

7/25/2017

68-O-17

AN ORDINANCE

**Authorizing the City Manager to Enter into a Real Estate Contract
for the Sale of the Certain City-Owned Real Property at 100 Chicago
Avenue, Evanston, Illinois to Harrington Brown, 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 100 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 has determined that ownership of the Subject Property with a surface parking lot with 20 permit parking spaces 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 Harrington Brown, LLC, an Illinois limited liability company.

Pursuant to Ordinance 67-O-17, 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 Harrington Brown, 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 Harrington Brown, 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 Harrington Brown, 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 100 Chicago Avenue, 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 is hereby authorized and directed to execute, 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 *Pioneer Press*, a newspaper in general circulation in the City, on July 27, 2017. 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: 1

Introduced: August 14, 2017

Adopted: August 14, 2017

Approved: 8/15/17, 2017


Ann Rainey, Mayor Pro Tem

Attest: 
Devon Reid, City Clerk

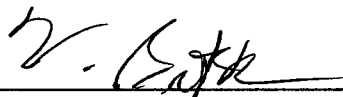
Approved as to form: 
W. Grant Farrar, Corporation Counsel

EXHIBIT A**LEGAL DESCRIPTION**

PART OF THE SOUTH 6.25 CHAINS OF THE NORTH EAST ¼ OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF HOWARD STREET, WITH THE EAST LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILROAD RUNNING THENCE EAST ALONG THE NORTH LINE OF HOWARD STREET TO ITS INTERSECTION WITH THE WEST LINE OF NORTH CLARK STREET (FORMERLY CHICAGO AVENUE) THENCE NORTHERLY ALONG THE WEST LINE OF SAID CLARK STREET 100 FEET, THENCE WEST PARALLEL WITH THE NORTH LINE OF HOWARD AVENUE TO THE EAST LINE OF THE RIGHT OF WAY OF CHICAGO AND NORTHWESTERN RAILROAD, THENCE SOUTHERLY ALONG SAID RIGHT OF WAY LINE 100 FEET MORE OR LESS TO THE POINT OF BEGINNING. PARCEL 2: THE NORTH 50 FEET OF THE SOUTH 150 FEET OF THAT PART OF THE SOUTH 6.25 CHAINS, LYING WEST OF THE WEST LINE OF CHICAGO AVENUE EAST OF THE EAST LINE OF CHICAGO AND NORTHWESTERN RAILROAD AND NORTH OF THE NORTHLINE OF HOWARD STREET OF THE NORTH EAST ¼ OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Real property address: 100 North Chicago Avenue, Evanston, IL 60202

PINs: 11-30-212-007-0000 and 11-30-212-008-0000

EXHIBIT B
AGREEMENT FOR PURCHASE AND SALE

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made and entered into as of the ____ day of _____, 2017 (the "Execution Date"), by and between the City of Evanston ("Seller") and Harrington Brown, LLC, an Illinois limited liability company ("Purchaser").

WITNESSETH:

WHEREAS, Seller is the owner of that certain real property located in Cook County, Illinois, being more particularly described on Exhibit A attached hereto and being located at 100 Chicago Avenue, Evanston, Illinois (the "Property");

WHEREAS, Purchaser desires to purchase the "Subject Property" (as hereinafter defined) and Seller desires to sell the Subject Property to Purchaser for the price and pursuant to the terms, conditions and upon the representations hereinafter set forth.

NOW, THEREFORE, for and in consideration of the purchase price noted below and other good and valuable consideration, the receipt whereof is hereby acknowledged by each party hereto from the other party hereto, and a hereinafter receipted deposit and in consideration of mutual covenants and conditions and promises herein contained, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference.

2. Sale. Subject to and upon the terms and conditions hereof, Seller shall sell, transfer, assign and convey to Purchaser at the "Closing", as hereinafter defined: (i) fee simple title to the Property, together with all easements, rights-of-way and other appurtenances, inuring to the benefit of the Property and all right, title and interest, if any, of Seller in and to any land lying in the bed of any street, road, avenue, open or proposed, in front of or adjoining the Property to the centerline thereof, and all right, title and interest of Seller in and to any awards made or to be made in lieu thereof, and in and to any unpaid awards for damage to the Property by reason of change of grade of any street; (ii) any and all improvements and fixtures located upon or under the Property ("Improvements"); and (iii) any, all licenses, franchises, certificates of occupancy and other permits, rights and approvals relating to the Property, including, without limitation, relating to development, construction, operation and maintenance of the Property or the building(s), if any, located upon the Property, and all permits, licenses, studies, plans, reports and surveys Seller may have, pertaining to the Property (collectively "Intangibles"); and Purchaser shall accept such conveyance, subject to the conditions hereof and upon the representations and warranties herein made. The Property, the Improvements and Intangibles are hereinafter collectively referred to as the "Subject Property". Further, on or prior to a date which is three (3) days following the Execution Date, Seller covenants and agrees to deliver to Purchaser true and correct copies of the documents and agreements that constitute, establish or evidence the Intangibles. In addition, from and after the date hereof, Seller shall deliver such

other documentation in Seller's possession or control which may be reasonably requested by Purchaser (the "Documents") and "Seller's Title Evidence" (as hereinafter defined).

3. Purchase Price. Purchaser shall pay to Seller Two Hundred Twenty Thousand Dollars (\$240,000) for the Subject Property (the "Purchase Price"). If the Site Plan Approval process yields a reduction in the building stories from the original proposal of a 5-story development then, at Purchaser's election, the purchase price may be revisited by the parties. In the event the parties cannot reach an agreement on a reduction in purchase price, then upon written notice to the other party, either party elect to terminate this Agreement. The Seller will provide Purchaser a credit of \$110,000 at Closing for the cost of the environmental remediation on the Property to be performed by Purchaser and its contractors.

