

7/11/2013

44-R-13

A RESOLUTION

**Authorizing the City Manager to Execute a
Termination and Restatement of Surviving Obligations
Regarding the Church Street Plaza Redevelopment Agreement**

WHEREAS, on October 23, 1998, the City entered into a redevelopment agreement ("RDA") for the property commonly known as Church Street Plaza; and

WHEREAS, most of the RDA dealt with land acquisition, funding, and construction of Church Street Plaza, the first phase of which opened in November of 2000, and property tax obligations related to the Downtown II TIF, which the City terminated in October of 2008; and

WHEREAS, the only remaining portions of the RDA with any ongoing effect relate to parking; and

WHEREAS, Church Street Plaza SPE, LLC, owner of portions of Church Street Plaza, has asked that the City consent to a partial termination of the RDA in order to unencumber its title,

**NOW, THEREFORE, BE IT RESOLVED 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.

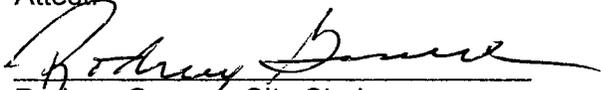
SECTION 2: The City Manager is hereby authorized and directed to sign, and the City Clerk authorized and directed to attest, the Agreement set forth in Exhibit 1, attached hereto and incorporated herein by reference, on the City's behalf.

SECTION 3: The City Manager is hereby authorized and directed to negotiate any additional conditions or terms of the Agreement as may be determined to be in the best interest of the City.

SECTION 4: 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.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: July 22, 2013

EXHIBIT 1

**Termination of Redevelopment Agreement
and Restatement of Surviving Obligations**

This document prepared by and
after recording return to:

David L. Reifman
DLA Piper LLP (US)
203 North LaSalle Street
Chicago, Illinois 60601

This space reserved for Recorder's use only.

**TERMINATION OF REDEVELOPMENT AGREEMENT
AND RESTATEMENT OF SURVIVING OBLIGATIONS AGREEMENT**

THIS TERMINATION OF REDEVELOPMENT AGREEMENT AND RESTATEMENT OF SURVIVING OBLIGATIONS AGREEMENT (this "Agreement") is made as of this ____ day of _____ 2013 by and between **THE CITY OF EVANSTON**, an Illinois home rule municipality (the "City") and **CHURCH STREET PLAZA SPE, LLC**, a Delaware limited liability company ("CSP"). (The City and CSP are sometimes referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS:

A. CSP is the owner of certain parcels of real estate legally described on Exhibit A (the "CSP Parcels").

B. The CSP Parcels constitute several of the parcels of real property which are subject to that certain Redevelopment Agreement between the City and AHC Evanston LLC dated October 23, 1998, as the same was amended by (i) that certain First Amendment to Redevelopment Agreement dated November 23, 1998, (ii) that certain Second Amendment to Redevelopment Agreement dated June 7, 1999, (iii) that certain Third Amendment to Redevelopment Agreement dated January 26, 2000, (iv) that certain Fourth Amendment to Redevelopment Agreement dated October 12, 2000 and (v) that certain Fifth Amendment to Redevelopment Agreement dated August 20, 2001 (said Agreement, as so amended, is hereinafter called the "**Redevelopment Agreement**"). A document titled "Memorandum of the Redevelopment Agreement" (the "**Memorandum**") was recorded against title to all of the real property affected by the Redevelopment Agreement on June 10, 1999 in the Cook County Recorder's Office as Document No. 99557632, thereby giving notice of the existence of the Redevelopment Agreement. The CSP Parcels constitute the "Main Pavilion Parcel", the "Mini-Anchor Parcel" and the retail portion (but not the remainder) of the "Parcel South of Church Street" as set forth in the Redevelopment Agreement. Capitalized terms used herein which are not otherwise defined shall have the meaning ascribed to them in the Redevelopment Agreement.

C. The vast majority of rights and obligations of the Parties under the Redevelopment Agreement are related to the initial construction and development of the Subject Property and/or matters which by their terms were declared to expire or terminate as of a date certain and which, as of the date hereof, have expired or terminated, including, without limitation the expiration as of December 31, 2008 of the Downtown II Redevelopment Project Area; however, certain limited terms of the Redevelopment Agreement survive and continue to be applicable to the use and development of the CSP Parcels (and other portions of the Subject Property).

D. In connection with the Redevelopment Agreement, and pursuant to City resolutions 36-R-99, 37-R-99, 38-R-99 and 15-R-02, CSP (or its predecessors in interest) entered into various parking leases with the City related to the use and zoning of each of the various portions of the CSP Parcels (individual a "Parking Lease" and collectively the "Parking Leases").

E. The Parties wish to enter into this Agreement in order to (i) declare and clarify that the Redevelopment Agreement is deemed to be terminated and of no further force or effect as concerns the CSP Parcels (without affecting the Parking Leases); (ii) clean up matters of title related to the CSP Parcels and release the Redevelopment Agreement and (iii) memorialize and restate those surviving obligations of the Parties in this Agreement as the sole remaining agreements as relates to the CSP Parcels.

NOW THEREFORE, in consideration of the recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals**. The recitals above are hereby incorporated into this Agreement by this reference as though fully set forth herein.

