

2/21/2012

**26-O-12**

**AN ORDINANCE**

**Authorizing the City Manager to Negotiate and Execute  
a Commercial Lease with an Option to Purchase  
for City-Owned Real Property Located at 629-631 Howard Street**

WHEREAS, the City of Evanston owns certain real property located at 629-631 Howard Street, Evanston, Illinois 60202, which is improved with a three-story brick building (the "Property"); and

WHEREAS, the City Council has determined that it is in the best interests of the City of Evanston to negotiate and execute a five (5)-year commercial lease agreement for the first-floor commercial space of the Property, with an option to purchase the Property, with Ward Eight, LLC,

**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:** Pursuant to Subsection 1-17-4-1 of the Evanston City Code of 1979, as amended (the "City Code"), the City Manager is hereby authorized and directed to negotiate and execute, and the City Clerk is hereby authorized and directed to attest, on behalf of the City of Evanston, the lease agreement, by and between the City of Evanston, as landlord, and Ward Eight, LLC, as tenant, for the first-floor commercial space on the Property, in accordance with the rental schedule and terms

provided in the agreement. The lease agreement shall be in substantial conformity with the Lease attached hereto as Exhibit "A" and incorporated herein by reference.

**SECTION 3:** Should Ward Eight, LLC seek to exercise the option to purchase, the City shall follow the procedure for conveyance by negotiation pursuant to Subsection 1-17-4-2-(B), as amended.

**SECTION 4:** If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

**SECTION 5:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 6:** 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.

**SECTION 7:** This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Ayes: 8

Nays: 1

Introduced: February 27, 2012

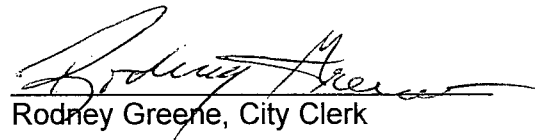
Adopted: February 27, 2012

Approved:

February 29, 2012

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Approved as to form:

  
W. Grant Farrar, Corporation Counsel

**EXHIBIT A****LEASE AND OPTION AGREEMENT FOR THE PREMISES LOCATED AT 629-631 HOWARD STREET, EVANSTON, ILLINOIS, BY AND BETWEEN THE CITY OF EVANSTON, LANDLORD AND WARD EIGHT LLC, TENANT**

*EFFECTIVE DATE OF LEASE:* March 15, 2012

*TERM OF LEASE:* March 15, 2012 THROUGH March 14, 2017

*RENTAL RATE:*

FROM March 15, 2012 THROUGH March 14, 2013: FREE RENT (Year 1)

FROM March 15, 2013 THROUGH March 14, 2015: \$2,000.00/MO (Year 2 - 3)

FROM March 15, 2015 THROUGH March 14, 2016: \$2,250.00/MO (Year 4)

FROM March 15, 2016 THROUGH March 14, 2017: \$2,500.00/MO (Year 5)

This Lease and Option Agreement (the "**Agreement**") is executed by and between The City of Evanston, an Illinois home rule municipality ("**Landlord**"), whose main business office is located at 2100 Ridge Avenue, Evanston, Cook County, Illinois, and Ward Eight LLC, an Illinois limited liability company ("**Tenant**"), of Chicago, Illinois (insert Tenant's present address). Landlord and Tenant may be referred to as a "Party" and collectively as the "Parties".

**SECTION 1: DESCRIPTION OF PREMISES**

Landlord leases to Tenant the commercial area on the first floor of the property commonly known as 629-631 Howard Street (the "**Premises**"), situated within the Landlord's 3 story mixed use building located at the same common address and legally described on Exhibit "A" (the "**Property**"). The Property has two residential units on the second and third floors and the Premises is the commercial unit on the first floor. The term "**Common Facilities**" as used in this lease will include those facilities within the Premises for the nonexclusive use of Tenant in common with other authorized users, and includes, but is not limited to, sidewalks, planted areas, and open means of ingress and egress.

**SECTION 2: TERM**

The term of this lease will be for five (5 years) and will start on March 15, 2012 – March 14, 2017. Tenant must provide Landlord with 60 days notice if they choose to renew the lease of the Premises.

**SECTION 3: RENT**

A. **RATE:** Tenant agrees to pay Landlord a monthly rental payment for the term of this Agreement in accordance with the rental rate schedule outlined on the first page. The rent is due and payable on the first day of each month.

**B. LATE CHARGES.** ANY PAYMENTS FOR RENTAL OR ADDITIONAL RENTAL NOT PAID WITHIN FIVE (5) DAYS OF THE DUE DATE SHALL INCUR A LATE PAYMENT OF \$10.00 PER DAY UNTIL PAID IN FULL.

**C. PAYMENTS** shall be mailed to: City of Evanston  
Attn: Dept of Administrative Services  
2100 Ridge Avenue, Room 4100  
Evanston, IL 60201

**D. RENT COMMENCEMENT:** Tenant's obligation to pay any money will not commence until the 1<sup>st</sup> day of the earlier of the completion of the tenant improvements outlined on Exhibit "B", Site Plan, and a certificate of occupancy is issued or four months after the Effective Date of this Lease (the "Rent Commencement"). However, the schedule provided on the first page commences on the first date that Tenant receives all permits, variances and governmental approvals necessary to construct and operate Tenant's wine bar in the Premises (the "Rent Commencement Date"). Tenant warrants they will use best efforts to complete construction on the Tenant Improvements, obtain a business license, obtain a liquor license from the City of Evanston and the State of Illinois, and open for business within 4 months of the Effective Date.

#### **SECTION 4: COMMON FACILITIES**

**A. MAINTENANCE BY LANDLORD:** Landlord will maintain in good repair the common and structural facilities of the Property which shall include but not be limited to the following:

1. Exterior maintenance, including the foundation, walls, slab, doors and roof and replacement;
2. A refuse container to be shared by all tenants in the Property;
3. Common electric facilities and the HVAC unit(s);
4. Common water facilities;
5. Fire Alarm inspections for the common facilities and Property; and
6. Hallways, stair rails, and related elements outside of the Premises within the Property.

