

5/4/2017

**49-R-17**

**A RESOLUTION**

**Authorizing the City Manager to Enter Into a Parking Lease Agreement with Target Corporation at the City Parking Garage Located at 821 Davis Street (Sherman Plaza)**

**WHEREAS**, the City of Evanston ("City") owns a parking garage located at 821 Davis Street, commonly referred to as the Sherman Avenue Garage (the "Garage"); and

**WHEREAS**, the Garage is attached to a larger development that contains street level commercial units, including 1616 Sherman Avenue and Target Corporation ("Target") signed an agreement to lease 1616 Sherman Avenue; and

**WHEREAS**, Target seeks to provide dedicated parking spaces for its Target customers within the Garage; and

**WHEREAS**, the City Council of the City of Evanston has determined that the best interests of the City would be served by executing a parking lease agreement providing twenty-six (26) dedicated parking spaces to Target customers; and

**WHEREAS**, pursuant to Section 1-17-4-1 of the Evanston City Code of 2012, as amended, the City Council may authorize by resolution leases of parking,

**NOW, THEREFORE, 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, and the City Clerk hereby authorized and directed to attest on behalf of the City, a parking lease between the City and the Target Corporation to provide 26 dedicated

parking spaces that Target's customers would pay standard posted parking rates for usage in the Garage; the lease is attached hereto as Exhibit A and incorporated herein by reference.

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional terms and conditions of said leases 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 adoption.

  
Stephen H. Hagerty, Mayor

Attest:

  
\_\_\_\_\_  
Devon Reid, City Clerk

Adopted: May 22nd 2017

**EXHIBIT A**

**Parking Lease Agreement**

**PARKING LEASE AGREEMENT  
FOR PARKING IN THE 821 DAVIS STREET GARAGE BETWEEN**

**THE CITY OF EVANSTON**

**AND**

**TARGET CORPORATION**

## PARKING LEASE AGREEMENT

1. **Date and Parties.** This Parking Lease Agreement (“**Agreement**”) is made on this \_\_\_\_ day of \_\_\_\_\_ 2017 (the “**Effective Date**”), by and between the City of Evanston, an Illinois municipal corporation (“**Landlord**”), and Target Corporation, a Minnesota corporation (“**Tenant**”).

2. **Tenant’s Store.** Tenant executed a lease agreement to lease a street level commercial space at 1616 Sherman Avenue, Evanston, Illinois (the “**Store Lease**”), and the Store Lease is conditioned on Tenant obtaining the dedicated parking spaces solely for its customers as contemplated by this Agreement.

3. **Leased Premises.** Landlord is the fee owner of the property commonly known as 821 Davis Street, Evanston, Illinois 60201 (“**Property**”) which is legally described on Exhibit A attached hereto, which Property is improved with and includes as part thereof, a parking garage (“**Public Garage**”). Tenant desires to lease from Landlord, and Landlord agrees to lease to Tenant, twenty-six (26) covered parking spaces in the location identified on Exhibit B attached hereto (such number and location of spaces, the “**Leased Premises**”) subject to the terms and conditions of this Agreement. Tenant must have exclusive use of the Leased Premises during the Tenant’s posted business hours, at the time of signing the posted business hours will be 7:00 a.m. – 11:00 p.m., as may be amended by Tenant at any time. The Leased Premises will be marked with one (1) hour maximum use (the “**Parking Limit**”) signage, paid for and installed by Landlord, indicating the spaces which are for Tenant’s customers during posted hours of business. Landlord will not manage or enforce the Parking Limit at the outset of this Lease, but if Tenant makes Landlord aware that the existing parking arrangements are insufficient to ensure that the Leased Premises are available to Tenant’s customers then Landlord will work with Tenant to implement reasonable measures (e.g. ticketing by parking enforcement officers or the Police Department) to ensure the Leased Premises are available for Tenant’s customers. The parties agree to work in good faith if an electronic validation system, compatible with Tenant’s systems, is necessary to ensure enforcement of the Parking Limit. At a later date, if Tenant seeks to pursue a validation system, it would need to purchase the validator to be installed at their facility and the cost of the validated tickets will be the responsibility of Tenant.

