

**62-O-16**

**AN ORDINANCE**

**Authorizing the City Manager to Execute a Lease of City-Owned Real Property Located at 860 Chicago Avenue**

**WHEREAS**, the City of Evanston owns certain real property located at 860 Chicago Avenue, Evanston, Illinois 60202, which is improved with a single story building and operated by a business selling magazines and newspapers commonly known as the "City Newsstand" (the "Property"); and

**WHEREAS**, City Newsstand, Inc., an Illinois corporation, has operated its commercial business on the Property since 2000 and seeks to renew its lease; and

**WHEREAS**, the City Council has determined that the Property is not necessary to City operations and leasing the Property to City Newsstand for the operation of a newspaper and magazine sales business is in the City's best interests,

**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 2012, as amended (the "City Code"), the City Manager is hereby authorized and directed to execute, on behalf of the City of Evanston, the Lease Agreement by and between the City of Evanston, as landlord, and City Newsstand, Inc., as tenant. The Lease Agreement shall be in substantial conformity with the Lease Agreement attached hereto as Exhibit "1" and incorporated herein by reference.

**SECTION 3:** 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**SECTION 4:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5:** 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 6:** This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Ayes: 6

Nays: 0

Introduced: July 25, 2016

Approved:

Adopted: August 15, 2016

August 22, 2016

Elizabeth B. Tisdahl  
Elizabeth B. Tisdahl, Mayor

Attest:  
Rodney Greene  
Rodney Greene, City Clerk

Approved as to form:  
W. Grant Farrar  
W. Grant Farrar, Corporation Counsel

**EXHIBIT 1**  
**LEASE AGREEMENT**

LEASE

between

CITY NEWSSTAND, INC.

an Illinois corporation

as Tenant

and

CITY OF EVANSTON

An Illinois municipal corporation,

as Landlord

860 CHICAGO AVENUE

EVANSTON, ILLINOIS 60202

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## LEASE

THIS LEASE AGREEMENT is made by and between **CITY OF EVANSTON** (“**Landlord**”), an Illinois municipal corporation and **CITY NEWSSTAND, INC.**, an Illinois corporation (“**Tenant**”).

WITNESSETH:

### **1. PROPERTY**

Landlord is the fee simple owner of certain real property at 860 Chicago Avenue, Evanston, Illinois 60202, legally described in **Exhibit “A”** attached hereto and incorporated herein (the “**Property**”). The Property is .053 acres total improved with a one-story commercial building. Landlord does hereby demise and lease the Property to Tenant, for Tenant’s exclusive use and control, together with all appurtenances thereto, pursuant to the terms and conditions of this Lease.

### **2. TERM**

(a) Primary Term. Subject to the provisions of this Lease, the “**Primary Term**” shall be a 5-year term and commence on the 1st day of January, 2016 (“**Commencement Date**”) and shall end at 11:59 p.m. on the 31<sup>st</sup> day of December, 2021, except as otherwise terminated as provided herein. The lease is back dated to January 1, 2016 and the Landlord has already received the 2016 annual rent.

(b) Extended Terms. Provided Tenant is not otherwise in default beyond any applicable cure period, Tenant shall have one option (individually, an “**Extension Option**”), to renew the Lease for an additional five years (each an “**Extension Term**”) upon the same terms, covenants and conditions as herein provided. The Extension Option shall be exercised by Tenant delivering to Landlord written notice of such election, not less than one hundred twenty (120) days prior to the expiration of the Primary Term. The Primary Term together with any Extension Term is referred to herein collectively as the “**Term**”.

### **3. RENT**

(a) Primary Term. The Rent for lease of the Property for the first year of the lease is Seven Thousand Six Hundred Forty-Five and 04/100 Dollars (\$7,645.04). The Tenant previously remitted the lump sum payment for the 2016 annual rent. The Rent for the remaining four years of the Lease (2017 – 2021) will be payable in lump sum payments; the yearly payment due on or before January 1<sup>st</sup>. The Rent will increase annually by the Consumer Price Index (CPI) and the City will invoice the Tenant on or before November 15<sup>th</sup> with the rate based on CPI.

(b) Extensions. The Rent set forth in Section 3(a) will also be adjusted each year based on CPI.

(c) Late Fee and Interest. In the event any sums required hereunder to be paid are not received by Landlord on or before the date the same are due, then, Tenant shall on demand pay, as additional rent, a service charge of Two Hundred Dollars (\$200). In addition, interest shall accrue on all past due sums at an annual rate equal to the lesser of six percent (6.0%) per month and the maximum legal rate. Such interest shall also be deemed Additional Rent.

(d) Time and Place of Payment. Tenant shall pay to Landlord the Rent in advance, in equal monthly installments, and without prior notice, setoff (unless otherwise expressly permitted herein) or demand, except as otherwise specifically provided herein, on or before the first (1<sup>st</sup>) day of each calendar month during the Term hereof to: City of Evanston, Attn: Collector's Office, 2100 Ridge Avenue, Evanston, IL 60201.

