

11/22/2011

66-R-11

A RESOLUTION

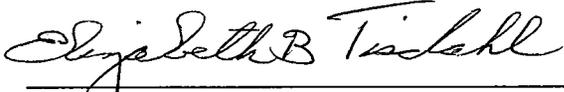
**Authorizing the City Manager to Execute a License Agreement
with 350Green for Electric Vehicle Charging Stations
Located in City Parking Lots and Garages**

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

SECTION 1: The City Manager is hereby authorized and directed to sign the license agreement ("Agreement") between the City and 350Green, a District of Columbia corporation, attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as he may determine to be in the best interests of the City.

SECTION 3: This resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: November 28, 2011

EXHIBIT A

**License Agreement Between the City
and 350Green**

LICENSE AGREEMENT

The parties listed below as "Owner" and "Company" hereby enter into this Charging Station Agreement (the "Agreement") upon the terms and conditions set forth herein.

OWNER: The City of Evanston, Illinois

COMPANY: 350 Green, a District of Columbia corporation

DATE OF AGREEMENT: December 7, 2011

COMMENCEMENT DATE: December 7, 2011

TERMINATION DATE: Terminable upon written notice by either party (subject to provisions of Exhibit 1)

USE FEE: Individual sessions are allocated at \$6 for a Fast Charge Session and \$3 for a Level 2 Charge Session.

SITE ADDRESSES: See Schedule 1

ELECTRICITY: Electricity service to the Systems shall be provided by Owner. Electricity usage will be reimbursed to Owner by Company on a monthly basis for the term of the Agreement.

TOTAL NUMBER OF SYSTEMS TO BE INSTALLED: Two Level 2 Charging Stations

INCORPORATION: The terms and provisions of the attached Exhibit 1 and all Schedules attached thereto are hereby incorporated into this Agreement.

EXHIBIT 1 - General Terms and Conditions

1. **License.** Owner hereby grants to Company a non-exclusive license (the "Permitted Use") to install, operate, maintain, repair, improve, and replace vehicle charging stations or other installations and equipment (the "Systems") at the real property described in Schedule 1 attached hereto (the "Premises"), upon the terms and conditions set forth herein (the "Use License"), and in the general locations set forth in Schedule 1. In addition, Owner hereby grants to Company and its successors, assigns, agents, employees, contractors, invitees and customers (i) a non-exclusive license in, on and across the Premises, including, without limitation, all parking areas, common areas, entries, exits, and driveways serving the Premises (the "Licensed Access Areas") for the purpose of ingress and egress to the Systems during the period of this Agreement and the Surrender Period (defined below) (the "Access License"), and (ii) a non-exclusive license on, over, under and across the Premises in locations from time to time reasonably agreed to and identified by Owner and Company (the "Licensed Utility Areas" and collectively with the Licensed Access Areas, the "Licensed Areas") to the extent reasonably required by Company to install, connect and operate the electric, telecommunication, or other utilities required for the operation of the Systems during the Term and the Surrender Period (the "Utility License", and, together with the Access License, the "Ancillary Licenses"). Company shall reimburse Owner for revenue lost from metered parking spaces near or adjacent to the Licensed Areas as a result of Company's or its vendors' obstruction of such spaces during the installation, connection, operation, maintenance, alteration, and/or removal by renting meter hood(s) and/or monthly parking permit(s) at the then-current rate(s), at Company's election. In addition, upon Owner's consent, Company may add additional Systems to the Premises or change the location of existing Systems. Upon the installation of additional Systems or a change to the location of existing Systems, the parties shall amend this Agreement to reflect the actual number and location of the Systems within the Premises.

2. **Term.** The Term of this Agreement shall commence on December 7, 2011 ("Effective Date") and continue for seven (7) years, unless otherwise terminated as provided herein.

3. **Termination.** Owner shall have the right at any time during the License Term to terminate this License without cause upon ninety (90) days' prior written notice to Company. In the event Owner exercises such right, Owner shall pay to Company an amount equal to the product of (a) one eighty-fourth ($1/84$) of Company's Installation Costs (as defined below), and (b) the number of full calendar months of the License Term remaining as of the date such termination is effective. The term "Installation Costs" means the total amount of Company's actual costs of (i) transporting the Systems to the Premises; (ii) arranging electrical and communications service to the Premises; and (iii) installing the Systems at the Premises. Installation Costs shall not include the cost of the Systems themselves.

4. **Taxes.** Company shall pay, before delinquency, any and all taxes or assessments against the Systems or other personal property of Company located at the Premises.

