

## PARKING EASEMENT AGREEMENT

**THIS PARKING EASEMENT AGREEMENT** ("Agreement") is made and entered into effective as of \_\_\_\_\_, 2011 by and between THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RAMSEY, MINNESOTA, a body politic and corporate under the laws of the State of Minnesota ("HRA") and RAMSEY PROFESSIONAL CENTER, LLC, a Minnesota limited liability company ("RPC").

### RECITALS:

A. HRA is the current record fee owner of the real property legally described on the attached Exhibit A ("HRA Property");

B. RPC is the current record fee owner of the real property legally described on the attached Exhibit B ("RPC Property");

C. RPC or one of its predecessors in title formerly owned the portion of the HRA Property legally described on the attached Exhibit C (the "60 Foot Strip");

D. While RPC or its predecessors owned the 60 Foot Strip, they constructed approximately 54 parking stalls and related improvements to provide access between the RPC Property and Sapphire Street on a portion of the 60 Foot Strip (the "Existing Improvements");

E. HRA has agreed to grant RPC an easement over the portion of the 60 Foot Strip described on the attached Exhibit D (the "Easement Area") to use the Existing Improvements located on the Easement Area for vehicle parking and for vehicular ingress to and egress between the RPC Property and Sapphire Street;

F. If RPC constructs additional improvements on the RPC Property and, as a result of such construction, requires additional parking stalls to satisfy the parking requirements of the City of Ramsey's Ordinances, HRA has agrees, in Section 7.1 below, to amend this Agreement to expand the Easement Area within the 60 Foot Strip and to allow RPC to construct, at RPC's sole cost and expense of up to 50 additional parking stalls in the expanded Easement Area (the "Expanded Parking Improvements"); provided, the total number of parking stalls in the Easement Area, as expanded, shall not exceed 104 parking stalls; and

G. HRA may, at some time in the future, construct new or additional surface parking or new parking structures on the portion of the HRA Property legally described on the attached Exhibit E (the "Replacement Easement Area"). Any and all new or additional surface parking areas and any new parking structures that the HRA constructs within the Replacement Easement Area are referred to in this Agreement as "New Parking Facilities." If the HRA elects to construct New Parking Facilities, the HRA may unilaterally terminate this Agreement and the easements granted herein; provided the HRA offers to grant RPC and, if requested by RPC, grants RPC a replacement easement to permit RPC, RPC's tenants and RPC's and RPC's tenants' employees and invitees the right to use the same number of parking stalls in the New Parking Facilities that RPC has the right to use in the Easement Area at the time that HRA terminates this Agreement.

**NOW THEREFORE**, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, HRA and RPC hereby covenant and agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Grant of Parking Easement. Subject to the terms and conditions of this Agreement, including without limitation the termination right of HRA in Section 7.2, and subject to any covenants, conditions, restrictions, easements or other matters of record, HRA grants RPC a non-exclusive, appurtenant easement over the Easement Area to use, maintain, repair and replace and to allow RPC's tenants and RPC's and RPC's tenants' employees, guests and invitees (hereinafter the "Permitted Users") to use the Existing Improvements located in the Easement Area for 54 vehicle parking spaces (the "Parking Easement"). The Parking Easement is appurtenant to the RPC Property. HRA reserves the right, at HRA's sole cost and expense, to reconfigure the 54 parking spaces within the Parking Easement; provided HRA may not, as a part of any such reconfiguration, reduce the number of parking spaces within the Easement Area to less than 54 parking spaces.

3. Grant of Access Easement. Subject to the terms and conditions of this Agreement, including without limitation the termination right of HRA in Section 7.2; subject to the right of HRA to restrict and confine the easement as described below; and subject to any covenants, conditions, restrictions, easements or other matters of record, HRA grants RPC a non-exclusive, appurtenant easement to use and to allow the Permitted Users to use the Easement Area for vehicular ingress and egress between the RPC Property and Sapphire Street and for pedestrian access between the Easement Area and the RPC Property ("Access Easement"). The Access Easement is appurtenant to the RPC Property. HRA reserves the right to record one or more amendments to this Agreement from time to time, without the consent or joinder of RPC, to restrict and confine the Access Easement to a drive lane of not less than 24 feet in width.