#### 4. FIXTURES

All trade fixtures and equipment installed by Tenant in or on the Property (including furniture, satellite communication dish and equipment, registers, other equipment, shelving and signs) shall remain the property of Tenant and Tenant may remove the same or any part thereof at any time prior to or at the expiration or earlier termination of this Lease. Tenant shall repair at its own expense any damage to the Property caused by the removal of said fixtures or equipment by Tenant. This provision shall expressly survive the termination or expiration of this Lease.

#### 5. USE OF PROPERTY

(a) Permitted Use. Tenant shall have the right, subject to applicable Federal, State and local laws and the terms of this Lease, to use the Property for the following purpose(s): to run a newspaper and magazine sales and other related functions to run the business (herein collectively "**Permitted Use**").

(b) Tenant Exclusive Use of Property. Landlord covenants and agrees that it has no rights to use, modify, alter or lease any portion of the Property other than as expressly provided in this Lease.

(c) No Continuous Operation. In the event Tenant has ceased operating its business for a continuous period of thirty (30) days, following written notice by Landlord providing a thirty day cure period, Landlord has the right to recapture the Property and, upon such recapture, this Lease shall terminate and neither party shall be further obligated hereunder, except to the extent any such obligation hereunder is expressly specified herein to survive the termination of this Lease.

#### 6. MAINTENANCE

(a) Tenant accepts the Property in as-is condition, and acknowledges that the Landlord has made no representations to the condition or has made any repairs to same except as provided in this Lease. The Landlord or Landlord's staff or other representatives have made no representations or assurances that it will alter or remodel the Property and all renovations will be at Tenant's sole cost and expense. Tenant is responsible for all maintenance and repair of the Property.

(b) Maintenance Responsibilities of Tenant:

(i) HVAC system for the Property, interior sprinkler and fire safety system within the Property, and other interior fixtures.

(ii) All regular refuse must be disposed of in appropriate containers to be provided by the Landlord. Tenant cannot dispose of construction building materials in the standard refuse

containers and must arrange for special pick-ups and containers for said materials. A refuse container for regular refuse will be located at the Property in reasonable proximity to the Property. Tenant will contract to have trash hauled from such container with reasonable frequency. Tenant is responsible for snow, ice removal and leaf removal and general upkeep of the exterior directly in front and in back of the Property.

(iii) The Tenant will at all times maintain all of the Property in a clean, neat and orderly condition. The Tenant will not use the Property in a manner that will violate or make void or inoperative any policy of insurance held by the Landlord. The Tenant shall pay the Landlord for overtime wages for staff and for any other related expenses incurred in the event that repairs, alterations or other work in the Property required or permitted hereunder are not made during ordinary business hours at the Tenant's request.

(iv) Tenant will keep the interior non-structural portions of the Property, including all interior, non-structural walls, surfaces and appurtenances (other than systems and any other items that Landlord is required to maintain pursuant to Section 7(c), in good repair. Tenant shall be responsible for repairs, damages and losses for damages sustained outside the Property attributable to Tenant's negligence or intentional misconduct. Tenant agrees to use good faith efforts to report such damage in writing to the Director of Public Works or his designee, by the next City of Evanston business day, after discovery of such damage by Tenant.

(v) Tenant shall yield the Property back to Landlord, upon the termination of this Lease, whether such termination shall occur by expiration of the Term, or in any other manner whatsoever, in the same condition of cleanliness and repair as at the date of the execution hereof, loss by casualty and reasonable wear and tear accepted. Except to the extent any of the following is Landlord's obligation pursuant to Section 7(c), Tenant shall make all necessary repairs and renewals upon Property and replace broken fixtures with material of the same size and quality as that broken. If, however, the Property shall not thus be kept in good repair and in a clean 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 Lease or an interference with the possession of the Property by Tenant, and Landlord may replace the same in the same condition of repair 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 Property 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.

(vi) Tenant will keep is leasehold improvements in compliance with all laws and regulations during the entire Term of this Lease, except for repairs required of the Landlord to be made and damage occasioned by fire, hurricane or other causes as provided for in this Lease.

## **7. PAYMENT OF TAXES**

(a) Definition. For purposes hereof, "Taxes" shall mean real property taxes and "Assessments" shall mean assessments, general and special, foreseen and unforeseen, for public improvements levied or assessed against the Property and the improvements thereon for that portion of the Term from and after the Property PIN Creation Date (as defined herein).



(b) Payment. Landlord represents and warrants to Tenant that the Property has two PINs, one for the leasehold and one for the underlying property. The first PIN, 11-19-424-008-8001, is for the underlying property and tax exempt. The second PIN, 11-19-424-008-8002, is the Leasehold PIN and Tenant is responsible for payment of all Taxes and Assessments before any fine, penalty, interest or cost may be added thereto, become due or be imposed by operation of law for the nonpayment of late payment thereof for the Leasehold PIN.

(c) Prorations. At the end of the Term, Taxes and Assessments to be paid by Tenant shall be prorated based on the portion of the fiscal tax year in which this Lease is in effect.

