

6/2/99

37-R-99

A RESOLUTION

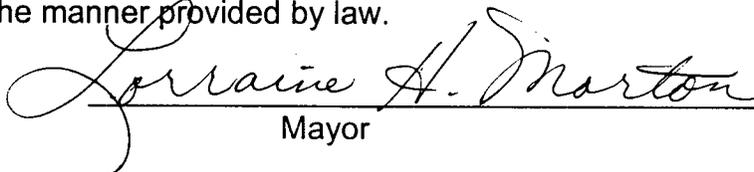
**Authorizing the City Manager to Enter Into
a Cinema Parking Lease Agreement**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON,
COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, a Cinema Parking Lease Agreement by and between the City of Evanston and AHC Evanston LLC. Such Agreement shall be in substantial conformity with the Agreement marked as Exhibit A attached hereto and incorporated herein by reference.

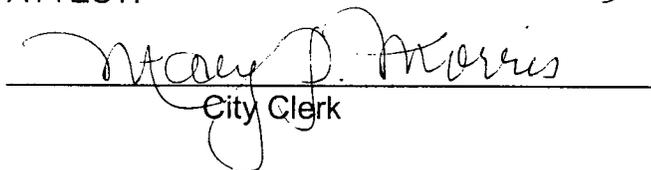
SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the lease as may be determined to be in the best interests of the City.

SECTION 3 That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.



Mayor

ATTEST:



City Clerk

Adopted: June 7, 1999

CINEMA PARKING LEASE

THIS PARKING LEASE (hereinafter referred to as the "Lease") is made this 8th day of June, 1999, by and between the CITY OF EVANSTON, a municipal corporation (hereinafter referred to as "Landlord") and Church Street Plaza LLC, a limited liability company (hereinafter referred to as "Tenant").

W I T N E S S E T H

1. **Demise.** Landlord, for and in consideration of Ten Dollars (\$10.00) and the covenants and agreements set forth herein, does hereby lease to Tenant and Tenant hereby takes from Landlord the number of parking spaces ("Spaces") required to comply with the City of Evanston's Zoning Ordinance, as that ordinance may be modified from time to time for the benefit of the Tenant's real estate, as improved and as legally described on Exhibit A and by this reference incorporated herein (the "Main Pavilion Parcel"). The Spaces shall be unassigned and unreserved automobile parking spaces and shall be located at the planned new Public Parking Garage (hereinafter referred to as "Garage") located on the real estate legally described on Exhibit B hereto and by this reference incorporated herein. The Spaces shall be used by the Tenant to provide parking for the Cinema upon the Main Pavilion Parcel (the "Cinema") and to maintain compliance with the City of Evanston Zoning Ordinance for the Cinema. Tenant shall have, as appurtenant to the Spaces, rights to use in common: (a) the common lobbies, corridors, stairways, stairwells, escalators, elevators, of the Garage in common with others, and (b) common walkways, parking areas and driveways necessary for common ingress and egress to the Garage. The availability of Spaces in the Garage is based upon the Planned Development Ordinance (41-O-99) and the shared parking calculations used therein.

2. **Term.** The term of the Lease (hereinafter referred to as "Term") shall commence on the date the Main Pavilion Parcel is transferred by the City pursuant to paragraph 7 of the Redevelopment Agreement (hereinafter referred to as the "Commencement Date") and shall expire on the fortieth anniversary of the opening of the Cinema for business. Tenant shall have the right to terminate this lease prior to the end of the Term by providing other parking elsewhere for the Cinema which satisfies all zoning requirements of the City of Evanston.

3. **Rent.** Provided that a portion of this Main Pavilion Parcel is being used as a Cinema, the Tenant and the Cinema operator shall have free parking for its movie patrons in the Garage for up to four (4) hours per day for the period of the initial term of its lease, twenty (20) years, from the date said Cinema opens for business. If it is determined, at the expiration of the twenty (20) year period that the patrons of a majority of movie theaters within the trade area of the Cinema are paying for parking, the City reserves the right to charge the patrons of the Cinema for parking at a rate

which shall not place the Cinema at a competitive disadvantage to those theaters. Provided the Cinema operator exercises its option to extend its lease term beyond twenty (20) years, the City, at the completion of each five (5) year option period for a maximum of twenty (20) years beyond the initial twenty (20) year term, shall determine if a majority of the patron's of the movie theaters within the trade area of the Cinema are paying for parking. If a majority of such movie theater patrons are paying for parking, the City may charge the patrons of the Cinema for parking at a rate which shall not place the Cinema at a competitive disadvantage to those theaters. If the patrons of a majority of movie theaters in the trade area are not paying for parking when the foregoing determinations are made by the City, then the City shall not charge the patrons of the Cinema for parking. At the expiration of forty (40) years, the City shall have the right to charge patrons of the Cinema for parking at the rate it charges the general public. At the termination of the Cinema lease or a change in use of the Cinema property to other than Cinema, the City's agreement contained in this paragraph shall terminate and the City shall have the right to charge patrons for parking at the rate it charges the general public. The City shall be allowed to charge Movie Patrons of the Cinema the same rate it charges the general public for the time said patrons use the Garage beyond the four (4) hours of free parking referred to in this paragraph: All employees of the Cinema operator who use the Garage other than movie patrons shall be charged the parking rate that the City charges the general public for the spaces leased hereunder.

