

GUTHRIE EMPLOYEE PARKING AGREEMENT

This Agreement is entered into effective as of the 1st day of March, 2006 by and between the City of Minneapolis, a Minnesota municipal corporation (the “**City**”); acting on its own behalf and as the assignee of the Minneapolis Community Development Agency, a Minnesota public body corporate and politic (the “**MCDA**”); and the Guthrie Theater Foundation, a Minnesota nonprofit corporation (the “**Guthrie**”).

RECITALS

- A. The MCDA, the City and the Guthrie are parties to that certain Amended and Restated Redevelopment Contract dated July 25, 2003, (the “**Redevelopment Agreement**”), which contains certain MCDA and City commitments to provide parking for Guthrie employees.
- B. The Guthrie has acquired property from the MCDA and is constructing thereon a 3-theater complex pursuant to the Redevelopment Agreement.
- C. The City has acquired the property described on the attached Exhibit A as the “**Off-Site Parking Parcel**” from the Hennepin County Regional Railroad Authority (“**HCRRA**”) and has constructed thereon a public parking ramp (the “**Riverfront Ramp**,” formerly the “**Guthrie District Parking Facility**”) pursuant to the terms and conditions of a Design-Build Construction Contract dated July 25, 2003, between the City and the Guthrie.
- D. The City has also acquired the property described on the attached Exhibit A as the “**Liner Development Parcel**” from HCCRA, but such property is being sold pursuant to a redevelopment contract and thus is not available for surface parking.
- E. The City owns a surface parking lot located on the southeast corner of the property described on the attached Exhibit A as the “East Parcel” (the “**CPED Lot**”).
- F. Prior to the execution of this Agreement, the City has approved a 10-year land lease of the CPED Lot (the “Park Lease”) to Park Development Foundation. If it enters into the Park Lease the CPED Lot shall no longer be available for Guthrie parkers so long as the Park Lease remains in effect.
- G. The Riverfront Ramp and the CPED Lot are depicted on the attached Exhibit B.
- H. The City Planning Commission has approved the Guthrie’s application for 15 surface parking spaces to be built on Parcel A-1 as defined in the Redevelopment Agreement.
- I. Pursuant to authority in Laws of Minnesota 2003, chapter 127, article 12, sections 31-34, and Minneapolis Code of Ordinances, Title 16, Chapter 415, both as amended from time to time, the City Council of the City adopted Resolution No. 2003R-625 transferring all programs, projects and districts of the MCDA to the City effective January 1, 2004.

AGREEMENT

In consideration of the benefit that a theater complex would have on the operation and utilization of the Riverfront Ramp, and the mutual covenants of the parties contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals a Part of this Agreement. The Recitals set forth above are hereby incorporated into and made a part of the provisions of this Agreement.

2. Redevelopment Agreement. Pursuant to Section 14.02 of the Redevelopment Agreement, the parties agreed to enter into a lease by which the City and MCDA would provide parking for Guthrie parking users. Among other terms and conditions, the parties contemplated that the parking spaces would be provided in one or more of the following locations, in the priority order shown:

- (a) Spaces in the Riverfront Ramp, to the extent spaces: (i) are available without eliminating market-rate monthly parkers, and (ii) will not jeopardize the tax exempt status of the parking bonds (and with the understanding that Guthrie employees will use the spaces on or near the roof).
- (b) To the extent that the full Maximum Number of Spaces (as defined in the Redevelopment Agreement) are not available in the Riverfront Ramp and until the Liner Development Parcel is sold for development, spaces will be provided in the surface lot on the Liner Development Parcel.
- (c) To the extent that the full Maximum Number of Spaces are not provided by priorities (a) and (b), spaces will be provided in the existing “grandfathered” CPED Lot.

The parties acknowledge that: (i) the City has entered into a redevelopment contract for sale of the Liner Development Parcel and this parcel is no longer available for use by Guthrie parkers; and (ii) the City has approved the Park Lease and if it enters into the Park Lease the CPED Lot shall no longer be available for use by Guthrie parkers so long as the Park Lease remains in effect.

3. Parking Rights. Notwithstanding the Redevelopment Agreement, the parties agree that the City shall make available to the Guthrie 135 non-reserved parking spaces (the “**Spaces**”) in one of the following locations:

- (a) All the Spaces will be provided in the CPED Lot until August 28, 2006 (the “Transfer Date”); and
- (b) Beginning on the Transfer Date, all the Spaces will be provided in the Riverfront Ramp for the remainder of the term of this Agreement.

