

10/18/94

117-O-94

AN ORDINANCE

AUTHORIZING THE CITY MANAGER TO ENTER INTO
A REAL ESTATE CONTRACT FOR THE SALE OF
PROPERTY AT 1817 CHURCH STREET, EVANSTON, ILLINOIS

WHEREAS, the City of Evanston owns the real property commonly known as 1817 Church Street, Evanston, Illinois, legally described as follows:

See Exhibit A

WHEREAS, the City Council of the City of Evanston has determined that ownership of the aforesaid real estate is no longer necessary, appropriate, required or in the best interest of the City of Evanston; and

WHEREAS, the City Council of the City of Evanston has determined that the best interest of the City of Evanston would be served by the sale of said real estate to a qualified party for private use; and

WHEREAS, pursuant to Ordinance 104-0-94, the City Council by a vote of 2/3 of the elected Aldermen then holding office did direct that the process to sell said Property be by negotiation on behalf of the City; and

WHEREAS, pursuant to said Ordinance, the negotiations have occurred; and

WHEREAS, the City Manager recommends that a sale between the City of Evanston, as seller, and Carolina's Southern Kitchen, Inc. as buyer, be hereby accepted by the City Council of the City of Evanston for the aforesaid real property legally described in Exhibit A; and

WHEREAS, the City Council finds and determines that the best interest of the City of Evanston and its residents will be served by conveying the aforesaid real property to Carolina's Southern Kitchen, Inc. on terms consistent with the contract set forth in Exhibit B, attached hereto and incorporated herein by reference;

WHEREAS, the notice of intent to sell City property has been published in a newspaper of general circulation in the City of Evanston as required by ordinance; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: The City Council of the City of Evanston finds as fact the recitals hereinabove set forth.

SECTION 2: The negotiated sale to Carolina's Southern Kitchen, Inc., as buyer, is hereby accepted by the City Council of the City of Evanston for the real property legally described in Exhibit A and located at 1817 Church Street, Evanston, Illinois.

SECTION 3: The City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest, the contract in Exhibit B, pursuant to the terms of which the subject property shall be conveyed. The City Manager is further authorized to negotiate any changes or additional terms and conditions with respect to the sale of the aforesaid real property as he may deem fit and proper.

SECTION 4: The City Manager and the City Clerk, respectively, are hereby authorized and directed to execute, attest, and deliver such other documents, agreements and certificates as may be necessary to the sale herein authorized, including other documents referred to in said contracts.

SECTION 5: All ordinances or parts of ordinances in ~~conflict~~ herewith are hereby repealed.

SECTION 6: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced November 7, 1994

Adopted: November 7, 1994

Approved: November 9, 1994

Lorraine A. Norton
Mayor

ATTEST:

Luster Davis
City Clerk

Approved as to form:

[Signature]
Corporation Counsel

Attachment A

The West 1/2 of Lot 12 and the East 10 feet of Lot 13 in Block 3 of Merrill Ladd's Second Addition to Evanston, being a subdivision of the West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 13, Township 41 North, Range 13 East of the Third Principal Meridian, Cook County, Illinois, commonly known as 1817 Church Street, Evanston, Illinois.

**ARTICLES OF AGREEMENT FOR INSTALLMENT
PURCHASE OF REAL ESTATE**

Articles of agreement made this ____ day of _____, 1994, by and between CITY OF EVANSTON, an Illinois municipal corporation, seller, and Carolina's Southern Kitchen, Inc., an Illinois corporation, purchaser.

Witnesseth: In consideration of the monies paid and hereinafter to be paid by purchaser to seller, and of the other mutual covenants and agreements herein contained, the parties hereto agree as follows:

Article I

Covenants of Seller

1.1. Seller covenants and agrees to convey by warranty deed on the date that the total purchase price and all other payments and considerations herein shall have been paid, made, or tendered in full to seller under the terms of this contract and assure to purchaser title in fee simple to the real estate hereafter described in paragraph 1.2, by a good and sufficient stamped warranty deed, but subject to:

- (a) General real estate taxes for the second installment of 1994, and subsequent years;
- (b) Special taxes or assessments for improvements not yet completed;
- (c) Installments not due at date hereof of any special tax or assessment for improvements heretofore completed;
- (d) Zoning and Building ordinances;
- (e) Public utility easements;
- (f) Public and private roads and highways;
- (g) Covenants and restrictions of record as to use and occupancy;
- (h) Rights of persons claiming by, through, and under the purchaser.

1.2. Description of real estate: (see legal description in Attachment A), commonly known as 1817 Church Street, Evanston, Illinois.

