

1/14/2015

**2-O-15**

**AN ORDINANCE**

**Authorizing the City Manager to Enter into a Real Estate Contract  
for the Sale of the Certain City-Owned Real Property at 629-631  
Howard Street, Evanston, Illinois to Ward Eight, LLC**

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

**SECTION 1: Legislative Statement.**

At the time of passage of this ordinance, the City of Evanston owns real property with a real property address of 629-631 Howard Street, Evanston, Illinois, legally described in Exhibit A attached hereto and incorporated herein by reference (the "Subject Property").

The City Council of the City of Evanston determine that ownership of the three-story building which contains a commercial business on the first floor and two residential units on the remaining two floors at the Subject Property is no longer necessary, appropriate, required, or in the best interest of the City of Evanston. The City Council determined that the best interest of the City of Evanston would be served by the sale of the Subject Property to the City's commercial tenant, Ward Eight, LLC, an Illinois limited liability company. On February 27, 2012, the City Council adopted Ordinance 26-O-12 authorizing a 5-year lease agreement with Ward Eight and granted an option to purchase the Subject Property and Ward Eight wishes to exercise this option.

Pursuant to Ordinance 1-O-15, the City Council, by a vote of two-thirds (2/3) of the elected Aldermen then holding office directed that the Subject Property be sold by negotiation on behalf of the City. Negotiations commenced and concluded. The City Manager recommends that a sale between the City of Evanston as Seller, and Ward Eight, LLC as Buyer, be hereby accepted by the City Council for the aforesaid Property legally described in Exhibit A. The City Council finds and determines that the best interests of the City of Evanston and its residents will be served by conveying the aforesaid Subject Property to Ward Eight, LLC on terms consistent with the Agreement for Purchase and Sale of Real Estate and in a form acceptable to the Corporation Counsel prior to execution, the proposed agreement is attached as Exhibit B and incorporated herein by reference (hereinafter, the "Agreement").

**SECTION 2:** That the negotiated sale of the Subject Property to Ward Eight, LLC, as Buyer is hereby accepted by the City Council of the City of Evanston for the real Property legally described in Exhibit A and commonly known as 629-631 Howard Street, Evanston, Illinois.

**SECTION 3:** The City Manager is hereby authorized and directed to sign the real estate sale agreement after it is in form acceptable to the Corporation Counsel, and the City Clerk is hereby authorized and directed to attest, the Agreement for Purchase and Sale of Real Estate in Exhibit B, pursuant to the terms of which the Property shall be conveyed. The City Manager is further authorized to negotiate any changes or additional terms and conditions with respect to the sale of the aforesaid Property as the City Manager may deem fit and proper.

**SECTION 4:** The City Manager and the City Clerk, respectively, are hereby authorized and directed to execute, attest, and delivery such other documents, agreements, and certificates as may be necessary to the sale herein authorized, which are in a form acceptable to the Corporation Counsel.

**SECTION 5:** Pursuant to Subsection 1-17-4-2-(B) of the Evanston City Code, 2012, as amended (the "City Code"), an affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the elected Aldermen is required to accept the recommendation of the City Manager on the negotiation authorized herein. The City reserves the right to reject any and all negotiations.

**SECTION 6:** Pursuant to City Code Subsection 1-17-4-2-(B)-3, Notice of Intent to Sell and Lease Certain Real Estate was published in the *Sun Times*, a newspaper in general circulation in the City, on January 8, 2015. Said publication was neither less than fifteen (15) nor more than thirty (30) days before the date on which the City Council considered adoption of this ordinance authorizing the City Manager to execute a sales contract as the result of a negotiated sale.

