

RESOLUTION NO. 7879-R48

A RESOLUTION APPROVING AND AUTHORIZING
THE EXECUTION OF AN AGREEMENT RELATIVE
TO PARKING AND PARKING REVENUES FOR
LINCOLN SQUARE SHOPPING CENTER, URBANA,
ILLINOIS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
URBANA, ILLINOIS, as follows:

Section 1. That "An Agreement Relative to Parking
and Parking Revenues for Lincoln Square Shopping Center,
Urbana, Illinois", a copy of which said Agreement is attached
hereto and hereby incorporated by reference, be and the same
is hereby approved.

Section 2. That the Mayor of the City of Urbana,
Illinois be and the same is hereby authorized to sign and execute
said Agreement for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this 5th day of February,
1979.


Beverly Umbarger
Beverly Umbarger, Acting City Clerk

APPROVED by the Mayor this 9th day of February,
1979.

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

7879-R48

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN RESOLUTION NO. 7879-R48 AND IS INCORPORATED THEREIN BY REFERENCE.

Beverly Umbarger, Acting City Clerk

AN AGREEMENT RELATIVE TO PARKING AND
PARKING REVENUES FOR LINCOLN SQUARE
SHOPPING CENTER, URBANA, ILLINOIS

This Agreement, made and entered into as of the first day of April, 1978, by and between the CITY OF URBANA (hereinafter referred to as the "City"), and JEWEL COMPANIES, INC., a New York Corporation (hereinafter referred to as "Jewel").

W I T N E S S E T H:

WHEREAS, the City is the owner and operator of certain municipal parking lots in the area bounded by Vine Street to the east, Elm Street to the north, Race Street to the west, and Illinois Street to the south, all within the corporate limits of the City of Urbana, Illinois and otherwise described as the "Central Business Addition, Urbana, Illinois"; and

WHEREAS, the City Council of the City has heretofore resolved, by Resolution No. 7677-R41, entitled "A Resolution Approving an Agreement To Retire Outstanding Parking Revenue Bonds By The Issue Of General Obligation Bonds Within A Time Certain", to use parking meter revenues of the Urbana Parking Meter System to retire certain general obligation bonds of the City issued pursuant to Ordinance No. 7677-78, which said ordinance was passed on the 22nd day of February, 1977, and approved on the 25th day of February, 1978; and

WHEREAS, the aforesaid municipal parking lots currently provide the City with parking meter revenues which are currently used and employed by the City for the purpose of retiring the general obligation bonds referred to above; and

WHEREAS, Jewel is the owner of a food store located on Eisner Tract "B" in the Central Business Addition, Urbana, Illinois; and

WHEREAS, both City and Jewel now desire to substitute the terms and conditions of this Agreement for and as an alternative to such revenues as would otherwise be generated by parking meters in a portion of said municipal parking lots and to provide certain other rights and obligations with respect to said municipal parking lots.

NOW, THEREFORE, for and in consideration of the amounts hereinafter set forth and the mutual promises made to each other, the parties do mutually covenant and agree as follows:

1. Definitions.

The following terms when used in this Agreement shall have the following meaning:

(a) "Parking Area" shall mean and refer to that certain property outlined in red on the site plan attached hereto and hereby made a part hereof as Exhibit A.

(b) "Carson" shall mean and refer to the Carson Pirie Scott & Company, a Delaware corporation.

(c) "Urbana Central" shall mean and refer to Urbana Central Development Corporation, an Illinois corporation.

(d) "Timpone" shall mean and refer to "Raymond Timpone".

(e) "Permittees" shall mean and refer to the officers, agents, patrons, customers, guests, invitees or licensees of such person, firm or corporation.

2. Term.

The term of this Agreement shall be for a period of fifteen (15) years commencing on the 1st day of April, 1978, and terminating on the 31st day of March, 1993, unless sooner terminated as provided herein.

3. Parking Area; No Charge.

(a) Throughout the term of this Agreement the City shall maintain and provide the Parking Area for the public parking of motor vehicles and for vehicular and pedestrian ingress and egress related thereto, subject to, and in accordance with, the terms, provisions and conditions of this Agreement.

