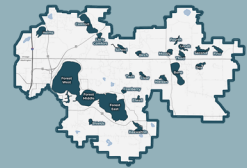




MEMORANDUM

Comfort Lake-Forest Lake Watershed District

Date: January 11, 2023
To: CLFLWD Board of Managers
From: Mike Kinney, District Administrator
Subject: District Office Lease



District Wide

Background/Discussion

The purpose of this agenda item is for the board to approve the District President to sign a real estate document confirming that the board agrees to waive the right of first refusal. This clause was built into the District's office space lease for the property at 44 Lake Street South.

Recommended Motion

Manager _____ moves to approve the Board President to sign the Amendment to Lease Agreement offered by 494 Properties dated January 9, 2023, and thus confirming that the board agrees to waive the right of first refusal. Seconded by Manager _____.

Attached

2014 Dec 01 _ 494 Properties lease with CLFLWD
2023 January _ Amendment to Lease Agreement

COMMERCIAL LEASE AGREEMENT

THIS IS A LEASE: This Lease is effective December 1, 2014. It is a legal agreement between 494 Properties, LLC, 5151-157th Street North, Hugo, MN 55038 ("Lessor"), and the Comfort Lake- Forest Lake Watershed District, a political subdivision of the State of Minnesota ("Lessee"). This lease is a legal contract that can be enforced in court against Lessor and Lessee if either fails to comply with this Lease.

DESCRIPTION OF THE PREMISES: The Premises consists of 845 square feet of the second floor of the building and 1819 square feet of first floor area including the entrance and stairway, as shown on attached Appendix A, of the building located at 44 South Lake Street, MN 55025, all of which is for the exclusive use of Lessee. Lessor shall maintain the Premises in a habitable and tenantable condition suitable for occupancy for the term of this Lease. For the purpose of prorating Common Area Maintenance (CAM) expenses, the Premises consists of 2664 square feet of the total square footage of 5197 square feet, which equals 51% of the total building rentable square footage.

RIDD

EXCEPT FOR THE ENTRANCE AND STAIRWAY WHICH ARE USED BY OTHER LESSEES.

TERMS OF THE LEASE: This Lease is for a term of five (5) years, beginning on December 1, 2014, at 12:00 a.m. and ending on November 30, 2019, at 12:00 p.m. Lessee may renew the Lease for an additional five-year term, by providing notice at least 90 days before the Lease ends, but only at rent and terms agreed to with Lessor. As used herein, the term "lease year" means December 1 through November 30.

RENT AMOUNT: The monthly base rent, paid in advance, for and during each of the years of the Lease is as follows (all lease years begin on December 1st in each of the indicated years): 2014- \$1100.00; 2015- \$1133.00; 2016-\$1167.00; 2017-\$1202.00; 2018-\$1238.00.

PAYMENT TERMS: The rent payment for each month, consisting of base rent plus CAM charge, is due on the 1st day of the month. If it is received after the 5th day of the month, a late charge of 5% of the amount due will be charged.

RESPONSIBILITY OF RENT; RESTRICTIONS: The Lessee must pay the full amount of rent owed to the Lessor. No smoking is allowed in this building. No pets are allowed in this building.

SECURITY DEPOSIT: Upon the signing of this Lease, Lessee has given ZERO \$ to Lessor as a security deposit. Lessee is responsible for any repair or cleaning necessary at the end of this Lease to put the Premises in original order, less normal wear and tear, for any future tenants. Any damage to the Premises during the term, including but not limited to glass breakage, carpet stains, holes in carpeting, or damage to walls or doors, will be Lessee's responsibility and expense. This does not include: (a) normal wear and tear; or (b) any condition of the Premises, or any element or system thereof, that must be repaired, refurbished or replaced not due to any act of Lessee or its invitees.

USE OF THE PREMISES: The Premises shall be used as office space for Lessee's operation as a local public water resource management agency. Any illegal activity or violation of City Codes is prohibited.

ENTRY/SECURITY: Lessee, at its cost, may replace and maintain entry devices, locks and security measures on exterior doors and windows that exclusively serve the Premises and on interior doors and windows that provide for entry into the Premises or are located within the Premises. Lessee will provide Lessor a key to any such keyed locks or security measures. Lessee may manage entry into the Premises outside of normal business hours as necessary or convenient for its duties as a public agency. If access through an area of the building not within the Premises is necessary for this purpose, on prior notice Lessor will cooperate with Lessee to address the access need.