## 8. DAMAGE AND DESTRUCTION

(a) Casualty. If the Property shall be damaged by fire or other casualty (“**Casualty**”), Landlord shall, within one hundred eighty (180) days after such damage occurs (subject to being able to obtain all necessary permits and approvals, including, without limitation, permits and approvals required from any agency or body administering environmental laws, rules or regulations, and taking into account the time necessary to effectuate a satisfactory settlement with any insurance company) repair such damage at Landlord’s expense and this Lease shall not terminate. If the foregoing damage is due to the negligence or willful misconduct of Tenant, then Landlord shall look first to the insurance carried by Tenant to pay for such damage. Notwithstanding (i) any other provisions of the Lease to the contrary, and (ii) any legal interpretation that all improvements become part of the realty upon being attached to the Property, following a Casualty, the Landlord shall be responsible only for restoring the Property to building standard levels of improvement, and the tenant shall be responsible for insuring and replacing the above building standard levels of improvement, and the tenant shall be responsible for insuring and replacing the above building standard tenant improvements or betterments that made the Property “customized” for Tenant’s use. Customized improvements include, but not limited to: bullet proof glass, alarm censored doors, wood flooring, and custom cabinetry. Except as otherwise provided herein, if the entire Property are rendered untenable by reason of any such damage, all Rent and Additional Rent shall abate for the period from the date of the damage to the date the damage is repaired, and if only a part of the Property are so rendered untenable, the Rent and Additional Rent shall abate for the same period in the proportion that the area of the untenable part bears to the total area of the Property; provided, however, that if, prior to the date when all of the damage has been repaired, any part of the Property so damaged are rendered tenantable and shall be used or occupied by or through Tenant, then the amount by which the Rent and Additional Rent abates shall be apportioned for the period from the date of such use or occupancy to the date when all the damage has been repaired.

(b) Repair to Leasehold Improvements. Landlord shall have no obligation to repair damage to or to replace any leasehold improvements, Tenant’s personal property or any other property located in the Property, and Tenant shall within thirty (30) days after the Property is sufficiently repaired so as to permit the commencement of work by Tenant, commence to repair, reconstruct and restore or replace the Property (including fixtures, furnishings and equipment) and prosecute the same diligently to completion.

(c) Termination Right. Notwithstanding any provision contained herein to the contrary, Tenant shall have the option and right to terminate this Lease if, (a) the Property shall be so damaged by Casualty that it cannot be fully repaired within one hundred eighty (180) days after the date of

damage; (b) during the last eighteen (18) months of the Term of this Lease, the Property is damaged by a Casualty in amount exceeding thirty-three and one-third percent (33.33%) of the square footage of the Property, provided that, in such event, such termination of this Lease shall be effected by written notice within ninety (90) days of the happening of the Casualty causing such damage. This provision shall expressly survive the termination or expiration of this Lease.

## 9. INSURANCE

(a) Tenant shall keep in full force and effect during the Term special form coverage insurance covering Tenant's leasehold improvements, trade fixtures, merchandise and other personal property from time to time in, on or upon the Property for the full replacement value insuring against physical loss or damage generally included in the classification of "all risk" coverage.

(i) Said insurance shall be written by a company or companies licensed to do business in the state in which the Property is located and rated Class A:XII or better in Bests Key Rating Guide of Property-Casualty Insurance Companies.

(ii) Said insurance shall be in an amount of the full replacement value with a deductible in Tenant's reasonable discretion, which deductible Tenant shall be paid at Tenant's sole cost and expense. The insurance is to cover, in addition to any personal property at the Property, the above building standard leasehold improvements and betterments incorporated into the Property, whether or not initially installed and/or paid for by the Tenant. The Tenant's aggregate coverage amount must be an amount sufficient to cover both the tenant's personal property at the Property and the leasehold improvements. So long as the Lease is not terminated pursuant to Paragraph 9 for a casualty, the proceeds of tenant's insurance policy with respect to the tenant improvements shall be used to restore and replace the same.

(b) Tenant agrees to maintain a policy or policies of commercial general liability insurance written by an insurance carrier rated at least Class A or better in Bests Key Rating Guide of Property-Casualty Insurance Companies and licensed to do business in the state in which the Property is located which shall insure against liability for injury to and/or death of and/or damage to personal property of any person or persons, with policy limits of not less than \$2,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others not arising out of any one occurrence. Said policy or policies shall provide, among other things, blanket contractual liability insurance. Tenant's policy shall cover the Property and the business operated by Tenant and shall name Landlord as an additional insured. Landlord is self-insured up to \$1.25 Million and agrees to maintain an excess policy or policies of commercial general liability insurance over the self-insured limit written by an insurance carrier with a rating at least Class A or better in the Bests Key Rating Guide and licensed to do business in the state in which the Property is located which shall insure against liability for injury to and/or death of and/or damage to personal property of any person or persons, with policy limits of not less than \$2,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others not arising out of any one occurrence.

(c) Each of the parties hereto agrees to maintain and keep in force, during the Term hereof, all Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts.

(d) Within thirty (30) days after written request, each of the parties agrees to deliver to the other a certificate of insurance as evidence that the policies of insurance required by this Section 10 have been issued and are in effect.

