

11/14/2011

**107-O-11**

**AN ORDINANCE**

**Authorizing the City Manager to Execute a Real Estate Contract for  
the Sale of City-Owned Real Property Located at  
1817 Church Street in Evanston, Illinois  
to Evanston North Shore Contractors Cooperative, LLC**

**WHEREAS**, the City of Evanston owns real property located at 1817 Church Street in Evanston, Illinois, legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Subject Property"); and

**WHEREAS**, the City Council of the City of Evanston has determined that ownership of the aforesaid Subject Property is no longer necessary, appropriate, required, or in the best interests of the City of Evanston; and

**WHEREAS**, the City Council has determined that the best interests of the City of Evanston would be served by the sale of said Subject Property to a qualified party for private use; and

**WHEREAS**, pursuant to Ordinance 106-O-11, the City Council, by a vote of at least two-thirds ( $\frac{2}{3}$ ) of the elected Aldermen then holding office, did direct the City Manager to negotiate the sale of said Subject Property on behalf of the City; and

**WHEREAS**, pursuant to Ordinance 106-O-11, the City Manager has negotiated the sale of the Subject Property; and

**WHEREAS**, the City Manager recommends that the City Council hereby approve the negotiated sale of the Subject Property, with the City of Evanston as Seller and Evanston Northshore Contractors Cooperative, LLC ("ENSCC"), as Buyer; and

**WHEREAS**, the City Council hereby finds and determines that the best interests of the City of Evanston and its residents will be served by conveying the aforesaid Subject Property to ENSCC, on terms consistent with the Agreement for Purchase and Sale of Real Estate, attached hereto as Exhibit B and incorporated herein by reference (hereinafter, the "Agreement"); and

**WHEREAS**, as required by Section 1-17-4-2-(B) of the Evanston City Code, 1979, as amended (the "City Code"), a Notice of Intent to Sell Certain Real Estate, was published in the *Evanston Review*, a newspaper in general circulation in the City of Evanston, on November 25, 2011, neither less than fifteen (15) nor more than thirty (30) days before the date on which the City Council considered adoption of this ordinance authorizing the sale of the Property,

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

**SECTION 1:** The foregoing recitals are hereby found as fact and incorporated herein by reference.

**SECTION 2:** The City Council of the City of Evanston hereby approves the negotiated sale of the Subject Property with the City as Seller and ENSCC as Buyer.

**SECTION 3:** The City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest, the Agreement, 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 Subject Property as the City Manager 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 effectuate the sale herein authorized.

**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.

**SECTION 7:** If any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications hereof that can be given effect without the invalid provision or application, and each invalid application hereof is severable.

**SECTION 8:** The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Ayes: 8

Nays: 0

Introduced: December 12, 2011

Adopted: January 9, 2012

Approved:

January 11, 2012

Elizabeth B. Tisdahl  
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene  
Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar  
W. Grant Farrar, Corporation Counsel

**EXHIBIT A****Legal Description**

THE WEST 1/2 OF LOT 12 AND THE EAST 10 FEET OF LOT 13 IN BLOCK 3 IN MERRILL LADD'S SECOND ADDITION TO EVANSTON, BEING A SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, COMMONLY KNOWN AS 1817 CHURCH STREET, EVANSTON, ILLINOIS.

**Commonly Known As:** 1817 Church Street, Evanston, Illinois.

**EXHIBIT B**

**Agreement for Sale of Real Estate**

## AGREEMENT FOR SALE OF REAL ESTATE

THIS AGREEMENT FOR SALE OF REAL ESTATE (this "Agreement") is entered into as of the Effective Date per Section 9.16, which is \_\_\_\_\_, 201\_, by and between THE CITY OF EVANSTON ("Seller"), and EVANSTON NORTH SHORE CONTRACTORS COOPERATIVE, an Illinois limited liability company ("Purchaser"),

### RECITALS:

A. Seller legally or beneficially owns the land (the "Land") which is legally described on Exhibit A-1 attached hereto. The Land consists of approximately 17,100 square feet and is commonly known as 1817 Church Street in the City of Evanston, County of Cook, State of Illinois.

B. The Land, all improvements, fixtures, and tangible personal property located on the Land, all easements and appurtenances belonging to the Land, and all interest of the titleholder of the Property in any streets or other rights of way adjacent to the Land, are collectively referred to as the "Property".

C. The Property, which has been vacant for years and has fallen into disrepair, was recently appraised at two hundred twenty thousand dollars (\$220,000.00).

D. Purchaser desires to acquire and rehabilitate the Property to make it suitable for use as offices for a home repair & improvement/building trades cooperative, pursuant to the terms and conditions set forth below (the "Intended Use").

