vote to Override, Sust - Vote to Sustain													

ADOPTED _____ 19

_____
Chairperson

APPROVED
NOT APPROVED _____ 19
VETOED

_____
Mayor

EXHIBIT "A"

082692

EASEMENT AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 1992 by and between MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, a body politic and corporate ("Agency") and CLIFFORD L. MACKENZIE [~~XXXXXXXXXXXX~~] [and Laura M. MacKenzie, husband and wife,] and DOUGLAS L. TRAINER [~~XXXXXXXXXXXX~~] [and Alice M. Trainer, husband and wife,] collectively, "Grantee").

RECITALS:

A. Agency is the owner of Lot 6, Auditor's Subdivision No. 126, Hennepin County, Minnesota ("Agency Property").

B. Grantee is the owner of Lot 5, Auditor's Subdivision No. 126, Hennepin County, Minnesota ("Grantee Property").

C. The parties desire to create certain easements burdening the Agency Property for the benefit of the Grantee Property.

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and Grantee, on behalf of themselves and their successors and assigns, hereby agree as follows:

ARTICLE I

Definitions

As used in this Agreement, the following terms have the following definitions:

Grantee Building: The building on the Grantee Property.

Laws and Regulations: All federal,state and local statutes, regulations, codes, ordinances and rules and all orders, directives, decisions or requirements of any court or other governmental authority, now in effect or hereafter enacted or announced, which are applicable to any of the matters discussed or described in this Agreement.

Owners: With respect to any of the Agency Property and the Grantee Property, all present and future owners of legal or equitable fee title to all or any portion of such property and their respective successors and assigns, each of whom is an "Owner."

Owner's Group: With respect to any Owner: (i) the Owner; (ii) the Owner's affiliates, tenants, subtenants, licensees, and concessionaires; and (iii) the partners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees of the Owner and its affiliates, tenants, subtenants, licensees, and concessionaires.

Walkway Easement Area: The portion of the Agency Property as described on Exhibit A hereto.

ARTICLE II

Easements

Section 2.01 Easements Burdening the Agency Property for the Benefit of the Grantee Property. Agency hereby grants the following easements to Grantee and its successors and assigns for the benefit of the Grantee Property:

(A) Access to Exterior Wall: A nonexclusive easement on and over the Walkway Easement Area for purposes of access to and maintenance and repair of the exterior wall of the Grantee Building.

(B) Pedestrian Access: A nonexclusive easement over and across the Walkway Easement Area for purposes of pedestrian ingress, egress and access to and from the Grantee Property.

ARTICLE III

Operating Covenants

Section 3.01 Construction, Maintenance, and Repair

(A) Initial Construction of Sidewalk on Walkway Easement Area. The Owner of the Agency Property shall construct a sidewalk on the Walkway Easement Area at its expense. In connection with the construction of such sidewalk, the Owner of the Agency Property shall have the right to install a water repellant material between the sidewalk and the Grantee Building by cutting a groove into the outer wall of the Grantee Building which is sufficient for the installation of the material in a good and workmanlike fashion.

(B) Maintenance and Repair of Walkway Easement Area. After the initial construction of the sidewalk on the Walkway Easement Area, the Owner of the Grantee Property shall be responsible for performing all necessary maintenance, repairs, and replacements of the Walkway Easement Area and the sidewalk located thereon at its expense, including but not limited to reasonable efforts to remove snow and ice on a timely basis. All maintenance, repairs, and replacements by the Owner of the Grantee Property shall be done in a good and workmanlike manner, free of mechanic's liens and the claims thereof, and in accordance with all Laws and Regulations.

The Owner of the Grantee Property shall secure written approval from the Owner of the Agency Property at least thirty (30) days prior to performing any maintenance, repairs, or replacements of a non-routine nature. The Owner of the Agency Property shall not unreasonably withhold or delay such approval. If the Owner of the Grantee Property defaults in any of its obligations pursuant to this Section 3.01(B) and fails to commence such action as is necessary to cure such default within thirty (30) days after written notice of default is given (or immediately after written notice of default in the event of an emergency), then the Owner of the Agency Property may enforce such obligations by an action at law or suit in equity, or may perform or pay all or part of such obligations and charge the cost of performing or the payment made to the Owner of the Grantee Property. In connection with any suit to enforce such obligations or to collect the cost of performance or payment, the Owner of the Agency Property shall be entitled to reasonable attorneys' fees.

