

CITY OF ANOKA

ORDINANCE NO. 2005-1247

AN ORDINANCE RELATING TO THE LEASE OF REAL PROPERTY

THE COUNCIL OF THE CITY OF ANOKA ORDAINS:

Section 1. Whereas, the City of Anoka owns real property described on Exhibit A attached hereto.

Whereas, the City of Anoka and Windego Park Society, a non-profit corporation ("Windego"), have reached an agreement regarding the leasing of said real property to Windego.

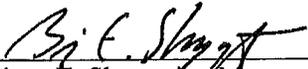
Whereas, the Council has determined in accordance with Section 13.05 of the Anoka City Charter, that it would be in the best interest of the City of Anoka to lease the real property to Windego, pursuant to the terms of said Lease Agreement.

Now, therefore be it resolved that:

1. The City Council hereby approves the lease of real property to Windego, pursuant to the above-described Lease Agreement.
2. The City Council authorizes and directs the Mayor and City Clerk to execute all of the documents necessary to complete the lease.
3. This Ordinance authorization shall not be effective until the Anoka City staff and City Council has reviewed and approved the following conditions:
 - a. Reformation of the Windego Park Society Board of Directors.
 - b. Review of the Articles and Bylaws of Windego Park Society.
 - c. Review and completion of all plans, specifications and other approval processes required for the activities and construction contemplated on the site.
 - d. Determination that a viable financing plan is in place that will cover the improvements, insurance and performance bonds required to be posted in the lease.
 - e. Evidence that the Windego Park Society has adequate access and parking for the premises.
 - f. Windego Park Society must meet the conditions of this ordinance by January 1, 2007, or the ordinance authorization for the lease will terminate on said date.



SECTION 2: This Ordinance shall be in full force and effective upon passage and seven days after publication.


Bjorn E. Skogquist, Mayor


Amy T. Oehlers, City Clerk

Introduced: August 15, 2005
Adopted: September 6, 2005
Published: September 16, 2005
Effective: September 23, 2005

Conditions meet and accepted by the Anoka City Council on December 18, 2006.

	Aye	Nay	Abstain	Absent
Skogquist	X			
Anderson	X			
Freeburg	X			
Rice	X			
Schumacher	X			

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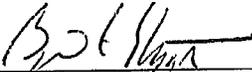
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Anderson	X			
Freeburg	X			
Rice	X			
Schumacher	X			

LEASE

THIS LEASE MADE and entered into this 18 day of December, 2006 by and between City of Anoka, a municipal corporation, partnership, hereinafter called "Landlord", and Windego Park Society, a Minnesota non-profit corporation, hereinafter called "Tenant".

1. **PREMISES DEMISED.** That in consideration of the covenants and agreements hereinafter mentioned to be performed by the respective parties hereto, and in payment of rental hereinafter designated to be made by Tenant in accordance with the provisions under this lease, Landlord has by these presents let, leased, rented and demised unto Tenant, its successors and assigns, and Tenant takes and hires from Landlord, those certain premises legally described as

See attached Exhibit A for legal description

which consists of approximately 21,935 () square feet ("Premises"). Such demised Premises shall include all of Landlord's easements and appurtenances in adjoining and adjacent land, highways, roads, streets, lanes, whether public or private, reasonably required for the installation, maintenance, operation, and service of sewer, water, gas, power, and other utility lines, for driveways, approaches to and from abutting highways, for the use and benefit of the above described parcel of real estate, but excluding the pedestrian walkway bridge located on the southerly edge of the Premises which Tenant shall not control, impede, block, or any way interfere with the public use or access to said bridge

2. **TERM.** The term of this lease shall commence on the 18 day of

December 20 02, and continue for a period of twenty-five (25) years from and after such commencement date, unless earlier terminated pursuant to paragraph 19.

3. **RENT.** Tenant shall pay to Landlord as and for rent for the demised Premises, in advance on the first day of each and every year during the term of this lease the sum of One Dollar (\$1.00) per year commencing on January 1 2001.

4. **TAXES.** It is agreed that Tenant shall pay one hundred (100%) percent of all taxes, assessments and impositions and costs of every kind and nature, general and special, including real estate taxes, assessments and costs for replacement, repair or alteration of any sidewalk, curb, gutter, watermain, waterpipes, sewermain, sewerpipe, both sanitary and storm sewers, which may become due and payable on said property during the period of this lease.

5. **UTILITIES.** Tenant shall pay promptly as and when the same become due and payable, all rents, rates and charges for water, sewer, electricity, and gas used by the Tenant in connection with the use of the demised Premises.

