



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and Members of the City Council
FROM: William R. Gray, Public Works Director
Bradley M. Bennett, Assistant City Engineer
DATE: September 6, 2018
RE: Parking Lot 11 License Agreement with Stephens Building, LLC

Action Requested

Approval of the attached ordinance entitled "A LICENSE AGREEMENT WITH STEPHENS BUILDING, LLC" (Parking Lot 11).

Background and Facts

The Stephens Building, LLC renovated four apartments at 218 West Main Street in downtown Urbana. Because 218 West Main Street is a zero lot line property, the Stephens Building, LLC does not have a suitable place to locate trash and recycling containers for use by the four apartments. The public right-of-way line for Goose Alley is at the north face of the building. The building has existing buildings on the east and west faces of the building. Main Street is at the south face of the building.

The Stephens Building, LLC inquired about using a portion of City Parking Lot 11, which is in close proximity to their building, for the location of trash and recycling containers. Public Works staff has approved a location in a landscaped area adjacent to a handicap parking space access aisle for the trash and recycling containers as shown in Attachment A. The Stephens Building will construct a concrete pad and screened enclosure for the trash and recycling containers. A depiction of the screened enclosure in City Parking Lot 11 is presented in Attachment B.

In accordance with City policy, a license agreement, which is required for the installation described above, is attached for Council consideration. The proposed location of the containers is shown in Exhibit A attached to the proposed agreement.

Financial Impact

The proposed installation will be at no cost to the City. The Stephens Building, LLC will pay an annual fee of \$28.05 to the City for the occupation of City property in accordance with the City's Schedule of Fees. The annual fee will be adjusted by the Consumer Price Index each year of the agreement.

Recommendations

It is recommended that the City Council approve an ordinance entitled "A LICENSE AGREEMENT WITH STEPHENS BUILDING, LLC" (Parking Lot 11).

Attachments: ATTACHMENT A – TRASH AND RECYCLING CONTAINERS LOCATION
ATTACHMENT B – DEPICTION OF TRASH AND RECYCLING CONTAINERS
ENCLOSURES
AN ORDINANCE APPROVING A LICENSE AGREEMENT WITH STEPHENS
BUILDING, LLC (PARKING LOT 11)
PARKING LOT 11 LICENSE AGREEMENT

ATTACHMENT A – TRASH AND RECYCLING CONTAINERS LOCATION
(LOOKING EAST)



ADMINISTRATION • ARBOR • ENGINEERING • ENVIRONMENTAL MANAGEMENT
EQUIPMENT SERVICES • OPERATIONS • PUBLIC FACILITIES

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ATTACHMENT B – DEPICTION OF TRASH AND RECYCLING CONTAINERS
ENCLOSURES (LOOKING EAST)



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Parking Lot 11 License Agreement

This agreement is made between Stephens Building, LLC, an Illinois limited liability company (“Company”), and the City of Urbana, an Illinois municipal corporation (“City”), each a “party” and together the “parties,” and is effective on the last date signed by a party hereto.

The City owns the public parking lot (“Lot 11”) located at 224 W. Main Street in Urbana. The Company owns the mixed-use apartment building located at 218 W. Main Street (“Stephens Building”). Because the Stephens Building is a zero lot line property, the Company does not have a suitable place to set out trash and recycling containers for use by Stephens Building residential tenants. As such, the Company desires to use a portion of Lot 11 for this purpose. The parties desire to establish an agreement to allow the Company to place and maintain trash and recycling containers within a screened enclosure on a designated portion of Lot 11 for the use of Stephens Building residential tenants. Therefore, the parties agree as follows:

1. **Grant of license.** The City hereby grants and the Company hereby accepts a nonexclusive, nontransferable, nonassignable, and revocable license to construct, maintain, use, repair, and remove a facility (“Facility”) consisting of a concrete pad, a gated fence, and no more than two trash containers and two City of Urbana U-CYCLE Program recycling containers on a portion of Lot 11 (“Licensed Property”). The Licensed Property consists of 33 square feet (3’ x 11’), as shown on Exhibit A.

- A. The license gives the Company permission to use the Licensed Property for the limited purposes and term stated in this agreement. The license is not a warranty of title and does not convey any right, title, or interest in the Licensed Property.
- B. The license is subject to the rights of any public utility or other person or entity currently having rights, licenses, franchises, or easements in and about the Licensed Property.
- C. The Company shall fully and faithfully perform and comply with all terms, conditions, and covenants contained in this agreement. If the Company fails to perform or comply with any term, condition, or covenant in this agreement, the City may revoke the license after giving the Company a period in which to cure such failure as set forth in this agreement.
- D. The Company shall not transfer or assign the license.
- E. The license is nonexclusive and at all times subordinate to the City's use of the Licensed Property. Accordingly, if necessary to accommodate repair, maintenance, or construction of City utilities or improvements to Lot 11 or the Licensed Property, the Company shall, at its sole cost, relocate or remove all or any portion of the Facility not more than 60 days after the City's Public Works Director (“Director”) directs such relocation or removal in writing.