(e) Waiver of Subrogation. Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income for property or general liability losses, even though such loss or damage might have been occasioned by the acts or omissions of such party, its agents, contractors or employees. Landlord or Tenant shall look exclusively to the proceeds of insurance carried by it or for its benefit in the event of any damage or destruction to its property located on the Property. Notwithstanding anything to the contrary contained herein, Landlord and Tenant hereby release and waive any and all rights of recovery, claim, action or cause of action, against the other, or its respective directors, shareholders, officers, agents, invitees and employees, for any loss or damage that may occur to the property or the equipment, fixtures and improvements comprising any part of the Property, by reason of fire, the elements, or any other cause which could be insured against under the terms of an “all risk” fire insurance policy, in the state where the Property is located, regardless of cause or origin, including negligence of the parties hereto, their agents, officers, invitees and employees. Subject to the provisions of the Lease, no insurer of a party hereunder shall ever hold or be entitled to any claim, demand or cause of action against Tenant by virtue of a claim of loss paid under any such insurance policies, whether such insurer’s claim be in the nature of subrogation or otherwise. The waivers provided pursuant to this paragraph shall not operate to the extent that they would void coverage under the provisions of any policy of insurance.

## **10. INDEMNIFICATION**

Except as otherwise provided in this Lease and subject to Section 10(e), and except to the extent caused by the negligence or willful misconduct of Landlord, or its agents, employees or contractors, or by the breach of this Lease by Landlord, Tenant shall protect, defend, indemnify and save Landlord and its officers, directors, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from (i) any matter, condition or thing that occurs in the Property, which is not the result of Landlord’s negligence or willful misconduct, (ii) any negligence or willful misconduct of Tenant, or its agents, employees or contractors; or (iii) Landlord’s breach occasioned wholly or in part by any act, omission of Tenant, its agents, employees, contractors or servants. The provisions of this Section shall survive the expiration or earlier termination of this Lease only with respect to any damage, injury or death occurring before such expiration or earlier termination.

## **11. EMINENT DOMAIN**

(a) Taking. An appropriation or taking under the power of eminent domain of all, or a portion, of the Property, are sometimes hereinafter called a “taking.”

(b) Total Taking of the Property. If all of the Property shall be taken this Lease shall terminate and expire as of the date of vesting of title in, or taking of actual physical possession of the Property by, the condemnor, and Landlord and Tenant shall thereupon be released from any and all further liability hereunder except to the extent any such liability hereunder expressly states that it shall survive the termination of this Lease. In such event, Tenant shall be entitled to participate in any

condemnation award so as to be compensated for the cost of relocation, removal and decrease in value, as a result of such taking of Tenant's fixtures, equipment and stock-in-trade located in the Property, goodwill and any other items to which Tenant is entitled under applicable law, and, the value of the leasehold of which Tenant is being deprived for the remainder of the Term hereof so long as any such award made to Tenant shall not reduce any award which may be obtained by Landlord. Nothing in this Section shall be construed as a waiver by Landlord of any rights vested in it by law to recover damages from a condemnor for the taking of its right, title, or interest in the Property.

(c) Partial Taking.

In the event of the taking of:

(i) any portion of the Property, so that the remainder thereof is not reasonably adapted to the continued leasing of the Property by Tenant; or

(ii) access, whether by a taking or otherwise, of the Property or a portion thereof to adjoining thoroughfares, so that all accessibility is substantially or materially restricted and as a result the continued leasing of the Property by Tenant will become impracticable or unprofitable in Tenant's sole discretion; then Tenant shall have the right to cancel and terminate this Lease as hereinafter provided. Within ninety (90) days after receipt by Tenant from Landlord of written notice that a condemnation action has been commenced, Tenant may, by written notice to Landlord, notify Landlord of its election to terminate this Lease, whereupon the parties shall be released from any and all further obligations under this Lease except to the extent any such obligation hereunder is expressly provided hereunder that the same shall survive the termination of this Lease and Tenant shall share any award or sale price as provided in Section 12(b) hereof.

(d) Notice of Proceedings. Upon service on either party hereto of any legal process in connection with any condemnation proceedings, the party so served shall give immediate notice thereof to the other party hereto.

(e) Temporary Taking. In the event of a taking of the Property, or any portion thereof, for temporary use (specifically one not exceeding one hundred twenty (120) days in duration), without the taking of the fee simple title thereto, this Lease shall remain in full force and effect, except for Tenant's payment of Rent which shall be proportionally abated for any period during which Tenant cannot operate its business from the Property in the same manner as prior to such temporary taking. All awards, damages, compensation and proceeds payable by the condemnor by reason of such taking relating to the Property, for periods prior to the expiration of the Lease shall be payable to Tenant. All such awards, damages, compensation and proceeds for periods after the expiration of the Lease shall be payable to Landlord.