**B. MAINTENANCE BY TENANT:**

1. Snow and ice removal, including salting, from front walkway of Premises and parking spaces behind the Property within 24 hours of any snow event with accumulation of an 1 inch or more. Tenant will furnish snow removal equipment and salt.
2. Premises maintenance and all fixtures and property within the space;
3. All refuse from Premises to be placed in appropriate containers; and

4. The Tenant will at all times maintain all of the Premises in a clean, neat and orderly condition. The Tenant will not use the Premises in a manner that will violate or make void or inoperative any policy of insurance held by the Landlord.

#### **SECTION 5: SECURITY DEPOSIT**

Concurrently with the execution of this Lease, Tenant shall deposit with Landlord the sum of Two Thousand and 00/100 Dollars (\$2,000.00). Said sum shall be held by Landlord as security for the performance of all terms, covenants and conditions of this Lease to be performed by Tenant. If Tenant defaults with respect to any provisions of this lease, Landlord may at her option apply all or any portion of such deposit to compensate Landlord for any loss or damage it may sustain. Landlord shall not be required to keep this security deposit separate from its general funds and Tenant shall not be entitled to any interest on such deposit. At the termination of this Agreement Landlord shall refund the said security deposit to Tenant. In the event Tenant has breached any of the terms, covenants and conditions of this Agreement or fails to leave the premises in substantially the same condition as when Tenant took possession, normal wear and tear excepted, Landlord shall be entitled to deduct from the security deposit the amount expended by Landlord for necessary and reasonable repairs Tenant shall not use the security deposit as the last month's rental payment. The Landlord shall itemize the deductions from the Security Deposit, if any.

#### **SECTION 6: OPTION TO PURCHASE PROPERTY:**

**A. GENERAL:** Tenant initially is only a Tenant of the Premises which is owned and managed by Landlord. The Landlord owns the Property, on which the Premises is located. As such, Tenant's monthly payments are lease and rental payments. However, under the Landlord's terms of this Agreement, the Tenant has an option to purchase the Property so long as the Tenant is occupying and leasing the Property and is otherwise in compliance with Landlord's program rules after the end of the third year (the "Option"). Tenant must submit written notification to Landlord that it intends to exercise the Option within 90 days of expiration of the third year, thus notice must be sent on or before the beginning of the 33<sup>rd</sup> month of the Lease. If Tenant elects to NOT exercise the Option prior to the end of the third year of this Agreement, the following are applicable: (1) the Landlord is freely able to market, enter into a contract, and sell the Property to another purchaser; (2) Tenant shall remain a Tenant of the Premises for the remainder of the term of the Agreement; and (3) Tenant shall not have another option beyond the third year to purchase the Property at the end of the Term.

**B. PURCHASE PRICE:** The purchase price of this Property will be \$362,650.00 (the "Purchase Price"), which is based on the fair market value and current appraisal of the Property and the actual cost of tenant improvements (see Section 8) on the date of exercising the option and corporate authority decision. The Purchase Price is based on the amount of the original purchase price that the City paid for the property (\$237,650.00), the CDBG funds anticipated to be used for the

renovation of the residential units (\$40,000.00), and part of the estimated Tenant Improvement Allowance (defined *supra*).

**C. CASH USED ALONE TO PURCHASE:** The Tenant may notify Landlord that they have the resources to purchase the Property and that the Tenant is exercising the Option prior to the expiration of the Agreement. A closing or transfer of ownership will occur upon the Tenant paying the purchase price and the Parties execution of a purchase and sale contract ("**Property Purchase Agreement**").

**D. RENTAL CREDITS USED TO PURCHASE:** Credit will NOT be given for residential rent payments, made to Landlord pursuant to the Lease Agreement between Landlord and Anne Carlson and Cody Modeer, for the Option. The Landlord will only give credit towards the purchase price for rent payments made under this agreement for the lease of the Premises subject to this Agreement (the "**Rental Credit**").

**E. CASH AND RENTAL CREDIT USED TO PURCHASE:** The Tenant may notify Landlord that they will be exercising the Option to Purchase and that they wish to use the Rental Credit and have the resources to supplement those credits to purchase the Property. A closing and transfer of ownership will occur upon the Tenant paying the difference between the rental credit and the purchase price.

**F. DELINQUENCIES:** Should the Tenant have incurred delinquencies with Landlord, the Tenant will be required to payoff those delinquencies upon any offer to exercise its Option.

**G. TENANT BREACH:** Should the Tenant breach this Agreement for any reason other than nonpayment, at the discretion of Landlord, the Tenant's Option may be denied.

**H. LANDLORD REPORTING:** So long as Tenant is leasing the Premises, Landlord shall provide at the Tenant's request, approximately every year, a written accounting of the rent paid on the Premises, any delinquencies owing, and the Property purchase price. However, except for the above, Landlord is not obligated to advise the Tenant when the Rental Credit equals or exceeds the purchase price.

**I. PROPERTY SOLD:** If the Property is purchased by the Tenant, the maximum interest that Landlord has in the land and structures in accordance with the Property PIN as indicated on Exhibit "A", and will be transferred pursuant to the Property Purchase Agreement.

**J. NO OBLIGATION TO PURCHASE THE PROPERTY:** A Tenant is under no obligation to purchase the Property and has the right to continue under the terms of this Agreement as Tenant/renter. However, if the Tenant fails to exercise his or her option at the conclusion of this Agreement, the Option to Purchase shall expire.

**K. NO LANDLORD RESPONSIBILITY AFTER PURCHASE:** Upon sale to Tenant pursuant to this Agreement, the Tenant shall become solely responsible for the Property.

**SECTION 7: USE OF PREMISES**

**A. PURPOSES:** Tenant will use the Premises to operate a wine bar and sell alcohol products and transaction of other related business and uses incidental thereto, and no part of the Premises will be used for any other purpose without the prior written consent of Landlord. The use of the premises will be in conformance with the restrictions set forth in the Class S Liquor License granted to the Tenant's by the City of Evanston corporate authorities. Prior to the issuance of a business license, the Tenant shall submit copies of final lien waivers to Landlord from Tenant's contractors and subcontractors for the tenant improvements.

**B. BUSINESS HOURS:** Tenant will operate the Premises and be open for business at the discretion of the Tenant. When Tenant is open for business, Tenant will provide adequate personnel to service its customers. However, if Tenant is unable to comply with this provision due to shortage of materials, act of God, and destruction of the premises by fire or other reason beyond Tenant's control (financial inability of Tenant accepted), Tenant will not be deemed to be in default.