E. Seller desires to sell the Property to Purchaser and Purchaser desires to purchase the Property from Seller pursuant to the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 AGREEMENT TO SELL

Purchaser agrees to purchase and Seller agrees to sell the Property to Purchaser in exchange for the covenants described below, subject to the terms and conditions set forth in this Agreement. In furtherance of such agreement, Seller agrees to convey or cause to be conveyed to Purchaser good and marketable fee simple title to the Property subject to the Permitted Exceptions (defined below). Such conveyance shall be by recordable special warranty deed and the other instruments specified in Article 7 below.

### ARTICLE 2 PURCHASE PRICE

**2.1 Purchase Price.** The purchase price for the Property to be paid by Purchaser to the Seller shall be ONE and NO/100 Dollars (\$1.00) (the "Purchase Price").

**2.2 Payment of the Purchase Price.** The Purchase Price, plus or minus any adjustments, credits or pro-rations provided for herein, shall be paid at the Closing.

**2.3 Closing Costs.** Seller shall pay the cost of: (a) the Title Commitment and Title Policy; and (b) obtaining and recording any releases of any mortgages, liens or other encumbrances which are not Permitted Exceptions; and (c) the Survey. Purchaser shall pay the cost of: (y) recording the deed; and (z) the cost of applying for and securing the Governmental Approvals. All other closing costs shall be apportioned according to prevailing local custom. Each party shall pay its own legal fees.

**2.4 Closing Pro-rations and Adjustments.** All items of income or expense other than real estate taxes and assessments ("Taxes") shall be pro-rated according to prevailing local custom. If the Property is currently tax exempt, there shall be no real estate tax pro-ration at Closing. Provided that the Property is not currently tax exempt, unpaid Taxes for the applicable tax year which are not yet due and payable on the Closing Date shall be pro-rated as follows. Any Taxes which are assessed only against the Property as a separate parcel shall be pro-rated to the Closing Date on the basis of 105% of the most recent ascertainable bill or assessment therefor. Such pro-ration shall be re-pro-rated upon receipt of the actual bill. If all or a portion of the Property is located in a tax or assessment parcel (a "Tax Parcel") which also includes other property, then any unpaid Taxes for the applicable tax year which are not then due and payable on the Closing Date with respect to such Tax Parcel shall be pro-rated to the Closing Date as follows. Purchaser's credit shall be based on 105% of the portion of the most recent ascertainable bill or assessment for the Tax Parcel which is allocable to the Property.

### **ARTICLE 3 CONDITIONS PRECEDENT**

In addition to the terms and conditions set forth elsewhere in this Agreement, Purchaser's obligation to purchase the Property shall be subject to the following conditions precedent:

**3.1 Land Due Diligence Contingency; Review Period.**

(a) During the sixty (60) day period (the "Land Due Diligence Review Period") following the Effective Date, Purchaser and its agents and contractors shall have the right to enter upon the Property and conduct such tests and investigations as may be necessary for Purchaser to determine whether there are any matters which in Purchaser's judgment would make infeasible Purchaser's Intended Use of the Property. Among the matters Purchaser may investigate are (i) a zoning of the Property; (ii) soil and environmental matters; (iii) the state of title to the Property as evidenced by the Title Commitment; (iv) matters shown on the Preliminary Survey; (v) the availability and sufficiency of utilities, including water, sanitary sewer, storm/retention facilities, telephone, gas and electricity; and (vi) the existence of any laws, regulations or judicial matters affecting the Property. Within five (5) business days after the Effective Date, Seller shall provide Purchaser with a copy of each of the items (the "Delivery Items") described on Exhibit B that affect the Property and which are in Seller's possession or control. The Land Due Diligence Review Period shall be extended day to day for each day Seller is late in delivering the Delivery Items to Purchaser.

(b) In the event the Purchaser, acting in its sole discretion, determines during the Land Due Diligence Review Period that any of the matters reviewed by Purchaser would make unfeasible Purchaser's Intended Use or purchase of the Property, then Purchaser may elect to terminate this Agreement by delivering written notice of termination to Seller at any time on or prior to the last day of the Land Due Diligence Review Period. If Purchaser fails to give Seller notice of termination by the end of the Land Due Diligence Review Period, then the Land Due Diligence Contingency will be deemed waived.

(c) If Purchaser so elects to terminate this Agreement, Purchaser shall (i) return to Seller any materials Seller had delivered to Purchaser in connection with Purchaser's review, and (ii) deliver to Seller (without cost to Seller) any and all title reports, surveys, soil tests, or environmental studies pertaining to the Property which Purchaser has obtained during the Land Due Diligence Review Period. Items (i) and (ii) are called the "Return Items".

