

6/8/2009

50-R-09

A RESOLUTION

**Authorizing the City Manager to Renew the Lease for the
Continued Use of Property at Sherman Avenue and Lake Street
As a Public Parking Lot (City Lot 14)**

WHEREAS, the City of Evanston previously had an initial twenty-five year lease with the option of two ten-year lease extensions with the Hotel located at Sherman Avenue and Lake Street for use of their property as a public parking lot known as City Lot 14; and

WHEREAS, the first optional ten-year lease extension expires on June 30, 2009; and

WHEREAS, the parking space afforded by City Lot 14 is necessary and essential so that adequate off-street parking can be provided in this business area; and

WHEREAS, the City Council finds that the best interests of the City of Evanston and its residents will be served by the continued leasing and use of this parking for the public;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL
OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That the City Manager is hereby authorized and directed to issue notice, and the City Clerk hereby authorized and directed to attest on behalf of the City, that the City of Evanston is exercising its option in the

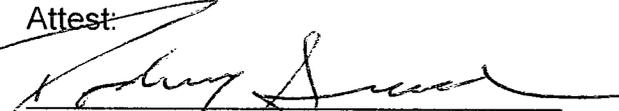
lease by and between the City of Evanston, as Lessee, and Evanston North Shore Hotel Partners, as Lessor, for certain property commonly known as City Lot 14 for an additional term of ten (10) years at a rental rate of one dollar (\$1.00), payable each year on the anniversary of the term pursuant to the terms of the original agreement (Exhibit A).

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions or terms on the lease for aforesaid property as may be determined in the best interest of the City.

SECTION 3: That this Resolution 50-R-09 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: June 22, 2009

Exhibit A

Contract for the Sale of Real Estate, Rider and Lease of Parking Facility by and between the City of Evanston, as Lessee, and Evanston North Shore Hotel Partners, as Lessor, dated January 10, 1972, for certain property commonly known as City Lot 14

CONTRACT FOR SALE OF REAL ESTATE

23458177

P & S Management Co., Inc., an Illinois corporation

hereinafter referred to as Purchaser, agrees to purchase for a price of \$462,000.00 on the terms set forth herein, the following described real estate, in the County of Cook State of Illinois:

LEGAL DESCRIPTION SET FORTH ON SCHEDULE A HERETO

Commonly known as Northeast Corner of Lake Street and Sherman Avenue, Evanston, Ill.

2. City of Evanston, an Illinois municipal corporation

hereinafter referred to as Seller, agrees to sell the real estate described above at the price and terms set forth herein and to convey or cause to be conveyed to the purchaser or nominee a good title thereto by a recordable Warranty deed subject only to: (a) general taxes for the year 1972 and subsequent years; and to covenants, conditions and restrictions of record which will not interfere with or inhibit the development of said property as contemplated hereby.

Purchaser has deposited with Seller a Letter of Credit or Bid Bond in the amount of \$46,200.00 to serve as earnest money to be applied on the purchase price, and agrees to pay or satisfy the balance of the purchase price, plus or minus prorations, at the time of closing as follows: (strike subparagraph not applicable) (u) The payment of \$153,000.00 and the cancellation of the letter of credit or bid bond set forth above.

4. The Purchaser [does] [does not] agree to assume aggregating \$ bearing interest at the rate of % a year, and the payment of a sum which represents the difference between the amount due on the indebtedness at the time of closing and the balance of the purchase price. This contract is subject to the condition that Purchaser be able to procure within days a firm commitment for a loan to be secured by a mortgage or trust deed on the real estate in the amount of \$ or such lesser sum as Purchaser accepts, with interest not to exceed % a year to be amortized over years, the service charges for such loan not to exceed %.

8. The earnest money shall be held by Seller for the mutual benefit of the parties. 9. If Seller has not agreed to this contract within 21 days, Purchaser's offer as contained herein shall be considered null and void. 10. This contract is subject to the Conditions set forth on the reverse side hereof, and to paragraphs incorporated on the reverse side hereof, all of which Conditions, and additional provisions, if any, are made a part of this contract.