4. **Maintenance.** Landlord shall maintain the Garage in accordance with the level of maintenance it performs for other comparable Garages in the City of Evanston and shall perform all repairs, restoration and maintenance thereto. In the event Landlord finds it necessary to restrict access to the Garage to perform maintenance required hereunder, it will give reasonable prior written notice of such necessity to Tenant, except in case of emergency, provided however Landlord shall at all times, provide the Spaces. Landlord shall, at its sole cost keep and maintain the Garage and all sidewalks and parking areas, safe, secure, and clean, specifically including, but not by way of limitation, snow and ice clearance, landscaping and removal of waste and refuse matter.

5. **Rules and Regulations.** Tenant agrees to abide by the requirements and regulations relating to the use of the Garage promulgated by Landlord upon not less than thirty (30) days' prior written notice thereof, providing said requirements apply to all users.

6. **Use.** Tenant agrees to limit its use of the Garage to the parking of motorized vehicles for nine (9) passengers or less. Landlord and Tenant agree to create a voucher system to allow movie patrons of the cinema four (4) hours of free parking, if applicable, as provided in paragraph three of this lease.

7. **Successors and Assigns.** The rights and obligations of the parties hereto shall inure to the benefit of the parties hereto and each of their successors and assigns. The interest and rights of Tenant hereunder shall be assignable subject to Paragraphs 31 and 44 of the Redevelopment Agreement as amended.

8. **Changes in Zoning Requirements.** In the event the zoning requirements for the Cinema are changed by the action of the Evanston City Council so that the Cinema is not required to provide the number of spaces leased hereunder, the City may, upon thirty (30) days' written notice decrease the number of Spaces leased hereunder to the number then required. In the event the zoning requirements for the Project are changes by the action of the Evanston City Council so that the Cinema is required to provide additional parking spaces in excess of the number of Spaces leased hereunder, the Spaces shall be so increased.

9. **Utilities.** Landlord agrees to pay all charges for water, gas, electricity and other utilities incurred in connection with the Garage.

10. **Mortgages.** If Tenant mortgages its leasehold estate created hereby and the mortgagee or holder of the indebtedness secured by the leasehold mortgage or trust deed shall notify Landlord, in the manner provided for the giving of the notice, of the execution of such mortgage or trust deed and name the place for service of notice upon such mortgagee or holder of such indebtedness, then, in such event, Landlord agrees for the benefit of such mortgagee or holder of such indebtedness from time to time, as follows:

(i) Landlord agrees to give any such mortgagee or holder of such indebtedness simultaneously with service on the Tenant, a duplicate of any and all notices of default given by Landlord to Tenant. Such notices shall be given in the manner and shall be subject to the terms of the notice provisions of this Lease.

(ii) Such mortgagee or the holder of such indebtedness shall have the right to perform any of Tenant's covenants under this Lease and to cure any default of Tenant pursuant to terms of this Lease.

(iii) No liability for any payment or the performance of any Tenant's covenants and agreements shall attach to or be imposed upon any mortgagee or the holder of such indebtedness unless such mortgagee or holder of such indebtedness forecloses its interest and becomes the successor Tenant under this Lease.

(iv) Tenant agrees that any mortgage or security interests it may grant in this leasehold will provide that it is subject to and subordinate to Landlord's estate.

11. **Tenant Default.** A. The occurrence of the following shall be an "Event of Default" hereunder:

If Tenant fails to observe or perform any of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of forty-five (45) days after written notice thereof from Landlord specifying such failure; provided, however, that if such failure cannot reasonably be cured within such forty-five (45) day period, no Event of Default shall be deemed to exist so long as Tenant shall have commenced curing the same within such forty-five (45) day period, and shall thereafter diligently and continuously prosecute the same to completion.

B. Upon the occurrence of an Event of Default, by or against Tenant, Landlord shall have the following rights and remedies:

(i) Landlord may, at its option, at any time upon fifteen (15) days written notice to Tenant, and upon the date specified in such notice from Landlord to Tenant recover from Tenant Landlord's damages caused by such Default together with all other sums payable to Landlord hereunder, including reasonable attorneys' fees, costs and expenses.