4. Payment of Purchase Price; Deposit; Due Diligence Period. The Purchase Price shall be paid as follows:

(a) Within three (3) business days following the Execution Date, Purchaser will deliver to Chicago Title and Trust Company, 5215 Old Orchard Road, Skokie, IL 60077 ("Escrow Agent") the sum of Five Thousand and No/100 Dollars (\$5,000.00) ("Deposit"), which amount shall be held by the Escrow Agent, at the expense of Purchaser, pursuant to the terms and provisions of Exhibit B, and which shall be credited toward the Purchase Price at Closing or otherwise disbursed in accordance with this Agreement. Subject to the terms and conditions of this Agreement, the Deposit shall become non-refundable following the expiration of the Approval Period (as defined below), except in the event of Seller's default under this Agreement or if this Agreement is terminated by Purchaser in accordance with the terms of this Agreement (or as otherwise set forth herein).

(b) The "Due Diligence Period" shall mean the period commencing on the Execution Date and ending on the date which is 60 days thereafter.

(c) The balance of the Purchase Price shall be payable at the Closing (as hereinafter defined), plus or minus prorations as hereinafter set forth, by wire transfer.

5. Title. Within five (5) days following the Execution Date hereof, Seller shall deliver to Purchaser a copy of any existing title insurance policy (if any) and survey for the Subject Property ("Seller's Title Evidence"). In furtherance of the foregoing, and not as a limitation thereof, the state of Seller's title and the "Survey" (as hereinafter defined) and the state of title reflected thereby shall be such that Chicago Title Insurance Company ("Title Company") will issue a commitment ("Commitment") for the issuance of a 2006 ALTA Owner's Title Insurance Policy (i.e., with extended coverage over pre-printed exceptions) without exception other than the "Permitted Exceptions" (as hereinafter defined) for the amount of the Purchase Price (and the amount of Purchaser's contemplated improvements with a "pending improvements" clause). Seller will order the Commitment within five (5) business days of the Execution Date, and will provide a copy of same to Purchaser upon receipt. If Purchaser shall have any objection(s) with respect to the status of title to the Subject Property as reflected in the Commitment and/or the Survey, Purchaser shall notify Seller of such objections ("Title Notice") on or before thirty (30) days following Purchaser's receipt of the Commitment and Survey ("Title Review Period"). Purchaser shall have until the end of the Title Review Period to obtain a new

survey of the Subject Property or an update of Seller's existing survey (if any) ("Survey"). Seller shall have the right, but not the obligation, to satisfy any objection stated in the Title Notice (except as expressly set forth in this Paragraph 5). Seller shall have thirty (30) days in which to satisfy any title objection; provided, however, Seller is not obligated to satisfy any title objection unless Seller so agrees in writing or as may be expressly required under this Paragraph 5. If, after the expiration of said thirty (30)-day period, Seller has not cured the defect(s) of which Purchaser gave notice, then Purchaser shall have the right, but not the obligation, until the end of the Due Diligence Period to attempt to cure such defect(s) in title. If, prior to the end of the Due Diligence Period, the title defect or defects cannot be corrected, then Purchaser shall have the right, but not the obligation, to terminate this Agreement and, upon termination, Purchaser's Deposit shall be returned to Purchaser, and neither party shall have any claim against the other except as herein expressly stated. As set forth herein, "Permitted Exceptions" shall mean: (i) those matters shown on the Commitment as of the end of the Due Diligence Period and not objected to by Purchaser in writing and (ii) taxes not yet due and payable. Notwithstanding anything herein to the contrary, in no event shall the term "Permitted Exceptions" be deemed to include any monetary liens, claims of liens or security interests, and any other liens arising after the date of the Commitment caused or permitted by Seller, and Seller shall remove the same at or prior to Closing.

Seller covenants to execute such reasonable affidavits and undertakings reasonably required by the Title Company to delete: (i) the Schedule B, Section 1 requirements in the Commitment (except liens which may arise out of mechanic liens with whom Purchaser has contracted); (ii) the standard printed exceptions in the Commitment which are customarily removable by such affidavits; and (iii) the gap exception.

6. Conditions Precedent; Approval Period. Unless waived in whole or in part in writing by the other party, this Agreement and the obligations of the parties to close the transaction hereunder are subject to and contingent upon each and all of the following (hereinafter sometimes collectively referred to as the "Conditions Precedent" and singularly as a "Condition Precedent"):

(a) *Due Diligence Period Termination Right.* Purchaser, in its sole and absolute discretion, exercisable for any reason or for no reason, shall have the right, on or prior to the expiration of the Due Diligence Period, to terminate this Agreement upon written notice to Seller, whereupon this Agreement shall promptly be deemed terminated and of no further force and effect, the Deposit, and any interest accrued thereon, shall be returned to Purchaser and upon such return Purchaser and Seller shall have no further obligations to each other, except as expressly set forth in this Agreement.

(b) *Approval Period.* Purchaser shall have the period (i) commencing on the date of expiration of the Due Diligence Period, and (ii) expiring at 5:00 p.m. Central Time on the date which is 150 days thereafter (such period, the "Approval Period"), to undertake and obtain its municipal approvals for zoning entitlements, site plan, and building permits, all necessary to development property in Evanston per City Code (collectively, "Site Plan Approval") for the development of the Subject Property. If Purchaser cannot obtain Site Plan Approval within the Approval Period, then Purchaser can terminate this Agreement, whereupon this Agreement shall be deemed terminated and of no further force and effect, the Deposit, and any interest accrued

thereon, shall promptly be returned to Purchaser and, upon such return, Purchaser and Seller shall have no further obligations to each other, except as expressly set forth in this Agreement.

