



ST. CHARLES  
SINCE 1834

## AGENDA ITEM EXECUTIVE SUMMARY

**Title:** Discussion regarding Parking Lot “F” Lease Agreement  
(southwest corner of IL Rt. 64 and IL Rt. 31)

**Presenter:** Peter Suhr

*Please check appropriate box:*

	Government Operations	X	Government Services 11.25.13
	Planning & Development		City Council

Estimated Cost:	\$9,000 - \$12,000	Budgeted:	YES	X	NO	
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If NO, please explain how item will be funded:

**Executive Summary:**

A portion of the parking lot located at 209 West Main Street (SW corner of Rt. 64 & Rt. 31) is being sold from the current owner and purchased by Mr. Timothy Allen. The City of St. Charles has a longstanding understanding with the current owner authorizing the City to use eleven (11) parking stalls for public parking on a no-fee basis 24 hours per day. These spaces are adjacent several other parking stalls currently owned by the City (please see attached map). The City currently pays the owner \$750/ month and has agreed to maintain the parking stalls in good working order including sweeping, snow removal, patching and striping.

Over the past few months, Staff has prepared and presented a new Lease Agreement with Mr. Timothy Allen to be considered by the Committee. Terms of the agreement have included an increase in payment from \$750/ month to \$1,000/ month, a term of five (5) years and a condition of Mr. Allen successfully purchasing the property. At October’s Committee Meeting, staff was directed to continue negotiations with Mr. Allen and to include “credit” back on the lease as part of the right of first refusal clause in the contract.

Since then, staff modified the Lease Agreement, based on Committee’s suggestion, to include full “credit” of all lease dollars spent on the property if the City were to ever purchase the property from Mr. Allen. The “Right of First Refusal” language in Chapter 16 of the Lease Agreement was modified and presented to Mr. Allen for consideration.

Mr. Allen prepared a counter offer to our proposed Agreement including the following differences:

1. Mr. Allen finds the proposed credits “unreasonable” and has removed all language in regard from his agreement.
2. Mr. Allen has proposed \$1,000/ month payment in lieu of current \$750/ month.
3. Mr. Allen will extend the “right of first refusal” clause for the first term of the agreement only (5 years).
4. Mr. Allen has proposed a 30 day period to consider and except purchase in lieu of a 60 day period.

**Attachments:** *(please list)*

209 West Main Street Parking Lot Lease Agreement (Original for Mr. Allen’s Consideration)  
 209 West Main Street Parking Lot Lease Agreement (Counter-Offer from Mr. Allen)  
 Map of Parcel Ownership in Block 44

**Recommendation / Suggested Action** *(briefly explain):*

For Information Only. Questions, discussion and feedback from Council. Action needed only if Committee wants to approve proposed Lease Agreement from Mr. Timothy Allen.

<i>For office use only:</i>	<i>Agenda Item Number: 4.i</i>
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**ST. CHARLES AGREEMENT TO Mr. ALLEN**  
**209 West Main Street Parking Lot**  
**Lease Agreement**

This Lease Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the City of St. Charles, Illinois (LESSEE), whose business address is 2 East Main Street, St. Charles, IL 60174, and Mr. Timothy Allen (LESSOR).

1. By execution of this Agreement and in consideration of the mutual covenants and agreements herein stated, LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR the following described property (the "Premises"), as well as its adjoining access ways:

The east 33 feet of Lot 3 in Block 44 of the Original Town of St. Charles, in the City of St. Charles, Kane County, Illinois.  
PIN – 09-27-364-008

2. LESSOR represents that he is the sole owner and currently is in title to the property described in paragraph 1. Prior to the effective date of this Agreement, LESSEE has provided evidence of title to the LESSOR.

Said Premises is located at 209 West Main Street, St. Charles, Illinois 60174, and is shown on Exhibit A attached hereto and incorporated herein by reference.

3. This Agreement shall be effective as of the date set forth above and shall continue in effect for a period of five (5) years thereafter. This Agreement is not subject to automatic renewal.

4. The provisions of Section 2 notwithstanding, LESSEE shall not utilize the Premises until the following items have been submitted and approved by LESSOR:

- a. A copy of this Agreement fully executed by the City of St. Charles; and
- b. The Certificate of Insurance as described herein.

