

TUNNEL AGREEMENT
(Grain Exchange Tunnel)

THIS AGREEMENT is made as of January 19, 1994 among Minneapolis Community Development Agency, a body corporate and politic under the laws of the State of Minnesota ("MCDA"), City of Minneapolis, a Minnesota municipal corporation ("City"), and The United States of America, acting by and thorough the General Services Administration ("GSA").

RECITALS

A. GSA is the owner, in fee, of the tracts of land situated in the City of Minneapolis, County of Hennepin, State of Minnesota, described on Exhibit 1 (the "GSA Tract").

B. City is the owner, in fee, of the tracts of land situated in the City of Minneapolis, County of Hennepin, State of Minnesota, described on Exhibit 2 (the "Central Ramp").

C. GSA, City and MCDA are parties to a Development Agreement in Minneapolis, Minnesota, dated March 19, 1993 (the "Development Agreement") providing for, among other things, development of a new U.S. Courthouse and related plaza and structured parking (collectively, the "Project") on the GSA Tract. Capitalized terms used in this Agreement and not defined herein shall have the meanings given them in the Development Agreement.

D. In connection with the Project, MCDA, City, and GSA desire to provide for the construction and maintenance of a pedestrian tunnel and service corridor ("Grain Exchange Tunnel") running from the exterior building lines of the GSA Tract along South Fourth Street to the Central Ramp.

E. The City intends to construct the Grain Exchange Tunnel.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, MCDA, the City) and GSA hereby agree as follows:

1. MCDA or the City shall cause the Grain Exchange Tunnel to be constructed which will connect to the GSA Tract at the GSA Tract property line at the corner of Fourth Avenue South and South Fourth Street and will run along South Fourth Street to the Central Ramp. Such tunnel and connection will be at the approximate location shown on Exhibit 3 attached hereto in substantial accordance with plans and specifications to be developed by MCDA or the City. Plans and specifications for the Grain Exchange Tunnel construction shall be subject to the approval of GSA, which shall not be

unreasonably withheld, delayed or conditioned. If within 30 days following receipt of the plans and specifications GSA has not provided MCDA or the City with notice withholding approval and specifying such adjustments GSA believes are necessary to secure approval, the plans and specifications shall be deemed to be approved. Upon execution of this Agreement, GSA shall provide MCDA or the City with all existing drawings, specifications and other documents and shall thereafter furnish any additional drawings, specifications and other documents pertaining to the buildings and improvements to be located on the GSA Tract as may be helpful in designing and constructing the Grain Exchange Tunnel connection. GSA shall construct the interior improvements on the GSA Tract, and City shall construct and restore the interior improvements in the Central Ramp, respectively, as may be necessary to provide access to the Grain Exchange Tunnel so that such access will be available upon completion of the Grain Exchange Tunnel and improvements on the GSA Tract and the Central Ramp. In particular but without limitation, GSA shall construct the improvements on the GSA Tract in such manner that there shall be direct and convenient access to and from the Grain Exchange Tunnel and the Plaza Garage and the Central Ramp.

2. GSA does hereby grant, bargain, quitclaim and convey to the City, its successors and assigns, for the benefit of the Central Ramp, and the City does hereby grant, bargain, quitclaim and convey to GSA, its successors and assigns, for the benefit of the GSA Tract, mutual easements for the period provided in Paragraph 4 below, to construct, reconstruct, repair, maintain, operate and use the Grain Exchange Tunnel all in accordance with the terms, covenants and conditions provided in this Agreement. Such easements shall include the nonexclusive right to use the public areas designated or reasonably necessary for pedestrian tunnel walkway and service corridor access between and within the buildings and improvements on the GSA Tract and in the Central Ramp, as the case may be, to provide reasonably convenient pedestrian access from the Grain Exchange Tunnel to and from such buildings and improvements and to any other tunnel or pedestrian walkways or skyways now or hereafter attached to or accessible through such buildings and improvements. City acknowledges that, except during normal Federal business hours, and except as otherwise required to carry out the intent of this Paragraph 2, GSA may restrict public pedestrian access to portions of the interior of the building and improvements on the GSA Tract which are normally closed to the public outside of normal Federal business hours. GSA and the City shall each have the right in its sole discretion to increase, decrease, alter or rearrange at its expense the public areas in its respective building for pedestrian tunnel walkway and service corridor access so long as the resulting configuration of the public areas provides such reasonably convenient access.