**SECTION 7:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 8:** This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

**SECTION 9:** 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 10:** The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Ayes: 8

Nays: 0

Introduced: January 26, 2015

Adopted: February 9, 2015

Approved:

February 11, 2015

*Elizabeth B. Tisdahl*

Elizabeth B. Tisdahl, Mayor

Attest:

*Rodney Greene*  
Rodney Greene, City Clerk

Approved as to form:

*Michelle Masomay / Acting Corporation Counsel*  
W. Grant Farrar, Corporation Counsel

**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

REAL ESTATE PURCHASE AND SALE AGREEMENT

## REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT ("Contract") is entered into as of the \_\_\_ day of December, 2014 ("Effective Date"), by and between the City of Evanston, an Illinois municipal corporation ("Seller") and Ward Eight, LLC, an Illinois limited liability company. The Seller and Buyer shall be referred to herein collectively as the "Parties".

In consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**1. Property.** Seller hereby agrees to convey to Buyer and Buyer hereby agrees to purchase from Seller all of Seller's interest in the real property described on Exhibit A attached hereto and all improvements located thereon and all appurtenances thereto (the "Realty"), and Seller's interest, if any, in the personal property described on Exhibit B attached hereto (the "Personalty"). The Realty and Personalty are sometimes collectively referred to herein as the "Property". The Realty has a street address of 629-631 Howard Street, Illinois 60202 and the leased by the Buyer from the Seller per Commercial Lease and Option Agreement dated March 15, 2012 (the "Lease").

**2. Purchase Price.** The purchase price for the Property is Three Hundred Sixty-Two Thousand Six Hundred Fifty and no/100 Dollars (\$362,650.00) ("Purchase Price") and shall be paid as follows:

(a) The Buyer will pay the January and February rent per the Lease agreement as earnest money for this transaction. The Earnest Money will be used as a credit at Closing and non-refundable if the Closing between the Parties under this Contract does not occur; and

(b) The entire Purchase Price, subject to closing prorations and credits for rent paid during the Lease Term per the aforementioned Lease shall be paid to Seller in cash by wire transfer of immediately available funds at the Closing.

**3. Seller's Representation and Warranty.** Seller hereby warrants and represents to Buyer that Seller has the authority necessary to enter into this Contract and comply with Seller's obligations hereunder.

The representation and warranty made by Seller in this Section 3 shall be true as of the Closing Date (as defined below) hereof and shall survive the Closing of this transaction for a period of one (1) year.

**4. Survey Contingency.** Buyer, at its sole expense, shall obtain a survey (the "Survey") of the Realty prepared by a land surveying company registered in the same state as the Realty. If Buyer elects to obtain a Survey, Buyer agrees to (i) have such Survey certified to the Title Company and to the Seller, and (ii) provide Seller with a copy of such Survey. Buyer shall have three (3) days from the Effective Date to obtain and deliver to Seller a copy of the Survey and, in writing any objection to a matter shown on the Survey which materially affects the Realty or Buyer's intended use of the Realty ("Survey Objections"). If within such three (3) day period,

Buyer fails to (a) obtain and deliver a copy of the Survey to Seller, and/or (b) deliver written notice of Survey Objections to Seller, then Buyer is deemed to have waived all rights to object to, is deemed to have approved, and shall accept title to the Realty subject to, any matters shown on the Survey. If within such three (3) day period, Buyer obtains and delivers a copy of the Survey to Seller and delivers written notice of Survey Objections to Seller, Seller shall have five (5) business days after receipt of Buyer's objection notice to notify Buyer in writing what, if anything, Seller agrees to do to cure such Survey Objections. Failure of Seller to respond within said five (5) business day period shall indicate that Seller elects not to cure the Survey Objections. Seller shall have no obligation to cure any Survey Objections or incur any expense with respect thereto. Upon receipt of notice from Seller indicating that Seller elects not to pursue a cure of any Survey Objection, Buyer shall have two (2) business days after delivery of such notice from Seller to deliver notice to Seller terminating this Contract, in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If Buyer does not terminate this Contract pursuant to the immediately preceding sentence within said two (2) business day period, then Buyer is deemed to have waived all rights to object to, is deemed to have approved, and shall accept title to the Realty subject to such uncured Survey Objection(s). If Seller pursues a cure and is unable to cure the Survey Objections by the Closing Date, then Buyer shall have the option, as its sole right, to either terminate this Contract on the Closing Date (in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive), or close on the purchase of the Property with no Purchase Price reduction, in which case Buyer is deemed to have approved any uncured Survey Objections and waived any rights against Seller relating thereto.

**5. Title Contingency.** Promptly after the Effective Date, Seller shall deliver or cause to be delivered to Buyer a current commitment (the "Commitment") for an owner's title insurance policy for the Realty issued by a title agent selected by Seller using a nationally recognized title insurance underwriter (the "Title Company"). Buyer shall have five (5) business days after receipt of the Commitment to deliver to Seller in writing any objection to a matter shown on the Commitment which materially affects the Realty or Buyer's use of the Realty ("Title Objections"). If Buyer fails to deliver notice of Title Objections to Seller within said five (5) business day period, Buyer shall be deemed to have fully accepted the Commitment and all matters disclosed therein. If Buyer delivers notice of Title Objections to Seller within said five (5) business day period, Seller shall have ten (10) days after receipt of Buyer's objection notice (the "Title Cure Period") to notify Buyer in writing what, if anything, Seller agrees to do to cure the Title Objections. Failure of Seller to respond within the Title Cure Period shall indicate that Seller elects not to cure the Title Objections. Seller shall have no obligation to cure any Title Objection or incur any expense with respect thereto. If Seller elects not to cure one or more of the Title Objections, as Buyer's sole right, Buyer shall have two (2) business days after the end of the Title Cure Period to deliver notice to Seller terminating this Contract, in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If Buyer does not terminate this Contract during said two business day period, Buyer is deemed to have accepted any uncured Title Objections. If Seller pursues a cure and is unable to cure a Title Objection by the Closing Date, then Buyer shall have the option, as its sole right, to either terminate this Contract (in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive), or close on the purchase of



the Realty with no Purchase Price reduction, in which case Buyer is deemed to have accepted any uncured Title Objections and waived any rights against Seller relating thereto. Buyer shall make its election under the immediately preceding sentence within one (1) business day after Seller notifies Buyer that it was unable to cure one or more Title Objections. If Buyer does not terminate this Contract during said one (1) business day period, Buyer is deemed to have accepted any uncured Title Objections.

Notwithstanding anything to the contrary herein, the following matters shall be deemed "Permitted Exceptions" and Buyer shall have no right to object to any of said matters on the Commitment or Survey:

(a) municipal and zoning ordinances and agreements entered under them, agreements with any municipality regarding the development of the Property, building and use restrictions and covenants, and State and/or Federal statutes and regulations;

(b) recorded easements for the distribution of utility and municipal services;

(c) property taxes and special assessments levied in the year of closing and subsequent years;

(d) such other matters disclosed by the Survey, which are not objected to by Buyer within the three (3) day period described in Section 4 above, or are waived or approved or deemed waived or approved by Buyer pursuant to Section 4 above, or if Buyer does not obtain and deliver a copy of the survey to Seller within the 7-day period described in Section 4 above, then any matters that would be shown on a current accurate and complete survey;

(e) such other matters as disclosed by the Commitment and waived or accepted or deemed waived or accepted by Buyer pursuant to this Section 5;

(f) the standard or general exceptions contained in the Commitment; and

(g) acts done or suffered to be done by Buyer or its affiliates or anyone claiming by, through or under Buyer or its affiliates.

Buyer's obligation to purchase the Realty is conditioned upon the Title Company being prepared to issue, at Closing, a current, standard owner's title insurance policy (or a marked-up and binding commitment therefor), without extended coverage over the printed standard or general exceptions, in the amount of the Purchase Price allocated to the Realty insuring Buyer as the fee simple owner of the Realty as of the date of recording the deed, subject to the Permitted Exceptions ("Title Policy").