(d) Purchaser shall repair any damage to the Property resulting from Purchaser's activities on the Property under this Agreement. Purchaser shall indemnify, defend, and hold harmless Seller and Seller's elected and appointed officials, employees and agents from and against any and all loss, damage, liability or expense (including reasonable attorneys fees) and claims and liens of mechanics or materialmen any of the indemnified parties may incur as a result of Purchaser's access, other than any property damage or injury to any person, which damage or injury is (i) related to Hazardous Materials (as defined in Section 6.1 below) in existence on the Property or (ii) is caused by the negligence of Seller. The indemnity obligations of Purchaser under this Section 3.1 shall survive the Closing or a termination of this Agreement, notwithstanding anything contained to the contrary in this Agreement. Any investigation or inspection conducted by Purchaser pursuant to this Agreement, in order to verify satisfaction of any conditions precedent to Purchaser's obligations under this Agreement or to determine whether Seller's representations and warranties are true and accurate, shall not affect (or constitute a waiver by Purchaser of) any of the provisions of this Agreement or Purchaser's reliance on such provisions.

### **3.2 Governmental Approvals Contingency.**

(a) Both Purchaser's and Seller's obligation to close shall be contingent upon Purchaser's ability to obtain the Governmental Approvals (defined in subparagraph (b) below) for the Property that are necessary for Purchaser's Intended Use and which are satisfactory in all respects to both Purchaser and Seller. During the Land Due Diligence Review Period and thereafter through the Governmental Approvals Period (defined below), Purchaser at its expense shall seek to obtain or to confirm the availability of the Governmental Approvals. It is understood that Seller being a party to this Agreement shall not in any way obligate it to grant the Governmental Approvals for the Property, and that Purchaser's application(s) for the Governmental Approvals will be reviewed under normal City of Evanston processes subject to the normal City of Evanston standards of review without regard to the existence of this Agreement. If Purchaser determines in its sole discretion at any time during the Governmental Approvals Period that it will not be able to secure satisfactory Governmental Approvals, Purchaser shall have the right, by written notice to Seller, to terminate this Agreement. If Purchaser fails to give notice of satisfaction of the Governmental Approvals by the end of the Governmental Approvals Period, Purchaser shall be deemed to have terminated this Agreement.



If Purchaser gives a notice of satisfaction of the Governmental Approvals, then Seller shall have the right to give notice that Seller is not satisfied with the Governmental Approvals. If Seller fails to give such notice within ten (10) days after receipt of Purchaser's satisfaction notice, then Seller will be deemed to be satisfied with the Governmental Approvals and the contingency in this Section 3.2 shall be satisfied. If Seller gives notice that it is not satisfied with the Governmental Approvals after Purchaser has given a notice of satisfaction, then at Purchaser's election Purchaser may by notice to Seller elect to (i) terminate this Agreement or (ii) reinstate the Governmental Approvals Period. If Purchaser fails to give notice of its election to Seller within ten (10) days after receipt of Seller's dissatisfaction notice, Purchaser will be deemed to have elected to reinstate the Governmental Approval Period. Upon a termination of this Agreement under this Section 3.2, Purchaser shall deliver the Return Items to Seller. As used in this Agreement, the "Governmental Approvals Period" shall mean the period beginning on the Effective Date and running through \_\_\_\_\_, 20\_\_\_\_.

(b) As used in this Agreement, the "Governmental Approvals" shall mean the obtaining of the following items on terms and conditions satisfactory to Purchaser and Seller: (i) Purchaser satisfying itself that water, sanitary and storm sewer services sufficient to service Purchaser's Intended Use will be available to serve the Property on terms and conditions satisfactory to Purchaser, and that each can be used by Purchaser at tap-on fees and rates satisfactory to Purchaser, and (ii) Purchaser satisfying itself that it can obtain building permits and other authorizations from Seller and other public agencies and authorities as may be necessary or appropriate for Purchaser's Intended Use.

#### ARTICLE 4 TITLE INSURANCE AND SURVEYS

**4.1 Title Commitment; Preliminary Survey.** Within thirty (30) days after the Effective Date, Seller, at its expense, will obtain:

(a) a preliminary survey of the Property ("Preliminary Survey") by a licensed surveyor approved by Purchaser acting reasonably (the "Surveyor"), certified as having been made in compliance with 2005 ALTA/ACSM Land Survey Standards;

(b) a commitment for the Property (together with all subsequent versions thereof issued prior to the Closing, the "Title Commitment") for a title policy in the form of an ALTA 2006 Form owner's title insurance policy issued by the Title Insurer with extended coverage over the standard printed exceptions and with, access, owner's comprehensive, zoning 3.0, survey, and separate tax lot endorsements; and

(c) copies of all documents evidencing the exceptions raised on the title commitment other than mortgage debt to be paid off at the Closing.

**4.2 Permitted Exceptions.** Prior to the end of the Land Due Diligence Review Period, Purchaser shall provide Seller with a list of those title exceptions (including matters of survey) which are satisfactory to Purchaser, acting reasonably. Such list shall be attached to this Agreement as Exhibit C and shall constitute the "Permitted Exceptions" under this Agreement unless and except to the extent that the list is modified pursuant to Section 4.4 hereof. Prior to

the end of the Land Due Diligence Review Period, Purchaser acting reasonably may also specify any additional endorsements it shall require on each Title Policy. The provision of such endorsements shall be a condition to Closing, but the expense of such endorsements shall be borne by Purchaser.

