

JOINT USE PARKING AGREEMENT

This Joint Use Parking Agreement ("Agreement") is entered into effective as of September 1, 2006 ("Effective Date") between the CITY OF AUSTIN, a Texas home rule city and municipal corporation ("Landlord"), and GREATER AUSTIN PERFORMING ARTS CENTER, INC., a Texas non-profit corporation using the assumed name "The Long Center" ("Tenant"): Landlord and Tenant being sometimes collectively referred to herein as the "Parties".

RECITALS

A. Landlord and Tenant entered into a Second Amended and Restated Lease Agreement, dated effective as of January 13, 2005, covering (i) the land under, and certain land surrounding, the existing Palmer Auditorium in Austin, Texas and (ii) the permanent improvements then and thereafter located on such land, which Second Amended and Restated Lease Agreement amended and restated the Amended and Restated Lease Agreement dated May 3, 2001, in its entirety.

B. The Second Amended and Restated Lease Agreement was amended by that First Amendment to Second Amended and Restated Lease Agreement, dated effective as of April 7, 2005, (as amended, the "Lease").

C. Paragraph 1.4 of the Lease requires that Landlord and Tenant enter into a Joint Use Parking Agreement, authorizing Tenant (as well as Tenant's employees, patrons, customers, vendors and other invitees) to use, on a non-exclusive basis and on the same terms and conditions as same are available to the general public from time to time, (a) the Lester E. Palmer parking garage located on property adjacent to the Premises (the "Parking Garage"), (b) the One Texas Center parking garage, and (c) the Town Lake Center parking garage, (collectively, the "Right to Use").

D. Landlord and Tenant presently desire to set forth the details of such use in this Joint Use Parking Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Off-Site Parking Rights.

(a) Authorized Use.

Subject to the terms and conditions set forth herein, Landlord authorizes Tenant (as well as Tenant's employees, patrons, customers, vendors and other invitees) to use, on a non-exclusive basis and on the same terms and conditions as same are available to the general public from time to time, (a) the Parking Garage, (b) the One Texas Center parking garage, and (c) the Town Lake Center parking garage (collectively, the "Parking Facilities").

(b) Term.

The Right to Use will remain in effect only so long as Landlord retains ownership of the Parking Facilities and the Parking Facilities are used for parking purposes.

(c) Revenue.

Any revenue generated from the Parking Facilities shall belong to Landlord, as the owner and operator of the Parking Facilities, and Tenant shall have no right, title and/or interest in and to any portion of such revenue.

(d) Parking Rights of Other Parties.

Tenant's right to use the Parking Facilities is also subject to any rights of other parties under the agreements listed on Schedule 1.4 attached to the Lease.

(e) Surface Parking.

It is understood and agreed by the Parties that this Agreement will effect Landlord's intention to minimize surface parking on its property adjacent to the Premises.

(f) Further Assignment of Daytime Parking Rights.

In addition, the Parties acknowledge and agree that Landlord will have the right to further assign daytime parking rights in the Parking Facilities in its sole discretion in order to maximize the use of the Parking Facilities.

(g) Adequate Access.

Further, Landlord and Tenant also acknowledge that adequate access to the Premises is critical to achieving Tenant's mission in the use of the Premises. Adequate access includes (a) surface streets that allow easy approach and departure to and from the Premises; (b) an amount of limited parking on the Premises near the entrance(s) to the Improvements for handicapped and other special patrons, and (c) sufficient parking within convenient walking distance of the Premises to accommodate simultaneous events at as many as four (4) performance venues within the Improvements, plus events at the Community Events Center and the Town Lake Cultural Park.

(h) Insurance and Indemnity.

Tenant agrees that the blanket contractual liability coverage included under its Commercial General Liability Insurance provided under Article 7 and Exhibit E to the Lease will provide liability coverage for its liability assumed under this Agreement, any liability incurred pursuant to its enjoyment of its Right to Use the Parking Facilities, and for any claims, losses, or damages sustained or caused by Tenant's invitees in the Parking Facilities or while on Landlord's surrounding property. IN ADDITION, TENANT AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL

CLAIMS, CAUSES OF ACTION, LOSSES OR DAMAGES WHATSOEVER BASED UPON OR ARISING OUT OF PERSONAL INJURY, DEATH OR PROPERTY DAMAGE SUSTAINED OR CAUSED BY TENANT AND ITS EMPLOYEES AND INVITEES WHILE USING THE PARKING FACILITIES. THIS INDEMNITY IS INTENDED TO INDEMNIFY LANDLORD AGAINST SUCH INJURY, DEATH, OR DAMAGE EVEN IF CAUSED BY A PREMISES DEFECT CAUSED BY OR ALLOWED TO EXIST BY OR THROUGH LANDLORD'S OWN NEGLIGENCE.

(i) Security.

Tenant may provide security in the One Texas Center and the Town Lake Center parking garages, when the use of such Parking Facilities is requested, in coordination with Landlord with the understanding that Landlord is not responsible for the safety or security of Tenant's invitees using the Parking Facilities.

2. Service Yard.

(a) Service Yard Parking Rights.

Tenant's parking rights in that portion of the Premises designated as the Service Yard are non-exclusive, as such Service Yard is essential to the efficient use and operation of the Premises and the Community Events Center.

(b) Reservation of Rights.