(ii) Landlord may, at its option, but shall not be obligated to, take such action as appropriate to correct or remedy such default (including performing or causing to be performed any of Tenant's obligations hereunder) and all sums expended by Landlord in doing so shall be payable from Tenant to Landlord upon demand.

(iii) In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions in this Agreement, Landlord shall, in addition to the rights and remedies provided hereunder, have the right to invoke any right or remedy allowed at law or in equity or by statute or otherwise.

(iv) Landlord shall not have the remedy of terminating this lease by any reason of Tenant's default.

12. **Notices.** All notices herein required shall be in writing and shall be served on the parties, either personally or mailed by certified or registered mail, return receipt requested or by expedited messenger, and all such notices shall be deemed received on receipt or if delivery is refused upon the date of attempted delivery addressed as follows:

If to the Landlord: City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
Attention: City Manager
Facsimile: (847) 448-8083

With a copy to: Burke and Ryan
33 North Dearborn Street, Suite 402
Chicago, IL 60602
Fax: (312) 236-2556

If to the Tenant: Arthur Hill
Arthur Hill & Co. LLC
5 Revere Drive, Suite 300
Northbrook, Illinois 60062
Facsimile: (847) 498-4947

With a copy to: Mark Yates
Sonnenschein, Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606-6404
Facsimile: (312) 876-7934

Either party may, by notice, change the addresses set forth above. Facsimile transmission is not authorized as a means of notice under this Lease.

13. **Miscellaneous.**

A. Captions and Attachments. The headings of sections and paragraphs hereof are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any paragraph of this lease. Exhibits and addenda attached or affixed hereto are deemed a part of this lease and are incorporated herein by reference.

B. Estoppel Certificates. The City and the Tenant agree that at any time and from time to time, upon not less than ten (10) days' prior notice by the other party, such party will execute, acknowledge and deliver to the other a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same as so modified are in full force and effect and setting forth such modifications) and the date to which the Rent and other charges and obligations hereunder have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, Mortgagee, assignee of any mortgage or assignee of the

respective interests under this Lease, made in accordance with the provisions of this Lease.

C. Governing Law. The laws of the State of Illinois shall govern the validity, performance and enforcement of this Lease.

D. Severability. If any provision of this Lease shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

E. Condition of the Premises. Tenant occupancy of the Garage after the Commencement Date shall constitute an acknowledgment by Tenant that, the Garage was, on the date possession was taken, in good order and satisfactory condition.

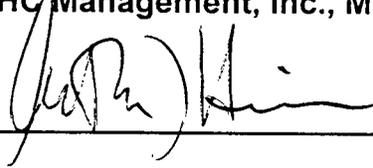
F. Covenant not to Compete. Tenant acknowledges that the majority of the Spaces within the Garage will be available for parking by the public at large for a fee payable to Landlord. Tenant covenants and agrees that it will never compete in any way with Landlord's use of the Garage.

14. The City agrees that movie patrons of the Cinema may also park in the Sherman Street Garage if spaces are available and such movie patrons will have the rights, and payment obligations set forth in paragraph four of this lease as if they were parking the Garage.

IN WITNESS WHEREOF, the parties hereto have executed this lease this day and year first above written.

- TENANT: -

CHURCH STREET PLAZA LLC
By: AHC Management, Inc., Manager

By: _____


LANDLORD:

CITY OF EVANSTON

By: _____


EXHIBIT A

LOT 1 OF THE CHURCH MAPLE RESUBDIVISION BEING A RESUBDIVISION OF PART OF DEMPSTER'S SUBDIVISION OF BLOCK 66 OF THE VILLAGE OF EVANSTON, COOK COUNTY, ILLINOIS; PART OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT OF WAY (FORMERLY CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD RIGHT OF WAY); PART OF BLOCK 18 IN THE VILLAGE OF EVANSTON; ALL OF BLOCKS 2 AND 3 IN CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22 IN THE COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS; AND PART OF VACATED CLARK STREET AND EAST RAILROAD AVENUE; BEING IN THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS.

EXHIBIT B

LOT 4 OF THE CHURCH MAPLE RESUBDIVISION BEING A RESUBDIVISION OF PART OF DEMPSTER'S SUBDIVISION OF BLOCK 66 OF THE VILLAGE OF EVANSTON, COOK COUNTY, ILLINOIS; PART OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT OF WAY (FORMERLY CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD RIGHT OF WAY); PART OF BLOCK 18 IN THE VILLAGE OF EVANSTON; ALL OF BLOCKS 2 AND 3 IN CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22 IN THE COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS; AND PART OF VACATED CLARK STREET AND EAST RAILROAD AVENUE; BEING IN THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS.