

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) _____
Recommendations of Boards, Commissions & Committees (Green) _____
Waiver of First Requested Other Business (Pink) _____

X

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: January 10, 2007 (B of T) Date: January 18, 2007

TITLE: DuPage Theater Redevelopment - Parking Lot License Agreement

SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for discussion a Parking Lot License Agreement with Elmhurst Memorial Healthcare/Lombard Bible Church relative to off-site parking. (DISTRICT #4)

Please place this item on the January 18, 2007 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X

Finance Director X

Village Manager X *W.T. Lichter*

Date _____
Date _____
Date _____

1/11/07

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Assistant Village Manager/Director of Community Development *DAL*

DATE: January 18, 2007

SUBJECT: PC 06-27- Theater parking requirements

The proposed plans associated with the DuPage Theater redevelopment (PC 06-27) provide 240 off-street parking spaces where 276 spaces are required by Code. The petitioner desires to provide the required balance of parking off-site via a lease arrangement with Elmhurst Memorial Healthcare and Lombard Bible Church. However, there are several options for addressing the parking deficiency.

1. The Village could grant a variation from Section 155.416 (M) and Section 155.602 to allow for a reduction of the required number of off-street parking spaces for a theater from thirty-seven (37) to zero (0). Staff has recommended against this variation to the Plan Commission.
2. The petitioner can enter into a parking agreement with others to lease parking spaces for the purpose of satisfying off-street parking requirements. The petitioner has obtained a lease from Elmhurst Memorial Healthcare and Lombard Bible Church to utilize forty (40) parking spaces (Exhibit A) on evenings and weekends.
3. The Village could license some or all of the 98 parking spaces in the Parkside East Commuter Lot, allowing the theater to meet parking requirements in accordance with Section 155.601(A)(4) of the Lombard Zoning Ordinance.

Staff suggests that any lease agreement for theater parking then limit the operation of the theater to when said parking may be utilized. If a parking lot license agreement is executed, the theater would be responsible for providing alternative parking accommodations for any events during weekdays. However, the likely attendees to weekday events are groups of children arriving by bus for a fieldtrip with school or a youth program. Accommodations could easily be made for buses to drop children off at the theater and park elsewhere offsite.

Attached is the petitioner's proposed parking lot license agreement with Elmhurst Memorial Healthcare and Lombard Bible Church. Staff seeks direction from the Village Board if the proposed lease is adequate.

ELMHURST MEMORIAL HEALTHCARE/LOMBARD BIBLE CHURCH

PARKING LOT LICENSE

This PARKING LOT LICENSE ("License") is entered into as of the _____ day of _____, 2006 by and among ELMHURST MEMORIAL HEALTHCARE, an Illinois not for profit corporation ("Elmhurst"), and THE LOMBARD BIBLE CHURCH OF THE CHRISTIAN MISSIONARY ALLIANCE, an Illinois not for profit corporation ("Lombard Bible Church") (Elmhurst and Lombard Bible Church being collectively referred to as "Licensees"), and the VILLAGE OF LOMBARD, an Illinois municipal corporation ("Licensee").

RECITALS

WHEREAS, Elmhurst is the owner of certain real property known as 130 South Main Street, Lombard, Illinois (the "Elmhurst Site"); and

WHEREAS, Lombard Bible Church is the owner of certain real property commonly known as 120 South Main Street, Lombard, Illinois (the "Bible Church Site"); and

WHEREAS, on or about February 28, 2003, Elmhurst and Lombard Bible Church entered into a certain Easement Grant and Agreement (the "Easement") under which the Licensees share use of the parking lot to the East of the Bible Church Site and to the North of the Elmhurst Site and including parts of the Bible Church Site and the Elmhurst Site, as set forth and depicted on Exhibit A, attached hereto and made a part hereof (the "Lot"), pursuant to the terms and conditions of the Easement; and

WHEREAS, Licensee wishes to obtain the use of a portion of the Lot for patron parking during certain events to be held in connection with the proposed operation of the DuPage Theater located at 101 - 125 South Main Street, Lombard, Illinois (the "Theater"); and

WHEREAS, Licensee plans to assign this License to the Illinois not for profit corporation (or other tax-exempt entity) that will operate the Theater; and

WHEREAS, Licensees are willing to permit Licensee's or its assignee's use of the Lot in accordance with the terms and conditions set forth in this License;

NOW, THEREFORE, in consideration of and in accordance with the mutual covenants set forth herein, the parties hereby agree as follows:

1. The Licensed Space. Licensees hereby license to the Licensee that certain space in the Lot, comprised of forty (40) designated parking spaces, as indicated on Exhibit A, and the ingress and egress necessary for vehicles to access the parking spaces from the Main Street ingress/egress point marked on Exhibit A (the "Licensed Space"), to be used solely for the purposes and during the Term and Permitted Parking Times as designated herein below.