6. **USE OF THE PREMISES.** Tenant agrees that the Premises shall be used for the operation of an Amphitheater to host community entertainment events including but not limited to events such as music in the park and theatrical events. No event shall be conducted on the site unless it has received prior Landlord written approval. If any approved event is not conducted in accordance with City Staff's written approval or fails to meet the standards contained in Chapter 50, Article 4 of

the Anoka City Code, the Landlord may immediately terminate the event on the demised Premises and same shall be considered a breach of this lease. Tenant further agrees that the demised Premises shall not be used for any political purposes including but not limited to fundraising, political sign postings or political activities of any sort. Any other use of the Premises, except granted in this paragraph, shall require the express written approval of the Landlord. The Premises shall not be used for any events until after completion and approval of all improvements by Landlord as contemplated in Section 7 herein.

7. IMPROVEMENTS AND ALTERATIONS. Landlord and Tenant acknowledge that it is Tenant's intent to renovate and improve the Amphitheater presently located upon the demised Premises. Tenant has inspected the Premises and accepts same in the condition that currently exists on the date of the execution of this lease. Landlord and Tenant agree that Landlord has made no representations regarding the condition of the Premises and the ability to renovate and improve same. Furthermore, Landlord shall have no financial obligation, whatsoever, to assist Tenant in the construction of any of the proposed improvements upon the leased Premises. Tenant will not make or permit anyone to make any major or substantial alterations, additions, or improvements, structural and otherwise in and to the demised Premises without the prior written consent of the Landlord. A major alteration, addition or improvement shall be one in excess of twenty five thousand (\$25,000) dollars. Tenant must provide 30 days written notice of its intent to make improvements and provide written plans and specifications outlining in such detail as required by the

Landlord the proposed construction on the Premises. All finished structures must maintain their Historical Register Status. As a condition precedent to such written consent of Landlord, Tenant agrees to obtain and deliver to Landlord such security as the Landlord may request. If any mechanic's lien is filed against the demised Premises, or the real property of which the demised Premises are a part, for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, such mechanic's lien shall be discharged by Tenant within ten (10) days thereafter, at Tenant's sole cost and expense, by the payment thereof or by filing any bond required by law. If Tenant shall fail to discharge any such mechanic's lien, Landlord may, at its option, discharge the same and treat the cost thereof as additional rent, it being expressly agreed that such discharge by Landlord shall not be deemed to waive, or release, the default of Tenant in not discharging the same. Tenant will indemnify, defend and hold Landlord harmless from and against any and all expenses including reasonable attorney fees, liens, claims or damages to person or property which may or might arise by reason of the making of any such alterations, decorations, additions or improvements. If any such alteration, decoration, addition or improvement is made without the prior written consent of Landlord, Landlord may correct or remove the same and the Tenant shall be liable for any and all expenses incurred by Landlord in the performance of this work. All alterations, decorations, additions or improvements in or to the demised Premises made by either party shall immediately become the property of Landlord and shall remain upon and be surrendered with the demised Premises as a part thereof at the end of the term

hereof without disturbance, molestation or injury. Tenant shall be allowed to construct temporary seasonal and promotional decorations on the site without the written permission of the landlord.

8. **MAINTENANCE** Tenant agrees to keep the Premises continually in a neat, clean and respectable condition. Tenant shall be responsible for all maintenance work and repairs during the term of this lease including, but not limited to, the repair of structural portions of the Amphitheater.

9. **DEFENSE AND INDEMNIFICATION.** Tenant agrees to defend, indemnify and hold harmless Landlord and its elected officials, officers, employees, agents and representatives, from and against any and all claims, including reasonable attorneys fees and other costs and expenses of litigation, which may be asserted against or incurred by Landlord or for which Landlord may be liable in the performance of this lease, except those which arise solely from the negligence, willfulness conduct or other fault of the Landlord. Tenant shall defend all claims arising out of the operation, construction, use, maintenance, repair, or presence of Tenant's Amphitheater facilities on the leased Premises.

10. **ASSIGNMENT AND SUBLETTING.** Tenant will not assign, transfer, mortgage or encumber this lease or sublet or rent or permit occupancy or use of the demised Premises, or any part thereof by any third party, without obtaining the prior written consent of Landlord; nor shall any assignment or transfer of this lease be effectuated by operation of law or otherwise without the prior written consent of Landlord. The consent by Landlord to any assignment or subletting shall not be

construed as a waiver or release of Tenant from the terms of any covenant or obligation under this lease, nor shall the collection or acceptance of rent from any such assignee, subtenant or occupant constitute a waiver or release of Tenant of any covenant or obligation contained in this lease, nor shall any such assignment or subletting be construed to relieve Tenant from obtaining the consent in writing of Landlord to any further assignment or subletting.

