

4/27/16

39-R-16

A RESOLUTION

Authorizing the City Manager to Enter into a One Year Lease Agreement with Olga Bernick at the Robert Crown Community Center

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COUNTY OF COOK, STATE OF ILLINOIS:

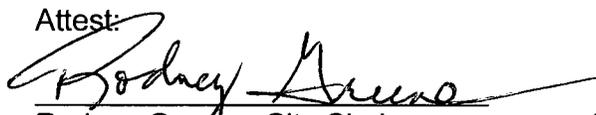
SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, a one (1) year lease agreement for a concession stand at the Robert Crown Community Center with Olga Bernick. The one (1) year lease agreement shall be in substantial conformity with the lease marked as Exhibit A (Lease Agreement – One Year), attached hereto and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the lease as may be determined to be in the best interests of the City.

SECTION 3: That this Resolution 39-R-16 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: May 9, 2016

EXHIBIT A

**ROBERT CROWN COMMUNITY CENTER CONCESSION STAND LEASE
AGREEMENT WITH OLGA BERNICK (ONE YEAR)**

**LEASE AGREEMENT FOR THE PREMISES LOCATED AT 1701 MAIN STREET,
EVANSTON, ILLINOIS, BY AND BETWEEN**

THE CITY OF EVANSTON, LANDLORD

AND

EVANSTON ICE COMPANY

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This Lease Agreement (the "**Agreement**" or "**Lease**") shall take effect as of the date of execution of the Agreement by the City (the "**Effective Date**"). This Lease is by and between **The City of Evanston**, an Illinois home rule municipality and owner of Subject Property ("**Landlord**"), whose main business office is located at 2100 Ridge Avenue, Evanston, Cook County, Illinois, and **Evanston Ice Company**, an Illinois corporation ("**Tenant**"). Landlord and Tenant may be referred to collectively as the "**Parties**".

SECTION 1. DESCRIPTION OF PREMISES

Landlord leases to Tenants concession stand space at the Robert Crown Community Center, located on the main floor of the property with a street address of 1701 Main Street, Evanston, Illinois 60202 (the "**Premises**"), situated within the Landlord's building located at the same common address and legally described on **Exhibit A** (the "**Property**") and commonly known as the Robert Crown Community Center ("**Crown**").

The Property has various uses including ice skating, summer camp classes, and many other uses. The term "**Common Facilities**" as used in this Agreement will include those areas and facilities within the Property (outside of the Premises) for the nonexclusive use of Tenants in common with other authorized users, and includes, but is not limited to, sidewalks, parking area, planted areas (excluding the adjoining park area), common area restrooms and open means of ingress and egress. Tenants will have the non-exclusive right to use the Common Facilities, including the washrooms referenced above.

SECTION 2. TERM

The term of this Agreement will be for one year, June 1, 2016 – May 31, 2016 (the "**Term**"). Tenants must provide Landlord with 90 days' notice to request a renewal of the Agreement for the Premises. Landlord, in its sole discretion, may decide that a Renewal Term is not necessary and in the best interests of the City. Renewal of the Agreement must be authorized by written consent of the Parties and must be authorized by the City Council.

SECTION 3. RENT

A. RATE: Tenants agree to pay Landlord an annual rental payment (the "**Rent**") in accordance with the following schedule:

1. For the period of June 1st – May 31st (twelve months), the Rent rate is \$700.00 per month, for total Rent of \$8,400.00 for the twelve months.

B. PAYMENTS. The Rent outlined in Section 3[A][1] above shall be paid in accordance with said Section.

C. Any and all Rent **PAYMENTS** under this Lease shall be mailed to:

City of Evanston
Parks, Recreation, and Community
Services Department
2100 Ridge Avenue, First Floor
Evanston, IL 60201

SECTION 4. COMMON FACILITIES

A. MAINTENANCE BY LANDLORD: Tenants acknowledge that they have leased the Premises for many years and receive the Premises, Common Facilities and remainder of the Property in as-is condition, and acknowledge that the Landlord has made no representations to the condition or has made any repairs to same. The Landlord or Landlord's staff or other representatives have made no representations or assurances that it will alter or remodel the Premises or Property. Landlord shall, when necessary, as determined by Landlord, in its reasonable discretion or when required by applicable laws, perform, repair and maintain all of the following:

1. Exterior maintenance, including the foundation, exterior walls, slab, common area doors and roof;
2. A refuse container to be shared by all tenants in the Property to be located at the Property in reasonable proximity to the Premises. Landlord will contract, to have trash hauled from such container with reasonable frequency;
3. Electric facilities and systems, and the HVAC unit(s) and systems (including the portions of such systems serving the Premises exclusively);
4. Plumbing and water facilities and systems (including the portions of such systems serving the Premises exclusively);
5. Fire and life safety systems and fire alarm systems, including inspections thereof (including the portions of such systems serving the Premises exclusively);
6. Hallways, stair rails, and related elements, and restrooms and other Common Facilities, including the parking lot serving the Property;
7. Snow and ice removal, including salting, from front walkway of Premises and parking spaces in front of the Property within 48 hours of any snow event with accumulation of an 1 inch or more; and
8. Change light bulbs, ballasts and tubes in any fluorescent or comparable light fixtures in the Premises. Notwithstanding the foregoing, Tenant will change light bulbs, ballasts and tubes which are considered specialty lighting and related to performance activities.
9. Maintain the HVAC units in the Premises, the HVAC units are the property of the Landlord and shall remain in the Premises at the end of the Term.

