

## OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT (the Agreement) is made as of \_\_\_\_\_, 2004, by and between the GOLDEN URBAN RENEWAL AUTHORITY (GURA) and MESA MEADOWS LAND CO., a Colorado corporation (Owner).

1. Eligible Improvements. GURA is carrying out the Golden Urban Renewal Plan a/k/a the Golden Downtown Redevelopment Plan (the Plan). Owner owns the real property described in Exhibit A, attached to and made a part hereof. Morrison Theatre Company dba Miners Alley Playhouse, a Colorado non-profit corporation (MTC/MAP) is a local cultural institution that is a tenant in the Property. The Owner has made certain improvements to the Property (the Eligible Improvements), the reasonable and necessary costs of which are eligible for reimbursement by GURA pursuant to the Plan and the Colorado Urban Renewal Law (Law). In consideration of the covenant of the Owner herein, GURA agrees to reimburse the Owner for the costs of the Eligible Improvements in accordance with this Agreement.

- a. The Eligible Improvements are the elevator and sprinkler system installed as part of the improvements made to the Property by the Owner. The Owner completed construction of such improvements on June 10, 2003 . The Eligible Improvements are mandated by municipal codes as life safety improvements required for use of and activities on the Property by MTC/MAP and the general public.
- b. The owner has provided or will provide GURA with evidence satisfactory to GURA that the actual reasonable and necessary costs paid by the Owner for the Eligible Improvements total \$\_\_\_\_\_. GURA agrees to reimburse the Owner the amount of \$50,000 (the Reimbursement Obligation) for the Eligible Improvements.

2. Payment of Reimbursement Obligation. Subject to the provisions of this Agreement, the Reimbursement Obligation shall be payable as follows:

- a. \$4,000 on or before July 10, 2004;
- b. \$3,000 on or before August 10, 2004;
- c. \$3,000 on or before September 10, 2004;
- d. \$833.45 on or before January 10, 2005, and \$833.33 on or before the 10<sup>th</sup> of each of the following months to and including December 10, 2007; and

- e. \$416.59 on or before January 10, 2008, and \$416.67 on or before the 10<sup>th</sup> day of each of the following months to and including December 10, 2009.

3. Rent Reduction. The Owner shall reduce the rent of MTC/MAP each month by an amount equivalent to the amount that it receives in payment of the Reimbursement Obligation pursuant to Section 2, above. It is the intention of the parties that the rent paid by MTC/MAP under the Lease shall be reduced by the amount of the Reimbursement Obligation received by the Owner.

4. Term. In no event will the Reimbursement Obligation exceed \$50,000. Notwithstanding any language herein to the contrary, this Agreement shall terminate (the Term) on the first to occur of (a) payment in full of the Reimbursement Obligation, (b) December 31, 2009; (c) if the improvements on the Property are destroyed or damaged and are not being used as a community playhouse for a period of sixty (60) days; or (d) ten days after MTC/MAP is no longer a tenant in actual physical possession of the Property in accordance with the terms of the lease by and between the Owner and MTC dated February 14, 2003, attached to and made a part hereof as Exhibit B (the Lease).

5. Conditions Precedent. The following shall be performed or waived on or before July 5, 2004, as conditions precedent to the obligations of GURA hereunder:

- a. Approval by GURA of receipts, cancelled checks, payment records, certification of the architects and other representatives of the Owner showing the actual cost of the eligible Expenditures up to a maximum of \$50,000.
- b. Approval by GURA of the terms of the Lease.

6. Representations and Warranties by the Owner. The Owner represents, warrants and certifies to GURA as follows:

- a. The Lease is in full force and effect and MTC/MAP is not in default under the Lease;
- b. There is no action or proceeding pending or, to the knowledge of the Owner, threatened against the Owner, the Property, or involving the Lease, before any court or administrative agency that might result in any material adverse change in the business or financial condition of the Owner or MTC/MAP;
- c. The Owner is not involved in any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation proceeding and, to the best knowledge of the Owner, no such proceeding is contemplated or threatened.

d. The Owner knows of no bankruptcy or singular proceeding involving MTC/MAP and has not sent or is contemplating sending a notice of default under the Lease to MTC/MAP. During the Term, the Owner will provide GURA with copies of any notices of default under the lease at the same time such notices are given to MTC/MAP by the Owner.

7. Remedies. If any event of default by the Authority occurs and is continuing hereunder, the Owner may seek enforcement of the Reimbursement Obligation. In no event shall GURA be liable for special, consequential, or punitive damages. If any event of default by the Owner occurs and is continuing hereunder, GURA may seek any available remedy at law or in equity and terminate this Agreement. In addition the non-defaulting party may recover its reasonable costs and attorney fees.

8. Notices. Unless otherwise notified in writing by either party, all notices required or permitted by this Agreement shall be in writing and shall be sufficiently given if delivered in person, by prepaid overnight express mail or express courier to either party or by certified mail, with postage prepaid, return receipt requested and addressed:

In the case of GURA to:

Golden Urban Renewal Authority  
Attention: Executive Director  
1111 Washington Street, #115  
Golden, Colorado 80401

In the case of Owner to:

Mesa Meadows Land Co.  
501 North Ford Street  
Golden, CO 80403

9. Further Assurances: Estoppel Certificates. The parties and any assignee or successor in interest agree to execute such additional instruments or documents and take such other actions as shall be reasonably requested by the other party to implement this Agreement. The parties agree to execute such documents as the other party shall reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder.

10. Covenant of Good Faith. Each party agrees to act reasonably and in good faith in performing or attempting to perform each and every condition, covenant, obligation or duty required by the Agreement, and any other agreement implementing this Agreement, and each party shall not unreasonably, arbitrarily or capriciously withhold any approval or action required by the Agreement.

11. GURA or City Not a Partner. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, neither GURA nor the City of Golden shall be deemed to be a partner or joint venturer of the Owner and neither GURA nor the City shall be responsible for any debt or liability of the Owner or MTC.

12. City Not a Party. The City is not a party to this Agreement, and GURA is not part of the City or a department or agency of the City and is not authorized to bind or represent the City or the position of the City in any manner whatsoever, nor is the City authorized to bind or represent GURA or the position of GURA in any manner whatsoever.

13. Binding Effect. The Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors and assigns.

14. Amendments. This Agreement is the entire Agreement of the parties as to the subject matter herein and supersedes and replaces all prior agreements with respect to the subject matter herein and may be amended only in writing fully subscribed by the parties or their successors or assigns.

15. Assignment. Except as may be otherwise provided herein and except for transfers made for estate planning purposes, this Agreement or any rights or interest in this Agreement may not be assigned or transferred by either party without the prior written approval of the other party. Such approval shall not be unreasonably withheld.

16. Minor Changes. This Agreement is approved in substantially the form submitted to the Owner and to the Board of Commissioners of GURA. The officers executing the Agreement are authorized to make such minor changes in the Agreement and the attachments as may be necessary, so long as such changes are consistent with the intent and understanding of the parties. The execution of the Agreement or any document regarding such minor changes shall constitute conclusive evidence of the approval of such changes by the respective parties.

17. Enforced Delay and Performance for Causes Beyond Control of Party. Neither party shall be considered in default of its obligations under this Agreement in the event of enforced delay due to causes beyond its control and without its fault or negligence, including, without limitation, acts of God, acts of the public enemy, acts of the federal, state or local government, acts of the other party, acts of third-parties, acts or orders of court, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of subcontractors or material men due to such causes. In the event of the occurrence of any enforced delay, the time or times for performance of the obligations of the party claiming delay shall be extended for the period of the enforced delay; provided, that the party seeking the benefit of the provisions of this section shall notify the other party, within fourteen (14) days after such party knows of any enforced delay, of the specific delay in writing and claim the right to an extension of the period of the enforced delay.

18. Authority. The persons executing this Agreement on behalf of parties represent and warrant that each is fully authorized to bind such party to all of the terms and conditions of this Agreement.

19. Incorporation by Reference. The exhibits to this Agreement are incorporated into and made a part of this Agreement.

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

GOLDEN URBAN RENEWAL AUTHORITY

By:

Attest:

MESA MEADOWS LAND CO., a Colorado corporation

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By:

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