**C. STORAGE OF MERCHANDISE:** Tenant agrees to store on the Premises only goods, wares and merchandise Tenant intends to offer for retail sale from the Premises or use in connection with the service offered by Tenant in regular course of the named Tenant's business. Tenant agrees to use for office or clerical purposes only that space as is reasonably required for Tenant's business. In the basement of the Property, storage lockers are available for the tenants to the Property. For the Premises, Tenant shall be entitled to the use of one (1) storage locker. Tenant shall be responsible for providing a lock for the storage locker. Landlord is not responsible for any lost or stolen items from the storage locker.

**D. STORAGE OF INFLAMMABLE MATERIALS:** Tenant agrees that it will not permit to be kept at the Premises any gasoline, distillate or other petroleum product, or other substance of an explosive or inflammable nature as may endanger any part of the premises without the written consent of the Landlord.

**E. USE IMPAIRING STRUCTURAL STRENGTH:** The Tenant will not permit the Premises to be used in any manner that will impair the structural strength of the store building, or permit the installment of any machinery or apparatus the weight or vibration of which may tend to impair the building's foundations or structural strength.

**F. GARBAGE DISPOSAL:** The Tenant will not incinerate any garbage or debris in or about the Premises, and will cause all containers, rubbish, garbage and debris stored in the Premises to be hauled away for disposal before accumulation of any substantial quantity.



**G. PUBLIC REGULATIONS:** In the conduct of its business on the Premises, Tenant will observe and comply with all laws, ordinances and regulations of public authorities. Tenant acknowledges that the Property is owned by the City of Evanston and therefore no smoking will be permitted at the Property.

**H. OTHER MISUSE:** Tenant will not permit any unlawful or immoral practice with or without his knowledge or consent, to be committed or carried on in the Premises by Tenant or any other person. Tenant will not use or allow the use of the Premises for any purpose whatsoever that will injure the reputation of the Premises or of the building of which they are a part.

**I. PARKING:** Tenant shall not be entitled to a parking spot in the back of the Property as part of this Lease Agreement. As stated in the Residential Lease, the Tenant is entitled to one (1) parking spot for the residential leased premises.

**SECTION 8: IMPROVEMENTS.**

**A. FINANCING STATEMENT:** The City will record a Uniform Commercial Code ("UCC") Financing Statement against the Property for the fixtures, business equipment, and other personal property to be installed at the property pursuant to the site plan (the "Site Plan"). The Financing Statement will secure the Landlord's loan, as detailed in Section 9 to Tenant for the improvements to the Premises. The Tenant will also be required to execute a security agreement which details the terms and conditions that the Landlord can lien the fixtures, business equipment, and personal property (the "Security Agreement"). The terms and conditions of the Security Agreement shall be incorporated into the Lease herein by reference.

**B. INSTALLATION OF EXTERIOR LIGHTING AND FIXTURES:** Tenant will not install any exterior lighting, exterior plumbing facilities, shades or awnings, amplifiers, or similar devices, or use any advertising medium that may be heard outside the Premises, such as loudspeakers, or radio broadcasts, without Landlord's prior written consent.

**C. IMPROVEMENT INSTALLATION AND ALLOWANCE:**

1. Improvement Allowance: Landlord shall provide Tenant with an improvement allowance to renovate the Property in the principal amount of no greater than \$100,000.00, the final amount to be determined based on the architecture drawings, scope of work, and cost projections (the "Tenant Improvement Allowance"). The Tenant Improvement Allowance shall be approved by the City Manager prior to any construction. This Improvement Allowance shall NOT be paid out directly to the Tenant and not be funded until: (a) City of Evanston Council has approved the Agreement; (b) the Agreement is executed; and (c) Final improvement plans attached as Exhibit "B" are accepted by both Parties. The Landlord, as administrator of the grant, shall pay the contractors for the

improvements directly in accordance with a separate TIF Grant Agreement, the terms of which are incorporated herein by reference. The Improvement Allowance is funded through the Howard-Ridge Tax Increment Financing (TIF) District.

2. Construction of Improvements: The Tenant shall contract for the construction of the improvements. The improvements shall be in substantial conformance with the attached plans on Exhibit "B" (the "**Tenant Improvements**"). Any variation from the plans shall be first approved by the Landlord. Landlord shall not unreasonably withhold its consent for approval of the revised plans.

D. Subject to the improvements provided on Exhibit "B", Tenant shall not attach, affix or exhibit or permit to be attached, affixed or exhibited, except by Landlord or his agent, any articles of permanent character or any sign, attached or detached with any writing or printing thereon, to any window, floor, ceiling, door or wall in any place in or about the Premises, or upon any of the appurtenances thereto, without in each case the written consent of the Landlord; and shall not commit or suffer any waste in or about said Premises; and shall make no changes or alterations in the Premises by the erection of partitions or the papering of walls or otherwise, without the consent in writing of Landlord; and in case Tenant shall affix additional locks or bolts on doors or window, or shall place in the Premises lighting fixtures or any fixtures of any kind without the consent of the Landlord first had and obtained such locks, bolts and fixtures shall remain for the benefit of Landlord, and without expense of removal or maintenance to Landlord.

**SECTION 9: CDBG LOAN TO TENANT:** The City shall provide a 10-year loan to the Tenant in the principal amount of up to \$130,000.00 (One Hundred Thirty Thousand and no/100 Dollars), together with interest on the unpaid principal balance from August 15, 2012, until paid in full. Borrower (Tenant) will pay this loan in 120 regular payments of \$1,316.19 each. The loan shall be repaid at the earlier of the following two dates: (1) after the date of termination of this Lease, without the Tenant exercising its option to purchase; or (2) at the conclusion of the 120<sup>th</sup> month. The loan terms are more specifically provided in the promissory note to evidence the indebtedness (the "Note"). The Note will be secured by the fixtures and personal property to which the City will be filing a UCC Financing Statement, as provided in Section 8. Additionally, the CDBG Loan shall be administered in accordance with the guidelines and requirements provided in a project agreement between the City and its Borrower (the "Project Agreement"). The Project Agreement and Note terms shall be incorporated into the Lease herein by reference.

