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PARKING RIGHTS AGREEMENT  
BETWEEN

AL KADER TEMPLE

AND

THE CITY OF PORTLAND

Dated

August 1, 1984

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PARKING RIGHTS AGREEMENT

DATED: August 1, 1984

BETWEEN: AL KADER TEMPLE  
1119 S.W. Park Avenue  
Portland, OR 97205

("Owner")

AND: THE CITY OF PORTLAND,  
a municipal corporation  
1220 S.W. Fifth Avenue  
Portland, OR 97201

(the "City")

Owner owns the real property known as Lots 3, 4, 5, 6 and the south 1/2 of Lot 2, Block 221, City of Portland, Multnomah County, Oregon (the "Property") which consists of approximately 25,000 square feet of property. The Property is presently improved as a surface parking lot. The Property is being used as a surface parking lot, subject to a lease agreement with City Center Parking pursuant to which City Center Parking operates the surface parking.

The City, through its Performing Arts Center Committee, is constructing a three theatre Performing Arts Center. The Performing Arts Center will in part occupy Lots 1, 2, 3, 4, 7 and 8 of Block 207, City of Portland, which is property owned by The First Congregational Church (the "Church"). The Church utilizes this property for parking at varying times.

The City has determined that the use of the Property as a surface parking facility, at certain times and at fair rates, is important to the successful operations of the Performing Arts Center. In order to insure this use of the Property, the City has threatened to condemn the Property. Owner has agreed to make the Property available to the City for the Performing Arts Center

at certain times and under certain conditions, all according to the terms of this Agreement. The City has agreed to accept the terms of this Agreement in lieu of acquiring the Property through condemnation.

The Owner, recognizing the importance of the Performing Arts Center to the community, and, in part, based on its role as a significant charitable and fraternal community organization, desires to cooperate with the City so as to make the Property available for surface parking, all on the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises of the parties set forth in this Parking Rights Agreement, (the "Agreement") Owner and the City agree as follows:

SECTION 1            GRANT OF RIGHTS; TERM

1.1 Grant of Rights

Owner hereby grants to the City, the Parking Rights defined in Section 2, subject to all of the terms and conditions of this Agreement. In the event that the City, by action of the City Council, elects not to build the two theatres planned for the property owned by the Church, this grant and this Agreement shall be automatically null and void and neither party to this Agreement shall have any obligation to the other.

1.2 Term

1.2.1 The term of this Agreement shall commence upon the date the City gives written notice to the Owner electing to utilize the parking rights set forth in Section 2 (the "Commencement Date") and shall continue thereafter until either

the City, pursuant to Section 1.2.3, or Owner, pursuant to Section 1.2.2, gives a notice of termination and the second anniversary of that notice has occurred.

1.2.2 This Agreement may be terminated by the Owner in the event that Owner, or its successor, elects to construct improvements upon the Property and such improvements do not include a parking garage. In the event such improvements do include a parking garage, then the parking rights granted to the City pursuant to this Agreement shall be suspended during the construction of such improvements and shall resume upon the completion of the construction and commencement of operations of such parking garage. Owner may terminate this Agreement pursuant to this Section 1.2.2 by giving the City written notice of termination, which notice shall be effective on the second anniversary of the date of such notice. In the event Owner gives a notice of termination and thereafter abandons or suspends its plans to construct improvements on the Property, the parking rights granted to the City shall continue until Owner commences construction of improvements. In such an event Owner need not give another two-year advance notice to the City.

1.2.3 The City may give its written notice terminating this Agreement, but such notice shall not be effective until the second anniversary of the date of this notice.

SECTION 2            PARKING RIGHTS

The Parking Rights which are hereby granted by Owner to the City are as follows:

### 2.1 Parking During PAC Performances

Owner agrees to keep the Property, as a surface parking facility, open and available to the general public at all times when performances are occurring at the Performing Arts Center and to make Owner's surface parking facility available at a reasonable time prior to the beginning of such performance(s). Such parking may be provided on an attended or unattended basis.

