

4/11/2012

43-O-12

AN ORDINANCE

Authorizing the City Manager to Negotiate and Execute a Real Estate Purchase Agreement for the Real Property at 1229 Chicago Avenue, Evanston, Illinois

WHEREAS, the City of Evanston seeks to acquire real property located at 1229 Chicago Avenue, Evanston, Illinois 60202 and legally described on Exhibit "A", which is incorporated herein by reference (the "Subject Property"); and

WHEREAS, the Subject Property is owned by Northwestern University ("Northwestern"); and

WHEREAS, the Subject Property is part of a larger development of adjoining properties at 1211 Chicago Avenue and 1223-1225 Chicago Avenue, Evanston, Illinois; and

WHEREAS, the City Council of the City of Evanston has determined that City ownership of the aforesaid Subject Property is necessary, appropriate, required, and in the best interests of the City of Evanston to facilitate said future development; and

WHEREAS, the City Council has determined that the best interests of the City of Evanston would be served by negotiating a real estate purchase contract for the purchase of said Subject Property from Northwestern (the "Northwestern Real Estate Purchase Agreement"); and

WHEREAS, the City Manager recommends that the City Council hereby approve the negotiations and further execution of the Northwestern Real Estate Purchase

Agreement on terms consistent with the agreement attached as Exhibit "B" and incorporated herein by reference; and

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

SECTION 1: The City Council of the City of Evanston hereby approves the negotiation of the Northwestern Real Estate Purchase Agreement for the Subject Property.

SECTION 2: The City Manager is authorized to negotiate all terms and conditions with respect to the Northwestern Real Estate Purchase Agreement for the Subject Property as the City Manager may deem fit and proper.

SECTION 3: The City Manager and the City Clerk, respectively, are hereby authorized and directed to execute, attest, and deliver the Northwestern Real Estate Purchase Agreement and such other documents, agreements, and certificates as may be necessary to effectuate the Northwestern Real Estate Purchase Agreement if a final agreement is reached and is herein authorized.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: 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 of this ordinance that can be given effect without the invalid application or provision, and each invalid application of this ordinance is severable.

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: 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.

Introduced: May 7, 2012

Approved:

Adopted: May 7, 2012

May 10, 2012

Elizabeth B Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene
Rodney Greene, City Clerk

W. Grant Farrar
W. Grant Farrar, Corporation Counsel

EXHIBIT A

Legal Description

LOT TWENTY (20) IN BLOCK SEVENTY-SIX (76) IN NORTHWESTERN UNIVERSITY SUBDIVISION OF THAT PART OF THE NORTH HALF OF THE NORTH HALF OF SECTION NINETEEN (19), TOWNSHIP FORTY-ONE (41) NORTH, RANGE FOURTEEN (14), EAST OF THIRD PRINCIPAL MERIDIAN, LYING EAST OF CHICAGO AVENUE (EXCEPT FIFTEEN AND ONE HALF (15 1/2) ACRES IN THE NORTH EAST CORNER) IN COOK COUNTY, ILLINOIS.

PIN: 11-19-200-032-8001

Commonly Known As: 1229 Chicago Avenue, Evanston, Illinois 60202

EXHIBIT B

Real Estate Purchase Agreement

REAL ESTATE SALE CONTRACT

This agreement ("Agreement") is entered into this ___ day of _____ 2012 by and between the CITY OF EVANSTON, an Illinois municipal corporation, ("Purchaser") and NORTHWESTERN UNIVERSITY ("Seller").

1. **Purchase Price.** The Purchaser agrees to purchase from the Seller at a price of SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00) (the "Purchase Price"), on the terms set forth herein, the following described real estate in Cook County, Illinois:

LEGAL DESCRIPTION TO BE ADDED BY SELLER'S ATTORNEY PRIOR TO CLOSING.

commonly described or known as 1229 Chicago Avenue (Lot 20), Evanston, Illinois, a lot measuring approximately ___ feet by ___ feet improved with a building of approximately _____ square feet (the "Property"). Specific lot dimensions will be per survey (however, variations between the survey and the foregoing approximate figures shall not affect the validity or substance of this Agreement).