**SECTION 10: SIGNS:** Tenant will have the exclusive right to maintain on the exterior and interior of the Premises, at its own expense, all signs necessary to conduct the business of Tenant. Tenant acknowledges that there are limitations from the City of Evanston's Municipal Code for the sign size, type, and number and Tenant agrees to be bound by such laws and ordinances.

**SECTION 11: DEFECTS; DEFECTIVE CONDITION; WIND; ACTS OF THIRD PERSONS:** Except as provided by Illinois law, Landlord will not be liable to Tenant for any damage or injury to Tenant or Tenant's property occasioned by the failure of Landlord to keep the Premises in repair, and shall not be liable for any injury done or occasioned by wind or by or from any defect of plumbing, electric wiring or of insulation thereof, gas pipes, water pipes or steam pipes, or from broken stairs, porches, railings or walks, or from the backing up of any sewer pipe or down-spout or from the bursting, leaking or running of any tank, tub, washstand, water closet or waste pipe, drain, or any other pipe or tank in, upon or about the Premises or the building of which they are a part nor from the escape of steam or hot water from any radiator, it being agreed that said radiators are under the control of Tenant, nor for any such damage or injury occasioned by water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Premises, or otherwise, nor for any such damage or injury done or occasioned by the falling of any fixture, plaster, or stucco, nor for any damage or injury arising from any act, omission or negligence or co-tenants or of other persons, occupants of the same building or of adjoining or contiguous buildings or of owners of adjacent or contiguous property, or of Landlord's agents or Landlord, all claims for any such damage or injury being hereby expressly waived by Tenant.

**SECTION 12: CASUALTY DAMAGE; REPAIRS; ABATEMENT OF RENT**

**A. USE OF PARTIALLY DAMAGED PREMISES:** On damage or destruction to the Premises, Tenant will continue to use them for the operation of its business to the extent practicable.

**B. RIGHT TO TERMINATE ON DESTRUCTION OF TWO-THIRDS OF PREMISES:** Either Party will have the right to terminate this Agreement if, during the last year of the term, the Premises is damaged to an extent exceeding two-thirds of the reconstruction cost of the Premises as a whole. On termination, this Agreement will be affected by written notice to the other Party, delivered within ten days of the damage.

**C. REPAIRS BY LANDLORD:** If the Premises are damaged or destroyed before or after the start of the Agreement by any cause beyond Tenant's control, then Landlord will immediately, on receipt of insurance proceeds paid in connection with casualty damage, but no later than sixty days after damage has occurred, proceed to repair the premises. Repairs will include any improvements made by Landlord or by Tenant with Landlord's consent, on the same plan and design as existed immediately before the damage occurred, subject to those delays reasonably attributable to governmental restrictions or failure to obtain materials, labor or other causes, whether similar or dissimilar, beyond the control of Landlord. Materials used in repair will be as nearly like original materials as reasonably procured in regular channels of supply. Wherever cause beyond the power of the party affected causes delay, the period of delay will be added to the period in this lease for completion of the work, reconstruction or replacement.

**D. REDUCTION OF RENT DURING REPAIRS:** If Tenant continues to conduct business during the making of repairs, the fixed minimum monthly rental will be equitably reduced in the proportion that the unusable part of the premises bears to the whole. The determination of the unusable space shall be determined by the Landlord based on square footage. No rent will be payable while the store building is wholly unoccupied pending the repair of casualty damage.

**SECTION 13:        *REPAIRS AND MAINTENANCE***

Tenant shall keep the Premises and appurtenances thereto in a clean condition, and in good repair, all according to the statutes and ordinances in such cases made and provided, and the directions of public officers thereunto duly authorized, all at Tenant's own expense, and shall yield the same back to Landlord, upon the termination of this Agreement, whether such termination shall occur by expiration of the term, or in any other manner whatsoever, in the same condition of cleanliness, repair and sightlines as at the date of the execution hereof, loss by fire and reasonable wear and tear excepted. Tenant shall make all necessary repairs and renewals upon Premises and replace broken globes, glass and fixtures with material of the same size and quality as that broken and shall insure all glass in windows and doors of the Premises at his own expense. If, however, the Premises shall not thus be kept in good repair and in a clean, and healthy condition by Tenant, as aforesaid, Landlord may enter the same, or by Landlord's agents, servants or employees, without such entering causing or constituting a termination of this Agreement or an interference with the possession of the Premises by Tenant, and Landlord may replace the same in the same condition of repair, sightlines, healthiness and cleanliness as existed at the date of execution hereof, and Tenant agrees to pay Landlord, in addition to the rent hereby reserved, the expenses of Landlord in thus replacing the Premises in that condition. Tenant shall not cause or permit any waste, misuse or neglect of the water, or of the water, gas or electric fixtures.

Tenant will, at Tenant's expense, maintain all of the demised Premises, including but not limited to, store fronts, bulk-heads, exterior entry and exit doors, ornamental facing, plate glass and glazing on the demised Premises, in good condition and repair. Tenant will also be in compliance with all laws and regulations during the entire term of this Agreement, except for repairs required of the Landlord to be made and damage occasioned by fire, hurricane or other causes as provided for in this Agreement.

**SECTION 14:        *UTILITIES***

Tenant agrees to pay before delinquency all charges for gas, water, heat, electricity, power and other similar charges incurred by Tenant during its occupancy of the Premises.

**SECTION 15:        *TAXES***

Tenant will pay before delinquency all taxes levied on Tenant's fixtures, equipment and personal property on the demised Premises, whether or not affixed to the real property. Landlord will prorate the real estate taxes for the Property based on the proportionate share of the square footage of the Premises (the "Premises Real

Estate Taxes"), which is equal to thirty three percent (33%). The Landlord will invoice the Tenant for the Premises Real Estate Taxes and payment must be received within 30 days of the date of the invoice. The amount of the Real Estate Taxes owed will fluctuate based on Cook County assessments.

## **SECTION 16:        INSURANCE**

**A. INSURANCE COMPANIES:** It is agreed that any policies of insurance to be maintained by the respective parties will be obtained from good and solvent insurance companies.

**B. TENANT TO OBTAIN LIABILITY INSURANCE:** Tenant agrees that it will, at its expense, maintain a policy of insurance, written by responsible insurance carriers, approved by Landlord that will insure Landlord against liability for injury to or death of persons or damage to property occurring about the demised Premises. The liability under insurance will be at least \$1 million for any one person injured or killed or any one occurrence, \$2 million general aggregate coverage for any one accident, and \$ 100,000.00 property damage.

