

**RESOLUTION TO AUTHORIZE PARKING LOT LEASE AGREEMENT BETWEEN CITY OF
FREEPORT AND LJJS, LLC d/b/a MIDTOWN CENTER**

RESOLUTION NO. 2007-25

WHEREAS, LJJS, LLC is the owner of Midtown Center, located at 206 S. Galena Avenue, Freeport, IL; and

WHEREAS, LJJS, LLC has requested to lease twenty-six (26) parking spaces in the City-owned parking lot on the north side of West Jackson Street between Galena Avenue and Walnut Avenue for the sole purpose use of parking for residents and guests of Mid-Towne Center; and

WHEREAS, LJJS, LLC has agreed to pay two hundred (\$200.00) dollars in annual rent, any real estate taxes and all maintenance and expenses; and

WHEREAS, this City Council believes that execution of this lease is in the best interests of the citizens of the City of Freeport because it will encourage the reuse of existing buildings and discourage blight in the downtown area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS that it does hereby approve execution of the "Parking Lot Lease Agreement" between the City of Freeport and LJJS, LLC, a copy of which is marked as "Exhibit A", attached hereto and incorporated by reference as if fully set forth herein.

BE IT FURTHER RESOLVED the Mayor and the City Clerk are hereby authorized to execute this Resolution, Exhibit A and any other document as may be necessary or expedient in order to fully implement the intent of this Resolution.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to transmit a certified copy of the Resolution with Exhibit A attached to LJJS, LLC.

BE IT FURTHER RESOLVED this Resolution is expressly adopted pursuant to the Home Rule authority of the City of Freeport under Section 6(a) of Article VII of the Illinois Constitution of 1970; and

BE IT FURTHER RESOLVED all Resolutions or motions in conflict with this Resolution are repealed insofar as they conflict; and

BE IT FURTHER RESOLVED if any section, clause or provision of this Resolution be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Resolution as a whole or any part thereof, other than the part so declared to be invalid, and this City council expressly declares that it would have enacted this Resolution even with the invalid portion deleted.

RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS this ____ day
of _____, 2007.

Latacia M. Ishmon, City Clerk

APPROVED this ____ day of _____, 2007.

George W. Gaulrapp, Mayor

PARKING LOT LEASE AGREEMENT

THIS LEASE, is made this _____ day of _____, 2007 by and between the City of Freeport, with principal offices in the City Hall, 230 West Stephenson Street, Freeport, Illinois 61032, hereinafter referred to as "LESSOR", and LJJS, LLC, hereinafter referred to as "LESSEE";

WITNESSETH:

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **DESCRIPTION**

In consideration of the two hundred dollars (\$200.00) annual rent herein reserved on the part of the LESSEE to be paid and covenants herein contained to be performed, the LESSOR does hereby lease to the LESSEE, and the LESSEE does hereby lease from LESSOR, the following-described premises, to-wit:

A portion of the City of Freeport Parking Lot Number 6 on the north side of West Jackson Street between Galena Avenue and Walnut Avenue consisting of twenty-six (26) contiguous parking spaces. See attached plat (Exhibit A) of the exact premises.

2. **TERM**

The term of this lease shall be ten years, commencing on April 3, 2007 and ending on April 3, 2017, the date of the signature of the parties notwithstanding, LESSEE shall have the option to extend this Lease for an additional period of time, in increments of one year(s) (12 consecutive calendar months), for a maximum additional term of three (3) year(s). LESSEE may identify the number of years the extended term, at the expiration of the initial term, or at the expiration of any extension previously elected, PROVIDED HOWEVER, that the Lease and all rights hereunder shall not extend beyond April 3, 2020. The exercise of any option to extend shall be given by LESSEE in writing 90 days prior to the expiration of the initial term, or any term thereafter, up to the year 2020. Any such extension shall be on the same terms as contained in this Lease, except as mutually agreed otherwise by the parties hereto.

Notwithstanding anything to the contrary in this Lease, the LESSEE may terminate this Lease upon sixty (60) days advance notice to the LESSOR.

COVENANTS OF LESSEE

3. **SNOW REMOVAL AND ANNUAL RENT**

LESSEE shall pay to LESSOR as and for the rent of the premises, the sum of two hundred dollars (\$200.00) which shall be due and payable on the first day of May of each year that this Lease, or any extension thereof, shall be or remain in effect.