B. MAINTENANCE BY TENANTS:

1. Interior non-structural Premises maintenance and all fixtures and property within the Premises other than (a) utility, HVAC or fire/life safety facilities and systems and (b) any items Landlord is required to maintain pursuant to Section 4[A];

2. All refuse from Premises to be placed in appropriate containers and Tenants cannot dispose of construction building materials in the standard refuse containers and must arrange for special pick-ups and containers for said materials;

3. The Tenants will at all times maintain all of the Premises in a clean, neat and orderly condition. The Tenants will not use the Premises in a manner that will violate or make void or inoperative any policy of insurance held by the Landlord. The Tenants shall pay the Landlord for overtime wages for staff and for any other related expenses incurred in the event that repairs, alterations or other work in the Premises required or permitted hereunder are not made during ordinary Business Hours (as defined in Section 5[B]) at the Tenant's request.

4. Tenants will keep the interior non-structural portions of the Premises, including all interior, non-structural walls, surfaces and appurtenances (other than systems and any other items that Landlord is required to maintain pursuant to Section 4[A]), in good repair. Tenants shall be responsible for repairs, damages and losses for damages sustained outside the Premises to other Crown tenant's personal property or leased area attributable to Tenant's negligence or intentional misconduct, subject to Section 12[E]. All such damage must be reported in writing to the Director of Parks, Recreation and Community Services, or his/her designee, by the next City of Evanston business day, after discovery of such damage by Tenants.

5. Repairs by Tenants must have prior written approval by the Director of Parks, Recreation and Community Services, or his or her designee, and must occur within thirty (30) days of such approval unless the Director of Parks, Recreation and Community Services, or his or her designee, gives a prior written request or grants approval for an extension beyond the thirty (30) days (or unless such repairs cannot reasonably be completed within thirty (30) days, in which case, Tenant shall have such additional time as is reasonably required). If Tenants fail to make the necessary repairs by the date determined by the Lessor, the Landlord has the option to make the necessary repairs and Tenants agree to promptly pay for those repairs upon presentation of an invoice by the Landlord to the Tenant. Tenants are required upon lease termination to leave space in good repair and condition. Maintenance and repair issues which constitute a life and safety hazard must be corrected within twenty-four (24) hours after discovery by Tenants, provided that the issue can be fixed within that time frame. If the issue cannot be fixed within twenty-four (24) hours after discovery by Tenants, the Tenants must provide a schedule for repair within one (1) business day after

discovery by Tenants to the Director of Parks, Recreation and Community Services for approval, which cannot be unreasonably withheld.

SECTION 5. USE OF PREMISES

A. PURPOSES: Tenants will use the Premises to operate a concession stand and other related business and uses incidental thereto, and no part of the Premises will be used for any other purpose without the prior written consent of Landlord (the "Permitted Use"). Liquor is not permitted on the Premises.

B. HOURS OF OPERATION AND LANDLORD ACCESS:

1. Tenant's use of the Premises shall only be for the permitted use. Tenants shall have the right to conduct their business in the Premises only during the Business Hours of the Property. Both Tenant and Landlord agree and acknowledge that the Business Hours change seasonally. Landlord will provide notice to Tenant with regards to modified Business Hours throughout the year. Tenants' staff, agents, employees and contractors may not access the Premises outside of the Property's Business Hours. The Property will be closed on holidays/days as observed by the City of Evanston.

2. The Landlord shall have the right to retain a set of keys to the Premises, and Tenants shall not change any locks for the Premises to any other lock, other than a lock consistent with the Landlord's master lock for the Property. The Tenants shall permit the Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises concealed to the greatest extent possible, above ceiling, under floor or in walls that don't reduce the square footage of the Premises and don't materially affect Tenants' use of the Premises. The Landlord shall have the right to enter upon the Premises with 24 hours prior written notice or without notice in case of an emergency, to control heat, electricity and air conditioning, to inspect the same, and to make such repairs, alterations, improvements or additions to the Premises or Crown, as the Landlord may deem necessary or desirable. Tenants will not cease any Rent payments while repairs, alterations, improvements, or additions are being made, by reason of loss or interruption of business of the Tenants, or otherwise, provided Landlord shall complete such work as quickly as reasonably possible. Notwithstanding the foregoing, if a portion of the Premises is unusable for the purpose contemplated hereunder for a period of greater than 5 days (including, without limitation, as a result of a casualty or a condemnation or the repairs required in connection therewith), the fixed minimum monthly rental will be equitably reduced in the proportion that the unusable part of the Premises bears to the whole. The determination of the unusable space shall be reasonably determined by the Landlord based on square footage. Notwithstanding anything to the contrary contained herein, Landlord shall not have the right to alter the Premises except as expressly required or permitted hereunder. Notwithstanding the foregoing, if the repairs, alterations, improvements, or additions are at a Tenant's request or if the repairs are necessitated by a Tenant's actions, then the Tenants may not cease any rent for any period, unless the Premises are unusable as a result of

the negligence or intentional misconduct of Landlord or its agents, employees or contractors. If a Tenant shall not be personally present to open and permit an entry into Premises, at any time, when for any reason an entry therein shall be necessary or permissible, the Landlord or the Lessor's agents may enter the same by using the key, or may forcibly enter the same, without rendering the Landlord or such agents liable therefore (if during such entry the Landlord or the Lessor's agents shall accord reasonable care to Tenants' property), and without in any manner affecting the obligations and covenants of this Lease.