3. The cost of the design and construction of the Grain Exchange Tunnel shall be paid as follows:

- (a) GSA shall pay the cost of all work performed, services rendered and materials furnished in designing, constructing and restoring the interior of the improvements on the GSA Tract (including the Plaza Garage) incurred by reason of the construction of the Grain Exchange Tunnel and any structural support required to support the Grain Exchange Tunnel on the GSA Tract. Such cost will be borne by GSA only, and MCDA and the City shall not pay any portion of the cost thereof.
- (c) Except as provided in item (a) above, MCDA or the City shall pay all of the cost of work performed, services rendered and materials furnished in initially designing and constructing the Grain Exchange Tunnel, attachment of the Grain Exchange Tunnel at the property line of the GSA Tract at the location of the connection shown on Exhibit 3, and up to the Central Ramp, and all associated architectural fees, insurance and bonds.

4. The mutual easements referred to above shall continue in effect so long as both that portion of the existing building or improvements on the Central Ramp and that portion of the building or improvements to be erected by GSA on the GSA Tract to which the Grain Exchange Tunnel is affixed continue to exist. Upon the demolition or destruction of either that portion of the existing building or improvements on the Central Ramp or that portion of the building or improvements to be erected by GSA on the GSA Tract to which the Grain Exchange Tunnel is affixed (except where destroyed by casualty and rebuilt within 3 years), such mutual easements shall terminate, at which time the Grain Exchange Tunnel shall be promptly sealed.

5. From and after the date the Grain Exchange Tunnel is substantially complete, all repairs, maintenance, cleaning, operations, replacement and removal of the Grain Exchange Tunnel shall be performed by MCDA or the City. The Grain Exchange Tunnel shall be kept and maintained in first-class condition and repair and shall be operated in a first-class manner consistent with the highest level of standards maintained in other tunnels in the Minneapolis central business district. The Grain Exchange Tunnel shall not be replaced or removed, nor except in any emergency shall extraordinary repairs be performed without the prior written approval of the City, which approval will not be unreasonably withheld, delayed or conditioned.

6. The MCDA or the City shall maintain, at all times from and after the opening of the Grain Exchange Tunnel, (a) public liability insurance insuring GSA, MCDA and City, and the holder of any mortgage on the GSA Tract as specified from time to time by GSA, against all claims, demands or actions for injury or death, in an amount not less than \$5,000,000 combined single limit, arising from, related to or connected with the operation of the Grain Exchange Tunnel and (b) insurance on the Grain Exchange Tunnel covering those risks covered by an "All-Risk" policy of property insurance, with coverage for the full replacement cost of the Grain Exchange Tunnel, as determined annually by the property insurer, the proceeds of which shall be applied to repair and restoration of the Grain Exchange Tunnel. The aforesaid insurance shall be in form and amount reasonably satisfactory to all parties, and with an insurer reasonably satisfactory to all parties. Each policy shall provide that it will not be subject to cancellation or reduction in coverage except after 30 days' prior written notice to each of the insureds. Certificate evidence of each policy shall be deposited with the MCDA or the City prior to opening of the Grain Exchange Tunnel and for renewals, not less than 30 days prior to the expiration of the term of the expiring policy. The City may self-insure for any or all of the foregoing with the consent of GSA which consent shall not be unreasonably withheld.

7. The operation and use of the Grain Exchange Tunnel, and the availability of all pedestrian easement rights and areas described in Paragraph 2, shall be from 6:00 a.m. to 10:00 p.m., Mondays through Fridays, from 9:30 a.m. to 10:00 p.m. Saturdays and from 10:00 a.m. to 6:00 p.m. Sundays and Holidays, such other hours as the Project or the Central Ramp shall be open for business as set out by notice from time to time given by GSA or the City to the other, and any other hours as may be agreed by GE, the City and GSA. As used herein, "Holidays" means New Years Day, Easter Sunday, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and such other days as the GSA and the City shall mutually agree.