**4.3 Title Policy; Final Survey.** At the Closing, Seller shall deliver to Purchaser an Owner's Title Insurance Policy in the form of the ALTA Form Owner's Policy from the Title Insurer, or in lieu thereof a marked-up title commitment from the Title Insurer (either being referred to herein as the "Title Policy") which shall: (i) be dated the Closing Date; (ii) name Purchaser or its permitted assignee as the insured; (iii) have a liability amount equal to the Purchase Price; (iv) show Purchaser or its permitted assignee as the owner of the Property in fee simple subject to no exceptions other than the Permitted Exceptions; (v) include extended coverage over the standard printed exceptions; (vi) and include the endorsements listed in Section 4.1(b) together with any other endorsements specified by Purchaser pursuant to Section 4.2. At Purchaser's option the Title Policy shall be a combined Policy for the Property provided Seller will not be obligated to pay more than the portion of the cost thereof that is equitably allocable to the Property.

**4.4 Objection and Cure Period.** If any Title Commitment or Preliminary Survey or any updates of any of them contain any matters not constituting Permitted Exceptions or liens which are of a definite and ascertainable amount which can be removed at Closing by payment of money ("Removable Liens"), then the Seller may, at its election, within thirty (30) days after Seller's receipt from Purchaser of the Permitted Exceptions or a subsequent version of the Title Commitment or Survey, as the case may be: (a) cause the non-permitted matters to be deleted from the Title Commitment; (b) subject to Purchaser's approval of such arrangement (acting reasonably), cause the Title Insurer expressly to insure over such non-permitted matters; or (c) object in writing to Purchaser to the exclusion of any one or more of such matters as a Permitted Exception.

If Seller fails or elects not to cause all of the non-permitted matters to be deleted or insured over within the aforementioned thirty (30) day period, Purchaser may by written notice to Seller within five (5) days after the expiration of Seller's 30-day objection and cure period elect to: (x) terminate this Agreement; or (y) agree to take title subject to the matters at issue, in which case the Permitted Exceptions shall be expanded to include the additional matters not deleted or insured over, but with a deduction from and offset against the Purchase Price for all Removable Liens. If the updated Title Commitment or Survey containing the non-permitted matter is issued within thirty (30) days prior to the Closing, the Closing Date shall be extended as necessary to give the Seller the benefit of the full 30-day objection and cure period and to give Purchaser the benefit of the full five-day election period referred to above.

## **ARTICLE 5 COVENANTS**

**5.1 Seller's Covenants.** Seller with respect to the Property hereby makes the following covenants to Purchaser which shall be applicable so long as this Agreement is in effect:

(a) Seller shall not from and after the date of this Agreement voluntarily or consensually perform any act which results in any additional exceptions to title that would survive the Closing without Purchaser's consent.

(b) Seller shall not enter into any agreements, including leases, or amend any existing agreements which affect the Property and which would survive the Closing without Purchaser's consent;

(c) Seller shall not participate in any discussions or negotiations with any other party regarding the sale or any similar transaction involving the Property;

(d) Seller shall furnish Purchaser with any notices Seller receives from governmental authorities pertaining to the Property;

(e) Seller shall promptly notify Purchaser of any event or circumstance which Seller becomes aware of which causes a representation or warranty in this Agreement to be untrue or a covenant or condition in this Agreement incapable or unlikely to be performed or satisfied;

(f) Seller shall not remove or materially disturb any portion of the Property including cutting trees, removing landscaping, or performing site grading, without Purchaser's consent; and

If Seller breaches any of the foregoing covenants in any material respect by the Closing Date then Purchaser may elect to terminate this Agreement.

**5.2 Purchaser's Covenants.** Purchaser, with respect to the Property, hereby makes the following covenants to Seller which shall survive the Closing:

(a) Right of Reverter. The deed to be delivered by Seller at Closing pursuant to Section 7.3(a) below shall contain the following reservation of a right of reverter in favor of Seller: "This conveyance is subject to a right of reverter in favor of Seller if certain conditions are met, which right is as set forth in Exhibit D of an Agreement for Sale of Real Estate between Seller and Purchaser dated \_\_\_\_\_, 201\_\_\_. Such right of reverter shall expire on the six (6)-year anniversary date of this deed if such right has not been exercised, which exercise would be evidenced by recordation of a quitclaim deed re-conveying the Property from Purchaser to Seller." Seller and Purchaser hereby agree to the terms of Exhibit D attached hereto which terms shall survive the closing.