(c) *Performance of Other Party; No Pending Litigation.*

(i) As a condition benefiting Seller only, at the Execution Date and at Closing, all representations and warranties of Purchaser hereunder shall be true and correct in all material respects, and all obligations of Purchaser hereunder shall have been performed in all material respects.

(ii) As a condition benefiting Purchaser only, at the Execution Date and at Closing, all representations and warranties of Seller hereunder shall be true and correct in all material respects, and all obligations of Seller hereunder shall have been performed in all material respects. In addition, as a condition benefiting Purchaser only, there shall be no pending or threatened litigation involving the Subject Property or Purchaser's contemplated development thereon.

(d) *No Material Adverse Change.* As a condition benefiting Purchaser only, except as permitted in this Agreement, there shall have been no adverse change to the title to the Subject Property from the effective date of the Commitment, excluding any mortgage or liens of Seller which Seller shall satisfy at Closing, and at Closing the Title Company shall be prepared and unconditionally committed to issue to Purchaser its owner's policy of title insurance in the amount of the Purchase Price, insuring fee title to the Property in Purchaser subject only to the Permitted Exceptions and with "extended coverage" and such other endorsements that Purchaser reasonably requires ("Title Policy").

(e) *Zoning.* As a condition benefiting Purchaser, Purchaser shall obtain Site Plan Approval by following the process set forth in the City Code, including presentation to the Plan Commission and City Council for approval. This real estate contract does not provide any future zoning approval or entitlements for the development. The development and site plan for the Subject Property shall allow for the future use of the building with ground floor retail with a job training program component and certain housing units that are affordable to households earning at or below 80% of the area median income in the residential floors above the ground floor.

Purchaser shall have the right to terminate this Agreement in the event of the failure of any Condition Precedent at or before Closing. Should this Agreement be terminated by Purchaser due to the failure of any Condition Precedent, the Deposit shall be forthwith returned to Purchaser by the holder thereof and all parties hereto shall be released and relieved from any and all further obligations hereunder or arising herefrom except as herein provided. If this Agreement is terminated by the Seller due to the failure of Condition Precedent (c)(i) or a failure to close by Purchaser in accordance with terms of this Agreement, then, provided Seller is not then in default of this Agreement, the Deposit shall be paid over to Seller and all parties hereto shall be released and relieved from any and all further obligations hereunder or arising herefrom except as herein provided.

7. Representations, Warranties and Covenants of Seller. As a material inducement to Purchaser to execute this Agreement and to close the transaction contemplated hereby and to

pay the Purchase Price therefore, Seller warrants and represents to Purchaser that as of the date hereof and as of the Closing:

(a) Seller has the legal capacity to execute and deliver this Agreement and to execute and deliver all other documents and perform all other acts as may be necessary in connection with the performance of this Agreement and the consummation of the sale of the Property.

(b) Neither the execution and the delivery of this Agreement, the assumption of the obligations set forth in this Agreement, the consummation of the transactions contemplated in this Agreement, the performance of the covenants and agreements set forth in this Agreement nor the compliance with the terms and provisions of this Agreement will conflict with, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan agreement, loan or other agreement or instrument to which the Seller is a party, or by which the Seller or its property may be bound.

(c) No approval or consent not already obtained by any person or entity is necessary in connection with the execution and delivery of this Agreement by the Seller or the performance of the Seller's covenants and agreements under this Agreement. The Seller agrees to work in good faith to facilitate Purchaser's due diligence inspections and to assist and support Purchaser's efforts to obtain the Site Plan Approval in a timely manner. Without limitation, upon request from Purchaser, Seller shall execute such applications and other necessary documents and provide such information that may be required or reasonably requested to obtain the Site Plan Approval (including submittals to the City of Evanston and other applicable governmental agencies), provided that Seller shall not be required to incur any liability as a consequence of such applications and submittals (unless Purchaser agrees to reimburse or indemnify Seller for the same). Further, upon request from Purchaser, Seller or its designated representatives shall attend public hearings and meetings with City of Evanston staff personnel.

(d) Seller is not aware of any judicial, administrative or similar proceeding affecting the Subject Property or Seller's ability to perform its obligations under this Agreement.

(e) Seller has not made an assignment for the benefit of creditors of all or substantially all of its assets, is able to pay all or substantially all of its debts as they become due, has not been adjudicated as bankrupt or insolvent, nor has Seller filed a petition or application to any tribunal for the appointment of a trustee or receiver or any substantial part of its assets, or upon the commencement of any voluntary or involuntary bankruptcy (and, in respect of an involuntary bankruptcy, has not been discharged within sixty (60) days), reorganization or similar proceedings with such other party, or the entry of an order appointing a trustee or receiver or approving a petition in any such proceeding.

(f) Seller has good, marketable and insurable title to the Subject Property in fee simple and subject to no liens or encumbrances whatever other than (i) the Permitted Exceptions and (ii) monetary liens that will be satisfied and released by Seller at or prior to Closing.

(g) As of the Closing contemplated hereby, there shall be no unpaid bills for labor performed or materials supplied incident to the Subject Property, any of which will be paid off at Closing. A no-lien affidavit stating same will be delivered by Seller to Purchaser at Closing.

(h) To Seller's knowledge, there are no pending or contemplated condemnation or eminent domain proceedings which would affect any portion of the Subject Property.