4. **Lease Term.** The lease term (“**Term**”) of this Lease shall start on the date of issuance of the Final Certificate of Occupancy of the Leased Premises (“**Commencement Date**”) and expire fifteen (15) years thereafter (“**Lease Term**”); provided however, that, if the Store Lease expires or terminates prior to the expiration of the Lease Term, then this Lease shall automatically terminate simultaneously therewith. Provided Tenant is not otherwise in default beyond any applicable cure period, Tenant shall have two (2) options (“**Extension Options**”), to extend the Lease for a ten (10) year period each (“**Extension Term**”) upon the same terms, covenants and conditions as herein provided. Tenant must provide Landlord written notice of its intention to exercise the Extension Option within 90 days of expiration of the Term or an Extension Term.

5. **Rent.** Since the consideration for this Lease is Tenant's entering into the Store Lease, Landlord assesses no monetary rent for the dedicated parking spaces provided to Tenant's customers during the Lease Term.

6. **Parking Rates for Tenant's Customers.** Tenant's customers must pay the posted parking rates for the Public Garage during the term that the automobile is parked in the Public Garage beyond the 1-hour free parking. Landlord will not discount parking. Landlord may, in its sole discretion, increase the standard parking rate for automobiles at the Public Garage with no notice needed to Tenant.

7. **Books and Records.** Landlord or its authorized representatives may conduct at any time upon reasonable prior notice, an audit or inspection of the usage of the Leased Premises for the purpose of determining the degree to which Tenant's customers utilize the Leased Premises. The parties will review and study the usage of spaces every 5 years. If greater than 50% of the spaces are not utilized on a regular basis, the Parties agree to discuss reduction of the spaces.

8. **Compliance with Law.** Tenant shall not use the Leased Premises, or knowingly permit anything to be done in or about the Leased Premises, that will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

9. **Landlord Repair Responsibility.** Landlord shall repair and maintain the Leased Premises, including snow removal, rubbish removal, lighting, paving, repair of potholes, and curb cuts in a manner consistent with other parking facilities in the City of Evanston. Landlord shall not be liable for any failure to make such repairs or to perform any maintenance if need for such repair is due to the neglect on the part of the Tenant. Tenant shall provide Landlord with notice of any repairs needed and Landlord shall address said repair(s) within a reasonable time to be agreed between City and Tenant. If during such repairs, Landlord is unable to make the Leased Premises available for use by Tenant's guests for a period of ten (10) consecutive days or more, Landlord shall be required to provide separate dedicated parking during the period of repairs. The provisions of this Section shall not apply in the case of damage or destruction by fire or other casualty or a taking under the power of eminent domain which are governed by Sections 15 and 16, respectively, of this Agreement.

10. **Tenant Alterations Prohibited.** Tenant shall not, at any time during the Lease Term, make any alterations, decorations, additions, or improvements to the Leased Premises, except for signage and branding elements (e.g., paint, graphics, or other materials reflecting Tenant's corporate designs and branding that are prototypical from time to time) as well as repair and replacement thereof.

11. **Utilities.** Landlord shall be responsible for and pay for all utilities supplied to the Leased Premises.

12. **Insurance to be Maintained by Landlord; Waiver.** Throughout the term, Landlord covenants to maintain insurance with respect to the Public Garage insuring

against loss or damage by fire and such other hazards for the full insurable replacement cost of such improvements, less deductibles; and comprehensive public liability, and property damage insurance in such limits as deemed appropriate. Landlord and Tenant hereby release each other from any liability for loss or damage by fire or other casualty coverable by a standard form of "all risk" insurance policy ("Special Extended Coverage"), irrespective of (i) any negligence of the other, its agents or employee, or (ii) the amount of such insurance required or actually carried, including any deductible or self-insurance reserve

13. **Casualty/Restoration.** In the event the Public Garage is damaged by fire, explosion or any other casualty and as a consequence thereof, Landlord is unable to provide twenty-six (26) parking spaces in another portion of the Parking Garage, Landlord will use best efforts to provide alternative parking at another City parking garage. In the event that Landlord elects not to repair or rebuild the Parking Garage, then this Agreement shall terminate as of the date of the casualty., Tenant shall have no further obligation under this Lease. Notwithstanding the foregoing, Landlord may elect to nullify such termination by notice to Tenant delivered within ninety (90) days of the date of termination. In the event that Landlord timely notifies Tenant of such election, Landlord and Tenant shall amend this Agreement to reflect the substitute location of the Leased Premises, number of parking spaces at the substitute location, and such other modifications to terms and conditions that are warranted on the basis of such substitution and this Agreement shall remain in full force and effect. If, following any Landlord termination of this Lease, Landlord elects to rebuild the Parking Garage (or the portion thereof affected by the casualty) within three (3) years after the casualty, then Landlord shall provide notice to Tenant and offer to lease the Leased Premises to Tenant on the same terms and conditions as set forth in this Lease (the "**Rebuilding Offer**"). In the event Tenant desires to accept the Rebuilding Offer, Tenant shall make the election by notice to Landlord within one hundred twenty (120) days after Tenant's receipt of the Rebuilding Offer.