Dated January 10, 1972

P & S MANAGEMENT CO., INC. (purchaser) By [Signature] President ATTEST: [Signature] Secretary c/o Rudnick Wolfe Snyderman & Foreman 150 North Wacker Drive Chicago, Illinois

CITY OF EVANSTON (seller) By: [Signature] Mayor ATTEST: Eugene Demaree, Clerk 1501 Oak Avenue Evanston, Illinois

a. Seller shall deliver or cause to be delivered to Purchaser or Purchaser's agent, not less than 90 days prior to the time of closing, a title commitment for an owner's title insurance policy issued by PIONEER NATIONAL TITLE INSURANCE COMPANY ~~in the amount of the purchase price, covering title to the real estate on or after the date hereof, showing title in the intended grantor subject only to (1) the conditions and stipulations and standard or general exceptions contained in the owner's policy issued by that company, (2) the title exceptions set forth above, and (3) title exceptions which may be removed by the payment of money at the time of closing and which the Seller may so remove at that time by using the funds to be paid upon the delivery of the deed. Every title commitment furnished by the seller hereunder shall be conclusive evidence of good title as therein shown, subject only to exceptions as therein stated.~~

Seller also shall furnish Purchaser an affidavit of title covering the time of closing, subject only to the title exceptions permitted by this contract.

b. If the title commitment discloses exceptions relating to title other than those referred to in the preceding paragraph, Seller shall have 30 days from the date of the delivery to Purchaser thereof to have these exceptions removed from the commitment. If Seller fails to have these exceptions removed within this time, Purchaser may terminate this contract or may elect, upon notice to Seller within 10 days after the expiration of the 30-day period, to take title as it then is with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount, ~~or may pursue any other remedies hereunder, at law or in equity.~~

c. ~~General taxes, and other similar items shall be adjusted ratably as of the time of closing. If the amount of the current general taxes is not then ascertainable, the adjustment thereof shall be on the basis of the amount of the most recent ascertainable taxes. Seller shall pay the amount of any stamp tax imposed by law on the transfer of the title, and shall furnish a completed Real Estate Transfer Declaration signed by the Seller or the Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois. (Ill. Rev. Stat., chap. 120, pars. 001 et seq.)~~

e. If this contract is terminated without Purchaser's fault, the earnest money shall be returned to the Purchaser, but if the termination is caused by the Purchaser's fault, then ~~upon notice to the Purchaser, the earnest money shall be forfeited to the Seller and applied first to the payment of Seller's expenses and the balance, if any, to be retained by the Seller as liquidated damages.~~

f. At the election of Seller or Purchaser upon notice to the other party not less than 5 days prior to the time of closing, this sale shall be closed through an escrow with PIONEER NATIONAL TITLE INSURANCE COMPANY ~~in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement then in use by said title insurance company, and with such special provisions inserted in the escrow agreement as may be required to conform with this contract. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, payment of purchase price and delivery of the deed shall be made through the escrow and this contract and the earnest money shall be deposited in the escrow. The cost of the escrow shall be divided equally between Seller and Purchaser. (strike paragraph if inapplicable)~~

g. Time is of the essence of this contract.

~~11, 1967, as amended (Ill. Rev. Stat., chap. 29, pars. 8.21, 8.22), unless there is attached to this contract or incorporated therein the certificate of compliance provided for by section 2 of said act, Seller warrants that no notice from any state, city or other governmental authority of a dwelling code violation which existed in the dwelling structure for this contract was executed has been received by Seller, his principal, if any, or his agent, if any, within ten days of the date of execution of this contract, except as set forth in any list attached to this contract or incorporated herein.~~

i. All notices herein required shall be in writing and shall be served on the parties at the addresses following their signatures. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service.

THIS CONTRACT FOR SALE OF REAL ESTATE IS FURTHER EXPRESSLY MADE SUBJECT TO THE ADDITIONAL TERMS, CONDITIONS AND PROVISIONS SET FORTH ON THE RIDER AFFIXED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.



Pioneer National Title Insurance Company

COOK COUNTY
BRUNSWICK BLDG.
69 WEST WASHINGTON ST.
CHICAGO, ILL. 60602
TELEPHONE (312) 346-3282

DU PAGE COUNTY
330 NAPERVILLE ST.
WHEATON, ILL. 60187
TELEPHONE (312) 665-4300

LAKE COUNTY
COUNTY & MADISON STS.
WALHEGAN, ILL. 60095
TELEPHONE (312) 396-6000

Member of America's largest title insurance group

RIDER AFFIXED TO AND INCORPORATED IN
CONTRACT FOR SALE OF REAL ESTATE DATED
JANUARY 10, 1972 BETWEEN THE CITY OF
EVANSTON AND P & S MANAGEMENT CO., INC.

