

4/22/2019

42-O-19

AN ORDINANCE

**Authorizing the City Manager to Execute a Sale Contract for
City Owned Real Property located at 2222 Oakton Street with Clark
Street Real Estate LLC**

WHEREAS, the City of Evanston owns real property located at 2222 Oakton Street, Evanston, Illinois, 60202 and legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Subject Property"); and

WHEREAS, the Subject Property formerly served as the recycling center for the City of Evanston and is now utilized by the City for storage of equipment and vehicles; and

WHEREAS, the City Council of the City of Evanston has determined that ownership of the aforesaid Subject Property is no longer necessary, appropriate, required, or in the best interests of the City of Evanston and seeks to sell the Subject Property to Clark Street Real Estate LLC to further implement terms of the Agreement for affordable housing; and

WHEREAS, pursuant to Ordinance 122-O-18, the City Council, by a vote of at least two-thirds ($\frac{2}{3}$) of the elected Aldermen then holding office, did direct the City Manager to negotiate the sale of 2222 Oakton Street; and

WHEREAS, pursuant to Ordinance 122-O-18, the City Manager has negotiated the sale of the Subject Property; and

WHEREAS, the City Manager recommends that the City Council hereby approve the sale of the Subject Property, with the City as Seller and Clark Street Real Estate LLC, as the Buyer; and

WHEREAS, the City Council hereby finds and determines that the best interests of the City of Evanston and its residents will be served by conveying the Subject Property, on terms consistent with the Sale Agreement for Real Estate, attached hereto as Exhibit A and incorporated herein by reference (hereinafter, the "Agreement"); and

WHEREAS, as required by Section 1-17-4-2-(B) of the Evanston City Code, 2012, as amended (the "City Code"), a Notice of Intent to Sell Certain Real Estate, was published in the *Evanston Review*, a newspaper in general circulation in the City of Evanston, on April 25, 2019, 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 sale of the Property,

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: The City Council hereby approves the negotiated sale of the Subject Property with the City as Seller and Clark Street Real Estate LLC as Buyer.

SECTION 3: The City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest, the Agreement, pursuant to the terms of which the Subject Property shall be conveyed. The City Manager is further authorized to negotiate any additional terms that he deems fit and proper.

SECTION 4: The City Manager and the City Clerk, respectively, are hereby authorized and directed to execute, attest, and deliver such other documents, agreements, and certificates as may be necessary to effectuate the sale herein authorized.

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

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

SECTION 7: 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 hereof that can be given effect without the invalid provision or application, and each invalid application hereof is severable.

SECTION 8: 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: 6

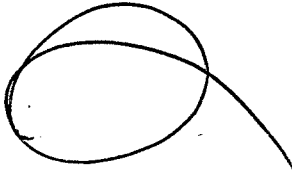
Nays: 3

Introduced: May 13, 2019

Adopted: June 10, 2019

Approved: June 24, 2019

Stephen H. Hagerty
Stephen H. Hagerty, Mayor

Attest: 
Devon Reid, City Clerk

Approved as to form:
Michelle L. Masoncup
Michelle L. Masoncup, Corporation Counsel

EXHIBIT A

Sale Agreement of Real Estate

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") made and entered into as of the _____ day of _____, 2019 (the "Execution Date"), by and between the City of Evanston ("Seller") and Clark Street Real Estate, 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 2222 Oakton Street, Evanston, Illinois and as depicted on the plat of subdivision ("Plat") attached hereto as Exhibit B (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 Land 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"), together with all, personal property owned by Seller, located and permanently affixed to the Property or Improvements, and used in connection with the operation and maintenance of the Property, including without limitation, any HVAC Systems, as hereinafter defined, and other personal property (the "Personal Property"); and (iii) if any, all licenses, 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, owned by 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, the Personal Property 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). Seller will produce copies of the following due diligence documents:

(a) Copies of income and expense statements, year-end financial and monthly and annual operating statements of the Property for the current year and the three (3) years immediately preceding the date of the Agreement.

(b) Copies of all engineering and architectural plans and specifications, drawings, studies and surveys relating to the Property, including but not limited to environmental reports, in Seller's possession or control, and copies of all records pertaining to the repair, replacement and maintenance of the mechanical systems at the Property, the roof and the structural components of the Property.