**C. TENANT TO OBTAIN WORKER'S COMPENSATION INSURANCE:** Tenant agrees to maintain employees' Worker's Compensation insurance required under Illinois law, and any other insurance necessary to protect Landlord against liability to person or property.

**D.        TENANT TO OBTAIN FIRE INSURANCE ON FIXTURES AND INVENTORY:** The Tenant agrees to maintain on all equipment in the Premises, a policy of fire insurance in companies approved by the Landlord of at least 80 % of the insurable replacement value. Tenant also will maintain adequate inventory insurance, the proceeds of which will, as long as this Agreement is in effect, be used for the replacement of the insured property. The policy will name Landlord as additional beneficiary to protect Landlord's interest as Landlord.

**E. LANDLORD TO OBTAIN FIRE INSURANCE ON PREMISES:** Landlord agrees to maintain during this Agreement, a policy fire insurance of at least 80 % of the insurable value of the Premises. If permitted without additional charge, Landlord will cause to be endorsed on its fire insurance, and any extended coverage policy or policies, the waiver of right of subrogation.

**F. TENANT'S WAIVER OF CASUALTY INSURANCE PROCEEDS:** If the Premises are damaged by fire or other casualty insured against, Tenant agrees to claim no interest in any insurance settlement arising out of any loss where premiums are paid by Landlord, or where Landlord is named as sole beneficiary, and that it will sign all documents required by Landlord or the insurance company necessary in connection with the settlement of any loss.

**G. CONTROL OF INSURANCE PROCEEDS TO AVOID TAXABLE GAIN:** If the Premises, including any improvements, were to be damaged in any manner, and the

receipt of any insurance proceeds or other reimbursement for such damage would result in the realization of taxable gain for federal or state purposes, then the party to whom the gain would be taxed will have the right to take all action respecting proceeds or reimbursements necessary to enable party to comply with any regulations of the appropriate taxing authorities, so that the gain will not be recognized for tax purposes. Nothing here will be construed to entitle Landlord to delay any repairs to any part of the improvements in the event of damage.

**H. TENANT'S FAILURE TO INSURE:** Should Tenant fail to keep in effect and pay for insurance as required by this section, the Landlord may do so.

**SECTION 17:            *SUBLETTING; ASSIGNMENT***

The Premises shall not be sublet in whole or in part to any person other than Tenant, and Tenant shall not assign this Agreement to any person or corporate entity, unless directly affiliated with a corporate entity of Tenant. If Tenant, or any one or more of the Tenants, if there be more than one, shall make an assignment for the benefit of creditors, or shall be adjudged a bankrupt, Landlord may terminate this Agreement, and in such event Tenant shall at once pay Landlord a sum of money equal to the entire amount of rent reserved by this Agreement for the then unexpired portion of the term hereby created as liquidated damages. At Landlord's option, should Landlord consent to any assignment or sublease of the demised Premises, Tenant shall nevertheless remain liable for all terms and conditions of this Agreement until the expiration of the Agreement term stated above.

**SECTION 18:            *SURRENDER OF PREMISES – HOLDING OVER***

Subject to the Option to Purchase language, Tenant will, at the termination of this Lease, leave the Premises in as good condition as they are in at the time of entry by Tenant, except for reasonable use and wear, acts of God, or damage by casualty beyond the control of Tenant. On vacating, Tenant will leave the Premises clear of all rubbish and debris. If Tenant retains possession of the Premises or any part thereof after the termination of the term by lapse of time or otherwise, then Landlord may at its option within thirty days after termination of the term serve written notice upon Tenant that such holding over constitutes the creation of a month to month tenancy, upon the terms of this Agreement. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as hereinafter set forth; nor shall receipt of any rent or any other act in apparent affirmation of tenancy operate as a waiver of the right to terminate this Agreement for a breach of any of the covenants herein.

**SECTION 19:            *INDEMNIFICATION AND LIENS***

**A. LIENS AND ENCUMBRANCES:** The Tenant will hold the Landlord harmless from all claims, liens, claims of lien, demands, charges, encumbrances or litigation arising out of any work or activity of Tenant on the Premises. Tenant will, within sixty

(60) days after filing of any lien, fully pay and satisfy the lien and reimburse Landlord for all resulting loss and expense, including a reasonable attorney's fees. Provided, however, in the event that Tenant contests any lien so filed in good faith and pursues an active defense of said lien, Tenant shall not be in default of this paragraph. However, in the event of any final judgment against Tenant regarding such lien, Tenant agrees to pay such judgment and satisfy such lien within 60 days of the entry of any such judgment.

**B. DISCHARGE OF LIEN:** If Tenant fails to fully discharge any claim, lien, claim of lien, demand, charge, encumbrance, or litigation, or should proceedings be instituted for the foreclosure of any lien or encumbrance, and if judgment is rendered against Tenant either by a court of competent jurisdiction or by arbitration and Tenant still persists in non-payment of the same within the 60 day set forth above, Landlord will have the right at any time after expiration of the 60-day period, to pay the lien or encumbrance. All amounts so paid will be repaid by the Tenant on demand, together with interest at the rate of  10 % per year from the date of payment and shall be considered additional rent owed to Landlord by Tenant.

**C. INDEMNIFICATION OF LANDLORD:** Except as otherwise provided in this Agreement, Tenant shall protect, indemnify and save Landlord and its officers, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from injury to persons or damage to property on the Premises, arising out of or in connection with Tenant's use or occupancy of the Premises or Tenant's activities on the Premises, or contracts entered into for work on the Premises, or arising from any negligent or willful act of Tenant. Tenant shall pay for all of Landlord's costs of suit and attorneys fees and expenses.

**D. INDEMNIFICATION OF TENANT.** Except as otherwise provided in this Agreement, Landlord shall protect, indemnify and save Tenant and its officers, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from injury to persons or damage to property on the Premises, arising out of or in connection with Landlord's negligent act or omission or willful misconduct. Landlord shall pay for all of Tenant's costs of suit and attorneys fees and expenses.