3. Nothing herein contained, however, shall be deemed or construed to impose upon the Landlord any obligations, responsibility or liability whatsoever, for the care, supervision or repair of the Premises or any part thereof, other than as herein provided. The Landlord shall also have the right at any time without the same constituting an actual or constructive eviction and without incurring any liability to the Tenants therefore, to change the arrangement and/or location of Common Facilities, including entrances or passageways, doors and doorways, and corridors, stairs, toilets or public parts of Crown, and to close Common Facilities (as and when reasonably necessary for Landlord to perform its obligations hereunder or exercise its rights or as necessary due to Force Majeure), including entrances, doors, corridors or other facilities. The Landlord shall not be liable to the Tenants for any expense, injury, loss or damage resulting from work done by persons other than the Landlord in or upon, or the use of, any adjacent or nearby building, land, street, or alley.

C. LOCKING OF PREMISES: All doors to the Premises must be kept locked at all times except during the Business Hours (as defined in Section 5[B]). Tenants shall not open the door to anyone in the late hours. The door may not be propped open for any reason. During normal Business Hours (as defined in Section 5[B]) for the Property, patrons and users of the Property shall have access to the Common Facilities. Tenants shall not have use of Common Facilities after the Business Hours (as defined in Section 5[B]).

D. STORAGE OF INFLAMMABLE MATERIALS: Tenants agree that they will not permit to be kept at the Premises any gasoline, distillate or other petroleum product, or other substance of an explosive or inflammable nature as may endanger any part of the premises without the written consent of the Landlord, provided that Tenants can maintain customary cleaning products in the Premises.

E. USE IMPAIRING STRUCTURAL STRENGTH: The Tenants will not permit the Premises to be used in any manner that will impair the structural strength of the Premises, or permit the installment of any machinery or apparatus the weight or vibration of which may tend to impair the building's foundations or structural strength.

F. GARBAGE DISPOSAL: The Tenants will not incinerate any garbage or debris in or about the Premises, and will cause all containers, rubbish, garbage and debris stored in the Premises to be placed in the refuse container supplied by Landlord for the Property before accumulation of any substantial quantity.

G. PUBLIC REGULATIONS: In the conduct of its business on the Premises, Tenants will observe and comply with all laws, ordinances and regulations of public authorities. Tenants acknowledge that the Property is owned by the City of Evanston and therefore no smoking will be permitted at the Property.

H. OTHER MISUSE: Tenants will not permit any unlawful or immoral practice with or without his knowledge or consent, to be committed or carried on in the Premises by Tenants or any other person. Tenant will not use or allow the use of the Premises for any purpose whatsoever that will injure the reputation of the Premises or of the building of which they are a part.

SECTION 6. SIGNS

Tenants may apply for signage (temporary and permanent signage) only for the interior of the Premises, at its own expense, in order to conduct the business of Tenants. Tenants acknowledge that there are limitations from the City of Evanston Municipal Code of 2012, as amended, and the Code governs the application process and the details regarding size, type, and number of signs and Tenants agree to be bound by such ordinances. Any interior signs must be submitted to and approved by the Director of Parks, Recreation and Community Services or his/her designee. Landlord cannot make representations in a lease agreement that Tenants shall be entitled additional signage, a certain number of signs and/or dimensions of proposed signage.

SECTION 7. DEFECTS; DEFECTIVE CONDITION; WIND; ACTS OF THIRD PERSONS

Except as provided by Illinois law and except to the extent arising from the negligence or intentional misconduct of Landlord or its agents, employees or contractors, or from the breach of this Lease by Landlord, Landlord will not be liable to Tenants for any damage or injury to Tenants or Tenants' property occasioned by the failure of Landlord to keep the Premises in repair, and shall not be liable for any injury done or occasioned by wind or by or from any defect of plumbing, electric wiring or of insulation thereof, gas pipes, water pipes or steam pipes, or from broken stairs, porches, railings or walks, or from the backing up of any sewer pipe or down-spout or from the bursting, leaking or running of any tank, tub, washstand, water closet or waste pipe, drain, or any other pipe or tank in, upon or about the Premises or the building of which they are a part nor from the escape of steam or hot water from any radiator, nor for any such damage or injury occasioned by water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Premises, or otherwise, nor for any such damage or injury done or occasioned by the falling of any fixture, plaster, or stucco, nor for any damage or injury arising from any act, omission or negligence or co-tenants or of other persons, occupants of the same building or of adjoining or contiguous buildings or of owners of adjacent or contiguous property, or of Landlord's agents or Landlord, all claims for any such damage or injury being hereby expressly waived by Tenants. Notwithstanding the foregoing, if any portion of the Premises unusable for the purpose contemplated hereunder for a period of greater than 5 days, the fixed minimum monthly rental will be equitably reduced in the proportion that the unusable part of the

Premises bears to the whole. The determination of the unusable space shall be reasonably determined by the Landlord based on square footage.

SECTION 8. CASUALTY DAMAGE; REPAIRS; ABATEMENT OF RENT

A. USE OF PARTIALLY DAMAGED PREMISES: On damage or destruction by a casualty to the Premises, Tenants will continue to use them for the operation of its business to the extent practicable

B. RIGHT TO TERMINATE ON DESTRUCTION OF TWO-THIRDS OF PREMISES: Either Party will have the right to terminate this Agreement if, the Premises is damaged by a casualty to an extent exceeding two-thirds of the reconstruction cost of the Premises as a whole. If such damage occurs, this termination will be affected by written notice to the other Party, delivered within 90 days of the damage.

