

1/27/2017

12-R-17

A RESOLUTION


Authorizing the City Manager to Enter into a One Year Parking Lease Agreement for One Hundred and Fifty Parking Spaces at the 1800 Maple Avenue Parking Garage with Northwestern University

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

SECTION 1: The City Manager is hereby authorized and directed to sign a one (1) year parking lease (March 1, 2017 through February 28, 2018) (the "Lease") by and between the City and Northwestern University for one hundred and fifty (150) parking spaces at 1800 Maple Avenue. The Lease is attached hereto as Exhibit 1 and incorporated herein by reference.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional terms and conditions of said Lease that he deems to be in the best interests of the City.

SECTION 3: This Resolution 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: February 13, 2017

EXHIBIT 1
PARKING LEASE AGREEMENT

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**PARKING LEASE AGREEMENT
FOR PARKING IN THE 1800 MAPLE AVENUE GARAGE BETWEEN**

THE CITY OF EVANSTON

AND

NORTHWESTERN UNIVERSITY

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PARKING LEASE AGREEMENT

1. **Date and Parties.** This Parking Lease Agreement (“Agreement”) is made on this _____ day of _____ 2017 (the “Lease Commencement Date”), by and between the City of Evanston, an Illinois municipal corporation (“City” or “Landlord”), and Northwestern University (“Northwestern” or “Tenant”).

2. **Leased Premises.** Landlord is the fee owner of certain property legally described in Exhibit A, attached hereto and incorporated herein, and commonly known as 1800 Maple Avenue, Evanston, Illinois 60201 (“Property”), which Property is improved with a parking garage (“Parking Garage”). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord one hundred and fifty (150) covered garage parking spaces at 1800 Maple Avenue, Evanston, Illinois; the one hundred and fifty (150) covered parking spaces shall be referred to as the “Leased Premises.” The Leased Premises are being operated and managed by SP Plus Corporation (“SP Plus” “Management Company”).

3. **Lease Term.** The initial term of this Lease shall start on the Lease Commencement Date and continue for one (1) year, or twelve (12) months (the “Initial Term”). Subject to the notice requirements of this Agreement, and provided that at the time of such notice the Tenant is not then in Default (as herein defined) under the terms of this Lease, the Tenant is hereby granted the right (each, a “Renewal Option”) to renew the Initial Term of this lease in one (1) year term increments (each, a “Renewal Term”). The Tenant shall exercise each Renewal Option, if at all, by noticing the Landlord in writing of its intent to renew within sixty (60) days of the expiration of the then current term. All of the terms and provisions of this Lease shall apply to each Renewal Term.

In the event the Tenant timely exercises a Renewal Option, the Landlord and the Tenant each agree to execute an amendment to this Lease in a form reasonably acceptable to both Parties reflecting the extension of the term by the Renewal Term. If no Renewal Option is exercised by the Tenant, the term of this Lease shall end on the last day of the twelve month, unless terminated at an earlier date.

4. **Rent.** The Tenant agrees to pay the Landlord as a lease fee the standard parking rent (“Rent”) for the parking spots located at 1800 Maple Avenue in monthly installments of \$95.00 per parking spot on or before the first day of each and every successive month during the Lease Term. All Rent and other charges due under this Lease shall be made payable to SP Plus. Landlord may, in its sole discretion, change the Rent at any time during the Term by giving Tenant no less than thirty (30) days prior written notice. Notwithstanding anything to the contrary in this Agreement, changes to the Rent made pursuant to this Section shall not require a written amendment to this Agreement and shall be deemed effective upon Tenant’s receipt of Landlord’s notice as required in this Section.

5. **Proximity Card.** Tenant shall be issued a total number of proximity cards equivalent to the total number of parking spaces required by the Tenant as provided for in this Agreement. The Proximity cards will be supported by License Plate Recognition.