5. Use. Compliance with Laws; Rules. Company may use the Premises for the installation, operation, repair, maintenance, replacement and removal of electric vehicle charging stations and other legal, related uses.

6. Parking. All parking stalls in the immediate vicinity of the Systems as are reasonably required to simultaneously operate the Systems at full capacity shall be designated the "Company Customer Parking Area", as further described in Schedule 2. Owner shall use commercially reasonable efforts to avoid interfering with the operation of Company's business in the Company Customer Parking Area and the Premises.

7. Insurance. Company shall obtain and keep in full force and effect, at Company's sole cost, a commercial general liability policy of insurance protecting Company against claims for bodily injury, personal injury and property damage based upon, involving or arising out of Company's use or occupancy of the Premises and/or this Agreement. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$1,000,000. Company shall deliver certificates evidencing such insurance to Owner upon issuance from insurer, which certificates shall name Owner as an additional insured and certificate holder.

8. Indemnity. Company shall hold Owner, its officials (whether appointed or elected and whether or not serving at the time of commencement of this Agreement), its officers, employees, volunteers and agents, harmless from and against any and all injury, death, loss, damage, claims, actions, suits, liabilities and expenses (including without limitation reasonable costs and expenses for investigation and litigation, whether in law or equity, and reasonable attorneys' fees) ("Claims") in any way arising from or connected with Company's breach of this Agreement or Company's use of the Premises. To the extent prohibited by applicable law, no person or entity indemnified hereunder shall be indemnified for claims to the extent arising from such person's or entity's own negligence, and the provisions hereof shall not be construed to require Company to indemnify any person or entity otherwise covered by this Section 8 to the extent of such person or entity's own negligence or to require any indemnification that would make any of the provisions in this Section 8 void or unenforceable. Notwithstanding the foregoing, Company's liability to Owner shall be limited to direct actual damages only, and all other remedies or damages at law and equity, including consequential damages, punitive or other exemplary damages, are waived unless asserted against Owner by an unrelated third party. This indemnification shall survive the termination of this Agreement.

9. Premises Repairs and Maintenance. Company accepts the Premises in "as is" condition. Company shall be responsible for the general repair and maintenance of the Systems. Except for obligations which are Company's responsibility pursuant to the preceding sentence, Owner shall be solely responsible for maintaining the Premises, including the Licensed Areas. In the event of any emergency repairs or maintenance commissioned by Owner, Owner shall make reasonable efforts to contact Company prior to such work. For routine maintenance at the Premises that may affect use of the Systems, Owner shall provide twenty-four (24) hours advance notice to Company. Company understands that prior notice may not always be feasible. Owner shall provide

fifteen (15) days prior notice to Company of the dates and anticipated duration of any planned repairs and/or maintenance (such as such as striping and resurfacing) affecting the Premises.

10. Systems Alterations. Owner consents to the installation, repair, maintenance, upgrade, removal and/or replacement of the Systems, including, without limitation, all utility facilities serving the Systems. All such work shall comply with applicable laws and shall be performed in a good and workmanlike manner. Company shall keep the Premises free of any liens arising out of work performed by or for Company. The Systems and any other equipment installed in the Premises by or for Company are and shall at all times be Company's personal property, and Owner shall have no lien or other interest therein. Company may remove the same at any time; provided, however, Company shall repair any damage to the Premises caused by such removal.

11. Systems Damage. Owner shall use reasonable diligence to restore any portion of the Premises, affecting the Systems, within a period of thirty (30) days after notice from Company. Notwithstanding the foregoing, Company shall be responsible for any repair, restoration or replacement of the Systems caused by any peril.

12. Assignment. Company may not assign this Agreement without the prior written consent of Owner, which consent may not be unreasonably withheld. Notwithstanding the foregoing, Company may, without Owner's prior written consent and without constituting an assignment hereunder, assign its interest in this Agreement to: (a) an entity controlling, controlled by or under common control with Company; (b) an entity related to Company by merger, consolidation, non-bankruptcy reorganization, or government action; or (c) a purchaser of a substantial portion of Company's stock or of the Systems. In addition, Owner's consent shall not be required in connection with any pledge, mortgage, deed of trust, hypothecation, or collateral assignment of this Agreement, the Company's rights hereunder and/or the Systems (a "Lender's Lien") to any person or entity providing financing to Company or the Systems (each a "Lender"). A sale or transfer of Company's stock or other equity interests shall not be deemed an assignment or any other transfer of this Agreement.

