

7/6/94

48-R-94

A Resolution

Authorizing the City Manager to
Contract for and Complete the Purchase
of 1110 Emerson Street

WHEREAS, the City Manager has heretofore been authorized on behalf of the City of Evanston to negotiate the purchase of certain real estate located at 1110 Emerson Street and legally described as follows:

See Exhibit A

WHEREAS, said property is part of the Northwestern University Evanston Research Park Project and a valuable acquisition in the best interest of the City's economic development; and

WHEREAS, a real estate sales contract (Exhibit B attached hereto, and incorporated herein) has been negotiated by the parties for the sale of 1110 Emerson Street for Four Hundred Ninety Thousand Dollars and no/100ths (\$490,000.00), with an anticipated July, 1994 closing date:

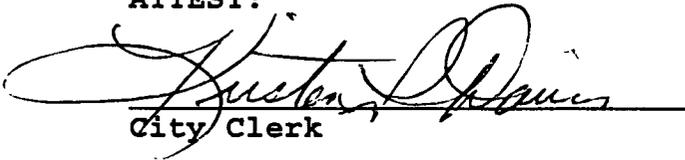
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS: That the City Manager be and hereby is authorized and directed to enter into a contract for, negotiate additional terms as necessary and desirable, and take title to 1110 Emerson Street for Four Hundred Ninety Thousand Dollars and no/100ths (\$490,000.00).

SECTION 1: That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.



Mayor

ATTEST:



City Clerk

Adopted: August 8, 1994

AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT is made this ____ day of July, 1994, by and between LASALLE NATIONAL BANK as Successor to EXCHANGE NATIONAL BANK OF CHICAGO as Trustee under Trust Agreement dated June 18, 1991 and known as Trust Number 38712 (Owner of Record), by and through its beneficiary, MICHAEL WARD, having a notice address of 1110 Emerson Street, Evanston, Illinois, (the "Seller"), and the CITY OF EVANSTON, having a notice address of 2100 Ridge Avenue, Evanston, Illinois 60201 (the "Buyer").

W I T N E S S E T H :

1. Sale of Property. The Seller agrees to sell and the Buyer agrees to purchase on the terms hereafter stated all of the Seller's right, title and interest in and to the following described property (hereinafter called the "Property"):

1.1 Real Property. All of the land situated in Evanston, Cook County, Illinois, more specifically described in Schedule A, attached hereto and made a part hereof, commonly known as 1110 Emerson, Evanston, Illinois, together with the buildings, improvements, fixtures and other items of real property located on such land.

1.2 Personal Property. All tangible personal property located on such real property which is owned by the Seller and used in the ownership, operation, and maintenance of the aforesaid buildings, improvements, and land, including but not limited to, all heating, ventilating, lighting, plumbing, electrical, and central cooling fixtures and equipment, etc.

2. Purchase Price. Subject to the adjustments and prorations hereafter described, the total purchase price to be paid by the Buyer to the Seller for the purchase of the Property is the sum of FOUR HUNDRED NINETY THOUSAND DOLLARS (\$490,000.00). The purchase price will be paid in the following manner:

2.1 Earnest Money. The sum of Ten Thousand Dollars (\$10,000.00) in the form of a personal check (the "Earnest Money Deposit") is herewith deposited as earnest money with Seller's attorney, as escrowee, to be applied against the total purchase price on the Closing Date. The Earnest Money Deposit shall be placed in an interest bearing escrow account for the mutual benefit of the parties, with the interest payable to the Buyer at Closing or upon contract termination.

2.2 Cash at Closing. On the Closing Date, the Buyer will pay to the Seller the further sum of Four Hundred Eighty Thousand Dollars (\$480,000.00), plus or minus prorations, in immediately payable funds.