The cost of the proximity cards shall be at the Tenant's sole expense and shall be provided by the Landlord. Tenant is solely responsible for maintaining and insuring proper use of all proximity cards. Any attempt to manipulate or circumvent any parking procedures or the provisions of this Agreement may result in immediate revocation of parking privileges. Tenant acknowledges that the proximity card must be used upon entry and exit to the 1800 Maple Avenue garage. Absent such use, Tenant may be subject to the daily parking rate for said facility. Tenant acknowledges that a replacement charge for lost or damaged proximity cards will be imposed by Landlord at the Tenant's sole expense.

6. **Non-Exclusive Use:** Tenant shall have non-exclusive use of the Leased Premises only for parking purposes. The Tenant acknowledges and agrees that only intended and registered users of 1800 Maple Avenue, Evanston, Illinois will be permitted to use the parking spaces located on the Leased Premises. Vehicles parked in the aforesaid parking lot located at 1800 Maple Avenue that are not registered will be subject to being ticketed and/or towed.

7. **Renewal.** Tenant must notify Landlord, in writing, of its desire to renew the Agreement within 120 days of expiration of the term. The parties will negotiate the lease and enter into a new and separate agreement.

Following the expiration of the one (1) year anniversary of the Agreement, the Agreement can be modified every year thereafter but not before, during any calendar year in the preceding one (1) year term per the annual parking report. Any amendments to the number of parking spaces leased from the Landlord or any other amendments to the Agreement, including term extensions, shall be approved by the City Council as an amendment to the Agreement.

8. **Compliance with Law.** Tenant shall not use the Leased Premises, or permit anything to be done in or about the Leased Premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

9. **Landlord Repair Responsibility.** Landlord shall repair and maintain the Leased Premises, including snow removal, paving, repair of potholes, and curb cuts. Landlord shall not be liable for any failure to make such repairs or to perform any maintenance if need for such repair is due to the neglect on the part of the Tenant. Tenant shall provide Landlord with written notice of any repairs needed and Landlord shall address said repair(s) within a reasonable time to be agreed between City and Tenant. There shall be no abatement of Rent, and no liability of Landlord by reason of any injury to, or interference with, Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Leased Premises or in or to fixtures, appurtenances and equipment therein. The provisions of this section shall not apply in the case of damage or destruction by fire or other casualty or a taking under the power of eminent domain.

10. **Tenant Alterations.** Except as otherwise specifically provided in this Lease, Tenant shall not, at any time during the Lease Term, make any alterations, decorations, additions, or improvements to the Leased Premises (hereinafter collectively referred to as "Alterations"), without Landlord's prior written consent, which shall not be unreasonably withheld. In the event that Landlord consents to the performance of any such Alterations, Landlord may impose on Tenant whatever requirements or conditions Landlord may deem appropriate in connection with the performance of such Alterations (e.g. insurance, performance bond, lien waivers, plans and specifications, permits and licenses).

11. **Utilities.** Landlord shall be responsible for and pay for all utilities supplied to the Leased Premises.

12. **Liens.** Tenant shall not cause or permit any mechanic's lien to be filed against the Leased Premises by reason of, or due to, or as a result of, any work, labor, services, or materials performed at, or furnished to, the Leased Premises, to Tenant, or to anyone holding the Leased Premises through or under Tenant. If any such mechanic's lien shall at any time be filed, Tenant shall immediately cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise; provided, however, that Tenant shall have the right to contest any and all such liens provided security which is satisfactory to Landlord, in its sole discretion, is deposited with Landlord and such lien is dismissed within sixty (60) days from the filing date of said lien. Subject to the immediately preceding sentence, in the event that Tenant fails to cause any such lien to be discharged within thirty (30) days after being notified of the filing thereof and before judgment or sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord, together with all costs and expenses (including, but not limited to, reasonable attorney's fees), incurred by Landlord in procuring the discharge of such lien, shall be deemed to be additional rent and shall immediately become due and payable by Tenant to Landlord on the first day of the next following month.

