

**RECIPROCAL EASEMENTS
AND OPERATING AGREEMENT**

DATE: MARCH 31, 2004

BETWEEN: CITY OF MINNEAPOLIS
a Minnesota municipal corporation ("City")

AND: GUTHRIE THEATER FOUNDATION
a Minnesota nonprofit corporation ("Guthrie")

RECITALS:

- A. City is the owner of the real estate legally described on Exhibit A (such real estate, together with the rights and interests created hereby, being the "City Parcel"), and intends that the City Parcel be developed by construction therein of a public parking garage (such facilities, together with any alterations, additions, or improvements thereto or replacements, expansions or changes in use thereof, being the "Garage").
- B. Guthrie is the owner of the real estate legally described on Exhibit B (such real estate, together with the rights and interests created hereby, being the "Guthrie Parcel"), and intends that the Guthrie Parcel be developed by construction therein or in respect thereof of a scene shop, truck dock and related improvements (such facilities, together with any alterations, additions, or improvements thereto or replacements, expansions or changes in use thereof, being the "Project").
- C. City and Guthrie desire to establish certain easements, restrictions and operating agreements for the benefit of the City Parcel and Guthrie Parcel (collectively, the "Property") and its owners and occupants.

AGREEMENT:

CITY AND GUTHRIE therefore declare and agree that the Property and each portion thereof will be sold, conveyed, held and occupied subject to the following easements, restrictions, and operating agreements, which will run with the Property and be binding on all parties having any right, title or interest in the Property or any portion thereof, their successors and assigns:

- 1. Definitions. In this Agreement:
 - (a) "Building" means the Project and Garage.
 - (b) "Design/Build Contract" means the Design/Build Construction Contract between the City and Guthrie dated July 25, 2003, which contract provides for the Guthrie to construct the Garage pursuant to the Redevelopment Contract.
 - (c) "Parcel" means the Guthrie Parcel or the City Parcel, as the case may be.

- (d) "Party Walls" means any nonstructural walls, insulation, fencing and other elements and improvements on the boundaries separating the Garage from the Project, including the boundaries of any exclusive use easement granted in connection therewith.
- (e) "Redevelopment Contract" means the Amended and Restated Redevelopment Contract among Minneapolis Community Development Agency, City and Guthrie dated July 25, 2003, pursuant to which City has acquired the City Parcel and Guthrie has acquired the Guthrie Parcel and agreed to construct the Project and Garage.
- (f) "Shared Costs" means those costs of operating, maintaining, repairing and replacing those elements and facilities which are shared by City and Guthrie under Section 18.
- (g) "Support" means the structural and foundation support for the Garage and Project, including foundations, pilings, footings, columns, shear walls, beams, girders, joists, brackets, supports, slabs, and support walls.
- (h) "Theater" means the theater complex owned or leased by the Guthrie located across South Second Street from the Building.
- (i) "Utilities" means any utilities serving the Building or any part thereof, including water, sanitary sewer, storm sewer, electricity, natural gas, steam, hot water, chilled water, telephone, cable television and other communications systems, and any mechanical, electrical or fire or life safety systems serving the Building or any part thereof, including lines, mains, pipes, vents, ducts, shafts, conduits, wires and related machinery and equipment.

2. Right of Entry. City grants and conveys to Guthrie in respect of the City Parcel, and Guthrie grants and conveys to City in respect of the Guthrie Parcel, a nonexclusive, temporary license to use portions of the City Parcel and Guthrie Parcel during the period of any construction, reconstruction, maintenance, repair or replacement of the Project or the Garage to the extent reasonably necessary to perform the work in question. All such work will be performed with reasonable diligence and in a manner so as to minimize interference with the use and operation of the burdened Parcel and the improvements thereon, and will be carried out in conformance with such reasonable rules and regulations as may be imposed by the owner of the burdened Parcel. The party performing such work will repair any damage to the Building or other property of the other party (or the tenants or invitees of such other party) caused by such work. If either party intends to perform any work which would affect the structural integrity of the Building or is expected to interfere with the normal use and operation thereof for more than 24 hours, it will first give the other party not less than 15 business days' written notice (except in an emergency) containing details of the proposed work. If either party intends to perform any work which is expected to interfere with the normal use and operation of the Building for not more than 24 hours or is expected to occur within the Parcel of the other party, the party intending to perform the work will give reasonable notice to the other party by telephone or other communication of the proposed work. If there is imminent danger of injury or damage to person or property due to damage or failure of any structural element or other facility in the Building, either party will have the right to immediately enter the Parcel of the other party to correct such damage or

failure or otherwise take reasonable steps to prevent such injury or damage, upon giving notice of entry as may be reasonable under the circumstances.

3. Building Support.

- (a) City grants and conveys to Guthrie in respect of the City Parcel a nonexclusive easement for Support of the Project, and Guthrie grants and conveys to City in respect of the Guthrie Parcel a nonexclusive easement for Support of the Garage. Guthrie will be responsible at its cost to maintain, repair and replace any elements and improvements within the Project that provide Support only for the Project. City will be responsible at its cost to maintain, repair and replace all other elements and improvements that provide Support for the Building, provided that Guthrie will be responsible as a Shared Cost for 40% of the cost of any extraordinary structural repairs or replacements of any columns shown on Exhibit C and beams and girders within or beneath the Guthrie Parcel attached thereto, which are designed to provide Support for both the Project and Garage, where a material cause of the damage is determined, by a licensed structural engineer mutually selected by the City and Guthrie, to be the result of differential movement between the Project and Garage or otherwise caused by the placement of the Project on top of the Garage.
- (b) Prior to any construction, repair, replacement, alteration or reconstruction of the elements or improvements which affect the structural loading or capacity of the Building, the party planning to perform such work will make available to the other party for its reasonable and prompt approval all preliminary and final plans and specifications for such work. Such plans and specifications will be deemed approved by the other party if the other party has not given written notice of disapproval within 15 business days after receipt specifying the changes required to be made to such plans and specifications.
- (c) Neither party will modify, enlarge, or increase the loading on a structure or improvement in the other Parcel above the loading designed into the Support for that portion of the Building on its Parcel without the prior written consent of the other party. Such consent will not be unreasonably withheld or delayed so long as such modification, enlargement or increased loading does not require enlargement of the columns, foundations or support facilities in the burdened Parcel in a manner which materially and adversely affects access to and use and operation of the improvements in the burdened Parcel. Notwithstanding the foregoing, the City will not have any right to use the excess capacity which has been designed into the Support to accommodate above-standard live loads in the Project or any future expansion of the Project. If expansion of the Project requires enlargement of the columns, foundations, or support facilities in the Garage, the Guthrie will be responsible for the cost of such enlargement and will bear as a Shared Cost under Section 18 that portion of the cost of repair and replacement of any enlarged member which
 - (i) the additional loading added to such member in excess of the original design load bears to
 - (ii) the total loading on such member.

4. Building Encroachments. City grants and conveys to Guthrie in respect of the City Parcel, and Guthrie grants and conveys to City in respect of the Guthrie Parcel, an exclusive easement for such minor building encroachments as may exist or occur by reason of the construction or reconstruction of the Building or from the settlement or shifting of the Building, but such easement will not excuse either party from exercising reasonable diligence in constructing or reconstructing the Building or any part thereof in accordance with plans and specifications approved by the other party. The City will be responsible at its cost to maintain, repair and replace any encroachments of the Garage within the Guthrie Parcel and the Guthrie will be responsible at its cost to maintain, repair and replace any encroachment of the Project within the City Parcel.

5. Truck Dock and Project Access. City grants and conveys to Guthrie an exclusive easement in that part of the Garage generally shown on Exhibit D identified as the "Truck Dock and Project Access Easement" for the purpose of constructing, reconstructing, maintaining, repairing, replacing, using and operating a truck dock and an elevator and stairway tower and certain improvements and equipment therein for the purpose of loading, unloading, and transporting scenery and other goods and materials to and from the Project and the Theater and providing elevator and stairway access to and within the Project. In connection therewith, Guthrie will have the right to construct, reconstruct, maintain, repair, replace and use any driveway and curb cut providing vehicular access to the truck dock and any sidewalks and doorways providing pedestrian access to such truck dock or such elevator and stairway from the public street and right-of-way. Guthrie will maintain, repair and replace such truck dock, elevator and stairway tower, and other improvements and equipment in the exclusive use easement at Guthrie's cost.

6. Chiller Room and Cooling Towers. City grants and conveys to Guthrie an exclusive easement in that part of the Garage generally shown on Exhibit D identified as the "Chiller Room Easement" for the purpose of constructing, reconstructing, maintaining, repairing, replacing, using and operating an equipment room and certain improvements and any boilers, chillers and other equipment located therein, and an exclusive easement in that part of the Garage generally shown on Exhibit D identified as the "Cooling Tower Easement" for the purpose of constructing, reconstructing, maintaining, repairing, replacing, using and operating a structural slab and certain improvements and any cooling towers and other equipment located thereon, for the purpose of providing heating, cooling, and ventilation for the Project, Theater and other users. In connection therewith, Guthrie will have the non-exclusive right to use the areaways, vaults, shafts, and underground and aboveground connections in and about the Garage for the purpose of installing, maintaining, repairing, replacing, using and operating any heating, cooling and ventilation lines, mains, pipes, vents, ducts, shafts and related machinery and equipment providing heat, cooling and ventilation to the Project and the Theater. Guthrie and its contractors will have reasonable access 24 hours per day, 7 days per week to such equipment room and cooling tower areas (including vehicular access to the equipment room) and other connections, subject to the same rights and obligations as apply to Utilities under Section 11. Guthrie will maintain, repair and replace the equipment room, structural slab and other improvements and equipment in the exclusive use easement and the connections thereto at Guthrie's cost. Notwithstanding the foregoing, City will have a right to access the shared generator located in the Cooling Tower Easement as may be required to operate and maintain the generator in the event the Guthrie fails to do so. Guthrie will have the right at its cost to expand the Chiller Room Easement and Cooling Tower Easement to accommodate future expansion of the heating, cooling and ventilation systems to serve the Project, Theater, or other users so long as accommodations

reasonably acceptable to the City are made for any loss of parking spaces or vehicular circulation within the Garage resulting therefrom. Such other users may include the Garage so long as the parties agree on the terms and conditions under which the Guthrie would provide such services to the Garage.