3. Title. Within ten (10) days after the Seller's acceptance hereof, the Seller will provide to the Buyer a copy of the existing Plat of Survey of the Property and within thirty (30) days after Seller's acceptance, a commitment for the issuance of an ALTA Form B owner's policy of title insurance issued by a title insurer acceptable to Purchaser and/or Purchaser's lender showing fee simple title to the Property to be in the Seller and containing the following exceptions (hereinafter referred to as the "Permitted Exceptions"):

- a. Real Estate taxes for 1993 and subsequent years;
- b. Public and utility easements and building setback lines of record;
- c. Zoning and building laws and ordinances.
- d. Covenants, conditions, and restrictions of record which do not interfere with the intended use of the property as a residential building.
- e. Drainage and utility district charges and assessments.
- f. Acts of the Purchaser; rights of persons claimed by, through or under the Purchaser; and any other matters which Purchaser shall approve in writing.

The Buyer will have ten (10) days after receipt of the commitment for title insurance to provide to the Seller a letter setting forth all of the Buyer's objections to the Seller's title to the Property and the Seller shall have thirty (30) days after receipt of such letter to correct or obtain title insurance over the defects in title objected to by the Buyer. If the Seller is unable to correct such defects within such thirty (30) day period, the Buyer will have the option to waive such defect or terminate this Agreement and to obtain a refund of the Earnest Money Deposit with all interest accrued thereon. On the Closing Date, the Seller will cause to be issued to the Buyer a policy of owner's title insurance in an amount equal to the purchase price containing the Approved Title Exceptions and any other exceptions to coverage waived or approved by the Buyer.

4. Closing. The Buyer and the Seller agree that the purchase will be consummated as follows:

- 4.1 Title Transfer. The Seller agrees to convey title to the Property to the Buyer by Trustee's Deed on or before the close of business on the Closing Date and, effective on the delivery of such deed by the Seller to the Buyer, all ownership interest and the risk of loss of the Property will pass from the Seller to the Buyer.

- 4.2 Closing Date. This transaction will close on February 28, 1995 or any other date mutually agreeable to the parties (the "Closing Date"), provided Purchaser has completed its purchase of the City of Evanston Property commonly known as 2230 Main Street, Evanston, Illinois, and the purchase of the contiguous property owned by Zera Construction as provided in Paragraph 13 below (the "Closing Date"). The closing will take place at the office of the title insurer or at such other location upon which the parties shall mutually agree.
- 4.3 Seller's Instruments. At Closing, the Seller will deliver or cause to be delivered to the Buyer the following items (all documents will be duly executed and acknowledged where required):
- 4.3.1 Trustee's Deed. A Trustee's Deed, executed by the Seller conveying to the Buyer marketable fee simple title to all of the Seller's right, title and interest in and to the Property, free and clear of all liens and encumbrances except the Permitted Exceptions;
- 4.3.2 Bill of Sale. A bill of sale conveying all of the Seller's right, title and interest in and to all of the personal property contained on and in the Property free and clear of all liens and encumbrances except the Permitted Exceptions;
- 4.3.3 Title and Lien Affidavits. An Affidavit of Title certifying that the Seller is conveying clear title to the Buyer free of all encumbrances except the Permitted Exceptions and an ALTA statement or other lien affidavit in a form acceptable to the title insurer certifying that the Property is free from claims for mechanics', materialmen's and laborer's liens;
- 4.3.4 Authority of Signatory Officers/Partners. Such documents, certificates, or other evidence of authority with respect to the Seller and each nominee of the Seller acting hereunder as might be reasonably requested by the Buyer;
- 4.3.5 Specific Assignments. Such specific assignments and other instruments as might reasonably be requested by the Buyer to transfer contracts, permits and other similar items relating to the Property to the Buyer, each of which will bear the written approval (to the extent required) of all appropriate parties thereto.
- 4.3.6 Transfer Tax Declarations. State of Illinois, County of Cook, and City of Evanston transfer tax declarations providing all information concerning

the transaction required on said documents;

3.3.7 Additional Documents. Such additional documents as might be reasonably required by the Buyer to consummate the sale of the Property to the Buyer, including but not limited to any and all documents required by federal, state, or local authorities with respect to disclosures concerning environmental risks.

4.4 Buyer's Instruments. At Closing, the Buyer will deliver to the Seller the payment required by Paragraph 2.2 and such additional documents as might be reasonably required by the Seller to consummate the sale of the Property to the Buyer.