14. **Eminent Domain.**

(a) **More than 50% Taken:** If 50 percent (50%) or more of the Public Garage is taken for a public or quasi-public use by the State or federal government, this Agreement will terminate as of the date of the physical taking, and notwithstanding anything to the contrary in the Ordinance, Tenant shall have no further obligation to lease parking spaces from Landlord and the Project shall be deemed conforming as to parking.

(b) **Less than 50% Taken:** If the taking affects less than 50 percent of the Public Garage and Landlord continues to provide the required number of parking spaces to Tenant, then Landlord will, with reasonable diligence, proceed at Landlord's expense to repair or reconstruct the Public Garage to a tenantable covered parking condition within 90 days after the date of the actual physical taking.

(c) **Right to Condemnation Award:** Any award made in any condemnation proceeding for the taking of any part of the Premises will be the sole property of Landlord.

15. **Assignment, Subletting and Ownership.**

(a) **Prohibition against Transfer.** Tenant may, without Landlord's consent and notwithstanding anything to the contrary in this Agreement, sublet all or any portion of the Leased Premises or assign this Lease to (i) a subsidiary, parent, affiliate, division or corporation controlled by or under common control with Tenant; (ii) a successor corporation related to Tenant by merger, consolidation, reorganization or government action or (iii) any entity which is permitted pursuant to the Store Lease. Additionally, Tenant may assign this Lease to Tenant's lender as additional security for Tenant's loan, and in either case, Landlord shall consent to such assignment, the form of which assignment and consent shall be subject to the reasonable approval of the parties.

(b) Any attempt or purported transfer, assignment, subletting, mortgage, or agreement (hereinafter collectively referred to as a "**Transfer**"), without Landlord's prior written consent shall be void and of no force or effect and shall not confer any interest or estate in the purported transferee.

16. **Signs.** Tenant may not erect or install any signage, of any nature or design, without Landlord's prior written consent and without following the submission and approval process set forth in the City Code except that Tenant shall be allowed to erect or install signage as identified on Exhibit C attached hereto subject to compliance with all applicable governmental requirements.

17. **Indemnification.** Except as otherwise provided in this Agreement, Tenant shall protect, indemnify and save Landlord and its officers, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from injury to persons or damage to property on the Leased Premises, arising out of or in connection with Tenant's use or occupancy of the Leased Premises or Tenant's activities on the Leased Premises, or arising from any negligent or willful act of Tenant; provided however, that Tenant shall have no obligation to indemnify or hold Landlord harmless from or against any claim, demand, action, liability, loss or damage, or any related cost or expense, arising from the negligence or misconduct of Landlord, or any of Landlord's agents, employees, representatives or contractors, or arising from the act or omission of any person or party other than Tenant or Tenant's agents, employees, representatives or contractors. Tenant shall pay for all of Landlord's costs of suit and attorneys' fees and expenses subject to the foregoing.

18. **Holdover.** On the last day of the Term, as the case may be, or upon any earlier termination of this Agreement, or upon any re-entry by Landlord upon the Leased Premises, Tenant shall quit and surrender the Leased Premises to Landlord and return the transponders. If Tenant remains in possession after the expiration date or after any earlier termination date of this Agreement (a) Tenant shall be deemed a tenant at will; (b) Tenant must pay Landlord \$100 per day during the holdover period, (c) there shall be no renewal or extension of this Agreement by operation of law, and (d) the tenancy at will may be terminated upon thirty (30) days' notice from Tenant or Landlord.

19. **Tenant Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Tenant:

(a) If Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Agreement and such failure continues for thirty (30) days after notice thereof from Landlord to Tenant; provided, however, that if the nature of any such default is such that the same cannot be cured within thirty (30) days, Tenant shall have such additional period of time as may be necessary to cure such default provided that it commences to cure said default within the thirty (30) day period and proceeds diligently thereafter to complete such cure; or

(c) Tenant shall make a general assignment the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy.