- F. The City reserves a parking space for disabled persons in Lot 11 next to the Licensed Property. When opened, the gate or gates the Company will construct on the Licensed Property may prevent use of this parking space. To avoid this result, the Company shall make reasonable efforts to ensure that the gate or gates remain closed and latched when not in use. Further, the Company acknowledges that access to the Licensed Property may be limited whenever a motor vehicle is parked in this parking space. In such cases, the City is not liable to the Company for any damages arising from such limited access. This provision will survive the termination of this agreement.

2. **Term; termination.** The initial term of this agreement is 20 years from the effective date. Upon expiration of this initial term or any renewal term, this agreement automatically renews for a subsequent term of five years, unless, no fewer than 90 days before the scheduled expiration of the current term, either party provides written notice to the other party of the intent not to renew. The parties may terminate this agreement at any time by mutual written consent. Either party may terminate this agreement for cause by giving written notice to the other party at least 45 days before the proposed termination. Such party shall specify the reason or reasons for such termination in the written notice and shall specifically state that such termination will become effective on a date at least 45 days after the date thereof if the other party does not completely cure the reason or reasons for such notice of termination.

3. **Fee.** On the effective date of this agreement and each anniversary of such date thereafter, the Company shall pay to the City, in advance and without demand, an annual fee of \$28.05 as compensation for the license granted under this agreement. The Company shall pay to the City the annual fee and all other charges required to be paid under this agreement by cash, valid check, or money order at City of Urbana Accounting, 400 S. Vine Street, Urbana, Illinois 61801. The City may adjust the amount set for compensation on August 1 of each year, beginning in 2019, in accordance with the Consumer Price Index (CPI-U) published by the United States Department of Labor, Chicago area, all items for all urban consumers, or other generally recognized index which succeeds the Consumer Price Index.

4. **Taxes and assessments.** The Company shall pay before delinquency all real estate taxes and special assessments assessed against the Licensed Property that become payable during any term of this agreement. If the Company fails to pay any such taxes or assessments, the City, at its option, may make payment without prejudice to any of its rights. The Company may institute any administrative or legal proceedings challenging the tax rate, assessed value, or other factors influencing the amount of taxes.

5. **Construction of improvements.** At its sole cost and upon the City's issuance of any applicable permits, the Company shall construct and thereafter maintain in good repair a 3-foot wide by 11-foot long by 6-inch thick concrete pad to support the trash and recycling containers and a solid wall fence to surround and enclose the trash and recycling containers. The fence must include at least one outward swinging gate. Such pad and fence will remain the Company's property.

- A. Before constructing the improvements described above, the Company shall submit complete plans, drawings, and designs of such improvements to the City for the City's approval. The Company shall complete all construction of the improvements not later than 60 days after the City gives the Company notice of such approval, inclusive of the effective date of such notice.
- B. The Company shall construct the improvements in a good, substantial, and competent manner. In constructing the improvements, the Company shall do as little damage as possible to Lot 11 and the Licensed Property and shall repair at its own expense any such damage.

6. **Repairs and maintenance.** At its sole cost, the Company shall keep the Licensed Property safe and in good order and condition at all times. The Company shall leave the Licensed Property free from all nuisances, including without limitation litter, and dangerous and defective conditions and shall maintain high aesthetic standards. The Company shall not cause or allow any undue waste on Lot 11 or the Licensed Property.

7. **Removal.**

- A. The City may remove and dispose of the Facility, or any portion thereof, upon occurrence of any of the following:
 - (1) an emergency that presents imminent peril to person or property;
 - (2) the Company's non-compliance with any term, provision, or covenant that is not cured within the time provided for in this agreement following notice of such non-compliance tendered to the Company;
 - (3) termination of this agreement for any reason;
 - (4) the Company's abandonment of the Facility's in accordance with the provisions in section 9 of this agreement; or
 - (5) expiration of this agreement in the absence of any renewal thereof.
- B. The Company shall bear all costs and expenses incurred in the removal and disposal of the Facility and the restoration of the Licensed Property.
- C. If the Company fails in any way to make timely payment to the City for such costs and expenses, the Company shall pay, in addition to any amount so owed, the City's reasonable attorneys' fees and court costs incurred in the collection of such amount. This provision will survive the termination of this agreement.
- D. The Company shall remove the Facility upon termination of this agreement, provided that the Company shall complete the removal in such a manner as not to

injure or damage Lot 11 or the Licensed Property. If the Company fails to remove the Facility as provided above, the City, at its option, may require the Company to remove it. If the Company fails to remove the Facility in not more than 60 days after receipt of notice from the City, the City may remove the Facility and dispose of it as the City sees fit, and the Company shall sell, transfer, and set over to the City all of the Company's right, title, and interest in the Facility for the sum of \$1. If the City removes the Facility as provided above, the Company shall pay the City upon demand the cost of that removal, plus the cost of transportation and disposition of the Facility.