(c) Copies of Seller's most recent owner's title policy issued in connection with the Property and the most recent survey of the Property.

3. Purchase Price. Purchaser must pay to Seller One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) for the Subject Property (the "Purchase Price"). Provided that all Conditions Precedent (as hereinafter defined) to Purchaser's obligations to close as set forth in this Agreement have been satisfied and fulfilled or waived, in writing, by Purchaser, the Purchase Price shall be paid to Seller at Closing (as hereinafter defined), plus or minus prorations and other adjustments required under this Agreement, by wire transfer of funds.

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

(a) Within five (5) business days following the Execution Date, Purchaser will deliver to Chicago Title and Trust Company, 10 South LaSalle St. Suite 3100, Chicago, IL 60603 ("Escrow Agent") the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) ("Deposit"), which amount shall be held by the Escrow Agent and disbursed in accordance with joint order escrow trust instructions; provided, however, if the Deposit is released pursuant to Section 6 to Purchaser, it will be released upon the sole order of Purchaser, if Purchaser terminates this Agreement pursuant to Section 6 (it being understood and agreed that as between Seller and Purchaser, this Agreement supersedes the joint order escrow trust instructions in the event of any conflict between said documents). The Deposit 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 Due Diligence Period (as defined below), except in the event of Seller's default under this Agreement or if this Agreement was terminated by Purchaser in accordance with the terms of this Agreement (or except 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 sixty (60) days thereafter. In the event that any of the information to be provided by the Seller to the Purchaser pursuant to Section 5, "Title," including (as hereinafter defined) is not delivered to the Purchaser, the Purchaser may extend the Due Diligence Period for an additional period equal to the number of days delivery of such information was delayed. In addition, Purchaser shall have the right to extend the Due Diligence Period for two (2) sixty (60) day periods each ("Extension Periods"), upon prior written notice to the Seller of the same, and delivery of an applicable and refundable deposit of Twenty-Five Thousand and NO/100 Dollars (\$25,000.00) for each such extension which amount shall be held by the Escrow Agent and which shall be additional Deposit and all references herein to the Deposit shall be deemed to include such additional amount.

(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, if any, a copy of any existing title insurance policy and any existing survey previously performed 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 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 along with copies of the recorded documents in the Commitment. 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 later of the Commitment, copies of all recorded documents and survey ("Title Review Period"). Seller will provide copies of any previously performed surveys of the Property and a copy of the Plat. If Purchaser seeks to have a new survey performed, Purchaser shall have until the end of the Title Review Period to obtain a new 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 ten (10) business 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 ten (10) business 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 one hundred-eighty (180) days thereafter (such period, the "Approval Period"), to undertake and obtain its municipal approvals for the Plat, zoning entitlements, site plan, and building permits, all necessary to develop 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 may 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 to Purchaser, Purchaser and Seller shall have no further obligations to each other, except as expressly set forth in this Agreement. Provided Purchaser is diligently pursuing the Site Plan Approval, Purchaser shall have the right to extend the Approval Period for an additional 60 days by delivering Seller notice thereof prior to the expiration of the original Approval Period.

(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 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) *Post-Closing Obligations.* As a condition benefitting Seller only, the executed deed shall provide that in the event the Purchaser does not satisfy the "Post-Closing Obligations" within two (2) years from the Closing, subject to delays attributable to casualty, condemnation and Force Majeure, all right, title and interest in and to the Subject Property shall automatically revert to the City of Evanston. "Post-Closing Obligations" include acquiring a building permit and renovating the existing structure on the Subject Property into a recreational athletic facility known as a "climbing gym". If Purchaser does not fulfill the Post Closing Obligations by two (2) years from the Closing (as hereinafter defined), subject to delays attributable to casualty, condemnation and Force Majeure, the City of Evanston has a Right of Reverter and the title to the Real Estate may revert back to the City. Second, the covenant will state if the Purchaser's original tenant, climbing gym 'First Ascent' or its successors or assigns ceases operations on the Property for more than one hundred eighty (180) consecutive days (except in the event of casualty, condemnation or Force Majeure), then the Purchaser will offer the City of Evanston the first right of refusal to operate the facility as a tenant. If the City opts to not exercise this right within thirty (30) days, then the Purchaser and its successors or assigns may market the facility for future uses that are permitted or special uses in the I2 district.