(i) Except as set forth on Exhibit C attached hereto, Seller is not a party to and the Subject Property is not affected by any lease or other occupancy agreement, or any service, maintenance or property management agreements or any contracts or other agreements of any kind with respect to the Subject Property which is not reflected in the Permitted Exceptions; and Seller will not, without the prior written consent of Purchaser, enter into or amend any agreement, contract or lease which will be effective following the Closing. All existing agreements, contracts or leases affecting the Subject Property shall be terminated as of the Closing.

(j) To Seller's knowledge there is no pending or threatened litigation involving the Subject Property.

(k) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, so as to require the withholding of any portion of the Purchase Price for Federal income tax purposes, and Seller agrees to execute, at Closing, an affidavit evidencing same.

(l) The Subject Property is not the subject of a right of first refusal or option to purchase in any third party.

(m) The parties executing this Agreement are duly authorized to bind Seller without the further authorization of any person or entity.

(n) Seller shall, until Closing, maintain the Subject Property in its existing condition and carry such reasonable and customary liability insurance.

(o) Seller has not received written notice of the violation (actual or asserted) of any law, statute, code, ordinance, rule, regulation, court order or other legal requirement (collectively, "Laws") applicable to the Property, including (without limitation), any Laws pertaining to hazardous or toxic materials or conditions and any Laws pertaining to human health or welfare or the protection of the environment. To Seller's knowledge, no party has released, generated, produced, stored, treated, processed, transferred or disposed of any hazardous or toxic materials on the Subject Property.

(p) Seller has delivered to Purchaser all of the Documents in Seller's possession or control and all such Documents are, to Seller's knowledge, true, correct and complete in all material respects.

(q) The representations and warranties of the Seller set forth in this Paragraph 7 shall be made as of the date hereof and shall be true and correct as of the Closing Date with the same force and effect as if made at that time and will survive Closing for 6 months.

8. Representations and Covenants of Purchaser. The Purchaser hereby represents and warrants as to the Seller and covenants and agrees with Seller as follows:

(a) Purchaser is a limited liability company duly organized and existing under the laws of the State of Illinois, with the legal capacity to execute and deliver this Agreement and to execute and deliver all other documents and perform all other acts as may be necessary in connection with the performance of this Agreement and the consummation of the purchase of the Property.

(b) Neither the execution and the delivery of this Agreement, the assumption of the obligations set forth in this Agreement, the consummation of the transactions contemplated in this Agreement, the performance of the covenants and agreements set forth in this Agreement nor the compliance with the terms and provisions of this Agreement will conflict with, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan agreement, loan or other agreement or instrument to which the Purchaser is a party, or by which the Purchaser or its property may be bound.

(c) No approval or consent not already obtained by any person or entity is necessary in connection with the execution and delivery of this Agreement by the Purchaser or the performance of the Purchaser's covenants and agreements under this Agreement. Without limiting Purchaser's rights under Paragraph 6, Purchaser agrees to work in good faith during the Due Diligence Period and Approval Period and attempt to obtain the Site Plan Approval in a timely manner.

(d) The Purchaser is not aware of any judicial, administrative or similar proceeding which could materially and adversely affect the Purchaser's ability to perform its obligations under this Agreement.

(e) Purchaser has not made an assignment for the benefit of creditors of all or substantially all of its assets, is able to pay all or substantially all of its debts as they become due, has not been adjudicated as bankrupt or insolvent, nor has Purchaser filed a petition or application to any tribunal for the appointment of a trustee or receiver or any substantial part of its assets, or upon the commencement of any voluntary or involuntary bankruptcy (and, in respect of an involuntary bankruptcy, has not been discharged within sixty (60) days), reorganization or similar proceedings with such other party, or the entry of an order appointing a trustee or receiver or approving a petition in any such proceeding.

(f) Except as set forth in this Agreement, Purchaser acknowledges and agrees that the Purchaser is relying solely upon its own inspections, investigations, analysis and independent assessment of the Property in determining whether to acquire the Property. The Purchaser also hereby agrees that the Seller sells the Property, and the Purchaser purchases and accepts the Property, in AS IS – WHEREIS CONDITION, WITH ALL FAULTS, without any

warranties, representations, guarantees, statements, agreements, studies, reports, descriptions, guidelines or other information or materials whether oral or written, expressed or implied, of any kind or nature from the Seller, except as expressly set forth in this Agreement, and Seller has no responsibility to make any improvements to the Property.

(g) In the event Purchaser closes in accordance with this Agreement, Purchaser shall be deemed to acknowledge, understand and agrees as follows: (i) the Purchaser is aware of the physical and geological condition of, and the status of title to, the Property and the Purchaser acknowledges that the Seller and the Seller's representatives have made no representations or warranties, regarding the physical and geological condition of, and status of title to, the Property or the suitability of the Property for the Purchaser's proposed use, except as expressly set forth in this Agreement; (ii) the Purchaser is satisfied with the soils and the soil compaction of the Property; (iii) the Purchaser has evaluated the environmental condition of the Property, has conducted all environmental tests and assessments of the Property which the Purchaser believes are necessary, and is satisfied with the environmental condition of the Property; and (iv) the Purchaser has examined the zoning ordinance, building code and other laws, codes, statutes, regulations, covenants and restrictions relating to the Property and the Purchaser assumes all risks relating to such zoning ordinance, building code and other laws, codes, statutes, regulations, covenants and restrictions relating to the Property.

(h) Subject to the terms of this Agreement, in the event Purchaser closes in accordance with this Agreement, the Purchaser hereby releases the Seller and Seller's representatives from all responsibility and liability regarding the valuation, marketability, compliance with laws, or utility of the Property, or its suitability for any purpose whatsoever, except that the foregoing shall not limit Purchaser's remedies in the event of a breach of Seller's express representations or warranties hereunder.