(b) Property Tax Covenant. At the Closing, Purchaser shall record a restrictive covenant or deed restriction that shall run with the land which states as follows: "In the event that the Purchaser, its successors, or assigns, are or become exempt from the payment of real estate taxes, said tax-exempt entity or entities shall make annual payments *in lieu* of taxes, at the then-current rate applicable to that portion of the Property said tax-exempt entity or entities own, to the City of Evanston, Evanston/Skokie Community Consolidated School District 65, and Evanston Township High School District 202, for a period of thirty (30) years."

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES**

**6.1 Seller's Representations and Warranties.** Seller, with regard to the Property, represents and warrants to Purchaser as follows:

(a) Authority. Seller is the owner of the fee simple absolute title to the Property. Seller has full power and authority to sell and convey or to cause the conveyance of the Property as provided for in this Agreement and this Agreement is binding and enforceable against Seller.

(b) Agreements. Neither the execution and delivery of this Agreement by Seller nor the consummation of the transactions contemplated hereby will result in any breach or violation of or default under any judgment, decree, order, mortgage, lease, agreement, indenture or other instrument to which Seller is a party.

(c) Litigation. There is no litigation, proceeding, claim or investigation, including, without limitation, any condemnation, zoning, or environmental proceeding, pending or, to the best of the Seller's knowledge, threatened, which affects the Property or this transaction, except as disclosed in writing to Purchaser by Seller prior to or during the Land Due Diligence Review Period.

(d) Zoning. The Property is zoned B2 (Business) and OWE (West Evanston Overlay) in the City of Evanston, Illinois. There are no actions pending or threatened to change the zoning or comprehensive plan designation of the Property.

(e) Hazardous Materials. Except as may be set forth in any environmental reports delivered to Purchaser and listed on Exhibit E: (i) Seller has no knowledge of any Hazardous Materials currently located on the Property, and (ii) Seller has not used, stored, or placed any Hazardous Materials under, on, or at the Property, and (iii) to the best of Seller's knowledge, all underground storage tanks previously located on the Property were either removed or closed in accordance with all Environmental Laws, and (iv) to the best of Seller's knowledge, there are no violations or claimed violations of Environmental Laws with respect to the Property. As used herein "Environmental Laws" shall mean all statutes specifically described in the definition of "Hazardous Materials" and all other federal, state or local laws, regulations or orders relating to or imposing liability or standards of conduct concerning any Hazardous Material. As used herein, "Hazardous Materials" shall mean any hazardous, toxic or dangerous substance, material, waste, gas or particulate matter which is defined as such for purposes of regulation by any local government authority, the State where the Property is located, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sec. 1251 *et seq.* (33 U.S.C. Sec. 1317), (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.* (42 U.S.C. Sec. 6903), or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive

Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9601 *et seq.* (42 U.S.C. Sec. 9601).

(f) Surviving Agreements. There are no leases, service agreements, or other agreements affecting the Property which will survive the Closing.

(g) Utilities. To Seller's knowledge, all water, sewer, gas, electric and telephone utilities are installed to the boundaries of the Property or in contiguous streets, and there are no recapture agreements or other agreements requiring any out-of-the-ordinary payments for connection to such utilities.

(h) Disclosure. During the Land Due Diligence Review Period, Seller delivered to Purchaser true and correct and complete copies of all Delivery Items in Seller's possession or control, and Seller has not failed or omitted to communicate in writing to Purchaser any other agreement, document or fact which is material to the Property or this Agreement.

**6.2 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller as follows:

(a) Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the consummation of the transactions contemplated hereby will result in any breach or violation of or default under any judgment, decree, order, mortgage, lease, agreement, indenture or other instrument to which Purchaser is a party;

(b) Authority. Subject to obtaining any necessary investment committee or other internal approval of this transaction, which can be presumed if Purchaser does not terminate this Agreement at or before the end of the Governmental Approvals Period, Purchaser has full power and authority to execute this Agreement and purchase the Property as provided for in this Agreement and this Agreement is binding and enforceable against Purchaser.

**6.3 Breach of Representations and Warranties.** Each party warrants that each of the representations and warranties made by it in this Article 6 or appearing in other parts of this Agreement is true as of the date of this Agreement and will also be true as of the Closing. Each party shall notify the others promptly if such party becomes aware prior to the Closing Date of any matter which would render any of the representations or warranties of such party untrue in any material respect. If any of the representations and warranties by Seller shall not be true as of the Closing and such breach has been disclosed to Purchaser and is other than as a result of Seller's deliberate or willful act, Purchaser may alternatively as its sole remedy either (a) waive such breach and close the transaction contemplated herein, or (b) terminate this Agreement. In the case of a breach of any of Seller's representations or warranties as a result of Seller's willful or deliberate act, the Purchaser may exercise its remedies under Article 8.

**6.4 NO OTHER WARRANTIES.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER IS SELLING ITS APPLICABLE PROPERTY TO PURCHASER IN AN "AS-IS" CONDITION, AND PURCHASER AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO PURCHASER REGARDING THE PROPERTY.