11. **TENANT INSURANCE.** Tenant must maintain an occurrence form comprehensive general liability coverage in a form acceptable to the Landlord. The Tenant must maintain the aforementioned comprehensive general liability coverage with limits of not less than \$1,000,000 each occurrence. Said amount of general liability coverage shall be adjusted annually so that it shall be less than the liability limits established for municipalities under Minnesota Statute 466.04 as amended. Tenant shall provide, prior to tenancy, evidence of the required insurance in the form of a certificate of insurance issued by a company (rated A+ or better), licensed to do business in the State of Minnesota, which shall include the coverages required in this paragraph. Tenant will name the Landlord as an additional insured on the general liability policy. The certificate shall also provide that coverage may not be canceled, non-renewed, or materially changed without 30 days prior written notice to the Landlord.

12. **DEFAULT.** If Tenant shall fail to pay any annual installment of rent, or other charges as herein provided although no legal or formal demand has been made therefor, or shall violate or fail to perform any of the other conditions, covenants or

agreements herein made by Tenant, Landlord may, ten (10) days after written notice thereof to Tenant by Landlord, at the option of Landlord, terminate this lease and said notice shall operate as a notice to Tenant to quit (any further notice to quit, or of Landlord's intention to re-enter being hereby expressly waived) and Landlord may proceed to recover possession under and by virtue of the provisions of the laws of the state in which the building is located, or by such other proceedings, including an unqualified right of re-entry and possession, as may be applicable. If Landlord elects to terminate this lease, all obligations herein contained on the part of Landlord to be done and performed shall cease, but without prejudice to the right of Landlord to recover from Tenant all past or future rentals and damages. Landlord shall have a right to commence one or more actions to enforce the terms of this section and the commencement and prosecution of one action shall not be deemed a waiver of an estoppel from commencing one or more actions from time to time in the future. All rights and remedies of Landlord under this lease shall be cumulative and shall not be exclusive of any other rights and remedies provided to Landlord under applicable law.

13. **WAIVER.** If, under the provisions hereof, Landlord shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of Landlord's rights hereunder. No waiver by Landlord of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance

of a surrender of the lease.

14. **SIGNS.** Tenant shall not erect any exterior signs on the Premises without obtaining the written approval of the Landlord prior to the placement of such signs. This restriction shall not apply to any changes which are made on a marquee sign advertising the artistic or other promotional events which are to be conducted on the site.

15. **CONDEMNATION.** If the leased Premises be condemned or taken by eminent domain so as to materially affect the operation of Tenant's business, then in that event, this lease may become void at the option of either party upon either party giving the other party written notice within twenty (20) days after the occurrence of the event, in which case, this lease shall be void as of the day of such damage or destruction. Notwithstanding the voiding of the lease, each party shall share in any condemnation award as their interest might appear at the time of condemnation.

16. **HOLDING OVER.** In the event Tenant continues to occupy the Premises after the last day of the term herein created, and Landlord elects to accept rent thereafter, a tenancy by month to month only shall be created and not for any longer period.

17. **LANDLORD'S COVENANT OF TITLE AND QUIET ENJOYMENT.** Landlord covenants and warrants that Landlord has full right and lawful authority to enter into the lease for the full term hereof and that Landlord is lawfully seized of the entire Premises hereby demised and has good title thereto, free and clear of all tenancies and encumbrances, and that at all times when Tenant is not in default

under the terms and conditions of this lease, Tenant's quiet and peaceable enjoyment of the demised Premises shall not be disturbed or interfered with by anyone.

18. **NOTICE** If at any time after the commencement of this lease, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing, signed by the party serving same, deposited in the Registered or Certified United States mail, Return Receipt Requested, postage prepaid, and shall be addressed to the Landlord at its residence or the place designated for the payment of rent and to Tenant at the address of the demised Premises.

19. **TERMINATION.** Notwithstanding any other provision contained in this lease to the contrary, if Tenant fails, within thirty-six (36) months from the date of this lease, to substantially complete construction of amphitheater improvements on the demised Premises, the Landlord, at its sole option, may advise Tenant of Tenant's obligation to complete such improvements within an additional twelve (12) month period. If Tenant fails to complete construction of the amphitheater improvements within said twelve (12) month period after receipt of such notice, the Landlord, at its sole option, may terminate this lease.

20. **HEADINGS.** Headings or title of the paragraphs and subparagraphs are inserted solely for the convenience of reference and shall not constitute a part of this lease, nor shall they affect its meaning, construction or effect. Words of any gender used in this lease shall be held to include any other gender and words in the singular

number shall be held to include the plural when the sense requires.