In addition to the two hundred dollars (\$200.00) cash payments to LESSOR for the rental of the premises for said term, the LESSEE agrees to remove all snow from any sidewalks,

entrances and the entire Lot Number Six (6) (not just from the premises) within the time allotted pursuant to City Ordinance. If the leased premises becomes subject to real estate taxation, LESSEE agrees to pay such real estate taxes, before the due date thereof, which payment shall be deemed additional rent but paid directly to the Stephenson County Treasurer.

4. USE OF PREMISES

(A) LESSEE may use the demised premises for any lawful purpose which is not contrary to the laws of the City of Freeport, County of Stephenson and State of Illinois, but primarily as a parking lot for its tenants.

(1) LESSEE agrees that it will use and occupy the same in a careful, safe manner; that it will not maintain or suffer on the premises any business, conduct, act or thing that will constitute a public or private nuisance or violate any other public ordinance during the term of this Lease.

(2) The zoning of said property is B-2-2, and LESSEE agrees to use said property in conformity with zoning.

(B) LESSEE has examined and knows the condition of the premises and receives the same in as in condition; and, during the term of this Lease, LESSEE shall keep the premises and improvements thereto slightly in appearance and in good order and not allow damage or waste during the term of the Lease and will surrender the same to the LESSOR upon termination of this Lease in as good condition as when received, except for ordinary wear and tear, and normal depreciation due to lapse of time. Obligation for repair(s) and maintenance of the premises are set forth in Paragraph 13 hereto.

(C) LESSOR shall post the premises as "Private Parking for LJJS, LLC -- Violators' Vehicles will be Towed at Owner's Expense". LESSEE shall purchase such signs at LESSEE's expense. The cost of installation shall be born by LESSEE.

5. INSURANCE

(A) LESSEE shall procure and maintain throughout the term of this Lease a policy or policies of insurance, at its sole cost and expense, insuring both LESSOR and LESSEE against all claims, demands or actions arising out of or in connection with LESSEE's use or occupancy of the premises, the limits of such policy or policies to be in the amount not less than \$3,000,000 combined single limit for personal injuries to or death of any one person and in respect of property damaged or destroyed, and to be written by insurance companies qualified to do business in the State in which the premises are located. Duly executed certificates of insurance shall be promptly delivered to LESSOR and renewals thereof as require shall be delivered to LESSOR at least ten (10) days prior to the expiration of the respective policy terms. LESSEE's insurance policy shall require that reasonable advance notice be given LESSOR (as an additional insured) of any modification or cancellation of said policy.

(B) LESSOR and LESSEE agree that each shall be responsible for the defense of any claim or demand arising from the actions or inactions of the employees or agents of each. LESSEE shall maintain insurance, as required in Paragraph 5(A) above. LESSOR may insure such risk, in LESSOR's sole discretion. Each party shall be solely responsible for any damages from injury caused by the party's employees or agents. See Paragraph 11, following.

6. ASSIGNMENT AND SUBLETTING

The LESSEE shall not sublet the premises without the written permission of the LESSOR, which consent shall not be unreasonably withheld. Any such assignment made with the written permission of LESSOR shall not relieve LESSEE of any liability hereunder, unless LESSOR specifically agrees by written instrument to release LESSEE.

7. FORFEITURE

(A) In the event LESSEE shall fail to remove snow for a period of five (5) days after receipt of written notice from LESSOR stating the non-removal of said snow, then the LESSOR may enter upon the demised premises for the purpose of removing such snow, and LESSEE shall pay liquidated damages to LESSOR in the actual amount for each man-hour reasonably utilized to remove the snow from the sidewalks, the entrances and Lot No. 6. This section does not preclude the City from issuing any citations to LESSEE for failure to remove the same as being property under the control of LESSEE.

(B) If LESSEE fails to perform in any manner required by this instrument, after due notice, identifying LESSEE's failure in allowing a reasonable time to cure such default, and if LESSEE fails to cure or to undertake reasonable diligence to cure such default, LESSOR may terminate this Agreement for default. Termination shall be effective by service of a notice of termination in the manner herein specified. If it is determined by LESSOR that LESSEE had a reasonable excuse for non-performance (such as strike, fire, flood, or event beyond control of LESSEE, and not caused by default of LESSEE) LESSOR may allow additional time for performance rather than terminate the Lease.