### 2.2 Limitation on Rates

Owner, when providing the parking referred to in Section 2.1 above, shall charge fair and reasonable rates, which in no event shall exceed rates for comparable parking rights. Comparable rates shall refer to rates charged by other public and private parking facilities providing parking for theatrical, athletic, or cultural events, such as, but not limited to, the events at the Memorial Coliseum or Civic Auditorium.

### 2.3 Sunday Parking

Owner grants to the City and its assignees the right to park vehicles on the Property on all Sundays during the hours of 7:00 a.m. through 1:00 p.m., on an attended or non-attended basis. In the event any vehicles so parked remain on the Property after 1:00 p.m., the Owner or its lessee or operator, may impose a charge for such overtime parking in an amount equal to the amount actually being charged that afternoon for parking on the Property by the general public attending such performance.

2.4 Monthly Parking

Owner grants to the City and its assignees the right to up to 20 monthly parking passes authorizing day and night time parking, seven days per week. On or before the Commencement Date, the City shall give Owner written notice of the actual number of such monthly parking passes desired.

2.5 Special Church Events

Owner grants to the Church, its members and guests, the exclusive right to park vehicles of the Church, its members, and guests on the Property on an attended or unattended basis at any time after 5:30 p.m. for the evening of Maundy Thursday and Christmas Eve, so as to allow those participating in Church Services on these days to park their vehicles.

2.6 Maintenance

Owner shall do all things reasonably necessary, at Owner's cost and expense, to maintain the Property as a surface parking facility and to keep this surface parking facility open, available, and in reasonably good condition for providing the parking rights set forth in this Section 2.

SECTION 3            COMPENSATION

As compensation for the Parking Rights, the City shall pay to Owner or its agent the following respective amounts at the following respective times:

3.1 Sunday Parking

The City shall pay Owner, an annual stipend for the parking rights referred to in Section 2.1 in the annual amount of

\$10,000. This amount shall be paid on or before the Commencement Date and on each anniversary of the Commencement Date throughout the term of this Agreement.

3.2 Monthly Passes

For the monthly parking referred to in Section 2.4, the City shall pay to Owner, the monthly parking charge normally charged for monthly parking on the Property. In the event Owner does not otherwise allow monthly parking on the Property, then the charge for monthly parking shall be the normal monthly parking fee charged by City Center Parking at that surface parking lot nearest the Property where monthly parking is offered.

3.3 Special Church Events

The City shall pay, or shall cause the Church to pay, to Owner the sum of \$200 for each day when pursuant to Section 2.5, parking by the Church, its members and guests, occurs for those special church events.

SECTION 4            RELEASE OF LIABILITY

The City and the Church, for itself, its members, and its guests hereby waives any claims for property damage or injury arising out of the exercise of the Parking Rights, unless such injury arises out of the conduct of agent(s) of the Owner, or of its operator, who are attending or operating the parking lot on the Property.

SECTION 5            GENERAL PROVISIONS

5.1 Notices

All notices required, permitted, or otherwise given pursuant to this Agreement shall be given by hand delivery or by certified mail, addressed to a party at its address set forth above. A notice shall be effective, if given by hand delivery, upon delivery to a party's address shown above. A notice shall be effective, if given by mail, on the third day following the day when the notice, properly addressed and postage prepaid was deposited in the U.S. mails.

5.2 Computation of Time

In computing any period of time under this Agreement, the day of the act or event from which the designated period of time begins to run shall not be included. If the last day of a designated period of time falls on a Saturday, Sunday, or legal holiday, then the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

5.3 Entire Agreement

This Agreement contains the entire agreement among the parties pertaining to the matters contained herein, and supersedes and replaces all prior written and oral agreements between the parties or their representatives.

5.4 Third Party Beneficiary

It is the intent of the parties that the Church shall be a third party beneficiary of this Agreement.

### 5.5 Governing Law

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Oregon.

### 5.6 Successors

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns, except as otherwise set forth herein.

### 5.7 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together shall constitute a single instrument.

### 5.8 Gender

Whenever the context so indicates, the masculine gender includes the feminine and/or the neuter and the singular includes the plural.