4. Conditions of Use. During the term of the Parking Easement and the Access Easement, RPC must, at RPC's sole cost and expense, (a) maintain the Easement Area, as the same may be expanded pursuant to Section 7.1, in a clean and safe condition, including without limitation resurfacing, restriping, cleaning and removing snow from the Existing Improvements and the Expanded Parking Improvements, if any; (b) promptly repair and restore any damage to the Existing Improvements and the Expanded Parking Improvements, if any; (c) replace the Existing Improvements and Expanded Parking Improvements, if any, as reasonably necessary; (d) comply with all laws, regulations, rules, orders, statutes, or ordinances of any governmental entity in effect on or after the date hereof and applicable to the Parking Easement and Access Easement, as the same may be expanded; (e) if any taxes are assessed against the HRA Property due to the Parking Easement or the Access Easement, as the same may be expanded, or RPC's use of the Existing Improvements or the Expanded Parking Improvements, if any, reimburse HRA for any such taxes assessed against the HRA Property; (f) defend and indemnify HRA against any third party allegations and claims arising out of one or more Permitted User's use of the Existing Improvements, the Access Easement, and the Expanded Parking Improvements, if any, and indemnify HRA from and against any loss, cost, damage, liability, or expense arising out of such third party claims, all as set forth in Section 5. Except for the construction of

Expanded Parking Improvements pursuant to Section 7.1, RPC may not construct any new or additional improvements within the Parking Easement or the Access Easement without HRA's prior written consent, which consent HRA may grant or withhold in its sole and absolute discretion.

5. Indemnification. To the extent permitted by law, RPC hereby agrees to indemnify, defend and hold harmless HRA, the City of Ramsey, Minnesota and their respective agents, members, directors, board members, officers, agents, affiliates, mortgagees, and employees (the "Indemnified Parties") from and against any and all losses, costs, damages, expenses, or liabilities (including reasonable attorneys' fees and costs) arising out of any third party demands, claims, or lawsuits including, but not limited to, claims for bodily injury (including death), property damage or economic loss and fines or penalties arising out of one or more Permitted User's use of the Existing Improvements, as the same may be expanded, the Access Easement, as the same may be expanded, and the Expanded Parking Improvements, if any.

6. Insurance. During the term of the Parking Easement and the Access Easement, RPC must name the Indemnified Parties as an additional insured on the policy or policies of liability insurance RPC maintains with respect to the RPC Property and must, upon the HRA's request, provide the HRA with evidence that such insurance is in place and in full force and effect. As between the insurance provided under RPC's policy and any other insurance covering the Indemnified Parties, the insurance provided under RPC's policy shall be primary with respect to any claims asserted against the Indemnified Parties that arise out of the use, maintenance, repair or replacement of the Parking Easement, as the same may be expanded, the Access Easement, as the same may be expanded, the Existing Improvements or the Expanded Parking Improvements, if any, by one or more Permitted Users.

7. Future Development of Improvements.

7.1 If RPC elects to construct one or more additional improvements on the RPC Property and as a result of such construction RPC will need additional parking spaces to satisfy the parking requirements of the City of Ramsey's Ordinances, HRA must, upon RPC's written request, join with RPC in executing and recording an amendment to this Agreement that amends Exhibit D of this Agreement to expand the size of the Easement Area within the 60 Foot Strip to accommodate up to an additional 50 parking stalls and access thereto; provided, the total number of stalls in the Easement Area, as expanded, may not exceed 104 parking stalls. RPC agrees to construct, at its sole cost and expense, the Expanded Parking Improvements. HRA may, in its sole and absolute discretion, direct RPC as to the configuration of the Expanded Parking Improvements, and may from time to time reconfigure and re-stripe the parking stalls in the Easement Area; provided, however, HRA cannot reconfigure the parking stalls in a manner that results in fewer parking stalls being available to RPC than were available to RPC before such reconfiguration. If HRA and RPC amend this Agreement to expand the Easement Area, but RPC fails to complete construction of the Expanded Parking Improvements within one (1) year of the date of the amendment, HRA may thereafter unilaterally amend this Agreement to restore the original Exhibit D and to delete this Section 7.1.

