



Minnesota
STATE COLLEGES
& UNIVERSITIES

LEASE AGREEMENT

THIS LEASE AGREEMENT is made by and between WINONA AREA PUBLIC SCHOOLS, DISTRICT NO. 861, referred to as LESSOR, and State of Minnesota by and through the Board of Trustees of Minnesota State Colleges and Universities, on behalf of WINONA STATE UNIVERSITY, hereinafter referred to as LESSEE.

RECITALS

WHEREAS, Winona Area Public School District - #861 owns Paul Giel Field, located at 1268 West 5th Street, Winona MN 55987, which includes a stadium and track and field, and

WHEREAS, the track and field which has most recently been used by the District is located at the Winona Senior High School campus and is in need of substantial refurbishing or replacement to bring it to even minimally acceptable use and safety standards, and

WHEREAS, WSU needs an upgraded Paul Giel Field to accommodate its collegiate track and field,

WHEREAS, the District, Winona State University (WSU), and the Morrie Miller Athletic Foundation (Foundation) are combining their efforts and financial resources to significantly upgrade, renovate, refurbish, improve, and enhance the Paul Giel facility, including a new track and field (the "Project"), and

WHEREAS, the Foundation is working with and representing the interests of the Foundation principals, the community, various private donors, and Winona Cotter Catholic School, and

WHEREAS, the cost of the project is estimated to be \$2,700,000, and the District will contribute \$500,000 toward the project and an additional \$150,000 toward an artificial turf surface for the football field, and

WHEREAS, WSU will contribute \$500,000 toward the project, structured as follows: leasing use rights to the track and field facility at Paul Giel Field and contributing \$499,990 toward the leasehold improvements consisting of constructing the high quality track and field facility at Paul Giel Field and the making of related improvements, and

WSU making annual lease payments of \$1.00 per year for ten years for the ongoing rights to use of the facility, and

WHEREAS, the Foundation has proposed contributing the balance (estimated at \$1,550,000) to the District toward the project, and

NOW THEREFORE, the District, WSU, and the Foundation (the parties) now wish to enter into an agreement to detail the terms of the contribution of funds by the parties, WSU's lease and of the ongoing rights to use the facilities and to pay for ongoing maintenance, repair and operation of the facilities.

WITNESSETH: LESSOR and LESSEE, in consideration of the rents, covenants and considerations hereinafter specified, do hereby agree each with the other as follows:

1. LEASED PREMISES

LESSOR grants and LESSEE accepts the lease of the following described Leased Premises located in the City of Winona, County of Winona, Minnesota, to-wit:

The Paul Giel Field, located at 1268 West 5th Street, Winona MN 55987, and legally described more particularly shown Exhibit A, attached and incorporated herein (hereinafter described as the "Property")

2. USE

- 2.1. Use. LESSEE shall be allowed to use and occupy the Leased Premises for athletic track and field events on dates and times established in advance of each athletic season during the term of the lease, and in compliance with this Agreement and with all laws, regulations, and ordinances applicable thereto.
- 2.2. Schedules. The parties shall meet no less than once annually on or shortly before the anniversary date of the Lease (or on such annual date as to allow the parties to schedule for the upcoming year), where the parties shall review the overall scheduling, expected operating costs, programming, and any special events that are anticipated to take place on the Property during the next calendar year.

3. TERM

- 3.1. The term of this Lease Agreement shall be effective as of the date the last party signs the agreement, and commence upon delivery of the Property to the Lessee, and shall continue for five (5) years. LESSEE may renew the lease for one additional five (5) year term upon the same terms and conditions as contained herein. LESSEE must give notice of intent to renew to LESSOR at least one hundred eighty (180) days prior to the expiration of the original term.

4. PAYMENT OF RENT AND OPERATING EXPENSES

- 4.1. Rent. Rent for the Leased Premises and in consideration for all covenants, representations and conditions of this Lease Agreement, shall be one dollar (\$1.00) per year payable on or before the anniversary of the commencement date.
- 4.2. Operating Expenses. LESSEE and LESSOR shall each be responsible for their own costs of holding a track and field event at the facility, which shall include the costs of event personnel and cleanup after the event. LESSOR agrees to submit invoices to LESSEE for payment. Such invoice shall be sent to Business Office, Winona State University, P.O. Box 5838, Winona, MN 55987. LESSEE shall have thirty (30) days after receipt of such invoice to make payment.
- 4.3. LESSOR and LESSEE shall meet annually at the anniversary of the lease term, and determine whether to acquire or dispose of certain track and field equipment for the common use of the LESSOR and LESSEE. The parties will determine what equipment, if any, is to be acquired and make provision for its storage, accessibility and costs of acquiring and maintaining, and shall memorialize such decisions in a separate Equipment Agreement that shall be revised and incorporated by reference into the lease. Generally, ownership of the equipment shall reside with the party that funded the purchase, and such party shall retain the equipment at the termination or expiration of the lease term.
- 4.4. LESSOR represents and warrants that it is solely entitled to all rents payable under the terms of this Lease Agreement. LESSOR further represents and warrants that it is registered with the Secretary of the State of Minnesota to do business in the State of Minnesota and will continue to provide the documentation required by the Secretary of State's office to remain in good standing.