2. **Conveyance.** Seller agrees to sell the real estate and the property described above at the price and terms set forth herein, and to convey or cause to be conveyed to Purchaser, or Purchaser's nominee, title thereto by a recordable Warranty Deed, with release of homestead rights, if any, subject only to: (a) covenants, conditions and restrictions of record; (b) private, public and utility easements and roads and highways, if any; (c) special taxes or assessments for improvements heretofore completed; (e) mortgage or trust deed specified below, if any, and (f) general taxes for the year of closing and subsequent years including taxes which may accrue by reason of new or additional improvements during the year(s); and (g) any leases (as expressly described below).
3. **Earnest Money.** Upon the Seller's execution of this Agreement (the "Execution Date"), Purchaser will deposit in escrow, as earnest money, the sum of ZERO Thousand Dollars (\$ ZERO). The balance of the Purchase Price will be paid in the manner described under Section 4 (Closing) in U.S. funds in the form of a certified or cashier's check, or similar funds, in the amount of the balance owed plus or minus prorations.
4. **Closing.** The time of the closing shall be no later than sixty (60) days after the expiration or waiver of the Inspection Period ("Closing Date"), at a time to be agreed, unless the parties mutually agree otherwise, at the Skokie, Illinois office of Chicago Title Insurance Company. Notwithstanding the foregoing, given that certain contingency provided under Section 25 (concerning the consummation of the sale of an adjacent parcel to another party in a coordinated transaction), the Closing Date may be postponed by mutual agreement of the parties to this Agreement. The Purchase Price shall be due on the earlier of (a) 1 July 2013, or (b) within three (3) business days following the date upon which Purchaser or such third party, including such persons described under Section 25 below, as may be appropriate, secures a temporary or final certificate of occupancy or similar permission with regard to certain retail grocery store operations contemplated within the Property.
5. **Inspection Period.** Purchaser's obligations hereunder are subject to, at Purchaser's sole and unfettered discretion, Purchaser's approval of the Property for Purchaser's intended use. For that purpose, Purchaser is given sixty (60) days from the Execution Date to inspect the

Property and to obtain all necessary testing and municipal and governmental approvals for its intended use (the "Inspection Period").

Purchaser's approval or termination, hereunder, shall be at Purchaser's sole discretion and Purchaser may terminate this agreement during the Inspection Period for any reason (or no reason), whatsoever. If during the Inspection Period the Purchaser notifies the Seller in writing of its election to terminate this agreement, the agreement shall be terminated and null and void, and, except as to Purchaser's covenants and obligations as to indemnification, the parties shall be relieved of any further obligation and responsibility under this agreement and the earnest money and accrued interest thereon shall be returned to the Purchaser. In the event Purchaser does not or fails to give written notification of its election to terminate the agreement prior to the expiration of the Inspection Period, Purchaser shall be deemed to have waived its rights under the Inspection Period and shall be obligated to purchase the Property.

With notice to Seller, and subject to any rights of the current tenants, Purchaser and its agents shall have the right to reasonably access the Property during the Inspection Period. Purchaser or its agents may conduct reasonable research, non-destructive testing, evaluation or initiate any application or appeal for zoning (subject to the provisions below) or City of Evanston approvals ("Governmental Approvals") Purchaser deems reasonably necessary or conduct no research, testing evaluation or zoning application or appeal, at Purchaser's sole cost and expense and at Purchaser's sole and unfettered discretion. Any destructive testing, other than small material sampling required for asbestos testing, if recommended by Purchaser's environmental consultant, shall only be conducted with the written consent of Seller; in such event Seller may, but is not so obligated, require its supervision over any destructive testing and the posting by Purchaser of a reasonable deposit.

Buyer shall not cause or permit any mechanic's liens or liens to be recorded against the Property as a result of any actions taken by Purchaser or Purchaser's agents during the Inspection Period. After conducting any inspections, Purchaser shall promptly restore the Property to the condition it was in immediately prior to conducting any inspections or tests, as reasonably approved by Seller.