13. **Insurance to be Maintained by Tenant.** Tenant shall, at its sole cost and expense, at all times during the Term obtain and pay for and maintain in full force and effect the following insurance policy or policies:

(a) **"All-Risk" Property Coverage.** "All Risk" property insurance on a replacement cost basis, covering all of the Tenant's personal property, merchandise, trade fixtures, furnishings and equipment, and all leasehold improvements installed in the Leased Premises by, or on behalf of, Tenant in an amount not less than the full replacement cost of all such property.

(b) **Liability Coverage.** Commercial general public liability to comply with any conditions of this Lease, umbrella liability insurance, covering Tenant against any claims arising out of liability for bodily injury and death and personal injury and property damage occurring in and about the Leased Premises, and otherwise resulting from any acts and operations of Tenant, its agents and employees, with limits of not less than a

total combined single limit of \$1,000,000.00 per occurrence and \$2,000,000.00 annual general aggregate. Such insurance shall include, inter alia: (i) "occurrence" rather than "claims made" policy forms; (ii) all insurable liability assumed by the Tenant under the terms of this Lease; (iii) premises medical expenses in an amount not less than \$5,000.00 per person, per accident; (iv) the Landlord and any other parties designated by Landlord (including, but not limited to, its beneficiary, its general partners and its managing agent) shall be designated as additional insured(s); and (v) severability of insured parties.

(c) Workers' Compensation Coverage. Workers' compensation and employer's liability insurance in the state of Illinois. A Copy of Liability insurance Certificate required pursuant to this Paragraph shall be delivered to Landlord prior to the Rent Commencement Date. If Tenant fails to submit such certificate to Landlord within the specified time, or otherwise fails to obtain and maintain insurance coverage in accordance with this Paragraph then Landlord, at Landlord's sole option, may, but shall not be obligated to, procure such insurance on behalf of, and at the expense of, the Tenant, and if Landlord exercises such right and expends any funds to obtain such insurance, Tenant shall reimburse Landlord for such amounts upon demand, it being understood that any such sums for which Tenant is required to reimburse Landlord shall constitute additional Rent under this Lease.

14. Casualty/Restoration. In the event the Leased Premises are damaged by fire, explosion or any other casualty to the extent which is less than twenty-five percent (25%) of the full replacement cost of the Leased Premises and none of the events described in the next succeeding sentence of this Paragraph shall have occurred, the damage shall be repaired by Landlord within a reasonable time period thereafter, and that in no event shall Landlord be required to repair or replace Tenant's signage, fixtures and any work performed by Tenant. In the event of any such damage by fire, explosion or any other casualty, and (a) Landlord is not required to repair as hereinabove provided, or (b) the Leased Premises are damaged to the extent of twenty-five percent (25%) or more of the full replacement cost of the Leased Premises, Landlord may elect either to (i) repair or rebuild the Leased Premises or the building or buildings respectively, or (ii) terminate this Lease. Tenant shall also have the right to terminate the lease, if damage due to any of the above exceeds 25 % of the aggregate full replacement cost. Landlord shall make such election by giving notice of such election in writing to Tenant within ninety (90) days after the date of the event causing the damage. If Landlord is required or elects to repair the Leased Premises as herein provided, Tenant shall promptly commence and diligently complete 'Tenant's work), at Tenant's expense. Tenant's rent shall be abated during this period.

15. Eminent Domain.

(a) More than 50% Taken: If 50 percent (50%) or more of the Premises are taken for a public or quasi-public use, this lease will terminate as of the date of the physical taking, and the Parties will be released from all further liability.

(b) Less than 50% Taken: If the taking affects less than 50 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 90 days after the date of the actual physical taking.

(c) **Abatement of Rent**: During any repair, Tenant 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 Tenant will be required to pay the adjusted fixed minimum monthly rental in accordance this Agreement.

(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.