7. Garage Access. Guthrie grants and conveys to City an exclusive easement in that part of the Project generally shown on Exhibit D identified as the "Garage Access Easement" for the purpose of constructing, reconstructing, maintaining, repairing, replacing, using and operating an elevator and stairway tower and certain improvements and equipment therein for the purpose of providing elevator and stairway access to and within the Garage. City will maintain, repair and replace such elevator and stairway tower and other improvements and equipment in the exclusive use easement at City's cost. Notwithstanding the foregoing, Guthrie will have the right to use the stairways and elevators for access to the roof of the Project and for emergency egress from the Project through a connecting door and doorway at the upper level of the Garage. In addition, Guthrie will have a non-exclusive right at its cost to place signage in the elevator lobbies as provided in Section 9. The roof deck over the Garage Access Easement and the roofing or other surface materials on top of such deck will be within the Guthrie Parcel and Guthrie will be responsible at its cost for the maintenance, repair and replacement of such roofing or other surface materials. However, the City will be responsible at its cost for any painting or other decorative enhancements of the underside of the roof deck.
8. Party Walls. City grants and conveys to Guthrie in respect of the City Parcel, and Guthrie grants and conveys to City in respect of the Guthrie Parcel, a non-exclusive easement for the purpose of constructing, maintaining, repairing, replacing and using any Party Walls. The Party Walls are generally in the locations shown on Exhibit D. Guthrie will maintain, repair and replace such Party Walls, and the cost thereof will be a Shared Cost under Section 18. However, each party will be responsible at its cost for any painting or other decorative enhancements of the Party Wall on its side of the boundary and for any damage to the Party Walls which is the result of the act or omission of such party or its employees, contractors or invitees. The exterior walls of the Project above the uppermost floor level of the Garage will not be considered Party Walls, but the City will be responsible for any damage to such walls which is the result of the act or omission of the City or its employees, contractors or invitees.
9. Theater Signage. City grants and conveys to Guthrie a right at its cost to place signage in the elevator lobbies, corridors, and pedestrian entrances and exits of the Garage (including the walkway between the elevator lobby and the exit door at the crosswalk that crosses South Second Street). Such signage will be for the sole purpose of directing patrons to the Theater and describing scheduled performances in the Theater. The Guthrie at its cost will keep and maintain its signs in good order and condition and will repair any damage to the Garage caused by the installation, repair or removal of such signs. The City may adopt reasonable rules and regulations regarding the size, type, placement, and community standard to be maintained by such signage. The Guthrie may install such signs at such locations as it may select with the reasonable approval of the City, so long as they do not unreasonably interfere with other signage installed by the City within such areas.
10. Sidewalks. City at its cost will provide normal snow and ice removal and removal of trash and other debris from the public sidewalks and driveways adjacent to or serving the Building and normal mowing and upkeep of the boulevard areas between the sidewalk

and curb, in accordance with standards equal to the standards maintained by the City for its other public parking garages. The Guthrie at its cost will have the right to provide additional snow and ice removal, removal of trash and other debris, and mowing, upkeep and landscaping of the boulevard areas, if the Guthrie desires that the public sidewalks, driveways and boulevard areas require a higher standard of maintenance in keeping with the use of the Theater.

11. Utility Connections. City grants and conveys to Guthrie a non-exclusive easement to use the mechanical and electrical rooms in that part of the Garage generally shown on Exhibit D identified as the "Mechanical/Electrical Room Easement" and the areaways, vaults, shafts, and underground and aboveground connections in and about the Garage, and Guthrie grants and conveys to City a non-exclusive easement to use the areaways, vaults, shafts, and aboveground connections in and about the Project, for the purpose of installing, maintaining, repairing, replacing, using and operating any Utilities. The location of such Utilities will be subject to the reasonable approval of the owner of the burdened Parcel. The owner of the benefited Parcel and its contractors will have reasonable access 24 hours per day, seven days per week, to any such Utilities serving the benefited Parcel. Use of the Utilities by either party will not disturb the users of the Garage and Project any more than reasonably necessary under the circumstances. City and Guthrie will each have the right upon reasonable notice and at its cost to modify, alter or relocate any Utilities within its Parcel as may be desirable for operation, improvement, reconstruction, or modification of its Parcel. Utility service to the other Parcel will be maintained during and after the period for any such modification, alteration or relocation except as may be required in an emergency (in which event the party making such modifications, alterations or relocation will use all reasonable efforts to provide necessary services). Guthrie at its cost will be responsible to maintain, repair and replace any Utilities exclusively serving the Project and will pay all utility charges therefor. City at its cost will be responsible to maintain, repair and replace any Utilities exclusively serving the Garage and will pay all utility charges therefor. Guthrie will be responsible at its cost to maintain, repair and replace any storm drainage facilities in the Project, including the storm drains on the roof of the Project. City will be responsible at its cost to maintain repair and replace any other storm drainage facilities serving the Building. Guthrie will be responsible to maintain, repair and replace the mechanical and electrical rooms and the water, sanitary sewer and fire and life safety facilities jointly serving the Garage and the Project, and the cost of any such maintenance, repair and replacement of such mechanical and electrical rooms and Utilities will be a Shared Cost under Section 18.

12. South Exit. City grants and conveys to Guthrie an exclusive easement to install, maintain and use a door and doorway between the Project and the fourth above-grade level of the Garage at the location generally shown on Exhibit D identified as the "South Exit Easement" for the purpose of providing access to and from vehicles parked in the Garage by the Guthrie and its tenants, and their respective employees and invitees, and transporting miscellaneous goods and equipment thereto and therefrom by hand or dolly, skid, overhead trolley, or similar conveyance, and for emergency egress from the Project. Guthrie at its cost will be responsible for the maintenance, repair and replacement of the door, doorway, and any dolly, skid, overhead trolley or similar conveyance. The south exit will include the exclusive right to use an 18-foot wide parking stall in front of such doorway at the location generally shown on Exhibit D identified as the "Guthrie Parking Stall", for parking of an automobile or utility vehicle owned or leased by the Guthrie or its tenant or any employee of either. The Guthrie has the option under the Design/Build

Agreement to either (a) retain the right to use the Guthrie Parking Stall as part of the Project, or (b) lease the Guthrie Parking Stall as a reserved space. If the Guthrie elects to retain the right to use the Guthrie Parking Stall under (a), there will be no cost or charge to the Guthrie or other user of the Guthrie Parking Stall for the privilege of entering, exiting and parking of the vehicle from time to time designated by the Guthrie for use of the Guthrie Parking Stall and the Guthrie will be responsible to reimburse the City for the cost of maintaining, repairing and replacing the wearing surface of the Guthrie Parking Stall, including striping and signage. If the Guthrie elects to lease the Guthrie Parking Stall from the City as a reserved space under (b), the Guthrie will pay the same rate for use of the Guthrie Parking Stall as the City reasonably charges from time to time for reserved spaces in the Garage and the City at its cost will be responsible for the cost of maintaining, repairing and replacing the wearing surface of the Guthrie Parking Stall. If the extra width of the Guthrie Parking Stall results in the loss of two spaces being available to the City, the Guthrie will be charged for two reserved spaces; otherwise, the Guthrie will be charged for one reserved space.

13. Generator. The generator for the Building located in the Cooling Tower Easement shown in Exhibit D will be designed to provide electrical power to both the Garage and the Project. City grants and conveys to Guthrie an exclusive easement in that part of the Garage within and underneath the basement floor slab at the location generally shown on Exhibit D identified as the "Storage Tank Easement" and a non-exclusive easement in the areaways, vaults, shafts, and underground and aboveground connections in and about the Garage for the purpose of installing, maintaining, repairing, replacing, using and operating an underground fuel storage tank and associated lines, pipes, vents and related machinery and equipment used for delivering, storing and conveying fuel used in the generator. The design of the panel within the basement floor slab providing access to the storage tank will be subject to the reasonable approval of the City. Guthrie and its contractors will have reasonable access 24 hours per day, seven days per week, to such storage tank and other connections, subject to the same rights and obligations as apply to Utilities under Section 11. Guthrie will operate, maintain, repair and replace the generator and all electrical systems and facilities connected thereto which jointly serve the Garage and Project and the storage tank and other connections thereto. The cost of such operation, maintenance, repair and replacement will be a Shared Cost under Section 18. Guthrie will coordinate testing of the generator with the City and will notify the City of its maintenance schedule.
14. Tunnel. Guthrie will have the right at any time and at its cost and subject to any necessary governmental approvals, licenses and permits, to construct and thereafter operate, maintain, repair and replace a pedestrian tunnel connecting the Building to the Theater for the purpose of providing access to and from vehicles parked in the Garage by the Guthrie and its tenants and their employees and invitees, and by patrons of the Theater. The location of the tunnel will be subject to the reasonable approval of the City as owner of the Garage, but nothing therein will affect the City's right as the municipal authority to approve the location of the tunnel in the public street. The tunnel will be an exclusive easement in favor of the Guthrie. The City will cooperate with the Guthrie in the design and construction of the tunnel, including any amendment of this Agreement as may be required. Prior to construction of the tunnel, Guthrie will make available to the City for its reasonable and prompt approval all preliminary and final plans and specifications for such work. Such plans and specifications will be deemed approved by the other party if the other party has not given written notice of disapproval within 30

business days after receipt specifying the changes required to be made to such plans and specifications.

