

## 501(c)(3) PARKING AGREEMENT

**THIS 501(c)(3) PARKING AGREEMENT** is made and entered into as of the 21<sup>st</sup> day of December 2010 between **City of Minneapolis**, a Minnesota municipal corporation ("City"), and **The American Academy of Neurology Institute** (formerly known as The American Academy of Neurology), a Minnesota nonprofit corporation ("AANI").

### RECITALS

- A. City owns and operates a 997-space, fully automated, public parking ramp located at 212 9<sup>th</sup> Avenue South, Minneapolis, Minnesota (the "Ramp").
- B. City financed the Ramp with its General Obligation Guthrie Parking Ramp Bonds, Series 2003 in the original aggregate principal amount of \$16,100,000 and its General Obligation Guthrie Parking Ramp Bonds, Series 2005 in the original aggregate principal amount of \$16,400,000 (collectively, the "Bonds").
- C. The Bonds are tax exempt "qualified 501(c)(3) bonds" under Section 145 of the Internal Revenue Code.
- D. City and AANI are parties to the Redevelopment Contract dated December 21, 2010 (the "Redevelopment Contract").
- E. Pursuant to the Redevelopment Contract, AANI will construct an office building on land adjacent to the Ramp (the "Project").
- F. AANI wishes to purchase parking rights in the Ramp for the officers and employees of AANI and American Academy of Neurology Foundation (the "Foundation"), both of which are Minnesota nonprofit corporations and organizations exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), as a result of the application of Section 501(c)(3) of the Code.
- G. On November 9, 2010, the City Council of City held a public hearing to approve AANI and the Foundation and any and all of their affiliates that are organizations exempt from federal income taxation under Section 501(a) of the Code, as a result of the application of Section 501(c)(3) of the Code, as additional users of the Ramp.
- H. The Ramp is subject to a Reciprocal Easements and Operating Agreement dated March 31, 2004 ("REOA") between City and the Guthrie Theater Foundation, a Minnesota nonprofit corporation ("Guthrie"), which imposes certain obligations on City, including the obligation to manage the Ramp "to be available to patrons and visitors of the Theater on a priority basis during anticipated times of need for events at the Theater."

- I. City and Guthrie also are parties to the Guthrie Employee Parking Agreement dated as of March 1, 2006 (the "Guthrie Agreement"), pursuant to which Guthrie's employees were granted the right to use 135 non-reserved/undesignated spaces in the Ramp, 29 of which may be allocated to non-501(c)(3) users, for a seven-year term.

**NOW, THEREFORE**, the parties agree as follows:

1. Recitals. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.
2. Parking Rights. The City will provide AANI with access cards for 75 non-reserved/undesignated spaces in the Ramp for use by the officers and employees of AANI and the Foundation at a monthly rate per space equal to the monthly 24-hour unreserved rate charged to the general public for spaces in the Ramp.

AANI will be responsible for distributing the access cards to its employees and administration of the parking space usage. AANI may, at its option, charge its employees a fee for the access cards and will be solely responsible for collecting such fees. City will invoice AANI on a monthly basis around the tenth day of each month for the cost of the parking spaces. Payment is due by the last business day of the month in which the invoice is sent for parking the following month.

3. Increase/Decrease Spaces. AANI may from time to time, upon not less than 60 days' written notice to City, increase or decrease, by increments of not less than 5, the number of parking spaces it will use in the Ramp. Each such notice shall specify the number of spaces and the date on which AANI elects to take or release them. For each additional space, City will provide an access card and increase AANI's monthly invoices accordingly. For each released space, AANI shall return the access card to City and AANI's monthly costs will be reduced accordingly.
4. Limitation on Rights. Notwithstanding any contrary provision in this Agreement, the rights granted AANI herein shall not impair and shall at all times be subject to: (i) all prior existing rights granted to Guthrie during the term of the REOA; (ii) all prior existing rights granted to Guthrie during the term of the Guthrie Agreement; and (iii) a reservation of all rights of City not otherwise expressly granted to AANI herein.
5. Bond Covenants.
  - (a) AANI must deliver to City an opinion of counsel, experienced in matters relating to nonprofit organizations and the federal taxation of such organizations, addressed to City and to Kennedy & Graven, Chartered, as bond counsel to City ("Bond Counsel"), to the effect that: (i) AANI and the Foundation are Minnesota nonprofit corporations; (ii) AANI and the Foundation are organizations described in Section 501(c)(3) of the Code and exempt from federal income taxation pursuant to Section 501(a) of the Code; (iii) AANI and the Foundation are not private foundations within the

meaning of Section 509(a) of the Code; and (iv) no substantial portion of the operation of the Ramp will constitute an unrelated trade or business of AANI or the Foundation within the meaning of Section 513(a) of the Code. AANI shall also deliver to City and Bond Counsel the organizational documents of AANI and the Foundation, certificates of good standing of AANI and the Foundation in the State of Minnesota issued within thirty (30) days of the date of this Agreement, the determination letters issued by the Internal Revenue Service with respect to the status of AANI and the Foundation as organizations described in Section 501(c)(3) of the Code (including any amendments or supplements to such determination letters), and such other instruments, contracts, and other documents as City and Bond Counsel may reasonably request in connection with the tax-exempt status of the Bonds.

