

12/19/2019

**5-R-20**

**A RESOLUTION**

**Authorizing the City Manager to Execute a Real Estate Contract  
for the Purchase of a Vacant Lot Located at  
1829 Simpson in Evanston, Illinois**

**WHEREAS**, the City of Evanston seeks to purchase a vacant lot at 1829 Simpson Street, Evanston, Illinois, 60201; and

**WHEREAS**, the Subject Property will be utilized to expand Twiggs Park to the west; and


**WHEREAS**, the City Council hereby finds and determines that the best interests of the City of Evanston and its residents will be served by purchasing the aforesaid Subject Property, on terms consistent with the Purchase and Sale Agreement, attached hereto as Exhibit A and incorporated herein by reference (hereinafter, the "Agreement"),

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


**SECTION 1:** The City Manager is hereby authorized to purchase the vacant lot located at 1829 Simpson Street, Evanston, Illinois for a purchase price of \$55,000 (Fifty-Five Thousand Dollars) and execute all associated contract documents and closing documents for the purchase. Attached as Exhibit A is a copy of the Agreement.

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional conditions of said agreement to close the purchase transaction as he may be determine to be in the best interests of the City.

**SECTION 3:** Resolution 5-R-20 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

  
\_\_\_\_\_  
Stephen H. Hagerty, Mayor

Attest:

  
\_\_\_\_\_  
~~Devon Reid, City Clerk~~  
Eduardo Gomez, Deputy City Clerk  
Adopted: January 27, 2020

Approved to form:

  
\_\_\_\_\_  
Kelley Gandurski, Corporation Counsel

**EXHIBIT A**  
**REAL ESTATE CONTRACT**

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Evanston, an Illinois municipal corporation ("Purchaser"), and Rita Katz and Vira Yenakly (collectively the individuals are referred to as the "Seller").

### WITNESSETH:

WHEREAS, Seller is the owner of that certain property commonly known as 1829 Simpson, Evanston, Illinois 60201 and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Seller warrants that they have the authority to dispose of the Property and enter into this Agreement;

WHEREAS, the Seller desires to convey the Property to Purchaser,

NOW, THEREFORE, for and in consideration of the promises and of the mutual covenants and agreements hereinafter set forth, the parties agree to the terms of this Agreement, which reads in its entirety as follows:

1. Agreement to Purchase. Purchaser agrees to purchase and Seller agrees to sell and convey or cause to be conveyed to Purchaser, or its designee, by Warranty Deed (the "Deed"), good and merchantable title to the Property at the price and subject to the terms, conditions and provisions hereinafter set forth.
2. Purchase Price. Purchaser agrees to pay and Seller agrees to accept as the purchase price the sum of \$55,000.00 (FIFTY-FIVE THOUSAND AND NO/100 DOLLARS) ("Purchase Price") payable at closing.

The Purchase Price shall be paid as follows:

(a) \_\_\_\_\_ Purchaser shall remit no earnest money prior to closing.

(b) The balance of the Purchase Price, subject to closing prorations and credits, shall be paid to Seller in cash by wire transfer of immediately available funds at the Closing.

3. Survey Contingency. Seller agrees to provide a copy of the Buyer with a copy of any existing surveys that it has in its possession from the original purchase in 2016. Buyer, at its sole expense, may obtain a survey (the "Survey") of the Realty prepared by a land surveying company registered in the same state as the Realty. If Buyer elects to obtain a Survey, Buyer agrees to (i) have such Survey certified to Seller, and (ii) provide Seller