Section 3.02 **Insurance and Indemnity.**

(A) The Owner of the Grantee Property shall hold harmless and indemnify the Owner of the Agency Property and its Owner's Group, from and against all loss, costs, damage, actions, suits, judgments and expense, including reasonable attorneys' fees, arising out of or due to, the use of the easements granted herein by the Owner of the Grantee Property and its Owner's Group, except where and to the extent due to or a result of, the negligence or willful misconduct of the Owner of the Agency Property or its Owner's Group.

(B) The Owner of the Grantee Property shall at its own expense:

(1) Maintain comprehensive general liability insurance which names the Owner of the Agency Property as an additional insured against claims for bodily injury, death and property damage occurring in or upon the Walkway Easement Area, including contractual liability coverage for claims made pursuant to the indemnity provisions of this Agreement, in such amounts as may be required by law or are carried from time to time by prudent owners of commercial buildings in the City of Minneapolis, but in all events to afford protection for limits of not less than $500,000.00 combined single limit for bodily injury or property damage; and

(2) Provide the Owner of the Agency Property upon request with certificates evidencing such insurance.

(C) Each policy described in Paragraph (B) shall not be cancelable, amended or permitted to lapse except after 30 days prior written notice to the Owner of the Agency Property.

ARTICLE IV

Miscellaneous

Section 4.01 **Compliance with Laws and Regulations.** The Owner of the Grantee Property shall use the easements granted herein in compliance with all Laws and Regulations and will not do or permit to be done anything which would or might result in the Owner of the Agency Property becoming liable for any damages, fines or penalties under any of such Laws and Regulations.

Section 4.02 **Severability.** The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Agreement, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Agreement, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section 4.03 **Interpretation.** Whenever appropriate, the singular number may be read as the plural, and the plural may be read as the singular. Any gender used may be read as the feminine, neuter or masculine gender, whichever is appropriate. Compound words beginning with the prefix "here" shall be read as referring to this entire Agreement and not merely to the part of it in which they appear.

Section 4.04 **Notices.** All notices, communications, demands and requests permitted or required to be given under this Agreement shall be in writing and shall be deemed to be given when personally delivered, when delivered to a reliable and recognized overnight courier or messenger service which provide receipts of delivery or when deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed as follows or to such other address as is set forth in a notice given in accordance with this Section 4.04:

If to Agency: Minneapolis Community Development Agency
Crown Roller Mill
105 Fifth Avenue South
Minneapolis, Minnesota 55401
Attention: Richard Victor

If to Grantee: Clifford L. MacKenzie and Douglas L. Trainer
_____
_____
_____
Attention: _____

Section 4.05 **Minnesota Law.** This Agreement shall be construed in accordance with the laws of the State of Minnesota.

Section 4.06 **No Dedication.** Nothing contained herein shall be deemed to be a gift or dedication of all or any portion of the easements herein granted, or any thereof, to or for the general public.

Section 4.07 **Agreement to Run With the Land; Duration.** This Agreement shall run with the land, and, except as is expressly provided herein, shall be binding upon and inure to the benefit of the parties and their successors and assigns as Owners of the Agency Property and the Grantee Property. This Agreement and the easements granted herein shall automatically terminate without further notice or action on January 31, 2020.

IN WITNESS WHEREOF, the parties have executed this Agreement and the Agency has caused its corporate seal to be affixed hereto as of the date first above written.

AGENCY:

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By _____
A Commissioner

By _____
A Commissioner

GRANTEE:

_____
Clifford L. MacKenzie

_____
Laura M. MacKenzie

Alice M. Trainer

_____
Douglas L. Trainer

Approved as to Form:

_____
Assistant City Attorney

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 1992, by _____ and _____, Commissioners of the Minneapolis Community Development Agency.