(i) The representations and warranties of the Purchaser set forth in this Paragraph 8 shall be made as of the date hereof and shall be true and correct as of the Closing Date with the same force and effect as if made at that time.

9. Inspections; NFR Letter. Seller hereby grants to Purchaser and Purchaser's agents, employees, servants and contractors the right to go upon the Subject Property during the term of this Agreement and make such tests and investigations and do such things, including, but not limited to, surveying of the Subject Property as Purchaser shall deem necessary or appropriate, including, but not limited to, tests and investigations that may be necessary for Purchaser to determine that Purchaser can utilize the Subject Property for its contemplated use. All of Purchaser's costs and expenses incurred in connection with its due diligence at the Property, including without limitation, all inspection and testing, and obtaining and reviewing reports, appraisals, materials and documents are the sole and absolute responsibility of Purchaser and such obligations to pay these costs and expenses shall not be a credit against the Purchaser's obligation to pay the Purchase Price at Closing. Neither Purchaser, nor any of its agents or representatives, shall damage the Property or any portion thereof unless the same shall promptly be repaired by Purchaser at Purchaser's sole cost and expense. Purchaser shall indemnify and hold Seller harmless for damage to persons or property from any claims, demands, actions, lawsuits, damages, construction liens against the Subject Property and costs, including reasonable attorneys' fees, arising out of any act or omission of Purchaser, or its agents and/or

representatives, in connection with Purchaser's due-diligence review, investigations, tests and surveys; provided, however, that Purchaser shall not be liable for the mere discovery of any pre-existing condition at the Subject Property. The foregoing indemnity shall survive the termination or cancellation of this Agreement and shall survive Closing.

10. Environmental Indemnity. Purchaser must defend, indemnify, and hold Seller harmless from and against any and all costs, damages, expenses and/or liabilities (including reasonable attorneys' fees) which Purchaser may suffer as a result of any written demand (whether or not a suit), claim, suit or action regarding any such Hazardous Substances (whether alleged or real) present due to and/or regarding the removal and clean-up of same or resulting from the presence of such Hazardous Substances. Purchaser, for itself and its successors in interest, waives and releases Seller from any and all future claims and causes of action arising from or relating to the presence or alleged presence of Hazardous Substances in, on, under, about or emanating from the Property during the period of Purchaser's ownership of the Property, including without limitation any claims for cost recovery, contribution, natural resources damages, property damage, consequential damages, personal or bodily injury (including death) or otherwise, under or on account of any violation, or arising under, Environmental Law during the period of Purchaser's ownership of the Property. The term "**Hazardous Substance**" includes, without limitation, any material or substance (regardless of whether discarded, recyclable or recoverable) to which liability or standards of conduct are imposed pursuant to Environmental Laws, including, but not limited to (i) any defined, characteristic or listed "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste", "hazardous substance", "hazardous material", "regulated substance", "pollutant", "contaminant" or waste, (ii) petroleum (including crude oil or any fraction thereof, natural gas, liquefied natural gas, synthetic gas or mixtures of natural gas and synthetic gas), (iii) asbestos and any asbestos containing materials, (iv) substances known to cause cancer and/or reproductive toxicity, (v) polychlorinated biphenyls (PCBs) and (vi) radioactive material. The term "**Environmental Law**" means 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 Premises or the Property, as such laws are amended and the regulations and administrative codes applicable thereto, including, by way of example and without limitation, the following: the Illinois Environmental Protection Act; Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); the Resource Conservation and Recovery Act ("RCRA"); the Clean Air Act; the Clean Water Act; the Safe Water Drinking Act ("SDWA"); the Toxic Substances Control Act; and all state and local counterparts thereto; and any common or civil law obligations including, without limitation, nuisance or trespass. It is the intent of the parties hereto to construe the terms "Hazardous Substance" and "Environmental Law" in their broadest sense.

11. Conveyance. The conveyance of the Subject Property by Seller to Purchaser shall be by special warranty deed in a form sufficient to vest title in Purchaser pursuant to Paragraph 5. Seller and Purchaser acknowledge that time shall be of the essence as to all acts of Purchaser and Seller hereunder. Seller agrees to execute and deliver to Purchaser, at Closing an assignment of the Intangibles and, if applicable, a bill of sale in customary form conveying any personalty associated with the Subject Property. Seller shall also deliver to Purchaser at Closing (i) a

Foreign Investment in Real Property Tax Act affidavit executed by Seller, (ii) evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the underwriter for the Title Policy, and (iii) such other documents as may be reasonably necessary or required by the Title Company to effectuate the transaction contemplated herein. Seller and Purchaser shall each deposit with Escrow Agent an executed closing statement consistent with this Agreement in the form required by Escrow Agent.

12. Closing

(a) Unless extended by any other provisions of this Agreement, the "Closing" of the transaction contemplated by this Agreement (execution and delivery of the special warranty deed, as well as the execution and delivery of all other documents required pursuant to this Agreement and the payment of all sums required to be paid) shall take place upon the date selected by Purchaser by notice to Seller at least five (5) business days in advance of such date, but in any event on or before sixty (60) days after the expiration of the Approval Period.

(b) Seller agrees to execute at Closing an undertaking required by the Title Company to delete the "gap" exception.

13. Expenses. The parties agree that the following shall be the schedule of obligations with respect to the Closing expenses hereunder, to wit:

(a) Seller shall pay for:

- (i) any state, county and municipal documentary stamp taxes (or other transfer taxes) and surtaxes, if any, on the special warranty deed; and
- (ii) the premium for the Title Policy providing coverage equal to the Purchase Price (including extended coverage but not any other endorsements), and the cost of correcting any title defects;
- (iii) one-half (1/2) of the escrow fees of the Title Company as escrow agent and for the escrow closing;
- (iv) all prorations to and including the Closing Date for real estate taxes, special assessments or fees, water bills, utility charges or other similar expenses.