21. **BINDING ON SUCCESSORS AND ASSIGNS.** It is further expressly agreed and understood that all covenants and agreements herein made shall extend to and be binding upon the heirs, devisees, executors, administrators, successors in interest, and assigns of the Landlord, and of the Tenant, as permitted above.

22. **NO PARTNERSHIP.** Nothing contained in this lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant, or to create any other relationship between the parties hereto other than that of Landlord and Tenant.

23. **APPLICABLE LAW.** There are no understandings or agreements not incorporated in this lease. This is a Minnesota contract and shall be construed according to the laws of Minnesota. The captions in this lease are for convenience only and are not a part of this lease.

24. **PERMIT.** Tenant shall obtain all permits and approvals required under the Anoka City Ordinances prior to commencement of any construction.

25. **CONFLICT OF INTEREST.** Tenant agrees that no member of the Anoka City Council will serve as a corporate officer or on the board of directors of Tenant, serve as a paid employee of Tenant or enter into any contract with Tenant which provides for compensation while said individual is a member of the City Council. Furthermore, Tenant shall not engage in any political fundraising, expenditures, or activities involving City elections.

26. **AUDITS/FINANCIAL DISCLOSURES.** Tenant shall provide to Landlord

annually, and at such other additional times as reasonably requested by Landlord, copies of all audits performed on Tenant's organization, budgets, profit-loss statements or other similar documents detailing Tenant's revenues and expenditures. The City shall have the right to inspect the Premises at all reasonable times.

27. **SALE OF PREMISES.** The Landlord shall not sell the Premises unless the Landlord determines by official action that the Premises are no longer usable or needed by the Landlord or Tenant to carry out the government program for which it was acquired, the sale is made as authorized by law, the sale is made for fair market value, and the sale is approved by the commission of the Minnesota Department of Finance. If any state bonds used to improve the Premises remain outstanding on the date of the sale of the Premises, the net proceeds of the sale shall be applied as follows: the net proceeds of the sale must be used: first, to pay the State of Minnesota the amount of stated bond proceeds used to better the Premises; second, to pay in full on the outstanding public or private debt incurred to better the Premises; and third, any excess over the amount needed for those purposes must be provided in proportion to the shares contributed to the acquisition or betterment of the Premises and disbursed accordingly. All state funds or other revenues received by Tenant related to the Premises shall be strictly and solely used by Tenant to construct the improvements and alterations described in paragraph 7 herein and no such funds shall be used to compensate members of Tenant's organization through wages or otherwise.

ANOKA

REAL. CLASSIC.

2015 First Avenue, Anoka, MN 55303
 Phone: (763) 576-2700 Website: www.ci.anoka.mn.us

CITY OF ANOKA, MINNESOTA ORDINANCE

ORD-2010-1424

AN ORDINANCE TERMINATING THE LEASE AGREEMENT BETWEEN WINDEGO PARK SOCIETY AND THE CITY OF ANOKA RELATING TO OLD AMPHITHEATRE PROPERTY ON FERRY STREET, ANOKA, MINNESOTA

THE COUNCIL OF THE CITY OF ANOKA ORDAINS:

SECTION 1: The City of Anoka ("City") and Windego Park Society ("Company") entered into a lease agreement by Ordinance No. 2005-1247, dated September 6, 2005 for the old amphitheatre property located on Ferry Street in Anoka, Minnesota.; and

SECTION 2: Pursuant to the Lease Agreements' terms of Events of Default, the City has the right to terminate said lease in the event of a default; and

SECTION 3: Company is currently in default in that it has failed to:

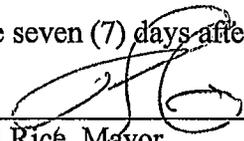
- Meet substantial completion of the project with the time set within said lease; and
- Provide proof of current insurance coverage through the duration of the lease, and
- Pay rent due to City within ten (10) days of the date said rent was due; and

SECTION 4: The City of Anoka has determined that it is in the best interest of the City to terminate said lease effective at midnight on February 25, 2010.

SECTION 6: It is hereby declared that the Mayor and Clerk are hereby authorized and directed to sign and execute any documents necessary to implement the termination of said lease.

SECTION 7: This ordinance shall be in full force and effective seven (7) days after publication.

Introduced: February 1, 2010
 Adopted: February 16, 2010
 Published: February 19, 2010
 Effective: February 26, 2010


 Phil Rice, Mayor


 Amy Oehlers, City Clerk

	Aye	Nay	Abstain	Absent
Rice	X	_____	_____	_____
Anderson	X	_____	_____	_____
Freeburg	X	_____	_____	_____
Schmidt	_____	_____	_____	X
Weaver	X	_____	_____	_____