Provided, however, in the event that the Park Lease is terminated or the City repossesses the CPED Lot for default of the Park Lease and any damage or destruction to the CPED Lot is repaired or the CPED Lot is restored to a condition at least equal to its condition as of the date of this Agreement, then the City may move the Spaces back to the CPED Lot upon reasonable notice to the Guthrie.

4. CPED Lot. The parties acknowledge and agree that, effective March 1, 2006, the Guthrie parking requirement has been satisfied by use of the CPED Lot. The City, through its parking operator, is responsible for operation, maintenance, and repair of the CPED Lot. The Guthrie shall have no responsibility to operate, maintain, or repair the CPED Lot. In the event the Guthrie desires and requests installation of any special equipment (specifically equipment not in use on the CPED Lot as of the date of this Agreement, such as card readers, gates and the like) or any special operational procedures beyond what is standard at the time of this Agreement, the costs of installation and maintenance of such special equipment and of such special operational procedures shall be borne by the Guthrie.

5. Guthrie Parkers. The Guthrie may allocate the Spaces to, or permit the use of the Spaces by, more Guthrie users (i.e., those who visit the Guthrie regularly for Guthrie business such as employees, volunteers, vendors, food service people who are not employees, contract employees such as cleaning staff, and board members) than the number of leased spaces, on the condition that no more than 135 Spaces will be occupied at any one time and no more than 29 Spaces will be allocated to non-501(c)3 users. If the Guthrie at any time exceeds 135 Spaces, the City will invoice the Guthrie for the amount of the overage at the market rate of the space in the Riverfront Ramp as of and for the day and time the overage occurs. The Guthrie must provide to the City and its operator(s) and regularly update a list of the individuals to whom parking cards have been issued. The Guthrie or its employees are responsible for distribution of the cards or hangtags among employees and the administration of the parking space usage.

6. Rental Payments. The rate for each Space will be \$40 per month for the first full year and then inflate on each anniversary of the Commencement Date, as defined below, in proportion to increases in the average monthly 24-hour reserved rate in the City parking system. The Guthrie must make monthly rental payments, in advance, to the City (or to its operator(s), at the City's request) for the Spaces in the Riverfront Ramp and CPED Lot. If reserved spaces in the City system are eliminated during the term, the annual rate increase will be based in proportion to the average standard monthly space increase across the City parking system.

7. Term. This Agreement will commence March 1, 2006, (the "**Commencement Date**") and remain in full force and effect for seven years from that date.

Provided, however, in the event that (i) the Park Lease is not executed, or (ii) the Park Lease is terminated, or (iii) the CPED Lot is repossessed by the City for default without termination of the Park Lease, then, pursuant to the Redevelopment Agreement, the following shall occur. In the event that before the end of the seven-year term of this Agreement the City wishes to sell the CPED Lot for development and the Riverfront Ramp is not available, resulting in the potential elimination of some or all of the parking the City is required to provide to the

Guthrie, the Director of CPED will recommend to the City Planning Commission that the Guthrie be granted the approvals needed for the Guthrie to accommodate the 135 Spaces for the remainder of the seven-year term on Parcel A-2 as defined in the Redevelopment Agreement. If the City Planning Commission does not approve such parking and if the Guthrie appeals the City Planning Commission's decision, the City Council, in exercising its governmental authority, will give strong consideration to the following facts, among others: (i) two of the three parking locations provided under the Redevelopment Agreement would no longer be available to the Guthrie, (ii) development of the CPED Lot will not be possible without the granting to the Guthrie a right to construct parking on its land, (iii) the development of the CPED Lot would allow the City to further meet its development goals for the area if this Agreement could be terminated, (iv) the safety of the Guthrie employees would be improved in moving the Guthrie parking to the area adjacent to the theater, (v) any additional accessory parking approved on Parcel A-2 would be limited in duration, (vi) the reduction of the surface parking on the CPED Lot and the net impact of the phased development of the Guthrie and surrounding Historic Mills District area will have been to drastically reduce the number of surface parking spaces in comparison to the situation that existed prior to the development of the Guthrie theater, including the extinguishing of certain existing non-conforming rights for surface parking, and (vii) any additional limited-duration accessory parking on Parcel A-2 will be required to comply with the then-existing site plan review standards. If such parking is approved by the City Planning Commission (or by the City Council on an appeal), the City may terminate this Agreement for the remaining term. If such parking is not approved, this Agreement will remain in full effect for the remaining term.