**ARTICLE 7  
THE CLOSING**

**7.1 Definition; Time and Place.** The performance by Seller and Purchaser of their respective obligations under this Agreement and the delivery of the Purchase Price to the Seller after delivery of the Title Policy to Purchaser and delivery of possession of the Property to Purchaser shall constitute the closing of the sale (the "Closing"). The date of the Closing (the "Closing Date") shall be forty-five (45) days after the expiration or Purchaser's waiver of the Governmental Approvals Period, or such later date as may be extended by mutual written consent of Purchaser and Seller or by operation of this Agreement. Purchaser may extend the Closing Date as needed for satisfaction of such conditions so long as Purchaser is pursuing such satisfaction diligently and in good faith. The Closing shall take place at the Chicago office of the Title Insurer.

**7.2 Possession.** Possession of the Property shall be delivered at the Closing.

**7.3 Documents To Be Delivered By Seller At Closing.** At the Closing Seller shall deliver or cause to be delivered to Purchaser, the following with respect to its applicable Property, each of which shall be in form reasonably satisfactory to Purchaser and (if applicable) the Title Insurer:

- (a) a duly executed and acknowledged special warranty deed to the Property subject only to the Permitted Exceptions;
- (b) a bill of sale respecting any personal property to be conveyed;
- (c) copies of the most recent tax or assessment bills or other items on which any pro-rations are based;
- (d) the Title Policy;
- (e) evidence of authorization of Seller as to the execution of this Agreement and the sale of the Property to Purchaser and the performance of other acts required hereunder;
- (f) an affidavit to the effect that Seller is not a foreign person under Section 1445(b) of the United States Internal Revenue Code (FRPTA);
- (g) all other documents (if any) required, pursuant to other provisions of this Agreement, to be executed and delivered by Seller; and
- (h) such other instruments and documents as may be reasonably required in order to carry out the purposes of this Agreement.

**7.4 Documents To Be Delivered By Purchaser At Closing.** At the Closing Purchaser shall deliver or cause to be delivered to Seller directly, the following with respect to each Property, each of which shall be in form reasonably satisfactory to Seller and (if applicable) the Title Insurer:

- (a) The Purchase Price, plus or minus adjustments, credits and pro-rations provided for herein;
- (b) Evidence of Purchaser's authorization to execute this Agreement and perform the other acts required hereunder;
- (c) all other documents, required pursuant to other provisions of this Agreement, to be executed and delivered by Purchaser; and
- (d) such other instruments and documents as may be reasonably required in order to carry out the purpose of this Agreement.

**7.5 Documents to be Jointly Delivered by Seller and Purchaser at Closing.** At the Closing Seller and Purchaser shall each execute and deliver the following with respect to each Property, each of which shall be in form reasonably satisfactory to the parties and (if applicable) the Title Insurer:

- (a) Applicable transfer tax declarations for the State, the County and any necessary municipal transfer declarations all indicating that this transaction is "exempt" from transfer taxes;
- (b) A Closing Statement (in triplicate); and
- (c) ALTA Statements as required by the Title Insurer.
- (d) such other instruments and documents as may be reasonably required in order to carry out the purpose of this Agreement.

## ARTICLE 8 DEFAULTS; REMEDIES

**8.1 Purchaser's Default.** If the transaction contemplated hereby does not close by reason of a default by Purchaser in any of the terms hereof (as opposed to by reason of failure of any contingency to Purchaser's obligations hereunder), and such default is not cured within five (5) Business Days after written notice of such default is given by Seller to Purchaser, then Seller may pursue any and all legal and/or equitable remedies which Seller may have.

**8.2 Seller's Default.** If the transaction contemplated hereby does not close by reason of a default by Seller in any of the terms hereof, and such default is not cured within five (5) Business Days after written notice of said default is given by Purchaser to Seller, then Purchaser's only remedy shall be, if such default was as a result of Seller's willful or deliberate act, pursue against Seller any other rights or remedies available at law or in equity, including, without limitation, an action for Purchaser's actual costs and damages.

**ARTICLE 9  
MISCELLANEOUS**

**9.1 Uniform Risk Act.** The Uniform Vendor and Purchaser Risk Act as enacted in the State in which the Property is located shall apply to this transaction.

**9.2 Payment of Real Estate Brokers and Consultants.** Each party represents to the other that no other real estate broker has been used in connection with this transaction. Purchaser agrees to indemnify, defend and hold Seller harmless from and against any claim for a real estate broker's commission or fee by any other party claiming through Purchaser. Seller agrees to indemnify, defend and hold Purchaser harmless from and against any claim for a real estate broker's commission or fee by any other party claiming through Seller.