13. Provisions Benefiting Lender. Any Lender shall have the absolute right to do one, some or all of the following things: (a) assign its Lender's Lien; (b) enforce its Lender's Lien (defined below); (c) access and operate the Systems and perform any obligations to be performed by Company hereunder, or cause a receiver to be appointed to do so; (d) assign or transfer Company's interest in this Agreement to a third party; or (e) exercise any rights of Company hereunder. Owner's consent shall not be required for any of the foregoing; and, upon acquisition of Company's interest in this Agreement by the Lender or any other third party who acquires the same from or on behalf of the Lender, Owner shall recognize the Lender or such other party (as the case may be) as Company's proper successor, and this Agreement shall remain in full force and effect. As a precondition to exercising any rights or remedies as a result of any default or alleged default by Company, Owner shall deliver a duplicate copy of the applicable notice of default to each Lender concurrently with delivery of such notice to Company, specifying in detail the alleged event of default and the required remedy, provided Owner was given

notice of such Lender as provided hereunder. A Lender shall have the same period after receipt of a notice of default to remedy any event of default of Company, or cause the same to be remedied, as is given to Company after Company's receipt of a notice of default hereunder plus an additional sixty (60) days or such longer period required to complete such cure, including the time required for the Lender to foreclose its Lender's Lien and gain possession of the Systems. At Company's request, Owner shall execute such consents, estoppel certificates and additional documents as may reasonably be required by such Lender in connection with its Lender's Lien.

14. Surrender. Within ninety (90) days following the termination of this Agreement, Company shall remove all aboveground components of the Systems and all of its personal property from the Premises; provided, however, Company shall not be required to remove any underground utility facilities. The Use License and Ancillary Licenses shall apply during this period to the extent they relate to such removal of Systems and personal property. Upon termination of this Agreement for any reason, Company shall return the Premises to their previous condition, normal wear and tear excepted.

15. Notices. Any notice given under this Agreement shall be in writing and shall be hand delivered, sent by reputable overnight courier, or mailed (by certified mail, return receipt requested, postage prepaid) to the party's address set forth herein. Any notice shall be deemed to have been given when received or refused. Each party shall have the right to change its notice address upon not less than five (5) days notice to the other party.

OWNER:

City Manager
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

With a copy to:

Corporation Counsel
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

COMPANY:

350Green
411 S. Hewitt
Los Angeles, CA 90013

16. Effect of Conveyance. The terms, covenants, conditions and provisions hereof shall inure to the benefit of and extend to and be binding upon the heirs, executors, administrators, personal representatives, successors in interest, and assigns the successors in interest and assigns of the respective parties hereto. Owner shall require any purchaser of the Premises to assume Owner's rights and obligations hereunder.

17. Signage. Company shall be permitted to install, at its sole cost and expense, its standard signage adjacent to or on the Systems. All such signage shall be in

compliance with applicable law, including, but not limited to, Owner's Sign Ordinance set forth in Title 4, Chapter 12 of the Evanston City Code of 1979, as amended.

18. Relocation. Owner shall have the right to require the Company to relocate the Systems to another location within the Premises (the "Relocation Area") upon not less than ninety (90) days prior written notice. The Relocation Area shall be capable of supporting Systems of equal or greater utility as the existing Systems. Owner shall pay all of Company's out-of-pocket costs of relocation, including, but not limited to, any costs relating to: (i) the installation of new Systems; (ii) installation of additional electrical, telecommunications, or other utility lines, as well as the removal of such existing lines and any required restoration of the Premises; (iii) any related permitting requirements of governmental entities; and (iv) lost revenues during any reasonably necessary period of non-operation, as evidenced by revenues generated during the prior twelve (12) month period.

19. Miscellaneous. This Agreement shall in all respects be governed by and construed in accordance with the laws of the state or commonwealth in which the Premises are located. If any term of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement shall remain in full force and effect to the fullest extent possible under the law, and shall not be affected or impaired. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. Any executed copy of this Agreement shall be deemed an original for all purposes. This Agreement shall, subject to the provisions regarding assignment and subletting, apply to and bind the respective heirs, successors, executors, administrators and assigns of Owner and Company. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Owner or Company. The captions used in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof. When a party is required to do something by this Agreement, it shall do so at its sole cost and expense without right of reimbursement from the other party unless specific provision is made therefore. If either party brings any action or legal proceeding with respect to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' and experts' fees and court costs. Whenever one party's consent or approval is required to be given as a condition to the other party's right to take any action pursuant to this Agreement, unless another standard is expressly set forth, such consent or approval shall not be unreasonably withheld or delayed. This Agreement may be executed in counterparts. No amendment hereto shall be effective unless in writing and signed by both parties.