**6. Inspection Contingency.** During the fifteen (15) day period immediately following the Effective Date (the "Inspection Period"), Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Realty and/or a current Phase I environmental assessment of the Realty. Buyer shall not have the right to conduct any sampling or other invasive testing of the water, soil, air or building improvements on or beneath the Property without Seller's express prior written consent. Buyer shall repair any damage done

to the Property by any such inspection. Buyer shall insure that any party entering onto the Realty for purposes of inspection maintains commercially reasonable liability insurance naming Seller as an additional insured, and upon request of Seller and prior to any such party entering onto the Realty, Buyer shall deliver to Seller a certificate of insurance evidencing that such insurance is in place. Buyer shall indemnify, defend and hold Seller harmless from and against any loss, cost, liability or expense Seller may incur resulting from any such inspection. Buyer shall have until the end of the Inspection Period to terminate this Contract by written notice to Seller resulting from Buyer's objection to any matter shown in an inspection report or Phase I environmental assessment, which materially affects the Realty or Buyer's intended use of the Realty. If Buyer does not deliver a written notice to Seller before the end of the Inspection Period terminating this Contract, then Buyer is deemed to have waived this inspection contingency and any right to object to the condition of the Property. In no event shall Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property. If this Contract is terminated by Buyer for any reason other than a default by Seller, then, as a condition to the return of any earnest money deposited hereunder, Buyer shall, within five (5) business days after termination of this Contract, cause to be delivered to Seller copies of any and all non-proprietary reports, tests, results and analyses in Buyer's possession or under Buyer's control, including, but not limited to, all title reports, surveys, environmental reports, geotechnical analyses, and traffic reports, at no cost or expense to Seller. Seller's rights and Buyer's obligations under this Section 6 shall survive the Closing or any termination of this Contract.

**7. No Representations or Warranties; AS-IS Condition.**

(a) Buyer is hereby purchasing the Property in "**AS-IS, WHERE-IS**" condition and "**with all faults**", and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons for Seller, in entering into this Contract or in closing the transactions described herein, except for the express representation and warranty set forth in Section 3 hereof. Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied Buyer's survey, title and inspection contingencies set forth in Sections 4 through 6 above. In closing and completing this transaction, Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of Seller or its agents or employees except those expressly set forth in Section 3 above.

(b) Except for the express representation and warranty set forth in Section 3 hereof, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Property, including without limitation: the income or expenses of the Property; zoning and building codes and other similar restrictions; availability or cost of utilities; the condition of the soils on the Property, the environmental condition of the Property; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Property; compliance of the Property with any law, regulation, ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Property or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller.

(c) Buyer acknowledges and agrees that any Personalty to be conveyed in this transaction from Seller to Buyer will be transferred by quit claim bill of sale, with no representation, warranty or guaranty, expressed or implied, regarding the condition of or the title to such Personalty, and Buyer further agrees to accept such Personalty in its "AS-IS/WHERE IS" condition at closing.

(d) Buyer (and any party claiming through or under Buyer) hereby agrees that following the Closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Property, including without limitation, any matters specifically referenced in this Contract. This Section 7(a) through (d) shall survive the Closing.

**8. Closing.** The closing of this transaction (the "Closing") shall take place within seven (7) days after the expiration of the Inspection Period (the "Closing Date"), at the offices of the Chicago Title and Trust Company or at such other time and place as may be agreed upon by Buyer and Seller. At Closing, Buyer shall deliver to the Title Company by wire transfer to an account designated by the Title Company, immediately available funds in the amount of the Purchase Price, as adjusted by any prorations and closing costs provided for herein, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Realty is located or otherwise required by the Title Company to issue the Title Policy.