RIGHT OF ENTRY: Lessor or Lessor's agent may enter the Premises at reasonable hours and, except when arranged otherwise with Lessee, when a representative of Lessee is present to repair or inspect the Premises and perform any work that Lessor decides is necessary or show the Premises for lease or sale purposes. Lessor will give reasonable advance notice and, if possible, 24-hour notice will be given. If the property is sold during the lease term, Lessor will include in the terms of sale that the new owner must accept this lease, that this obligation is for the benefit of Lessee and that it survives closing.

ASSIGNMENT AND SUBLETTING: Lessee may assign or sublease the Premises as long as Lessor gives Lessee prior written consent and approves of the new tenant. Such consent shall not be unreasonably withheld, but may be conditioned on the creditworthiness of the newly proposed tenant and the nature of the business of the proposed tenant.

UTILITIES: Lessee shall pay its own utility charges for electric, gas, water and sewer conditioned on Lessor providing for separate metering of each. Lessee is responsible to provide cleaning, trash and garbage service for its Premises at its own cost.

SIGNAGE: Lessee may install and maintain reasonable exterior and entrance signage at its cost, either affixed to the building or freestanding, but will comply with any local ordinances pertaining to this signage. Lessor may cut or trim vegetation on the property as is reasonable for signage visibility purposes. Specifically but not exclusively, Lessor agrees that Lessee may cut and trim vegetation on the building's north wall if Lessee elects to place signage there.

MAINTENANCE AND REPAIRS: Lessee promises at Lessee's expense to keep the Premises clean, neat, and in good order including its entrances to the building. Lessee will not abuse plumbing facilities and will keep restrooms within the Premises clean. Lessee promises at Lessee's expense to make all necessary repairs and eliminate any violations of health and safety laws that result from the negligent or willful conduct of Lessee or Lessee's employees, guests or clients. Lessee shall comply with all sanitary laws affecting the cleanliness, occupancy, and preservation of the Premises.

The following are the responsibilities of Lessor and Lessee as to the heating system within the Premises:

- a. Lessee will obtain an annual inspection and perform any maintenance pursuant to the inspection;
- b. Lessee will obtain any repair needed due to a function failure;

ZERO RPD

- c. Lessee's costs related to the above two items will be capped at ~~\$300~~ per lease year;
- d. Lessee will document costs to Lessor and deduct any amount above the cap from the next month's CAM charge and that of each following month until fully credited;
- e. If at any time it is determined that there is a need to replace the boiler, Lessee will notify Lessor and Lessor will be responsible for the replacement.

Lessor will be responsible for maintenance and upkeep not explicitly made Lessee's responsibility in this Lease, including but not limited to the following:

- a. Cleaning and janitorial services for areas within the building not the responsibility of Lessee or another tenant;
- b. Maintenance, repair and replacement of building elements, systems and fixtures except as obligated to Lessee in the preceding paragraph;
- c. Building security except those authorities given to Lessee under "Entry/Security" above;
- d. Exterior window cleaning, painting and building maintenance;
- e. Landscaping, leaf removal and exterior lighting;
- g. Sidewalk, walkway and parking lot maintenance;
- h. Snow clearing and managing snow and ice conditions exterior to the building.

CAM charges include real estate taxes (at present estimated real estate taxes are \$17,000.00 per year), property insurance premiums (currently insurance charges are \$3,300.00 per year), snowplowing and parking lot upkeep* (currently \$6,000.00 per year) for a total of \$26,300.00 for calendar year 2014-2015 for the entire building of which the Premises are a portion. Therefore, CAM charges starting December 1, 2014 will be \$1,117.75 per month which shall be paid by Lessee to Lessor together with monthly base rent as specified in the "Rent Amount" paragraph in this Lease. See Appendix C. Starting February 1, 2015, the rent will be the amount already stated in the sum of \$1100.00 plus the monthly CAM charge of \$1,117.75 for a total monthly rent due of \$2217.75. Lessor will notify Lessee of the final figures for taxes, insurance and other additional charges and monthly rent will thereafter be adjusted accordingly.