20. No Relief for Breach. The expiration or termination of this Agreement shall not relieve either Party of any liability for a breach of its obligations under this Agreement for any misrepresentation or failure to comply with any agreement or covenant therein. Any such expiration or termination shall not be deemed to be a waiver of any available remedy for any such breach, misrepresentation or failure to comply with any agreement or covenant.

21. Entire Agreement. This Agreement sets forth all of the promises, inducements, agreements, conditions and understandings between Owner and Company relevant to the subject matter of this Agreement, and there are no promises, agreements, conditions or understandings, written or oral, express or implied, between them other than as herein set forth.

22. Survival of Terms, Binding on Successors. The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in this Agreement (and specifically including those provisions that, by their terms, survive the termination of this Agreement) shall be binding upon and inure to the benefit of the Parties hereto and their respective legal successors and permitted assigns and the covenants, provisions and agreements herein contained shall run with the Premises during the Term and shall expire twelve (12) months after termination of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Owner and the Company have signed this Agreement as of the dates set opposite their signatures.

OWNER

Dated: 12/12/11

By: Wally Bobkiewicz

Name: Wally Bobkiewicz

Title: City Manager

COMPANY

Dated: December 7, 2011

By: Kenneth A. Adams

Name: Kenneth A. Adams

Title: Regional Infrastructure
Director

Approved as to form:

W. Grant Farrar

W. Grant Farrar
Corporation Counsel

SCHEDULE 1

Evanston Municipal Parking Facilities

1. Lot 3, 1702 Chicago Avenue, Evanston, IL 60201
2. Lot 4, 2122 Central Street, Evanston, IL 60201
3. Lot 32, 825 Hinman Avenue, Evanston, IL 60202
4. 1800 Maple Self Park, 1800 Maple Avenue, Evanston, IL 60201
5. Church Street Self Park, 525 Church Street, Evanston, IL 60201
6. Sherman Plaza Self Park, 821 Davis Street, Evanston, IL 60201

SCHEDULE 2

See Attached Site Plans

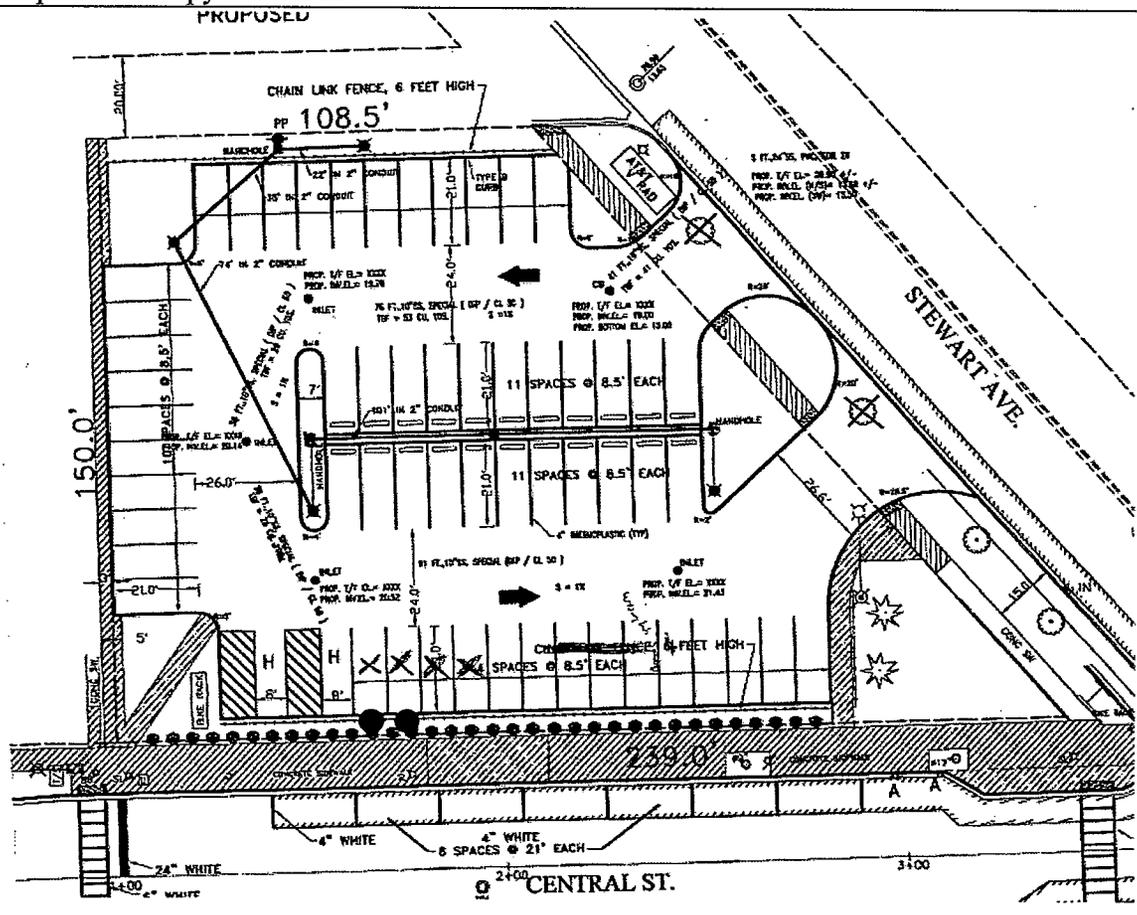
Parking Lot 3 – 1702 Chicago Avenue, Evanston, IL 60201