20. **Landlord's Remedies.** In the event of Tenant's default hereunder, then after applicable notice and the expiration of any cure period, Landlord shall have the right, at Landlord's option, upon giving notice to tenant, to terminate this Agreement and Tenant's right of possession of the Leased Premises.

21. **Time is of the Essence.** Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor, and all provisions herein and all provisions relating thereto, shall be strictly construed.

22. **Successors and Assigns.** All of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. No third party, other than such heirs, legal representatives, successors and assigns, shall be entitled to enforce any or all of the provisions of this Agreement or shall have any rights hereunder whatsoever

23. **Memorandum of Lease.** At either party's request, both parties shall execute and notarize a Memorandum of Lease evidencing this Lease of record, which either party may file in the real property records of Cook County, Illinois, and each party agrees to cooperate with the reasonable requests of the other to accomplish such recordation.

24. **Prior Agreements/Amendments.** This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest or except as expressly provided in this Agreement.

25. **Sale of Premises.** In the event of any sale of the Leased Premises by Landlord, Landlord shall deliver notice to tenant thereof not less than thirty (30) days prior to the proposed sale. Upon sale of the Leased Premises, (i) Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and

obligations contained in or derived from this Agreement arising out of any act, occurrence or omission occurring after the consummation of such sale, and without further action of the Landlord or the City Council, and (ii) the purchaser of the Leased Premises shall automatically (and without any further action) assume and agree to carry out any and all of the covenants and obligations of the Landlord under this Agreement, as the same may be modified by Tenant and such purchaser. If Tenant elects to not lease parking spaces at the Leased Premises following the sale, Tenant must provide the City of Evanston notice of how it will comply with the Ordinance requirements for parking at an alternative site(s).

26. **Notices.** All notices and demands required or permitted to be given hereunder shall be in writing and given by personal delivery or reputable overnight courier (such as Federal Express), or registered or certified mail to:

Tenant: Target Corporation  
Target Properties  
Attn: Real Estate Portfolio Management/  
Evanston Downtown, IL [T3283]  
1000 Nicollet Mall, TPN 12H  
Minneapolis, MN 55403

Landlord: City of Evanston  
Attn: City Manager  
2100 Ridge Avenue  
Evanston, IL 60201

with a copy to: City of Evanston  
Attn: Corporation Counsel  
2100 Ridge Avenue  
Evanston, IL 60201

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement  
the day and year first above written.

LANDLORD:

CITY OF EVANSTON  
an Illinois municipal corporation

By: \_\_\_\_\_

Its: City Manager

Print Name: Wally Bobkiewicz

TENANT:

TARGET CORPORATION  
a Minnesota corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

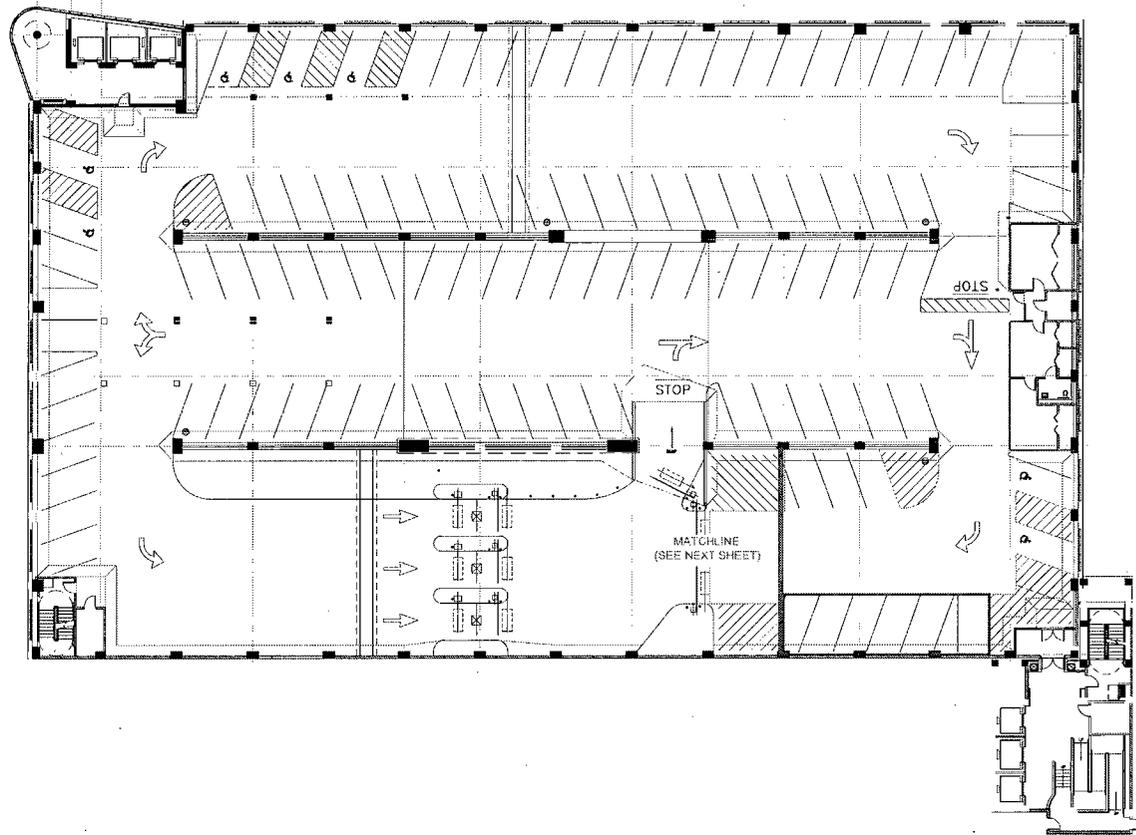
Print Name: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PREMISES**