5. LESSEE shall be authorized to use the Premises and its adjoining access ways for public parking on a no-fee basis 24 hours per day. During this time it shall be authorized to set time limits on public parking and enforce CITY parking ordinances, rules and regulations.

6. LESSEE shall, at its own cost, provide maintenance, cleaning and repair services for the Premises and its adjoining access ways and walkways, including any necessary sweeping and/or snow removal. Such maintenance shall keep the Premises in good working order and be in accordance with the LESSEE'S usual and customary standards. Such maintenance shall include necessary pavement patching and repair (limited to \$1,000 per patch) mowing, bush and tree trimming (adjacent to parking lot frontage) lot lighting, signage, sealing and striping of the

parkway pavement. LESSEE shall not be obligated to repave the Premises other than the patching and repair referenced in the preceding sentence.

Upon termination of this Agreement, all surfacing and other improvements of the premises shall become the sole property of LESSOR, free from any claim, lien or encumbrance.

7. LESSEE may not assign its rights under this Agreement, in whole or in part, nor shall the Premises or any part thereof be sublet, nor shall any rights or privileges granted by this Agreement be sold, transferred or assigned without first obtaining the written consent of LESSOR. Any sale, transfer, assignment or sublease in violation of this paragraph shall be void and, at the option of LESSOR, operate to terminate this Agreement.

8. LESSEE, at its own expense, shall keep in force during the term of this Agreement insurance from an insurance company licensed in the State of Illinois. A Certificate of Insurance shall evidence required insurance, including Comprehensive Liability Insurance with a minimum limit of \$1,000,000 per occurrence, combined single limit to include:

- a. Premises – Operations
- b. Independent Contractors
- c. Products – Completed Operations
- d. Broad Form Contractual
- e. Personal Injury

Coverage must list LESSOR as an additional insured party and be approved by LESSOR prior to the initial use of the Premises.

9. LESSEE agrees to indemnify, defend, and hold harmless LESSOR and all of his agents and employees from any claim, loss, damage, cost, charge, or expense, including attorney's fees and costs, arising from or in connection with:

- a. Any work or thing whatsoever done by LESSEE, or any condition created in or about the Premises by LESSEE during the term of this Agreement.
- b. Any act, omission, or negligence or intentional tort of LESSEE or any of LESSEE'S officers, agents, employees or contractors.
- c. Any accident, injury or damage whatsoever occurring upon the Premises as a result of LESSEE'S use of the Premises.

In the event of joint or concurrent negligence of LESSEE and LESSOR, each shall bear that portion of the loss or expense that is share of the joint or concurrent negligence bears to be the total negligence (including that of third parties) which caused the personal injury or property damage.

The LESSEE'S obligations under this provision for the term of this Lease shall not be limited in any way by the LESSEE'S limit of or lack of sufficient insurance protection. This provision shall survive any cancellation, termination or expiration of this Agreement.

10. LESSEE agrees to pay LESSOR Seven-Hundred Fifty (\$750) Dollars per month, payable on the first day of every month, during the term of this Lease.

11. LESSEE agrees to maintain updated and accurate accounting records, books, and data showing any and all revenue, expenses, and monies for services performed for its activities on the Premises. This information shall be available for review by LESSOR or his designee.

Any gross revenue from parking or other activities on the Premises received by LESSEE shall be paid over to LESSOR on a quarterly basis. For purposes of this Section, the term "revenue" shall not include fines or other money received by LESSEE as a result of its enforcement of CITY parking ordinances, rules and regulations on the Premises.

12. This Agreement represents the entire agreement and supersedes any and all prior agreements, negotiations or understandings, written or oral relating to the matters set forth herein.

13. All parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state or local law, regulation or code, such part shall be severable with the remainder of this Agreement remaining valid and enforceable.

14. No modification, addendums or amendments of any kind may be made to his Agreement unless in writing and signed by both parties hereto.

15. This Agreement shall be governed by the laws of the State of Illinois and venue for any litigation related hereto shall be exclusively in the Sixteenth Judicial Circuit, Kane County, Illinois.