8. **No liens.** The Company shall keep the Licensed Property free and clear of all liens arising out of any work performed, materials furnished, or obligations incurred by the Company.

9. **Lapse and termination.** The license granted in this agreement is limited to the construction, maintenance, use, repair, and removal of the Facility. Any additional use other than that specifically named in this agreement, without the further express written consent of the City, is a violation of this agreement. Upon cessation of such use, as determined by the Director, this agreement immediately and automatically will lapse and terminate. If the Director believes the Company is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify the Company in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice will state that the Company has 30 days to reassert its rights under this agreement and demonstrate that it has not in fact abandoned the license granted by this agreement. If the Company demonstrates within the 30-day period that it has not abandoned the Facility, this agreement will remain in force and effect according to its terms. If the Company does not demonstrate within the 30-day period that it has not abandoned the Facility, this agreement will be deemed lapsed, terminated, and no longer in effect.

10. **Representations.** Each party represents to the other that the person or persons signing this agreement on behalf of the party is authorized and empowered to enter into this agreement by and on behalf of such party and that this agreement is a legal, valid, and binding obligation of such party, enforceable against the other in accordance with its terms.

11. **Indemnification.** The Company shall indemnify and defend the City, its officers, employees, and agents against all claims, liability, or damage, including without limitation reasonable attorney's fees and costs, arising from or in any way related to the Company's construction, maintenance, use, repair, and removal of the Facility, except to the extent caused by the gross negligence or willful misconduct of the City, its officers, employees, or agents. This section will survive the termination of this agreement.

12. **No third party beneficiaries.** This agreement does not and is not intended to confer any enforceable rights or remedies upon any person other than the parties.

13. **No assignment.** This agreement is personal to the Company. The Company has no right to assign or sublicense this license in any way. Any assignment or sublicense of this license by the Company immediately and automatically will terminate this agreement. This

agreement immediately and automatically will lapse and terminate if all or any part of the Stephens Building or any interest in the Stephens Building is sold or if title is otherwise transferred.

14. **Entire agreement; amendment.** This agreement, together with its attachment, constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this agreement, and may not be amended except by a writing signed by both parties.

15. **Notices.** The parties shall give all notices required or permitted by this agreement in writing. All notices will be deemed given when personally delivered; deposited in the U.S. mail, postage prepaid, first class; or delivered to a commercial courier service (e.g., FedEx or UPS). A notice delivered by email will be deemed given when the recipient acknowledges having received the email by an email sent to the sender's email address, as stated in this section, or by a notice delivered by another method in accordance with this section. An automatic "read receipt" will not constitute acknowledgment of an email for purposes of this section. Each party's address is stated below and may be changed to such other address as the party may hereafter designate by notice.

Stephens Building, LLC
Stephens Building, LLC
Attention: Norman Baxley
203 South Staley Road
Champaign, Illinois 61822

City of Urbana
Public Works Director
City of Urbana
706 S. Glover Avenue
Urbana, Illinois 61802-4427

16. **Non-waiver.** Either party's failure to enforce any provision of this agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any provision of this agreement is valid only if in writing and signed by the parties.

17. **Severability.** The parties intend this agreement to be enforced to the fullest extent as allowed by law. If any provision of this agreement is found to be unenforceable by any court or agency of competent jurisdiction, the remaining provisions will remain in full force and effect.

18. **Compliance with governmental requirements.** The Company shall comply with all applicable laws, ordinances, regulations, and requirements of federal, state, county, and local regulatory authorities, all of which as may be amended from time to time.

19. **No presumption.** Each party hereto acknowledges that this agreement is the product of good faith negotiations by and between the parties hereto and, as such, neither party may seek to have this agreement strictly construed against the other party as drafter of this agreement.

20. **Counterparts.** The parties may sign this agreement in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the

same instrument. Signatures delivered by email in Adobe Portable Document Format (PDF) or by facsimile will be deemed original signatures for all purposes.

The parties are signing this agreement on the dates indicated below their signatures.