C. REPAIRS BY LANDLORD: If the Premises are damaged by a casualty before or after the start of the Agreement, then Landlord will immediately, on receipt of insurance proceeds paid in connection with casualty damage, but no later than sixty days after damage has occurred, proceed to repair the Property. Repairs will include any improvements made by Landlord or by Tenants with Landlord's consent, on the same plan and design as existed immediately before the damage occurred, subject to those delays reasonably attributable to governmental restrictions or failure to obtain materials, labor or other causes, whether similar or dissimilar, beyond the control of Landlord. Materials used in repair will be as nearly like original materials as reasonably procured in regular channels of supply. Wherever cause beyond the power of the party affected causes delay, the period of delay will be added to the period in this lease for completion of the work, reconstruction or replacement.

D. REDUCTION OF RENT DURING REPAIRS: If a portion of the Premises is unusable for the purpose contemplated hereunder for a period of greater than 5 days, the fixed minimum monthly rental will be equitably reduced in the proportion that the unusable part of the Premises bears to the whole. The determination of the unusable space shall be reasonably determined by the Landlord based on square footage. No rent will be payable while the Premises is wholly unoccupied pending the repair of casualty damage.

E. FIRE AND CASUALTY. If the Premises are entirely destroyed by fire or another act of God, and Landlord elects to not rebuild the Premises, then this Agreement shall be terminated effective as of the date of the casualty.

SECTION 9. REPAIRS AND MAINTENANCE

Except to the extent any of the following is Landlord's obligation pursuant to Section 4[A], Tenants shall keep the interior, non-structural portions of the Premises in a clean condition, and in good repair, all according to the statutes and ordinances in such cases made and provided, and the directions of public officers thereunto duly authorized, all at Tenants' own expense, and shall yield the same back to Landlord, upon the termination of this Agreement, whether such termination shall occur by expiration of the

term, or in any other manner whatsoever, in the same condition of cleanliness and repair as at the date of the execution hereof, loss by fire and reasonable wear and tear excepted. Except to the extent any of the following is Landlord's obligation pursuant to Section 4[A], Tenant shall make all necessary repairs and renewals upon Premises and replace broken fixtures with material of the same size and quality as that broken. If, however, the Premises shall not thus be kept in good repair and in a clean condition by Tenants, as aforesaid, Landlord may enter the same, or by Landlord's agents, servants or employees, without such entering causing or constituting a termination of this Agreement or an interference with the possession of the Premises by Tenants, and Landlord may replace the same in the same condition of repair and cleanliness as existed at the date of execution hereof, and Tenants agree to pay Landlord, in addition to the rent hereby reserved, the expenses of Landlord in thus replacing the Premises in that condition. Tenants shall not cause or permit any waste, misuse or neglect of the water, or of the water, gas or electric fixtures.

Tenants will also be in compliance with all laws and regulations during the entire term of this Agreement, except for repairs required of the Landlord to be made and damage occasioned by fire, hurricane or other causes as provided for in this Agreement.

SECTION 10. UTILITIES

Landlord agrees to pay before delinquency all charges for gas, water, heat, electricity, power and other similar charges incurred by Landlord or Tenants with respect to the Premises or the Property during the Term of this Agreement and Tenants' occupancy of the Premises.

SECTION 11. TAXES

If applicable, Tenants will pay before delinquency all taxes levied on Tenants' fixtures, equipment and personal property on the demised Premises, whether or not affixed to the real property. Landlord will pay all real estate taxes for the Property.

SECTION 12. INSURANCE

A. INSURANCE COMPANIES: It is agreed that any policies of insurance to be maintained by the respective parties will be obtained from good and solvent insurance companies. Only companies with an "A" Policyholder's Rating with the Alfred Best Company will be acceptable.

B. TENANT TO OBTAIN LIABILITY INSURANCE: Tenants agree that they will, at their expense, maintain a policy of insurance, written by responsible insurance carriers, approved by Landlord that will insure Tenants against liability for injury to or death of persons or damage to property occurring about the Premises. Landlord will be named as an additional insured. The liability under insurance will be at least \$1 million for any one person injured or killed or any one occurrence, \$2 million general aggregate coverage for any one accident, and \$ 100,000.00 property damage. Tenants will obtain an endorsement and Certificate of Insurance naming the Landlord as an additional insured from Tenants' carrier (during the term of the Lease, including Premises

Improvement construction) and all contractors during the construction of the Premises Improvements and any other renovation or construction at the Premises. Annually, Tenant shall provide copies of the insurance policy and all endorsements thereto to Landlord. Tenant shall send the policy to the Law Department on or before June 1st of every year this Lease is in effect. If the Tenant fails to comply with this requirement, that shall constitute a default by Tenant.

C. TENANTS TO OBTAIN WORKER'S COMPENSATION INSURANCE:

Tenants agree to maintain employees' Worker's Compensation insurance required under Illinois law.

D. TENANTS TO OBTAIN INSURANCE ON FIXTURES AND EQUIPMENT:

The Tenants agree to maintain on all trade fixtures and personal property in the Premises, a policy of insurance approved by the Landlord of at least 90% of the insurable replacement value of all trade fixtures and personal property.