2. Term. Unless sooner terminated as provided in Section 3 of this License, the term shall commence on the date first written above and shall expire fifteen (15) years thereafter (the "Term").

3. Termination.

A. Termination for Business Need. Either of the Licensees may terminate this License at any time based on such Licensor's business needs by providing at least one hundred twenty (120) days prior written notice to the other parties. Such termination shall not affect performance dates previously approved regardless of whether such performance dates extend beyond the notice period. Each Licensor shall have an independent right to determine its business needs in its sole reasonable discretion, taking into account whether the use of the Licensed Space under this License interferes with, impairs or otherwise causes inconvenience to its chosen operation of its property.

B. Immediate Termination. Either Licensor may terminate this License immediately upon notice to Licensee if: (1) Licensee violates or fails to perform its obligations under any of the terms or conditions of this License; (2) Licensee receives notice of an alleged violation of any federal, state or local law or ordinance relating to Licensee's use of the Lot; or (3) Licensee or either of them are ordered to do so by any regulatory body or other governmental agency having jurisdiction over the Lot or its use.

4. Purpose. The Lot is to be used by Licensee solely for the purpose of parking a maximum of forty (40) passenger vehicles (which may include pick-up trucks and motorcycles) of the patrons or employees of Licensee immediately preceding, during and after a performance held at the Theater insofar as such parking is otherwise conducted in accordance with all applicable laws. Under no circumstances shall Licensee use the Lot for any other purpose, including, without limitation, the placing or permitting of any motor vehicle or other form of conveyance in any other portion of the Elmhurst Site or the Bible Church Site. In the event of a dispute, Licensee shall make the final determination of what constitutes a passenger vehicle.

5. Permitted Parking Times. Parking for the purposes set forth in Section 4 shall be permitted only as set forth below:

A. Evening performances. Parking for performances on Monday through Sunday evenings during the Term shall be permitted starting after 7:00 p.m. and ending before 12:00 midnight. Such parking shall be permitted only pursuant to the notice provisions set forth in Section 5C, below.

B. Weekend matinees. Parking will be permitted during the daytime on Saturdays and Sundays during the Term pursuant to this Section 5B, provided

that any such Sunday parking shall not begin earlier than noon. Such parking shall be permitted only pursuant to the notice provisions set forth in Section 5C, below.

C. Notice Requirements. Notice of performance dates shall be provided in writing to each of the Licensees at least on hundred twenty (120) days in advance of such performance. Either Licensee (Elmhurst or Lombard Bible Church) may prohibit Theater parking on a proposed date by providing written notice to Licensee within fifteen (5) business days of the receipt of a notice of performance date. Such prohibition must be based on reasons related to the business or operations of the Licensee sending the notice. If notice of a performance date is given less than one hundred twenty (120) days prior to the performance, Licensees may each choose to agree to or prohibit the proposed parking for any reason whatsoever by providing written notice to Licensee of its agreement or prohibition. The written agreement of both Licensees is required if notice is received less than one hundred twenty (120) days in advance of the performance date or parking will not be permitted.

6.

Signage. No less than one-half hour and no more than one hour prior to performance time, Licensee shall place temporary signage indicating:

A. the location of the Lot for "Additional Parking" in the Theater's own contiguous lot;

B. the location of the Lot for Additional Parking for Theater patrons visible to southbound traffic on Main Street only;

C. within the Lot, signage indicating the forty (40) spaces marked on Exhibit A as Theater parking, and indicating those spaces not appropriate for Theater parking in the Lot;

D. parking entrance for southbound Main Street traffic only at the entrance to the Lot marked on Exhibit A; and

E. parking exit visible to Theater patrons parking in the Lot at the exit from the Lot marked on Exhibit A only.

Prior to the first event conducted at the Theater that requires use of the Lot under this License, Licensee shall be responsible for obtaining the written approval of Licensees for the temporary signage Licensee proposes to use to satisfy the requirements of this Section 6, which approval shall not be unreasonably withheld.