_____
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this 29th day of October, 1992, by Clifford L. MacKenzie [~~XXXXXXXXXXXX~~] [and Laura M. MacKenzie, husband and wife].

Diane M. Schiks
Notary Public

DIANE M. SCHIKS
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires 6-19-96

STATE OF MINNESOTA)
ss.
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this 29th day of October, 1992, by Douglas L. Trainer [~~XXXXXXXXXXXX~~] [and Alice M. Trainer, husband and wife].

Diane M. Schiks
Notary Public

DIANE M. SCHIKS
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires 6-19-96

This instrument was drafted by:
Minneapolis City Attorney's Office
Crown Roller Mill
105 Fifth Avenue South, Suite 405
Minneapolis, Minnesota 55401

EXHIBIT A

TO EASEMENT AGREEMENT

(Description of Walkway Easement Area)

The northeasterly 5.00 feet of that part of Lot 6, Auditor's Subdivision No. 126, files of the Registrar of Titles, Hennepin County, Minnesota, which lies northeasterly of the southeasterly extension of the northeasterly line of Lot 4, said Auditor's Subdivision No. 126.

RESOLUTION

of the

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By _____

Granting of License Agreement
Orpheum Theatre Expansion and Renovation Project
926-928 Hennepin Avenue

WHEREAS, the Minneapolis Community Development Agency, hereinafter known as the Agency, is the owner of 910 Hennepin Avenue, Minneapolis, Minnesota ("Agency Property"); and

WHEREAS, Clifford L. Mackenzie and Douglas L. Trainer, hereinafter collectively known as the "Licensee", are the owners of 916-918 Hennepin Avenue, Minneapolis, Minnesota ("Licensee Property"); and

WHEREAS, the Agency has agreed to authorize the Licensee to enter a portion of the Agency Property ("Access Area") (i) during normal delivery hours for the purposes of vehicular ingress and egress in accordance with the terms of the License Agreement for the sole purpose of making deliveries and pickups of goods to and from the Licensee Property only; and (ii) during normal delivery hours or, in an emergency, at other times, for the purpose of vehicular ingress and egress in accordance with the terms of the License Agreement for the sole purpose of maintenance and repair of the Licensee Property; and

WHEREAS, pursuant to due notice thereof published in Finance and Commerce on Saturday, November 28, 1992, a public hearing on granting of said license and the provisions thereof, was duly held on December 10, 1992, at the Minneapolis City Hall, 350 South 5th Street, Room 319, at 2:00 p.m., in the City of Minneapolis, County of Hennepin, State of Minnesota.

NOW, THEREFORE, BE IT RESOLVED, that for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency agrees to grant said license; and

BE IT FURTHER RESOLVED, that the granting of said license is hereby determined to be in accordance with the Agency's approved disposal program; and

BE IT FURTHER RESOLVED, that said license be and the same is hereby accepted, subject to the execution of the license agreement attached hereto as Exhibit A. Furthermore, that the Executive Director or other appropriate official of the Agency be and is hereby authorized to execute and deliver said agreement to the Licensee; provided, however, that this Resolution does not constitute such an agreement and no agreement shall be created until executed by the Executive Director or other appropriate official.

RECORD OF COMMISSION VOTE													
Commissioner	Aye	Nay	NV	Abs	Ovrd	Sust	Commissioner	Aye	Nay	NV	Abs	Ovrd	Sust
Dziedzic							Niland						
Cherryhomes							Rainville						
Johnson							Sayles Belton						
Campbell							Scallon						
Cramer							Schulstad						
Hilary							Scott						
Niemiec													
Vote: N V - Not Voting, Abs - Absent, Ovrd - Vote to Override, Sust - Vote to Sustain													

ADOPTED _____ 19

_____
Chairperson

APPROVED
NOT APPROVED _____ 19 _____
VETOED

_____
Mayor

102892

LICENSE AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 1992 by and between MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, a body politic and corporate ("Agency") and CLIFFORD L. MACKENZIE and DOUGLAS L. TRAINER (collectively, "Licensee").

