

ORDINANCE NO. 2004-11-148

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE NEW LINCOLN SQUARE, LLC (TO PROVIDE PARKING FACILITIES)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That An Agreement By and Between The City of Urbana, Champaign County, Illinois and The New Lincoln Square, LLC, To Provide Parking Facilities, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____, 2004.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2004.

Tod Satterthwaite, Mayor

AGREEMENT TO PROVIDE PARKING FACILITIES

BY AND BETWEEN THE
CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

AND

THE NEW LINCOLN SQUARE, LLC

DATED AS OF MAY 1, 2005

This Instrument was prepared by:

**Kenneth N. Beth
Evans, Froehlich, Beth & Chamley
44 Main Street
P.O. Box 737
Champaign, IL 61820
(217) 359-6494**

AGREEMENT TO PROVIDE PARKING FACILITIES

THIS AGREEMENT TO PROVIDE PARKING FACILITIES, including any Exhibit attached hereto (collectively, this **“Agreement”**), is made and entered into as of May 1, 2005, but actually executed by each of the parties on the dates set forth beneath the signatures of each of their duly authorized officers below, by and between the CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, an Illinois municipal corporation (the **“City”**) and THE NEW LINCOLN SQUARE, LLC, an Illinois limited liability company (the **“Square”**).

WITNESSETH:

WHEREAS, the City is the owner of certain improved municipal parking facilities (the **“Parking Facilities”**) located upon the lots shown as Lot 10-A North, Lot 10-A South, Lot 10-E, Lot 10-F, Lot 10-X and Lot 24 (collectively, the **“Parking Area”**) on Exhibit A, a copy of which is attached hereto and hereby made a part hereof; and

WHEREAS, the Square is the owner of Lot 1 and Lot 10 in the Central Business Addition, Urbana, Illinois, commonly known as “Lincoln Square” (the **“Lincoln Square Site”**); and

WHEREAS, the City and Lincoln Square Realty Partners Limited Partnership, a Delaware limited partnership (the **“Partnership”**), the former owner of the Lincoln Square Site, entered into “An Agreement Relative to Parking for Lincoln Square Shopping Center, Urbana, Illinois”, dated as of March 1, 1990 (the **“1990 Agreement”**), under and by which, among other matters, the City agreed to provide, operate and maintain, and the Partnership agreed to pay for, the public parking of motor vehicles upon that part of the Parking Area exclusive of Lot 24 under the terms, provisions and conditions therein contained; and

WHEREAS, the Square has succeeded to the interests of the Partnership under the 1990 Agreement; and

WHEREAS, the City and the Square have entered into a Redevelopment Agreement dated as of October 1, 2004 (the **“Redevelopment Agreement”**) under and by which the Square has proposed to rehabilitate, reconstruct, repair or remodel the existing structure upon the Lincoln Square Site conditioned upon the City providing certain tax increment finance and other incentives in connection therewith, including the rights and obligations of the City and the Square with respect to the Parking Area and the Square’s use of the Parking Facilities under this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, representations and undertakings herein contained, the City and the Square hereby mutually agree, covenant, represent and undertake as follows:

ARTICLE I
TERM; EFFECT OF 1990 AGREEMENT

Section 1.1. Term. The term of this Agreement shall commence on the first day of the calendar month in which any newly improved office space undertaken as part of the Private Development Project (as defined in the Redevelopment Agreement) is to be first occupied for use, such date currently anticipated to be May 1, 2005, and shall continue until December 31, 2028, unless sooner terminated in accordance with this Agreement (the “**Term**”).

Section 1.2. Effect of 1990 Agreement. Beginning on the first day of the Term of this Agreement, all provisions of the 1990 Agreement shall be and remain suspended and the provisions of this Agreement shall control and be in full force and effect. In the event that this Agreement is terminated for any reason under Section 5.2 hereof before June 30, 2018, the provisions of the 1990 Agreement shall no longer be and remain suspended but shall thereafter be and remain in full force and effect from and after the date of any such termination.