1.3 Seller warrants and represents that there are and shall be no service contracts, agreements, licenses, invoices, bills, or understandings of any nature, written or oral, which have not been disclosed herein, which Purchaser will be required to assume, pay, or be bound by.

1.4 (a) At least five (5) business days prior to the initial closing, Seller shall furnish or cause to be furnished to Purchaser

at Seller's expense a commitment issued by a title insurance company licensed to do business in Illinois, to issue a contract purchaser's title insurance policy on the current form of American Land Title Association Owner's Policy (or equivalent policy) in the amount of the purchase price covering the date hereof, subject only to (1) the general exceptions contained in the policy, (2) "permitted exceptions"; (3) prior permitted mortgages; (4) other title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount, which may be removed by the payment of money and which shall be removed at or prior to the initial closing, and (5) acts done or suffered by or judgments against the Purchaser, or those claiming by, through or under the Purchaser.

(b) If the title commitment discloses unpermitted exceptions, the Seller shall have thirty (30) days from the date of delivery thereof to have the said exceptions waived, or to have the title insurer commit to insure against loss or damage that may be caused by such exceptions and the initial closing shall be delayed, if necessary, during said 30-day period to allow Seller time to have said exceptions waived. If the Seller fails to have unpermitted exceptions waived, or in the alternative, to obtain a commitment for title insurance specified above as to such exceptions, within the specified time, the Purchaser may terminate the contract between the parties or may elect upon notice to the Seller within ten (10) days after the expiration of the thirty (30) day period to take the title as then is, with the right to deduct from the purchase price, liens of encumbrances of a definite or ascertainable amount. If the Purchaser does not so elect, the contract between the parties shall become null and void, without further action of the parties, and all monies paid by Purchaser hereunder shall be refunded.

(c) Every title commitment which conforms with subparagraph 1.4 "a" shall be conclusive evidence of good title therein shown, as to all matters insured by the policy, subject only to special exceptions therein stated.

(d) If a special tax search, Lien search, a judgment search, or the title commitment disclose judgments against the Purchaser which may become liens, the Seller may declare this Agreement null and void and all earnest money shall be forfeited by the Purchaser.

(e) Purchaser's taking possession of the premises shall be conclusive evidence that Purchaser in all respects accepts and is satisfied with the physical condition of the premises, all matters shown on the survey and the condition of title to the premises as shown to him on or before the initial closing. Seller shall upon said delivery of possession have no further obligation with respect to the title or to furnish further evidence thereof, except that Seller shall remove any exception or defect not permitted under subparagraph (a) of this paragraph resulting from acts done or suffered by, or judgments against the Seller between the initial closing and the final closing.

1.5 Seller shall furnish Purchaser at or prior to the initial closing and again, prior to final closing, with an Affidavit of

Title, covering said dates, subject only to those exceptions permitted, prior mortgages, permitted and unpermitted exceptions, if any, as to which the title insurer commits to extend insurance.

1.6 Prior to the initial closing, Seller shall deliver to Purchaser a survey of the subject premises showing all improvements existing as of the date of this Agreement, and all easements and building lines.

1.7. (a) If required, Seller shall report this transaction to the Illinois Department of Revenue (IDOR) promptly upon Seller's acceptance of this Contract pursuant to the provisions of section 902 (d) and companion sections of the Illinois Revenue Act. (b) Seller agrees to comply with the Illinois Responsible Property Transfer Act by preparing and submitting the necessary environmental disclosure documents to Purchaser and the title insurance company, if required, at least ten (10) days prior to closing.

1.8. The Seller will pay the following costs: The Seller's attorney's fees, as well as the issuance of the owner's policy of title insurance to the Purchaser, the cost of a new or recertified survey done by a licensed land surveyor, the cost of any State, County, and City of Evanston transfer tax stamps to be affixed to the deed, if any.

1.9. Seller will deliver possession of the subject premises free of tenants.

1.10. Purchaser will be entitled to possession immediately upon completion of the first closing.

Article II -

Covenants of Purchaser

Purchaser covenants and agrees:

2.1.A. To pay seller the sum of \$201,000.00, at zero per cent interest as follows: \$1000.00, earnest money, payable on or before execution of this agreement, and the balance to be paid by check or money order in United States currency, where seller may from time to time direct, as follows; \$1,250.00 on the first day of _____, 1994, and \$1,250.00 on the first day of each and every month thereafter, unless sooner paid, with a balloon payment on the first day of the sixtieth month of this Agreement, of all amounts then remaining unpaid.