1. Purchaser shall have no obligation hereunder and particularly shall not be obligated to consummate the purchase and sale of the real estate until ninety (90) days following the last to occur of the following events:

- (a) Purchaser shall have obtained a firm commitment from Holiday Inns, Inc. for the issuance to Purchaser of a license to construct and operate upon the real estate a motor hotel under the Holiday Inn system;
- (b) Purchaser shall have obtained a firm commitment for a permanent mortgage loan in an amount not less than \$2,500,000.00, bearing simple interest at a rate of not more than 9-1/2% per annum, payable in 300 equal monthly installments of principal and interest which loan shall be secured by a first mortgage lien on the real estate and improvements (exclusive of trade fixtures), without personal liability; and
- (c) Purchaser shall have obtained a firm commitment for a construction loan in an amount not less than \$2,500,000.00, bearing simple interest at a rate per annum of not more than 2% over the prime rate of interest from time to time charged by the First National Bank of Chicago, on short term borrowing by its most credit worthy customers, which loan shall be secured by a first mortgage lien on the real estate and improvements (exclusive of trade fixtures), without personal liability.

The aggregate mortgage broker's commissions, standby fees and commitment fees with respect to said construction and permanent mortgage loans shall not exceed \$75,000.00.

Purchaser shall proceed with due diligence and in good faith to obtain the aforescribed commitments, and in the event that such commitments are not obtained within 180 days from the date hereof, this Contract shall be null and void without further action of the parties and the earnest money shall be forthwith returned to Purchaser, unless prior to the expiration of said 180 days, Purchaser shall agree in writing to purchase the real estate in the absence of one or more of such commitments.

Closing shall take place upon the completion of said Ninety (90) days or at some earlier date after the occurrence as stipulated herein, upon the mutual consent of the parties.

2. Seller represents and warrants to Purchaser as follows:

- (a) That on or before the closing of the transaction

contemplated hereby, the real estate shall be zoned in such a manner as to allow the construction and operation thereon of a motor hotel and related facilities as contemplated hereby; and

- (b) That, subject only to compliance with the usual and customary requirements of the Seller's municipal ordinances uniformly applied with respect thereto, Seller shall issue all building, driveway, canopy, sign, swimming pool, recreational, sewer and water tap-on, business operation and other permits and licenses required to construct and operate the facilities and improvements to be constructed on the real estate as contemplated hereby.

3. Purchaser covenants and agrees with Seller as follows:

- (a) Pursuant to Seller's Ordinance 81-0-71, Purchaser submitted with its bid dated November 29, 1971, preliminary plans describing the manner in which Purchaser proposed to develop the real estate with a motor hotel containing at least 150 lodging rooms, related restaurant, banquet and meeting facilities and parking facilities. Within 180 days following satisfaction of all of the conditions set forth in paragraph 1 of this Rider, Purchaser shall submit specifications and working drawings to Seller describing in detail the improvements to be constructed upon the real estate, which shall be generally consistent with said preliminary plans and shall conform to the requirements and standards of the Building Code of Seller. Said working drawings and specifications shall be prepared and certified by an architect licensed in the State of Illinois.
- (b) Within 360 days following satisfaction of all of the conditions set forth in paragraph 1 of this Rider, Purchaser shall commence or cause the commencement of the construction of the contemplated improvements upon the real estate and shall cause the completion thereof with due diligence, acts of God, strikes, lockouts, material shortages, unusual weather conditions and other causes beyond the control of Purchaser considered.
- (c) Seller shall be named a co-obligee on all performance and payment bonds furnished to the construction lender in connection with the improvement of the real estate, or the lender shall provide a letter asserting that adequate loan balancing dollars are posted with the lender to the extent necessary to complete the project in accordance with the approved plans and specifications.
- (d) Seller shall be entitled to retain possession of the real estate and continue to operate a municipal parking facility thereon, notwithstanding closing of the transaction contemplated hereby, until it shall receive from Purchaser 15 days advance written notice to vacate the

real estate, whereupon Seller shall vacate the real estate and tender possession thereof to Purchaser within said 15-day period. Purchaser shall withhold service of such notice until 15 days prior to its anticipated construction commencement date. During the period, if any, that Seller shall retain possession of the real estate subsequent to closing, as aforesaid, Seller shall be obligated to (i) maintain the real estate in good order and condition, (ii) indemnify and hold Purchaser harmless from and against any loss, damage or expense it may incur as a result of any act, omission, accident or occurrence upon or about the real estate, (iii) provide Purchaser with a certificate of insurance containing reasonable limits of liability with respect to its use and occupancy of the real estate, and (iv) maintain and pay for all utilities.