ARTICLE II
PARKING FACILITIES; OBLIGATIONS OF CITY

Section 2.1. Provision of Parking Facilities. For and during the Term of this Agreement, the City shall provide, operate and maintain the Parking Facilities for the benefit of the Lincoln Square Site in connection with the parking of motor vehicles and vehicular and pedestrian ingress and egress related thereto, subject to, and in accordance with, the terms, provisions and conditions of this Article, including as follows:

a. Lot 10-A North, Lot 10-A South and Lot 10-F shall each be operated as a free parking lot having a 2-hour time limit for the customers of any commercial tenants of the Square at the Lincoln Square Site, subject, however, to the reserved right of the City to operate Lot 10-A North as a metered parking lot, to request the use of Lot 10-F for any City-sponsored event on any Saturday and Sunday during the months of April to November, inclusive, in each year during the Term of this Agreement (which such request shall not be unreasonably denied, withheld, delayed or conditioned by the Square) and to permit the use of Lot 10-F for permit parking by any person serving as a juror during any jury term in the Circuit Court of the Sixth Judicial District, Champaign County, Illinois, under circumstances where the City has first made reasonable accommodation to provide such permit parking elsewhere.

b. Lot 10-E (in part) and Lot 10-X shall each be operated as a reserved lot for permit parking by the commercial tenants, including their employees, and the residential tenants of the Square at the Lincoln Square Site (collectively, the “**Permittees**”), subject, however, to the reserved right of the City to permit the use of Lot 10-X for an open-air market on any Saturday during the months of April to November, inclusive, in each year during the Term of this Agreement.

c. Lot 24 shall be operated as a reserved lot and made available for 100 parking spaces for permit parking by the Permittees of the Square at the Lincoln Square Site subject, however, to the reserved right of the City to relocate the availability of any such parking to any other parking lot owned or controlled by the City within a one-block radius of the area bounded by Elm Street to the north, Vine Street to the east, Illinois Street to the south and Race Street to the west (the “**Adjacent Parking Lots**”).

Section 2.2. No Charge. Except for any parking meter revenues derived in connection with any parking meters on Lot 10-A North and the payments provided to be made by the Square under Article IV of this Agreement, the City agrees that it will not impose upon the Square or any of its Permittees any other direct fee, charge, tax, assessment or other payment for the parking of motor vehicles upon the Parking Area, or for any repair, maintenance, improvement or restoration of the Parking Facilities or for any other reason relating to the Parking Area or Parking Facilities.

Section 2.3. Repair and Maintenance of the Parking Facilities. The City shall maintain the Parking Facilities at its own expense, subject to the provisions of this Agreement, in good condition and repair, and in a condition at least equal to the condition of parking lots serving or situated in or around multi-use facilities similar in size and quality to the facilities of the Lincoln Square Site, and agrees specifically:

- (i) to maintain the Parking Facilities in a clean, presentable and safe condition and promptly remove snow, ice, debris and other obstructions;
- (ii) to supply and maintain all pavement markings and such directional, informational and traffic control signs as may be reasonably necessary for public safety and the enforcement of applicable laws and ordinances on or within the Parking Area;
- (iii) to make all necessary repairs and replacements to lighting fixtures upon the Parking Area;
- (iv) to supply and maintain trees, shrubs and other plant materials for landscaping of the Parking Area; and
- (v) to repair, restore and replace the surface of the Parking Facilities from time to time as shall be reasonably required to maintain the Parking Facilities in the aforesaid condition.

The City agrees that it will diligently perform any repairs, maintenance, restoration, replacement and other work so as to minimize the interference with parking and vehicular and pedestrian traffic resulting therefrom and that it will provide to the Developer such written notice as may be reasonable under the circumstances whenever any such work will require the closure of any material part of the Parking Facilities.