COVENANTS OF LESSOR

8. UTILITIES

LESSOR shall pay all charges for any utilities used on the demised premises during the term of this Lease. Lighting (electric) for the premises is part of LESSOR's general street lighting, which LESSOR shall pay without any proration or other charge to LESSEE.

9. SNOW REMOVAL

Should LESSOR use the leased premises for temporary storage of snow removed from street or other areas, such "temporary storage" shall be limited to three (3) calendar days.

10. QUIET POSSESSION

LESSOR covenants that it is the lawful owner and is in possession of the demised premises and that it has good and lawful right to enter into the within Lease with LESSEE for the term and any extension thereof; that if LESSEE discharges its obligations and complies with each and all of the covenants, conditions and provisions herein, then it shall have and enjoy, during the term of this Lease and any renewal or extension thereof, quiet and undisturbed possession of the premises for the uses herein specified.

11. SUBROGATION

LESSOR waives and releases LESSOR's right of recovery against the LESSEE for damages to LESSOR's property by fire or other casualty including that occasioned by the negligence of the LESSEE, its agents or employees to the extent LESSOR receives actual payment therefore under LESSOR's insurance policies. LESSEE waives and releases LESSEE's right of indemnity

against the LESSOR for damages to LESSEE's property by fire or other casualty including that occasioned by the negligence of the LESSOR, its agents or employees, to the extent that LESSEE received actual payment therefore under LESSEE's insurance policy.

12. MECHANIC'S LIENS

LESSEE shall not, on its behalf, permit any Mechanic's or other liens to arise or attach to the leased premises and shall hold LESSOR harmless from any such lien should one arise. N that event any such lien is filed and not discharged or contested in good faith within 30 days after LESSOR is notified thereof, LESSEE shall be deemed in default under this Lease.

13. REPAIRS

LESSOR shall be responsible for all necessary repairs, under the following terms:

(A) LESSOR shall have full access to the leased premises for the purpose of inspecting and exhibiting the same to make any necessary repairs to the premises which LESSOR may see fit to make. LESSOR shall undertake such repair, to the extent possible; to minimize the interference with the use of LESSEE's parking spaces.

(B) LESEE agrees to pay for all repairs including but not limited to restriping, patching and general maintenance of the premises, however, LESSEE shall be given an opportunity to review and approve any work in excess of \$1,000 prior to the work being accomplished. Capital improvements such as but not limited to resurfacing the lost will be a cost paid by LESSOR alone, without charge to LESSEE.

14. DAMAGE

In case the leased premises shall be so damaged by fire, earthquake, the elements or any other casualty so as to be untenable LESSOR or LESSEE may terminate this Lease and any rents paid by LESSEE in advance shall be refunded. If the premises are partially damaged and are not rendered untenable, the LESSEE may remain in possession of said premises under the terms of the Lease and LESSOR agrees to cause said premises to be restored to substantially the condition thereof as prior to the said casualty with reasonable promptness.

15. CONDEMNATION

If the demised premises, or any part thereof, shall be taken in any proceedings by the public authorities (other than LESSOR, by condemnation or otherwise, or be acquired for public or quasi-public purpose, the LESSEE shall have the option of terminating this Lease, in which case any unearned rent shall be refunded to the LESSEE. In the event that only a portion of the premises shall be taken in any such condemnation or other proceedings and the remaining part of the premises shall be reasonably usable by LESSEE; and, if the LESSEE elects not to terminate this Lease, then the rent shall be reduced on an equitable basis considering the amount of area by which the demised premises are reduced by such condemnation or other proceedings. In any such proceedings whereby all or a part of said demised premises are taken, whether or not the LESSEE elects to terminate this Lease, each party shall be free to make claim against the condemning party or authority for the amount of the actual provable damages done to each of them by such proceedings.

16. FIXTURES

LESSEE, if not in default, may, on the termination of this Lease or at any time during the continuance thereof, remove from said premises all personal property of LESSEE which it may have installed or placed on said premises. LESSEE shall repair any damage to the demised premises caused by such removal, to restore the premises in the same condition as the commencement of this Lease, ordinary wear and tear excepted, to LESSOR's reasonable satisfaction.