(b) Purchaser shall pay for:

- (i) the cost of its due diligence, including any survey;
- (ii) the recording of the special warranty deed and any other conveyance documents, or mortgage, deed of trust, assignments of rents, financing statements or similar documents evidencing or securing

the obligations of the Purchaser under a mortgage loan or other loan secured by the Property;

- (iii) one-half (1/2) of the escrow fees of the Title Company as escrow agent and for the escrow closing;
- (iv) the premium on the Title Policy for coverage in excess of the Purchase Price and costs for any endorsements thereto (other than extended coverage); and
- (v) all of the costs of the premium and related costs charged by the Title Company for the issuance of any mortgage title insurance policy and any endorsements thereto.

(c) All governmental and quasi-governmental improvement liens which have been certified as of the Execution Date shall be paid by Seller and, if not certified, Purchaser shall receive a credit, at Closing, in an amount equal to 150% of the latest estimate therefor by the applicable governmental agency, provided that, upon request by either party hereto, the parties hereto shall, upon the actual amount of such lien being established, make whatever adjustments are necessary to reflect the actual amount of the lien notwithstanding the fact that the Closing of the transaction contemplated by this Agreement has occurred.

(d) Accrued and unpaid real property taxes and personal property taxes shall be prorated as of the date of Closing on an accrual basis based on the parties' respective periods of ownership, and Purchaser shall receive a credit for 110% of the estimated accrued and unpaid real property taxes and personal property taxes relating to Seller's period of ownership. If the Closing occurs on a date when the taxes for the year of Closing are not fixed, but the then-current year's assessment is available, taxes for such year will be prorated based upon such assessment. If such year's assessment is not available, taxes will be prorated based upon the then-prior year's tax. Except as otherwise specifically provided in this Agreement, all expenses and revenues of the Subject Property shall be prorated or credited as the case may be to the day of Closing. The provisions of this Paragraph shall survive the Closing. Any parking taxes owed to the City of Evanston will be paid prior to Closing by the Seller.

14. Possession. Possession of the Subject Property shall be delivered by Seller to Purchaser at Closing. Risk of loss to the Subject Property between the Execution Date and the date of the Closing shall be upon Seller.

15. Condemnation. In the event that any condemnation or eminent domain proceedings are threatened or instituted at any time prior to the Closing hereunder which results in or could result in the taking of any part or all of the Subject Property, Purchaser, by written notice given within thirty (30) days after notification thereof from Seller (and the Closing Date shall be extended accordingly to allow for such notice period, if necessary), shall have the option of: (i) canceling this Agreement, in which event the Deposit shall be forthwith returned by the holder thereof to Purchaser and upon such repayment, this Agreement shall be null, void and of no further force or effect and all parties hereto shall be released and relieved from any and all further liability or obligations hereunder, except those that survive termination of this

Agreement; or (ii) Closing the transaction contemplated by this Agreement, in which event the Purchase Price shall not be abated; provided, however, that Seller shall assign (with any necessary third-party consents) any condemnation or eminent domain award and its right to receive same to Purchaser. Seller agrees not to enter into any settlement of any condemnation proceedings or eminent domain proceedings without the prior written consent of Purchaser, and Seller agrees to immediately notify Purchaser in the event any condemnation or eminent domain proceeding be threatened or instituted. Purchaser's right to consent to any such settlement shall terminate on the date contemplated for Closing pursuant to this Agreement in the event Purchaser has not closed by such date.

16. Anti-Terrorism and Anti-Money Laundering Compliance

(a) Compliance with Anti-Terrorism Laws. Neither the Purchaser, the Seller, nor any person who owns a direct controlling interest in or otherwise controls the Purchaser or the Seller, or any assignee of the Purchaser, is (i) listed on the Specially Designated Nationals and Blocked Persons List (the "*SDN List*") maintained by the Office of Foreign Assets Control ("*OFAC*"), Department of Treasury, and/or on any other similar list ("*Other Lists*" and collectively with the SDN List, the "*Lists*") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, the "*OFAC Laws and Regulations*"); or (ii) a person (a "*Designated Person*") either (A) included within the term "designated national," as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "*Executive Orders*").

(b) No Violation of Anti-Money Laundering Laws. Neither Purchaser, any assignee of the Purchaser, nor any holder of a direct interest in an assignee of the Purchaser (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws. For purposes of this Paragraph 15, the term "*Anti-Money Laundering Laws*" means the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.* ("*BSA*"), and all applicable laws, regulations and governmental guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957.

17. 1031 Exchange. The parties acknowledge that Seller, or its assignees, may structure the sale of this Property so as to qualify for like-kind exchange treatment pursuant to §1031 of the Internal Revenue Code or other provisions providing favorable tax treatment. Accordingly, prior to each Closing, Seller reserves the right to assign this Agreement to a qualified exchange intermediary or other third party to the extent necessary to facilitate the exchange and shall give written notice of such assignment identifying the assignee at or prior to each Closing. As an accommodation to Seller, Purchaser agrees to accept performance pursuant to this Agreement from Seller's assignee to the extent of such permitted assignment and to perform pursuant to this Agreement for the benefit of Seller's assignee, provided that Purchaser shall not be required to acquire replacement property for Seller or to incur any additional

expense therefor and title to the Property shall be conveyed directly from Seller to Purchaser by the deed as required by this Agreement. Notwithstanding the foregoing, Seller shall remain primarily liable for the performance of the terms of this Agreement. If Purchaser desires to structure its acquisition of the Subject Property to qualify for like-kind exchange treatment pursuant to §1031 of the Internal Revenue Code or other provisions providing favorable tax treatment, Seller shall reasonably cooperate with Purchaser to effectuate the same.