E. LANDLORD TO OBTAIN FIRE INSURANCE ON PREMISES:

Landlord agrees to maintain during this Agreement, a policy of property insurance covering any peril generally included in the classification ISO Causes of Loss – Special Form (a "Special Form Policy") and covering at least 80% of the full replacement cost of the Premises and Property (or Landlord may self-insure for such coverage). If permitted without additional charge, Landlord will cause to be endorsed on its property insurance, and any extended coverage policy or policies, the waiver of right of subrogation. Landlord hereby agrees to waive any claims against Tenant and its agents and employees to the extent the same could be covered by a Special Form Policy, regardless if the same is maintained by the City.

F. TENANTS' WAIVER OF CASUALTY INSURANCE PROCEEDS:

If the Premises are damaged by fire or other casualty insured against, Tenants agree to claim no interest in any insurance settlement arising out of any loss where premiums are paid by Landlord, or where Landlord is named as sole beneficiary, and that it will sign all documents required by Landlord or the insurance company necessary in connection with the settlement of any loss.

G. CONTROL OF INSURANCE PROCEEDS TO AVOID TAXABLE GAIN:

If the Premises, including any improvements, were to be damaged in any manner, and the receipt of any insurance proceeds or other reimbursement for such damage would result in the realization of taxable gain for federal or state purposes, then the party to whom the gain would be taxed will have the right to take all action respecting proceeds or reimbursements necessary to enable party to comply with any regulations of the appropriate taxing authorities, so that the gain will not be recognized for tax purposes. Nothing here will be construed to entitle Landlord to delay any repairs to any part of the improvements in the event of damage.

H. TENANTS' FAILURE TO INSURE:

Should Tenants fail to keep in effect and pay for insurance as required by this section, the Landlord may terminate this Lease immediately.

SECTION 13. SUBLETTING; ASSIGNMENT

The Tenants are not permitted to sublet a portion of the Premises to another entity or individual(s) ("**Sub-Tenant**"). If Tenant, or any one or more of the Tenants, if there be more than one, shall make an assignment for the benefit of creditors, or shall file for bankruptcy protection, Landlord may terminate this Agreement, and in such event Tenant shall at once pay Landlord a sum of money equal to the entire amount of rent reserved by this Agreement for the then unexpired portion of the term hereby created less the reasonable rental value (as defined in Section 17[G] below) of the Premises as liquidated damages. At Landlord's option, should Landlord consent to any assignment of the demised Premises, Tenant shall nevertheless remain liable for all terms and conditions of this Agreement until the expiration of the Agreement term stated above.

SECTION 14. SURRENDER OF PREMISES; HOLDING OVER

Tenants will, at the termination of this Lease, leave the Premises in as good condition as they are in at the time of entry by Tenants, except for reasonable use and wear, acts of God, or damage by casualty beyond the control of Tenants. On vacating, Tenants will leave the Premises clear of all rubbish and debris. If Tenants retain possession of the Premises or any part thereof after the termination of the term by lapse of time or otherwise, then Landlord may at its option within thirty days after termination of the term serve written notice upon Tenants that such holding over constitutes the creation of a month to month tenancy, upon the terms of this Agreement. Tenants shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenants. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as hereinafter set forth; nor shall receipt of any rent or any other act in apparent affirmation of tenancy operate as a waiver of the right to terminate this Agreement for a breach of any of the covenants herein.

SECTION 15. INDEMNIFICATION AND LIENS

A. LIENS AND ENCUMBRANCES: The Tenants will hold the Landlord harmless from all claims, liens, claims of lien, demands, charges, encumbrances or litigation arising out of any work or activity of Tenants on the Premises. Tenant will, within sixty (60) days after filing of any lien, fully pay and satisfy the lien and reimburse Landlord for all resulting loss and expense, including a reasonable attorney's fees. Provided, however, in the event that Tenants contest any lien so filed in good faith and pursues an active defense of said lien, Tenants shall not be in default of this paragraph. However, in the event of any final judgment against Tenants regarding such lien, Tenants agree to pay such judgment and satisfy such lien within 60 days of the entry of any such judgment.

B. DISCHARGE OF LIEN: If Tenants fail to fully discharge any claim, lien, claim of lien, demand, charge, encumbrance, or litigation, or should proceedings be instituted for the foreclosure of any lien or encumbrance, and if judgment is rendered against Tenants either by a court of competent jurisdiction or by arbitration and Tenants still persists in non-payment of the same within the 60 days set forth above, Landlord will have the right at any time after expiration of the 60-day period, to pay the lien or

encumbrance. All amounts so paid will be repaid by the Tenants on demand, together with interest at the rate of ten percent (10%) per year from the date of payment and shall be considered additional rent owed to Landlord by Tenants.

C. INDEMNIFICATION OF LANDLORD: Except as otherwise provided in this Agreement, and except to the extent caused by the negligence or willful misconduct of Landlord, or its agents, employees or contractors, or by the breach of this Lease by Landlord, Tenants shall protect, defend, indemnify and save Landlord and its officers, directors, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from (i) any matter, condition or thing that occurs in the Premises, which is not the result of Landlord's negligence or willful misconduct, or (ii) any negligence or willful misconduct of Tenants, or their agents, employees or contractors.

D. INDEMNIFICATION OF TENANTS. Except as otherwise provided in this Agreement, and except to the extent caused by the negligence or willful misconduct of Tenants, or its agents, employees or contractors, or by the breach of this Lease by Tenants, Landlord shall protect, defend, indemnify and save Tenants and their officers, directors, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from (i) any matter, condition or thing that occurs in the Common Facilities, which is not the result of Tenants' negligence, or willful misconduct or (ii) any negligence or willful misconduct of Landlord, or its agents, employees or contractors.

