

30-R-11

A RESOLUTION

**Authorizing the Lease of Office Space in Main Library
to Foundation65 from May 15, 2011 through May 14, 2014**

WHEREAS, the City of Evanston c/o Evanston Public Library owns certain real property, including the property commonly known as the Main Library at 1703 Orrington Avenue, Evanston, Illinois; and

WHEREAS, the City seeks to lease certain office space in the Main Library to Foundation65, a non-profit educational foundation for the Evanston-Skokie School District 65; and

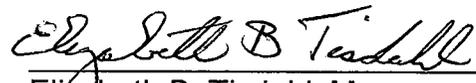
WHEREAS, the City Council of the City of Evanston has determined that it is in the best interests of the City of Evanston to lease the aforementioned office space, and execute a three-year lease agreement with Foundation65.

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

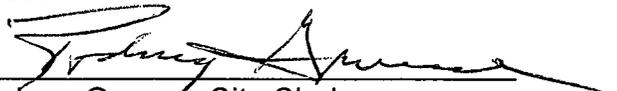
SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest on behalf of the City of Evanston, the lease agreement, by and between the City of Evanston c/o Evanston Public Library, or an affiliated entity, as Lessor and Foundation65, as Lessee, for the office space, located within the Main Library, for \$5,000.00/ per year. The lease agreement shall be in substantial conformity with the Lease attached hereto as Exhibit "A" and made a part hereof.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional terms and conditions for the lease agreement for the aforesaid space as may be determined to be in the best interests of the City and approved as to form by the Corporation Counsel. The City may agree in the future to assign the lease agreement to the Evanston Public Library Board of Trustees.

SECTION 3: That this Resolution 30-R-11 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: May 9, 2011

EXHIBIT A

**Lease Agreement by and between the City of Evanston c/o Evanston
Public Library and Foundation65 for the period
from May 15, 2011 to May 14, 2014**

LEASE AGREEMENT

THIS LEASE ("Lease") is made and entered into as of the 15 day of May, 2011, by and between CITY OF EVANSTON, an Illinois municipal corporation and a home rule unit of the State of Illinois, c/o the Evanston Public Library (the "Landlord") and **Evanston-Skokie District 65 Educational Foundation**, an Illinois non-profit corporation ("Foundation 65" or the "Tenant") for a certain commercial office space located at 1703 Orrington Avenue, Room 415, Evanston, Illinois 60201 (the "Premises").

In consideration of the rents, covenants and conditions hereafter set forth, the Landlord and Tenant hereby agree as follows:

1. BASIC LEASE PROVISIONS. In addition to the other terms which are elsewhere defined in this Lease, the following words and phrases, whenever used in this Lease, shall have the meanings set forth in this Section 1.

- (a) Date of Lease: May 15, 2011
- (b) Landlord: The City of Evanston
1703 Orrington Avenue
Evanston, Illinois 60201
- (c) Tenant: Foundation 65
P.O. Box 750
Evanston, IL 60204
- (d) Premises: 1703 Orrington Avenue
Room # 415
Evanston, Illinois 60201
(+/- 250 sq/ft)
- (e) Possession Date: May 15, 2011
- (f) Lease Term: Three Years (ending May 14, 2014)
- (g) Base Rent: \$ 5,000.00/per year (\$ 416.67/per month)
- (h) Delivery of Premises: Tenant will lease Space in AS-IS condition. The Premises will be furnished by Landlord, if any additional office equipment or furnishing is needed, it will be at the expense of the Tenant.
- (i) Real Estate Taxes: Landlord will be responsible for the payment of the real estate taxes.
- (j) Utilities: Landlord will be responsible for the payment of ALL

utilities, including wireless internet access and other related expenses, EXCEPT FOR: phone charges, cell phone charges, landline internet access, and cable television usage (if applicable). The Tenant is permitted to use the Landlord's copy machine and will reimburse the Landlord for said use per month at the rate of \$.10/per page.

- (k) Permitted Use: Operation of an educational foundation office.
- (l) Security Deposit: No Deposit Required
- (m) Hazard Insurance: Landlord to procure fire and hazard insurance on the Premises.
- (n) Tenant Insurance: Tenant to carry commercial liability insurance and insure all improvements, fixtures, equipment, and personal property.
- (o) Signage: Tenant may install its signage at its own expense, to be approved by Landlord.
- (p) Landlord's Personal Property at Premises: The Parties agree and acknowledge that all items described on Exhibit "A" are at all times the property of Landlord, which includes a desk, chair, file cabinet, which shall remain at the Premises upon termination of this Lease.