15. Theater Lighting. Guthrie will have the right to install and thereafter maintain, repair and replace one or more lighting fixtures and associated controls and electrical connections on the top floor of the Garage in the northerly corner thereof at the location generally shown on Exhibit D identified as the "Theater Lighting Easement" for the purpose of illuminating the graphics on the exterior of the Theater. Guthrie and its contractors will have reasonable access 24 hours per day, seven days per week, to such lighting fixtures and associated controls and electrical connections, subject to the same rights and obligations as apply to Utilities under Section 11. Guthrie at its cost will be responsible for the maintenance, repair and replacement of the lighting fixtures and associated controls and electrical connections.
16. Location of Easements. Except as otherwise set out in this Agreement, all of the easements granted under this Agreement will be at such locations as designed in the Building pursuant to the construction plans developed by Guthrie and approved by the City pursuant to the Design/Build Contract, or at such other locations as Guthrie and City may agree in writing from time to time. At the request of Guthrie or City, the locations will be surveyed by a registered land surveyor. The cost of such survey will be borne by the party requesting such survey unless otherwise agreed by Guthrie and City.
17. Maintenance. Each party will maintain, repair and replace its portion of the Building (including all facilities required to be maintained, repaired and replaced by it under this Agreement) in good order and condition in accordance with standards for comparable properties of similar age and use in the community and in a manner which does not disturb or interfere with the use of the Building by the other party or its tenants any more than is reasonably necessary under the circumstances. The party performing the work will repair any damage to the property of the other party or its tenants or invitees caused by such work. The Support will be maintained, repaired and replaced as may be required from time to time so that the adequacy and structural soundness of the Support will be preserved. If either party intends to perform any work which would affect the structural integrity of any element of the Support, it will first give the other party not less than 15 business days' written notice (except in an emergency) containing details of the proposed work. If there is imminent danger of injury or damage to person or property due to the damage or failure of any structural element in the Support, either party will have the right to immediately enter the property in which the Support is located to correct such damage or failure or otherwise prevent such injury or damage upon giving such notice of entry as may be reasonable under the circumstances and without interfering any more than reasonably necessary with the use of the property in which the Support is located.
18. Shared Costs.
 - (a) The actual out-of-pocket cost (plus 10% to cover administrative expenses for all items except metered usage of common Utilities, in which case the administrative charge will be 5% of the out-of-pocket cost for such metered usage) of operating, maintaining, repairing and replacing
 - (i) any Support which is a Shared Cost will be allocated as provided under Section 3;

- (ii) any Party Walls jointly serving the Garage and the Project, and the mechanical and electrical rooms located within the Mechanical/Electrical Room Easement shown on Exhibit D, will be borne equally by the City and Guthrie, except for painting and decorative enhancements of the Party Walls and any Utilities in the mechanical and electrical rooms which will be allocated as otherwise provided herein;
 - (iii) any Utilities (other than the storm drainage facilities) which jointly serve the Garage and Project will be borne by the City and Guthrie in proportion to their usage of such Utilities, such usage to be based to the extent practicable by meter readings and otherwise by engineering study; and
 - (iv) the generator and related equipment will be borne by the City and Guthrie in proportion to their respective demand loads used for design of such equipment.
- (b) The actual out-of-pocket cost of any property insurance provided under Section 24(b) will be allocated between the City and Guthrie in proportion to the insurable replacement cost of the Garage and Project, respectively, as reasonably determined by the insurer.

19. Reimbursement of Costs. Sixty days prior to opening of the Building and 60 days prior to each calendar year thereafter, Guthrie and City will compute and deliver to the other a budget setting out in detail the estimated amounts of any Shared Costs for work to be performed and insurance to be procured by it under this Agreement, and an estimate of the allocated share of the other party for such costs. The Guthrie and City will meet to review such budgets and determine the amount which needs to be advanced by one of the parties to cover the difference between their respective allocated shares of such costs. If the difference exceeds \$5,000 in Constant Dollars (as such term is hereafter defined), the appropriate party will either pay the difference in equal monthly installments on or before the first day of each month of the corresponding calendar year or pay the difference in a single sum by no later than the first business day of such calendar year. Within a reasonable time after the end of such calendar year, each party will deliver to the other a written statement setting out in reasonable detail the actual Shared Costs and the other party's allocated share of the actual Shared Costs. If monthly installments have not been charged to a party or the aggregate monthly installments actually paid by a party for such calendar year differs from such party's allocated share of the actual amount of the Shared Costs as set out in such statements, such party will pay or the other party will refund the difference, as the case may be, within 30 days thereafter. Any capital costs for specific repairs or replacements which exceed \$10,000 in Constant Dollars will be considered a "Major Expenditure". Except in an emergency which constitutes imminent threat of injury or damage to persons or property, no Major Expenditure will be undertaken without the prior written consent of both parties. If requested by the party making any repairs or replacements which constitute a Major Expenditure, the other party will escrow its share of such Major Expenditure with a mutually acceptable title company or other escrow agent prior to the commencement of such repairs or replacements. Funds will be released from such escrow accounts to pay such other party's allocated share of the cost of each Major Expenditure upon presentation of invoice therefor. As used herein, (i) a "Constant Dollar" will be \$1.00, multiplied by the most recently published Building Cost Index as of the time in question, and divided by the most recently published Building

Cost Index as of January 1, 2003, and (ii) the "Building Cost Index" will be the ENR 20-Cities Building Cost Index (1913 = 100) of the Engineering News-Record, a McGraw-Hill, Inc. publication or, if that index is discontinued, a comparable index prepared by a governmental agency or a responsible periodical of recognized authority, as may be reasonably selected by the parties.

20. Examination of Records. Either party at its cost may examine and copy the other party's books and records relating to the Shared Costs if requested within 180 days after receipt of the annual statement or other statement of such Shared Costs. Examination will be made during normal business hours with reasonable prior notice. No examination of a party's books and records or exception made thereto will extend the due date of any payment of the Shared Costs. Each statement will be considered as final and binding except to the extent of any written exception delivered to the party issuing such statement within 240 days of the giving of such statement. If the parties cannot agree on the actual Shared Costs within 30 days after delivery of the exception, the dispute will be determined by an independent certified public accountant mutually selected by City and Guthrie.
21. Modification of Easements. Guthrie or City at its cost will have the right from time to time upon reasonable approval by the other party to modify, alter or relocate any Support, Utilities, or other easement facilities as may be desirable for operation, improvement, construction, reconstruction, expansion or modification of any buildings or improvements on its Parcel, so long as such modification, alteration or relocation does not materially lessen the capacity or efficiency of the Support or Utilities serving the other Parcel or any buildings or improvements thereon or otherwise materially and adversely affect the use and operation of the other Parcel or any buildings or improvements thereon. Any such modification or alteration will be of a character and quality consistent with the character and quality of the original easement facilities, and any such relocation will not unreasonably interfere with use of or access to the other Parcel or any buildings or improvements thereon. The party relocating an easement area will obtain any surveys describing the location of the new easements and will execute and record an amendment to this Agreement reflecting any resulting relocation of the easements on its Parcel, the cost of which will be paid by such party.
22. Hazardous Materials. Neither City nor Guthrie will use or permit use of any hazardous materials in or about the Building or Property except in the ordinary course of its usual operations conducted thereon, and any such use will at all times be in compliance with all environmental laws. Each party will indemnify, protect, defend and hold harmless the other party and its tenants and subtenants, and the employees, agents, and invitees of any of them, from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of any hazardous material used or permitted to be used by such indemnifying party, whether or not in the ordinary course of business. As used herein, "hazardous materials" means petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in or regulated by any environmental law, and "environmental laws" means all federal, state and local statutes, laws, ordinances, and regulations which relate to or deal with human health or the environment, as they may be enacted or amended from time to time.

23. Nuisance. Neither Guthrie nor City will allow its Parcel to be used in a manner which is unlawful, disreputable, or creates any excessive noise, nuisance, or fire hazard or would unreasonably interfere with, annoy or disturb any user or occupant of the other Parcel. Nothing herein will limit the right of the Guthrie to manufacture and assemble scenery and other elements so long as such manufacturing and assembly is carried out in a manner consistent with the usual standards for manufacture and assembly of such items in other locales.
24. Insurance and Indemnity.
- (a) Each of Guthrie and City at its own expense will maintain with respect to its Parcel commercial general liability insurance with contractual liability coverage insuring against all claims, demands and actions for personal injury, death and property damage in or about its Parcel in amounts and in such form as may from time to time be acceptable to a prudent property owner in the metropolitan Minneapolis-Saint Paul area, but in all events to afford protection for limits of not less than \$5 million for injury or death sustained by one or more persons as a result of any one occurrence and \$5 million for damage to property as a result of any occurrence. Such insurance may include "umbrella" policies that specifically identify the insured's portion of the Property as covered thereby. Each policy will list as insured the owner of the other Parcel, and any tenants, managing agents, and holders of a mortgage or other security interest as may from time to time be designated by the owner of the other Parcel in writing, and will waive any right of subrogation against any of such insureds. No policy will be subject to cancellation or reduction in coverage except after at least 30 days' written notice to all insured parties. Each insurance policy or a duly executed certificate, together with evidence of payment therefor, will be deposited with the owner of the other Parcel upon execution of this Agreement and at least 30 days prior to the expiration of the previous policy. So long as the owner of the City Parcel and Garage is a municipal corporation with statutory limitations on liability, such owner may elect to self-insure its obligations for personal injury, death or property damage in or about the City Parcel.
- (b) Guthrie will procure and maintain property insurance on the Building, with the City and Guthrie named as insured and as loss payees as their interests may appear. Upon the written request of either party, the holder of any mortgage will be added as a named insured and loss payee as its interest may appear. Such insurance will be in an amount equal to the full insurable replacement cost of the Building as reasonably determined by City and Guthrie or by a mutually selected appraiser and will have the lowest deductible as will be commercially reasonable. Such insurance will be on the so-called "all-risk" form of policy or other form of policy as may be reasonably acceptable to prudent owners of similar property in the Minneapolis-Saint Paul metropolitan area. Guthrie and City will cooperate on a reasonable basis in determining the types and levels of coverage, amount of deductible, preferred carriers, and other insurance matters. Such insurance will provide that no cancellation or material reduction in coverage will be effective without at least 30 days' prior written notice to the insureds. The cost of the property insurance will be a Shared Cost under Section 18 of this Agreement.
- (c) City and Guthrie each waive any right of recovery, claim, action or cause of action against the other for any loss or damage that may occur to its portion of

the Building or any equipment and personal property in or about the Building by reason of fire or other cause which would be insured under (b) above regardless of the cause or origin, including negligence of the other party, its agents, officers, or employees.

- (d) The party who is responsible for the performance of any work under this Agreement will, to the extent of any insurance required to be carried by it under (a) above or to the extent of any statutory limitations of liability as to a municipal corporation not carrying insurance and except to the extent of the negligence or willful misconduct of the other party or the agents, officers or employees of the other party, defend, indemnify and hold harmless the other party from and against all claims, liabilities, liens, damages, and expenses which may arise from such work or failure to perform such work.

25. Damage and Destruction. Upon any damage or destruction of the Building or any part thereof, or any partial taking by eminent domain of the Building whether by legal proceedings or by a conveyance under threat thereof which does not render use of the remainder of the Building for its intended purpose commercially impractical, the owner of such property at its cost will

- (a) immediately clean up the land, remove all debris and return the land and its remaining portion of the Building to a safe condition, and
- (b) as soon as practicable thereafter, commence and complete restoration or replacement of its portion of the Building (or such part as remains after a taking) and apply its share of the insurance proceeds or condemnation award to the cost thereof.