In the event that Purchaser desires to initiate such Governmental Approvals, it shall do so at its sole risk, cost, and expense, and timely provide the Seller with copies of all materials provided to and/or received from any governmental body. Purchaser shall timely advise Seller of any and all meetings and other proceedings, which Seller shall have the right to attend and observe. In no event shall any Governmental Approvals become final or attach in any manner to the Property until after the Closing is fully consummated. Prior to initiating any Governmental Approvals, Purchaser shall deposit with Seller a power of attorney in such form as reasonably approved by Seller, allowing Seller to terminate any and all applications commenced by Purchaser ("Power of Attorney"). Such Power of Attorney may be utilized by Seller in the event of any breach by Purchaser and/or in the event Purchaser does not proceed to acquire the Property.

6. **Inspection Period Documents.** Seller shall deliver or cause to be delivered to Purchaser or Purchaser's agent, not more than five (5) days after the Execution Date, the following information in writing regarding the Property and other items to be conveyed under the terms hereof (*or if any portion of such information does not exist, a statement that such information does not exist*):

(A) Copies of and a list of any leases, service, maintenance, management or other contracts relating to the operation of the Property;

(B) Copies of and a list of Seller's interest in any warranties, guarantees, permits and licenses relating the above and the Property and Seller's interest in any trade names used in connection with the Property (not including Seller's name);

(C) Copies of the following documents which are in the possession of Seller and agents of Seller at the Effective Date: all engineering, utility, sewer and water service, asbestos, environmental and subsurface, wetlands, flood plain and traffic studies, examinations or correspondence relating thereto; all reports, notices and other documents pertaining to any process for site plan approval, zoning, and variance process previously undertaken; correspondence with adjacent property owners; any blueprints, architectural and building drawings, structural, HVAC, mechanical and plumbing plans and specifications, survey, engineering and environmental reports in Seller's possession in connection with the Property, the notices, reports and registrations Seller has filed, if any, pursuant to Seller's obligations under the Illinois State Fire Marshal Regulations for Underground Storage Tanks, SARA Title II, the OSHA Hazard Communication Standard, and/or any other Federal, State or Local Health and Safety Regulations and all documents concerning any previous or potential litigation concerning the Property. In the event Closing does not occur, Purchaser shall promptly return the above to Seller, except to the extent needed by Purchaser to pursue a claim against Seller based on Seller's default herein;

(D) An existing boundary survey of the Property, if in the possession of Seller, and

7. In the event that, after Seller has furnished the above information or a statement that such information does not exist, if Seller shall come to possess any newer or new information on or before the Closing Date, Seller shall furnish copies of such newer or new information to Purchaser no later than fifteen (15) days after receipt thereof; provided, however, that notwithstanding anything herein to the contrary, such newer or new information shall be furnished to Purchaser, if then in existence, no later than two days prior to the Closing Date. **Release.** Purchaser does hereby release and forever discharge Seller, and its officers, trustees, beneficiaries, employees, and agents, from any and all claims, demands, citations, and causes of action of any kind or nature which may arise as a result of Purchaser's activities related to Purchaser's inspections, investigations, testings, and Governmental Approvals with respect to the Property. Purchaser shall hold Seller, and its officers, trustees, beneficiaries, employees, and agents, harmless and defend such Seller parties against any and all claims, proceedings or causes of action resulting from any action or inaction of Purchaser, its agents or employees, with respect to the Property, including costs and reasonable attorneys' fees incurred, through and including any and all appellate proceedings. Purchaser shall cause its contractors to carry Worker's Compensation Insurance in accordance with statutory requirements, Automobile Liability Insurance and Commercial General Liability Insurance, naming Seller as an additional insured, covering such contractors on or about the premises with policy limits not less than two million dollars (\$2,000,000.00) in the event of personal injury to any number of persons or damage to Property, arising out of any one occurrence or in such reasonable amounts as Seller shall require and to submit such certificates evidencing such coverage to Seller prior to the commencement of such work. Seller shall be named as loss payee as to any and all Property damage. This covenant shall survive termination of this Agreement.