RECITALS:

A. Agency is the owner of 910 Hennepin Avenue, Minneapolis, Minnesota ("Agency Property").

B. Licensee is the owner of 916-918 Hennepin Avenue, Minneapolis, Minnesota ("Licensee Property").

C. The parties desire to create a license for access across the Agency Property for the benefit of Licensee.

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and Licensee hereby agree as follows:

ARTICLE I

Definitions

As used in this Agreement, the following terms have the following definitions:

Access Area: The portion of the Agency Property which is shown crosshatched in the drawing on Exhibit A hereto, provided that the Agency in its discretion may reconfigure the crosshatched area in a manner which does not unreasonably impede the uses outlined in Sections 2.01 and 2.02.

Laws and Regulations: All federal,state and local statutes, regulations, codes, ordinances and rules and all orders, directives, decisions or requirements of any court or other governmental authority, now in effect or hereafter enacted or announced, which are applicable to any of the matters discussed or described in this Agreement.

Normal Delivery Hours: 8:00 a.m. through 5:00 p.m., Monday through Friday.

Owners: Agency and Licensee, each of whom is an "Owner."

Owner's Group: With respect to any Owner: (i) the Owner; (ii) the Owner's affiliates, tenants, subtenants, licensees, and concessionaires; and (iii) the partners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees of the Owner and its affiliates, tenants, subtenants, licensees, and concessionaires.

ARTICLE II

License

Section 2.01 Right of Entry. Agency authorizes Licensee to enter the Access Area (i) during Normal Delivery Hours for purposes of vehicular ingress and egress in accordance with the terms of this Agreement for the sole purpose of making deliveries and pickups of goods to and from the Licensee Property only; and (ii) during Normal Delivery Hours or, in an emergency, at other times, for the purpose of vehicular ingress and egress in accordance with the terms of this Agreement for the sole purpose of maintenance and repair of the Licensee Property. This Agreement does not authorize Licensee to enter or use any portion of the Agency Property other than the Access Area or to enter the Access Area at any time other than Normal Delivery Hours, except for emergency service calls.

Section 2.02 Use of Access Area. The right to use the Access Area pursuant to this Agreement does not include the right to park vehicles or leave personal property of any kind within the Access Area. Licensee shall not allow any vehicles making deliveries or pickups or making service calls to remain within the Access Area for a period any longer than is necessary for purposes of the actual unloading or loading of the vehicles or service call. All loading and unloading shall be done within the portion of the Access Area designated as the "Loading Zone" in the drawing on Exhibit A attached hereto. In its use of the Access Area, Licensee shall not interfere with the use of the Agency Property by the Agency and other parties authorized by the Agency to use the Agency Property. Licensee agrees to meet and to confer and discuss with the Agency special situations which the Agency may encounter (e.g., the need to load a major show for the Orpheum Theater adjacent to the Agency Property) which will restrict Licensee's use of the Access Area. Licensee shall comply with such restrictions on the use of the Access Area as may be reasonably necessary to address such special situations. Licensee shall not be allowed to enter the Access Area with any truck in excess of 9 tons gross axle weight. Agency shall not be liable to Licensee as a result of any temporary obstructions of the Access Area due to maintenance or repair of the Access Area or the accumulation of snow or ice; provided, however, that this Agreement shall not be deemed to impose any obligation upon the Agency to complete maintenance or repair of the Access Area or remove any snow or ice.

Section 2.03 **Term of License.** Licensee shall have the right to enter upon the Access Area for the purposes described in this Agreement from the date of this Agreement until the earlier of January 1, 2020 or the termination of this Agreement in accordance with Section 2.04 hereof; provided, however, that Licensee shall have no right to use the Access Area from and including November 1, 1992 through and including December 31, 1993.

Section 2.04 **Termination.** This Agreement may be terminated by the Agency upon sixty (60) days prior written notice from the Agency to the Licensee if there is any breach of this Agreement by the Licensee, unless within such sixty (60) day period the breach is cured.