Notwithstanding the foregoing, the Guthrie may within 90 days after the damage or taking elect not to reconstruct or replace the Project, in which event the City will have the option either to reconstruct and replace the Garage or not to do so. In any such case where the owner is not obligated to restore or replace its portion of the Building and elects not to reconstruct or replace its portion of the Building, such owner at its cost will remove its portion of the Building or those elements thereof which have been damaged or destroyed or make the damaged elements of its portion of the Building compatible with those elements remaining undamaged, and restore its portion of the Building to that condition and state which would appear visually pleasing and attractive to owner, tenants of and persons using the remainder of the Property and not detract from the use and operation of the remainder of the Property or the portion of the Building located thereon. In the event the Building or a substantial portion thereof is not reconstructed and replaced in substantially the current design, the parties will agree to amend this Agreement on such terms as they may reasonably agree to accommodate any new structures or improvements as may be constructed on the Property and release any easements that may no longer be required.

26. Use of Garage. To the extent permitted by law and subject to circumstances beyond its control, the City covenants and agrees that for a period of 45 years from the date of this Agreement, and for so long thereafter as it may be functionally and financially reasonable to operate the Garage as a public parking garage, the City will continuously operate and maintain all or substantially all of the Garage as a public parking garage seven days per week and 24 hours per day at rates consistent with the rates and charges of competitive

parking facilities. Such use may limit access for transient parkers during the period from 2:00 AM to 6:00 AM, daily and such other hours as may be reasonably acceptable to the Guthrie, provided the Theater is not open for business and the Garage is unlikely to be used by patrons or visitors of the Theater or any business therein. The Garage will be managed (within the parameters of the bond financing provided for construction thereof under the Redevelopment Contract) to be available to patrons and visitors of the Theater on a priority basis during anticipated times of need for events at the Theater, at the standard parking rates for event parking. The City will have the right to determine said market rates, but will consult with the Guthrie prior to making such determinations. Any maintenance or repair activities will be carried out in such manner as will enable the Garage to be open and reasonably accessible for all scheduled events at the Theater.

27. Sale of Garage. The City has granted the Guthrie an option to purchase the Garage and the City Parcel for a limited period of time under Section 7.03(g) of the Redevelopment Contract. Subject to such option to purchase, City agrees that if at any time City considers selling, conveying or otherwise transferring its interest in the Garage or City Parcel, or both, whether by third party offer or otherwise, City will give notice to the Guthrie of the City's interest in doing so. The City and Guthrie will meet over the course of the next 90 days and explore in good faith whether it may be in the best interests of both parties for the City to sell the Garage or City Parcel to the Guthrie or otherwise restructure their arrangements for ownership and operation of the Building and Property, and during such 90-day period the City will not sell or otherwise transfer its interest in the Garage or the City Parcel, accept any offer to purchase or acquire its interest, or issue any request for proposals or other offer to sell or transfer its interest.
28. Limitation of Liability. The liability of each party under this Agreement will be limited to its Parcel, and no other property or asset will be subject to levy, execution or other procedure for satisfaction of remedies with respect to the covenants contained herein. Except as otherwise specifically set out in this Agreement, no party will, may or can avoid liability under this Agreement by disuse or non-use of any or all of the easement facilities.
29. Governmental Relationships. To the extent appropriate to achieve the purposes of this Agreement, each party will cooperate and join in any and all applications for permits, licenses or other approvals or authorizations required by any governmental unit or other body claiming jurisdiction in connection with any operation, maintenance, repair, use, replacement, construction or reconstruction, contemplated or required hereby.
30. Separate Tax Parcels. All rights and easements created by this Agreement are intended to be valued as part of the tax parcel assessed to the owner of the Parcel to whose benefit the rights and easements run. Guthrie and City will use all reasonable efforts, including adjustment of property lines where feasible, to have the taxing authority levy and assess real and personal property taxes (if any) on the Parcels in such manner.
31. Separate Mortgages. Each party will have the right separately to create mortgages or other security interests upon its separate estate, such estate being subject to and together with its interests in the easements and other covenants created herein.
32. Default and Remedies.

- (a) If any party defaults in any obligation requiring the payment of money and fails to cure the default within ten days after receipt of written notice of such default, or if any party defaults in any of its other obligations under any provision hereof and fails within 30 days after receipt of written notice of such default to commence such action as is necessary to cure such default and to proceed diligently thereafter to cure such default, the non-defaulting party may exercise its remedies under subsection (b) below and, in addition, may enforce the obligations of the defaulting party by an action at law or suit in equity. All indebtedness of or payments due by a party under this Agreement will bear interest from the date incurred or the date such payment is due, whichever is earlier, at a rate equal to 3% per annum in excess of the prime rate as published from time to time by *The Wall Street Journal* (or such other nationally-recognized publication or governmental report which reports comparable borrowing rates if *The Wall Street Journal* is no longer published) (or, if payment of such interest cannot be lawfully enforced, then at the highest rate that can be enforced), and the indebtedness, interest, and all reasonable costs of suit or collection thereof, including reasonable attorneys' fees whether suit be brought or not, with interest on such costs of suit or collection at the rate above set forth, will be payable on demand of the creditor, and such indebtedness, interest and costs of suit or collection and interest on such costs will be recoverable by any remedy available after the making of such award at law or in equity. Failure to enforce any covenant hereunder will not be deemed to be a waiver of the right to do so thereafter.
- (b) In addition to the other rights and remedies provided at law or in equity or under this Agreement, if a party defaults in any obligation under this Agreement and fails to cure such default within the applicable time period described in subsection (a) above, the owner of the other Parcel may on 30 days prior written notice or such shorter notice as may be reasonable in the circumstances for snow and ice removal and other operational matters required to be performed by the defaulting party that present imminent danger of injury or damage to persons or property (or without notice in an emergency) enter the Parcel of the defaulting party, if necessary, and pay for or perform such obligation. The costs of such payment or performance by the owner of the other Parcel, plus 10% of such costs for overhead and administration, will be paid by the defaulting party on demand.
- (c) If any party in writing by registered or certified mail notifies the owner of the other Parcel of the name and address of any tenant or holder of a mortgage or other security interest on its Parcel, the owner of the other Parcel will give such tenant or holder a copy of any notice or other communication with respect to any claim that a default exists or is about to exist under this Agreement and a copy of any notice of change of address. If the defaulting party fails to cure any such default, any such tenant or holder of whom the non-defaulting party has been so notified in writing will have the right (but not the obligation) to cure such default within a reasonable time, not to exceed 60 days after notice (or, if such default cannot reasonably be cured within 60 days, such time as may reasonably be required to cure such default with all diligence) with the same effect as if timely made by the defaulting party. Any default in the payment of money will be conclusively considered to be a default that can be cured within 60 days.

- (d) No party may terminate any of the easements created by this Agreement or discontinue performance of its obligations to maintain, repair and replace the easement facilities due to a default by the other party under this Agreement. Any such termination or change in performance may be made only with the written consents described in Section 38.
33. Force Majeure. Notwithstanding anything in this Agreement to the contrary, the time for performance of any obligations under this Agreement will be extended by the number of days of any delays in the commencement or performance of operation, construction, reconstruction, repairs, maintenance or replacement caused by acts of God, war, terrorist activities, civil commotion, embargo, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress resulting from fire or other casualty and all other events which are beyond the reasonable control of the affected party (except for unavailability of funds).
34. Notices. All notices, communications, demands and requests permitted or required to be given under this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, or (b) one business day after being delivered to a reliable and recognized overnight courier or messenger service which provides receipts of delivery, with fees prepaid or charged to the sender, or (c) three business days after being deposited in the United States mail in a sealed envelope with registered or certified mail postage prepaid thereon, return receipt requested, addressed as follows or to such other address as set forth in a notice given in accordance with this Section:

if to Guthrie, until grand opening of the Theater scheduled for May 7, 2006:	Guthrie Theater 725 Vineland Place Minneapolis, MN 55403 Attn.: Managing Director
---	--

if to Guthrie from and after grand opening of the Theater:	Guthrie Theater 818 South Second Street Minneapolis, MN 55401 Attn: Managing Director
---	--

if to City:	City of Minneapolis Director of Public Works 350 South Fifth Street, Room 203 Minneapolis, MN 55415-1314 Attn.: Manager of Parking Ramps and Lots
-------------	---

35. Estoppels. Each party will at any time and from time to time upon not less than 20 days' prior notice from the other execute, acknowledge and deliver a written statement certifying
- (a) that this Agreement is in full force and effect, subject only to such modification (if any) as may be set out therein, and
- (b) that there are not, to such party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults if any are claimed, and

- (c) as to any other matters pertaining to this Agreement as may be reasonably requested.

Any such statement may be relied upon by a prospective transferee or encumbrancer of all or any portion of the Parcel owned by the requesting party or any interest therein or any assignee of any such persons. If any party fails to timely deliver such statement, such party will be deemed to have acknowledged that this Agreement is in full force and effect, without modification except as may be represented by the party requesting such statement, and that there are no uncured defaults in the requesting party's performance.

36. Severability. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Agreement, or any part of the same, or the inapplicability thereof to any person or circumstance, will not impair or affect in any manner the validity, enforceability, or effect of the rest of this Agreement, or the inapplicability of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.
37. Minnesota Law. This Agreement will be construed in accordance with the laws of the State of Minnesota.
38. Successors and Assigns. All rights and easements established, granted, conveyed, reserved and consented to by this Agreement are appurtenant to the Guthrie Parcel and City Parcel and will run with the land, and will inure to the benefit of and be binding on all present and future owners of the Guthrie Parcel and City Parcel and their respective successors and assigns. Each party will be liable under this Agreement only for such obligations as accrue during its respective period of ownership of its Parcel. If any Parcel is subdivided into two or more Parcels of separate ownership, each obligation arising under this Agreement will bind only those Parcels as to which such obligation relates, and the other Parcels and the owners thereof will not be burdened by such obligation. Nothing in this Agreement is to be interpreted to give the public, any governmental authority (other than the City in its capacity as owner of the City Parcel), or any other third party any easement upon any land. This Agreement will continue following any transfer of the Guthrie's interest in the Project or Theater to the City with a lease back to the Guthrie as contemplated by the grant offered to the City by the State of Minnesota, with the Guthrie being responsible for the obligations of the owner of the Guthrie Parcel as provided under the terms of the lease.
39. Consents. If the consent or approval of either party is requested, such consent or approval will not be unreasonably withheld, delayed or conditioned. Any refusal to consent or approve will be in writing and will explain in reasonable detail the reasons for refusal. Notwithstanding anything herein to the contrary, if the party whose consent or approval is requested has failed within 20 days after a written request therefor to give to the requesting party either its consent or approval, or its written refusal to consent or approve containing an explanation of the reasons for refusal in reasonable detail, then the requested consent or approval will be automatically and conclusively treated as having been given.
40. Changes. This Agreement may be terminated, extended, modified, supplemented or amended at any time and from time to time solely by the owners of the Guthrie Parcel and the City Parcel and all mortgagees, beneficiaries and lessees under all first mortgages, deeds of trust and ground leases covering all or any portion of the Property.