At the Closing, Seller shall deliver to the Title Company a Quit Claim Deed conveying Seller's interest in the Realty to Buyer, subject only to the Permitted Exceptions, a Quit Claim bill of sale conveying Seller's interest, if any, in the Personalty to Buyer, if applicable, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Realty is located or otherwise required by the Title Company to issue the Title Policy. All prorations required hereunder shall be computed as of the Closing Date. Possession of the Property shall be delivered to Buyer on the Closing Date, subject to the Permitted Exceptions. Buyer shall pay for recording the deed. Seller shall pay the title insurance premium for the Title Policy to be issued to Buyer and gap coverage or endorsement charges. Buyer shall pay for all other endorsement charges and the title insurance premium for any loan policy, including endorsement charges related thereto. All escrow fees and Title Company closing charges shall be shared equally by Seller and Buyer, except Buyer shall pay any escrow fees and other charges related to Buyer's loan, if any. All other closing costs, including without limitation, state, county and municipal transfer taxes and other recording fees, shall be allocated as customary in the state and municipality in which the Realty is located.

**9. Taxes.**

(a) Taxes for Years Prior to Closing. Seller will pay in full all general real property taxes that are levied with respect to the Realty for tax years prior to the year of closing. Seller shall receive a credit at Closing for the Buyer's prorated portion of the real estate taxes due under the Commercial Lease Agreement dated March 15, 2012, except Buyer will not receive a credit for the portion that was owed under the Commercial Lease Agreement.

(b) Tax Challenges. If any tax challenge is ongoing with respect to the Realty for general real estate taxes levied for any tax years prior to the year of Closing, Seller will receive the full benefit of any refund arising out of such tax challenge. If any tax challenge commenced by Seller results in a reduction in taxes for the general real estate taxes levied for the year of Closing, the parties shall re-prorate taxes for the year of Closing upon receipt of the actual tax bill or adjusted tax bill. This Section 9(b) expressly survives Closing.

(c) Taxes for Current Year of Closing. All general real property taxes that are levied with respect to the Realty for the year of Closing will be prorated at the rate of 100% between Buyer and Seller as of the business day immediately prior to the Closing Date.

**10. Tenant Lease.** Buyer expressly assumes the obligations under the residential lease agreement ("Unit 1 Lease") by and between the Seller and Marcus T. Yakhnis and Nicole R. Mikels dated April 10, 2014. The Unit 1 Lease term is April 9, 2014 – March 31, 2015 for a monthly rental rate of Nine Hundred Seventy-Nine and 00/100 Dollars (\$979.00). The Tenants paid a security deposit of \$979.00 to the Seller at the time of the Unit 1 Lease execution and it will be assigned to Buyer at Closing.

**11. Special Assessments.** If applicable, at Closing Seller will pay all special assessments that were levied prior to the Effective Date. All special assessments levied after the Effective Date shall be paid exclusively by Buyer. Real estate taxes and special assessments shall not be re-prorated after the Closing, except as provided in Section 9(b), above. Prepaid expenses (including homeowner's association or similar assessments), if any, paid by Seller shall be prorated on a per diem basis as of the Closing Date, and Seller shall receive a payment at the Closing, in addition to the Purchase Price, equal to the allocated portion of such prepaid expenses attributable to periods on and after the Closing Date.

**12. Municipal Agreements.** Seller and Buyer agree that upon Closing, Buyer will assume any and all responsibilities and obligations under all existing development agreements, declarations, escrow agreements and other agreements affecting the Property. In addition, Buyer shall comply, at Buyer's sole expense, with all requirements imposed under any such agreement or by any state, federal or local governmental entity or agency including, without limitation, any requirement to construct infrastructure, construct improvements, install sidewalks and parkway trees and landscaping, and to escrow funds, post letters of credit or any other required security in connection with the development of the Property. On or before Closing, Buyer shall, at Buyer's sole expense, replace any funds or letters of credit deposited in connection with any such agreement or requirement. Buyer's failure to do so on or before the Closing Date shall be a default under this agreement. The parties agree that all development work is Buyer's sole responsibility and shall be performed at Buyer's sole cost and expense. Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, actions, liabilities, damages, costs and expenses, including reasonable attorneys' fees, incurred by Seller in connection with the failure by Buyer to observe or perform any of the obligations pursuant to this Section 11. Buyer and Seller agree that this paragraph shall be self-operative but, if requested by Seller, Buyer shall execute a document in recordable form evidencing the agreements set forth in this Section. To the extent Seller, any of its affiliates, or any predecessor owner of the Property is