The final sale price is determined as follows:

\$110,000 base price
91,000 estimated rehabilitation costs
\$201,000 Total Sale price

The sale price for the building will be reduced dollar-for-dollar by the amount of actual rehabilitation investment in the building to a maximum of \$91,000. However, the final sale price of the building will be no less than \$110,000. Purchaser must furnish Seller with evidence of rehabilitation expenditures.

- B. Buyer shall be entitled to delivery of a Warranty Deed of conveyance, in fee simple, Affidavit of Title, and other documents customarily executed to effect such a conveyance, at any time upon payment of all amounts due hereunder in the form of a cashier's or certified check made payable to Seller. The delivery of the cancelled note to Seller shall be simultaneous with the balance of the amount due hereunder the parties agree to complete such exchange at the offices of the holder of the note, may be required to comply with State, County or local law. Seller shall pay the amount of any stamp tax ten imposed by State or County law on the transfer of title to Buyer, and Buyer shall pay any such stamp tax and meet other requirements as then may be established by any local ordinance with regard to the transfer of title to Purchaser unless otherwise provided in the local ordinance.

2.2. To pay prior to the due date, all taxes and current installments of special assessments levied against said premises, and on demand, to exhibit receipts therefor.

2.3. Within a reasonable time after destruction or damage, to rebuild or restore the building or improvements on said premises that may have been destroyed or damaged.

2.4. To commit or suffer no waste to premises, and if purchaser fails to keep said premises in repair, then seller may cause said premises to be put in repair and purchaser agrees to pay the cost thereof.

2.5 Purchaser understands that the subject premises are a designated Evanston Landmark. Accordingly, Purchaser agrees to abide by the Evanston Historic Preservation Ordinance with respect to any exterior alterations.

2.6. INDEMNITY

A. Purchaser's insurance company shall insure the following indemnity agreement:

"The Purchaser shall indemnify, protect and save harmless the City of Evanston, its agents, officials and employees, against all injuries, deaths, loss damages, claims, patents claims, suits, judgments, costs and expenses which may in anywise accrue against the City in

consequence of its entering into this installment contract or which may in anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through the negligent act or omission of the Purchaser or his/its employees, of any persons doing work on the subject premises or being employed thereon, or of the City or its employees; and the Purchaser shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any judgments shall be rendered against the City in any such act, the Purchaser shall, at his own expense, satisfy and discharge same."

In the event of any conflict between the language of the insurance policy(s) and the above-recited indemnity agreement, the indemnity agreement shall govern.

- B. To keep all buildings and contents on said premises insured against loss by fire and extended coverage risks, in companies approved by seller to the full insurable value thereof or to the amount of indebtedness hereunder whichever is larger, either written in favor of or with suitable loss payable clauses attached, making the loss, if any, payable to the parties as their interests may appear, and deliver such policies or renewals as directed by seller.
- C. Purchaser shall not take possession of the subject premises until he has obtained the required insurance and has received written approval of such insurance by the City's Director of Safety and Risk Management. The Purchaser shall furnish, when requested, a certified copy of the policy(s) to the City. The policy(s) shall provide, in the event the insurance should be changed or cancelled, such change or cancellation shall not be effective until thirty (30) days after the City has received written notice from the insurance company(s). Such notice shall be mailed to the City in care of the Safety Department, 2100 Ridge Avenue, Evanston, Illinois, 60201 and also to the Planning Division, Community Development Department, City of Evanston, 2100 Ridge Avenue, Evanston, Illinois 60201. An insurance company having less than a B+ Policyholders Rating by the Alfred M. Best and Company, Inc. will not be considered acceptable. The City of Evanston must be named as an additional insured and named as certificate holder.

2.7. CONTRACTOR'S LIABILITY INSURANCE

- A. Purchaser shall not commence remodeling or repairs until

he has obtained all insurance required herein and such insurance has been approved by the City's Director of Safety and Risk Management. Nor shall Purchaser allow anyone to commence work until all similar insurance has been so obtained.

B. Purchaser shall furnish two (2) copies of certificates, with the City named as an additional insured, showing the minimum coverage described in Exhibit B in an insurance company acceptable to the City's Director of Safety and Risk Management.

2.8. To keep all buildings on said premises insured against loss by fire and extended coverage risks, in companies approved by Seller to the full insurable value thereof or to the amount of indebtedness hereunder whichever is larger, either written in favor of or with suitable loss payable clauses attached, making the loss, if any, payable to the parties as their interests may appear, and deliver such policies or renewals as directed by seller.

2.9. To permit no encumbrance whatsoever to attach to said premises, and, without limiting the generality of the foregoing, to permit no mechanics or other lien to attach to said premises and to secure in connection with any contract, written or oral, for repairs or improvements, a written waiver or release of any and all right of lien against the property.