with a copy of such Survey at no cost or expense to Seller. Buyer shall have thirty (30) days from the Effective Date to obtain and deliver to Seller a copy of the Survey and, in writing any objection to a matter shown on the Survey which materially affects the Realty or Buyer's intended use of the Realty ("Survey Objections"). If within such thirty (30) day period, Buyer fails to (a) obtain and deliver a copy of the Survey to Seller, and/or (b) deliver written notice of Survey Objections to Seller, then Buyer is deemed to have waived all rights to object to, is deemed to have approved, and shall accept title to the Realty subject to, any matters shown on the Survey (or that would be shown on a current, accurate and complete ALTA survey). If within such thirty (30) day period, Buyer obtains and delivers a copy of the Survey to Seller and delivers written notice of Survey Objections to Seller, Seller shall have five (5) business days after receipt of Buyer's objection notice to notify Buyer in writing what, if anything, Seller agrees to do to cure such Survey Objections. Failure of Seller to respond within said five (5) business day period shall indicate that Seller elects not to cure the Survey Objections. Seller shall have no obligation to cure any Survey Objections or incur any expense with respect thereto. Upon receipt of notice from Seller indicating that Seller elects not to pursue a cure of any Survey Objection, Buyer shall have two (2) business days after delivery of such notice from Seller to deliver notice to Seller terminating this Contract, in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If Buyer does not terminate this Contract pursuant to the immediately preceding sentence within said two (2) business day period, then Buyer is deemed to have waived all rights to object to, is deemed to have approved, and shall accept title to the Realty subject to such uncured Survey Objection(s). If Seller pursues a cure and is unable to cure the Survey Objections by the Closing Date, then Buyer shall have the option, as its sole right, to either terminate this Contract on the Closing Date (in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive), or close on the purchase of the Property with no Purchase Price reduction, in which case Buyer is deemed to have approved any uncured Survey Objections and waived any rights against Seller relating thereto.

4. Title Contingency

Promptly after the Effective Date, Seller shall order a title commitment (the "Commitment") for an ALTA owner's title insurance policy for the Realty issued by a title agent selected by Seller using a nationally recognized title insurance underwriter (the "Title Company"). Buyer shall have five (5) business days after receipt of the Commitment to deliver to Seller in writing any objection to a matter shown on the Commitment which materially affects the Realty or Buyer's use of the Realty ("Title Objections"). If Buyer fails to deliver notice of Title Objections to Seller within said five (5) business day period, Buyer shall be deemed to have fully accepted the Commitment and all matters disclosed therein. If Buyer delivers notice of Title Objections to Seller within said five (5) business day period, Seller shall have ten (10) days after receipt of Buyer's objection notice (the "Title Cure Period") to notify Buyer in writing what, if anything, Seller agrees to do to cure the Title Objections. Failure of Seller to respond within the Title Cure Period shall indicate that Seller elects not to cure the Title

Objections. Seller shall have no obligation to cure any Title Objection or incur any expense with respect thereto. If Seller elects not to cure one or more of the Title Objections, as Buyer's sole right, Buyer shall have two (2) business days after the end of the Title Cure Period to deliver notice to Seller terminating this Contract, in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If Buyer does not terminate this Contract during said two business day period, Buyer is deemed to have accepted any uncured Title Objections. If Seller pursues a cure and is unable to cure a Title Objection by the Closing Date, then Buyer shall have the option, as its sole right, to either terminate this Contract (in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive), or close on the purchase of the Realty with no Purchase Price reduction, in which case Buyer is deemed to have accepted any uncured Title Objections and waived any rights against Seller relating thereto. Buyer shall make its election under the immediately preceding sentence within one (1) business day after Seller notifies Buyer that it was unable to cure one or more Title Objections. If Buyer does not terminate this Contract during said one (1) business day period, Buyer is deemed to have accepted any uncured Title Objections.

Notwithstanding anything to the contrary herein, the following matters shall be deemed "Permitted Exceptions" and Buyer shall have no right to object to any of said matters on the Commitment or Survey:

(c) municipal and zoning ordinances and agreements entered under them, agreements with any municipality regarding the development of the Property, building and use restrictions and covenants, and State and/or Federal statutes and regulations;

(d) recorded easements for the distribution of utility and municipal services;

(e) property taxes and special assessments levied in the year of closing and subsequent years;

(f) such other matters disclosed by the Survey, which are not objected to by Buyer within the 30-day period described in Section 4 above, or are waived or approved or deemed waived or approved by Buyer pursuant to Section 4 above, or if Buyer does not obtain and deliver a copy of the survey to Seller within the 30-day period described in Section 4 above, then any matters that would be shown on a current accurate and complete ALTA survey;