Stephens Building, LLC

By: _____
Carolyn Baxley
Manager
Date _____, 2018

By: _____
Norman Baxley
Manager
Date _____, 2018

By: _____
David L. Borchers
Manager
Date _____, 2018

By: _____
Lynn A. Borchers
Manager
Date _____, 2018

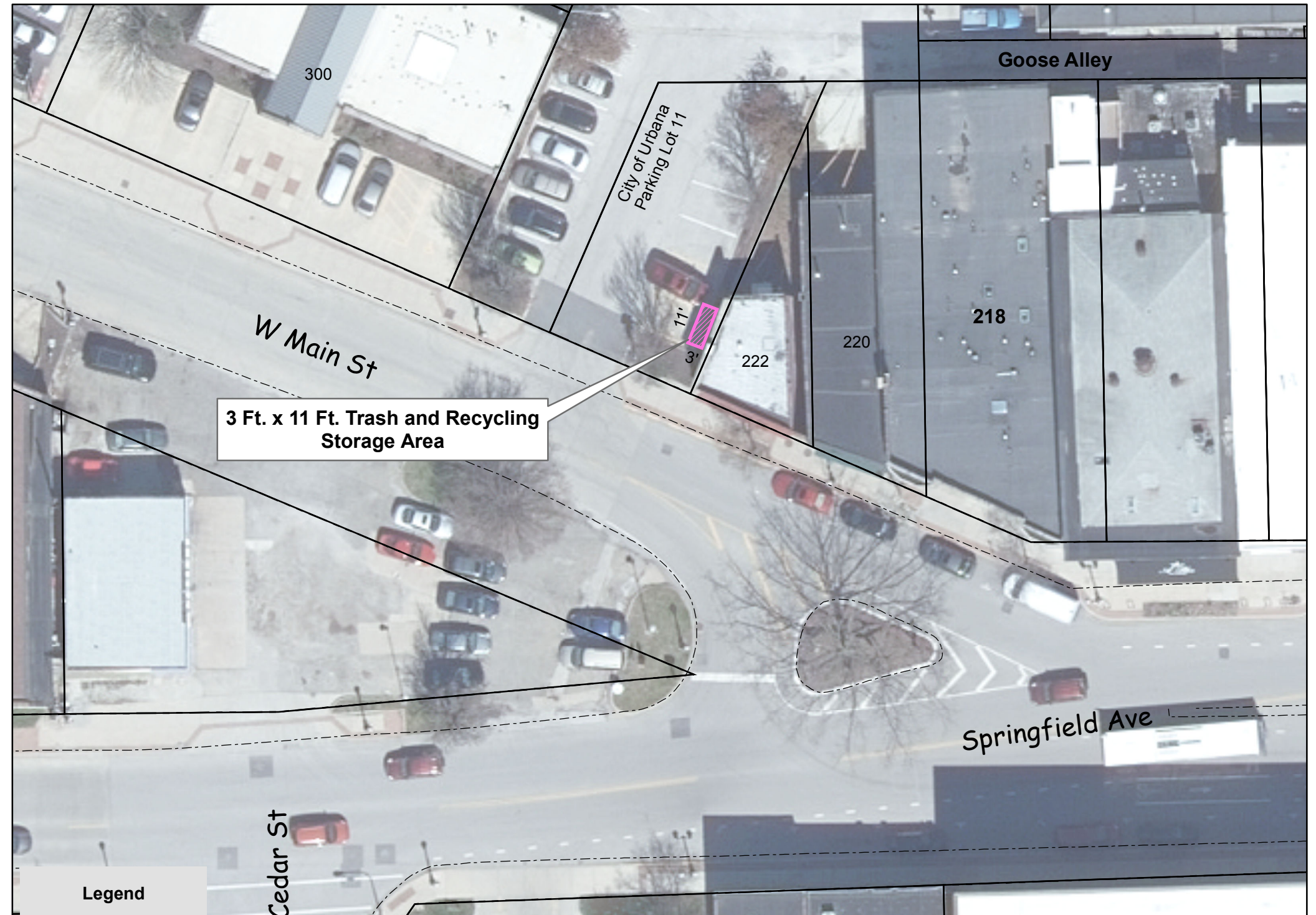
City of Urbana, Illinois

By: _____
Diane Wolfe Marlin
Mayor
Date _____, 2018

Attest:

Charles A. Smyth
City Clerk
Ordinance No. 2018-

Attachment: Exhibit A Facility description (1 page)



3 Ft. x 11 Ft. Trash and Recycling Storage Area

W Main St

Goose Alley

City of Urbana
Parking Lot 11

11'

3'

222

220

218

300

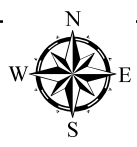
Springfield Ave

Cedar St

Legend

- - Right of Way
- Property Line
- - - Edge Of Pavement

224 West Main Street
Exhibit A



ORDINANCE NO. 2018-09-061

**AN ORDINANCE APPROVING A LICENSE AGREEMENT WITH
STEPHENS BUILDING, LLC**

(Parking Lot 11)

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

A Parking Lot 11 License Agreement between Stephens Building, LLC and the City of Urbana, Illinois, in substantially the form of the copy of the said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

This Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, 2018.

AYES:

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, 2018

Diane Wolfe Marlin, Mayor