4.5 Costs. The Seller will pay the following costs: The Seller's attorney's fees, all costs associated with the performance of any and all Phase II environmental impact analyses required by the City of Evanston, as well as the issuance of the owner's policy of title insurance to the Buyer, the cost of a new or recertified survey done by a licensed land surveyor, the cost of the State, County, and City of Evanston transfer tax stamps to be affixed to the deed, if any, and the release fee and recording fee for the release deed of any mortgage made by the Seller which must be released at or before Closing to transfer clear title to the Buyer. The Buyer will pay the following costs: the Buyer's attorney's fees, the costs of recording the deed conveying title to the Property to the Buyer as well as the cost of recording any mortgage(s) placed thereon, and the cost of the initial Phase I environmental impact analysis.

5. Adjustments and Prorations. All receipts and disbursements relating to the Property will be prorated on the Closing Date and the purchase price will be adjusted on the following basis:

5.1 Property Taxes. Real estate taxes for the second installment of 1993 and 1994 prorated to the Closing Date, will be credited to the Buyer at Closing, based on the amount of the last ascertainable tax bill. The Seller and Buyer shall reprorate the 1993 and 1994 real estate taxes as and when the second installment bill for 1993 becomes available. Upon reproration, if the amount paid by the Seller to the Buyer at Closing was in excess of the reprorated taxes, the Buyer shall, within fifteen (15) days of notice from the Seller, refund the excess to Seller. If, in the event of reproration, the reprorated amount exceeds the credit given to the Buyer at Closing, the Seller shall, within fifteen (15) days of notice from the Buyer, pay the balance due based upon the reprorated figures to the Buyer.

6. Seller's Representations. The Seller represents and warrants to the Buyer as follows: The Seller has the authority to make and perform this Agreement; to the best of its knowledge, the Property and the use thereof comply with all applicable public and private

restrictions, regulations, ordinances and laws; there are no actions, suits, or other legal proceedings presently pending, or to the best knowledge of the Seller, threatened against the Property; the roof and foundation are free from leaks and all heating, cooling, electrical, mechanical and plumbing systems, are in working order and shall be in working order as of the date of closing; the Seller's performance of this Agreement will not constitute a default under any agreement by which the Property might be bound; to its best knowledge the Property was constructed in accordance with and now conforms to all applicable building codes, environmental regulations, zoning ordinances and other restrictions governing the use of the Property; to its best knowledge the Seller has disclosed to the Buyer all matters which might have a material adverse effect on the ownership, operation or maintenance of the Property.

7. Survey. Prior to the Closing Date, Seller shall furnish a survey by a licensed land surveyor dated or recertified after the date of this Contract showing the location of the improvements (including fences, if any) thereon and showing all encroachments, if any. If the survey discloses improper location of improvements or encroachments and the Seller is unable to obtain title insurance protection for the benefit of the Buyer against loss resulting from such improper location or encroachment, Buyer may, at his option, declare this Agreement to be null and void, with the Earnest Money Deposit and all interest accrued thereon to be returned to the Buyer.

8. Possession. Possession of the Property will be delivered to the Buyer on the Closing Date free from management contracts, service contracts, employment agreements, and leases and/or tenancies of any kind or nature.

9. Default; Remedy. In the event that either party fails to perform such party's respective obligations hereunder (except as excused by the other's default) the party claiming default will make written demand for performance. If the Seller fails to comply with such written demand within ten (10) days after receipt thereof, the Buyer will have the option to waive such default, demand specific performance, or terminate this Agreement and, on such termination, the Earnest Money Deposit together with all interest accrued thereon, will be returned to the Buyer. If the Buyer fails to comply with such written demand within ten (10) days after receipt thereof, the Seller will have the option to waive such default or to terminate this Agreement and, on such termination, the Seller will be paid the Earnest Money Deposit as liquidated damages (and not as a penalty) as Seller's sole remedy. On such return or payment of the Earnest Money Deposit, the parties will be discharged from any further obligations and liabilities hereunder. It is specifically acknowledged that the Seller waives all rights to claim or demand specific performance of this Agreement.