7.2 HRA may, at any time and in its sole and absolute discretion, construct New Parking Facilities. If HRA decides to construct New Parking Facilities, HRA may

unilaterally execute and record an instrument terminating this Agreement, and a statement in the termination instrument that the termination is made pursuant to this Section 7.2 based on HRA's decision to construct New Parking Facilities shall be prima facie evidence of HRA's decision. HRA must give RPC at least sixty (60) days prior written notice before HRA executes and records an instrument terminating this Agreement and, if RPC so requests, in writing, within sixty (60) days after RPC's receipt of a notice from HRA of HRA's intent to terminate this Agreement, HRA and RPC must execute and record a new agreement confirming the termination of this Agreement and granting RPC (i) a new, non-exclusive, appurtenant parking easement that gives Permitted Users a non-exclusive right to use the same number of parking stalls in the New Parking Facilities that RPC had the right to use under his Agreement at the time of HRA's notice to RPC; (ii) a new, non-exclusive, appurtenant access easement for vehicular ingress and egress between the New Parking Facilities and a public right of way; and a new, non-exclusive, appurtenant easement for pedestrian access between the New Parking Facilities and the RPC Property (collectively, the "Replacement Parking and Access Easement"). HRA may include in the Replacement Parking and Access Easement indemnification and insurance provisions that impose the same indemnity and insurance obligations on RPC as the indemnification and insurance provisions set forth in Sections 5 and 6 of this Agreement. If the New Parking Facilities are not completed and available for use by Permitted Users when the termination of this Agreement is affective, HRA must, at HRA's sole cost and expense, provide temporary parking for Permitted Users at a location within 1,000 feet of the boundary of the RPC property until the New Parking Facilities are completed and available for Permitted Users to use pursuant to the terms of the Replacement Parking and Access Easement. HRA must, at its sole cost and expense, construct and maintain the temporary parking areas which may, at HRA's option, have a gravel surface. If RPC does not notify HRA within sixty (60) days after RPC's receipt of a notice from HRA of HRA's intent to terminate this Agreement that RPC is requesting a Replacement Parking and Access Easement, RPC's right to the Replacement Parking and Access Easement terminates and is of no further force or effect. HRA shall, in its sole and absolute discretion, determine the location of the access to and the configuration of the parking stalls within the New Parking Facilities. The HRA may reconfigure the location of stalls within the New Parking Facilities from time to time; provided, however, HRA may not reconfigure the parking stalls in a manner that results in fewer parking stalls available to RPC than were previously available to RPC before the reconfiguration. HRA is responsible for constructing any New Parking Facilities within the Replacement Easement Area, and RPC is not responsible for paying or reimbursing HRA for any costs associated with the initial construction of the New Parking Facilities. The Replacement Parking and Access Easement will obligate RPC to pay its proportionate share of the costs of all maintenance, repair and replacement of the New Parking Facilities (based on a formula of the number of parking stalls RPC is entitled to use under the terms of the Replacement Parking and Access Easement divided by the total number of parking stalls on or in the New Parking Facilities. RPC may unilaterally release and terminate its rights under the Replacement Parking and Access Easement at any time by recording an instrument releasing and terminating its rights in the Anoka County Land records and providing HRA with a copy of the recorded instrument of release and termination and thereafter RPC shall be relieved of any its obligation to pay its proportionate share of any costs of maintaining, repairing and replacing the New Parking Facilities that are incurred after the date RPC records such release and termination instrument. The provisions of this Section 7.2 survive HRA's termination of this Agreement pursuant to this Section 7.2.

8. Miscellaneous.

8.1 Binding Effect. The Parking Easement and the Access Easement shall run with title to the RPC Property, and this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

8.2 No Rights in Public, No Implied Easements. Nothing in this Agreement may be construed as creating any rights in the general public or as dedicating for public use any portion of any of the HRA Property, including without limitation the Existing Improvements, Access Easement and the Parking Easement.

8.3 Remedies and Enforcement. In the event of a breach of any term of this Agreement, the non-breaching party shall have the right to exercise any and all remedies afforded under law and at equity.

8.4 Amendment. Except as described in Sections 2 and 3, this Agreement may be modified or amended, in whole or in part, only by the written consent of the parties hereto, evidenced by a document that has been fully executed and acknowledged by the duly authorized representatives of each party hereto.

8.5 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

8.6 Severability. If any covenant, condition, provision, or term of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms of this Agreement, will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

8.7 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are merged into and superseded by this Agreement.