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 Escrow Agent and all parties hereto shall be released and relieved from any and all further obligations hereunder or arising herefrom except as herein provided.

Notwithstanding anything contained herein to the contrary, the City's right of reverter shall terminate on the date on which the City issues the certificate of occupancy for the Subject Property.

Notwithstanding anything to the contrary herein, the Purchaser, nor any successor in interest, shall be considered in breach of or in default of its obligations under the Post-Closing Obligations in the event of a delay due to unforeseeable events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to

discharge its obligations hereunder, including, without limitation, acts of God, acts of the United States government, fires, floods, strikes, shortages of material and unusually severe weather or delays of contractors or subcontractors due to such causes (collectively, "Force Majeure").

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) 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.

(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) Intentionally omitted.

(f) Intentionally omitted.

(g) 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.

(h) 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 – WHERE IS 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. The Purchaser assumes all risks of the Property including, without limitation, the physical condition of the Property, compliance of the Property with any federal, state or local laws, statutes, ordinances, regulations, rulings, etc., or the suitability of the Property for any existing or future uses, subject to the terms of this Agreement.

(i) 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.

(j) 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 condition (including, without limitation, the presence at or near the Subject Property of materials or substances that have been or may be in the future determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Subject Property under current or future federal, state and local laws, regulations or guidelines, whether or not considered to be one of the Hazardous Materials), valuation, marketability, compliance with laws, or utility of the Subject 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.

(k) 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. 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 Subject 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 Subject 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. Notwithstanding anything to the contrary herein, in the event Purchaser's investigation and inspection of the Subject Property discovers that any disposal, storage, remediation, treatment and/or other activities are necessary to meet the requirements of the IEPA and all applicable laws, including, without limitation, environmental laws (collectively, "Remediation Work"), said Remediation Work shall be at Seller's sole cost and expense.

10. 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.

11. 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, including the Plat and the Access Easement, as set forth in Section 30 below, executed by Seller and any other parties, in recordable form, and the payment of all sums

required to be paid) shall take place upon the date selected by Purchaser by notice to Seller upon the earlier of (i) at least five (5) business days in advance of such date; or (ii) on or before thirty (30) 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.

12. 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; and
- (v) the cost of the Plat.

(b) Purchaser shall pay for:

- (i) the cost of its due diligence, including the cost of a new survey;
- (ii) the recording of the special warranty deed, restrictive covenant, 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 Subject 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) Intentionally omitted.

(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.

13. 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.

14. Condemnation or Casualty. If prior to Closing, all or any portion of the Subject Property are damaged by fire or other casualty (collectively "Damage"), or is taken or made subject to condemnation, eminent domain or other governmental acquisition proceedings (collectively "Damage"), then the following provisions shall apply:

(a) If the cost of repair or replacement or the value of the governmental taking is Ten Thousand and 00/100 Dollars (\$10,000.00) or less, and the condemnation will not adversely affect Purchaser's intended use of the Subject Property, in the opinion of Purchaser's and Seller's respective engineering consultants, Purchaser shall close and take the Subject Property as diminished by such events, subject to a reduction in the Purchase Price applied against the cash otherwise due at the Closing, in the full amount of the repair and/or replacement cost. Any casualty insurance and condemnation proceeds shall be the sole property of Seller.

(b) If the cost of repair or replacement is greater than Ten Thousand and 00/100 Dollars (\$10,000.00) in the opinion of Purchaser's and Seller's respective engineering consultants, or the condemnation will adversely affect Purchaser's intended use, then Purchaser, at its sole option, may, with written notice to Seller, elect either to (i) terminate this Agreement by written notice and receive an immediate return of the Earnest Money, and neither party shall have any further liability to the other hereunder, or (ii) proceed to close subject to (1) a reduction in the Purchase Price of Ten Thousand and 00/100 Dollars (\$10,000.00) (and the deductible under Seller's insurance policy), applied against the cash otherwise due at Closing, together with (2) an assignment of the proceeds of Seller's casualty insurance and condemnation proceeds for all Damage in excess of Ten Thousand and 00/100 Dollars (\$10,000.00) plus a credit equal to the cost of repairing the Subject Property less the amount of the insurance proceeds. In the event Purchaser elects to proceed to close, Seller shall fully cooperate with Purchaser in the adjustment

and settlement of the insurance claim and cause the proceeds and benefits under any policy attributable to the period following the Closing and all condemnation proceeds to be transferred and paid over (and, if applicable, likewise credited on an interim basis) to Purchaser.