After the expiration of the time period specified above in this Section 2.04, this Agreement shall automatically terminate without further notice or action by Agency, and Licensee shall immediately cease using the Access Area. The Agency shall be entitled to reasonable attorneys' fees in any action to establish the termination of this Agreement or to enforce the termination of Licensee's rights to use the Access Area.

Section 2.05 **Scope of License.** This Agreement is personal to Licensee and may not be assigned, conveyed, pledged, or in any other way transferred by Licensee to any other person or entity without the prior written consent of the Agency. The Agency shall not unreasonably withhold its consent to an assignment if the assignee is the purchaser of the Licensee property and the Licensee agrees to assume the obligations of the Licensee hereunder. This Agreement is not a lease or an easement, nor shall this Agreement confer any estate, title, nor exclusive possessory rights in the Access Area or the Agency Property to Licensee. This Agreement may not be recorded or filed in the real property records of Hennepin County, Minnesota. This Agreement shall not be binding upon any subsequent owners of the Agency Property.

Section 2.06 **Insurance and Indemnity.**

(A) Licensee shall hold harmless and indemnify the Agency and its Owner's Group, from and against all loss, costs, damage, actions, suits, judgments and expense, including reasonable attorneys' fees, arising out of or due to, the use of the license granted herein by Licensee and its Owner's Group, except where and to the extent due to or a result of, the negligence or willful misconduct of the Agency or its Owner's Group.

(B) Licensee shall at its own expense:

(1) Maintain comprehensive general liability insurance which names the Agency as an additional insured against claims for bodily injury, death and property damage occurring in or upon the Access Area, including contractual liability coverage for claims made pursuant to the indemnity provisions of this Agreement, in such amounts as may be required by law or are carried from time to time by prudent owners of commercial buildings in the City of Minneapolis, but in all events to afford protection for limits of not less than $500,000.00 combined single limit for bodily injury or property damage; and

(2) Provide the Agency upon request with certificates evidencing such insurance.

(C) Each policy described in Paragraph (B) shall not be cancelable, amended or permitted to lapse except after 30 days prior written notice to the Agency.

ARTICLE III

Miscellaneous

Section 3.01 **Compliance with Laws and Regulations.** Licensee shall use the license granted herein in compliance with all Laws and Regulations and will not do or permit to be done anything which would or might result in the Agency becoming liable for any damages, fines or penalties under any of such Laws and Regulations.

Section 3.02 **Severability.** The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Agreement, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Agreement, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section 3.03 **Interpretation.** Whenever appropriate, the singular number may be read as the plural, and the plural may be read as the singular. Any gender used may be read as the feminine, neuter or masculine gender, whichever is appropriate. Compound words beginning with the prefix "here" shall be read as referring to this entire Agreement and not merely to the part of it in which they appear.

Section 3.04 **Notices.** All notices, communications, demands and requests permitted or required to be given under this Agreement shall be in writing and shall be deemed to be given when personally delivered, when delivered to a reliable and recognized overnight courier or messenger service which provide receipts of delivery or when deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed as follows or to such other address as is set forth in a notice given in accordance with this Section 4.04:

If to Agency: Minneapolis Community Development Agency
Crown Roller Mill
105 Fifth Avenue South
Minneapolis, Minnesota 55401
Attention: Richard Victor

If to Grantee: Clifford L. MacKenzie and Douglas L. Trainer

_____

_____

_____

Section 3.05 **Minnesota Law.** This Agreement shall be construed in accordance with the laws of the State of Minnesota.