10. Code Compliance. Seller shall warrant to Purchaser in the Affidavit of Title to be delivered at closing that Seller has not received any notice of zoning or building code violations between the date of contract and the date of closing, and that any and all violations previously noted have been corrected.

11. Regulatory and Environmental Issues. A. If required, Seller shall report this transaction to the Illinois Department of Revenue (IDOR) promptly upon Seller's acceptance of this Contract pursuant to the provisions of Section 902 (d) and companion sections of the Illinois Revenue Act. Purchaser shall have the right to withhold from Seller any amount required by IDOR in any Stop Order Letter issued by IDOR, such funds to be held by the title insurer in escrow until such time as the Stop Order is duly released by IDOR, or, if necessary, the escrowee shall apply such funds to obtain such release. Any part of such funds held by the escrowee after IDOR issues a release shall be paid over to Seller.

B. Seller agrees to comply with the Illinois Responsible Property Transfer Act by preparing and submitting the necessary environmental disclosure documents to Purchaser and the title insurance company, if required, at least ten (10) days prior to closing.

C. Seller warrants and represents that there are no underground storage tanks (UST's) on the property, nor are there any other environmental risks or contaminants present on the property including asbestos, benzene, or other hazardous substances identified as such by the Environmental Protection Agency, other than as identified on the Phase I Environmental Site Assessment dated July 20, 1993 prepared by Environmental Risk Consultants, and the Phase II Environmental Report prepared by Clearwater, A Division of the White Oak Group, Inc., dated June __, 1994.

12. Contracts, Leases. A. Seller warrants and represents that there are and shall be no service contracts, agreements, licenses, invoices, bills, or understandings of any nature, written or oral, which have not been disclosed herein, which Purchaser will be required to assume, pay, or be bound by.

B. Seller agrees not to enter into any leases or other rental arrangements or to modify the existing leases on or after the date hereof without the Purchaser's express written consent to the terms of any such rental arrangement or modification.

13. Contingency. This Contract is expressly contingent upon the closing of the purchase of the property commonly known as 2230 Main Street, Evanston, Illinois by the Seller from the City of Evanston and Philip Zera/Zera Construction, Inc., respectively, on or before July 8, 1994 or any other date mutually agreeable to the parties hereto.

14. Notice. For purposes of the Contract, any written notice must be personally delivered or mailed by certified or registered mail, or transmitted by facsimile, and shall be deemed given and be effective as of the date when such notice is received by the party to whom the notice is directed and/or his attorney. Notice shall be delivered to the parties at the addresses indicated on the front page of this Contract. Seller's attorney is Laura S. Addelson, 500 Davis Center Suite 701, Evanston, Illinois 60201, facsimile number 708-328-0486. Buyer's attorney is _____

_____, facsimile number _____.

15. Broker's Commission. The parties acknowledge that no real estate broker has been involved in the transaction or provided services on behalf of either party hereto, and that no real estate commission will be due and payable by either party in conjunction with this transaction.

16. Miscellaneous. It is further agreed as follows:

16.1 Time. Time is of the essence of this Agreement.

16.2 Entire Agreement. This instrument constitutes the entire agreement between the Buyer and the Seller and there are no agreements, understandings, warranties or representations between the Buyer and the Seller except as set forth herein. This Agreement cannot be amended except in writing executed by the Buyer and the Seller.

16.3 Binding Effect. This Agreement will inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto.

16.4 Expiration. This Agreement has been executed by the parties on the dates set forth below their respective signatures. It is understood that the obligation of the Buyer under this Agreement will terminate on the date five (5) business days after the date of the Buyer's execution of this Agreement unless the Seller shall have duly executed and returned a copy of this Agreement to the Buyer prior to such date.

16.5 Assignment. The rights of the parties under this Agreement cannot be assigned in whole or in part without the prior written consent of the other party.

16.6 Further Acts. Each party hereto agrees to do, execute, acknowledge and deliver all such further acts, assignments, transfers, assurances, and instruments that may reasonably be required to fully effectuate the transactions contemplated in this Agreement.

IN WITNESS WHEREOF, this instrument has been executed by the parties on the date indicated below their respective signatures.