- (b) AANI represents and covenants that AANI and the Foundation will maintain their status as organizations described in Section 501(c)(3) of the Code and will remain exempt from federal income taxation pursuant to Section 501(a) of the Code for the term of the Bonds unless City receives an opinion from nationally recognized bond counsel stating that the proposed change in status of AANI or the Foundation, or a merger of the two organizations, would not have an adverse effect on the tax-exempt status of the Bonds. AANI acknowledges that its representations and covenants will be relied upon by City, Bond Counsel, and the registered and beneficial owners of the Bonds in determining that the Bonds are "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code.
- (c) AANI will take all actions as may be required under Sections 103 and 141-150 of the Code, and the applicable Treasury Regulations promulgated thereunder, including any actions reasonably requested by City to establish or maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes.
- (d) AANI will refrain from taking any actions, including any actions that City reasonably requests that AANI refrain from taking, that would cause interest on the Bonds to become includable in gross income for federal income tax purposes.
- (e) City shall not be required to comply with its obligations under this Agreement if such compliance would adversely affect the tax exempt status of the Bonds as reasonably determined by City's Bond Counsel.

6. Term. This Agreement will commence when the Certificate of Completion has been issued for the Project and continue for twenty-five (25) years from that date.

7. Usage. AANI's right to utilize the parking spaces is conditioned upon payment in advance of the monthly parking fees and subject to the following terms and conditions:

- (a) Each access card is to park one vehicle at a time in the Ramp.
- (b) No bailment created. Parkers assume the risk of any fire, theft, or damage to the vehicle or contents of the vehicle.
- (c) Vehicles parked over forty-eight (48) hours must notify the parking operator at 612-343-7275 and/or [info@mplsparking.com](mailto:info@mplsparking.com). Vehicles may be moved in case of emergency, repair or maintenance work.
- (d) The monthly rate may be changed as of the first day of any month by giving seven (7) days' written notice posted on the Ramp.
- (e) Notices to customers will be posted on the Ramp.

The AANI parkers shall comply with all rules and regulations which the City and its operator(s) from time to time establish for use of the Ramp. Subject to interruption due to casualty, condemnation or other matters beyond the City's control, the parking spaces will be available twenty-four (24) hours per day, seven (7) days per week; provided, however, to the extent from time to time that the spaces are needed for a Guthrie event, the City and its operator may re-sell the spaces to such event parkers. The City or its operator will endeavor to give AANI advance notice of such events.

8. 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 AANI: American Academy of Neurology Institute  
201 Chicago Avenue South  
Minneapolis, MN 55415  
Attn: Executive Director/Chief Executive Officer

If to City: City of Minneapolis  
Department of Public Works  
Room 203 City Hall  
Minneapolis, MN 55415  
Attn.: Director of Traffic and Parking Services

w/copy to: Traffic and Parking Services  
33 North 9<sup>th</sup> Street  
Minneapolis, MN 55403  
Attn: Manager of Ramps and Lots

9. Binding Effect. This Agreement shall be binding on the parties hereto and their respective successors and assigns. AANI may not assign any of its rights, interests

or obligations hereunder except to another 501(c)(3) organization acquiring ownership of the Project.

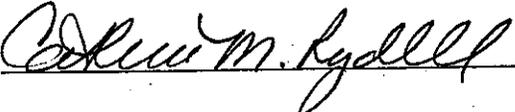
10. Termination Rights. City may terminate this Agreement if: (i) AANI fails to pay or cause to be paid any amount due hereunder and such failure continues for fifteen (15) days after notice to AANI; or (ii) AANI fails to comply with any other term or condition of this Agreement and such default continues for thirty (30) days after notice to AANI; or (iii) AANI or a permitted 501(c)(3) assignee of AANI no longer owns the Project. In order for AANI to cure a payment default under this Agreement, it shall be required to pay City interest on the delinquent amount until paid at the rate of twelve percent (12%) per annum.
11. Governing Law. This Agreement shall be governed by the law of Minnesota.
12. 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.
13. Third Party Beneficiaries. City and AANI do not intend for individual parkers to be third parties or other beneficiaries of this Agreement.
14. 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.

*(Remainder of Page Intentionally Left Blank)*  
*Signature pages follow.*

*(Signature page to Parking Agreement)*

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be made as of the day and year first above stated.

**THE AMERICAN ACADEMY OF  
NEUROLOGY INSTITUTE**

By 

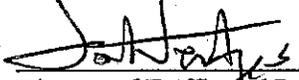
Its Executive Director/Chief Executive Officer

(Signature page to Parking Agreement)

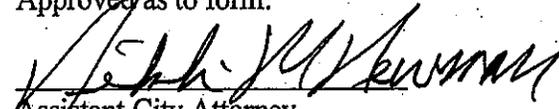
**CITY OF MINNEAPOLIS**

By   
Finance Officer  
~~City-wide Contract Administrator~~  
~~City Purchasing Agent~~

Responsible Department Head  
Approval:

  
Director of Traffic and Parking Services (PW)

Approved as to form:

  
Assistant City Attorney