Section 2.4. Alteration of Parking Spaces. The City shall not materially alter the location, size or shape of any parking spaces located in the Parking Area or the location, direction, size or shape of any aisles, driveways or other means of access, ingress or egress on or about the Parking Area or otherwise materially alter, change or modify the configuration of the Parking Facilities in any way without the prior written consent of the Square, which consent shall not be unreasonably denied, withheld, delayed or conditioned.

Section 2.5. Policing and Patrolling of the Parking Area. Throughout the Term of this Agreement, the City shall police and patrol the Parking Areas (but not solely or exclusively) for the purpose of enforcing the parking meter, time limit and permit parking restrictions described in Section 2.1 of this Agreement (collectively, the “**Parking Restrictions**”). The City further agrees that it will place signs on or about the Parking Area for the purpose of informing users of the Parking Area of the Parking Restrictions and that it will enforce the Parking Restrictions. In the event that the City shall elect to enforce the Parking Restrictions by the imposition of fines or other

penalties upon violators thereof, the imposition of such fines and penalties shall not be deemed to violate the provisions of Section 2.2 hereof.

Section 2.6. Permits. The City agrees to cooperate with the Square to establish policies and procedures for the issuance of permits for the motor vehicle of any Permittees of the Square at the Lincoln Square Site, which policies and procedures may include the means to affix and locate any identification stickers upon the vehicles of such Permittees and any relevant identification or other information in connection therewith. The Parking Restrictions shall not apply and shall not be enforced against any such Permittees who park a motor vehicle in Lot 10-E and Lot 10-X of the Parking Area in accordance with any such agreed upon policies and procedures, but any other applicable parking restrictions or regulations shall be and remain applicable and may be enforced.

ARTICLE III

LINCOLN SQUARE SITE; OBLIGATIONS OF THE SQUARE

Section 3.1. Use of Lincoln Square Site. The Square agrees that it shall use the Lincoln Square Site solely as a multi-use residential, office and retail facility substantially in accordance with the Design Proposal for the Private Development Project as most recently approved by the City in accordance with the Redevelopment Agreement. In no event shall the Square provide any leasable space devoted to office use within the Lincoln Square Site that will exceed 60% of the total leasable space within the Lincoln Square Site when measured on a square footage basis; provided, however, that this limitation shall not apply to any additionally constructed leasable space that is not a part of the Design Proposal for the Private Development Project as most recently approved by the City in accordance with the Redevelopment Agreement. The Square agrees that it shall continuously operate the Lincoln Square Site for the purposes as stated above and will not use or permit the use of Lincoln Square for any other purpose inconsistent herewith. Without in any way qualifying, broadening or otherwise affecting the aforesaid provisions hereof, the Square specifically agrees that no portion of the Lincoln Square Site will be used or be permitted to be used for an Adult Entertainment Use, as such or any similar term is now or hereafter defined in the Zoning Ordinance of the City of Urbana.

Section 3.2. Operation of the Lincoln Square Site. The Square agrees that it shall generally operate its business in a substantially efficient and reputable manner and shall, except during reasonable periods of repairing, cleaning and decorating, keep the Lincoln Square Site open to the public for business during the regular and customary days and hours that such businesses are usually open for business. The Square further agrees that it shall keep the Lincoln Square Site in substantially good repair and operating condition and that it shall make from time to time all reasonably necessary repairs thereto and reasonable renewals and replacements thereof.

ARTICLE IV

PAYMENT OBLIGATIONS OF THE SQUARE

Section 4.1. Payments. For and during the Term of this Agreement, the Square shall pay to the City an annual payment for the parking benefits attributable to Lot 10-A South, Lot 10-F, Lot 10-E and Lot 10-X (the “**Annual Base Payment**”) and an annual payment for the parking benefits attributable to Lot 24 and the Adjacent Parking Lots (the “**Annual Permit Payment**”).