These figures will be estimated and adjusted on a yearly basis, with estimates provided by Lessor to Lessee in writing on or before January 1st of each year for the preceding lease year, and final adjustments made in writing by June 1st of each year. Lessor's estimates will be accompanied by an accounting of Lessor's costs recoverable through CAM charges and a calculation of Lessee's share of CAM charges. On request, Lessee may inspect documentation of costs. Within 30 days of Lessee's receipt of the final adjusted CAM charge, Lessee shall pay any amount owing or Lessor, ~~shall refund~~ any overage paid.** Any amount due to Lessor as a result of adjustment under this paragraph is not subject to late fee or interest pursuant to any other term of this Lease.

RPD

ALTERATIONS: Lessee must first obtain Lessor's written consent to make structural alterations of any kind to the Premises. Nonstructural alterations can also be made, again only with lessor's consent. Alterations identified on Appendix B will be made by Lessor prior to Lessee occupancy date.

RPD

* AND THOSE ITEMS LISTED ABOVE UNDER LESSOR'S RESPONSIBILITIES AT PARAGRAPHS A, G, E, G, AND H. ** SHALL BE CREDITED TO FUTURE CAM CHARGES.

RPD

LIABILITIES: Lessor is not responsible for damage or injury that is caused by Lessee or Lessee's employees or guests. Lessor is not responsible for loss of any of Lessee's property from the Premises by theft or any other cause. Lessee must carry necessary insurance on all personal belongings, coverage for any damage Lessee may cause to the Premises due to negligence, liability insurance for injury to itself, its employees, its clients or guests when on the Premises. Lessee must provide an insurance certificate to Lessor stating the above-mentioned coverage, with 494 Properties, LLC listed as additional insured under Lessee's liability policy.

TERMINATION: Lessee shall move out of the Premises when the Lease term ends.

SURRENDER OF PREMISES: If Lessee chooses to move out of the Premises at the end of the Lease Term, any possessions of Lessee that are not removed at the end of the lease Term become the property of Lessor. Any cost incurred to dispose of such property will be charged to Lessee.

ABANDONMENT: If Lessee moves out of the Premises before the end of this Lease, Lessor may bring legal action to recover possession of the Premises. If Lessor terminates this Lease due to any violation of the Lease, Lessee is still responsible for all lease payments due until Lessee is off the Premises and the space is re-rented to another tenant or the Lease Term ends. In this circumstance, Lessor will exercise good faith and diligence to secure another tenant. Lessee is also responsible for any court fees or reasonable attorney fees incurred by Lessor due to Lessee's action or abandonment.

DAMAGE TO THE PREMISES: If the Premises is destroyed or damaged not due to the fault of Lessee or Lessee's guests, and the building is unfit for conducting business, Lessee is not required to pay for this space for the time it cannot be used. If the building is damaged or destroyed, Lessor may terminate this Lease immediately and may decide not to rebuild or repair the building. If damage was not caused by Lessee or Lessee's guest and Lessor cancels the Lease, the rent will be prorated up to the time of damage. If the building is not repaired within a reasonable time, Lessee also will have the option to terminate the Lease. If Lessee and Lessor agree in writing to cancel the Lease, the rent will be prorated up to the time of damage.

DEFAULT: If Lessee does not pay the rent or other amounts when due or does not pay late payments when charged, or if Lessee violates any term of this Lease, Lessor may terminate this Lease subject to written notice to Lessee specifying the violation and a 30-day opportunity for Lessee to cure. If Lessee does not move out, Lessor may bring an eviction action.

QUIET ENJOYMENT: Lessor covenants that it has the right to make this Lease for the term aforesaid and covenants that if Lessee shall pay the rent and perform all covenants, terms and conditions of this Lease to be performed by Lessee, Lessee shall, during the term hereby created, freely, peaceably and quietly occupy and enjoy the full possession of the Premises.

AND IT IS MUTUALLY AGREED, that all covenants, terms, and conditions of the Lease shall extend, apply and firmly bind the heirs, executors, administrators, successors, and assigns of the respective parties

hereto as fully as the respective parties are themselves bound.

Dated this 26 day of Nov month 2014 year

1st REFUSAL

* ~~RIGHT OF FIRST OFFER~~: Lessor grants Lessee a right of first offer to purchase the property, building, fixtures and property rights appurtenant thereto. Lessor shall give Lessee notice of an intent to offer the property for sale and shall negotiate with Lessee in good faith for a period of at least 60 days before negotiating with a third party or listing the property for sale. If during that period Lessee submits a term sheet to Lessor with an offer to purchase the property, Lessor may not within two years thereafter agree to convey the property to a third party subject to materially similar or less favorable contingencies unless the selling price exceeds the sum offered by Lessee.