### 5.9 Validity

In the event that any provision of this Agreement is held to be invalid, such event shall not affect in any respect whatsoever the validity of the remainder of this Agreement, and the remainder shall be reasonably construed without the invalid provision so as to carry out the intent of the parties.

### 5.10 Captions

All captions used are intended solely for convenience of reference and shall in no way define, limit, extend or restrict the rights and obligations of the parties or the terms of this Agreement.

5.11 Costs and Attorneys' Fees

In the event a party initiates litigation to enforce or interpret any of the terms of this Agreement the prevailing party shall be entitled to recover from the other party its reasonable attorney fees as determined by the judge(s) at trial or upon any appeal, in addition to all other damages or costs awarded.

5.12 Assignment

The City may assign its rights set forth in Sections 2.3, 2.4, and 2.5 to the Church without Owner's consent, but in the event of such an assignment the City shall remain responsible to Owner as guarantor of the obligations of the City set forth in Section 3.

5.13 Binding Effect

This Agreement shall be binding upon Owner, its assignees, grantees, vendees, successors in interest, lessees and agents. This Agreement shall burden the Property and benefit the City's Performing Arts Center and shall run with the Property.

5.14 Defined Terms

All words capitalized which are not capitalized as the first word of a sentence are defined words with the meaning given to them when they first appear with an initial capital letter.

5.15 Waiver

In order for a claimed waiver of a term or provision to be an enforceable waiver, the waiver shall be in writing and be signed by the party to be bound by the waiver. A waiver for one event shall be a waiver for that event only and not a general waiver of a term or provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first shown above.

Owner: AL KADER TEMPLE

By \_\_\_\_\_, Potentate

City: THE CITY OF PORTLAND

By \_\_\_\_\_, Mayor

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 1984 by \_\_\_\_\_, who is the Potentate of Al Kader Temple on behalf of the Temple.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires:

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 1984 by \_\_\_\_\_, who is the Mayor of the City of Portland, on behalf of the the City.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires:

STJ005

# ORDINANCE No. 156746

An Ordinance authorizing a Parking Rights Agreement with Al Kader Temple; authorizing the drawing and delivering of warrants; and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. For purposes of construction and operation of the Performing Arts Center, the City needs to obtain certain parking rights on property owned by Al Kader Temple.
2. Al Kader Temple is willing to enter into a parking rights agreement with the City.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Safety and Auditor are authorized to enter into a Parking Rights Agreement with Al Kader Temple in the form attached hereto, with such revisions as may be approved by the City Attorney.
- b. The Mayor and Auditor are authorized to draw and deliver warrants chargeable to the Performing Arts Center Construction Fund when demand is presented to and approved by the proper authorities.

Section 2. The Council declares that an emergency exists in that it is necessary to complete execution of the Parking Rights Agreement in order to keep the Performing Arts Center project on schedule; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council. **NOV 1 1984**

COMMISSIONER SCHWAB  
CPTThomas:mc  
November 1, 1984

**Jewel Lansing**  
Auditor of the City of Portland

By

*Edna Cervina*

Deputy

Calendar No. 2400

# ORDINANCE No. 156746

## Title

An Ordinance authorizing a Parking Rights Agreement with Al Kader Temple; authorizing the drawing and delivering of warrants; and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS		
	Yeas	Nays
JORDAN		
LINDBERG	✓	
SCHWAB	✓	
STRACHAN	✓	
IVANCIE	✓	

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

INTRODUCED BY
Commissioner Schwab

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities
Works

BUREAU APPROVAL
Bureau:
Prepared By: Christopher P. Thomas 11/1/84
Date:
Budget Impact Review:
<input type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: CPT

CALENDAR
Consent
Regular

NOTED BY
City Attorney: CPT
City Auditor
City Engineer

NOV 1 1984

Filed \_\_\_\_\_

JEWEL LANSING  
Auditor of the CITY OF PORTLAND

By

*Dennis [Signature]*  
Deputy