8. Title to the Grain Exchange Tunnel shall vest in the City.

9. From and after the day the Grain Exchange Tunnel is substantially complete, it shall be used continuously as a pedestrian walkway and a service corridor, subject to the conditions specified in Paragraphs 4 and 7 hereof, for travel to and from the buildings and improvements on the GSA Tract (including but not limited to the Plaza Garage) and to and from the Central Ramp and for no other purpose except that the City may permit on such terms as the City deems appropriate, connection of the Grain Exchange Tunnel to buildings known as the Minneapolis Grain Exchange for such purposes. At the request of the City, GSA agrees to enter into an amendment of this Agreement or such other

agreements as may be reasonably necessary to effect the connection of the Minneapolis Grain Exchange so long as no additional cost, obligation, or liability is thereby imposed upon or assumed by GSA.

10. If at any time it is necessary or permissible to give any notice under the terms of this Agreement to any party hereto, such notice shall be deemed to have been given or served on the date the same is deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to MCDA: Minneapolis Community Development Agency

Crown Mill Suite 600
105 Fifth Avenue South
Minneapolis, MN 55401-2538
Attn: Federal Courts Project Coordinator

If to City:

City of Minneapolis
Office of City Traffic Engineer
Room 233 City Hall
Minneapolis, MN 55415

If to GSA:

U. S. General Services Administration
230 South Dearborn Street
Chicago, IL 60604-1503
Attn: Assistant Regional Administrator
Public Buildings Service

Any party hereto may change the address or addresses to which notice is to be given to it by giving written notice thereof to the other parties not less than thirty (30) days prior to the effective date of change.

11. The easements and provisions of this Agreement are appurtenant to the use of GSA Tract and the Central Ramp and shall run with the land, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. GSA and its successors and assigns as owner of the GSA Tract shall be liable only for such obligations of GSA under this Agreement as accrue during its respective period of ownership of the GSA Tract. City and its successors and assigns shall each be liable only for such obligations of City under this Agreement as accrue to it during its respective period of ownership of the Grain Exchange Tunnel. MCDA and its successors and assigns shall each be liable only for such obligations of MCDA under this Agreement as accrue to it during its respective period of ownership of the Grain Exchange Tunnel. Nothing in this Agreement is to be interpreted to give the public, any governmental authority, or any other third party any easement upon any land.

12. This Agreement constitutes the entire agreement and understanding of the parties on the subject matter hereof. It may

be amended or modified only by written amendment or supplement signed by the party to be bound. The laws of the State of Minnesota shall govern the validity, performance and enforcement of this Agreement.

13. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the MCDA, the City, and the GSA have executed this Agreement effective as of the date first above written.

THE UNITED STATES OF AMERICA,
acting by and through the
GENERAL SERVICES ADMINISTRATION

By *[Signature]*
Its Acting Regional Administrator

Dated January 18, 1994

This Instrument Drafted by:

McGrann Shea Franzen Carnival
Straughn & Lamb, Chartered
2200 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2041
(612) 338-2525

ILLINOIS
STATE OF MINNESOTA)
 COOK) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 18th day of January, 1994, by Kenneth J. Kalscheur, as the Acting Regional Administrator, Public Buildings Service, of The United States of America, acting by and through the General Services Administration.

Daniel E. May
Notary Public
OFFICIAL SEAL "
DANIEL EDWARD MAY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12/31/95

[GSA signature page to Tunnel Agreement (Grain Exchange Tunnel), between and among The United States of America, acting by and through the General Services Administration, Minneapolis Community Development Agency and the City of Minneapolis, dated as of January 19, 1994.]

PARCEL 5:

The Northwesterly 29 feet front and rear of Lot 8, next to and adjoining Lot 9, and all of Lots 9 and 10 in Block 66, Town of Minneapolis, together with that part of vacated alley accruing thereto by reason of the vacation thereof.

PARCEL 6:

Lots 8 and 9, Rearrangement of Part of Block 66, Minneapolis, Files of Registrar of Titles, County of Hennepin, State of Minnesota, together with that portion of vacated E-W and N-S alleys accruing thereto by reason of the vacation thereof.

Being registered land as is evidenced by Certificate of Title No.
_____.