4. Included within the improvements to be constructed upon the real estate is a first level parking facility, more definitively described in the aforescribed preliminary plans. Said parking facility shall be constructed approximately four feet below street grade and shall contain sufficient area to accommodate at least 117 automobiles. The parties have determined that it will cost \$309,000.00 to construct said parking facility, and in consideration for the agreement of Purchaser to construct and lease same to Seller, as hereinafter provided, Purchaser shall be entitled to a credit against the purchase price at closing in the amount of \$309,000.00. In the event that the cost of constructing said parking facility exceeds \$309,000.00, Purchaser shall be solely responsible for the overage. There shall be due and owing to the Seller an amount equal to \$15,000.00 per annum prorated from the termination of the parking use to the time when parking use is restored, which shall be paid to the Seller at the time the parking garage is made available to it. Upon completion of the improvements to be constructed upon the real estate contemplated hereby, Purchaser shall lease said first level parking facility to Seller in accordance with the terms of the Garage Lease affixed hereto as Schedule B and incorporated herein by this reference. Said Garage Lease shall be completed to provide for a 25-year term, commencing on the date that the subject parking facility is tendered to the Seller. Said Lease shall further provide for two options to renew said Lease for a period of 10 years each, which may be exercised by the Seller under the same terms and conditions of the Garage Lease. At the end of 25 years, the Seller agrees to subordinate its lease to any refinancing by the Purchaser and the Purchaser agrees to the following:

- (a) Purchaser sets aside \$309,000.00 in an interest bearing escrow account, with the interest running to the benefit of the Purchaser. Seller shall have the right to that \$309,000.00 if the 10 year options to extend are not renewed.
- (b) Seller may cancel the lease upon 30 days notice at any time and obtain the \$309,000.00, less \$5,000.00 for each year after the first 25 year period.
- (c) Purchaser shall have the right to withdraw \$5,000.00 a year from the escrow account.

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If all options are exercised by the Seller, the Seller gets all residual dollars in the escrow account, which would be \$209,000.00. Executed counterparts to Schedule B shall be exchanged by the parties hereto upon completion of said facility. At such time as the Purchaser shall determine that it no longer wishes to operate a hotel on the subject premises and wishes to sell the property for any use which would result in the discontinuance of the parking facility, the Seller shall have the first right to purchase the subject property for a 30-day period, at fair cash market value.

5. Purchaser shall have the right to assign all of its rights hereunder to a partnership, limited partnership, joint venture, trust or other entity of which Purchaser and/or James L. Schwartz and Marshall Padorr, the principal shareholders of Purchaser, are the general partners, controlling shareholders or have working control through equity ownership or otherwise; provided, however, that said assignment shall not relieve Purchaser of any of the obligations or duties incurred by it hereunder. Purchaser agrees it will not sell the equity of the property for a use which is tax exempt, except with the consent of the City Council.

P & S MANAGEMENT CO., INC.

By Marshall Padorr
President

Attest:

James L. Schwartz
Secretary

CITY OF EVANSTON

By Eugene J. Dunwoody
Mayor

Attest:

Eugene J. Dunwoody
Clerk

The East 40 feet of Lots 5 and 6 in Block 29 in the City of Evanston in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, also the West 100 feet of Lots 5 and 6 in Block 29 in the City of Evanston, all in Cook County, Illinois;

Lots 7 and 8 in Block 29 in Evanston in the South West quarter of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois; and

Lots 9 and 10 in Block 29 in Evanston in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

SCHEDULE A

LEASE OF PARKING FACILITY

THIS INDENTURE, made this _____ day of January, 1972;

WITNESSETH:

P & S MANAGEMENT CO., INC., an Illinois corporation (or successor in title), Lessor, hereby leases unto the CITY OF EVANSTON, an Illinois municipal corporation, Lessee, and the Lessee accepts the premises known as the entire first level parking facility located in the Holiday Inn-Evanston, situated at the northeast corner of Lake Street and Sherman Avenue, Evanston, Illinois, for a term of twenty-five years, commencing May 1, 1972, and ending June 30, 1997, unless sooner terminated as provided herein, to be occupied and used by Lessee for the operation of a municipal parking facility and no other purpose. In consideration thereof, the parties covenant and agree:

1. Lessee shall pay to Lessor, or its managing agent, in coin or currency which at the time or times of payment is legal tender for public and private debts in the United States of America, at 9950 West Lawrence Avenue, Schiller Park, Illinois, or elsewhere as designated from time to time by Lessor's notice, the sum of One Dollar (\$1.00) per year, payable each year on the first day of every anniversary of the term.

2. Lessor shall furnish source of electricity for light and power in the parking area in accordance with the plans heretofore submitted to Lessee, and nothing shall obligate Lessor to furnish additional electrical service or capacity. Any additional electrical service load or capacity required by Lessee to be brought to the premises or floor of Lessee shall be provided by Lessee at Lessee's expense upon prior written approval of the Lessor. A separate meter shall be provided to measure the Lessee's electricity.

3. Lessee shall be responsible for maintenance, repair and operation of said parking facility and shall maintain said facility in a safe and clean manner.

4. Lessee shall not assign or convey this lease or any interest under it, allow any transfer hereof or any lien upon Lessee's interest by operation of law, sublet the premises or any part thereof, or permit the use and occupancy of the premises or any part thereof by any other than the Lessee.

5. Lessee shall not make any structural alterations in or additions to the premises without the Lessor's advance written consent. If Lessor consents to such alterations or additions, before commencement of the work, the Lessee shall furnish Lessor with plans and specifications, names and addresses of contractors, copies of contracts, necessary permits and indemnification and waivers of lien against all claims, costs, damages and liabilities which may arise in connection with the alterations or additions. These requirements shall not apply to ordinary maintenance.

6. Subject to the terms and provisions of this contract, the Lessee shall at its own expense keep the premises in good order, condition and repair during the term, and shall operate said parking facility in accordance with all applicable statutes and ordinances.

SCHEDULE B

7. Lessee hereby grants to Lessor the right, privilege and option to reserve the exclusive use of not more than 45 parking spaces within the garage for a monthly rental of Fifteen Dollars (\$15.00) per space. The location of said spaces shall be mutually agreed upon. Lessee further agrees to use its best efforts to provide a minimum of 15 additional spaces at such location as it may designate in the garage. The compensation for such parking spaces shall remain the same for at least five years, at which time the payment per space may be renegotiated, but in no event shall the payment exceed maximum rates in municipal parking facilities.

8. Lessee agrees to indemnify and hold Lessor harmless from and against any damage, loss, cost or expense Lessor may suffer or sustain by reason of any act, omission, occurrence or accident upon or about the premises demised hereby, except for damages, loss, costs or expenses caused by acts of the Lessor or its agents, employees or contractors. Lessor further agrees to indemnify the Lessee for any damage, loss, cost or expense the Lessee may suffer by reason of the negligence of the Lessor, its agents, employees or contractors. Lessee further agrees to continuously maintain and deposit with Lessor during the entire term of this lease, public liability insurance indemnifying Lessee and Lessor against any damage, loss, cost or expense either of them may suffer, sustain or incur by reason of any act, omission, occurrence or accident upon or about the demised premises, containing limits of liability of not less than \$1,000,000 in connection with any one accident or occurrence, \$500,000 for injury or death to any person, and \$100,000 for property damage. Said insurance shall be written in companies approved by Lessor and the duplicate originals of the policies, together with satisfactory evidence of the payment of premiums thereon, shall be continuously deposited with Lessor during the term hereof. Lessor hereby agrees to continuously maintain and deposit with the Lessee, during the entire term of this lease, fire and casualty insurance of an amount equal to a minimum amount in excess of \$400,000.00 over the first mortgage.

P & S MANAGEMENT CO., INC.

By Marcus J. P... President

Attest:

Jean L. Schurte Secretary

CITY OF EVANSTON

By [Signature] Mayor

Attest:

Eugene Purvort Clerk