(b) Except for the payments provided to be made by Jewel under this Agreement, the City agrees that it will not impose upon Jewel or its Permittees any direct fee, charge, tax, assessment or other payment for the parking of motor vehicles upon the Parking Area, or for repair, maintenance or restoration of the Parking Area or for any other reason relating to the Parking Area.

4. Base Payments by Merchant.

In consideration of the covenants and agreements of the City hereunder, Jewel agrees to pay to the City, as an annual base payment, commencing on the first (1st) day of April, 1978, and on the first (1st) day of April of each year of the term of this Agreement, Three Thousand Five Hundred Sixteen and no/100 Dollars (\$3,516.00).

5. Reserve Fund for Repairs.

(a) In addition to the base payment provided for in paragraph 4, Jewel shall pay to the City:

- (i) for the one-year period commencing April 1, 1980, the sum of One Hundred Forty-six and no/100 Dollars (\$146.00), payable on the said April 1, 1980,
- (ii) for each one-year period beginning with the one-year period commencing on the first (1st) day of April, 1981, the sum of Two Hundred Ninety-three and no/100 Dollars (\$293.00), payable on the 1st day of April in each such one-year periods.

(b) The aforesaid payments shall be set aside by the City for the repair, maintenance and restoration of the Parking Area and its facilities.

6. Repair and Maintenance of the Property.

The City shall maintain the Parking Area at its own expense, subject to the provisions of this Agreement, in good condition and repair, and agrees specifically:

- (a) To maintain the premises in a clean, presentable condition and remove snow, ice, debris and other obstructions;
- (b) 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;
- (c) To make all necessary repairs and replacements to lighting fixtures; and
- (d) To repair, restore and replace the surface of the Parking Area from time to time as shall be reasonably required to maintain the Parking Area in the aforesaid condition.

7. Lighting of Parking Area.

The City shall cause the Parking Area to be well-lighted throughout the term of this Agreement, by lights not less in quantity nor in illumination than the quantity and illumination of the lights located on the Parking Area as of the date hereof, subject, however, to a reasonable reduction in lighting by reason of national, state or local energy conservation policy.

8. 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 Area in any way without the prior consent of Jewel, which consent shall not be unreasonably withheld.

9. Parking Limitation.

(a) The City agrees that it will prohibit any motor vehicle from being parked on the Parking Area for a continuous period in excess of two (2) hours (such prohibition being herein sometimes referred to as the "Parking Time Limit"), that it will place signs on and about the Parking Area for the purpose of informing users of the Parking Area of the Parking Time Limit, and that it will enforce the Parking Time Limit. In the event that the City shall elect to enforce the Parking Time Limit 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 paragraph 3 hereof.

(b) Jewel, by notice to the City not less than thirty (30) days prior to the commencement of a one-year period, may request an increase or decrease in the maximum number of hours of the Parking Time Limit during such one-year period to a number of hours to be designated in such notice, and during such one-year period, the City agrees to amend the Parking Time Limit provided for in subparagraph 11(a) hereof as provided in such notice. In the event that Jewel

does not notify the City of any increase or decrease of the maximum number of hours of the Parking Time Limit as aforesaid, the Parking Time Limit applicable to such one-year period shall be and remain the Parking Time Limit applicable to the one-year period prior thereto.

(c) It is further agreed that the City may, at any time and from time to time, temporarily waive and suspend enforcement of the Parking Time Limit for and during the day or days or other period or periods of time that the City may find it necessary or convenient to do so.

10. Other Agreements

(a) Jewel and the City acknowledge that parts of the City parking facilities in the Central Business Addition are currently used for motor vehicle parking by both Carson and Urbana Central as well as Timpone and their respective Permittees. Jewel agrees that the City may enter into separate Agreements with Carson and Urbana Central as well as Timpone under terms, provisions or conditions relating to the parking of motor vehicle spaces in the Central Business Addition which may differ from the terms, provisions and conditions of this Agreement. It is expressly understood by and between the parties, however, that the Carson and Urbana Central Agreement shall provide that Carson and/or Urbana Central shall pay to the City their fair proportion of sums to replace revenues heretofore generated by the parking meters and sums for repairs, maintenance and restoration as referred to in paragraphs 4 and 5 of this Agreement.