SECTION 16. LANDLORD'S RIGHT OF INSPECTION AND REPAIRS

Tenants shall allow Landlord or any person authorized by Landlord reasonable access to the Premises during the Business Hours (as defined in Section 3[E]) for the purpose of examining or exhibiting the same, or to make any repairs or alterations thereof which Landlord may see fit to make (provided that Landlord cannot make voluntary alterations or modifications to the Premises without Tenant's consent). If the Tenants do not exercise the Option to renew the Lease and/or will be vacating the Premises at or prior to the end of the Term, Tenants will also allow Landlord to have placed upon the Premises at all times notices of "For Sale" and/or "For Rent" and Tenants will not interfere with the same.

SECTION 17. DEFAULT AND REMEDIES

A. EVENT OF DEFAULT: Any one of the following events shall be deemed to be an event of default hereunder by Tenants subject to Tenants' right to cure:

1. Tenants shall fail to pay any item of Base Rent at the time and place when and where due and does not cure such failure within five (5) business days after Rent is due;
2. Tenants shall fail to maintain the insurance coverage as set forth herein;

3. Tenants shall fail to comply with any term, provision, condition or covenant of this Lease, other than the payment of rent, and shall not cure, any such failure, within fifteen (15) days after written notice to the Tenants of such failure;

4. Tenants 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

B. OCCURRENCE OF AN EVENT: 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 Tenants shall immediately surrender the Premises to Landlord, but if Tenants fail 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 and with or without notice of such election or any notice or demand whatsoever, this Agreement shall thereupon terminate and upon the termination of Tenants' right of possession, as aforesaid, whether this Agreement be terminated or not, Tenants agree to surrender possession of the Premises immediately, without the receipt of any demand for rent, notice to quit or demand for possession of the Premises whatsoever and hereby grants to Landlord full and free license to enter into and upon the Premises or any part thereof, to take possession thereof with or (to the extent permitted by law) without process of law, and to expel and to remove Tenants or any other person who may be occupying the Premises or any part thereof, and Landlord may use such force in and about expelling and removing Tenants and other persons as may reasonably be necessary, and Landlord may re-possess itself of the Premises, but such entry of the Premises shall not constitute a trespass or forcible entry or detainer, nor shall it cause a forfeiture of rents due by virtue thereof, nor a waiver of any covenant, agreement or promise in this Agreement contained to be performed by Tenants. Tenants agree 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.

2. Landlord may recover from Tenants 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 Tenants' obligations hereunder, subject to Landlord prevailing on its claims.

3. 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.

C. REPOSSESSION OR RELETTING NOT A TERMINATION; LANDLORD'S RIGHT TO TERMINATE NOT FORFEITED: No repossession, operation or re-letting of the Premises or of fixtures and equipment will be construed as an election by Landlord to terminate this Agreement unless a written notice is given by the Landlord to the Tenants. The Landlord may terminate this Agreement if the Tenants remain in default (beyond any applicable notice and cure period). The acceptance of rent, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereof by Tenants, or the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts except written waiver, shall not be construed as a waiver of Landlord's rights to act without notice or demand or of any other right hereby given Landlord, or as an election not to proceed under the provisions of this Agreement.

D. TENANTS' OBLIGATION TO PAY DEFICIENCIES: If rentals received by the Landlord from re-letting the Premises under the provisions of this section are insufficient to pay all expenses and amounts due, Tenants will pay any deficiencies to the Landlord on demand and be declared in default for failure to pay.

E. LANDLORD'S RIGHT TO PERFORM TENANTS' DUTIES AT TENANTS' COST: If in Landlord's judgment any default by Tenants will jeopardize the Premises or the rights of Landlord, Landlord may, without notice, elect to cure Tenants' default and Tenants will reimburse Landlord, with interest, on 10-days' notice by Landlord to Tenants.

F. LANDLORD'S RIGHT TO TERMINATE AGREEMENT: If there is an event of default by Tenants as stated in Paragraph A of this section, Landlord may, without further notice, terminate this Agreement and all interest of Tenants and may take possession of the Premises by legal proceedings.

G. LANDLORD'S RIGHT ON TERMINATION TO RECOVER AMOUNT EQUAL TO RENT RESERVED: If this Agreement is terminated by Landlord due to any event of default by Tenants, Landlord will be entitled to recover from Tenants, at termination, the excess, if any, of the rent reserved in this Agreement for the balance of the term over the reasonable rental value of the Premises for the same period. The "reasonable rental value" will be the amount of rental Landlord can obtain as rent for the balance of the term.

H. LANDLORD'S REMEDIES CUMULATIVE: All of the remedies given to Landlord in this Agreement or by law are cumulative, and the exercise of one remedy by the Landlord will not impair its right to exercise any other right or remedy. Landlord shall not look to the property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee or agent of Tenants in seeking either to enforce Tenants' obligations under this Agreement or to satisfy a judgment for Tenants' failure to perform such obligations; and none of such parties shall be personally liable for the performance of Tenants' obligations under this Agreement.