Section 4.2. Annual Base Payment. The Annual Base Payment shall be payable in equal monthly installments on the first day of each month during the Term of this Agreement, commencing on May 1, 2005, and shall be in the initial amount of \$85,280 per year. Such Annual Base Payment shall be adjusted on May 1, 2006 and on each May 1 thereafter during the Term of this Agreement by the increase in the cost of living, as measured by the line captioned "all items" in the table and title "D-1 Consumer Price Index--All City Average," "all items groups, subgroups and special groups," published monthly in the Monthly Labor Review of the Bureau of Labor Statistics of the United States Department of Labor (the "CPI"). Such adjustment shall be determined by the following formula:

Annual Base Payment as last so increased under this Agreement

multiplied by:

$$1 + \frac{\text{Current Index} - \text{Base Index}}{\text{Base Index}}$$

Where, "Current Index" shall be the CPI for the month immediately prior to each applicable May 1 and "Base Index" shall be the CPI for the month immediately prior to the May 1 in the most recent calendar year. In no event, however, shall the Annual Base Payment for any period be less than the Annual Base Payment as last so increased under this Section. In the event that such CPI is no longer published or otherwise available, the adjustment provided for herein shall be by the successor (or the most nearly comparable successor) index thereto, adjusted as appropriate to the applicable dates.

Section 4.3. Annual Permit Payment. The Annual Permit Payment shall be payable in equal monthly installments on the first day of each month during the Term of the Agreement, commencing on May 1, 2005, and shall be in an amount of \$8,400.00 per year until April 30, 2015. Thereafter the Annual Permit Payment shall be at such rate or rates per permit as may then be in effect by the City for any such similar permit parking.

ARTICLE V **DEFAULT AND REMEDIES**

Section 5.1. Events of Default. The occurrence of any of the following events (an "Event of Default") shall constitute a default of this Agreement:

a. Any failure by the Square to make any payment or any installment thereof as provided in Article IV of this Agreement as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from the City to the Square.

b. Any failure by either party to observe and perform any other provision of this Agreement to be observed and performed by such party where such failure shall continue for a period of thirty (30) days after written notice thereof to such party from the other party not so in default, provided, that if the nature of such party's default is such that more than thirty (30) days are reasonably required for its cure, then such party shall not be deemed to be in default if such party commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

c. Any breach by the Square under the Redevelopment Agreement.

Section 5.2. Remedies.

a. Upon the occurrence of any Event of Default by the Square under subsection a. of Section 5.1 above, the City shall have the right and option, in addition to and without limiting the City in the exercise of any other right or remedy to recover the amount of any payment or installment then due and owing the City by reason of such Event of Default, to terminate this Agreement. Upon the occurrence of an Event of Default under subsections b. or c. of Section 5.1 above, the City shall only have the right and option to terminate this Agreement.

b. Upon the occurrence of an Event of Default by the City under subsection b. of Section 5.1 above, the Square shall have the right and option, in addition to and without limiting the Square in the exercise of any other right or remedy the Square may have by reason of such Event of Default, to withhold all or any part of any payment or installment due and payable by the Square under Article IV hereof, as such payment or installment may be adjusted from time to time, until the fifteenth (15th) day next following the curing of such Event of Default. The Square shall further have the right and option to specifically enforce any of the provisions of this Agreement or to pursue any legal remedy to recover for the Event of Default; provided, however, that any remedy seeking damages shall be limited to actual loss and under no circumstances shall the Square have the right to seek or recover consequential damages such as lost profits.

Section 5.3. Cost and Expenses of Enforcement. Upon the occurrence of an Event of Default which requires either party to undertake any action to enforce any provision of this Agreement, the defaulting party shall pay upon demand all of the nondefaulting party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such nondefaulting party in enforcing any of the defaulting party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the defaulting party causes the nondefaulting party, without the nondefaulting party's fault, to become involved or concerned.

Section 5.4. Accord and Satisfaction. No payment received by the City of a lesser amount than the amount of any payment or installment then due and payable shall be deemed to be other than on account of the earliest stipulated payment or installment then due and payable nor shall any statement on a check or any letter accompanying a payment of any such payment or installment then due and payable be deemed an accord and satisfaction. The City may accept payment without prejudice to the City's right to recover the balance of any such payment or installment then due and payable or to pursue any remedy in this Agreement or provided by law.