7.

Acknowledgement of Licensees. Written programs and/or signage within the Theater shall contain an appropriate acknowledgment of Licensees for providing complementary parking to Theater patrons. Licensees shall approve the wording

and placement of such acknowledgements in advance, in writing, with said approval not to be unreasonably withheld or delayed.

8. Clean-up. Within the two (2) hour period immediately following each Theater event at which parking was available in the Lot, the Licensee shall remove all temporary signage and shall remove all trash from the Lot and otherwise restore the Lot to at least as good a condition as it was in prior to the event. Licensee shall be required to arrange for the prompt towing of any motor vehicle not removed in a timely fashion as required by this License. Licensees or either of them shall have the authority to have any vehicle remaining in the Lot after clean-up time towed at the owner's expense or to direct that Licensee do so. Any towing expense incurred by a Licensee shall be reimbursed promptly by Licensee.

9. Share of Maintenance Cost. Licensee shall pay Elmhurst its share of the cost of maintaining the Lot in the amount of \$50 per day of use by the tenth (10th) day of each month during the Term if there were any uses in the previous month. On or after the first anniversary of the commencement of this License and no more often than yearly thereafter, Elmhurst may provide sixty (60) days prior written notice to Licensee of the effective date of any increase in Licensee's contribution to the maintenance cost. If Licensee does not find the increase in its share of maintenance costs to be acceptable, Licensee may terminate this License by providing at least thirty (30) days prior written notice to Licensees.

10. Use of Theater. Licensee shall provide Elmhurst and Lombard Bible Church with the use of the Theater for special events up to two (2) times per year each during times when Theater events are not scheduled. Each of the Licensees shall be required to request in writing the use of the Theater at least ninety (90) days in advance of the special event and shall specify the date and alternative dates whenever possible. Within thirty (30) days thereafter, Licensee shall respond in writing approving or denying the requested use, which approval shall not be unreasonably withheld. Use of the Theater shall be at each Licensee's own risk, and shall include use of the parking spaces otherwise available for the use Theater patrons during performances.

11. Zoning, Village Requirements and Other Legal Requirements. For purposes of zoning ordinances, permitted uses or other rules, conditions, ordinances or other requirements imposed on the Lot or adjacent properties by the Village of Lombard or any other governmental or quasi-governmental authority, the parking spaces licensed pursuant to this License shall be and remain in the property of the Licensees with all usage rights attributed to Licensees pursuant to all rights and permits accruing to Licensees prior to the execution of this License. This License shall have no effect on such rights unless notice of such change in rights shall be provided to Licensees at least one hundred eighty (180) days in advance and Licensees shall have the right to terminate this License immediately or with notice set forth in Section 3 in order to preserve any such rights. This Section 11

- shall survive and be binding on the Village of Lombard after any assignment of this License by the Licensee regardless of the provisions of such assignment.
12. Condition of Lot. Licensee has examined the Lot and knows its condition. No representations as to the condition and repair thereof, and no agreements to make any alterations, repairs or improvements in or about the Lot have been made by Licensee. Licensee accepts the use of the Lot "as is" with all defects, whether apparent or unknown.
13. Waiver and Release of Liability. Licensee shall conduct the use of the Lot entirely at its own risk. Licensee acknowledges that Licensees shall not provide any safety precautions, security or protection in connection with Licensee's use. Licensees shall not be liable or responsible for damage caused by fire, vandalism or other casualty to, or for the destruction, loss, or theft of any vehicle, equipment or personal property at any time during the Term, unless caused by the intentional or willful and wanton conduct of the Licensees. To the fullest extent permitted by law, Licensee hereby forever waives, relinquishes and discharges and holds harmless Licensees and each of them, their officers, directors, trustees, elders, employees and agents (the "Indemnified Parties") from any and all claims of every nature whatsoever that Licensee may have at any time against the Indemnified Parties for personal injury or property damage sustained or incurred by Licensee or any person claiming by, through or under Licensee, relating directly or indirectly to the Licensee's use of the Lot or the condition of the Lot, the Elmhurst Site and/or the Bible Church Site.
14. Indemnification. Licensee hereby indemnifies and shall defend and hold harmless the Indemnified Parties against and from any and all suits, liabilities, claims, losses, costs, damages, fines, penalties and expenses of every kind whatsoever (including court costs, litigation costs and attorney fees) suffered, incurred or sustained by any Indemnified Party arising out of the use of the Lot by Licensee, its employees, agents or invitees.
15. Insurance. Licensee shall obtain and maintain at all times during the Term of this License comprehensive general liability, property damage and workers compensation insurance or self-insurance program covering Licensee's activities in connection with this License. Limits of liability for such comprehensive general liability and property insurance policies or self-insurance shall each have limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate. Workers compensation insurance limits shall be at least in the minimum amounts required by Illinois law. Elmhurst and Lombard Bible Church shall be named as additional insureds under such comprehensive general liability and property damage insurance policies in connection with the use of the Lot. Should Licensee permit any sublicensee or contractor to use the Lot in accordance with this License, Licensee shall require such sublicensee or contractor to carry insurance meeting the requirements of this

Section 15, including naming each Licensor as an additional insured on such insurance policies.

16. No Property Interest. This License does not convey to or create in favor of Licensee any legal or equitable title or property interest, in whole or in part, to or in the Lot or any portion thereof; it being acknowledged that this License is a license and not a lease and merely grants temporary and limited permission to Licensee to use a portion of the Lot subject to the terms and conditions hereof. Licensee expressly acknowledges and agrees that any law relating to landlord/tenant matters or forcible entry and detainer is not applicable to this License, and Licensee expressly waives any and all rights to which Licensee might otherwise be entitled under said laws.

17. Assignment. Licensee shall not assign to any person or entity whatsoever its rights under this License, in whole or in part, or otherwise permit the use of the Lot or any portion thereof by any person contrary to the provisions of this License except by the prior written consent of Licenseors. Licenseors hereby consent to the assignment of this License to the Illinois not for profit corporation (or other tax-exempt entity) that will operate the Theater; provided however that the written form of such assignment shall be approved in advance by Licenseors, said approval not to be unreasonably withheld or delayed. Any assignment in violation of this provision shall be null and void and shall have no effect.

18. Notices. Any notices or demands which may be or are required to be given by any party to the other parties under this License shall be in writing, and all notices, demands and payments required to be given or made hereunder shall be given or made either: (a) by hand delivery; or (b) by United States certified mail, postage prepaid, addressed to Elmhurst, Lombard Bible Church and/or to Licensee, respectively, at the following addresses, or at such other place as such party may, from time to time, designate in writing:

If to Elmhurst:

Elmhurst Memorial Healthcare
200 Bertau Avenue
Elmhurst, Illinois 60126
Attention: President and CEO
With a copy to: General Counsel

If to Lombard Bible Church:

The Lombard Bible Church of the Christian Missionary Alliance
111 South Park
Lombard, Illinois 60148
Attention: Senior Pastor
With a copy to: Donald G. Jones, Elder

If to Licensee:

Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148
Attention: Village Manager

All notices, demands and payments will be deemed to be received: (i) if given by hand delivery, when delivered in person; or (ii) if given by certified mail, four (4) business days after deposit in the United States mail.

19. Severability. If any term or provision of this License shall to any extent be held invalid or unenforceable, the remaining provisions and terms of this License shall not be affected thereby, but each term and provision of this License shall be valid and enforced to the fullest extent permitted by law.

20. No Waiver. No waiver of a breach of any provision of this License shall be construed as a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this License shall be construed as a waiver of such breach.

21. Amendments. Any amendments to this License will be effective only if in writing and signed by Elmhurst, Lombard Bible Church and Licensee.

22. Entire Agreement. This License reflects the entire transaction between the parties relative to the subject matter contained herein.

IN WITNESS THEREOF, the parties have executed this License as of the date first written above.

LICENSORS:
ELMHURST MEMORIAL
HEALTHCARE

THE LOMBARD BIBLE CHURCH OF
THE CHRISTIAN MISSIONARY
ALLIANCE

By: _____
President & CEO

By: _____
Title: _____

LICENSEE:
VILLAGE OF LOMBARD

By: _____
Title: _____