## **12. UTILITIES**

Tenant shall pay during the Term hereof directly to the appropriate utility company or governmental agency all electric, water, gas, telephone and other public utility charges in connection with its occupancy and use of the Property, including all costs of operating and maintaining all equipment therein, all business licenses and similar permit fees but excluding any installation costs, tap fees and/or connection fees or charges, all of which shall be paid by Landlord. All utilities shall be paid pursuant to separate meters measuring Tenant's consumption of utilities from the Property, which

meter fee shall be Landlord's obligation at its sole cost and expense. Landlord shall not be liable to Tenant for damages or otherwise (i) if any utilities shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (ii) for any interruption in any utility service (including, but without limitation, any heating, ventilation or air conditioning) caused by the making of any necessary repairs or improvements or by any cause beyond Landlord's reasonable control, and the same shall not constitute a default, termination or an eviction. Notwithstanding the foregoing, in the event an interruption with such utility services shall continue for more than five (5) consecutive days, and if such interruption is not caused in part by Tenant, and if as a result of such interruption Tenant is unable to operate in the Property and in fact does not operate in the Property, then Rent shall abate for the entire period of interruption.

### **13. COVENANTS AGAINST LIENS**

Tenant covenants and agrees that it shall not, during the Term hereof, suffer or permit any lien to be attached to or upon the Property or the Property by reason of any act or omission on the part of Tenant or its agents, contractors or employees. In the event that any such lien does so attach, and (i) is not released within thirty (30) days after notice to Tenant thereof, or (ii) if Tenant has not bonded such lien within said thirty (30) day period, Landlord, in its sole discretion, may pay and discharge the same and relieve the Property or the Property therefrom, and Tenant agrees to repay and reimburse Landlord upon demand for the amount so paid by Landlord and for other reasonable costs incurred by Landlord in discharging and relieving said lien. 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 Property. 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.

### **14. ASSIGNMENT AND SUBLETTING**

Tenant shall not have the right to assign this Lease, or to sublet the Property, transfer and grant concessions or licenses ("**Transfer**") in all or any part of the Property without the Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. No Transfer shall relieve Tenant from any of its obligations as Tenant hereunder. Every such assignment or sublease shall recite that it is and shall be subject and subordinate to the provisions of this Lease, and the termination or cancellation of this Lease shall constitute a termination and cancellation of every such assignment or sublease. Notwithstanding the foregoing, Landlord agrees that no merger, consolidation, corporate reorganization, or sale or transfer of Tenant's assets or stock (specifically including any inter-family or inter-company transfers), redemption or issuance of additional stock of any class, or assignment or sublease to any person or entity which controls, is controlled by or is under common control with Tenant, shall be deemed a Transfer hereunder.

### **15. NOTICES**

Any notices required to be given hereunder, or which either party hereto may desire to give to the other, shall be in writing. Such notice may be given by reputable overnight delivery service (with proof of receipt available), personal delivery or mailing the same by United States mail, registered or

certified, return receipt requested, postage prepaid, at the following addresses identified for Landlord and Tenant, or to such other address as the respective parties may from time to time designate by notice given in the manner provided in this Section.

If to the City of Evanston:

City Manager  
2100 Ridge Avenue  
Evanston, IL 60201

with a copy to:

Corporation Counsel  
2100 Ridge Avenue  
Evanston, IL 60201

If to Tenant:

City Newsstand, Inc.  
4018 North Cicero Avenue  
Chicago, IL 60641

For purposes of this Lease, a notice shall be deemed given upon the date of actual receipt thereof or the date of proof of rejection thereof if delivered by hand or overnight courier service.

**16. RIGHT TO GO UPON PROPERTY**

Landlord hereby reserves the right for itself or its duly authorized agents and representatives at all reasonable times during business hours of Tenant upon at least forty-eight (48) hours prior notice to Tenant and accompanied by a representative of Tenant (which may be the store manager or assistant manager) to enter upon the Property for the purpose of inspecting the same and of showing the same to any prospective purchaser or encumbrance or tenant, and for the purpose of making any repairs which Landlord is required hereunder to make on the Property, but any such repairs shall be made with all due dispatch during normal construction trade working hours, and in such manner as to minimize the inconvenience to Tenant in the conduct of its business, it being agreed that in the event of a necessity of emergency repairs to be made by Landlord, Landlord may enter upon the Property forthwith to effect such repairs. Notwithstanding the foregoing, in the event that due to an entry by or on behalf of Landlord into the Property, Tenant's use is materially interfered with and Tenant, from the standpoint of prudent business management, cannot open and operate the Property for business for two (2) consecutive days, all Rent and other charges payable by Tenant hereunder shall equitably abate commencing after such second (2<sup>nd</sup>) day, and continuing until such repairs are completed, unless such entry is required as a result of Tenant's negligence or intentional misconduct.

**17. DEFAULT**

(a) Tenant Default.

(i) Events of Default. Including, but not limited to, the following events shall be deemed to be an "event of default" hereunder by Tenant subject to Tenant's right to cure:

a. Tenant shall fail to pay any item of Rent per Section 3 at the time and place when and where due and does not cure such failure within five (5) business days after receipt of notice from Landlord of such failure;

b. Tenant shall fail to comply with any other term, provision, covenant or warranty

made under this Lease or if any of Tenant's representations and warranties made under this Lease are determined to be untrue, either when made or at any time during the Term, by Tenant, and Tenant shall not cure such failure within thirty (30) days after Landlord's written notice thereof to Tenant. In the event Tenant cannot comply with such term, provision, or warranty, within said thirty (30) day period, Tenant shall not be in default if Tenant is diligently and continuously making an effort to comply with such term, provision, covenant or warranty and Tenant completes the cure of the default; or

c. 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.