16. Right of First Refusal: In the event of any offer acceptable to Lessor, or to Lessor's successor in interest, at any time or times during the original or extended term hereof, for the purchase of the premises or for a lease to commence upon the expiration or earlier termination of the original or extended term hereof, the Lessor, prior to acceptance thereof, shall give the Lessee, with respect to each such offer, written notice thereof and a copy of said offer including the name and address of the proposed purchaser or lessee; and Lessee shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase or lease the Premises, as the case may be, on the terms of said offer. If Lessee shall elect to purchase or lease the Premises pursuant to the option and first refusal herein granted, it shall give notice of such election within such sixty (60) day period. In the event Lessee exercises its right to purchase, the purchase price shall be the amount of the offer to purchase less the total of all payments made by Lessee pursuant to Paragraph 10 above during the term or extended term of this Lease. Lessee's failure at any time to exercise its option under this paragraph shall not affect this lease and the continuance of Lessee's rights and options under this and any other paragraph herein.

17. If either party shall be in default of any of the provisions hereof, the other party may, in addition to any other remedy that may be available, terminate this Agreement; provided, however, that the non-defaulting party shall first give written notice of such default to the other party, who shall have ten (10) days after receipt of such notice to remedy such default. Notice of default shall be sent via Certified Mail, return receipt requested, to the respective correspondence address listed below.

18. Recording. The parties shall record this Lease Agreement or a Memorandum thereof at the office of the Kane County Recorder.

19. Any and all written correspondence shall be sent to the respective mailing address listed below:

LESSEE

City Administrator  
City of St. Charles, Illinois  
2 East Main Street  
St. Charles, IL 60174  
Office (630) 377-4422  
E-mail: [mkoenen@stcharlesil.gov](mailto:mkoenen@stcharlesil.gov)

LESSOR

Indigo Real Estate  
c/o Mr. Timothy Allen  
27W174 Birch Rd.  
Winfield, IL 60190  
(630) 935-4363  
E-mail: [tim@indigoinc.com](mailto:tim@indigoinc.com)

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date stated above.

LESSOR

\_\_\_\_\_  
Timothy Allen, Owner

ATTEST:

\_\_\_\_\_

Representative for Mr. Timothy Allen

City of St. Charles, Illinois:

\_\_\_\_\_  
Raymond P. Rogina, Mayor

ATTEST:

\_\_\_\_\_

Nancy Garrison, City Clerk

**Mr. ALLEN'S COUNTER OFFER**  
**209 West Main Street Parking Lot**  
**Lease Agreement**

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2. LESSOR represents that he is the sole owner and currently is in title to the property described in paragraph 1. Prior to the effective date of this Agreement, LESSEE has provided evidence of title to the LESSOR.

Said Premises is located at 209 West Main Street, St. Charles, Illinois 60174, and is shown on Exhibit A attached hereto and incorporated herein by reference.

3. This Agreement shall be effective as of the date set forth above and shall continue in effect for a period of five (5) years thereafter. This Agreement is not subject to automatic renewal.

4. The provisions of Section 2 notwithstanding, LESSEE shall not utilize the Premises until the following items have been submitted and approved by LESSOR:

- a. A copy of this Agreement fully executed by the City of St. Charles; and
- b. The Certificate of Insurance as described herein.

5. LESSEE shall be authorized to use the Premises and its adjoining access ways for public parking on a no-fee basis 24 hours per day. During this time it shall be authorized to set time limits on public parking and enforce CITY parking ordinances, rules and regulations.

6. LESSEE shall, at its own cost, provide maintenance, cleaning and repair services for the Premises and its adjoining access ways and walkways, including any necessary sweeping and/or snow removal. Such maintenance shall keep the Premises in good working order and be in accordance with the LESSEE'S usual and customary standards. Such maintenance shall include necessary pavement patching and repair (limited to \$1,000 per patch) mowing, bush and tree trimming (adjacent to parking lot frontage) lot lighting, signage, sealing and striping of the

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Upon termination of this Agreement, all surfacing and other improvements of the premises shall become the sole property of LESSOR, free from any claim, lien or encumbrance.