IN TESTIMONY WHEREOF: The said parties have signed, sealed and executed this instrument in duplicate the day, month and year first written above.

LESSOR:

494 Properties, LLC

By: *Thomas Swanson*
Thomas Swanson, Chief Manager

LESSEE:

Comfort Lake-Forest Lake Watershed District

By: *Richard Damchik*

Richard Damchik, President, CLFLWD Board of Managers

1st REFUSAL

If Lessor during the term of this lease or any extension hereof, enters into a purchase agreement for the sale of the land and building of which the leased premises are but a part, with a ready, willing and able purchaser, then Lessor shall give a copy of said signed purchase agreement to Lessee, and Lessee shall have the option, within sixty (60) days following receipt of said signed purchase agreement, to purchase the land and building on the same terms and conditions as set forth in said purchase agreement. Lessee's exercise of this first right of refusal shall be in writing, delivered to Lessor within said 60-day period.

APPENDIX A-- [INSERT BUILDING FLOOR PLAN DEFINING "PREMISES"]

APPENDIX B --

Addendum to Lease Agreement for Premises located at 44 South Lake Street, Forest Lake, MN 55025

Between Lessor-494 Properties, LLC and Lessee-Comfort Lake- Forest Lake Watershed District

The following will be completed prior to occupancy date of December 1, 2014:

1. All furniture and equipment not marked as remaining will be removed.
2. Premises will be clean, in good repair, fully functional and ready for occupancy and in conformance with all codes and legal requirements.
3. All mechanical HVAC components will be inspected and maintenance performed for workability. Lessor will provide inspector's report to Lessee.
4. Lessee will be allowed access to the space prior to occupancy to arrange for and install phone and computer wiring in preparation for occupancy.

APPENDIX C-

TERMS FOR LEASING 44 SOUTH LAKE ST

5 YEAR LEASE COMMENCING DECEMBER 1, 2014 THRU NOVEMBER 30, 2019.

DECEMBER 2014 AND JANUARY 2015 ARE FREE OF BASE RENT, ONLY CAM CHARGES ARE OWED.


CAM EXPENSES OF \$1117.75 WILL BE DUE STARTING DECEMBER 1 2014.

FROM FEBRUARY THRU NOVEMBER 2015 WILL BE \$2217.75 AS STATED IN LEASE.

TENANT PAYS OWN WATER, SEWER, GAS & ELECTRIC FROM XCEL ENERGY.

TENANT MAY UPGRADE LIGHT SWITCHES AND FIXTURES AT ITS COST.

COMMON AREA MAINTENANCE INCLUDES REAL ESTATE TAXES, INSURANCE, SNOW PLOWING, &

PARKING LOT UPKEEP; AND ITEMS AT BOTTOM OF PAGE 3  RPD

PARKING LOT IS SHARED BY ALL TENANTS.

November 26, 2014

44 Lake Street South Inventory and Walkthrough

Items to be addressed:

by lessor



1. Missing light switch plate – lower level conference room area
2. Broken outlet plates – upper level
3. Paint – upper level rooms
4. Switches for main lights
5. Damaged/missing flooring – upper level
6. Stained flooring –
7. Missing trim –
8. Missing sink – upper level – northwest corner room – replace or cover up?
- 9.
- 10.
- 11.
- 12.

Board of Managers

Richard P. Damchik—President Jackie A. Anderson—Vice President Wayne S. Moe—Secretary
Jon W. Spence—Treasurer Stephen W. Schmaltz - Manager

Amendment to Lease Agreement

Concerning property at 44 South Lake St, Forest Lake, Minnesota, 55025, representative of Comfort Lake-Forest Lake Watershed District (CLFLWD) waives the "right of first refusal" of purchasing the property per page 5 of Commercial Lease Agreement 12/1/14.

Lessor:
494 Properties, LLC

By:  Thomas Swanson Date: 01/09/23
Thomas Swanson, Chief Manager

Lessee:
Comfort Lake-Forest Lake Watershed District

By: _____ Date: _____
CLFLWD Representative