SECTION 18. REMOVAL OF OTHER LIENS

In event any lien upon Landlord's title results from any act or neglect of Tenants and Tenants fail to remove said lien within thirty (30) days after Landlord's notice to do so, Landlord may remove the lien by paying the full amount thereof or otherwise and without any investigation or contest of the validity thereof and Tenants shall pay Landlord upon request the amount paid out by Landlord in such behalf, including Landlord's costs, expenses and attorney's fees. If Tenants demonstrate to Landlord that Tenants are contesting the validity of said lien in good faith, then Landlord shall allow Tenants to so contest such lien until either Tenant either abandons such contest or a final verdict is reached in a court of competent jurisdiction. Any amount advanced on behalf of Tenants shall be paid to Landlord by Tenants within 30 days after such advancement is made together with interest at 9% per annum and such amount shall be considered additional rentals (including any overage provided in either of the two [2] immediately preceding years).

SECTION 19. REMEDIES NOT EXCLUSIVE

The obligation of Tenants to pay the rent reserved hereby during the balance of the term hereof, or during any extension hereof, shall not be deemed to be waived, released or terminated, by the service of any five-day notice, other notice to collect, demand for possession, or notice that the tenancy hereby created will be terminated on the date therein named, the institution of any action of forcible detainer or ejection or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of Tenants' right to possession of the Premises. The Landlord may collect and receive any rent due from Tenants and payment or receipt thereof shall not waive or affect any such notice, demand, suit or judgment, or in any manner whatsoever waive, affect, change, modify or alter any rights or remedies which Landlord may have by virtue hereof.

SECTION 20. EXPENSES OF ENFORCEMENT

Tenants, if Landlord is the prevailing party, shall pay upon demand all Landlord's costs, charges and expenses, including attorney's fees, agents fees and fees of others retained by Landlord, incurred in enforcing any of the obligations of Tenants under this Agreement, or in any litigation, negotiation or transaction in which Landlord shall, without Landlord's fault become involved through or on account of any action or omission of Tenants regarding this Agreement.

Landlord, if Tenants are the prevailing party, shall pay upon demand all Tenants' costs, charges and expenses, incurred in enforcing any of the obligations of Landlord under this Agreement, or in any litigation, negotiation or transaction in which Tenant shall, without Tenants' fault become involved through or on account of any action or omission of Landlord regarding this Agreement.

SECTION 21. EMINENT DOMAIN

A. MORE THAN 30 PERCENT TAKEN: If 30 percent or more of the Premises are taken for a public or quasi-public use, this Agreement will terminate as of the date of the physical taking, and the Parties will be released from all further liability.

B. LESS THAN 30 PERCENT TAKEN: If the taking affects less than 30 percent of the Premises, the Landlord will, with reasonable diligence, proceed at Landlord's expense to repair the Premises and place them in tenantable condition within 120 days after the date of the actual physical taking. However, if 25% percent or more of the Premises as a whole is taken, the Landlord may elect to terminate this Agreement, notwithstanding that less than 30 percent of the Premises were taken. On termination, the parties will be released from all further liability under this Agreement.

C. ABATEMENT OF RENT: During any repair, Tenants will be required to pay only that part of the fixed minimum monthly rental as the area of the tenantable Premises remaining during repairs bears to the entire area leased. On completion of repairs, the fixed minimum monthly rental will be adjusted in proportion to the repaired area, and Tenants will be required to pay the adjusted fixed minimum monthly rental in accordance this Agreement (attributable to the portion of the Premises taken) and the remainder of the fixed minimum monthly rental shall be forever waived and forgiven by Landlord.

D. RIGHT TO CONDEMNATION AWARD: Any award made in any condemnation proceeding for the taking of any part of the Premises will be the sole property of Landlord, except that Tenants can make a claim for the unamortized portion of the cost incurred by Tenants for the Premises Improvements.

SECTION 22. GOVERNMENTAL INTERFERENCE WITH POSSESSION

Except as expressly set forth in Section 25, Tenants will not be released from its obligation should their possession of the Premises be interfered with by adoption of any law, ordinance, resolution, regulation or act of any legal or governmental authority. Further, Tenants will not be released by any order of abatement or judgment preventing use of the premises on the ground that the Premises or the business operated there constitutes a legally recognized nuisance.

SECTION 23. PEACEFUL ENJOYMENT

Landlord covenants and warrants that it is the owner of the Property and Premises, and that Tenants, on payment of rents and performance of the conditions, covenants, and agreements to be performed by it, may enjoy the Premises without interruption or disturbance. Landlord covenants, represents and warrants that there is no mortgage, deed of trust or similar encumbrance affecting the Property, as of the date hereof.

SECTION 24. EFFECT OF WAIVER OF BREACH OF COVENANTS

No waiver of any breach of any condition of this Agreement will be construed to be a waiver of any other breach of provision, covenant or condition.

SECTION 25. AMENDMENTS TO BE IN WRITING

This Agreement may be modified or amended only in writing signed by Landlord and Tenants. It may not be amended or modified by oral agreements between the Parties unless they are in writing duly executed by Landlord and Tenants.

SECTION 26. PARTIES BOUND

Every provision of this Agreement will bind the parties and their legal representatives. The term "legal representatives" is used in its broadest meaning and includes, in addition to assignees, every person, partnership, corporation or association succeeding to any interest in this Agreement. Every covenant, agreement and condition of this Agreement will be binding on Tenant's successors and assignees. Any sublease, concession or license agreement will be subject and subordinate to this Lease.