**SECTION 20:        *LANDLORD'S RIGHT OF INSPECTION AND REPAIRS***

Tenant shall allow Landlord or any person authorized by Landlord reasonable access to the Premises during regular business hours for the purpose of examining or exhibiting the same, or to make any repairs or alterations thereof which Landlord may see fit to make. If the Tenant does not exercise the Option and/or will be vacating the Premises at or prior to the end of the Term, Tenant will also allow Landlord to have placed upon the Premises at all times notices of "For Sale" and "For Rent", and Tenant will not interfere with the same.

**SECTION 21:        *DEFAULT AND REMEDIES***

**A. EVENT OF DEFAULT:** Any one of the following events shall be deemed to be an event of default hereunder by Tenant subject to Tenant's right to cure:

- (1) Tenant shall fail to pay within five (5) days, any item of Base Rent at the time and place when and where due;
- (2) Tenant shall fail to maintain the insurance coverage as set forth herein;
- (3) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than the payment of rent, and shall not cure, or commence the good faith cure of any such failure, within fifteen (15) days after written notice to the Tenant of such failure;
- (4) Tenant shall make a general assignment the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy; or
- (5) Any default by Tenant under the terms of the Note, Project Agreement, or Security Agreement.

**B. OCCURRENCE OF AN EVENT:** Upon the occurrence of any event of default, Landlord shall have the option to pursue any one or more of the following remedies subject to the laws of the State of Illinois and the Tenants right to cure:

- (1) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, but if Tenant fails to do so, Landlord may, without further notice and without prejudice to any other remedy Landlord may have for possession or arrearages in rent or damages for breach of contract, enter upon the Premises and expel or remove and with or without notice of such election or any notice or demand whatsoever, this Agreement shall thereupon terminate and upon the termination of Tenant's right of possession, as aforesaid, whether this Agreement be terminated or not, Tenant agrees to surrender possession of the Premises immediately, without the receipt of any demand for rent, notice to quit or demand for possession of the Premises whatsoever and hereby grants to Landlord full and free license to enter into and upon the Premises or any part thereof, to take possession thereof with or (to the extent permitted by law) without process of law, and to expel and to remove Tenant or any other person who may be occupying the Premises or any part thereof, and Landlord may use such force in and about expelling and removing Tenant and other persons as may reasonably be necessary, and Landlord may re-possess herself of the Premises as of her former estate, but such entry of the Premises shall not constitute a trespass or forcible entry or detainer, nor shall it cause a forfeiture of rents due by virtue thereof, nor a waiver of



any covenant, agreement or promise in this Agreement contained to be performed by Tenant. Tenant and its effects, without being liable to prosecution or any claim for damages therefor; and Tenant agrees to indemnify Landlord for all loss and damage which Landlord may suffer by reason of such lease termination, whether through inability to re-let the Premises, or through decrease in Rent, or otherwise.

(2) Landlord may recover from Tenant upon demand all of Landlord's costs, charges and expenses, including the fees and costs of counsel, agents and others retained by Landlord which have been incurred by Landlord in enforcing Tenant's obligations hereunder, subject to Landlord prevailing on its claims.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or available to Landlord at law or in equity, or constitute a forfeiture or waiver of any Rent due hereunder or of any damages suffered by Landlord.

**C. REPOSSESSION OR RELETTING NOT A TERMINATION; LANDLORD'S RIGHT TO TERMINATE NOT FORFEITED:** No repossession, operation or re-letting of the Premises or of fixtures and equipment will be construed as an election by Landlord to terminate this Agreement unless a written notice is given by the Landlord to the Tenant. The Landlord may terminate this Agreement if the Tenant remains in default. The acceptance of rent, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereof by Tenant, or the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts except written waiver, shall not be construed as a waiver of Landlord's rights to act without notice or demand or of any other right hereby given Landlord, or as an election not to proceed under the provisions of this Agreement.

**D. TENANT'S OBLIGATION TO PAY DEFICIENCIES:** If rentals received by the Landlord from re-letting the Premises under the provisions of this section are insufficient to pay all expenses and amounts due, Tenant will pay any deficiencies to the Landlord on demand and be declared in default for failure to pay.

**E. LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES AT TENANT'S COST:** If in Landlord's judgment any default by Tenant will jeopardize the Premises or the rights of Landlord, Landlord may, without notice, elect to cure Tenant's default and Tenant will reimburse Landlord, with interest, on 10-days' notice by Landlord to Tenant.

**F. LANDLORD'S RIGHT TO TERMINATE AGREEMENT:** If Tenant defaults as stated in Paragraph A of this section, Landlord may, without further notice, terminate this Agreement and all interest of Tenant and may take possession of the Premises by legal proceedings.

**G. LANDLORD'S RIGHT ON TERMINATION TO RECOVER AMOUNT EQUAL TO RENT RESERVED:** If this Agreement is terminated by Landlord due to any default by Tenant, Landlord will be entitled to recover from Tenant, at termination, the excess, if any, of the rent reserved in this Agreement for the balance of the term over the reasonable rental value of the Premises for the same period. The "reasonable rental value" will be the amount of rental Landlord can obtain as rent for the balance of the term.

**H. LANDLORD'S REMEDIES CUMULATIVE:** All of the remedies given to Landlord in this Agreement or by law are cumulative, and the exercise of one remedy by the Landlord will not impair its right to exercise any other right or remedy.

**SECTION 22: INTENTIONALLY DELETED.**

**SECTION 23: *REMOVAL OF OTHER LIENS***

In event any lien upon Landlord's title results from any act or neglect of Tenant and Tenant fails to remove said lien within ten days after Landlord's notice to do so, Landlord may remove the lien by paying the full amount thereof or otherwise and without any investigation or contest of the validity thereof and Tenant shall pay Landlord upon request the amount paid out by Landlord in such behalf, including Landlord's costs, expenses and reasonable attorney's fees. If Tenant demonstrates to Landlord that Tenant is contesting the validity of said lien in good faith, then Landlord shall allow Tenant to so contest such lien until either Tenant either abandons such contest or a final verdict is reached in a court of competent jurisdiction. Any amount advanced on behalf of Tenant shall be paid to Landlord by Tenant within 30 days after such advancement is made together with interest at 9% per annum and such amount shall be considered additional rentals.