**9.3 Notices.** All notices and other communications which are required to be, or which may be given under this Agreement shall be in writing, and shall be delivered at the addresses set out below. Notice may be given by personal delivery, facsimile, recognized overnight courier, or by United States mail in the manner set forth below. Notice shall be deemed to have been duly given (a) if by personal delivery, on the first to occur of the date of actual receipt or refusal of delivery by any person at the intended address, (b) if by facsimile, upon confirmed transmission, (c) if by overnight courier, on the first (1st) Business Day after being delivered to a recognized overnight courier, or (d) if by mail, on the third (3rd) Business Day after being deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

**If to Seller:** City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201  
ATTN: City Manager  
Fax: 847/448-8083

**With a Copy to:**

City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201  
ATTN: Corporation Counsel  
Fax: 847/448-8093

**And to:**

City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201  
ATTN: Community & Economic Development Director  
Fax: 847/448-8120



**If to Purchaser:** Evanston North Shore Contractors Cooperative, LLC  
c/o Renew Management Services  
P.O. Box 6094  
Evanston, Illinois 60201-6094  
ATTN: John Leineweber  
Fax: 847-475-5102

or to such other address as either party may from time to time specify as its address for the receipt of notices hereunder, in a notice to the other party.

**9.4 Assignment.** Prior to Closing, Purchaser may not assign or pledge any of its rights under this Agreement without the prior written consent of Seller, except Seller's consent shall not be necessary for an assignment to an entity in which Purchaser or an affiliate has an ownership interest where Purchaser remains liable for all of its obligations under this Agreement. Subject to the foregoing, this Agreement shall be binding upon the undersigned and each of their successors and assigns.

**9.5 Entire Agreement; Amendments.** This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof except as may be set forth in writing executed by both parties contemporaneously with or subsequent to this Agreement. The provisions of this Agreement may not be amended, changed or modified orally, but only by an agreement in writing signed by the party against whom any amendment, change or modification is sought.

**9.6 Severability.** If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and other applications thereof shall not be affected thereby.

**9.7 Captions; Number.** The captions contained in this Agreement are for the convenience of reference only, and shall not affect the meaning, interpretation or construction of this Agreement. As used in this Agreement, the singular form shall include the plural and the plural shall include the singular, to the extent that the context renders it appropriate.

**9.8 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

**9.9 Governing Law.** This Agreement and all rights, obligations and liabilities hereunder shall be governed by, and construed in accordance with, the laws of the State of Illinois.

**9.10 Time of the Essence.** Time is of the essence of this Agreement.

**9.11 Survival.** All of the respective representations and warranties of Seller and Purchaser hereunder, and all of their respective rights and remedies with respect to the incorrectness or breach thereof, shall survive the Closing Date for a period of one (1) year from the date of Closing.

**9.12 Recording.** Purchaser, at Purchaser's option, may record this with the Recorder of Deeds at any time after the Land Due Diligence Review Period. Purchaser agrees to deliver a recordable release at any time this Agreement is terminated for any reason other than a Seller's default.

**9.13 Waiver.** Except as otherwise expressly provided in this Agreement, no waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party whether or not the first party knows such breach at the time it accepts such payment or performance. Except as otherwise expressly provided in this Agreement, no failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

**9.14 Business Days.** If any date specified in this Agreement for the Closing Date or for commencement or expiration of time periods for termination or approvals or for notice occurs on a day other than a Business Day, then any such date shall be postponed to the following Business Day. As used herein, "Business Day" shall mean any day other than a Saturday, Sunday or a holiday observed by national banks or the Title Insurer.

**9.15 Limitation of Purchaser's Liability.** Any obligation or liability whatsoever of Purchaser which may arise at any time under this Agreement or any document delivered pursuant to this Agreement shall be satisfied, if at all, out of Purchaser's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of its members, or the partners, members, shareholders, trustees, officers, employees or agents of such members on any constituent level, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise. The negative capital account of any interest holder in Purchaser or the obligation of any interest holder in Purchaser to make a capital contribution to Purchaser shall not be deemed to be an asset of Purchaser.

**9.16 Effective Date.** The "Effective Date" as used in this Agreement shall be the date on which this Agreement is executed and delivered in final form by both parties. The parties shall fill in the Effective Date when that is known.

*[signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PURCHASER

EVANSTON NORTH SHORE  
CONTRACTORS COLLECTIVE, LLC,  
an Illinois limited liability company

By: Todd Smith  
Name: Todd Smith  
Title: Member Manager  
Date: 2/23/2012

By: John J. Leinweber  
Name: JOHN J. LEINWEBER  
Title: MEMBER MANAGERS  
Date: 2/23/2012

SELLER

THE CITY OF EVANSTON,  
an Illinois municipal corporation

By: Bart J. Marino  
Name: BART J. MARINO  
Title: MEMBER MANAGER  
Date: 2/23/2012

By: Wally Bobkiewicz  
Name: WALLY BOBKIEWICZ  
Title: CITY MANAGER  
Date: 2-28-12

Approved as to form:

W. Grant Farrar  
W. Grant Farrar  
Corporation Counsel

**EXHIBIT A**

**Legal Description of the Property**

THE WEST 1/2 OF LOT 12 AND THE EAST 10 FEET OF LOT 13 IN BLOCK 3 IN MERRILL LADD'S SECOND ADDITION TO EVANSTON, BEING A SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, COMMONLY KNOWN AS 1817 CHURCH STREET, EVANSTON, ILLINOIS.