SECTION 27. NOTICES

All notices or demands that either party may need to serve under this Agreement may be served on the other party by mailing a copy by registered or certified mail to the following addresses for the parties (or at such other address as the applicable party may designate in a written notice to the other party):

If to the City:

City Manager
2100 Ridge Avenue
Evanston, IL 60201
Fax: 847-448-8083

with a copy to:

Corporation Counsel
2100 Ridge Avenue
Evanston, IL 60201
Fax: 847-448-8093

If to Tenants:

Evanston Ice Company
1028 Greenleaf Street
Evanston, IL 60202

with a copy to:

Olga Bernick
1028 Greenleaf Street
Evanston, IL 60202

Service will be deemed complete at the time of the leaving of notice or within 2 days after mailing. In the event that it appears that Tenants are avoiding the service of any notice and is not present at the Premises for a period of more than 14 consecutive days, notices may be served by posting such notice upon the Premises. Notice shall than be deemed effective 5 days after such posting.

SECTION 28. MISCELLANEOUS

A. Provisions typed on this Agreement and all riders attached to this Agreement and signed by Landlord and Tenant are hereby made a part of this Agreement.

B. Tenant shall keep and observe such reasonable rules and regulations now or hereafter required by Landlord, which may be necessary for the proper and orderly care of the building of which the Premises are a part.

C. All covenants, promises, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of Landlord and Tenants and their respective heirs, legal representatives, successors and assigns.

D. The rights and remedies hereby created are cumulative and the use of one remedy shall not be taken to excuse or waive the right to the use of another.

E. The words "Landlord" and "Tenant" wherever used in this Agreement shall be construed to mean Landlords or Tenants in all cases where there is more than one Landlord or Tenant herein; and the necessary grammatical changes shall be assumed in each case as though full expressed.

F. This Agreement and any written and signed Amendments and/or Riders hereto shall constitute the entire agreement between the parties, and any oral representations made by one party to the other are considered merged herein.

G. In all cases where Landlord's consent is required, Landlord's consent shall not be unreasonably withheld.

H. This Agreement may be executed in multiple copies, each of which shall constitute an original.

SECTION 29. VENUE AND JURISDICTION

The Parties agree the this Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois and that venue for any disputes shall be in the Circuit Court of Cook County, Illinois.

SECTION 30. FORCE MAJEURE

Other than for Landlord's and Tenant's obligations under this Lease that can be performed by the payment of money, whenever a period of time is herein prescribed for action to be taken by either party hereto, such time period will be extended by a period equal to the period of any delays in performance by the applicable party due to any of the following events ("**Force Majeure**"): (i) Acts of God, (ii) strike or other such labor difficulties not specific to any labor issue existing only at the Property, (iii) extraordinary weather conditions greatly exceeding norms for the greater metropolitan area where the Premises located, (iv) extraordinary scarcity of or industry-wide inability to obtain

supplies, parts or employees to furnish such services, or (v) or any cause whatsoever beyond a party's control. For purposes of this Section 31, a cause or event shall not be deemed to be beyond a party's control, if it is within the control of such party's agents, employees or contractors.

IN WITNESS WHEREOF, both of said Landlord and Tenants caused this Agreement to be executed as of the date signed by the Landlord.

Landlord:

**THE CITY OF EVANSTON,
an Illinois home rule municipal corporation**

By: _____

Date: _____

Its: Acting City Manager, Martin Lyons

Tenant:

**EVANSTON ICE COMPANY
an Illinois Corporation**

By: _____

Date: _____

Its: Agent, Olga Bernick

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

PARCEL 1:

VACATION BY OWNER OF DUNN'S SUBDIVISION OF THE NORTH ½ OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT A STRIP OF LAND ALONG THE NORTH LINE 33 FT IN WIDTH), SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

AND

VACATION OF ALBERT PICK'S SUBDIVISION AND THE SUBDIVISION KNOWN AS DUNN'S SUBDIVISION, INCLUDING ALL STREETS AND ALLEYS IN THE NORTHEAST ¼ OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN.

PARCEL 2:

LOTS 6-13 OF BLOCK 3 IN PITNER AND SON'S SECOND ADDITION TO EVANSTON, A SUBDIVISION OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST ¼ AND THE AND THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

PARCEL 3:

LOTS 1, 2, AND 3 OF BLOCK 3 IN PITNER AND SON'S SECOND ADDITION TO EVANSTON, A SUBDIVISION OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST ¼ AND THE AND THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

PARCEL 4:

LOT 5 OF BLOCK 3 IN PITNER AND SON'S SECOND ADDITION TO EVANSTON, A SUBDIVISION OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST ¼ AND THE AND THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

PARCEL 5:

LOTS 4 OF BLOCK 3 IN PITNER AND SON'S SECOND ADDITION TO EVANSTON, A SUBDIVISION OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST ¼ AND THE AND THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 24, TOWNSHIP 41

NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

PARCEL 6:

LOTS 1-13 OF BLOCK 2 IN PITNER AND SON'S SECOND ADDITION TO EVANSTON, A SUBDIVISION OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST $\frac{1}{4}$ AND THE AND THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

PARCEL 7:

LOTS 1-13 OF BLOCK 1 IN PITNER AND SON'S SECOND ADDITION TO EVANSTON, A SUBDIVISION OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHEAST $\frac{1}{4}$ AND THE AND THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

PIN(s):10-24-220-001-0000

10-24-220-002-0000

10-24-220-003-0000

10-24-220-004-0000

10-24-220-005-0000

10-24-220-006-0000

10-24-220-007-0000

Commonly Known As: 1701 Main Street, Evanston, Illinois 60201