(c) In the event of a dispute between Seller and Purchaser with respect to the cost of repair, restoration or replacement with respect to the matters set forth in this Section 15, an engineer, general contractor or architect designated by each of Seller and Purchaser shall designate a third engineer, general contractor or architect licensed to practice in the jurisdiction where the Subject Property are located with no less than ten (10) years of commercial real estate experience, and such third engineer, general contractor or architect shall resolve such dispute. Purchaser and Seller shall share all fees, costs and expenses of such third engineer, general contractor or architect so selected equally.

15. 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.

16. 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.

17. 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.

18. 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) business 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.

19. Attorney's Fees. In the event that any party initiates legal proceedings to enforce the terms and conditions of this Agreement, the parties agree to bear its own expenses and attorneys' fees, court costs and other costs incurred in enforcing the terms and conditions of this Agreement with no right of reimbursement.

20. 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: Michelle L. Masoncup, Corporation Counsel
Email: gfarrar@cityofevanston.org

Notices as to Purchaser shall be sent to:

Clark Street Real Estate
980 N. Michigan Avenue, Suite 1280
Chicago, IL 60611
Attn: Andy Stein
astein@clarkstreet.com

With a copy to:

Schain Banks
70 W. Madison Street, 53rd Floor
Chicago, Illinois 60602
Attn: Charles Mangum
Facsimile: (312) 619-4873
E-mail: cmangum@schainbanks.com

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.

21. Brokers. The Seller represents and warrants to the Purchaser 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 for Seller. If Purchaser has made a brokerage agreement, Purchaser agrees that Purchaser is solely responsible for all fees, commissions and other payments due to the named broker.

22. Intentionally Deleted.

23. 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.

24. Venue. This Agreement shall be governed by and enforced and construed under the laws of the State of Illinois.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. Access Easement. Seller shall benefit and burden the Property and adjacent property retained by Seller ("Adjacent Property") as shown diagonally-striped on Exhibit B by a nonexclusive, perpetual and reciprocal easement ("Access Easement") for vehicular and pedestrian passage, ingress to and egress over the Property to Oakton Street for the benefit of the Adjacent Property as shown cross-hatched on Exhibit "B" ("Access Easement Area").

The Access Easement shall be drafted by Purchaser and shall be in a form reasonably acceptable to Purchaser and Seller. In the event the parties are unable to reach an agreement with respect to the Access Easement on or prior to the expiration of the Due Diligence Period, then Purchaser shall have the right to terminate this Agreement by written notice to Seller

on or prior to the expiration of the Due Diligence Period, and Purchaser shall receive the return of the Deposit, this Agreement shall be of no further force or effect, and both parties shall be released from liability hereunder, except as otherwise set forth in this Agreement.

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

PURCHASER:

CLARK STREET REAL ESTATE, LLC
An Illinois limited liability company

By: _____
Name: _____
Title: _____

SELLER:

THE CITY OF EVANSTON

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

LOT 2 IN EVANSTON'S RESUBDIVISION OF LOTS 2 & 3 IN WILLIAM B. JOHNSON'S SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID WILLIAM B. JOHNSON'S SUBDIVISION RECORDED AS DOCUMENT NUMBER 22280240, APRIL 9, 1973 IN COOK COUNTY, ILLINOIS.

Commonly known as: **2222 Oakton Street, Evanston, Illinois 60201**
PIN: **10-25-100-023-0000**

EXHIBIT B

PLAT OF SUBDIVISION

The Property is depicted

The Adjacent Property is diagonally-striped

The Access Easement Area is cross-hatched