8. **Conveyance of Title.** At Closing, Seller agrees to deliver to Purchaser a Warranty Deed, in recordable form, conveying the Premises to Purchaser free and clear of all liens, claims and encumbrances except for the Permitted Exceptions (as hereinafter defined).
9. **Title Commitment; Title Policy.** Purchaser, at its sole risk, cost, and expense, shall obtain and arrange for delivery to the parties within ten (10) days following the date hereof a Commitment for Owner's ALTA Title Insurance Policy Form B with extended coverage ("Commitment") issued by Title Company, setting forth the state of title to the Property and all exceptions and restrictions of record. Said Commitment shall require the issuance of a 3.0 zoning endorsement including parking (based upon plans and specifications), modified owner's comprehensive endorsement (based upon plans and specifications), (collectively, the "Endorsements"). Along with such commitment, Purchaser shall request that the Title Company furnish Purchaser with copies of all documents affecting the Property, as reflected in the Commitment. In the event any exceptions appear in such Commitment or title documents other than the standard printed exceptions (which shall be deleted in the Owner's Title Policy as hereafter provided) that are unacceptable to Purchaser, or the Title Company cannot or refuses to issue Endorsements or other items desired or required by Purchaser, then Purchaser shall, within five (5) days of receipt of the Title Commitment listing exceptions, notify Seller, in writing, of any objections to such exceptions or other matters. Any such exceptions or other matters not objected to by Purchaser in this time period shall hereinafter be referred to as "Permitted Exceptions"; provided, however, that mortgage liens, judgment liens, mechanic's liens, tax liens and other liens of definite or ascertainable amounts which are capable of being cleared from title by the payment of a sum certain ("Monetary Liens") shall not be Permitted Exceptions under any circumstances, regardless of whether or not Purchaser objects thereto in accordance herewith, and Monetary Liens shall be cleared from title at closing by the payment or escrowing of reasonably sufficient funds to cause such exceptions to be removed from Purchaser's title policy, such payments to be made by Seller. Any exceptions objected to by Purchaser within the time period specified above, and any Monetary Liens shall hereinafter be called "Unpermitted Exceptions". Provided such occurs before the Closing Date, Purchaser shall have five (5) days to object to any exceptions raised by the Title Company subsequent to the date of expiration of the Contingency Period for the first time ("Supplemental Exceptions"). Any Supplemental Exceptions objected to by Purchaser with the five (5) day period shall hereinafter be called "Unpermitted Exceptions." Seller shall give written notice to Purchaser within five (5) days of the date of Purchaser's notice of objection to title matters as to whether Seller will cure the matters objected to by Purchaser at or prior to Closing and such undertaking to cure, if any, shall be a binding obligation of Seller under this Agreement. In the event Seller fails to cure an Unpermitted Exception at or prior to Closing, Purchaser may terminate this Agreement and receive a return of the Earnest Money or may elect to proceed to close hereunder and take a credit at closing in the aggregate amount of any Monetary Liens. At Closing Seller shall pay to bring the Commitment to policy, with coverage over the standard, pre-printed exceptions and subject only to the Permitted Exceptions and the cost of the Endorsements.
10. **Survey.** Seller, at its sole cost and expense, will obtain a survey of the Property prepared in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, a survey of the Premises, dated as of a date on or after the Contract Date, certified to Purchaser and its assigns, Purchaser's designated lender(s), and the Title Company

("Survey"). The Survey shall, include Table A Optional Item No.'s: 1, 2, 3, 4, 5 (on a separate sheet from the other matters), 6, 7 (if applicable), 8, 9 (if applicable), 10, 11, 13, 14, 15 and 16. Should the Survey indicate the presence of any encroachments by or upon the Premises or other matters which do or could adversely affect Purchaser's use, Purchaser may terminate this Agreement by providing written notice to Seller no later than the earlier of (A) five (5) days after Purchaser's receipt of the Survey, or (B) fifteen (15) days prior to the Closing Date. In the event that Purchaser does not tender timely notice its right to terminate shall be null and void.