entitled to a refund of any funds (including the proceeds of any letter of credit drawn upon) or other security deposited with respect to the Property before the Closing, any such refund shall be and remain the property of Seller or its applicable affiliate, and to the extent Buyer receives any such refund before or after the Closing, Buyer shall remit such refund to Seller or its affiliate within five (5) days after Buyer's receipt therefor. Seller's right and Buyer's obligations under this Section 11 shall survive the Closing.

**13. Condemnation.** If before the Closing, any of the Realty is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, Seller shall notify Buyer in writing of the threat, condemnation or conveyance within five (5) business days of its occurrence. Buyer shall within ten (10) days of the notice have the option of (a) proceeding with the Closing (without any reduction in the Purchase Price) and receiving the award or condemnation payment (or an assignment thereof, if the same is not received by Closing), or (b) canceling this Contract and receiving back the earnest money deposited, and the parties shall have no further obligations hereunder except those provisions that expressly survive.

**14. Indemnification.** Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, claims, actions, liabilities, damages, liens, costs and expenses, including reasonable attorneys' fees, incurred by Seller (or its agents, consultants or affiliates) arising out of or related to (i) any activities upon the Property by Buyer, its agents, contractors and employees, or (ii) the failure by Buyer to observe or perform any of its covenants, representations or obligations under this Contract. This Section 13 shall survive the Closing or termination of this Contract.

**15. Notices.** All notices required or permitted to be given hereunder shall be in writing and delivered by certified mail, postage prepaid, or by overnight delivery service, or shall be personally served or sent via facsimile with confirmation of transmission, to Buyer and Seller at the following addresses:

SELLER: City of Evanston  
City Manager, Wally Bobkiewicz  
2100 Ridge Avenue  
Evanston, IL, 60201

With a copy to: City of Evanston  
Corporation Counsel, W. Grant Farrar  
2100 Ridge Avenue  
Evanston, IL 60201

BUYER: Ward Eight, LLC  
629 Howard Street  
Evanston, IL 60202

Notices may be given on behalf of a party by their respective attorneys named above. All notices shall be deemed received either when actually received or three (3) days after posting (if mailed), one business day after deposit with the delivery service (if sent by overnight delivery),

or when delivered (if personally delivered), or if sent by facsimile transmission, upon transmission as evidenced by the confirmation slip generated by the sender's facsimile machine. Either party may change the above addresses by written notice to the other.

**16. Default.** If before the Closing, Buyer defaults in the full and timely performance of any of its obligations hereunder, Seller shall be entitled to cancel this Contract and receive and retain the earnest money deposited hereunder as liquidated damages, the parties agreeing that in the event of a default hereunder before the Closing, actual damages would be impossible to calculate; provided, however, notwithstanding anything contained herein to the contrary, nothing contained in this Section 15 shall: (i) limit Seller's rights or remedies with respect to a breach or default by Buyer after the Closing or of a covenant or obligation that survives the Closing or a termination of this Contract; or (ii) limit Buyer's indemnification obligations under this Contract, and Seller shall be entitled to any and all rights and remedies available at law and/or in equity if Buyer defaults in the full and timely payment and performance of Buyer's indemnification obligations under this Contract, or any of Buyer's covenants or obligations after the Closing, or any covenant or obligation that survives the Closing or a termination of this Contract. If Seller breaches any representation or warranty set forth in this Contract or defaults in the full and timely performance of any of its obligations hereunder, Buyer, as its sole and exclusive remedy, may elect to either terminate this Contract and receive a refund of the earnest money (in which case the parties shall have no further obligations hereunder except those provisions that expressly survive) or seek specific performance, provided that any action for specific performance must be commenced within forty-five (45) days after Buyer obtains knowledge of Seller's default. If no such action is commenced within said 45-day period, Buyer shall be deemed to have waived its right to bring or pursue an action for specific performance. Buyer hereby expressly waives, relinquishes and releases any other right or remedy available to it at law, in equity or otherwise by reason of Seller's default of its obligations hereunder, including, without limitation, any rights Buyer may have to bring an action to recover direct, consequential, punitive or any other damages.