Section 5.5. Waiver. The waiver by either party of any default of any term, covenant, or condition herein shall not be deemed or implied to affect, and no express waiver shall affect, any default other than the default specified in such waiver and then only for the time and to the extent stated therein. The acceptance of any payment by the City shall not be deemed a waiver of any preceding default by the Square of any covenant herein, other than the failure of the Square to pay the amount so accepted. No covenant, term or condition of this Agreement shall be waived by either party unless such waiver is in writing and any failure to insist upon strict performance of any of the provisions contained in this Agreement shall not be deemed a waiver of any subsequent default in any of such provisions.

Section 5.6. Rights and Remedies Cumulative. Except as otherwise specifically provided in this Article, the rights and remedies of the parties under this Agreement are cumulative, and the use of one or more thereof shall not exclude or waive the right to the use of any other remedy conferred by law, including specific performance or any other equitable action.

**ARTICLE VI
MISCELLANEOUS**

Section 6.1. Savings Clause. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision thereof.

Section 6.2. Illinois Law; Venue. This Agreement shall be deemed to be a contract and an agreement made under and shall be construed in accordance with and governed by the laws of the State of Illinois. If any action or proceeding is commenced by either party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois.

Section 6.3. Covenants to Run with Land. It is mutually covenanted and agreed by and between the parties hereto that the covenants and agreements herein contained shall be commercial covenants running with the land and that each and all of the covenants, agreements and obligations in this Agreement contained shall extend to, and bind or inure to the benefit of not only the parties hereto and each of them, but each and every one of their successors and assigns. It is further covenanted and agreed that this instrument is not and is not intended to be a lease of the Parking Area and that no leasehold estate is created hereby.

Section 6.4. Notices and Communications. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (i) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (ii) personally delivered, (iii) sent by a nationally recognized overnight courier, delivery charge prepaid or (iv) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Square at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

if to the City: City of Urbana
 400 S. Vine Street
 Urbana, IL 61801
 Attn: Chief Administrative Officer
 Tel: (217) 384-2455
 Fax: (217) 384-2363

if to the Square: The New Lincoln Square, LLC
 201 Lincoln Square
 Urbana, IL 61801
 Attn: Manager
 Tel: (217) 367-4092
 Fax: (217) 367 0557

with a copy to: James Webster
104 W. University Avenue
Urbana, IL 61801
Tel: (217) 344-0973
Fax: (217) 347-7506

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 6.5. Written Amendments. This Agreement may be amended from time to time by the mutual agreement of the parties hereto, but neither this Agreement nor any provisions hereof may be changed, revised, modified, waived, discharged, terminated or otherwise abrogated, diminished or impaired other than by an amending instrument in writing duly authorized, executed and delivered by both the City and the Square.

Section 6.6. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 6.7. Further Assurances and Supplemental Agreements. Each of the parties hereto covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, in necessary and sufficient form for the purposes thereof, such agreements, instruments, documents and petitions supplemental hereto and such further acts, instruments, documents and petitions as may be reasonably required for the better releasing, assuring, conveying, pledging, assigning and confirming unto the appropriate parties hereto all and singular the rights and interests covenanted or agreed under and in connection with the terms and provisions of this Agreement.

Section 6.8. Headings. The headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

Section 6.9. Pronouns. All pronouns and any variations thereof contained in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

Section 6.10. Limitation on Benefits. The covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto and their respective successors and permitted assigns.

Section 6.11. Entirety of Agreement. This Agreement constitutes the entire Agreement between the parties hereto and, except as otherwise expressly provided for herein, supersedes all other prior agreements, understandings and undertakings, both written and oral, between the parties.

IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be executed by proper officers duly authorized to execute the same as of the date set forth beneath the signatures of their respective officers set forth below.