(b) The City shall use its best efforts to enforce the Agreement and all the terms and provisions thereof with Carson and Urbana Central relative to the parking of motor vehicles in the Central Business Addition, and, in the event of default by Carson and/or Urbana Central thereunder, shall (subject to Subparagraph 10(c) hereof) exercise the City's right and remedies thereunder.

(c) In the event of default by Carson and/or Urbana Central under the Carson and Urbana Central Agreement, the City shall not exercise any remedies provided in the Carson and Urbana Central Agreement, or otherwise available at law or equity, which would alter,

amend, limit, extend or terminate the rights of Jewel and its Permittees or the obligations of the City hereunder.

(d) In the event of default by the City under the Carson and Urbana Central Agreement which otherwise results in the termination of that Agreement, Jewel may, upon not less than ten (10) days notice to the City specifying such default and resulting termination, terminate this Agreement.

11. Default.

(a) In the event that the City shall be in default hereunder at the time that there is due a base payment under paragraph 4 or a payment for repair, maintenance and restoration under paragraph 5 hereof and such default materially affects the rights of Jewel hereunder, Jewel (i) upon not less than fifteen (15) days notice to the City specifying such default, may withhold all or any part of such base payment or payment to the repair reserve fund until the fifteenth (15) day next following the curing of such default, and/or (ii) upon not less than thirty (30) days notice to the City specifying such default, terminate this Agreement, provided, however, that such notice of termination shall be null and void if, prior to the effective date of such termination, the City shall cure such default. Defaults which materially affect the rights of Jewel hereunder shall include, but shall not be limited to, those defaults specified in paragraph 9 of this Agreement.

(b) In the event that Jewel shall fail to make a base payment under paragraph 4 hereof or a payment to the repair reserve fund under paragraph 5 hereof hereunder within ten (10) days of the date on which such payment is due hereunder (subject to the provision of subparagraph 11(a) above), the City may, upon not less than twenty (20) days notice to Jewel specifying such default, terminate this Agreement, provided, however, that such notice of termination shall be null and void if, prior to the effective date of such termination, Jewel shall cause the delinquent payment to be made. Upon termination, this Agreement shall be considered null and void, in default, and it shall be conclusively presumed that all rights and privileges herein granted Jewel have reverted to the City.

12. Miscellaneous.

(a) The various rights and remedies herein contained and reserved to each of the parties shall not be considered as exclusive of any other right or remedy of such party, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute.

(b) The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision thereof.

(c) The laws of the State of Illinois shall govern the validity, performance and enforcement of this Agreement.

(d) The headings of the several paragraphs herein are for convenience only and do not define, limit or construe the contents of such paragraphs.

(e) It is mutually covenanted and agreed by and between the parties hereto that the covenants and agreements herein contained shall be 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 a lease of the Parking Area and that no leasehold estate is created hereby.

(f) Whenever under this Agreement a provision is made for any declaration, demand or notice of any kind or where it is deemed desirable or necessary by any party to give or serve any declaration, demand or notice to the other, such declaration, demand or notice shall be in writing sent by registered or certified mail with postage prepaid, if to Jewel, addressed to it at Eisner Food Stores, 301 E. Wilbur Heights Road, Champaign, IL 61820, Attn: Real Estate Department, and if to the City, addressed to the Director of Public Works at 400 South Vire Street, Urbana, Illinois.

IN WITNESS WHEREOF, the parties hereto caused this instrument to be executed as of the day and year first above written.

CITY OF URBANA, ILLINOIS,

JEWEL COMPANIES, INC.,
EISNER FOOD STORE DIVISION,

By: Jeffrey T. Markland
Jeffrey T. Markland, Mayor

By: _____
President

ATTEST:

ATTEST:

Beverly Umbarger, Acting City
Clerk

Secretary