18. Closing Representations. The obligations of Purchaser and Seller under this Agreement are subject to all of the representations and warranties of the other party contained in this Agreement having been true and correct in all material respects on the date hereof and on the date of Closing.

19. Default.

(a) If Purchaser shall default in the payment of the Purchase Price or otherwise default in any of the terms, covenants and conditions of this Agreement on the part of Purchaser to be performed in any material respect, or if any of the representations and warranties made by Purchaser herein shall be in any respect untrue in any material respect, Seller shall, as its sole and exclusive remedy, retain the Deposit as full and agreed upon liquidated damages in full settlement of any and all claims against Purchaser for damages or otherwise and Purchaser shall have no other or further liability hereunder other than any liability under any indemnification provisions in this Agreement. The parties acknowledge that this provision for liquidated damages is a fair and reasonable measure of the damages to be suffered by Seller in the event of Purchaser's default because the exact amount of damages is incapable of ascertainment. Notwithstanding any provision of this Agreement to the contrary, Purchaser shall not be in default hereunder, unless Seller shall have provided written notice of the alleged default and a period of ten (10) days after receipt of notice to cure same.

(b) If, on or before the Closing:

- (i) Seller is unable to deliver good, marketable and insurable title to the Subject Property subject only to the Permitted Exceptions, it being acknowledged by Purchaser that Seller is not obligated to cure title objections (other than as expressly set forth in Paragraph 5) as set forth in Paragraph 5; or
- (ii) Seller shall have failed to comply with any other material term, provision, covenant, agreement or condition of this Agreement; or
- (iii) any of the representations and warranties made by Seller herein shall be in any respect untrue in any material respect,

and if such failure, default or misrepresentation is not cured by Seller within ten (10) business days after notice thereof from Purchaser, then the Deposit shall immediately be returned to Purchaser, and Purchaser shall have the right:

- (A) to cancel this Agreement by giving written notice to Seller whereupon this Agreement shall be deemed to be terminated,

and Seller shall reimburse Purchaser for its actual out-of-pocket expenses incurred in connection with pursuing the transaction contemplated hereunder; or

(B) to take title subject to the defect, exception, objection, inaccuracy or failure; or

(C) to pursue an action for specific performance.

Without limiting Purchaser's rights contained in this Paragraph, in case of a Seller lien or Seller encumbrance on the Subject Property which can be removed at the time of Closing by payment of a liquidated amount, Seller covenants and agrees, at Purchaser's request, to remove such lien or encumbrance at Closing so that the Subject Property can be conveyed to Purchaser free of same except non-delinquent real estate taxes which are not yet due and payable.

20. Attorney's Fees. In connection with any litigation arising out of this Agreement, each party shall cover its own costs and expenses incurred, including, but not limited to, attorneys' fees actually incurred.

21. Notices. All notices pursuant to this Agreement shall be in writing and shall be considered as properly given or made (i) upon the date of personal delivery (if notice is delivered by personal delivery), (ii) on the date of delivery, as confirmed by electronic transmission (if notice is delivered by email transmission), (iii) on the day one (1) business days after deposit with an nationally recognized overnight courier service (if notice is delivered by internationally recognized overnight courier service), or (iv) on the third (3rd) business day following mailing, if within the United States, by first class United States mail, postage prepaid, certified mail, return receipt requested (if notice is given in such manner).

Notices as to Seller shall be sent to:

The City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attn: Wally Bobkiewicz, City Manager
Email: wbobkiewicz@cityofevanston.org

With a copy to:

City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attn: W. Grant Farrar, Corporation Counsel
Email: gfarrar@cityofevanston.org

Notices as to Purchaser shall be sent to:

Harrington Brown LLC
4256 N. Ravenswood Avenue, #109
Chicago, IL 60613
Attn: David Brown, Manager

With a copy to:

DLA Piper LLP (US)
444 W. Lake Street
Suite 900
Chicago, IL 60606
Attn: Paul Shadle and Katie Jahnke Dale

The place to which any party hereto is entitled to receive any notice may be changed by such party by giving notice thereof in accordance with the foregoing provision. Attorneys for either party may give notices on behalf of their respective clients.

22. Brokers. Each party hereto represents and warrants to the other party that it has not employed or retained any broker, finder or other intermediary in connection with the transactions provided for in this Agreement and that it has not had any dealings with any person or entity which may entitle such person or entity to a fee or commission. Additionally, each of the parties agrees that, should any claim for a commission or fee be made by another broker, then the party breaching the representation and/or warranty set forth in this Paragraph 21 will indemnify, defend and hold harmless the other party from and against any and all claims, liabilities, damages, expenses (including, without limitation, reasonable attorneys' fees) and costs resulting from such claim for a commission or fee.

23. Intentionally Deleted.

24. Exclusivity. From the Execution Date through the termination of this Agreement or the Closing, as applicable, Seller will not discuss or negotiate with any third party the sale or other disposition of any of the Subject Property, or enter into any contract (whether binding or not) regarding any sale or other disposition of the Subject Property.

25. Venue. This Agreement shall be governed by and enforced and construed under the laws of the State of Illinois. Venue shall be in Cook County, Illinois.