Location of proposed 350Green charging stations shown in red



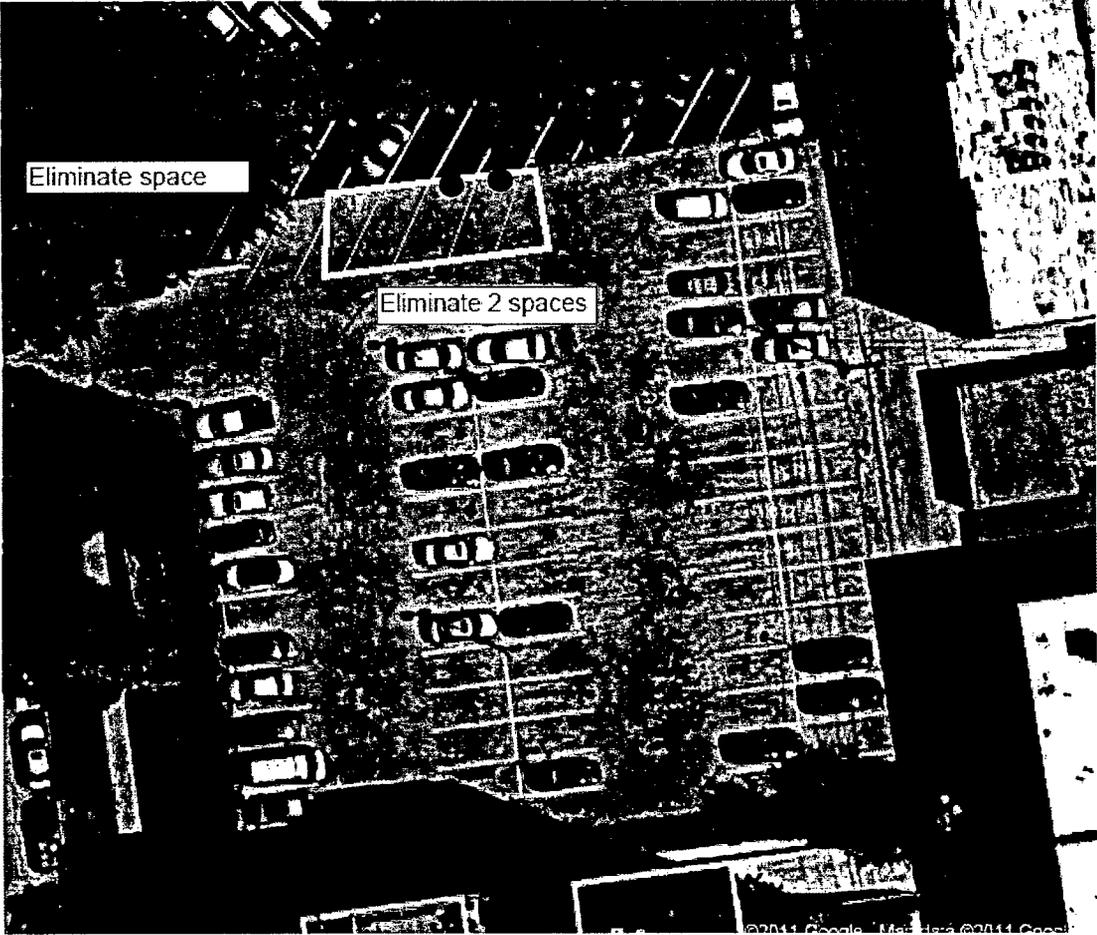
Parking Lot 4 – 2122 Central Street, Evanston, IL 60201