2. **PREMISES.** Landlord does hereby lease and rent to Tenant, and Tenant does hereby lease, take and rent from Landlord the leased space located at 1703 Orrington Avenue, Room # 415, Evanston, Illinois 60201. The Landlord will cause the halls, corridors, and other parts of the building adjacent to the Premises to be lighted, cleaned and generally cared for, accidents and unavoidable delays excepted. Landlord will air-condition the Premises when required by outside temperature. Tenant shall comply with such rules and regulations of the Library Facility at 1703 Orrington Avenue, Evanston, Illinois 60201, for the necessary, proper, and orderly care of the Library building in which the Premises are located. No modifications, alterations, additions, installations, or renovations including decorating shall be undertaken by the Tenant without first obtaining the written permission from the Landlord. The cost of all alterations and additions, if applicable, shall be borne by the Tenant and shall remain for the benefit of Landlord. The tentative hours of operation proposed are as follows: Monday - Friday from 8 a.m. to 5 p.m..

3. **PERMITTED USE.** The sole permitted use that Tenant shall use the Premises shall be for the operation of an educational foundation office (the "Permitted Use"). Tenant shall not use the Premises for any other purpose except the Permitted Use without the prior written approval of Landlord. The Landlord's administrative office hours of operation will govern when the Premises will be available to the Tenant for hours of access to the Premises. The Tenant shall obtain a post office box for mail delivery and shall not use the Landlord's mailing address for

receiving and sending Tenant's mail. All applicable laws, ordinances, and City policies shall be observed by the Tenant in and around the Premises. The City of Evanston Municipal Code provisions are herein incorporated by reference and made a part of this Lease.

4. **TERM.** The term of this Lease (the "Term") shall be for a period of three (3) years commencing on May 15, 2011 (the "Possession Date") and ending on May 14, 2014 (the "Expiration Date"). The parties agree and acknowledge that this Lease can be broken by Landlord or Tenant with thirty (30) days written notice without recourse of damages. After the Lease is terminated, the Tenant shall leave the Premises in broom clean condition and shall turn over any and all keys to the City Manager or his or her designee. Tenant shall pay for any and all damage to the Premises beyond normal wear and tear and shall do so within thirty (30) days of invoicing by the City. If the Tenant desires to renew the Lease for another term; the Tenant shall give Landlord sixty days written notice of said intention to elect to exercise said option to renew.

5. **RENT.** Tenant agrees to pay Landlord or Landlord's agent as rental for the Premises, the monthly installments of Rent due under the terms of this Lease. All monthly installments of Rent shall be payable in advance on or before the first (1st) day of each successive calendar month during the Term at the office of the Landlord set forth in Paragraph 1(b). A penalty of 15% on the base rent will be assessed against the Tenant for the payments not received by Landlord within five (5) days of the payment due date. If Tenant fails to pay any amount due for more than thirty (30) days, Landlord may accelerate all other amounts due under this Lease upon written notice to Tenant and following fourteen (14) day period for Tenant to cure said default. No delay or failure by Landlord to exercise this or any other right or remedy under this Lease shall be deemed a waiver of that right or any other term of the Lease.

6. **NO LIENS.** Tenant shall not permit to be created nor to remain undischarged any lien, encumbrance or charge to become, a lien or encumbrance or charge upon the Premises. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work in the Premises shall be filed against the Premises, Tenant shall, within sixty (60) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit or bond. If Tenant shall fail to cause such lien or notice of lien to be discharged by either paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, Landlord shall be entitled, if Landlord so elects, to defend any prosecution of an action for foreclosure of such lien and any money reasonably paid by Landlord and all reasonable costs and expenses, including attorneys' fees, reasonably incurred by Landlord in connection therewith, together with interest thereon at shall be paid by Tenant to Landlord within thirty (30) days following Tenant's receipt of Landlord's written demand. In the event Tenant diligently contests any such claim of lien, Tenant agrees to indemnify, defend, and hold harmless Landlord from any and all reasonable out of pocket costs, liability and damages, including attorneys' fees resulting therefrom, and, if requested, upon demand, Tenant agrees to immediately deposit with Landlord cash or surety bond in form and with a company reasonably satisfactory to Landlord in an amount equal to the amount of such contested claim.