**CITY OF URBANA, CHAMPAIGN COUNTY,
ILLINOIS, an Illinois municipal corporation**

**THE NEW LINCOLN SQUARE, LLC,
an Illinois limited liability company**

By: _____
Its Mayor

By: _____
Its Manager

Date: _____

ATTEST:

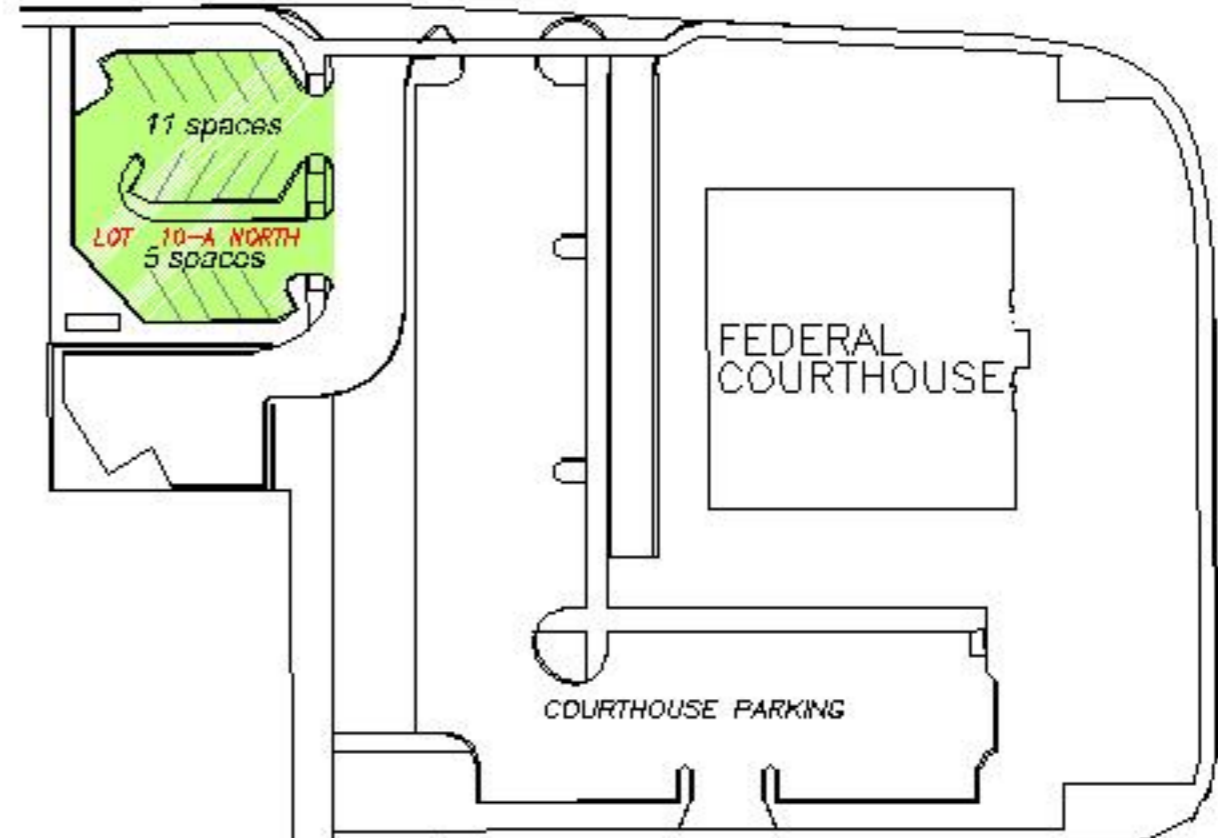
Its City Clerk

Date: _____

ELM STREET

PARKING SPACES

- 16 METERS
- 456 EMPLOYEE/RESIDENT SPACES
- 440 CUSTOMER SPACES W/2 HR. LIMIT



LEGEND
(LOCATIONS MAY VARY)

- HC = HANDICAP
- EM = EXPECTANT MOTHER
- R = RENTAL



LINCOLN SQUARE MALL