Proposed Canopy shown in red



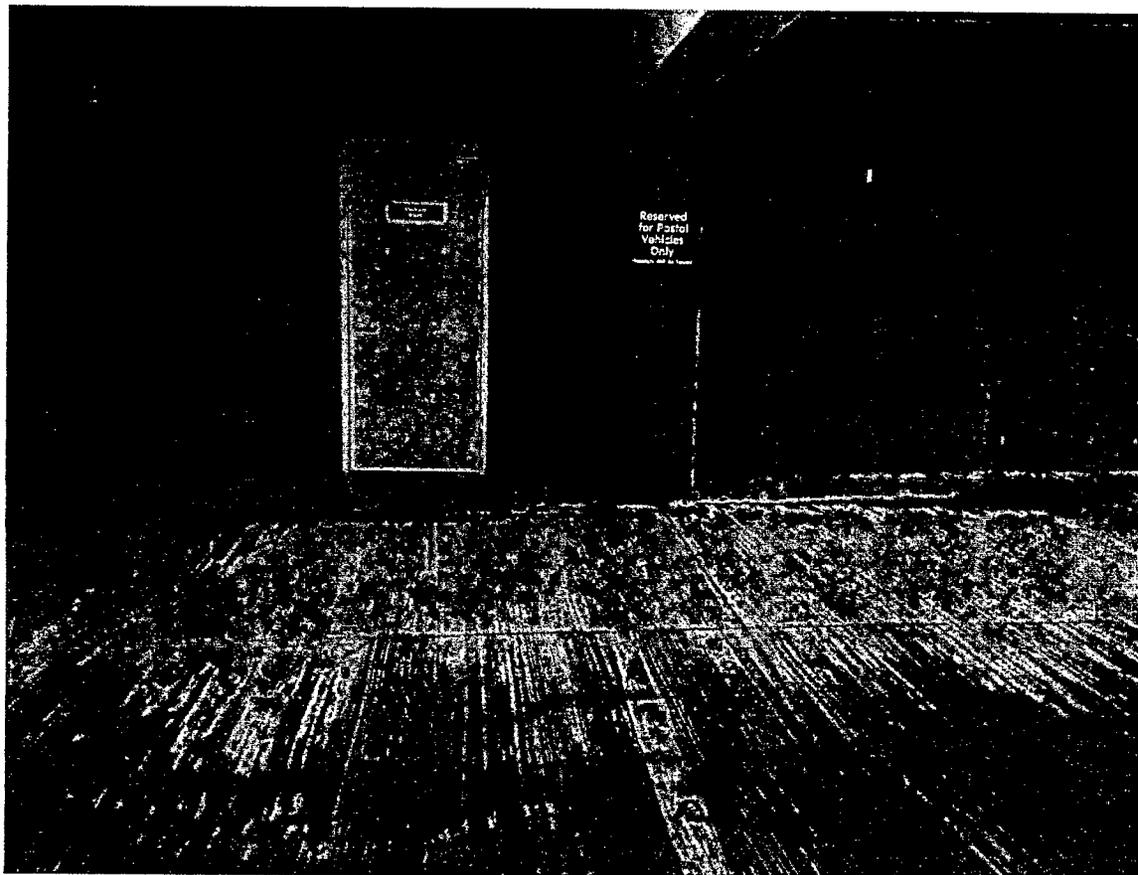
Parking Lot 32 – 825 Hinman Avenue, Evanston, IL 60202

Location of proposed 350Green charging stations show in red
I-GO solar canopy shown in yellow



1800 Maple Self Park – 1800 Maple Avenue, Evanston, IL 60201

Charging stations to be installed on the ground level near University Place entrance on the northwest side of the garage where USPS vehicles are currently parked. Picture depicts general location of the area.



Church Street Self Park – 525 Church Street, Evanston, IL 60201

Charging stations to be installed on the lower level, location to be determined based on feedback from Parking Management.



Sherman Plaza Self Park – 821 Davis Street, Evanston, IL 60201

Charging Stations to be installed adjacent to I-GO and Zip Car parking spaces along north wall. Picture depicts general location of the area.