7. **TENANT INSURANCE OBLIGATIONS.** Tenant shall, during the entire term hereof, keep in full force and effect a Comprehensive General Liability policy in the amount of Two

Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) with respect to the Premises, with provisions acceptable to Landlord, and the activities of Tenant in the Premises. The Tenant shall furnish copies of a Certificate of Insurance with the Landlord named as an additional insured with an insurance company acceptable to the Landlord. The Tenant shall furnish, when requested, a certified copy of the policy to the Landlord. The policy shall provide, in the event the insurance should be changed or cancelled, such change or cancellation shall not be effective until thirty (30) days after the Landlord has received written notice from the insurance company. An insurance company having less than an A- Policyholder's Rating by the Alfred M. Best Company will not be considered acceptable. Tenant shall at its own expense, cost, and risk shall defend and pay all costs, including attorney's fees, of any and all suits or other legal proceedings that may be brought or instituted against the Landlord, or any claim or demand, and pay and satisfy any judgment that may be rendered against them in any such suit or legal proceeding or the amount of any compromise or settlement that may result therefrom. Notwithstanding any of the foregoing, Tenant has no obligation to defend or indemnify Landlord in or for any claim or action against Landlord alleging negligence or gross negligence.

8. PERSONAL PROPERTY AND WAIVER OF SUBROGATION. Tenant shall be responsible for insuring all or its own personal property and equipment located on the Premises and any alterations, alterations and improvements that Tenant makes to the Premises. The Landlord and Tenant shall not be liable to the other for any loss or damage caused by water damage or any of the risks that are or could be covered by a standard all risk hazard insurance policy with an extended coverage endorsement, or for any business interruption, and there shall be no subrogated claim by one party's insurance carrier against the other party's carrier arising out of any such loss.

9. QUIET ENJOYMENT. Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements on Tenant's part to be performed, Tenant shall at all times during the Term have the quiet enjoyment and possession of the Premises.

10. CERTAIN RIGHTS RESERVED TO LANDLORD. In addition to those rights identified above, Landlord reserves the following rights:

- (a) to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy if Tenant should vacate the Premises during or prior to the last ninety (90) days of the Term or any part thereof;
- (b) to retain pass keys to the Premises;
- (c) to take any and all measures, including, without limitation, inspections, repairs, and alterations to all or any part of the Premises, as may be necessary or desirable for the safety, protection or preservation of the Premises or Landlord's Interests or as may be necessary or desirable in the operation of the commercial portions of the Premises; and

Landlord may enter upon the Premises with reasonable notice to tenant and may exercise any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant. Landlord agrees that it shall not interfere with the Tenant's use and occupancy unless Landlord

determines in its reasonable discretion that such interference is necessary.

11. DEFAULT REMEDIES.

(a) Any one of the following events shall be deemed to be an event of default hereunder by Tenant subject to Tenant's right to cure:

- (1) Tenant shall fail to pay within five (5) days, any item of Base Rent at the time and place when and where due;
- (2) Tenant shall fail to maintain the insurance coverage as set forth herein;
- (3) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than the payment of Rent, and shall not cure, or commence the good faith cure of any such failure, within fifteen (15) days after written notice to the Tenant of such failure; and
- (4) Tenant shall make a general assignment the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition in any proceeding seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting, or fail timely to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its properties.

(b) Upon the occurrence of any event of default, Landlord shall have the option to pursue any one or more of the following remedies subject to the laws of the State of Illinois and the Tenants right to cure:

- (1) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, but if Tenant fails to do so, Landlord may, without further notice and without prejudice to any other remedy Landlord may have for possession or arrearages in Rent or damages for breach of contract, enter upon the Premises and expel or remove Tenant and its effects, by force, if necessary, without being liable to prosecution or any claim for damages therefor; and Tenant agrees to Indemnify Landlord for all loss and damage which Landlord may suffer by reason of such lease termination, whether through inability to re-let the Premises, or through decrease in Rent, or otherwise. In the event of such termination, Landlord may, at its option, declare the entire amount of the Rent which would become due and payable during the remainder of the Term to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all Rent theretofore due, provided, however, that such payments shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment in advance of the Rent for the remainder of the Term.

(2) Landlord may recover from Tenant upon demand all of Landlord's costs, charges and expenses, including the fees and costs of counsel, agents and others retained by Landlord which have been incurred by Landlord in enforcing Tenant's obligations hereunder, subject to Landlord prevailing on its claims.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or available to Landlord at law or in equity, or constitute a forfeiture or waiver of any Rent due hereunder or of any damages suffered by Landlord.