2.10. To make no contract for major improvements or alterations without the prior written waiver or release of any and all right of lien against the property.

2.11. To comply with all requirements of law or municipal ordinances with respect to the premises and the use thereof, including, but not limited to, the Americans with Disabilities Act and any legislation regarding lead-based paint.

2.12. Purchaser will, expeditiously after the initial closing, take all steps necessary to return the subject property to the tax rolls and maintain it thereon.

Article III

Additional Covenants and Agreements of Seller and Purchaser

Seller and purchaser covenant and agree:

3.1. No right, title or interest, legal or equitable, in said premises shall vest in purchaser until delivery of deed or until the purchase price herein and all other payments herein shall have been paid or tendered in full to seller.

3.2. Time of payment shall be of the essence of this contract, and the covenants and agreements herein shall extend to and be obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.

3.3. Purchaser will have 10 days' grace period in making all payments specified.

3.4. Seller has exhibited to purchaser satisfactory evidence of title, in the amount of the purchase price showing title in seller, subject only to the matters herein specified, and to usual objections contained in owner's title guaranty policies or certificate of title; such evidence shall remain with the seller as further security until the deferred installments are fully paid and any further continuance of title subsequent to the date hereof shall be at the expense of purchaser.

3.5. In the event of the termination of this agreement by lapse of time, forfeiture or otherwise, all improvements, whether finished or unfinished on the premises, (which may be put upon, and on, said premises by the purchaser) shall belong to and be the property of the seller without liability or obligation on seller's part to account to purchaser therefor.

3.6. Purchaser shall pay to seller all costs and expenses, including attorney's fees, incurred by seller in any action or proceeding to which seller may be made a party by reason of being a party to this agreement, and purchaser will pay to seller all costs and expenses, including attorney's fees incurred by seller in enforcing any of the covenants and provisions of this agreement and incurred in any action brought by seller against the purchaser on account of the provisions hereof, and all such costs, expenses and attorney's fees may be included in and form a part of any judgment entered in any proceeding brought by seller against purchaser on or under this agreement.

3.7. Purchaser may make additional payment of principal from time to time in the amount of the next one or more or all of the principal payments that would normally have been due.

3.8. In the event of a breach by purchaser of any of the aforesaid covenants or of the failure of purchaser to make any of the payments, at the time and in the manner specified, this contract, at the option of seller, shall be forfeited and determined, and purchaser shall forfeit all payments made on this contract, and such payments shall be retained by seller in satisfaction and liquidation of damage sustained and seller shall have the right to re-enter and take possession of the premises aforesaid, and a written notice of such forfeiture, and re-entry served upon purchaser or recorded in the recorder's office of the county shall be sufficient evidence of such election, forfeiture, and re-entry, and all right in and title to said premises and any

and all improvements made upon said premises by purchaser shall vest in the seller.

3.9. The remedy of forfeiture herein given to seller shall not be exclusive of any other remedy, but seller in case of default or breach, or for any other reason herein contained, shall have every other remedy given by this agreement and by law or equity, and shall have the right to maintain and prosecute any and every such remedy, contemporaneously or otherwise, with the exercise of the right of forfeiture, or any other right herein given.

3.10. No assignment or transfer of this contract shall be made by purchaser.

3.11. Purchaser may record this contract at its own expense and procure duplicate evidence of title.

3.12. Purchaser hereby agrees, in good faith, to diligently seek a mortgage on said premises to pay off all sums owed under this agreement before _____, 19___. Upon request, purchaser shall, from time to time, present seller with evidence of purchaser's good-faith efforts to obtain said mortgage. Should purchaser breach the duty of this paragraph, it agrees to be liable to seller for damages it may suffer in having this agreement at below market interest, and due to inflation.

3.13. Purchaser has presented to seller plans, specifications, and firm price contract from [contractor], which improvements to the premises are approved by seller. Purchaser agrees to be liable for all the payments of all improvements and alterations to the premises made by purchaser from time to time. Purchaser warrants and guarantees to seller that it shall make the alterations and improvements to the premises set out in said approved plans, specifications and contract; and such warranty and guarantee is a material consideration of seller entering into this agreement.

3.14. To secure seller against mechanic's liens, and to insure that said remodeling and repairs shall be completed, purchaser, upon execution by seller of this agreement, shall deposit with a title insurance company approved by seller the full sum of said firm price contract, i.e., \$_____. The parties will enter into an escrow agreement with the title company, before any construction commences, directing them to make periodic payments to the contract or upon proof of construction and receipt of lien waivers. The cost of such escrow shall be borne by the purchaser.

