

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4273

Authorizing a space use agreement with Today Not Tomorrow, Inc. to use a portion of the north building located at 2202 S. Park Street within the Village on Park.

Presented May 10, 2018
Referred May 10, 2018
Reported Back June 14, 2018
Adopted _____
Placed on File without prejudice
Moved By Daniel G. Guerra, Jr.
Seconded By Claude A. Gilmore
Yeas 5 Nays 0 Absent 1
Rules Suspended _____
Legistar File # 51527

WHEREAS, the CDA is the owner of certain real property located at 2300 South Park Street, Madison, Wisconsin (the "Property"), more particularly described in the attached Exhibit A; and

WHEREAS, the Property is improved with a commercial building known as The Village on Park (the "Building"); and

WHEREAS, the User would like to the suite 81 situated in the north end of the Building (the "North Building") for storage; and

WHEREAS, the parties agree to enter into this agreement to set forth the terms and conditions of the User's use of such space.

NOW THEREFORE BE IT RESOLVED that the Community Development Authority of the City of Madison (the "CDA") hereby authorizes a space use agreement (the "Agreement") with Today Not Tomorrow, Inc. (the "User") within The Village on Park on the following terms and conditions:

1. Premises. The CDA hereby grants the User the right to occupy and use suite 81 in the North Building (the "Premises"), as depicted in the attached Exhibit B, pursuant to the provisions herein.
2. Term. This Agreement shall be commence as of June 1, 2018 (the "Effective Date") and continue on a month-to-month basis thereafter. Either party may provide sixty (60) day written notice to the other terminating this Agreement; this Agreement shall terminate after said notice period, (the "Termination Date") unless terminated earlier in accordance with the provisions of Paragraph 12 herein.
3. Hold Over. The User shall surrender the Premises upon the Expiration Date or termination of this Agreement. Any holdover not consented to by the CDA in writing shall not result in a new period of use or interest and, in such case, the CDA may treat the User as a trespasser.
4. Use. The User will occupy and use the Premises for storage purposes only in connection with its business, and for no other purposes whatsoever without the CDA's prior written consent, which consent the CDA may withhold in its sole discretion. The User is responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any such activities.
5. User Fee. Beginning on the Commencement Date and for the entire remaining Term of this Agreement, User shall pay to the CDA, to the address provided in Paragraph 16 or at such place as CDA may from time to time in writing designate, a fee of eighty dollars (\$80) in equal monthly installments, payable in advance on the first day of each calendar month, without any setoff, counterclaim or deduction whatsoever.
6. Security Deposit. A security deposit for One Hundred Dollars (\$100) is due upon the execution of the Agreement. In the event the Security Deposit is reduced below this amount for any the below referenced deductions, then it shall be immediately replaced with an additional deposit of One Hundred Dollars (\$100) or the User will not be able to use the Premises and this Agreement will terminate.

7. Maintenance.

- a. The User shall, at its own expense, keep and maintain the Premises in a clean and attractive appearance at all times. Maintenance responsibilities include, but shall not be limited to, cleaning and removal of garbage and debris in the Premise area. In the event the CDA's property management group ("Founders 3") has to clean up after User, then Fifty Dollars (\$50) will be deducted from the Security Deposit each time.
- b. The User shall be responsible for the cost and expense of repairs/replacements required by reason of acts or omissions of the User, its employees, agents, invitees, vendors, licensees or contractors.

8. Special Conditions.

- a. The User accepts the Premises in "as-is" condition. No modifications to the Premises shall be made by the User.
- b. The User shall be responsible for any extraordinary costs resulting from its use of the Premises (e.g., security services, etc.).
- c. After leaving the Premises, all lights must be shut off and the doors locked. In the event the security team or Founders 3 find the lights on in the Premises or door unlocked after User's use of the space, then Fifty Dollars (\$50) will be deducted from the Security Deposit each time this provision is breached.
- d. The User shall be responsible for keeping the Premises secure. Founders 3 will provide the User with two (2) access cards to the North Building. If an access card is lost, it will cost Fifty Dollars (\$50) to replace, which will be deducted from the Security Deposit. The User shall return two access cards on or before the Termination Date. In the event both access cards are not return, then the entire Security Deposit balance shall be forfeited.
- e. All property belonging to the User, its employees, agents and invitees shall be there at the risk of the User, and the CDA shall not be liable for damage thereto nor theft or misappropriation thereof.
- f. The User shall not disturb the tenants in the North Building or access any of the other rooms in the North Building.