**SECTION 24: *REMEDIES NOT EXCLUSIVE***

The obligation of Tenant to pay the rent reserved hereby during the balance of the term hereof, or during any extension hereof, shall not be deemed to be waived, released or terminated, by the service of any five-day notice, other notice to collect, demand for possession, or notice that the tenancy hereby created will be terminated on the date therein named, the institution of any action of forcible detainer or ejectment or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of Tenant's right to possession of the Premises. The Landlord may collect and receive any rent due from Tenant and payment or receipt thereof shall not waive or affect any such notice, demand, suit or judgment, or in any manner whatsoever waive, affect, change, modify or alter any rights or remedies which Landlord may have by virtue hereof.

**SECTION 25: *EXPENSES OF ENFORCEMENT***

Tenant, if Landlord is the prevailing party, shall pay upon demand all Landlord's costs, charges and expenses, including reasonable attorney's fees, agents fees and fees of others retained by Landlord, incurred in enforcing any of the obligations of

Tenant under this Agreement, or in any litigation, negotiation or transaction in which Landlord shall, without Landlord's fault become involved through or on account of any action or omission of Tenant regarding this Agreement.

Landlord, if Tenant is the prevailing party, shall pay upon demand all Tenant's costs, charges and expenses, including reasonable attorney's fees, agents fees and fees of others retained by Tenant, incurred in enforcing any of the obligations of Landlord under this Agreement, or in any litigation, negotiation or transaction in which Tenant shall, without Tenant's fault become involved through or on account of any action or omission of Landlord regarding this Agreement.

**SECTION 26:            *EMINENT DOMAIN***

**A. MORE THAN 30 PERCENT TAKEN:** If 30 percent or more of the Premises are taken for a public or quasi-public use, this lease will terminate as of the date of the physical taking, and the Parties will be released from all further liability.

**B. LESS THAN 30 PERCENT TAKEN:** If the taking affects less than 30 percent of the Premises, the Landlord will, with reasonable diligence, proceed at Landlord's expense to repair the Premises and place them in tenantable condition within 120 days after the date of the actual physical taking. However, if 25% percent or more of the Premises as a whole is taken, the Landlord may elect to terminate this Agreement, notwithstanding that less than 30 percent of the Premises were taken. On termination, the parties will be released from all further liability under this Agreement.

**C. ABATEMENT OF RENT:** During any repair, Tenant will be required to pay only that part of the fixed minimum monthly rental as the area of the tenantable Premises remaining during repairs bears to the entire area leased. On completion of repairs, the fixed minimum monthly rental will be adjusted in proportion to the repaired area, and Tenant will be required to pay the adjusted fixed minimum monthly rental in accordance this Agreement. There will be no abatement of any rent once physical possession is taken of part of the Premises. The method of computing the percentage rental will not change, and there will be no reduction of percentage rental.

**D. RIGHT TO CONDEMNATION AWARD:** Any award made in any condemnation proceeding for the taking of any part of the Premises will be the sole property of Landlord.

**SECTION 27:            *GOVERNMENTAL INTERFERENCE WITH POSSESSION***

Tenant will not be released from its obligation should its possession of the Premises be interfered with by adoption of any law, ordinance, resolution, regulation or act of any legal or governmental authority. Further, Tenant will not be released by any order of abatement or judgment preventing use of the premises on the ground that the Premises or the business operated there constitutes a legally recognized nuisance.

**SECTION 28:            *PEACEFUL ENJOYMENT***

Landlord covenants and warrants that, subject to any trust deeds or mortgages of record, it is the owner of the Property and Premises, and that Tenant, on payment of rents and performance of the conditions, covenants, and agreements to be performed by it, may enjoy the Premises without interruption or disturbance.

**SECTION 29:        *EFFECT OF WAIVER OF BREACH OF COVENANTS***

No waiver of any breach of any condition of this Agreement will be construed to be a waiver of any other breach of provision, covenant or condition.

**SECTION 30:        *TIME OF THE ESSENCE***

Time is of the essence.

**SECTION 31:        *AMENDMENTS TO BE IN WRITING***

This Agreement may be modified or amended only in writing signed by Landlord and Tenant. It may not be amended or modified by oral agreements between the Parties unless they are in writing duly executed by Landlord and Tenant.

**SECTION 32:        *PARTIES BOUND***

Every provision of this Agreement will bind the parties and their legal representatives. The term "legal representatives" is used in its broadest meaning and includes, in addition to executors and administrators, every person, partnership, corporation or association succeeding to any interest in this Agreement. Every covenant, agreement and condition of this Agreement will be binding on Tenant's assignees, subtenants, concessionaires and/or licensees, heirs, administrators and executors.

**SECTION 33:        *NOTICES***

All notices or demands that Landlord may need to serve under this Agreement may be served on Tenant (as an alternative to personal service) by mailing a copy by registered or certified mail to the following addresses for the parties:

City of Evanston  
Attn: W. Grant Farrar, Corporation Counsel  
2100 Ridge Avenue, Rm 4400  
Evanston, IL 60201

Cody Modeer and Anne Carlson  
631 Howard Street, Unit 2  
Evanston, IL 60202

Service will be deemed complete at the time of the leaving of notice or within 2 days after mailing. All notices or demands from Tenant to Landlord may be served on Landlord at the address where rent is being paid, or at any other address Landlord may in writing designate to Tenant. In the event that it appears that Tenant is avoiding the service of any notice and is not present at the Premises for a period of more than 14

consecutive days, notices may be served by posting such notice upon the Premises. Notice shall than be deemed effective 5 days after such posting.

**SECTION 34: MISCELLANEOUS**

Provisions typed on this Agreement and all riders attached to this Agreement and signed by Landlord and Tenant are hereby made a part of this Agreement. (b) Tenant shall keep and observe such reasonable rules and regulations now or hereafter required by Landlord, which may be necessary for the proper and orderly care of the building of which the Premises are a part. (c) All covenants, promises, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and assigns. (d) the rights and remedies hereby created are cumulative and the use of one remedy shall not be taken to excuse or waive the right to the use of another. (e) The words "Landlord" and "Tenant" wherever used in this Agreement shall be construed to mean Landlords or Tenants in all cases where there is more than one Landlord or Tenant herein; and the necessary grammatical changes shall be assumed in each case as though full expressed. (f) This Agreement and any written and signed Amendments and/or Riders hereto shall constitute the entire agreement between the parties, and any oral representations made by one party to the other are considered merged herein. (g) In all cases where Landlord's consent is required, Landlord's consent shall not be unreasonably withheld. (h) This Agreement may be executed in multiple copies, each of which shall constitute an original.