3.15. Purchaser hereby represents, warrants, and guarantees to seller that it has entered into this agreement with the present sole purpose of a) of using the second and third floors as the principal residence of Randolph Roebuck, proprietor of purchaser,

with no right to sublet, and b) remodeling the first floor of the premises into a Type I Restaurant as that term is now or hereafter defined in the Evanston Zoning Ordinance, and that it is intended only for commercial purposes; and that if at anytime Purchaser may convert, or use all or any part of the first floor for other than commercial purposes, or uses the second and third floors for any use other than his own principal residence, seller shall have the right to declare the balance of any principal, accrued, interest, or any other sums due seller, to then be due and payable.

3.16. Seller makes no representation that the premises are suitable for or may be used for any specific purpose, and purchaser assumes all risk of zoning, building permits and the like.

3.17. Seller shall remove, before closing, any and all of its furniture and equipment in the subject premises. Purchaser acknowledges that the removal of said property may cause minor holes, chipping in floors and walls, for which seller shall have no liability to purchaser. Purchaser's remodeling contract covers repair of such damage.

3.18. Purchaser and seller have negotiated this contract for approximately one year. All written contracts and agreements of the parties, any and all oral promises and representations are, by these presents, declared and terminated, cancelled, null and void, and this agreement embodies all of the promises, agreements, representations and warranties of the parties.

3.19. Seller and Purchaser may, at any time, re-negotiate or amend the terms of this Agreement and any documents executed pursuant to it. Any such changes are not valid unless reduced to writing and signed by Seller and Purchaser.

3.20. All promises, agreements, and undertakings of Seller and Purchaser in this document are declared to be covenants, the obligation to perform which shall survive the initial and final closings.

3.21. Fifteen days' physical absence by Purchaser with any installment being unpaid, or removal of the substantial portion of Purchaser's personal property or trade fixtures with installments being paid, and, in either case, reason to believe Purchaser has vacated the premises with no intent again to take possession thereof shall be conclusively deemed to be an abandonment of the premises by Purchaser. In such event, and in addition to Seller's remedies set forth herein, Seller may, but need not, enter upon the premises and act as Purchaser's agent to perform necessary decorating and repairs and to re-sell the premises outright or on terms similar to those contained in this Agreement with allowance for then existing marketing conditions. Purchaser shall be conclusively deemed to have abandoned any personal property remaining on or about the premises and Purchaser's interest therein

shall thereby pass under this Agreement as a bill of sale to Seller without additional payment by Seller to Purchaser.

3.22. No brokers were used in this transaction.

3.23. So long as Purchaser is not in default under this Agreement, Seller covenants that Purchaser shall be entitled to quiet enjoyment of the subject premises.

3.24. This Agreement does not create a joint venture.

3.25. Purchaser agrees that it will not initiate any action against Seller arising out of the presence of any hazardous waste or other environmental condition found on the premises after the date of the first closing. Purchaser agrees to indemnify and hold harmless, Seller, its successors and assigns, against any and all damages, claims, loss, liabilities, and expenses, and settlements and compromises of litigation, including without limitation, reasonable legal, accounting, consulting, engineering, and other expenses, which may be imposed upon or incurred by seller, arising out of or in connection with any environmental contamination or pollution found, occurring, or alleged to occur on the premises after the date of the first closing, including the exposure of any person to any such environmental contamination or pollution regardless of whether such environmental contamination or pollution resulted from any activities of any third party. This indemnity shall survive the transfer of title.

3.26. Notices to the parties are to be in writing, delivered in person or by first-class mail, return receipt requested, and are effective upon receipt. Notices are to be sent to:

Seller

Director of Community Development
City of Evanston
2100 Ridge Avenue
Evanston IL 60201

and

Law Department
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

Purchaser

Carolina's Southern Kitchen
Randolph Roebuck
1817 Church Street
Evanston, IL

Therefore, for the considerations and mutual promises set forth above, the parties hereto set their hands.

Seller
City of Evanston
By: Eric Anderson
City Manager

Purchaser
Carolina's Southern Kitchen
By: Randolph Roebuck

Attest: City Clerk
Kirsten F. Davis

**Articles of Agreement for
Installment Purchase of Real Estate**

Attachment A

The West 1/2 of Lot 12 and the East 10 feet of Lot 13 in Block 3 of Merrill Ladd's Second Addition to Evanston, being a subdivision of the West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 13, Township 41 North, Range 13 East of the Third Principal Meridian, Cook County, Illinois, commonly known as 1817 Church Street, Evanston, Illinois.