11. **Tax Prorations.** Seller warrants and represents that Seller is currently exempt from real estate taxation by Cook County, Illinois. However, tenants of the Property are subject to leasehold taxes by Cook County, Illinois.
12. **Rent Proration.** Seller shall credit to Purchaser at Closing Purchaser's prorata share of rent collected by Seller for the month in which the closing occurs. Rent due that is in arrears that is collected by Purchaser shall be credited seventy percent (50%) to Seller and thirty percent (50%) to Purchaser. However, Purchaser has no affirmative obligations to collect any rent in arrears at time of Closing.
13. **Transfer Stamps.** Any and all stamp taxes imposed by State law on the transfer of title, including that imposed by the State of Illinois, County of Cook, and by municipal ordinance shall be borne by Seller (or be exempt therefrom).
14. **Default.** If the Purchaser defaults, earnest money shall be forfeited and paid to Seller as Seller's sole remedy for such default at law or equity. If Seller defaults, earnest money, at the option of Purchaser shall be refunded to Purchaser, but such refunding shall not release Seller from its obligations under this agreement; notwithstanding the foregoing, Purchaser's remedy shall be limited to an action for specific performance and direct damages (expressly excluding consequential and punitive damages, loss of profits, and similar items). In the event of a dispute as to which party is entitled to the earnest money, the Escrowee may deposit the escrowed funds with the Clerk of the Circuit Court pending final resolution. The prevailing party in any action shall be due its costs and reasonable attorney's fees.
15. **Escrow.** At the election of either party, upon notice to the other not less than five (5) days prior to the time of Closing, this sale shall be closed through an escrow at Chicago Title Insurance Company in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement then in use by Chicago Title Insurance Company, with such special provisions inserted in the escrow agreement as may be required to conform with this agreement. Upon the creation of such escrow, anything herein to the contrary notwithstanding, payment of the purchase price and delivery of the deed shall be made through the escrow and this contract and the earnest money shall be deposited in the escrow. The parties shall equally share the cost of the escrow.
16. **Time.** Time is of the essence in this agreement.
17. **Notices.** All notices required herein shall be in writing and shall be served on the parties at the addresses following their signatures. The serving of a notice by facsimile transmission to a party's respective attorneys and other persons indicated below shall be sufficient; any other service shall be by a nationally recognized, overnight courier. When service is by facsimile, such shall be deemed served on the day of transmission, provided such is on or before 3:00 p.m. of a business day, or the next business day if thereafter; if by courier, then the next business day after dispatch.

If to Seller:

Ranee Berliant
Real Estate Asset Manager
Northwestern University
1800 Sherman Avenue, Suite
204
Evanston, Illinois 60201
(847) 467-3450
(847) 467-2800 [facsimile]

Susan Wuorinen
Assistant General Counsel
Office of General Counsel
Northwestern University
633 Clark Street
Evanston, Illinois 60208-1109
(847) 491-4838
(847) 467-3092 [facsimile]

K. Thomas Stevens
Stevens & Associates
200 West Superior Street
Suite 410
Chicago, Illinois 60654
(312) 786-2244
(312) 786-1331 [facsimile]

If to Purchaser:

Wally Bobkiewicz
City Manager
City of Evanston
Evanston, Illinois 60201
(847) 866-2936(847) 448-8093
[facsimile]

W. Grant Farrar
Corporation Counsel
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

18. **Assignment.** Purchaser may assign this Agreement to another entity only with Seller's written consent, which shall not be unreasonably withheld, conditioned, and/or delayed.