5. TERMINATION

- 5.1. Pursuant to Minnesota Statutes, Section 16B.24, Subdivision 6, this Lease Agreement is subject to cancellation upon thirty (30) days written notice by LESSEE for any reason except lease of other non-state-owned land or premises for the same use.
 - 5.2. LESSEE covenants that at the termination of this Lease Agreement by lapse of time or otherwise, it shall remove its personal property and vacate and surrender possession of the Leased Premises to LESSOR in as good condition as when LESSEE took possession, ordinary wear and tear and damage by the elements excepted.
6. DUTIES OF LESSOR. LESSOR shall, at its expense and obligation (except as noted), shall provide the following:
- 6.1. Construction of Leasehold Improvements. District shall construct and deliver the Leased Premises, consistent with the plans, specifications and costs as contained

in Exhibit B, attached and incorporated herein. The District has determined that the total estimated cost of the redevelopment of Paul Giel Field, as described above, is \$2,700,000. The LESSEE's share is limited to the actual cost of redevelopment up to a maximum of \$499,990. In that regard, LESSEE shall encumber up to \$499,990 to pay its share to the District after completion of the improvements. The LESSEE will pay 30% of each progress payment during the construction within 30 days upon receipt of the invoice certified by the District for the portion of the work actually completed. The total of the progress payments to be paid by LESSEE shall in no event exceed \$499,990.

- 6.2. LESSOR shall supply LESSEE with an invoice for work upon substantial completion, and LESSEE shall pay its share within 20 days upon receipt of such invoice. The parties shall hold back an amount up to 10% of the total contract price as "retainage" until satisfactory completion of the Project by contractor. Upon satisfactory completion of the Project, LESSEE shall remit its share of the retainage.
- 6.3. Delivery of Leased Premises: LESSOR covenants that it will deliver the Leased Premises to LESSEE no later than December 31, 2009 to allow LESSEE to use the Premises as described.
- 6.4. Quiet Enjoyment: LESSEE acknowledges that the track facilities will be shared with the LESSOR, however, LESSOR covenants that LESSEE shall have the quiet enjoyment of the Leased Premises during the full term of the Lease Agreement and any extension or renewal thereof.
- 6.5. Trash Removal: LESSOR shall provide or arrange trash removal for the Leased Premises.
- 6.6. Snow Removal: LESSOR shall keep any public sidewalks, stairways, and parking lots associated with the Leased Premises free from snow, ice and debris.
- 6.7. Repairs: LESSOR shall make such necessary repairs so as to continue to maintain the safety of the Leased Premises for use as an athletic facility, provided, however, that LESSOR shall not be responsible for repairs upon implements or articles which are not the personal property of LESSOR. LESSOR shall consult with LESSEE regarding major capital repairs or updates that are directly related to the usage of the field by LESSEE, such as resurfacing the track or repair and replacing turf on the field, and LESSEE shall have the right to approve such work, and may contribute up to 1/3 of the cost of any approved repair, to the extent funding is available. If a school's use of the track and field or common equipment results in damage to the track, field or common equipment beyond normal wear and tear, that school will be responsible for repairing such damage, and if not immediately repaired, LESSOR will have the authority to make the repairs and assess the cost to the LESSEE. Damage resulting from the javelin or hammer throw will not be deemed normal wear and tear and will be immediately repaired by the school whose use has caused the damage.

- 6.8. Taxes and Assessments: LESSOR shall be responsible for payment of all real property taxes and special assessments for the Leased Premises.
- 6.9. Exterior Lighting: LESSOR shall provide adequate exterior lighting in the parking lots (if any) associated with the Leased Premises.
- 6.10. Accessibility: LESSOR agrees to provide and maintain the Leased Premises with accessibility and facilities meeting code requirements for handicapped persons, pursuant to all applicable laws, rules, ordinances and regulations as issued by any federal, state or local political subdivisions having jurisdiction and authority in connection with said property.