EXHIBIT A

DESCRIPTION OF CITY PARCEL

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

Together with rights and easements benefiting the foregoing property as set out in the [ALLEY EASEMENT] dated March 31, 2004, a copy of which is filed in the office of the Registrar of Titles for Hennepin County, Minnesota, as Document No. _____.

EXHIBIT B

DESCRIPTION OF GUTHRIE PARCEL

Tract A, Registered Land Survey No. _____, Hennepin County, Minnesota

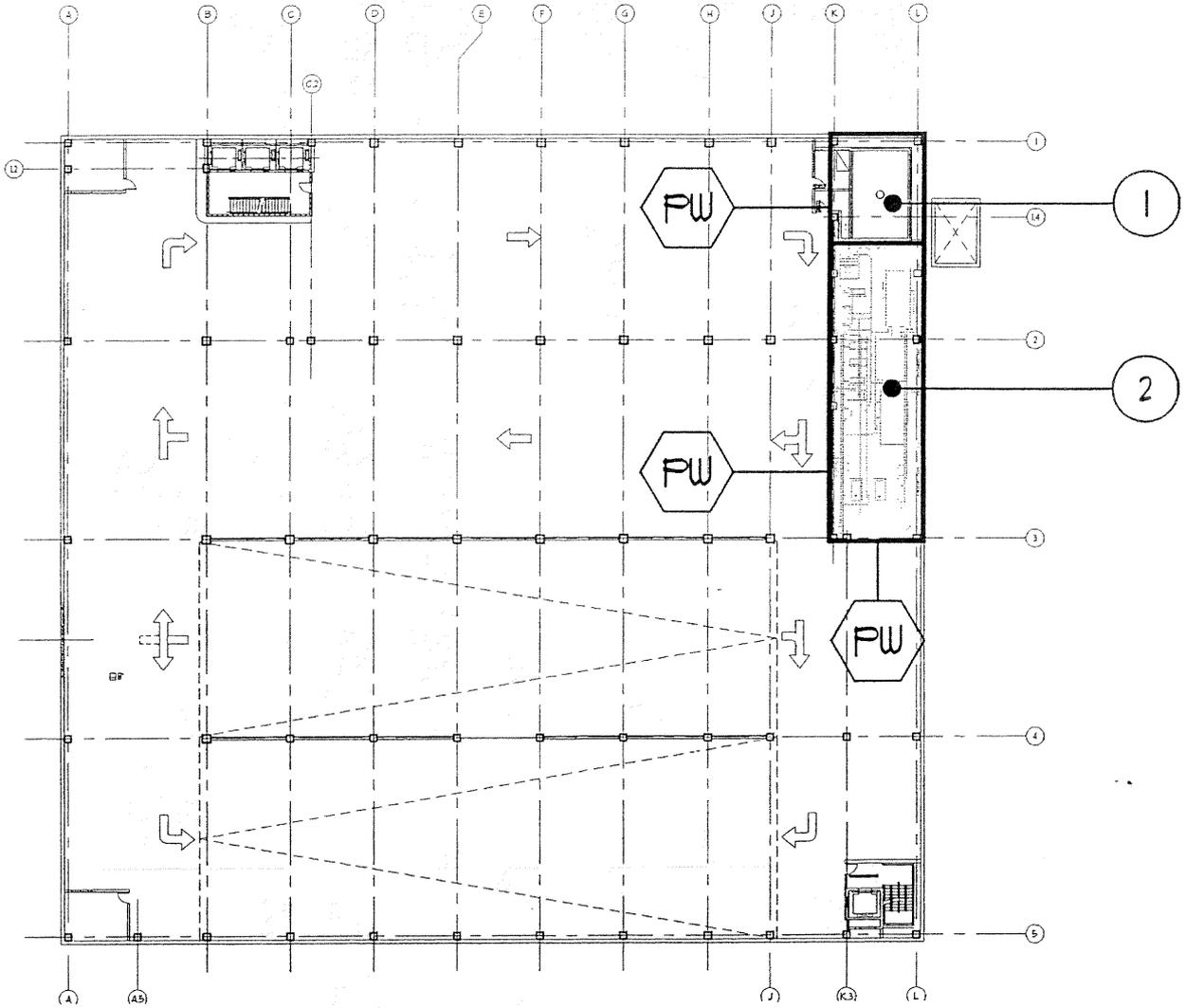
Together with that part of the Southwesterly half of the Second Street South, formerly known as Second Street, as dedicated in the plat of Town of Minneapolis, vacated, lying above an elevation of 855.50 feet (N.G.V.D. – 1929) described as follows:

Commencing at the most easterly corner of Block 97, said Town of Minneapolis; thence on an assumed bearing of North 59 Degrees 10 Minutes 29 Seconds West, along the southwesterly line of said Second Street, a distance of 63.50 feet, to the point of beginning of the parcel to be described; thence North 30 degrees 49 Minutes 31 Seconds East, a distance of 80.00 feet, to the Northeasterly line of said Second Street; thence North 59 Degrees 10 Minutes 29 Seconds West, along the northeasterly line of said Second Street distance of 114.00 feet; thence South 30 degrees 49 Minutes 31 Seconds West, a distance of 80.00 feet, to the southwesterly line of said Second Street; thence South 59 Degrees 10 Minutes 29 Seconds East, along said southwesterly line of said Second Street, a distance of 114.00 feet to the point of beginning.

EXHIBIT C

LOCATION OF SHARED COLUMNS

EXHIBIT D
LOCATION OF EASEMENTS



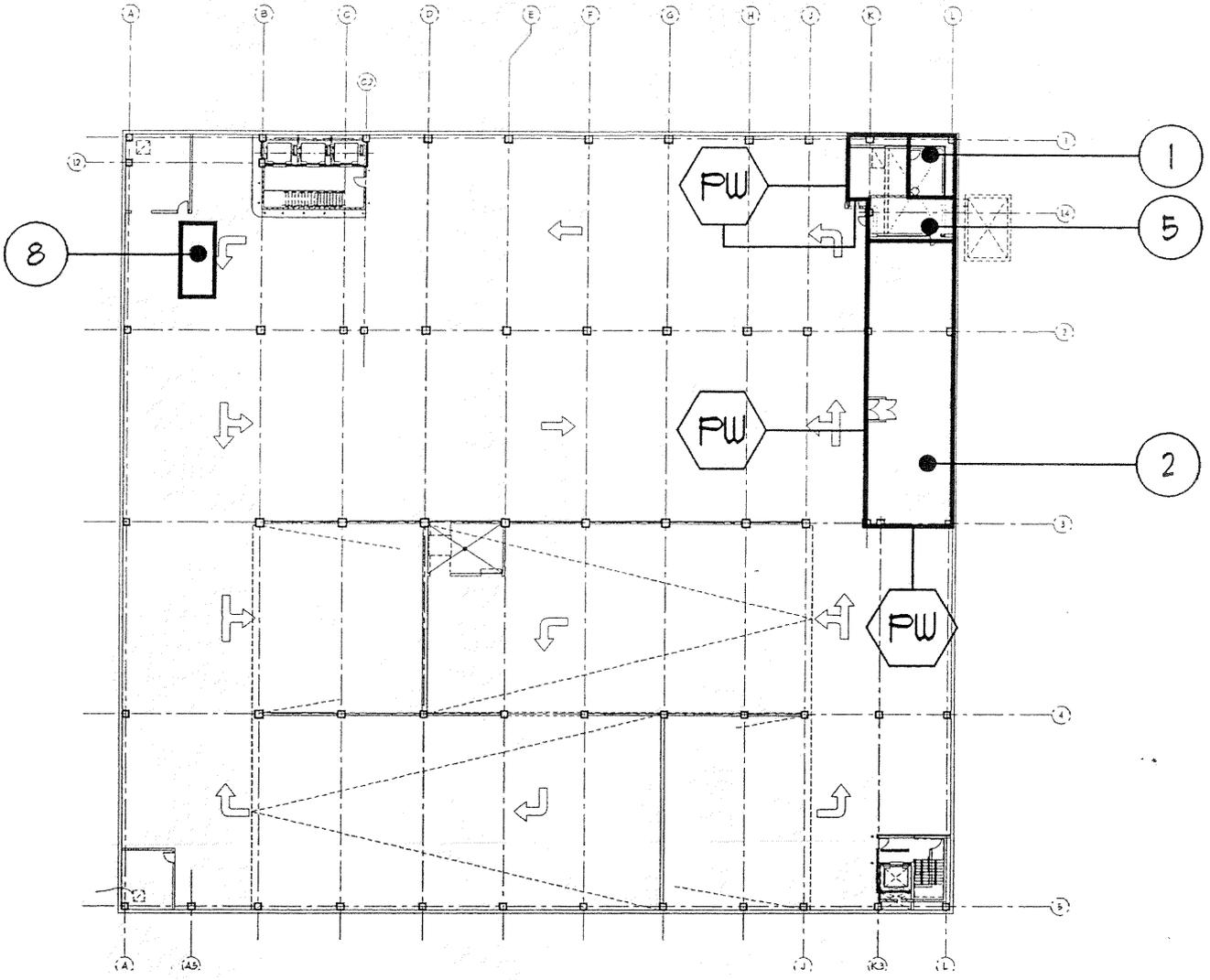
KEY	
①	TRUCK DOCK 4 PROJECT ACCESS EASEMENT
②	CHILLER ROOM EASEMENT
③	COOLING TOWER EASEMENT
④	GARAGE ACCESS EASEMENT
⑤	MECHANICAL/ELECTRICAL ROOM EASEMENT
⑥	GUTHRIE PARKING STALL
⑦	ROOF EXIT EASEMENT
⑧	STORAGE TANK EASEMENT
⑨	THEATER LIGHTING EASEMENT
⑩	GUTHRIE PROPERTY
PW	PARTY WALL

① Level P1 Floor Plan
N.T.S.