(g) such other matters as disclosed by the Commitment and waived or accepted or deemed waived or accepted by Buyer pursuant to this Section 5;

(h) the standard or general exceptions contained in the Commitment;

(i) the rights of tenants in possession under leases to be assigned to Buyer at Closing, however Seller shall use all reasonable efforts to terminate any and all existing leases for the current tenants prior to Closing by serving a 30-day notice of cancellation of

leases on each tenant of the Premises within 5 business days of the signing of this Contract; and

(j) acts done or suffered to be done by Buyer or its affiliates or anyone claiming by, through or under Buyer or its affiliates.

Buyer's obligation to purchase the Realty is conditioned upon the Title Company being prepared to issue, at Closing, a current, standard ALTA owner's title insurance policy (or a marked-up and binding commitment therefor), without extended coverage over the printed standard or general exceptions, in the amount of the Purchase Price allocated to the Realty insuring Buyer as the fee simple owner of the Realty as of the date of recording the deed, subject to the Permitted Exceptions ("Title Policy").

5. Inspection Contingency

. During the fifteen (15) day period immediately following the Effective Date (the "Inspection Period"), Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Realty and/or a current Phase I environmental assessment of the Realty. Buyer shall not have the right to conduct any sampling or other invasive testing of the water, soil, air or building improvements on or beneath the Property without Seller's express prior written consent. Buyer shall repair any damage done to the Property by any such inspection. Buyer shall insure that any party entering onto the Realty for purposes of inspection maintains commercially reasonable liability insurance naming Seller as an additional insured, and upon request of Seller and prior to any such party entering onto the Realty, Buyer shall deliver to Seller a certificate of insurance evidencing that such insurance is in place. Buyer shall indemnify, defend and hold Seller harmless from and against any loss, cost, liability or expense Seller may incur resulting from any such inspection. Buyer shall have until the end of the Inspection Period to terminate this Contract by written notice to Seller resulting from Buyer's objection to any matter shown in an inspection report or Phase I environmental assessment, which materially affects the Realty or Buyer's intended use of the Realty. If Buyer does not deliver a written notice to Seller before the end of the Inspection Period terminating this Contract, then Buyer is deemed to have waived this inspection contingency and any right to object to the condition of the Property. In no event shall Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property. If this Contract is terminated by Buyer for any reason other than a default by Seller, then, as a condition to the return of any earnest money deposited hereunder, Buyer shall, within five (5) business days after termination of this Contract, cause to be delivered to Seller copies of any and all non-proprietary reports, tests, results and analyses in Buyer's possession or under Buyer's control, including, but not limited to, all title reports, surveys, environmental reports, geotechnical analyses, and traffic reports, at no cost or expense to Seller. Seller's rights and Buyer's obligations under this Section 6 shall survive the Closing or any termination of this Contract.

6. No Representations or Warranties: AS-IS Condition

(a) Buyer is hereby purchasing the Property in "AS-IS, WHERE-IS" condition and "with all faults", and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons for Seller, in entering into this Contract or in closing the transactions described herein, except for the express representation and warranty set forth in this agreement. Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied Buyer's survey, title and inspection contingencies set forth above.

(k) Except for the express representation and warranty set forth in this agreement, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Property, including without limitation: the income or expenses of the Property; zoning and building codes and other similar restrictions; availability or cost of utilities; the condition of the soils on the Property, the environmental condition of the Property; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Property; compliance of the Property with any law, regulation, ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Property or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller.

(l) Buyer acknowledges and agrees that any Personalty to be conveyed in this transaction from Seller to Buyer will be transferred by quit claim bill of sale, with no representation, warranty or guaranty, expressed or implied, regarding the condition of or the title to such Personalty, and Buyer further agrees to accept such Personalty in its "AS-IS/WHERE IS" condition at closing.

(m) Buyer (and any party claiming through or under Buyer) hereby agrees that following the Closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Property, including without limitation, any matters specifically referenced in this Contract. This Section 7(a) through (d) shall survive the Closing.