(ii) Remedies. Upon the occurrence of an event of default, Landlord may, so long as such default continues, as permitted by law and subject to Landlord's obligation to use good faith efforts to mitigate damages, either:

a. terminate this Lease by written notice to Tenant, which written notice shall specify a date for such termination at least fifteen (15) days after the date of such written termination notice and such termination shall be effective as provided in such written notice unless Tenant shall cure such default within such notice period, or not terminate this Lease as a result of the default of Tenant. If Tenant shall fail to surrender the Property upon such termination, Landlord may thereupon, reenter the Property, or any part thereof, and expel or remove therefrom Tenant and any other persons occupying the same, using such means provided by law;

b. without terminating this Lease, Landlord may evict Tenant (by any means provided by law) and let or relet the Property or any or all parts thereof for the whole or any part of the remainder of the Term hereof, or for a period of time in excess of the remainder of the Term hereof, and out of any rent so collected or received, Landlord shall first pay to itself the expense of the cost of retaking and repossessing the Property and the expense of removing all persons and property therefrom, and shall, second, pay to itself any costs or expenses sustained in securing any new tenant or tenants (provided that such amount shall not include any amounts incurred to restore the Property to more than the condition originally delivered to Tenant), and shall third, pay to itself any balance remaining, and apply the whole thereof or so much thereof as may be required toward payment of the liability of Tenant to Landlord then or thereafter unpaid by Tenant; or

c. pursue such other remedies as are available at law or in equity.

(b) Landlord Default. Should Landlord default in the performance of any covenant, provision, warranty, condition or agreement herein, or if any of Landlord's representations and warranties made under this Lease are determined to be untrue, either when made or at any time during the Term, and such default in the case of any failure by Landlord to pay any sum required to be paid to Tenant hereunder, continues for ten (10) business days after notice thereof from Tenant, or in case of any non-monetary default, continues for thirty (30) days after receipt by Landlord of written notice thereof from Tenant (except as otherwise provided herein), or if the default of Landlord is of a type which is not reasonably possible to cure within thirty (30) days, if Landlord has not commenced to cure said default within said thirty (30) day period and does not thereafter diligently prosecute the curing of said default to completion (except as otherwise provided herein), Tenant in addition to any

and all other remedies which it may have at law and/or in equity including the right to seek injunctive relief without posting a bond or the obligation to prove irreparable harm, may pay or perform any obligations of Landlord hereunder and deduct the cost thereof from each installment of annual Rent payable pursuant to the terms of this Lease; provided, however, in no event shall the amount of any such deduction exceed ten percent (10%) of the Rent payable on a monthly basis; provided, further, Tenant shall not have the right to terminate this Lease except as expressly permitted herein.

## **18. REPRESENTATIONS AND WARRANTIES**

(a) Landlord represents, warrants and covenants to Tenant that, to Landlord's knowledge, the following is true as of the Effective Date:

- (i) Landlord is the fee simple owner of the Property;
- (ii) the Property is subject to no restrictions or continuing regulations of any kind or nature whatsoever incompatible with the Permitted Use and that there are no restrictions in any agreement by which Landlord is bound (including, but not limited to, Landlord's insurance policies) which would adversely affect Tenant's right to use the Property for the Permitted Use during the Term;
- (iii) there are no exceptions to title with respect to and/or encumbrances on the Property which would interfere with Tenants proposed use of the Property;
- (iv) Landlord has no notice of any proposed Assessments other than as reflected on the current tax bill;
- (v) there are no judicial, quasi-judicial, administrative or other orders, injunctions, moratoria or pending proceedings against Landlord or the Property which preclude or interfere with, or would preclude or interfere with, the construction contemplated herein or the occupancy and use of the Property by Tenant for the purposes herein contemplated.
- (vi) no third party has the right to object to Tenant's tenancy hereunder, prohibit the selling of any products sold by Tenant or the uses allowed herein or the right to consent to any feature of the Property or Tenant's signage.
- (vii) there are no mortgages, prime leases, deeds to secure debt, deeds of trust, or other instruments in the nature thereof, affecting Landlord or its interest in the Property.

(b) All representations and warranties, covenants and indemnities contained in this Lease shall survive the expiration or earlier termination of this Lease.

## **19. HOLDING OVER; END OF TERM**

(a) If Tenant shall hold possession of the Property after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying the Property as a tenant from month-to-month at one hundred fifty percent (150%) of the Rent in effect upon the expiration or termination of the immediately preceding term or (ii) Landlord may exercise any other remedies it has under this Lease or at law or in equity including an action for wrongfully holding over.



(b) Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Property to Landlord in as good order, condition and repair as when received by Tenant; ordinary wear and tear, casualty and condemnation excepted. This provision shall expressly survive the termination or expiration of this Lease.