12. INDEMNITY. Tenant agrees that Landlord, mayor, department and divisions officials, officers, agents, attorneys, and employees shall not be liable for any claim of any kind or in any amount for any injury to or death or persons or damage to property of Tenant or any other person. Tenant shall indemnify and hold Landlord harmless from all liability whatsoever, and from all losses, costs and expenses (including without limitation attorneys' fees and expenses) incurred or suffered as a result of or related to any real or claimed damage or injury related to Tenant's use and occupancy of the Premises. In the event that Tenant is named as a defendant in any legal proceeding arising from any act or omission of Landlord for any injury or any claimed damage occurring at the Premises, then Landlord shall indemnify and hold Tenant harmless from all liability whatsoever, and from all losses, costs and expenses (including without limitation attorneys' fees and expenses) incurred or suffered as a result of or related to any real or claimed damage or injury provided that a) Landlord is named as a defendant in the legal proceeding; b) the claim arises from a negligent or gross negligent act or omission of Landlord; c) Tenant's own negligent act or omission is not a cause of the claim; and d) the claim is unrelated to Tenant's use and occupancy of the Premises.

13. LIABILITY FOR ACTS OR NEGLECT. If any damage to the Premises, or any part thereof, results from any act or neglect of Tenant or its invitees or other guests, agents, customers, invitees or other guests of its customers, or employees, independent contractors, or the like, Tenant shall immediately repair the same; provided, however, that Landlord may, at its option, repair such damage and Tenant shall, upon demand by the Landlord, reimburse the Landlord forthwith for the total cost of such repairs. All personal property belonging to Tenant shall be at the sole risk of the Tenant and such other person only and the Landlord shall not be liable for damage, theft or misappropriation thereof.

14. DESTRUCTION OR DAMAGE. In the event of destruction of or damage to, the Premises by fire or other casualty, Landlord shall use the proceeds of its insurance to promptly rebuild and restore the Premises to their condition immediately prior to such destruction or damage. Landlord shall rebuild and restore the Premises to the condition of the Premises that existed on the Possession Date. In the event that the proceeds have been applied to indebtedness secured by any mortgage on the Premises, or are otherwise unavailable or the proceeds of insurance are not sufficient to pay for the cost of rebuilding or restoration, and Landlord elects not to make an equivalent amount of funds available to rebuild and restore the Premises, then Landlord may terminate this Lease and Tenant's rights hereunder and Tenant shall be released of its obligations and this Lease shall cease and terminate as of the date Tenant receives Landlord's written notice of such election, and neither party hereto shall have any further obligation to the other.

15. CONDEMNATION.

(a) If the whole or any part of the demised Premises shall be taken by any public authority under the power of eminent domain, the Lease term shall cease as of the day of possession shall be taken by such authority if such is of the entire demised Premises and any rents shall be prorated as of said date. If the entire premises are not taken, but such taking is more than 20% of the Premises the Tenant shall have the option to terminate this lease. If the taking is less than 20% and such taking would cost the tenant monies to reconfigure/ restructure the business premises or make it not practical to continue said business, tenant shall have the option to terminate the lease upon 30 days written notice to Landlord.

(b) All compensation awarded for any taking under the power of eminent domain, whether in whole or in part of the demised premises shall be the property of the landlord, however, the landlord shall not be entitled to any award made expressly to the tenant for the taking of the tenant's business value, furniture, fixtures or leasehold improvements (exclusive of the Landlord's contributions).

16. ATTORNEYS' FEES AND EXPENSES. If at any time during the Term of this Lease either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, then the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the reasonable expenses of attorney's fees, paralegal fees and disbursements incurred therein by the successful party. Such reimbursement shall include all legal expenses incurred prior to trial, at trial and at all levels of appeal and post judgment proceedings.

17. ENTIRE AGREEMENT. This Lease contains the entire agreement of the parties with respect to the Premises and no representations or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of any obligation hereunder, and no custom or practice at variance with the terms hereof, shall constitute a waiver of Landlord's right to demand strict compliance with the terms hereof.