Project	Guthrie District Parking Facilities	Comm. No.	2002099
Title	Property and easement diagrams	Date	03-23-04
		Drawing No.	a1.P1

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Project
**Guthrie District
 Parking Facilities**

Comm. No. 2002099

Date 03-23-04

Title
Property and easement diagrams

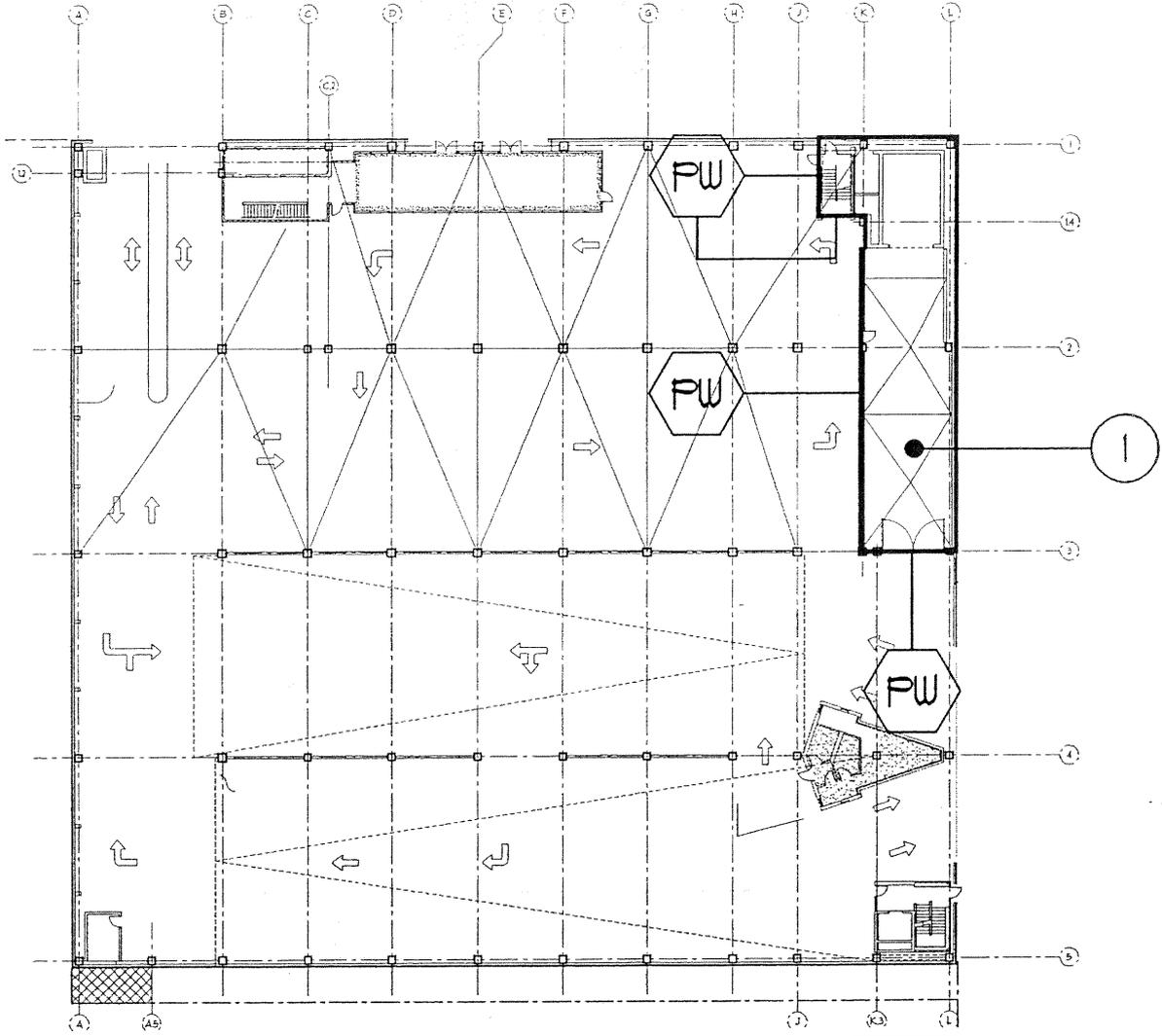
Drawing No. **a1.P2**

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KEY	
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②	CHILLER ROOM EASEMENT
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⑩	GUTHRIE PROPERTY
PW	PARTY WALL

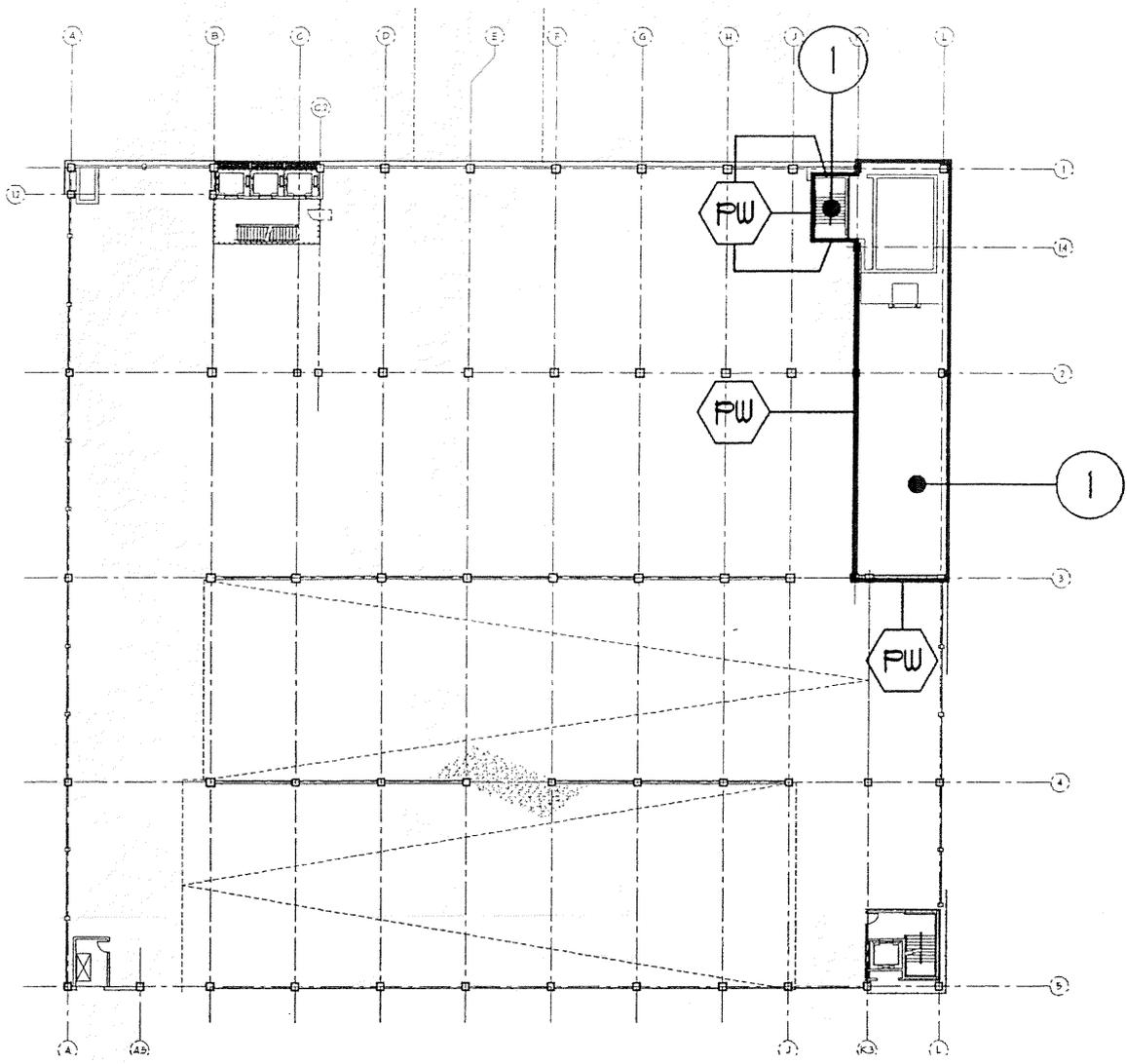
① Level 1 Floor Plan
N.T.S.

Project	Guthrie District Parking Facilities	Comm. No.	2002099
		Date	03-23-04
Title	Property and easement diagrams	Drawing No.	a1.01

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②	CHILLER ROOM EASEMENT
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⑩	GUTHRIE PROPERTY
PW	PARTY WALL