8.8 Governing Law. The laws of the State of Minnesota shall govern the interpretation, validity, performance, and enforcement of this Agreement.

8.9 Authority. The parties and each individual signing this Agreement on behalf of the parties, represent and warrant that they are duly authorized to sign on behalf of and to bind such party and that this Agreement is a duly authorized, binding and enforceable obligation of such party.

8.10 Recording. Either party may record this Agreement at its sole cost and expense.

8.11 Counterpart. Each party may execute a separate copy of this Agreement. This Agreement will be enforceable when each party has executed and acknowledged a copy of

this Agreement and each party has delivered an original or copy of the Agreement that the party has signed to the other party.

8.12 Notices. Any notice to be given to any party hereto in connection with this Agreement must be in writing, and delivered to the other parties (i) in person; (ii) by facsimile transmission (with confirmation of transmission available upon request from the non-sending party); (iii) by a nationally recognized overnight delivery service; or (iv) by certified mail, return receipt requested. If notice is given in person or via facsimile transmission, notice is deemed to have been given when personal delivery was received by the party or when the facsimile transmission was transmitted. If notice is given by a nationally recognized overnight delivery service, notice is deemed to have been given the day following delivery to the delivery service of such notice. If notice is given by certified mail, notice is deemed to have been given three (3) days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail. Notices should be sent to the parties at the following addresses:

To HRA:       The Housing and Redevelopment Authority in  
                  and for the City of Ramsey, Minnesota  
                  Ramsey Municipal Center  
                  7550 Sunwood Drive  
                  Ramsey, Minnesota 55303  
                  Attention: Executive Director

To RPC:       Ramsey Professional Center, LLC  
                  \_\_\_\_\_  
                  \_\_\_\_\_  
                  \_\_\_\_\_  
                  Attention: \_\_\_\_\_

A party may change its address for delivery of notices by written notice to the other party.

*[SIGNATURE PAGE FOLLOWS]*

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

THE HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RAMSEY, MINNESOTA,  
a public body under the laws of Minnesota

By: \_\_\_\_\_  
Its Chair

By: \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF ANOKA     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_ the Chair, and the Executive Director, of The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body under the laws of Minnesota, on behalf of said public body.

\_\_\_\_\_  
Notary Public

*[Signature page 1 of 2 to Parking Easement Agreement]*



**EXHIBIT A**

**LEGAL DESCRIPTION OF HRA PROPERTY**

Lot 1, Block 1, Ramsey Town Center 11<sup>th</sup> Addition, Anoka County, Minnesota, except that part which lies Southerly of the following described line: Commencing at the Southeasterly corner of Lot 1; thence on an assumed bearing of North along the Easterly line of said Lot 1 for 186.92 feet to the actual point of beginning of the line to be described; thence on a bearing of West for 692.28 feet to the Westerly line of Lot 1 and there terminating.

and

Outlot A, Ramsey Town Center 11<sup>th</sup> Addition, Anoka County, Minnesota

**EXHIBIT B**

**LEGAL DESCRIPTION OF RPC PROPERTY**

That part of Lot 1, Block 1, Ramsey Town Center 11<sup>th</sup> Addition, Anoka County, Minnesota which lies Southerly of the following described line: Commencing at the Southeasterly corner of Lot 1; thence on an assumed bearing of North along the Easterly line of said Lot 1 for 186.92 feet to the actual point of beginning of the line to be described; thence on a bearing of West for 692.28 feet to the Westerly line of Lot 1 and there terminating.

**EXHIBIT C**

**LEGAL DESCRIPTION OF THE 60 FOOT STRIP**

Lot 1, Block 1, Ramsey Town Center 11<sup>th</sup> Addition, Anoka County, Minnesota, except that part which lies Southerly of the following described line: Commencing at the Southeasterly corner of Lot 1; thence on an assumed bearing of North along the Easterly line of said Lot 1 for 186.92 feet to the actual point of beginning of the line to be described; thence on a bearing of West for 692.28 feet to the Westerly line of Lot 1 and there terminating.

**EXHIBIT D**

**LEGAL DESCRIPTION OF THE EASEMENT AREA**

**EXHIBIT E**

**LEGAL DESCRIPTION OF THE REPLACEMENT EASEMENT AREA**