16. **Assignment, Subletting and Ownership**. Any attempt or purported transfer, assignment, subletting, mortgage, or agreement (hereinafter collectively referred to as a "Transfer") without Landlord's and Management Company's prior written consent shall be void and of no force or effect and shall not confer any interest or estate in the purported transferee. However, Tenant shall remain liable for any and all rents and monies due Landlord up to and including the date of such termination and shall not be relieved of its obligations and responsibilities to pay all amounts due to Landlord.

17. **Signs**. Tenant may not erect or install any signage, of any nature or design, without Landlord's prior written consent and without following the submission and approval process set forth in the City Code.

18. **Surrender of Leased Premises**. Tenant shall, at its sole cost and expense, remove, at the termination of this Lease (by lapse of time or otherwise), remove such of the alterations and additions and signs made or installed by Tenant as Landlord may request; repair any damage caused by such removal.

19. **Indemnification**. Except as otherwise provided in this Agreement, Tenant shall protect, indemnify and save Landlord and its officers, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from injury to persons or damage to property on the Leased Premises, arising out of or in connection with Tenant's use or occupancy of the Leased Premises or Tenant's activities on the Leased Premises, or contracts entered into for work on the Leased Premises, or arising from any negligent or willful act of Tenant. Tenant shall pay for all of Landlord's costs of suit and attorneys' fees and expenses.

20. **Holdover**. On the last day of the Lease Term, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises, Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair, except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this Lease, and Tenant shall remove all of the Tenant's personal property therefrom, except as otherwise expressly provided in this Lease. If

Tenant remains in possession after the Expiration Date or after any earlier termination date of this Lease or of the Tenant's right to possession (a) Tenant shall be deemed a tenant at will; (b) Tenant shall pay hundred percent (100%) of the Minimum Rent last prevailing hereunder, (c) there shall be no renewal or extension of this Lease by operation of law, and (d) the tenancy at will may be terminated upon thirty (30) days' notice from Landlord; or, at the sole option of Landlord expressed by written notice to Tenant, but not otherwise, such holding over shall constitute a renewal of this Lease for a period of one (1) year on the same terms and conditions as provided in this Lease, except that the Minimum Rent shall be as specified in this Paragraph.

21. **Tenant Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (a) If Tenant fails to pay any Rent or any other charges required to be paid by Tenant; or
- (b) If Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of any such default is such that the same cannot be cured within thirty (30) days, Tenant shall have such additional period of time as may be necessary to cure such default provided that it commences to cure said default within the thirty (30) day period and proceeds diligently thereafter to complete such cure, and provided further that such default is cured within one hundred and twenty (120) days from the date of Landlord's notice to Tenant; or
- (c) If in any proceeding or action which Tenant is a party, a Trustee, or receiver, agent or custodian is appointed to take charge of the Leased Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Leased Premises or Tenant's Property; or
- (d) Tenant, or its employees while working at the Leased Premises, commits any crime which constitutes a misdemeanor or felony; or
- (e) Tenant shall fail to maintain the insurance coverage as set forth herein; or
- (g) 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.

22. **Landlord's Remedies.** In the event of Tenant's default hereunder, then in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, upon giving notice to tenant, to do the following:

(a) **Remedies.** In the event of any breach of this Lease by Tenant, Landlord at its option, and after the proper notice may, in addition to all other rights and remedies provided in this Lease, at law or in equity to terminate this Lease and Tenant's right of possession of the Leased Premises, and recover all damages to which Landlord is entitled under law.

(b) Landlord may, at Landlord's option, enter into the Leased Premises, remove Tenant's signs and other evidences of tenancy. Any such property of the Tenant not retaken from storage by the Tenant within thirty (30) days after the end of the Term, however terminated, shall be conclusively presumed to have been conveyed by the Tenant to the Landlord under this Lease as a bill of sale, without further payment or credit by the Landlord to the Tenant.

23. **Time is of the Essence.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor, and all provisions herein and all provisions relating thereto, shall be strictly construed.