(c) Any property, equipment, or product remaining in the Property upon expiration of this Lease shall be considered abandoned and property of the Landlord.

## **20. REMEDIES ARE CUMULATIVE**

Remedies conferred by this Lease upon the respective parties are not intended to be exclusive, but are cumulative and in addition to remedies otherwise afforded by the law.

## **21. QUIET POSSESSION**

Upon payment by the Tenant of the minimum, percentage and additional rent and all other sums due hereunder and upon the observance and performance of all covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Property for the Term of this Lease without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject nevertheless, to the terms and conditions of this Lease.

## **22. ALTERATION**

(a) Changes Required by Law. Any structural changes, alterations or additions in or to the Property which may be necessary or required by reason of any law, rule, regulation or order promulgated by competent governmental authority shall be made at the sole cost and expense of Landlord, including but not limited to asbestos removal and disposal and interior and exterior compliance with the Americans with Disabilities Act (ADA) etc. Notwithstanding the foregoing, if any such changes, alterations or additions are required as a result of improvements made by Tenant during the Term hereof or due to Tenant's use of the Property, such changes, alterations or additions shall be made at the sole cost and expense of Tenant. Tenant may contest the validity of any such law, rule, regulation or order, but shall indemnify and save Landlord harmless against the consequences of continued violation thereof by Tenant pending such contest.

(b) Alterations During Term. Tenant shall be permitted to perform interior, nonstructural alterations to the Property and to revise the interior layout of the Property. Tenant shall obtain Landlord's written consent to any other alterations or construction which affects the structural nature of the Property, which consent shall not be unreasonably withheld, conditioned or delayed.

## **23. HAZARDOUS SUBSTANCES**

(a) Tenant agrees that, except as herein set forth, it shall not generate, use, store, handle or dispose of on or transport over the Property any Hazardous Substances (defined below) in violation of any Environmental Laws (defined below), except as such incidental amounts of Hazardous Substances as may be required for Tenant to conduct the Permitted Use.

(b) If, at any time during the Term, Hazardous Substances are found in the Property or at the Property, then, in such event:

(i) with regard to any Hazardous Substances existing on the Property prior to the Commencement Date or that Landlord shall have caused, Landlord shall remove same, in compliance with applicable Environmental Laws, at Landlord's sole cost and expense. Landlord shall defend, indemnify, and hold Tenant harmless from and against any and all costs, damages, expenses and/or liabilities (including reasonable attorneys' fees) which Tenant may suffer as a result of any claim, suit or action regarding any such Hazardous Substances (whether alleged or real) and/or regarding the removal and clean-up of same or resulting from the presence of such Hazardous Substances. The representation, warranty and indemnity of Landlord described in this subsection shall survive the termination or expiration of this Lease.

(ii) with regard to any Hazardous Substances caused by Tenant or its agents, contractors or employees, Tenant shall remove same, in compliance with applicable Environmental Laws, at Tenant's sole cost and expense. Tenant shall defend, indemnify, and hold Landlord harmless from and against any and all costs, damages, expenses and/or liabilities (including reasonable attorneys' fees) which Landlord may suffer as a result of any claim, suit or action regarding any such Hazardous Substances (whether alleged or real) present due to Tenant and/or regarding the removal and clean-up of same or resulting from the presence of such Hazardous Substances. The representation, warranty and indemnity of Tenant described in this subsection shall survive the termination or expiration of this Lease.

(c) In the event that during the Term of this Lease, Tenant is prevented from performing Tenant's Work and/or Tenant shall be unable to operate for a period of thirty (30) days or more for the Permitted Use at the Property and ceases operating at the Property as a result of the existence or remediation of Hazardous Substances located at the Property which were not caused by Tenant or its agents, contractors or employees, then Rent, Additional Rent and all other charges due hereunder shall equitably abate, in accordance with the portion of the Property used by Tenant, until such time as Tenant is able to resume the performance of Tenant's Work and/or the operation of its business in the Property. If Rent and other charges shall be so abated for a period of three hundred sixty-five (365) days, Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice to Landlord.

(d) The term "**Hazardous Substance**" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under any Environmental Law (as defined below); (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos and any asbestos containing materials; and/or (iv) substances known to cause cancer and/or reproductive toxicity. The term "**Environmental Law**" shall mean any federal, state or local law, statute, ordinance, rule, regulation, order, consent, decree, judgment or common-law doctrine, interpretation thereof, and provisions and conditions of permits, licenses, plans, approvals and other operating authorizations whether currently in force or hereafter enacted relating to health, industrial hygiene or the environmental conditions on, under or about the Property, as such laws are amended and the regulations and administrative codes applicable thereto. It is the intent of the parties hereto to construe the terms "Hazardous Substance" and "Environmental Law" in their broadest sense.