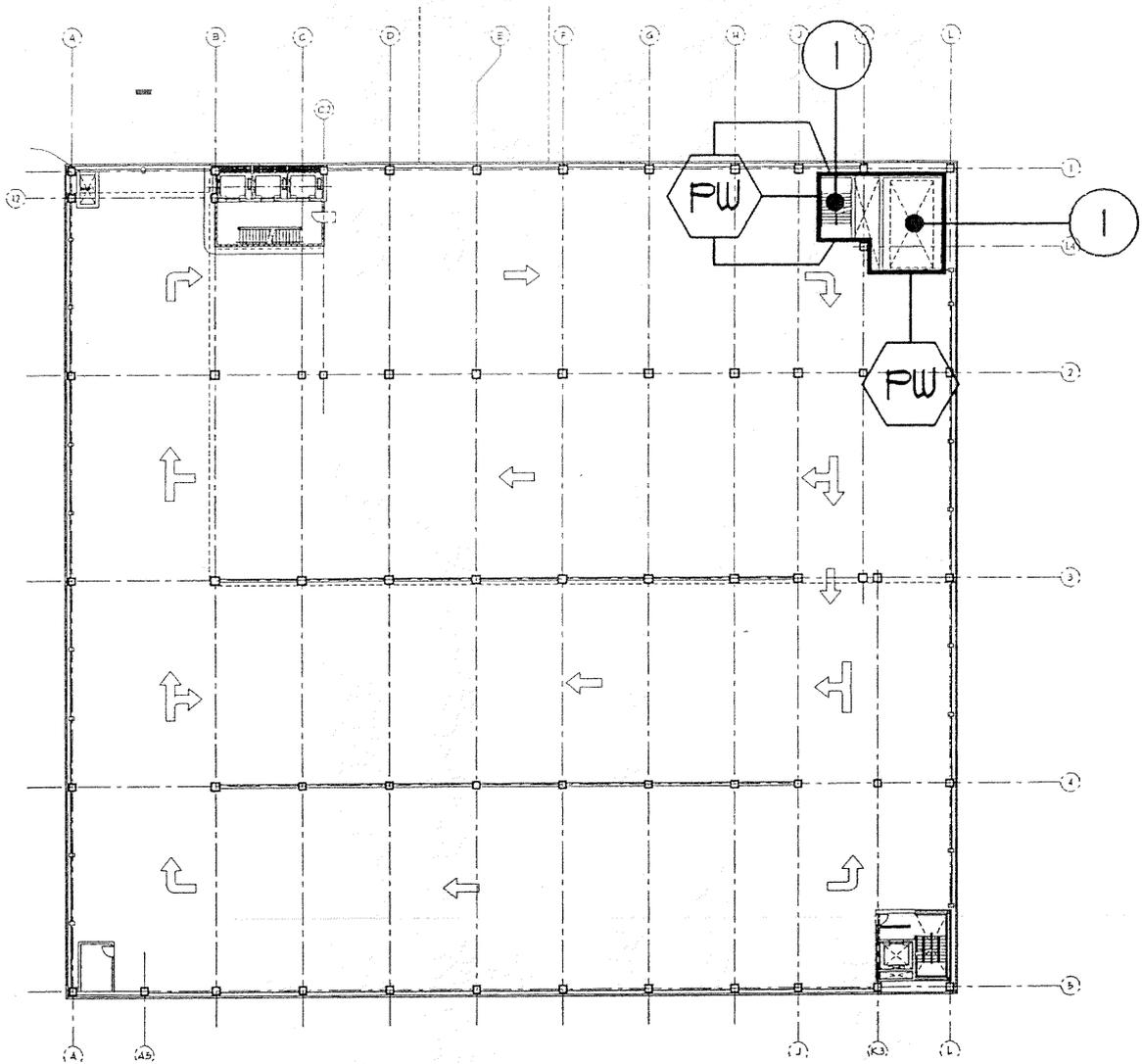
① Level 2 Floor Plan
N.T.S.

Project	Guthrie District Parking Facilities	Comm. No.	2002099
Title	Property and easement diagrams	Date	03-23-04
		Drawing No.	a1.02

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PW	PARTY WALL

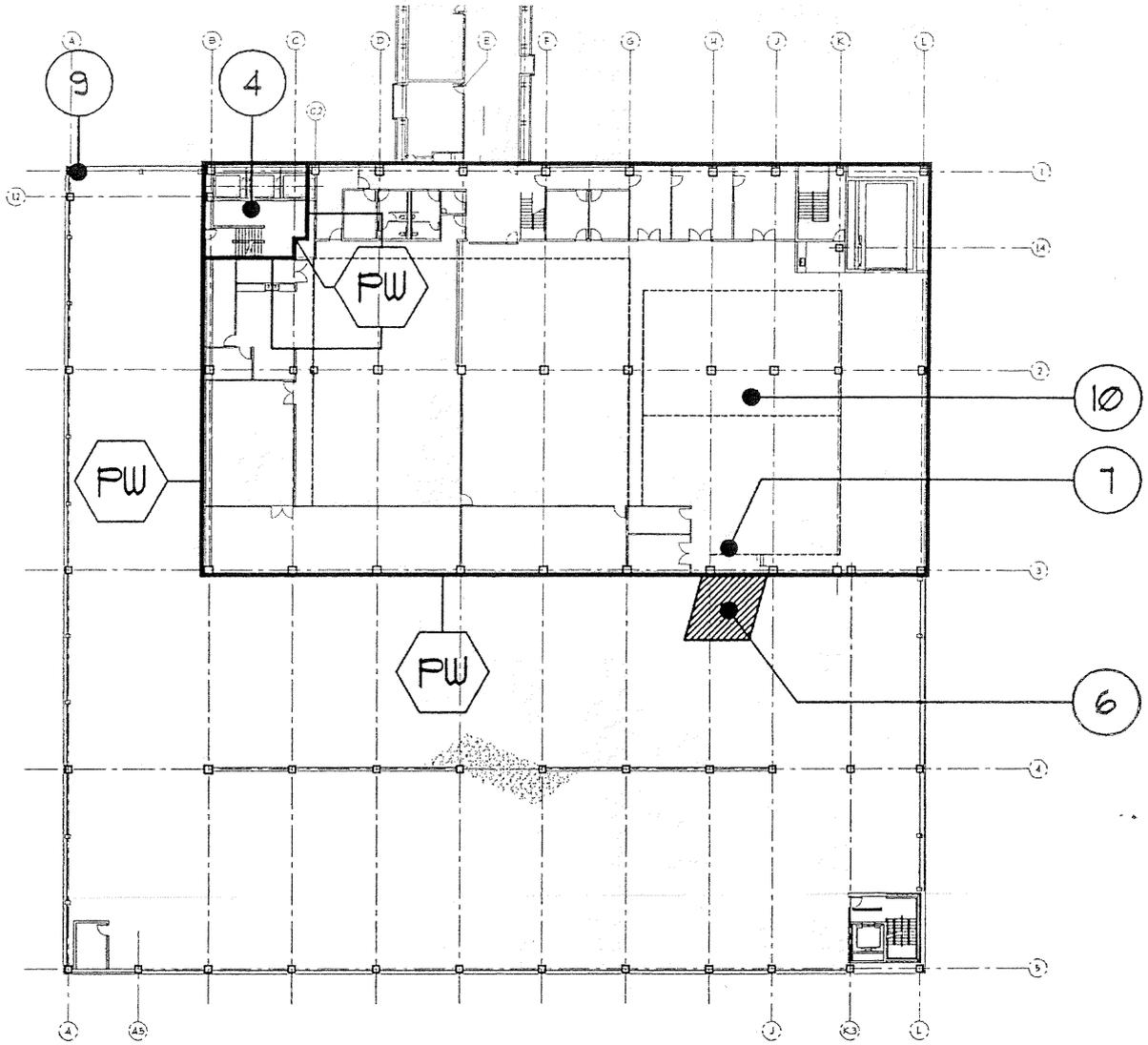
1 Level 3 Floor Plan
N.T.S.

Project	Guthrie District Parking Facilities	Comm. No.	2002039
Title	Property and easement diagrams	Date	03-23-04
		Drawing No.	a1.03

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⑧	STORAGE TANK EASEMENT
⑨	THEATER LIGHTING EASEMENT
⑩	GUTHRIE PROPERTY
PW	PARTY WALL

1 Level 4 Floor Plan
N.T.S.

Project	Guthrie District Parking Facilities	Comm. No.	2002099
Title	Property and easement diagrams	Date	03-23-04
		Drawing No.	a1.04

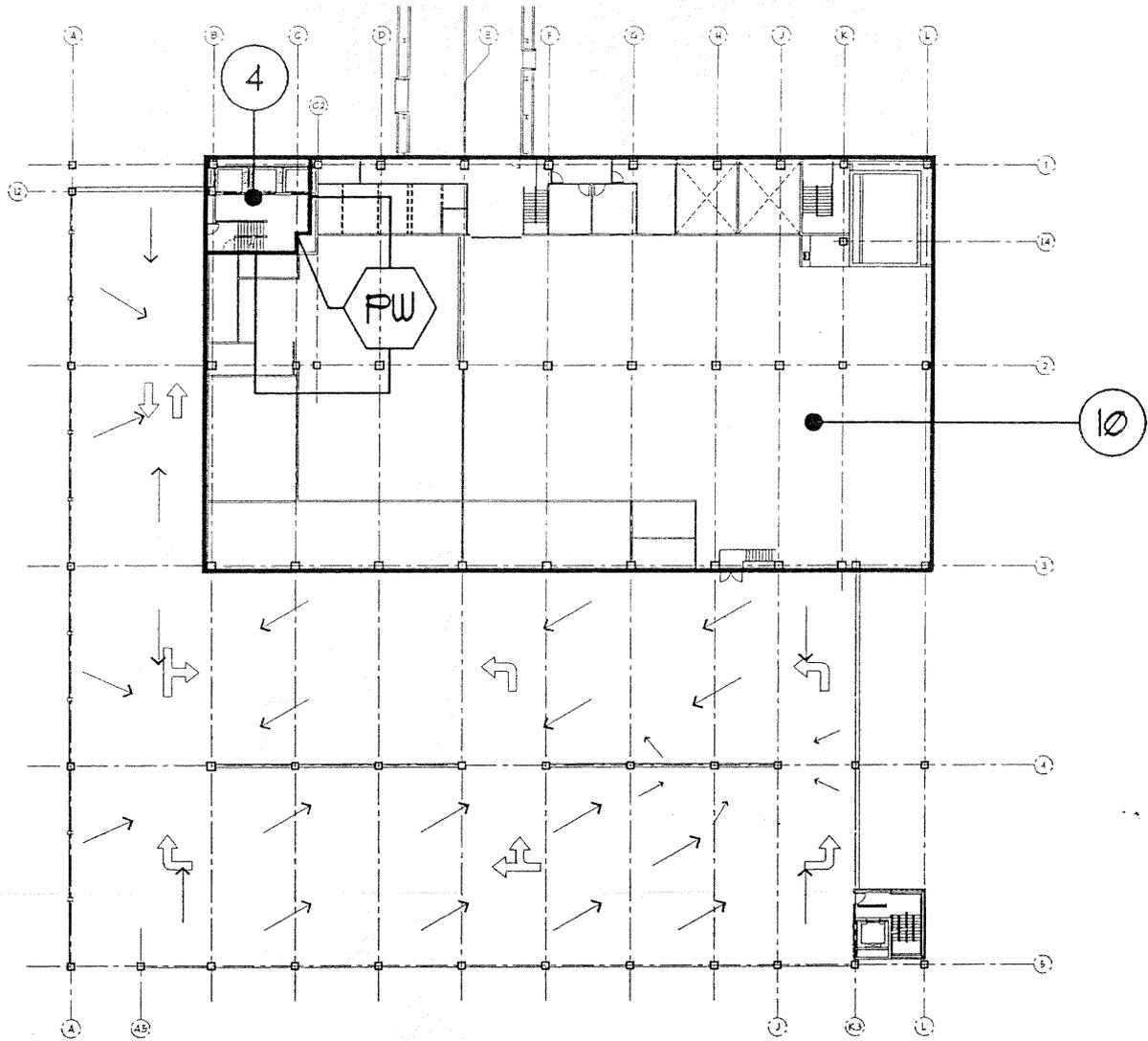
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⑩	GUTHRIE PROPERTY
⬡	PARTY WALL

① Level 5 Floor Plan
N.T.S.