**17. Real Estate Commissions.** Seller hereby represents and warrants that it has not engaged the services of real estate agent, broker or firm in connection with the Property or this real estate transaction. Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all loss, cost or expense from any claim for real estate commission made by any agent, broker or firm engaged by Seller in connection with the Property or this transaction. Buyer hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction. Buyer hereby agrees to defend, indemnify and hold Seller harmless from any and all loss, cost or expense from any claim for real estate commission made by any agent, broker or firm engaged by Buyer in connection with the Property or this transaction. Each party's rights and obligations under this Section 16 shall survive the Closing or any termination of this Contract.

**18. Entire Agreement.** This Contract contains the entire agreement between Seller and Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. This Contract may be amended only by a further written document signed by each of the parties.

**19. Assignment.** Buyer shall have the right to assign this Contract without Seller's prior written consent only to any entity owned and/or controlled by Buyer or its principals, provided that not less than five (5) business days before the Closing, Buyer gives notice of such assignment to Seller accompanied by reasonable evidence that the assignee is owned and/or controlled by Buyer. All other assignments shall require Seller's prior written consent, which may be withheld in Seller's sole discretion. Notwithstanding the foregoing, if this Contract is assigned by Buyer hereunder, Buyer shall remain jointly and severally liable, along with the assignee, for the Buyer's obligations under this Contract. Buyer shall cause any permitted assignee to acknowledge in writing that it will be bound by all of the terms and conditions of this Contract, with said acknowledgement set forth in a form subject to Seller's reasonable approval. This Section 18 shall survive the Closing or termination of this Contract.

**20. Successors and Assigns.** Subject to Section 18 above, the provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.

**21. Captions.** The captions of the paragraphs in this Contract have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.

**22. Severability.** If any provision of this Contract is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.

**23. Counterparts and Transmittal of Signatures.** This Contract may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of this Contract transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.

**24. Exculpation.** Buyer agrees to look solely to Seller's interest in the Property for the satisfaction of any liability or obligation arising under or in connection with this Contract, the transactions contemplated hereby or the documents executed pursuant hereto, or for the performance of any of the covenants, warranties or other agreements contained herein or therein, and Buyer shall not collect or attempt to collect any judgment or other amounts out of any assets of Seller other than Seller's interest in the Property. Further, Buyer agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, member, principal, parent, subsidiary or other affiliate of Seller, or any officer, director, employee, trustee, shareholder, partner, member or principal of any such parent, subsidiary or other affiliate, arising under or in connection with this Contract, the transactions contemplated hereby or the documents executed pursuant hereto. The terms of this Section 23 shall survive the Closing and any termination of this Contract for any reason.

**25. Miscellaneous.**

(a) All questions with respect to the construction or interpretation of this Contract shall be determined in accordance with the laws of the State of Illinois, without regard to conflict of law rules. Time is of the essence of this Contract.

(b) If any date upon which action is required under this Contract shall be a Saturday, Sunday or legal holiday, the date for such action shall be extended to the first day after such date which is not a Saturday, Sunday or legal holiday.

[NO FURTHER TEXT ON THIS PAGE]

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]



IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first above written.

Date: \_\_\_\_\_

**SELLER:**  
City of Evanston, an Illinois municipal corporation

\_\_\_\_\_

By: Wally Bobkiewicz  
Title: City Manager

Date: \_\_\_\_\_

**BUYER:**  
Ward Eight, LLC

\_\_\_\_\_

By: Anne Carlson  
Title: Manager

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

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**

**PERSONAL PROPERTY**

All personal property, if any, located on the Realty (other than any personal property owned by a tenant, as applicable)