**EXHIBIT B**

**DEPICTION OF THE LEASED PREMISES**

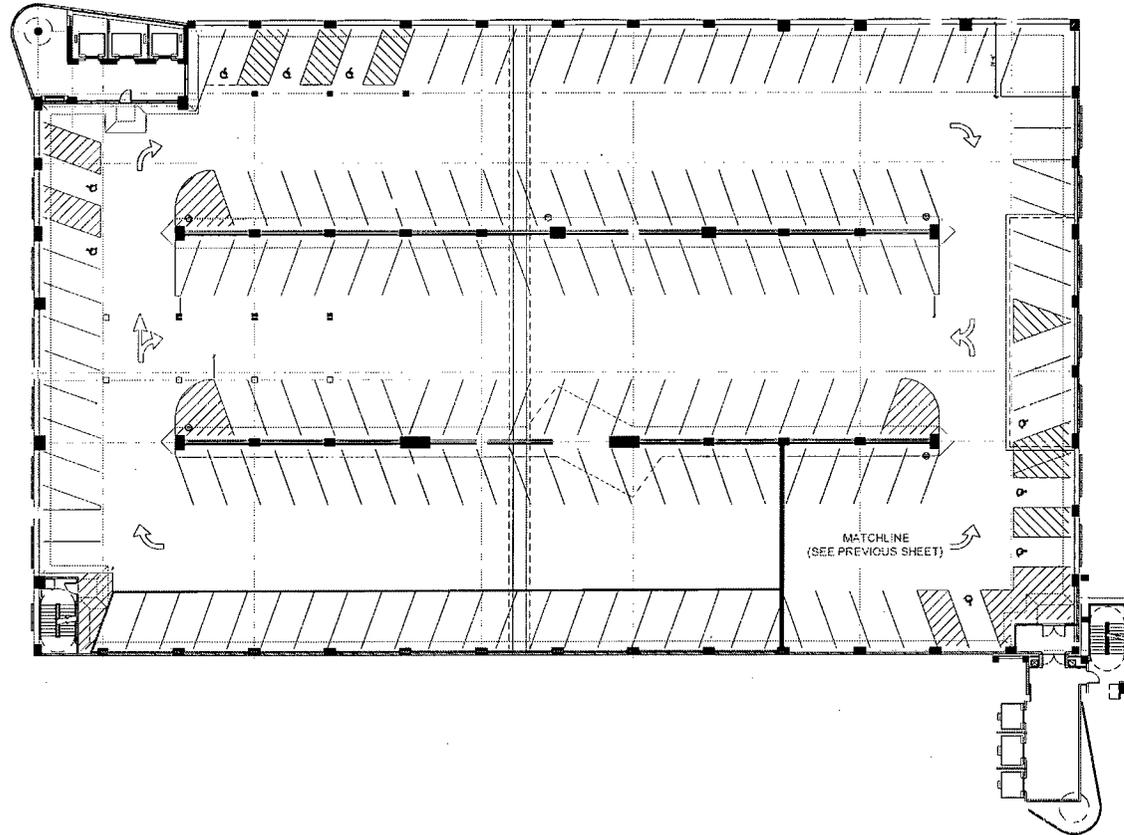


THIRD LEVEL PLAN

EXHIBIT B

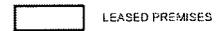


LEASED PREMISES



FOURTH LEVEL PLAN