Project
Guthrie District
Parking Facilities

Comm. No. 2002099

Date 03-23-04

Title
Property and easement diagrams

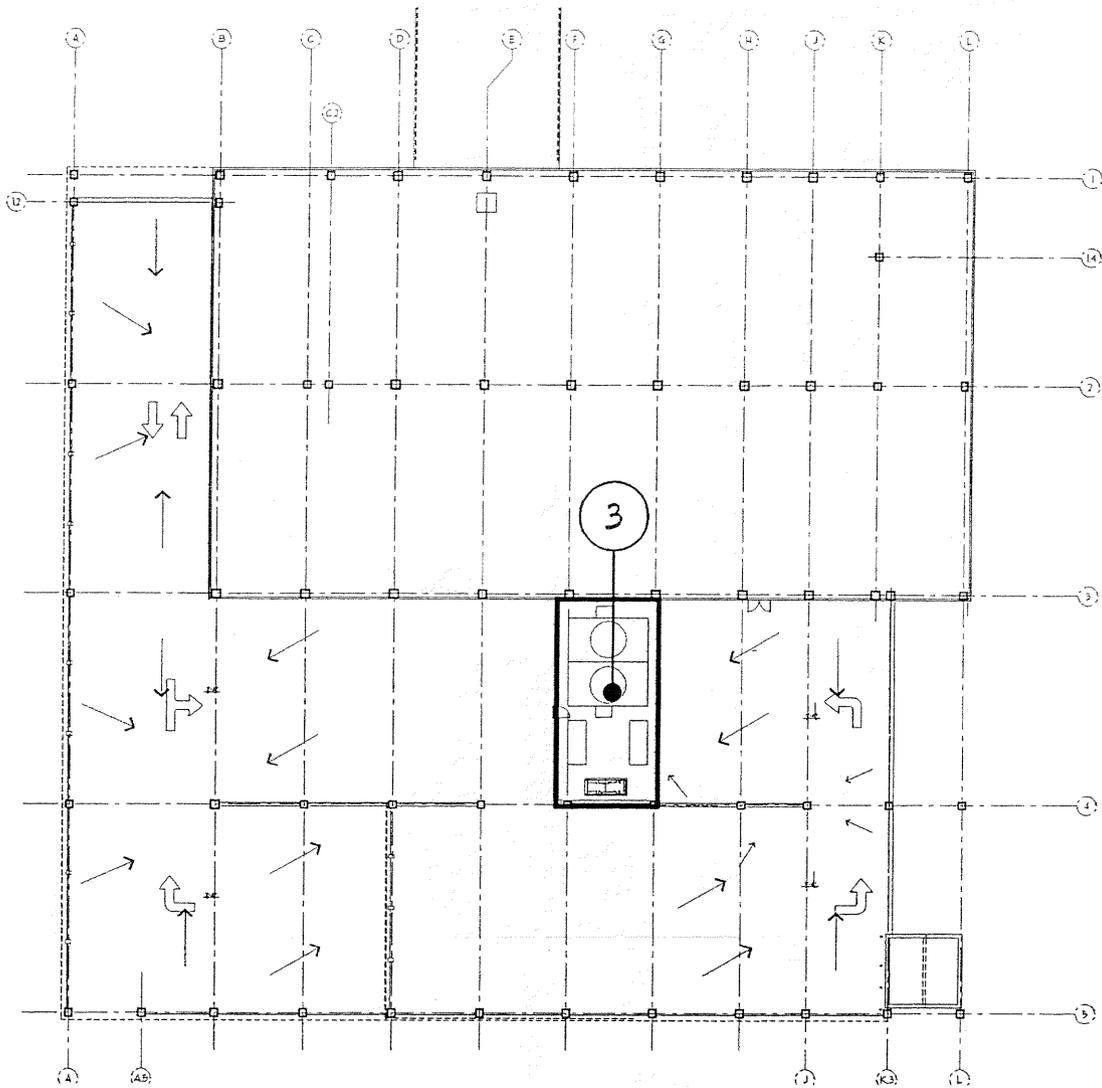
Drawing No. a1.05

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- KEY**
- ① TRUCK DOCK 4 PROJECT ACCESS EASEMENT
 - ② CHILLER ROOM EASEMENT
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 - ⑧ STORAGE TANK EASEMENT
 - ⑨ THEATER LIGHTING EASEMENT
 - ⑩ GUTHRIE PROPERTY
 - ⬡ PARTY WALL

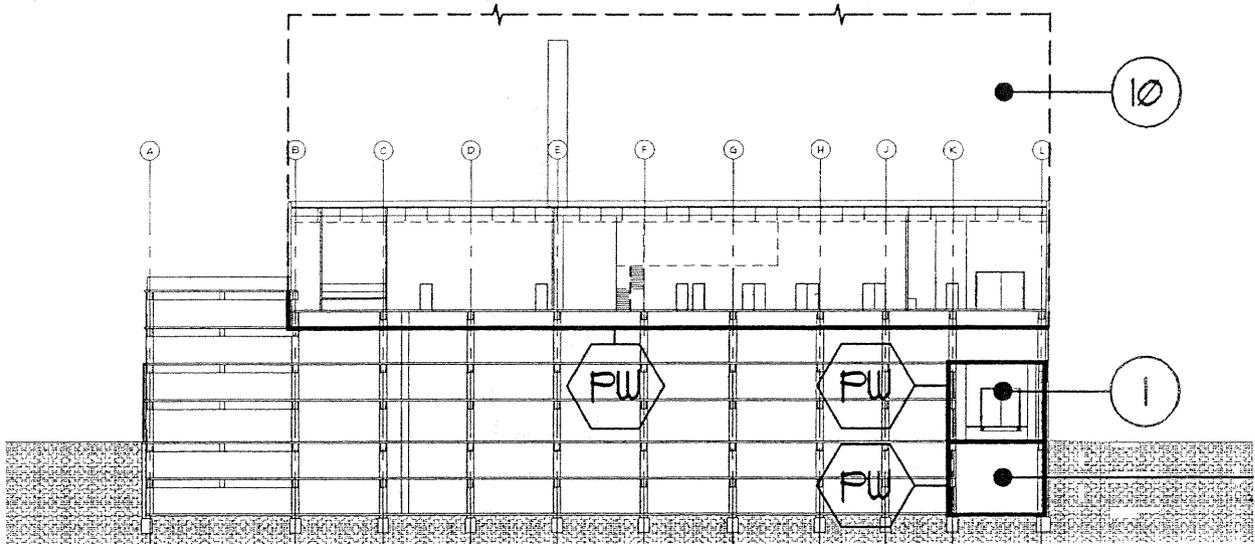
1 Level 6 Floor Plan
N.T.S.

Project	Guthrie District Parking Facilities	Comm. No.	2002099
Title	Property and easement diagrams	Date	03-23-04
		Drawing No.	a1.06

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1 Building Section Looking North
N.T.S.

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④	GARAGE ACCESS EASEMENT
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⬡	PARTY WALL

Project
Guthrie District
Parking Facilities

Comm. No. 2002099

Date 03-23-04

Title
Property and easment diagrams

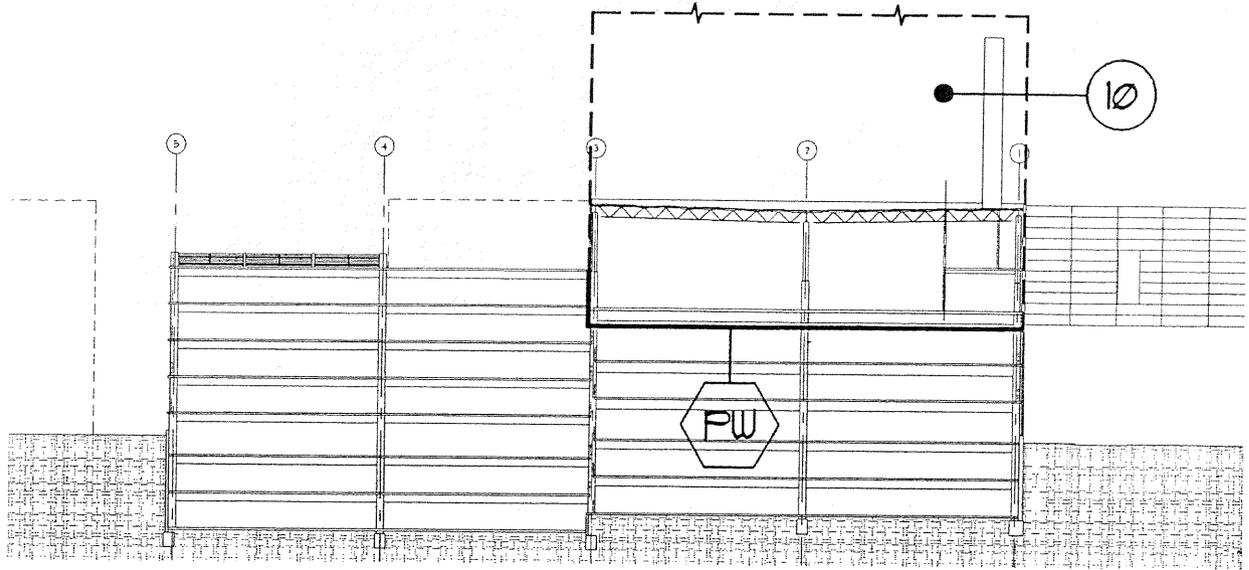
Drawing No. a4.01

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1 Building Section Looking West
N.T.S.

KEY	
①	TRUCK DOCK & PROJECT ACCESS EASEMENT
②	CHILLER ROOM EASEMENT
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⑩	GUTHRIE PROPERTY
PW	PARTY WALL

Project
Guthrie District
Parking Facilities

Comm. No. 2002099

Date 03-23-04

Title
Property and easment diagrams

Drawing No. a4.02

ARCHITECTURAL ALLIANCE

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