7. LESSEE may not assign its rights under this Agreement, in whole or in part, nor shall the Premises or any part thereof be sublet, nor shall any rights or privileges granted by this Agreement be sold, transferred or assigned without first obtaining the written consent of LESSOR. Any sale, transfer, assignment or sublease in violation of this paragraph shall be void and, at the option of LESSOR, operate to terminate this Agreement.

8. LESSEE, at its own expense, shall keep in force during the term of this Agreement insurance from an insurance company licensed in the State of Illinois. A Certificate of Insurance shall evidence required insurance, including Comprehensive Liability Insurance with a minimum limit of \$1,000,000 per occurrence, combined single limit to include:

- a. Premises – Operations
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- c. Products – Completed Operations
- d. Broad Form Contractual
- e. Personal Injury

Coverage must list LESSOR as an additional insured party and be approved by LESSOR prior to the initial use of the Premises.

9. LESSEE agrees to indemnify, defend, and hold harmless LESSOR and all of his agents and employees from any claim, loss, damage, cost, charge, or expense, including attorney's fees and costs, arising from or in connection with:

- a. Any work or thing whatsoever done by LESSEE, or any condition created in or about the Premises by LESSEE during the term of this Agreement.
- b. Any act, omission, or negligence or intentional tort of LESSEE or any of LESSEE'S officers, agents, employees or contractors.
- c. Any accident, injury or damage whatsoever occurring upon the Premises as a result of LESSEE'S use of the Premises.

In the event of joint or concurrent negligence of LESSEE and LESSOR, each shall bear that portion of the loss or expense that is share of the joint or concurrent negligence bears to be the total negligence (including that of third parties) which caused the personal injury or property damage.

The LESSEE'S obligations under this provision for the term of this Lease shall not be limited in any way by the LESSEE'S limit of or lack of sufficient insurance protection. This provision shall survive any cancellation, termination or expiration of this Agreement.

10. LESSEE agrees to pay LESSOR One Thousand (\$1,000) Dollars per month, payable on the first day of every month, during the term of this Lease.

11. LESSEE agrees to maintain updated and accurate accounting records, books, and data showing any and all revenue, expenses, and monies for services performed for its activities on the Premises. This information shall be available for review by LESSOR or his designee.

Any gross revenue from parking or other activities on the Premises received by LESSEE shall be paid over to LESSOR on a quarterly basis. For purposes of this Section, the term "revenue" shall not include fines or other money received by LESSEE as a result of its enforcement of CITY parking ordinances, rules and regulations on the Premises.

12. This Agreement represents the entire agreement and supersedes any and all prior agreements, negotiations or understandings, written or oral relating to the matters set forth herein.

13. All parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state or local law, regulation or code, such part shall be severable with the remainder of this Agreement remaining valid and enforceable.

14. No modification, addendums or amendments of any kind may be made to his Agreement unless in writing and signed by both parties hereto.

15. This Agreement shall be governed by the laws of the State of Illinois and venue for any litigation related hereto shall be exclusively in the Sixteenth Judicial Circuit, Kane County, Illinois.

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17. If either party shall be in default of any of the provisions hereof, the other party may, in addition to any other remedy that may be available, terminate this Agreement; provided, however, that the non-defaulting party shall first give written notice of such default to the other party, who shall have ten (10) days after receipt of such notice to remedy such default. Notice of default shall be sent via Certified Mail, return receipt requested, to the respective correspondence address listed below.

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City Administrator  
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2 East Main Street  
St. Charles, IL 60174  
Office (630) 377-4422  
E-mail: [mkoenen@stcharlesil.gov](mailto:mkoenen@stcharlesil.gov)

LESSOR

Indigo Real Estate  
c/o Mr. Timothy Allen  
27W174 Birch Rd.  
Winfield, IL 60190  
(630) 935-4363  
E-mail: [tim@indigoinc.com](mailto:tim@indigoinc.com)

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date stated above.

LESSOR

\_\_\_\_\_  
Timothy Allen, Owner

ATTEST:

\_\_\_\_\_

Representative for Mr. Timothy Allen

City of St. Charles, Illinois:

\_\_\_\_\_  
Raymond P. Rogina, Mayor

ATTEST:

\_\_\_\_\_

Nancy Garrison, City Clerk