26. Assignment. Purchaser shall have the absolute right and power to assign this Agreement and its interests in this Agreement to an entity affiliated with Purchaser or its principals, provided that such assignment should not relieve it of its obligations under this Agreement, and Seller shall close the transaction contemplated by this Agreement with such assignee; otherwise, this Agreement is not assignable.

27. No Recording. The Purchaser agrees it shall not record this Agreement or a memorandum hereof, and in the event the Purchaser does record this Agreement or a

memorandum of this Agreement, then the Purchaser shall be deemed in default hereunder, and at the option of the Seller, the Purchaser's rights under this Agreement shall be null and void and of no further force and effect and the Seller shall have the right to exercise all of its rights and remedies under this Agreement.

28. Terms. Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

29. Miscellaneous.

(a) This Agreement shall not be construed more strictly against either party, it being acknowledged that each party actively participated in the preparation of this Agreement.

(b) This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and/or assigns.

(c) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. This Agreement may be executed via telecopy or electronically.

(d) No waiver or modification of any provision of this Agreement shall be effective unless it is in writing and signed by Purchaser and Seller, and shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver.

(e) Time is of the essence with respect to all time periods set forth in this Agreement.

30. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Except where otherwise noted, the last day of any period of time described herein shall be deemed to end at 5:00 p.m. in the jurisdiction in which the Property is located.

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

PURCHASER:

HARRINGTON BROWN LLC
an Illinois limited liability company

By: _____
Name: _____
Title: _____

SELLER:

THE CITY OF EVANSTON

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

PART OF THE SOUTH 6.25 CHAINS OF THE NORTH EAST ¼ OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF HOWARD STREET, WITH THE EAST LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILROAD RUNNING THENCE EAST ALONG THE NORTH LINE OF HOWARD STREET TO ITS INTERSECTION WITH THE WEST LINE OF NORTH CLARK STREET (FORMERLY CHICAGO AVENUE) THENCE NORTHERLY ALONG THE WEST LINE OF SAID CLARK STREET 100 FEET, THENCE WEST PARALLEL WITH THE NORTH LINE OF HOWARD AVENUE TO THE EAST LINE OF THE RIGHT OF WAY OF CHICAGO AND NORTHWESTERN RAILROAD, THENCE SOUTHERLY ALONG SAID RIGHT OF WAY LINE 100 FEET MORE OR LESS TO THE POINT OF BEGINNING. PARCEL 2: THE NORTH 50 FEET OF THE SOUTH 150 FEET OF THAT PART OF THE SOUTH 6.25 CHAINS, LYING WEST OF THE WEST LINE OF CHICAGO AVENUE EAST OF THE EAST LINE OF CHICAGO AND NORTHWESTERN RAILROAD AND NORTH OF THE NORTHLINE OF HOWARD STREET OF THE NORTH EAST ¼ OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Real property address: 100 North Chicago Avenue, Evanston, IL 60202

PINs: 11-30-212-007-0000 and 11-30-212-008-0000

EXHIBIT B

ESCROW INSTRUCTIONS

1. Investment and Use of Funds. For purposes of this Exhibit B, the Deposit, including any interest thereon, shall be collectively referred to herein as the "Earnest Money." The Escrow Agent shall invest the Earnest Money in government insured interest-bearing accounts satisfactory to Purchaser, shall not commingle the Earnest Money with any funds of the Escrow Agent or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. If the Closing under this Agreement occurs, the Escrow Agent shall deliver the Earnest Money into the closing escrow upon the instructions of Purchaser, to be applied against the Purchase Price.

2. Termination before Expiration of Due Diligence Period. The Due Diligence period under the Agreement expires on _____, 2017. If Purchaser elects to terminate the Agreement pursuant to the terms of this Agreement, Escrow Agent shall pay the entire Earnest Money to Purchaser two business days following receipt of a copy of the Due Diligence Termination Notice from Purchaser (as long as the current investment can be liquidated in two days). No notice to Escrow Agent from Seller shall be required for the release of the Earnest Money to Purchaser by Escrow Agent. The Earnest Money shall be released and delivered to Purchaser from Escrow Agent upon Escrow Agent's receipt of a copy of the Due Diligence Termination Notice despite any objection or potential objection by Seller. Seller agrees it shall have no right to bring any action against Escrow Agent which would have the effect of delaying, preventing, or in any way interrupting Escrow Agent's delivery of the Earnest Money to Purchaser pursuant to this Section, any remedy of Seller being against Purchaser, not Escrow Agent.

3. Termination after Expiration of Due Diligence Period. Except as otherwise expressly provided herein, at any time after the expiration of the Due Diligence Period, upon not less than 5 business days' prior written notice to the Escrow Agent and the other party, Escrow Agent shall deliver the Earnest Money to the party requesting the same; provided, however, that if the other party shall, within said 5 business day period, deliver to the requesting party and the Escrow Agent a written notice that it disputes the claim to the Earnest Money, Escrow Agent shall retain the Earnest Money until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Earnest Money, or until ordered by final court order, decree or judgment, which is not subject to appeal, to deliver the Earnest Money to a particular party, in which event the Earnest Money shall be delivered in accordance with such notice, instruction, order, decree or judgment.

4. Interpleader. Subject to Section 2 above, in the event of any controversy regarding the Earnest Money, unless mutual written instructions are received by the Escrow Agent directing the Earnest Money's disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Earnest

Money with a court of competent jurisdiction. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Escrow Agent.

5. Liability of Escrow Agent. The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its negligent acts and for any loss, cost or expense incurred by Seller or Purchaser resulting from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties. Seller and Purchaser shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement or involving negligence on the part of the Escrow Agent.

EXHIBIT C

EXISTING PARKING AGREEMENTS TO BE TERMINATED

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