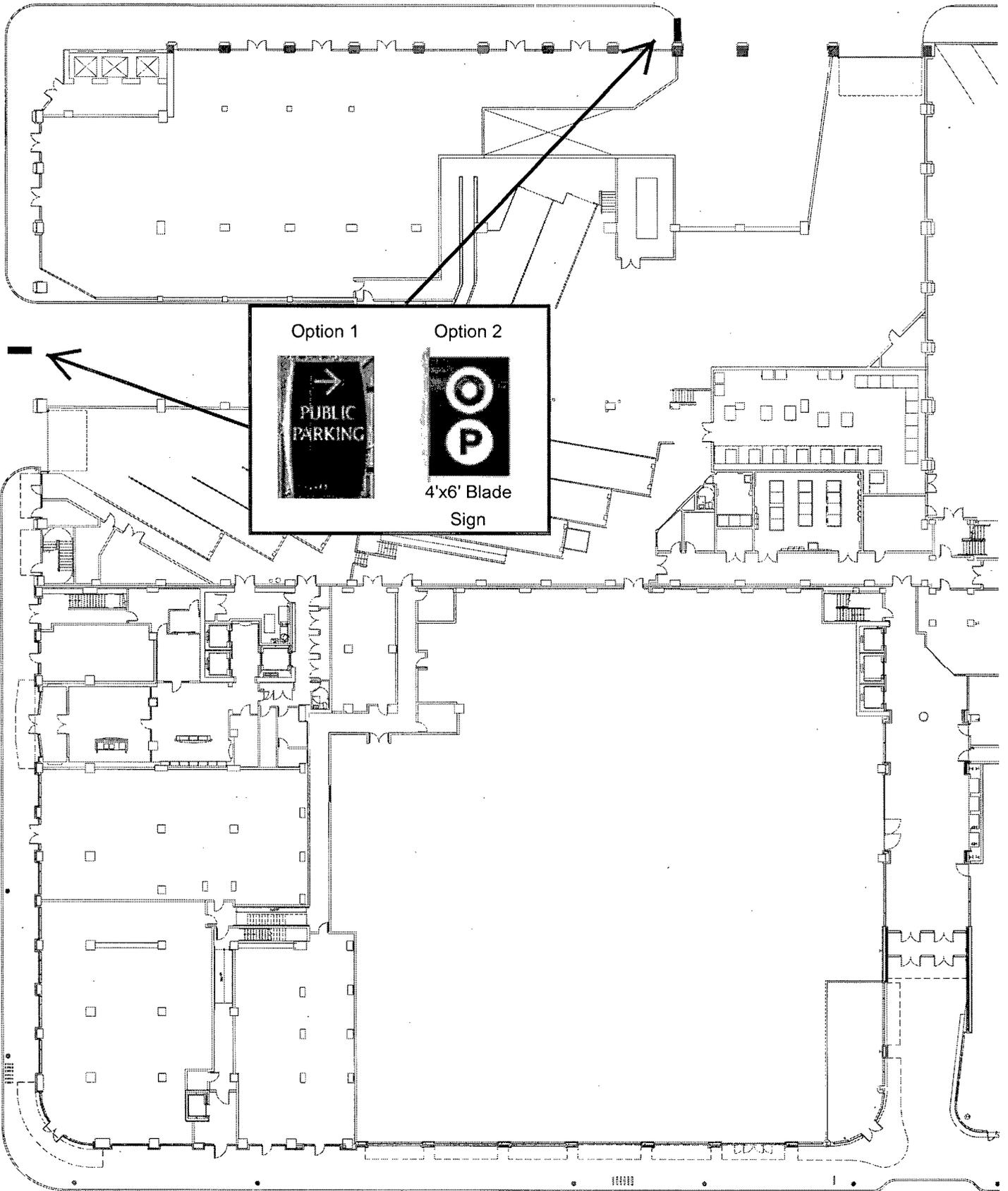
EXHIBIT B



**EXHIBIT C**

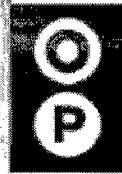
**SIGNAGE**

BENSON AVENUE



Option 1

Option 2



4'x6' Blade  
Sign

DAVID STREET

SHERMAN AVENUE

# EXHIBIT C