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

AGENCY:

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By _____
Its Executive Director

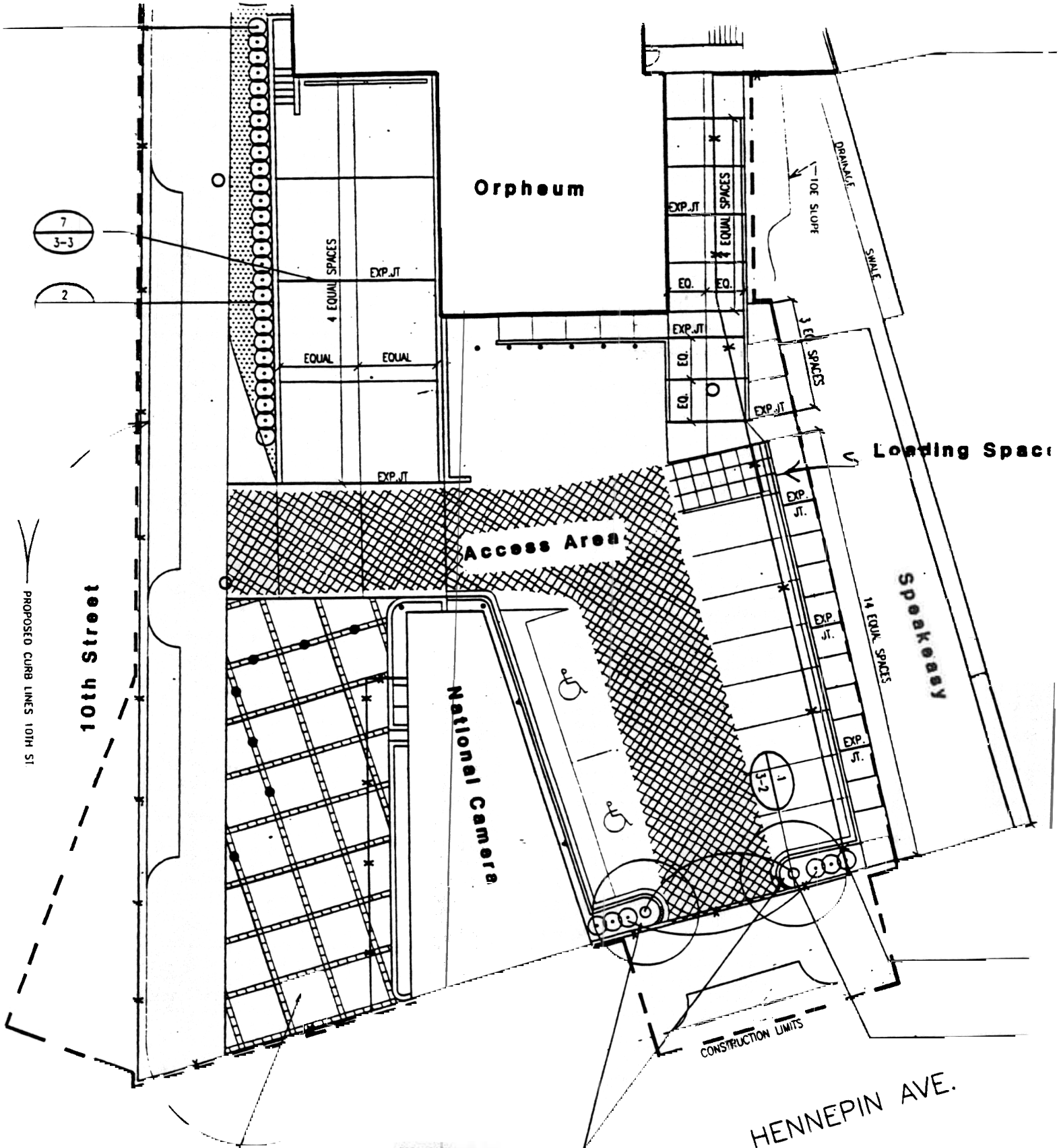
LICENSEE:

_____
Clifford L. MacKenzie

_____
Douglas L. Trainer

Approved as to Form:

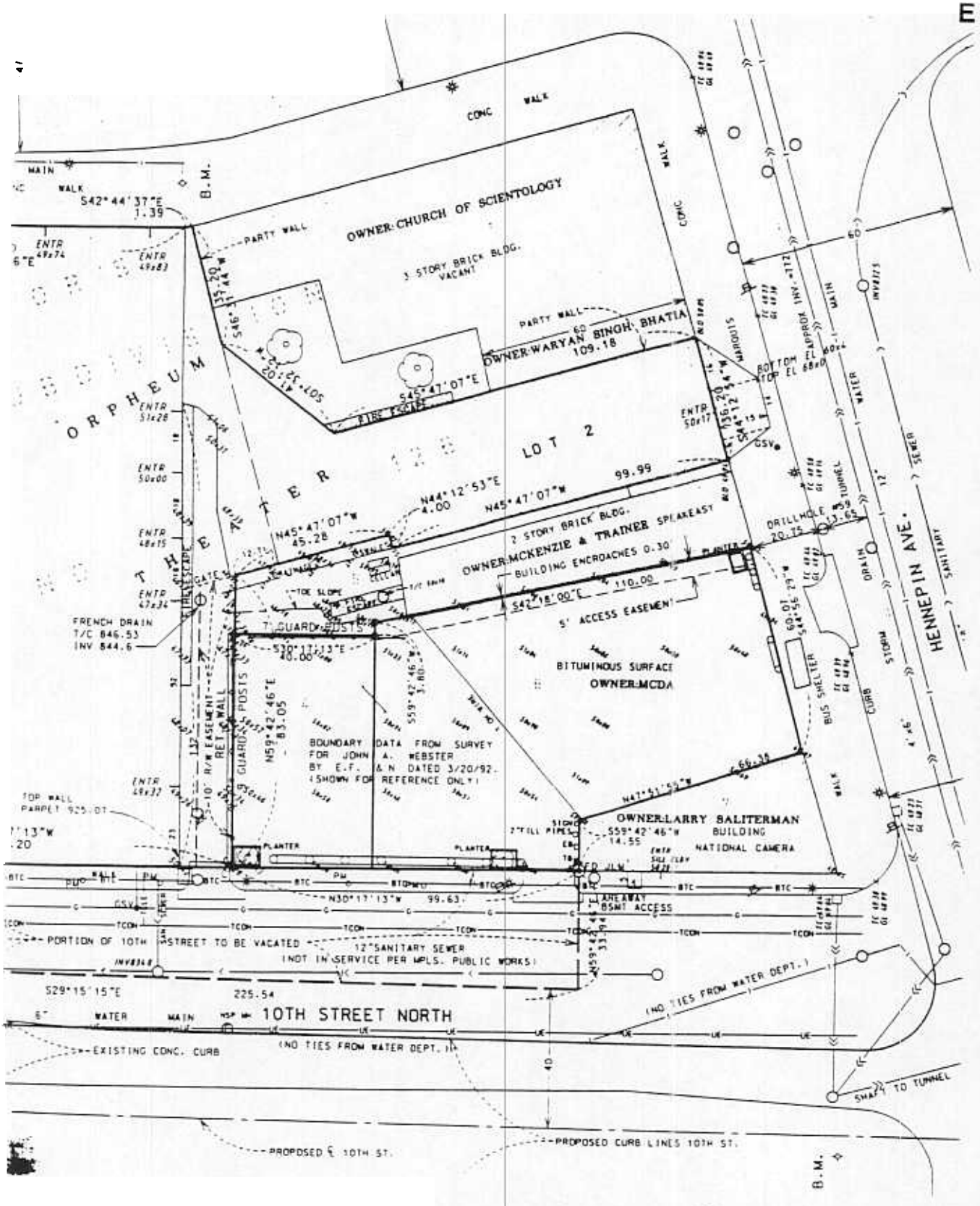
_____
Assistant City Attorney



ROCK MULCH
TO A DEPTH OF 3" (SEE C1.4)
NOTE: UNDER ALTERNATE #1 OMIT ALL PLANT MATERIALS, MULCH IS TO REMAIN

JOINTING AND SURFACE FINISH REQUIREMENTS FOR THIS AREA ARE SHOWN ON PLAN SHEET C1.4

Exhibit A



Existing easement to be released

New easement

Licensed access area