19. Intentionally deleted.

20. **SELLER'S REPRESENTATIONS**

Seller hereby represents, covenants and warrants to Purchaser as follows, each of which is true and correct as of the Effective Date, and shall be true and correct at Closing and shall survive the Closing and shall not merge into the deed:

(A) Seller is the record owner of the Property, has the full power, right and authority to grant the rights provided under this Agreement, to assign and convey the Property, subject to any and all leases, and to consummate this transaction, all as herein provided;

(B) Except as is listed below, Seller and agents of Seller, based upon Seller's actual knowledge (defined below), have received no threat or notice of the commencement of any legal action against Seller for the damaging, taking or acquiring of, or in connection with all or any part of, the Property and there is no pending or threatening eminent domain, condemnation or other governmental taking of the Property or any part thereof. If, prior to the Closing Date, all or any portion of the Real Estate is condemned or taken by eminent domain, or Seller becomes aware of or receives a notice of a proposed condemnation, Seller shall, within ten (10) days following any of the above events, give

Purchaser notice thereof in writing. If a condemnation or taking in fact occurs and such condemnation or taking is substantial (as hereinafter provided), then notwithstanding anything to the contrary herein, Purchaser shall have the option, exercisable by notice to Seller given within ten (10) days following Seller's notice to Purchaser of such condemnation or taking, to terminate this Agreement, whereupon this Agreement shall be terminated, the Earnest Money Deposit and interest thereon shall forthwith be returned to Purchaser and thereafter neither party shall have any further rights or obligations hereunder. If (a) Purchaser does not elect to terminate this Agreement in the event of a substantial condemnation or taking, or (b) such condemnation or taking is not substantial, Seller shall convey the Property on the Closing Date to Purchaser in its then condition, upon and subject to all of the other terms and conditions of this Agreement, and assign to Purchaser all of Seller's right, title and interest in and to any claims Seller may have to the condemnation awards and/or any causes of action with respect to such condemnation or taking of the Real Estate and pay to Purchaser all payments theretofore made to Seller by such condemning authorities. A condemnation or taking shall be deemed substantial if it results in the inability of Purchaser to construct Purchaser's development as contemplated by this Agreement:

NONE _____

_____;

(C) Based upon Seller's actual knowledge, Seller or agents of Seller have received no notices from any governmental authority of zoning, building, licensing, permit, fire, or health code violations in respect to the Real Estate or which to a material extent could adversely affect the financial condition or continued operation of Seller, nor are any licenses or permits existing or required to be obtained from any governmental authority affecting the Property except as follows:

NONE _____

_____;

(D) Based upon Seller's actual knowledge, there is no pending or threatened litigation, claims, demands or liens with respect to the Property or which to a material extent could adversely affect the financial condition or continued operation of Seller except as follows:

NONE _____

_____;

(E) Based upon Seller's actual knowledge, all water lines, sanitary sewers, storm sewers, electric, gas, telephone or other utilities or services are located on the Real Estate and appropriate utility easements permitting use and service of said utilities are of record; notwithstanding the foregoing, Seller shall not be required to secure any easements which are not of record, or to secure any amendments to recorded instruments;

(F) Based upon Seller's knowledge, no fact or condition exists which could result in the termination or impairment of access to the Real Estate from adjoining public streets or which could result in discontinuance of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services;

(G) Based upon Seller's actual knowledge:

(i) the Property is not in violation of any Federal, State or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on or under the Property including but not limited to, soil and ground water conditions;

(ii) there are no environmental, health or safety hazards on or under the Property, including, but not limited to soil and ground water conditions;

(iii) neither Seller has nor any other person, including, but not limited to, Seller's predecessors in title to the Property ever caused or permitted any hazardous material (as hereinafter defined) to be placed, held, located or disposed of on, under or at the Property or any part thereof or into the atmosphere or any water course, body of water or wetlands of the Property, and none of the Property, has ever been used (whether by Seller, or to the actual knowledge of Seller by any other person) as a treatment, storage or disposal (whether permanent or temporary) site for any hazardous material (except the Seller has knowledge that underground storage tanks were previously located on the Real Estate, but Seller represents that such tanks have been removed in accordance with all requirements of law and all contamination caused thereby has been remediated);

For purposes of this Agreement hazardous material means and includes, without limitation, definitions found in 42 U.S.C 9601 et seq. (CERCLA); 42 U.S.C. 6901 et. seq. (SWDA) as amended or hereafter amended; (i) petroleum including but not limited to crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (ii) asbestos in any form or condition, and (iii) any radioactive material, including, but not limited to, any source, special nuclear or by-product material as defined at 42 U.S.C. et. seq.; or (iv) that defined under any other applicable Federal, State, or local law, regulation, ordinance or requirement, all as amended or hereafter amended;