PARCEL 7:

That part of Lot 8, Block 66, Town of Minneapolis, according to the plat thereof, Hennepin County, Minnesota, which lies Southeasterly of the Southeasterly line of the Northwesterly 29.00 feet of Lot 8 and lies Northwesterly of the Northwesterly line of the Southeasterly 37.00 feet of Lot 8, together with that part of the Northeast-erly 1/2 of the vacated alley accruing thereto by reason of the vacation thereof.

EXHIBIT 2

TO

GRAIN EXCHANGE TUNNEL AGREEMENT

DESCRIPTION OF CENTRAL RAMP

PARCEL 1

Lot 6, Block 67, Town of Minneapolis, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.

PARCEL 2

Lot 7, Block 67, Town of Minneapolis, except the rear 8 feet of said lot reserved for alley.

PARCEL 3

The Southwesterly 8 feet of the Southeasterly 44 feet of Lot 7, Block 67, Town of Minneapolis.

PARCEL 4

The Southwesterly 8 feet of that part of Lot 7, Block 67, Town of Minneapolis described as follows: Commencing at Northwest corner of said lot; thence run on Northerly line of said lot Southeasterly 22 feet; thence at right angles and parallel with Westerly line of said lot; Southwesterly to rear or Southerly line of said lot; thence at right angles Northwesterly on line of said lot, 22 feet to Southwest corner of said lot; thence at right angles on west line of said lot Northeasterly to point of beginning.

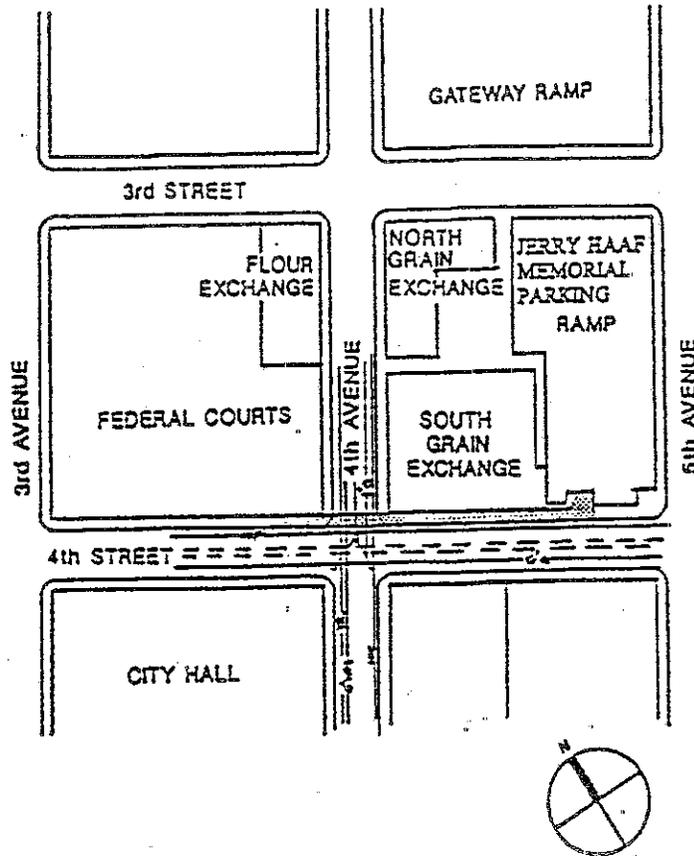
PARCEL 5

Lots 4 and 5, Block 67, Town of Minneapolis, Files of Registrar of Titles, County of Hennepin, State of Minnesota.

PARCEL 6

Lot 8, Block 67, Town of Minneapolis, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.

EXHIBIT 3
TO
GRAIN EXCHANGE TUNNEL AGREEMENT
LOCATION OF TUNNEL AND CONNECTION



[The description herein set forth is subject to appropriate adjustment in accordance with actual construction as provided by the Development Agreement, the adjustments to be determined by an "as built" survey prepared by a registered land surveyor, the expense of which shall be shared equally by the parties.]

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REGISTERED VOL 2694

PAGE 803671

REGISTERED VOL 2793

PAGE 833577

833577

COPY

OFFICE OF THE REGISTRAR
OF TITLES
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED ON

JAN 11 1996

10:02 AM
R. Dan Carlson
REGISTRAR
OF TITLES
BY _____ DEPUTY