17. NOTICES AND RENTALS

All notices, which are required to be given LESSOR herein, shall be deemed sufficient if sent either registered or certified mail to City Hall, Freeport, Illinois 61032, Attention: Mayor. Notices to LESSEE may be sent by either registered or certified mail to:

Rentals shall be sent or delivered to such party as LESSOR shall designate to LESSEE from time to time.

18. MODIFICATION

Both parties to this Lease agree that this Agreement contains all the terms and conditions agreed to by the parties and that any change thereto must be made in writing and agreed to by both parties.

19. GENDER

The use of the masculine, feminine, or neutral pronoun or other designation shall be construed as interpreted interchangeably.

20. COMPLIANCE WITH LAWS

In the performance of any actions or services related to this Agreement, LESSEE shall make reasonable and diligent efforts to comply with any and all Federal and State statutes, rules and regulations, and any and all of LESSOR's ordinances and regulations pertaining to the use of the premises. As for laws, statutes, rules, regulations, and ordinances adopted after the effective date and during the term of this Lease, LESSEE agrees to make reasonable and diligent efforts to comply with the same, or to contest the same in good faith by any lawful means. If LESSEE should not contest the same and not be successful, and if such future law, statute, rules, regulation, or ordinance should cause a failure of the benefits accruing to LESSEE under this Lease, LESSEE may, in its sole discretion, terminate this Lease on 30 days written notice to LESSOR. LESSOR shall attempt to consult with LESSEE before enacting any new ordinance, rule, regulation, which may reasonably be deemed by LESSOR to be detrimental to LESSEE's interest in the leased premises.

21. PROHIBITED INTEREST

No member, officer, director, agent, or employees of LESSEE, or LESSOR, or of a local public body with financial interest or control in this Agreement during its tenure, or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds received by LESSOR by reason of this Agreement.

22. AUTHORITY TO SIGN

Each person signing this instrument on behalf of a party represents and warrants that he or she had been duly authorized to sign this instrument on behalf of said party.

23. GOVERNING LAW

The law of the State of Illinois shall control the interpretation of this Agreement. The proper venue for interpretation and enforcement shall be the Circuit Court of the 15th Judicial Circuit, Stephenson County, Illinois.

24. INDEPENDENT STATUS

It is agreed by the parties hereto that at all times and for all purposes hereunder, the LESSOR is and shall remain an independent entity. No employee of the LESSOR shall remain an independent entity. No employee of the LESSOR shall be construed to be an employee of the LESSEE, nor shall any employee of the LESSEE be construed to be an employee of the LESSOR. No employee of one party shall be entitled to any of the rights, privileges or benefits accorded to employees of the other party.

25. REQUESTS FOR INFORMATION

If the LESSEE receives any written requests for inspection or copying of information acquired or produced under this Agreement other than from the LESSOR or its duly authorized agents, the LESSEE shall not release any such information for inspection or copying without first obtaining the LESSOR's written permission to do so. The LESSEE shall refuse any similar verbal requests for said inspection or copying. The LESSEE shall cooperate with the LESSOR during its review of any written requests for inspection and copying.

26. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause or phrase of this Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of the Agreement. Upon the occurrence of such event, if the provision, section, sentence, or clause found to be contrary to the law and unenforceable eliminates the benefits that either party may receive according to this instrument, the party so aggrieved may thereafter terminate this Agreement upon 30 days written notice to the other party.

27. SERVICES NOT PROVIDED FOR

The LESSOR shall not be required to perform any services or actions other than those specified in this Agreement, unless this is approved in writing by the LESSEE and by the LESSOR. Any additional services or actions to be performed by LESSOR shall require additional compensation to be paid by LESSEE to LESSOR as established by the written modification of this Agreement. Such approval shall be considered to be an addendum of this Agreement.

28. WAIVER OF BREACH OR DEFAULT

A waiver of any default shall not be deemed to be a waiver of any subsequent default. A waiver of a breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of the LESSEE and LESSOR.

IN WITNESS WHEREOF, this Lease has been executed in duplicate, each to have the full force and effect of an original, this day and year first above written.

ATTEST:

“LESSOR”

CITY OF FREEPORT

Latacia M. Ishmon, City Clerk

George W. Gaulrapp, Mayor

Date: _____

Date: _____

“LESSEE”

Authorized Signature

Title

Date: _____