7. DUTIES OF LESSEE

- 7.1 Maintenance. The LESSEE shall maintain the facility during its practices, games and tournaments. LESSOR shall maintain the field at all other times during the lease term. Utilities and land care of the field shall remain the responsibility of LESSOR during the term of this Agreement, subject to the Operating Expense provisions of Section 4.2 above.
- 7.2 Events. In the event LESSEE charges for any events hosted by LESSEE, LESSOR shall be entitled to retain the fees collected including, without limitation, any concessions sold.
- 7.3 Management: LESSEE agrees that in it shall comply with all applicable laws, statutes, rules, ordinances, and regulations, including but not limited to building code, disabilities access, zoning, air quality, pollution control, recyclable materials and prevailing wage requirements, as issued by any federal, state or local political subdivisions having jurisdiction and authority in connection with said property.
- 7.4 Use. LESSEE shall not use the Leased Premises at any time for any purpose forbidden by law.
- 7.5 Assignment. LESSEE shall not assign, sublet or otherwise transfer its interest in this Lease Agreement without the prior written consent of LESSOR.
- 7.6 Alterations. LESSEE is authorized to make alterations, additions, modifications and improvement to the Leased Premises in order to make the Leased Premises suitable for use as a athletic facilities, provided that written notice is given in advance to the LESSOR and the LESSOR approves thereof in writing, and provided that such alterations, additions, modifications and improvement shall not adversely affect the Leased Premises and shall be located within the boundaries of the Leased Premises.
- 7.7 LESSEE shall have the right and privilege at its expense of installing, erecting, placing, replacing, removing and maintaining, anywhere upon the

Leased Premises, lighting fixtures, signs of such dimensions, materials and content as LESSEE may require or desire.

8. INSURANCE

- 8.1. Property Damage: LESSEE shall maintain insurance or self-insurance on any personal property of LESSEE installed or maintained at the Leased Premises and liability insurance or self-insurance covering Lessee's events at the Leased Premises. Lessor shall maintain casualty insurance on the Leased Premises. LESSEE agrees that it will not bring a legal action against LESSOR in the event of personal injury or property damage occurring on the Leased Premises, unless such personal injury or property damage results from the negligence of LESSOR, its employees, contractors or assigns.
- 8.2. Liability: LESSOR and LESSEE agree that each party shall be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. LESSEE'S liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.376, and other applicable law.

9. NOTICES

- 9.1. All notices, or communications between LESSOR and LESSEE shall be deemed sufficiently given or rendered if in writing and delivered to either party personally or sent by registered or certified mail addressed as follows:

Notices to LESSOR should be sent to:

Winona School District
Director of Fiscal Affairs
903 Gilmore Ave
Winona MN 55987

Notices to LESSEE should be sent to:

Winona State University
VP for Finance & Administrative Services
Winona State University
P.O. Box 5838
Winona, MN 55987-5838

With a Copy to:
Minnesota State Colleges and Universities
Attn: Laura King
Vice-Chancellor/Chief Financial Officer
500 Wells Fargo Place
30 E. 7th Street
St. Paul, MN 55101

10. NEW LESSOR

In the event the Leased Premises shall be sold, conveyed, transferred, assigned, leased or sublet, or if LESSOR shall sell, convey, transfer, or assign this Lease Agreement or rents due under this Agreement, or if for any reason there shall be a change in the manner in which the rental reserved hereunder shall be paid to LESSOR, proper written notice must be delivered to LESSEE as promptly as possible. LESSEE's "Transfer of Ownership of Lease" document shall be executed by the parties in order that the State of Minnesota, Department of Finance is provided with authorization to issue payments to a new party.

11. AUDIT

Pursuant to Minnesota Statutes, the books, records, documents and accounting procedures and practices of LESSOR relevant to this Lease Agreement shall be subject to examination by the State and/or Legislative Auditor during normal business hours after reasonable notice to LESSOR.

12. HUMAN RIGHTS

When applicable, LESSOR certifies that it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes, Section 363A, or that it has not had more than 40 full-time employees at any time during the previous 12 months and claims exemptions from Minnesota Statutes, Section 363A.

IN WITNESS WHEREOF, the parties have set their hands on the date(s) indicated below intending to be bound thereby.

LESSOR:

By:	<i>Brian Neil</i>
By:	Brian Neil
Title:	Board of Education - Chair
Date	11/20/08

LESSEE:

By (authorized signature and printed name)	
Title	
Date	

By (authorized signature and printed name)	<i>Scott Ellinghusen</i>
Title	CFO - Winona State University
Date	12/7/08

VERIFIED AS TO ENCUMBRANCE:

Employee certifies that funds have been encumbered as required by Minnesota Statute §16A.15.

By (authorized signature and printed name)	<i>Stacey Matthews</i>
Title	Budget Director
Date	12/7/08

Stacey Matthews
WSU Budgeting Director
12/12/08

EXHIBIT A

Attach Legal Description of Property

LEGAL DESCRIPTION

Independent School District 861

**Part of outlot 65, second plat of subd. Of sec. 21, T107, R7, and in lots 1 & 2, Dietz & Lee's
Addition to Winona. City of Winona, Minnesota.**

EXHIBIT B

Attach Plans and Specs