(H) Based upon Seller's actual knowledge, Seller and agents of Seller have not been subject to, or received any notice of, any private, administrative or judicial action, or notice of any intended private, administrative, or judicial action, relating to the presence or alleged presence of hazardous materials in, under, upon or emanating from the Property, , and there are no pending or threatened actions or proceedings (or notices or potential actions or proceedings) from any governmental agency or any other person or entity regarding any matter relating to health, safety, or protection of the environment;

(I) Based upon Seller's actual knowledge, there have not been and there are not any past or present events, conditions, circumstances, activities, practices, incidents or actions which could reasonably be expected to interfere with or prevent continued compliance with any Federal, State, or local law, regulation, ordinance or requirement relating to health and safety and protection of the environment or which may give rise to any legal liability, or otherwise form the basis of any claim, action, suit, proceeding, hearing or investigation against or involving the Property based on any Federal, State or local law, regulation, ordinance or requirement relating to health, safety and protection of the environment or violation or alleged violation thereof;

(J) Based upon Seller's actual knowledge, the Real Estate is not located in the 100-year flood plain, flood way or wetlands.

(K) Northwestern University is "exempt" from real estate taxes;

(L) Intentionally deleted;

(M) Intentionally deleted;

(N) Seller is not insolvent;

(O) The performance by Seller of all the terms and provisions contained in this Agreement and in any and all other documents delivered to Purchaser shall not constitute an event of default under any other agreements to which Seller is now or hereafter may be a party, nor will any such acts in any way violate any statute, regulation or administrative direction;

(P) Unless Purchaser defaults prior to the Closing Date or unless this Agreement is terminated prior to such date, then other than (i) physical changes, except repairs, to the Real Estate, if any, mentioned in this Agreement which Seller expressly agrees to make under the terms hereof, (ii) physical changes to the Property made by Seller to comply with applicable law, and (iii) ordinary wear and tear, Seller shall between the last date Purchaser makes an inspection and the Closing Date:

(i) Advise Purchaser promptly of any litigation, arbitration, administrative hearing, or legislation before any governmental body or agency of which Seller is notified, concerning or affecting the Property which is instituted after the date hereof;

(ii) Not further encumber the Property or modify the terms or condition of any existing encumbrances, if any;

(iii) Not take, or omit to take any action that would have the effect of violating any of the representations, warranties, covenants and agreements of Seller contained in this Agreement;

(iv) Without the prior consent of Purchaser, not enter into any new written or oral service agreement or other agreement with respect to the Property that will not be fully performed by the parties thereto on or before the Closing Date;

(v) Keep observe and perform Seller's material obligations as landlord under leases presently in effect, and as long as tenants are not in default under the leases, nor cause termination of any lease;

(vi) Not amend any lease or enter into any new lease concerning the Property without the written consent of Purchaser and shall not amend any service agreement or enter into any new service agreement concerning the Property unless the same is terminable without penalty by the then owner of the Property upon not more than 30 days' notice;

(Q) Based upon Seller's actual knowledge, Seller is not aware of any unrecorded liens against the Property which will not be satisfied out of the Purchase Price;

(R) All obligations of Seller arising from the ownership and operation of the Property which accrued prior to the Closing Date, including, but not limited to salaries, taxes, leasing commissions, and the like, have been paid as they become due or will be paid at or prior to Closing. Except for obligations for which provisions are herein made for proration or other adjustments at Closing, there will be no obligations of Seller with respect to the Property outstanding as of the Closing Date;

(S) Seller shall maintain, or cause to be maintained, in full force and effect (subject to any expiration thereof) until Closing the insurance policies covering the Property, and/or shall continue to self-insure as historically employed. Seller shall renew or replace any policy expiring before Closing with a policy having a term of beyond the Closing Date;

(T) Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Real Estate for any tax year in which the Closing is to occur or any subsequent tax year without the prior written consent of Purchaser, which consent shall not be unreasonably withheld;

(U) If Seller is a corporation:

(i) The execution of this Agreement on behalf of Seller by the person(s) who executed this Agreement on behalf of Seller has been duly approved;

(ii) The execution by Seller of this Agreement and any other documents which may from time to time hereafter be executed by Seller and delivered to Purchaser shall not constitute a breach of any provision contained in the Articles of Incorporation or by-laws of Seller; and

(iii) Seller is and during the term of this Agreement will continue to be in good standing in the state in which Seller is incorporated and the state in which the Property is located.