Buyer

Seller

EXHIBIT A

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE ORIGINAL NORTHEAST CORNER OF LOT 1 IN GENERAL DYNAMICS-EVANSTON INDUSTRIAL PARK SUBDIVISION (SAID POINT BEING THE INTERSECTION OF THE FORMER NORTH-WESTERLY RIGHT OF WAY OF THE CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY AND A LINE 33 FT. SOUTH OF THE NORTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 24, SAID LINE ALSO BEING THE SOUTH LINE OF MAIN STREET); THENCE NORTH 90 DEGREES EAST, ALONG THE SOUTH LINE OF MAIN STREET, 109.84 FT. TO THE FORMER SOUTHEASTERLY RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY; THENCE SOUTH 24 DEGREES 26 MINUTES 16 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 617.82 FT.; THENCE NORTH 65 DEGREES 33 MINUTES 44 SECONDS WEST, 60.0 FT. TO THE POINT OF BEGINNING; THENCE NORTH 24 DEGREES 26 MINUTES 16 SECONDS EAST, 269.70 FT. TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 685.96 FT. AND A CHORD BEARING NORTH 19 DEGREES 27 MINUTES 33 SECONDS EAST, AN ARC LENGTH OF 119.21 FT. TO A POINT OF REVERSE CURVE; THENCE NORTHERLY ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 745.96 FT. AND A CHORD BEARING NORTH 16 DEGREES 57 MINUTES 37 SECONDS EAST, AN ARC LENGTH OF 64.57 FT.; THENCE NORTH 65 DEGREES 33 MINUTES 44 SECONDS WEST, 2.85 FT.; THENCE NORTH 24 DEGREES 26 MINUTES 16 SECONDS EAST, ALONG A LINE 25.0 FT. NORTHWESTERLY OF THE CENTER LINE OF THE MOST WESTERLY MAIN TRACK OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY, AS ORIGINALLY LOCATED PRIOR TO ITS REMOVAL 29.77 FT.; THENCE SOUTH 32 DEGREES 07 MINUTES 03 SECONDS WEST, 57.75 FT.; THENCE SOUTH 39 DEGREES 03 MINUTES 08 SECONDS WEST, 217.18 FT. TO THE MOST NORTHERLY CORNER OF LOT 1 IN ZERA SUBDIVISION No. 2; THENCE SOUTH 24 DEGREES 29 MINUTES 53 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1, 169.41 FT.; THENCE SOUTH 65 DEGREES 33 MINUTES 44 SECONDS EAST, 84.33 FT. TO THE POINT OF BEGINNING,

ALSO THAT PART OF LOT 1, IN ZERA SUBDIVISION No. 2, BEING A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 1; THENCE SOUTH 24 DEGREES 29 MINUTES 53 SECONDS WEST ALONG THE EASTERLY LINE OF SAID LOT 1, 169.41 FT.; THENCE NORTH 65 DEGREES 33 MINUTES 44 SECONDS WEST, 75.0 FT. TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 24 DEGREES 29 MINUTES 53 SECONDS EAST, ALONG SAID WEST LINE, 45.29 FT. TO A BEND IN SAID WEST LINE; THENCE NORTH 39 DEGREES, 03 MINUTES, 08 SECONDS EAST, ALONG SAID WEST LINE, 38.92 FT. TO A CORNER OF SAID LOT 1, THENCE SOUTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, ALONG THE EAST LINE OF SAID LOT 1, 47.62 FT. TO A CORNER OF SAID LOT 1, THENCE NORTH 39 DEGREES, 03 MINUTES, 08 SECONDS EAST, 180.96 FT. TO A POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT A

PARCEL 1: Lots 11 and 12 in Block 1 in Circuit Court Subdivision in partition of Lot 22 in County Clerk's Division of Unsubdivided Lands in the Northwest 1/4 of Section 18, Township 41 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2: Lot 1 (except the West 5 feet lying North of the alley created by Case No. 54770 in County Court) (and except the South 11-1/2 feet thereof) in Owner's Subdivision of Lot 21 in County Clerk's Division of Lands in the Northwest 1/4 of Section 18, Township 41 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.