18. TIME. Time is of the essence of this Lease, and of each term, condition and provision hereof.

19. HOLDING OVER. Upon termination of this Lease, by lapse of time or otherwise, Tenant shall surrender the Premises (and all keys thereto) in the same condition as at commencement of the Term, excepting only reasonable wear and tear and loss by insured casualty. If Tenant remains in possession after expiration of the Term, Tenant agrees to yield up immediate and peaceable possession to Landlord, and if failing to do so, the Tenant shall pay the sum of two hundred and no/100 Dollars (\$200.00) per day, for the time such possession is withheld. The Landlord or its legal representative at any time after the expiration of the Term, without notice, to re-enter the Premises, and to expel, remove and put the Tenant or any person(s) occupying the said Premises, using such force as may be necessary, and to repossess and enjoy the Premises against as before this Lease, without prejudice to any remedies which

might otherwise be used for arrears of rent or breach of covenants; or in cases the said Premises shall be abandoned, deserted, or vacated and remain unoccupied five days consecutively, the Tenant hereby authorizes and requests the Landlord to re-enter the Premises and remove all property found therein, regardless of ownership, place them in some regular storage warehouse or other suitable storage, at Tenant's expense, for no more than forty-five days, and to proceed to re-rent the Premises at the Landlord's option and discretion and apply all money so received after paying the expenses of removal toward the rent accruing under this Lease. This request shall not be construed as requiring compliance therewith on the part of the Landlord. If the Tenant shall fail to pay the rent at the times, place and in the manner above provided, and the same shall remain unpaid five (5) business days after the day whereon the same should be paid, the Landlord by reason thereof shall be authorized to declare the term ended and the Tenant hereby agrees that the Landlord, its agents or assigns may begin suit for possession and/or rent. In the event of re-entry and removal of the articles found on the Premises and personally owned by Tenant or others, the Tenant hereby authorizes and requests the Landlord to sell the same at public or private sale within fifteen (15) days after storage time period provided above. The proceeds of said sale shall be applied to the expenses of storage, removal, sale expenses and back due rent.

20. ASSIGNMENT AND SUBLETTING. This Lease shall bind and inure to the benefit of each of the parties, their respective heirs, successors, and assigns; provided however, that Tenant shall not assign its interest under this lease or sublet all or any portion of the Premises without first obtaining Landlord's prior written consent in writing, which consent will not be unreasonably withheld. No assignment or sublease shall relieve Tenant of its obligation to pay rent or perform other obligations required by this lease unless Landlord agrees in writing at the time the assignment is made, and no consent to one assignment or subletting shall be consent to any further assignment or subletting. Future successor and assigns of the Evanston Public Library shall have the power to further negotiate any renewals and amendments of this Lease. The City may agree in the future to assign this Lease to the Evanston Public Library Board of Trustees.

21. SEVERABILITY. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall be determined to be invalid or unenforceable to any extent, neither the remainder of this Lease nor the application of such term, covenant or condition to any other person or circumstance shall be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

22. TENANT SIGNAGE. Tenant agrees that any signage installed on the Premises will comply in all respects with applicable governmental requirements and Tenant will obtain and pay the cost of any required sign permits. All signage, bulletins, posters must be reviewed and approved by the Landlord, prior to Tenant posting the same. Landlord's consent shall not be withheld unreasonably.

23. GOVERNING LAW AND TIME LIMITATION. This Lease shall be construed and enforced in accordance with the laws of the State of Illinois. All disputes relating to the interpretation and enforcement of the provisions of this Lease shall be resolved exclusively by the federal or state court located in Cook County, Illinois, and the parties hereto hereby submit to

the jurisdiction and venue of the court for such purpose. The parties hereby waive trial by jury.

24. **NOTICES.** Notices sent to the Landlord, should be mailed to the address set forth in Paragraph 1(b) of this Lease and notice to the Tenant should be mailed to the address set forth in Paragraph 1(c) of this Lease. A mailed notice is must be sent via certified mail, return receipt requested and effective three (3) business days after deposit in the U.S. Mail. Notice given by personal delivery is effective upon delivery.

IN WITNESS WHEREOF, both of said Landlord and Tenant have caused this Lease to be executed as of the date and year first above written by a duly authorized officer or manager of each of the respective parties.

**Landlord: THE CITY OF EVANSTON,
Illinois home rule municipal corporation**

By: Wally Bobkiewicz

Its: City Manager, Wally Bobkiewicz

**Tenant: FOUNDATION 65,
Evanston-Skokie District 65 Educational Foundation**

By: Patty Barbato

Its: President, Patty Barbato

EXHIBIT "A"

PROPERTY LIST OF LANDLORD

<u>Item</u>	<u>Quantity</u>
Desk	1
Chair	1
File Cabinet	1