**SECTION 35: VENUE AND JURISDICTION**

The Parties agree the this Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois and that venue for any disputes shall be in the Circuit Court of Cook County, Illinois.

**[Signatures on following page]**

**IN WITNESS WHEREOF**, both of said Landlord and Tenant have caused this Agreement to be executed as of the date and year first above written by a duly authorized officer or manager of each of the respective parties.

**Landlord: THE CITY OF EVANSTON,**  
**an Illinois home rule municipal corporation**

By: Wally Bobkiewicz

Its: City Manager, Wally Bobkiewicz

**Tenant: WARD EIGHT LLC,**  
**an Illinois limited liability company**

By: Anne Carlson

Its: Manager, Anne Carlson

By: Cody Modeer

Its: Manager, Cody Modeer

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

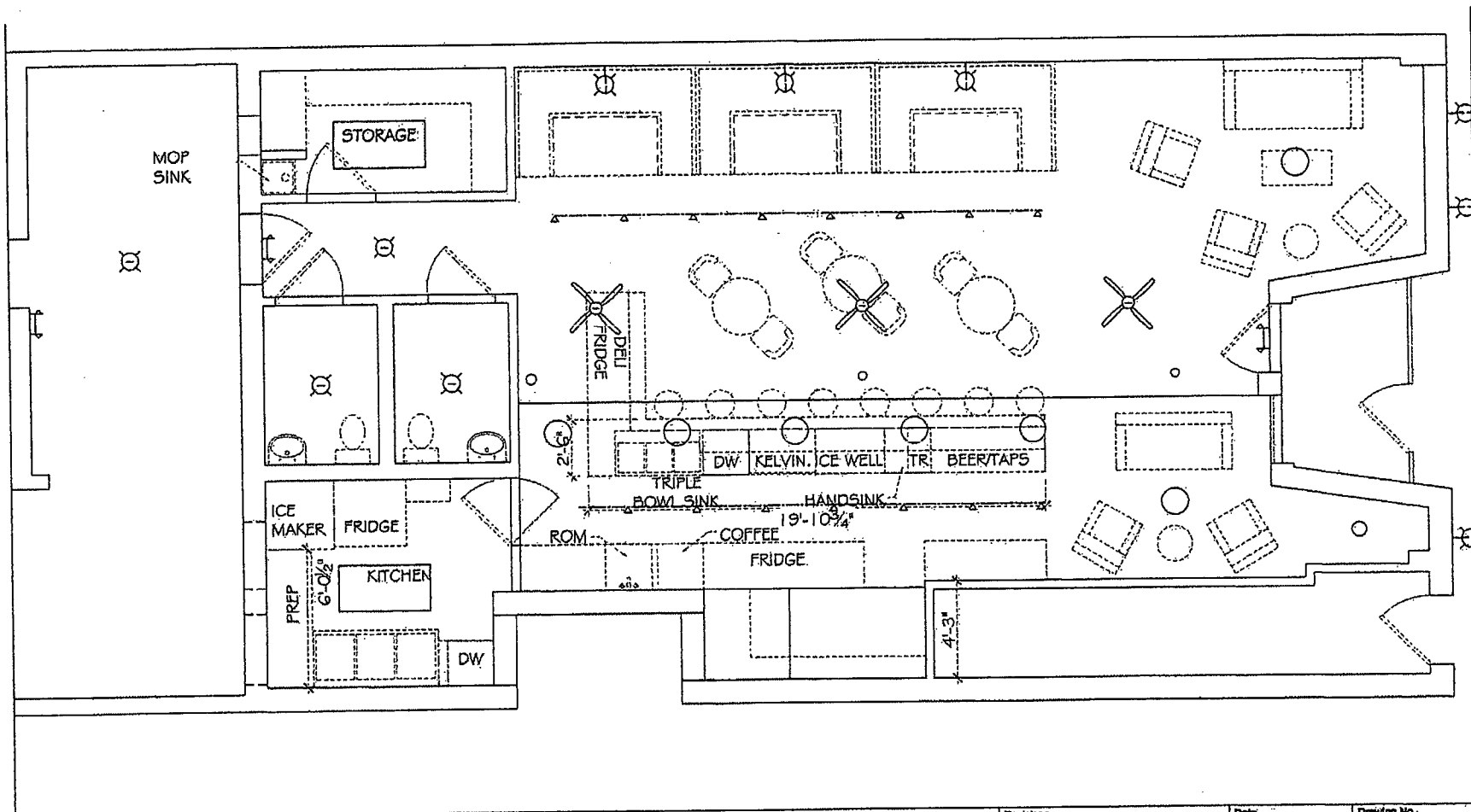
LOT 6 AND THE EAST 0.62 FEET OF LOT 5 IN BLOCK 1 IN NILES HOWARD  
TERMINAL ADDITIONAL, BEING A SUBDIVISION OF THE SOUTH 6.25 CHAINS (412  
½ FEET) OF THAT PART OF THE NORTHEAST ¼ OF SECTION 30, TOWNSHIP 41  
NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF  
THE RIGHT OF WAY OF THE CHICAGO AND NORTH WESTERN RAILROAD IN  
COOK COUNTY, ILLINOIS.

Real property address: 629-631 Howard Street, Evanston, Illinois, 60202

PIN: 11-30-209-024-0000

**EXHIBIT "B"**  
**PREMISES IMPROVEMENTS – SITE PLAN**





<p><b>AMY REICHERT, ARCHITECTURE + DESIGN</b> 6215 NORTH RAVENSWOOD SUITE #304 CHICAGO, IL 60640 PH: 773.271.5889    TC: 773.271.8892</p>	<p>Project</p> <p><b>WARD 8 629 HOWARD</b></p>	<p><b>LIGHTING PLAN FOR PRICING</b></p>	<table border="1"> <thead> <tr> <th>Revisions</th> </tr> </thead> <tbody> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </tbody> </table>	Revisions							<p>Date</p> <p><b>02/13/12</b></p> <p>Scale</p> <p><b>1/4" = 1'-0"</b></p>	<p>Drawing No.</p> <p><b>A</b></p>
Revisions												