## **EXHIBIT B**

### **Delivery Items**

1. Any title insurance policies or commitments (most recent), soils reports, land surveys, topographic surveys, environmental reports, engineering plans or reports, traffic reports, utility studies or other similar physical or development studies of the Property.
2. Any agreements with a governmental authority or a utility provider, including any annexation agreements, impact fee or donation agreements, TIF agreements and recapture agreement.
3. Any ordinances, resolutions, licenses, permits, or other similar documents evidencing a governmental approval or other governmental action specific to the Property; ordinances approving or denying concept, tentative, preliminary or final plans; ordinances approving or denying a special use or variance; temporary use permits, or the like.
4. Any agreements with a private party including any leases, service agreements, and recapture agreements.
5. Any notices of violation of any law, regulation or private agreement which remain uncured.

**EXHIBIT C**

**Permitted Exceptions**

1. Acts done or suffered to be done by Purchaser.

*[OTHERS TO BE PROVIDED BY PURCHASER  
DURING THE LAND DUE DILIGENCE REVIEW PERIOD]*

## EXHIBIT D

### Right of Reverter

1. The Property is transferred to Purchaser with the intent that Purchaser will operate thereon a home repair & improvement/building trades cooperative (the "Intended Use") in substantial accordance with the terms of this Agreement. Seller requires assurance that such operation will take place in accord with TIF regulations applicable to the Property and the Intended Use. Accordingly, Seller and Purchaser agree that Seller will convey the Property subject to the right of reverter set forth in this Exhibit D.
2. Contemporaneously with the execution of the deed from Seller to Purchaser, Purchaser shall execute a quitclaim deed to Seller, transferring title to the Property from Purchaser to Seller for the consideration of one dollar (\$1.00). Said quitclaim deed to Seller shall bear the same date (the "Deed Date") as the special warranty deed from Seller to Purchaser. Seller shall have custody of this quitclaim deed.
3. Purchaser shall, during the sixty (60) consecutive months after the Deed Date:
  - a. operate the Intended Use on the Property;
  - b. maintain a membership of no less than seventy-five percent (75%) City of Evanston residents;
  - c. maintain no less than forty percent (40%) minority ownership;
  - d. maintain ownership of the Property;
  - e. not cause or permit any liens to be filed against the Property without Seller's prior written consent;
  - f. not use the Property as collateral for any purposes; and
  - g. not be in arrears with regards to any two (2) consecutive real estate tax bills.
4. Upon becoming aware that Purchaser has failed to abide by any of the terms of paragraph 3 above, Seller's City Manager may issue Purchaser notice, via certified USPS mail, of such failure. Purchaser shall have six (6) months from the date of such mailed notice ("Reverter Notice Date") to:
  - a. cure said failure to Seller's satisfaction, not to be unreasonably withheld; or
  - b. pay Seller for the Property the amount determined by the following formula:  $\$220,000.00 - (M \times \$3,666.67)$ , where M is equal to the number of whole months that have elapsed between the Deed Date and the Reverter Notice Date.

5. If, at the end of the six (6) month period immediately following the Reverter Notice Date, Purchaser has neither cured, pursuant to paragraph 4a above, nor paid, pursuant to paragraph 4b above, Seller may exercise its right of reverter by a two-thirds ( $\frac{2}{3}$ ) majority vote of the Aldermen of Seller's City Council in a meeting held after at least ten (10) days prior notice to Purchaser, which vote authorizes the Corporation Counsel to record the quitclaim deed conveying title from Purchaser to Seller.
6. If Seller does not exercise this right of reverter by recording said deed by the six (6) year anniversary of the Deed Date, then all of Seller's rights under this Exhibit D shall expire. In addition, if Purchaser satisfies all conditions of paragraph 3, then, on request, Seller will execute and deliver to Seller a recordable release of Seller's rights under this Exhibit D in form reasonably satisfactory to Purchaser within ten (10) days of such request. If this right of reverter ceases by expiration or by release, Seller will, upon Purchaser's request, return the quitclaim deed to Purchaser.
7. All conditions set forth in this Exhibit D shall survive the closing.
8. The terms and conditions in this Exhibit D shall run with the land and be binding on heirs and successors in interest.



**EXHIBIT E**

**Environmental Reports**

*[IF ANY, TO BE PROVIDED BY SELLER  
DURING THE LAND DUE DILIGENCE REVIEW PERIOD*