2. **Termination of Redevelopment Agreement as to the CSP Parcels**. Except as specifically and expressly stated in Section 3 below, (a) the Redevelopment Agreement is hereby declared to be terminated and void and of no further force or effect solely as concerns the CSP Parcels (and no other portion of the Subject Property not owned as of the date hereof by CSP), (b) the Parties hereby declare the Redevelopment Agreement to be fully performed and satisfied as to the CSP Parcels, and (c) the Parties do hereby release and forever hold each other harmless from and against and claims, costs, obligations, liabilities and related matters of any type or description which exist, existed or which may or could arise under the Redevelopment Agreement. The recording of this Agreement shall serve as a release of the Redevelopment Agreement and the Memorandum from title as to the CSP Parcels.

3. **Surviving Obligations of the Parties**. In furtherance of the matters set forth in Section 2 above, and notwithstanding the termination of the Redevelopment Agreement as set forth herein, the Parties hereby ratify, affirm and restate the following obligations, which matters shall survive and which shall remain in full force and effect solely in accordance with the terms of this Agreement:

(a) **Cinema Parking (formerly Section 48 of the Redevelopment Agreement)**. Provided that the Main Pavilion Parcel has a movie theatre use ("Cinema"), the Cinema shall have free parking for its movie patrons in the public parking garage located on Maple Street and which was constructed by the City pursuant to the Redevelopment Agreement (the "Parking Garage") for up to four (4) hours per day for the period of the

initial term of its lease, being twenty (20) years, from the date said Cinema opened for business (which occurred on November 17, 2000). If it is determined, at the expiration of the twenty (20) year period that the patrons of a majority of movie theatres within the trade area of the Cinema are paying for parking, the City reserves the right to charge the patrons of the Cinema for parking at a rate which shall not place the Cinema at a competitive disadvantage to those theatres. Provided the Cinema exercises its option to extend its lease term beyond twenty (20) years, the City, at the completion of each five (5) year option period for a maximum of twenty (20) years beyond the initial twenty (20) year term, shall determine if a majority of the patrons of the movie theaters within the trade area of the Cinema are paying for parking. If a majority of such movie theatre patrons are paying for parking, the City may charge the patrons of the Cinema for parking at a rate which shall not place the Cinema at a competitive disadvantage to those theatres. If the patrons of a majority of movie theaters in the trade area are not paying for parking when the foregoing determinations are made by the City, then the City shall not charge the patrons of the Cinema for parking. At the expiration of forty (40) years, the City shall have the right to charge patrons of the Cinema for parking at the rate it charges the general public. At the termination of the Cinema lease or a change in use of the Cinema property to other than a movie theatre, the City's agreement contained in this paragraph shall terminate.

(b) Valet Parking (formerly Section 50 of the Redevelopment Agreement). The owner of the Main Pavilion Parcel and the Cinema shall have the right to conduct non-exclusive valet parking at no cost to the City in the Parking Garage.

(c) Parking Garage (formerly Section 51 of the Redevelopment Agreement). The City agrees that it will maintain, repair and, if destroyed or damaged by casualty, rebuild the Parking Garage for a period of twenty (20) years from the time said garage opened for business (which occurred on November 15, 2000).

4. Parking Leases. Nothing herein shall be deemed as an amendment or modification of the Parking Leases or any Parking Lease, all of which are and shall remain in full force and effect in accordance with their terms.

5. Miscellaneous.

(a) This Agreement represents the entirety of the agreement between the Parties and shall be binding upon them and inure to the benefit of and be enforceable by and against their respective successors and assigns.

(b) This Agreement may be signed in any number of counterparts, each of which shall be an original, with the main effect as if the signatures thereto and hereto were upon the same instrument.

(c) All notices, demands, requests, consents, approvals or other instruments required or permitted to be given under this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be given by any of the following means (i) personal service; (ii) telecopy or facsimile; (iii) overnight courier; or (iv) registered or certified mail, return receipt requested:

To CSP: Church Street Plaza SPE, LLC
c/o AHC Management, LLC
900 Clark Street
Evanston, Illinois 60201
Fax: (847) 570-5656

With a copy to: DLA Piper US LLP
203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601
Attention: David L. Reifman
Fax: (312) 236-7516

To the City: City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
Attention: City Manager
Fax: (847) 448-8083

With a copy to: City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
Attention: Corporation Counsel
Fax: (847) 448-8093

Such addresses may be changed by notice to the other Parties given in the same manner provided above. Any notices, demands, requests, consents, approvals or other instruments required or permitted to be given under this Agreement sent pursuant to either clause (i) or (ii) hereof shall be deemed received upon such personal service thereupon dispatch. Any notice, demand, request, consent, approval or other instrument required or permitted to be given under this Agreement sent pursuant to clause (iii) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands, requests, consents, approvals or other instruments required or permitted to be given under this Agreement sent pursuant to subsection (iv) shall be deemed received two (2) business days following deposit in the U.S. mail.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY:

CITY OF EVANSTON, ILLINOIS

By: _____
Its: _____

Attest: _____
Its: _____

CHURCH STREET PLAZA SPE, LLC

By: _____
Its: _____

EXHIBIT A
LEGAL DESCRIPTION