9. Insurance. The User shall procure and maintain during the term of this Agreement Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the City of Madison's Risk Manager) in an amount not less than \$1,000,000 per occurrence as may be adjusted, from time to time, by the City of Madison's Risk Manager (the "Risk Manager"). This policy shall also provide contractual liability in the same amount. The User's coverage shall be primary and list the CDA, the City of Madison, Wisconsin and their respective officers, officials, agents and employees as additional insureds. The foregoing insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII. As evidence of this coverage, the User shall furnish to the CDA a certificate of insurance (the "Certificate") on a form provided by the CDA showing the type, amount, class of operations covered, effective dates, and expiration dates of the required policy. The User shall provide the Certificate to the CDA upon execution of this Agreement, or sooner, for approval by the Risk Manager. The User shall provide copies of additional insured endorsements or insurance policies, if requested by the Risk Manager. The User and/or its insurer(s) shall give the CDA thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the foregoing policies during the term of this Agreement. If the coverage required above expires while this Agreement is in effect, the User shall provide a renewal certificate to the CDA for approval.

10. Indemnification. The User shall be liable to and agrees to indemnify, defend and hold harmless the CDA, the City of Madison, Wisconsin and their respective officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the CDA, the City of Madison, Wisconsin, or their respective officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the User or its officers, officials, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligence of the

CDA, the City of Madison, Wisconsin, or their respective officers, officials, agents or employees. The terms of this paragraph shall survive termination of this Agreement.

- 11. Hazardous Substances; Indemnification. The User represents and warrants that its use of the Premises will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The User further agrees to hold the CDA and the City of Madison, Wisconsin harmless from and indemnify the CDA and the City of Madison, Wisconsin against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the CDA, the City of Madison, Wisconsin or their employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease, or damage to or loss of use of real or personal property.
- 12. Default. In the event of the User's default hereunder, after the CDA gives the User written notice thereof, the CDA, in addition to all other rights and remedies accorded by law or in this Agreement, shall have the right to immediately terminate this Agreement and remove the User from the Premises.
- 13. Right of Entry. The CDA, the City of Madison, and their representatives shall have the right to enter upon the Premises at any time.
- 14. Assignment. The User shall not assign this Agreement or allow any other persons or entities to use the Premises, or any portion thereof, without the prior written consent of the CDA, which consent the CDA may withhold in its sole discretion.
- 15. Removal and Disposal of Personal Property. Upon the expiration or termination of this Agreement, the User shall remove all personal property from the Premises. If the User leaves any personal property on the Premises, the CDA shall have the right to dispose of said property, without liability, seven (7) days after the User vacates the Premises and bill User for the cost to dispose of the User's property.
- 16. Notices. All notices to be given under the terms of this Agreement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For Landlord: The Village on Park
 c/o Siegel-Gallagher Management Company
 252 E. Highland Ave.
 Milwaukee, WI 53202

For Tenant: Today Not Tomorrow, Inc.
 Attn: Executive Director, Elizabeth Banks
 P.O. Box 7728
 Madison, WI 53707

With a courtesy copy to: City of Madison

Office of Real Estate Services
 Attn.: Real Estate Manager
 P.O. Box 2983
 Madison, WI 53701-2983

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

BE IT FURTHER RESOLVED that the Secretary is hereby authorized to execute and deliver the Agreement, and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution in a form authorized by the City Attorney.

EXHIBIT A

Legal Description of the Property

Lot 2, Certified Survey Map No. 13468, City of Madison, Dane County, Wisconsin.

Tax Parcel No.: 251-0709-352-0406-9

EXHIBIT B

Location of Premises