Landlord reserves the right to use the Service Yard in-common with Tenant. Further, Landlord reserves the right to establish such non-discriminatory rules and regulations as Landlord deems necessary or appropriate in its reasonable discretion to govern Landlord's and Tenant's use of the Service Yard in order to ensure a coordinated and efficient use of the Improvements and the Community Events Center.

(c) Limitations on Use.

The Parties acknowledge that the Parking Plan allows a limited number of parking spaces on the Service Yard, near the entrance to the Improvements, which may only be used by handicapped and other special patrons during (i) performances at the Premises; and (ii) such other times as Landlord may consent to in writing from time to time.

(d) Consent Required.

No one may use the Service Yard for any other vehicular parking, including when no events are occurring, without Landlord's prior written consent; provided that the Austin Convention Center Department Director may grant verbal consent to such parking in emergencies and other situations said Director deems appropriate. Any rules adopted by Landlord for use of the Service Yard will expressly recognize these facts.

3. **Access Area.**

(a) **Purpose.**

The Access Area is for purposes of vehicular access to and from the Premises, over, upon, and across, but not under, certain real property of Landlord located adjacent to the Premises. The Access Area will be further defined by metes and bounds by amendment to the Lease and such amended description will thereupon become part of this Agreement. Tenant's use of the Access Area will be in common with Landlord and any other parties Landlord may allow to use same, and will be subject to such rules and regulations governing the use thereof as Landlord may from time to time promulgate.

(b) **Parking Prohibited.**

No vehicles of Tenant or its employees, invitees, patrons, or guests may be parked in the Access Area and Landlord will be entitled to tow any vehicles parked in violation of this prohibition.

(c) **Limitations on Access.**

Tenant further acknowledges that part of the Access Area passes through the Parking Garage (as defined herein) and that Tenant's access rights set forth herein may be limited by the dimensions of the Parking Garage.

4. **No Parking.**

(a) **Unpaved Areas.**

No parking shall be allowed on any unpaved portion of the Premises.

(b) **Right to Remove Vehicles.**

Landlord reserves the right to enter upon the Premises and Parking Facilities and remove any vehicles parked in violation of the terms of this Agreement without notice or opportunity to cure being given Tenant.

(c) **Signage.**

Landlord also reserves the right to post such signage, at its sole cost and expense, on the Premises and Parking Facilities as may be required by applicable law to ensure its ability to tow any illegally parked vehicles. Tenant may replace such signage at its sole cost and expense with more aesthetically pleasing signage at Tenant's sole expense, provided Tenant obtains Landlord's prior written consent to doing so and such signage meets all requirements of applicable law for such signs.

5. **Construction of Additional Parking.**

No paved parking area may be constructed on any portion of the Premises without the prior written consent of Landlord.

6. **Parking Plan.**

The procedures for reserving, prioritizing, and scheduling the use of the Parking Facilities pursuant to Tenant's Right to Use are set forth in Exhibit "A", which is attached hereto and made a part hereof. The Parties may make administrative revisions to the Parking Plan to ensure the efficient operation of the Parking Facilities without the necessity of further Council action.

7. **Town Lake Center Parking Garage.**

To the extent that the Town Lake Center Parking Garage, which is owned and operated by Landlord's electric utility, is utilized to provide parking under this Agreement, such use is allowed by Landlord in its governmental capacity as a Texas municipality, rather than a municipally owned electric utility, and will be considered a governmental function as a parking facility in connection with a civic, convention center or coliseum, pursuant to Section 101.0215, Texas Civil Practices & Remedies Code. Austin Energy will have no duties or obligations under this Agreement other than to allow access to the Town Lake Center Parking Garage. It is agreed and acknowledged that it may be necessary for Austin Energy to utilize the entire Town Lake Center Parking Garage on a 24-hour basis when responding to weather-related events and other public emergencies and in such an event, the Town Lake Center Parking Garage may not be available for public parking.

8. **Miscellaneous.**

(a) **Entire Agreement.**

This Agreement contains the complete and entire agreement between the Parties respecting the matters addressed herein. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties. Capitalized terms used in this Agreement and that are not defined herein will have the same meaning as the defined terms in the Lease.

(b) **Other Instruments.**

The Parties covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(c) **Invalid Provision.**

Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof will

be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

(d) Force Majeure. If either party is delayed, hindered, or prevented from performance of any of its obligations by reason of a Force Majeure event, including but not limited to the occurrence of any event that prevents or delays the performance by a party of any obligation imposed upon it hereunder and the prevention or cessation of which event is beyond the reasonable control of the obligor, then the time for performance of such obligation shall be reasonably extended for the period of such delay, provided the party claiming such an event shall give prompt written notice of such occurrence to the other party and shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep the other party advised with respect thereto, and shall commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination.

(e) Severability.

The provisions of this Agreement are severable and, in the event that any portion of this Agreement is found to be invalid or unconstitutional for any reason, the remainder of this Agreement will not be affected and this Agreement will be construed as if it had never contained such invalid or unconstitutional provision.

(f) Capitalized Terms.

Capitalized terms not otherwise defined herein will have the meaning set forth in the Lease.

EXECUTED to be effective as of the date and year first above written.

LANDLORD:

City of Austin
a home rule city and municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

Assistant City Attorney

TENANT:

Greater Austin Performing Arts Center, Inc.,
A Texas nonprofit corporation using the
assumed name "The Long Center"

By: _____

Name: _____

Title: _____

Attest:

_____, Secretary

EXHIBIT “A”
PARKING PLAN