(V) On the Closing Date no tenancies will exist on the Property other than that disclosed in the leases already provided to Purchaser.

Notwithstanding any provision to the contrary under this Agreement and/or applicable law, the obligations of Seller to examine, investigate, and take similar action, and the phrase "based upon Seller's actual knowledge," "Seller's knowledge," and/or phrases of similar import, shall solely and exclusively mean the ready knowledge of Ranee Berliant, not personally but as the Real Estate Asset Manager of the Seller, utilizing a reasonable standard of care to review information in her possession.

21. **AS-IS, WHERE-IS NATURE OF CONVEYANCE**

Except as expressly provided under this Agreement, Purchaser acknowledges and stipulates that the conveyance of the Property by Seller is strictly "as-is," and "where-is," with any and all faults, deficiencies, discrepancies, burdens, and obligations of any nature, type, and extent whatsoever, known or unknown, actual or contingent, existing, arising now, or at any time hereafter.

22. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF PURCHASER**

Purchaser hereby represents, covenants and warrants to Seller as follows, each of which is true and correct as of the Effective Date, and shall be true and correct at Closing and shall survive the Closing and shall not merge into the deed:

(A) Purchaser has all requisite power and authority to consummate the transaction contemplated by this Agreement and has by proper proceedings duly authorized the execution and delivery of this Agreement and consummation of the transaction contemplated hereby.

(B) This Agreement when executed and delivered by Purchaser will constitute the valid and binding agreement of Purchaser enforceable against Purchaser in accordance with its terms.

23. **FURTHER ASSURANCES** From the Effective Date of this Agreement, both Seller and Purchaser covenant to each other that, in addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by each, each shall perform, execute and deliver or cause to be performed, executed and delivered at, prior to, or after the Closing, any and all further reasonable acts, deeds, and assurances and execute any documents or other writings as the other or the Title Insurer may reasonably request in order to consummate the transactions contemplated herein or to confirm or perfect any right to be created or transferred herein or pursuant to this transaction, provided that neither party shall be required to incur any material expenses in connection therewith.

24. **CONFIDENTIALITY**

The parties shall maintain the terms of this Agreement and the transaction generally as confidential, including but not limited to any and all deliverables of Seller, disclosing such only on a

commercially reasonable "need to know" basis. In the event a party requires disclosure to any other person, then such recipients shall be bound by the instant confidentiality requirement.

25. **CONTINGENCY REGARDING ADJACENT PARCEL**

Any and all obligations of Seller and Purchaser under this Agreement are expressly contingent upon Seller entering into a contract with a separate purchaser (upon terms acceptable to Seller in its sole and absolute discretion) and consummating a transfer of certain real property adjacent to the Property, commonly known as 1231, 1233, and 1235 Chicago Avenue ("Seller Related Transaction") and the Purchaser entering into a contract with a separate seller (upon terms acceptable to the Purchaser in its sole and absolute discretion) and consummating a transfer of certain real property adjacent to the Property, commonly known as 1223-1225 Chicago Avenue ("Purchaser Related Transaction"). In the event that the Seller Related Transaction or the Purchaser Related Transaction does not occur for any reason, then this Agreement shall be subject to termination by Seller or Purchaser upon five (5) days written notice, with no further obligation upon the respective parties.

SELLER:
NORTHWESTERN UNIVERSITY

PURCHASER:
CITY OF EVANSTON

By:
Its:

By: Wally Bobkiewicz
Its: City Manager

DATE: _____

DATE: _____