8. Use of Spaces. The Guthrie's right to utilize the Spaces shall be conditioned upon payment of the rental payments and subject to terms and conditions consistent with the standard parking operating procedures implemented from time to time by the City and its operator(s). The Guthrie parkers shall comply with all rules and regulations which the City and its operator(s) from time to time establish for use of the Riverfront Ramp and the CPED Lot. Subject to interruption due to casualty, condemnation or other matters beyond the City's control, the Spaces shall be available twenty-four (24) hours per day, seven (7) days a week; provided, however, to the extent from time to time and for particular special events that the Guthrie does not need to use every Space twenty-four (24) hours per day, seven (7) days a week, the Guthrie may permit the City and its operator to re-sell those Spaces for special event parkers. Within six (6) months following the Guthrie's commencement of using the Spaces in the Riverfront Ramp, the Guthrie and the City agree to meet to discuss the pattern of use during the initial six (6) month period. The Guthrie and City will use the results of this initial period to discuss a mechanism to determine and/or confirm the actual number of Spaces that will be available for use during special events, which could vary based upon daytime, evening, and/or weekend events.

9. Notices. All notices provided for or required hereunder shall be given by first class United States mail or overnight courier, postage prepaid, to the parties at the following address (or such other address as the party to whom notice is given may designate in writing):

If to Guthrie:

Guthrie Theater Foundation

If to City:

City of Minneapolis

And:

Minneapolis CPED Dept.

818 Second Street South
Minneapolis, MN 55415
Attn: Managing Director

Room 233 City Hall
Minneapolis, MN 55415
Attn: Director of Traffic
and Parking Services

Crown Roller Mill
105 Fifth Avenue So., Suite 200
Minneapolis, MN 55401-2534
Attn: Director

10. Binding Effect. This Agreement shall be binding on the parties hereto and their respective successors and assigns. The Guthrie may not assign any of its rights, interests or obligations hereunder, except to a person, firm, entity or corporation providing financing to or acquiring ownership or master lease rights with regard to the theater complex. The City may assign its rights and delegate its duties to one or more parking operators.

11. Termination Rights. The City may terminate this Agreement if (i) the Guthrie fails to pay or cause to be paid any amount due hereunder and such failure continues for five (5) days after notice to the Guthrie; or (ii) the Guthrie fails to comply with any other term or provision of this Agreement and such default continues for thirty (30) days after notice to the Guthrie. In order for the Guthrie to cure a payment default under this Agreement, it shall be required to pay the City interest on the delinquent amount until paid at the rate of twelve percent (12%) per annum.

12. Governing Law. This Agreement shall be governed by the laws of Minnesota.

13. No Waiver. The failure of a party to insist upon strict observance or performance of any of the terms or provisions of this Agreement shall not be deemed a waiver of any rights or remedies of that party or as a waiver of that or any subsequent breach.

14. Third Party Beneficiaries. The City and the Guthrie do not intend for the Guthrie parkers to be third parties or other beneficiaries of this Agreement.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, but such counterparts together shall constitute one and the same instruments.

16. Enforceability. The City shall not be required to comply with its obligations under this Agreement if such compliance would adversely affect the tax exempt status of any public bond financing for the Riverfront Ramp as reasonably determined by the City's bond counsel. In the event such a determination is made and provided the basis is something outside of the reasonable control of the Guthrie, in view of the fact that none of the locations identified in the Redevelopment Agreement is available to Guthrie parkers on the terms and conditions agreed to in the Redevelopment Agreement, the City agrees to work cooperatively with the Guthrie to secure replacement parking for Guthrie parkers consistent with the terms and conditions of the Redevelopment Agreement.

CITY OF MINNEAPOLIS

By _____
Its Finance Officer

Approved as to form:

Assistant City Attorney

Department Head Responsible
For Monitoring Contract:

Director, Economic Policy and Development,
CPED

Director of Public Works

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on this _____ day of August, 2006, by Patrick Born, the Finance Officer of the **City of Minneapolis**, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

OFF-SITE PARKING PARCEL:

Tract B, Registered Land Survey No. 1740, Hennepin County, Minnesota.

LINER DEVELOPMENT PARCEL:

Lot 2, Block 1, Mill Quarter Addition.

EAST PARCEL:

Lots 1 and 2 and also the Southwesterly 52 feet of Lots 9 and 10, Block 117, Town of Minneapolis (1000 Second);

Lot 1, Block 1, Eleventh Avenue Addition (1010 Second); and
Outlot A, Eleventh Avenue 2nd Addition (1028 Second).

EXHIBIT B
DEPICTION