## 24. GENERAL CONDITIONS

- (a) Time is of the essence of this Lease. Any deadlines in this Lease which cannot be met because of delays caused by governmental regulations, inability to procure labor or materials, strikes, acts of God, or other causes (other than financial), beyond the control of Landlord or Tenant (“**Force Majeure**”) shall be extended by the amount of time caused by such delays; provided, however, the payment of rent shall not be excused. Notwithstanding anything herein to the contrary, the failure by Landlord to construct the Property according to building code and/or to receive timely inspections by the necessary authorities due solely to the negligence, misconduct or financial inability of Landlord or Landlord's contractors, employees or representatives shall not constitute Force Majeure. In order for Landlord to claim the occurrence of Force Majeure, Landlord must have notified Tenant in writing of such occurrence within twenty (20) business days after the initial occurrence.
- (b) No waiver of any breach of the covenants, agreements, obligations and conditions of this Lease to be kept or performed by either party hereto shall be construed to be a waiver of any succeeding breach of the same or any other covenant, agreement, obligation, condition or provision hereof.
- (c) If the Landlord must pursue legal action to enforce terms of the Lease, Tenant is responsible for all costs, charges, expenses and attorney’s fees, and any other fees incurred in the event of a dispute between the Parties.
- (d) Tenant shall not be responsible for the payment of any commissions in relation to the leasing transaction represented by this Lease. Landlord and Tenant each covenant that they have not dealt with any real estate broker or finder with respect to this Lease (herein collectively “**Brokers**”). Each party shall hold the other party harmless from all damages, claims, liabilities or expenses, including reasonable and actual attorneys' fees (through all levels of proceedings), resulting from any claims that may be asserted against the other party by any real estate broker or finder with whom the indemnifying party either has or is purported to have dealt, except for the Brokers.
- (e) The use herein of any gender or number shall not be deemed to make inapplicable the provision should the gender or number be inappropriate to the party referenced. All section headings, titles or captions contained in this Lease are for convenience only and shall not be deemed part of this Lease and shall not in any way limit or amplify the terms and provisions of this Lease.
- (f) Landlord and Tenant have negotiated this Lease, have had the opportunity to be advised respecting the provisions contained herein and have had the right to approve each and every provision hereof; therefore, this Lease shall not be construed against either Landlord or Tenant as a result of the preparation of this Lease by or on behalf of either party.
- (g) If any clause, sentence or other portion of this Lease shall become invalid or unenforceable, the remaining portions thereof shall remain in full force and effect.
- (h) Wherever in this Lease Landlord or Tenant is required to give consent, such consent shall not be unreasonably withheld, conditioned or delayed except to the extent otherwise expressly provided herein.

(i) Landlord hereby agrees that it shall maintain all confidentiality with regard to entering into this Lease, the opening for business by Tenant in the Property and any financial information contained hereunder or obtained from Tenant during the Term of this Lease, other than disclosures to necessary third parties and Landlord shall not release any material whatsoever to the press or any news media without the prior written approval of Tenant, which approval may be withheld in Tenant's sole discretion.

(j) There shall be no personal liability on Landlord, its elected officials, officers, employees, agents, or any successor in interest with respect to any provisions of this Lease, or amendments, modifications or renewals hereof. Tenant shall look solely to the then owner's interest in the Property (including but not limited to any insurance proceeds, rents, or judgments) for the satisfaction of any remedies of Tenant in the event of a breach by Landlord of any of its obligations hereunder.

(k) Landlord hereunder shall have the right to assign, sell or transfer Landlord's interest in this Lease or the Property with consent of Tenant, which shall not be unreasonably withheld. In the event of any such transfer, the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer.

(l) The parties agree the this Lease 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.

(m) This Lease shall become effective on the day that this Lease shall be executed by the last of the parties hereto to execute this Lease (herein "**Effective Date**").

(n) There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease cannot be changed or terminated except by a written instrument subsequently executed by the parties hereto.

[REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the respective parties hereto have executed this Lease by officers or agents thereunto duly authorized.

Landlord:

**CITY OF EVANSTON,**  
An Illinois municipal corporation

By: \_\_\_\_\_

Name: Wally Bobkiewicz

Title: City Manager

Tenant:

**CITY NEWSSTAND, INC.**  
An Illinois corporation

By: \_\_\_\_\_

Name: Joe Angelastri

**EXHIBIT A**  
**LEGAL DESCRIPTION**

THAT PART OF LOT 12 (EXCEPT THE WEST 28 FEET THEREOF) IN BLOCK 12 IN WHITE'S ADDITION TO EVANSTON IN THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN EVANSTON, COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 12; THENCE ALONG THE NORTHLINE OF SAID LOT 12, AND ON AN ASSUMED BEARING, SOUTH 89 DEGREES 08 MINUTES 09 SECONDS WEST 58.02 FEET; THENCE SOUTH 14 DEGREES 55 MINUTES 00 SECONDS EAST 46.15 FEET; THENCE NORTH 81 DEGREES 41 MINUTES 25 SECONDS EAST 53.33 FEET TO THE EAST LINE OF SAID LOT 12; THENCE, ALONG SAID EAST LINE NORTH 09 DEGREES 58 MINUTES 06 SECONDS WEST 38.34 FEET TO THE POINT OF BEGINNING.

COMMONLY KNOWN AS: 860 CHICAGO AVENUE, EVANSTON, ILLINOIS  
PIN: 11-19-424-008-8002 (Leasehold PIN)