7. Representations.

(a) Seller's Representations. As an inducement to Purchaser to enter into this Agreement, Seller hereby represents to Purchaser and agrees as follows:

(i) Seller has the right, power and authority to sell the Property, subject to the terms and conditions provided for in this Agreement, and to execute, deliver and perform its obligations under this Agreement and all other instruments, conveyances and documents to be executed and delivered in connection with the transaction contemplated herein. This Agreement and all other documents executed and delivered, or to be executed and delivered by Seller in connection with this Agreement have been, or at the appropriate



time will be, duly executed and delivered and constitute or, upon such execution and delivery will constitute, the legal, valid and binding obligations of Seller, enforceable in accordance with the respective terms and provisions. To the best of Seller's knowledge, there exists no action, suit, litigation or proceeding affecting the Property to which Seller is a party, and to the knowledge of Seller, there is no such action, suit, litigation or proceeding threatened, except for the previously disclosed property tax sale.

(ii) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said Section.

(b) Purchaser's Representations. As an inducement to Seller to enter into this Agreement, Purchaser hereby represents to Seller and agrees as follows:

(i) Purchaser has the right, power and authority to purchase the Property, subject to the terms and conditions provided for in the Agreement, and to execute, deliver and perform its obligations under this Agreement and all other instruments, conveyances and documents to be executed and delivered in connection with the transaction contemplated herein. This Agreement and all other documents executed and delivered, or to be executed and delivered by Purchaser in connection with this Agreement have been, or at the appropriate time will be, duly executed and delivered and constitute or, upon such execution and delivery will constitute, the legal, valid and binding obligations of Purchaser, enforceable in accordance with the respective terms and provisions. No consent or approval of any person, firm, corporation or governmental authority is required to be obtained by Purchaser in order for Purchaser to enter into this Agreement.

8. Closing of Sale.

(a) The Closing ("Closing") shall take place within 30 days of expiration of the Title Objection Period or such other date mutually agreeable to the parties.

(c) At Closing, each party shall, without further consideration, execute and deliver such additional instruments as may be reasonably requested by the other party in order to complete and effectuate the transfer of title and ownership of the Property, provided that such additional instruments (other than these specifically provided for in this Agreement, and customary Closing documents) shall not impose cost or liability on any party. This transaction shall be closed in accordance with the general provisions of the usual form of New York style escrow agreement then in use by the Title Insurer, the costs of which escrow shall be paid by Purchaser. Real estate taxes shall not be prorated. Purchaser shall pay any State, County or other transfer tax imposed by local ordinance.

- (d) Purchaser shall satisfy all outstanding real estate property taxes and liens recorded against the Property. In addition, Purchaser will pay all state, county and local transfer taxes associated with the sale.

9. Miscellaneous.

- (a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective successors and assigns.
- (a) Capitalized terms used by not defined in this letter shall have the meanings ascribed to them in the Redevelopment Agreement.
- (e) This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.
- (f) This Agreement (i) contains the entire understanding between the parties hereto with respect to the transactions contemplated herein; and (ii) may be altered or amended from time to time only by written instrument executed by both parties hereto.
- (g) This Agreement shall be interpreted in accordance with the laws of the State of Illinois.
- (h) The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Agreement.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties have executed this Agreement this day and year first written above.

**SELLER:**

**RITA KATS**

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2020

**VIRA YENAKLY**

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2020

**PURCHASER:**

**CITY OF EVANSTON**

By: \_\_\_\_\_

Print Name: Erika Storlie

Its: Interim City Manager

**Exhibit A**

**LEGAL DESCRIPTION**

THE WEST 27 FEET OF LOT 4 IN SHIPLEY'S RESUBDIVISION OF LOTS 9, 10, AND 11 AND THE WEST 1/2 OF VACATED STREET WEST AND ADJOINING SAID LOTS IN BLOCK 9 IN PANES' ADDITION TO EVANSTON IN THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number(s): 10-<sup>12</sup>~~20~~-419-002-0000

Address of Real Estate: 1829 Simpson, Evanston, IL 60201