24. **Successors and Assigns.** All of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. No third party, other than such heirs, legal representatives, successors and assigns, shall be entitled to enforce any or all of the provisions of this Lease or shall have any rights hereunder whatsoever.

25. **Quiet Enjoyment.** Upon Tenant paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Leased Premises for the entire Lease Term hereof, subject to all the provisions of this Lease.

26. **Prior Agreements/Amendments.** This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

27. **Sale of Premises.** In the event of any sale of the Leased Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Leased Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease.

28. **Notices.** Notices and demands required or permitted to be given hereunder shall be given by personal delivery or reputable overnight courier (such as Federal Express), or registered or certified mail to:

Tenant: Northwestern University
Attn: _____
633 Clark Street
Evanston, IL 60201

Landlord: City of Evanston
Attn: City Manager
2100 Ridge Avenue
Evanston, IL 60201

with a copy to: City of Evanston
Attn: Corporation Counsel
2100 Ridge Avenue
Evanston, IL 60201

29. Tenant and Landlord Mutual Environmental Indemnity.

(a) Definitions. For purposes of this Paragraph, "hazardous substance" means any matter giving rise to liability under the Resources Conservation Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 52 U.S.C. Sections 9601 et seq., the Illinois Environmental Protection Act (IEPA), or any common law theory based on nuisance or strict liability, including without limitation, petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any federal, state, county, municipal, local or other statutes, laws, ordinances and regulations.

(b) Prohibition. Tenant and Landlord shall not conduct or authorize the generation, transportation, storage, treatment or disposal, on the Leased Premises of any hazardous substance without prior written authorization by Landlord, which authorization may be withheld in Landlord's sole discretion, and the Tenant's failure to comply with the provisions of this paragraph shall constitute a default under this Lease.

(c) Remedial Action. If the presence, release, threat of release, placement on or in the Leased Premises, or the generation, transportation, storage, treatment, or disposal the Leased Premises of any hazardous substance due to the operation of tenants business: (i) gives rise to liability (including, but not limited to, a response action, remedial action, or removal action) under RCRA, CERCLA, the IEPA, or any common law theory based on nuisance or strict liability, (ii) causes an adverse public health effect, or (iii) pollutes, or threatens to pollute, the environment, Tenant shall promptly take, at Tenant's sole cost and expense, any and all remedial and removal action necessary to clean up the Leased

Premises, and mitigate exposure to liability arising from the hazardous substance, whether or not required by law.

(d) Indemnification of Landlord. Except as otherwise provided in this Agreement, Tenant shall protect, indemnify and save Landlord and its officers, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses from any and all environmental liability claims, specifically claims related to RCRA, CERCLA, the Clean Water Act, and claims of personal liability by third parties. Tenant shall pay for all of Landlord's costs of suit and attorneys' fees and expenses.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

LANDLORD:

CITY OF EVANSTON
An Illinois municipal corporation

By:

Its: City Manager
Name: Wally Bobkiewicz

TENANT:

NORTHWESTERN UNIVERSITY

By: _____
Its:
Name:

MANAGEMENT COMPANY

SP PLUS

By: _____
Its:
Name:

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 4 – PARKING

LOT 4 OF THE CHURCH MAPLE RESUBDIVISION BEING A RESUBDIVISION OF PART OF DEMPSTER'S SUBDIVISION OF BLOCK 66 OF THE VILLAGE OF EVANSTON, COOK COUNTY, ILLINOIS; PART OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT OF WAY (FORMERLY CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD RIGHT OF WAY); PART OF BLOCK 18 IN THE VILLAGE OF EVANSTON; ALL OF BLOCKS 2 AND 3 IN THE CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22 IN THE COUNTY CLERK'S DIVISION OF UNSUBSIDIZED LANDS; AND PART OF VACATED CLARK STREET AND EAST RAILROAD AVENUE; BEING IN THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS.

PINS: 11-18-117-004-0000

ADDRESS: 1800 MAPLE AVENUE, EVANSTON, ILLINOIS 60201