



# City of Chicago



SO2013-5416

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	6/26/2013
<b>Sponsor(s):</b>	Emanuel, Rahm (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Sale of City-owned property at 1300 N Astor St to Maxim's Chicago Restaurant Partners, LLC
<b>Committee(s) Assignment:</b>	Committee on Housing and Real Estate

## SUBSTITUTE ORDINANCE

**WHEREAS**, the City of Chicago (the "City") is a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the City is the owner of three commercial condominium units known as the Nancy Goldberg International Center, located at 1300 N. Astor Street, Chicago, Illinois, which is legally described on Exhibit A attached hereto (the "Property"); and

**WHEREAS**, the City, with the assistance of an independent real estate broker, has marketed and offered the Property for sale to the public; and

**WHEREAS**, public notice advertising the City's intent to sell the Property appeared in the *Chicago Sun-Times*, a newspaper of general circulation, on February 25, March 4 and March 11, 2013, at a listing price of \$1,360,000, being the market value as determined by appraisal; and

**WHEREAS**, Maxim's Chicago Restaurant Partners, LLC ("Grantee"), 858 W. Armitage Street, Suite 283, Chicago, IL 60614, has offered to purchase the Property from the City for the sum of One Million Three Hundred Seventy-Five Thousand and No/100 Dollars (\$1,375,000.00) (the "Purchase Price"), with the intent of reopening the space as a gourmet restaurant; and

**WHEREAS**, the bid submitted by the Grantee was the only bid received and exceeded the listing price; and

**WHEREAS**, the City, acting by and through the Department of Housing and Economic Development (the "Department"), desires to sell the Property, together with certain personal property located within the Property, to the Grantee for the Purchase Price; and

**WHEREAS**, by Resolution No. 13-037-21, adopted on June 20, 2013, the Chicago Plan Commission approved the sale of the Property; and

**WHEREAS**, the City is the owner of the domain names maximschicago.com and maximschicago.org (the "Domain Names"); and

**WHEREAS**, Grantee has offered to purchase, and the City desires to sell, the Domain Names for \$500 each; **now, therefore,**

### **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

**SECTION 2.** The City Council of the City hereby approves (a) the sale of the Property, together with certain personal property located within the Property, to the Grantee for the Purchase Price, and (b) the sale of the Domain Names to the Grantee for \$500 each. This approval is expressly conditioned upon the City entering into a purchase agreement with the Grantee in substantially the form attached hereto as Exhibit B (the "Purchase Agreement"). The

Commissioner of the Department (the "Commissioner") or a designee of the Commissioner is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver the Purchase Agreement, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Purchase Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Purchase Agreement.

**SECTION 3.** The Mayor or his proxy is authorized to execute, and the City Clerk or Deputy City Clerk is authorized to attest, a quitclaim deed conveying the Property to the Grantee.

**SECTION 4.** If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

**SECTION 5.** All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

**SECTION 6.** This ordinance shall be in full force and effect immediately upon its passage and approval.

Attachments: Exhibit A – Legal Description of Property  
Exhibit B – Purchase Agreement

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

(SUBJECT TO FINAL SURVEY AND TITLE COMMITMENT)

UNITS 'MR', 'UGP-2' AND 'UGS-2' IN THE ASTOR TOWER CONDOMINIUM, AS DELINEATED ON THE SURVEY OF THE FOLLOWING DESCRIBED PARCELS OF REAL ESTATE (HEREINAFTER COLLECTIVELY REFERRED TO AS "PARCEL"):

PARCEL 1:

THE SOUTH 7.07 FEET OF LOT 3 AND ALL OF LOTS 4, 5 AND 6 AND THAT PART OF LOT 7 LYING EAST OF A LINE DRAWN 21 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 7 IN THE SUBDIVISION OF LOT 9, 10 AND 11 IN BLOCK 4 IN STONE'S RESUBDIVISION OF ASTOR'S ADDITION TO CHICAGO, IN SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF E. GOETHE STREET AND N. ASTOR STREET DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF E. GOETHE STREET WHICH IS 23.5 FEET EAST OF THE SOUTHWEST CORNER OF LOT 7 AFORESAID; THENCE SOUTH AT RIGHT ANGLES TO THE NORTH LINE OF E. GOETHE STREET A DISTANCE OF 17.5 FEET; THENCE EAST ALONG A LINE WHICH IS 17.5 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF E. GOETHE STREET A DISTANCE OF 102 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE A DISTANCE 12.5 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE A DISTANCE OF 17.83 FEET TO A LINE WHICH IS 17.25 FEET EASTERLY OF, MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE WESTERLY LINE OF NORTH ASTOR STREET; THENCE NORTHERLY ON SAID PARALLEL LINE A DISTANCE OF 83 FEET MORE OR LESS TO A POINT IN A LINE WHICH IS 0.42 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTH 7.07 FEET OF LOT 3 AFORESAID; THENCE WEST ALONG SAID PARALLEL LINE A DISTANCE OF 17.46 FEET TO THE WESTERLY LINE OF NORTH ASTOR STREET; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF NORTH ASTOR STREET TO THE NORTH LINE OF E. GOETHE STREET; THENCE WEST ALONG THE NORTH LINE OF E. GOETHE STREET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS;

WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NO. 25146808, AND AS AMENDED FROM TIME TO TIME, TOGETHER WITH THEIR UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

**ADDRESS:** 1300 NORTH ASTOR STREET  
CHICAGO, ILLINOIS

**PINS:** 17-03-106-033-1001; -1076; -1100

EXHIBIT B

FORM OF PURCHASE AGREEMENT

(ATTACHED)

## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into by and between MAXIM'S CHICAGO RESTAURANT PARTNERS LLC, an Illinois limited liability company ("Buyer"), and the CITY OF CHICAGO, a municipal corporation ("Seller" or the "City"), on the Effective Date (defined below).

**Section 1. The Property.** The "Property" as referred to in this Agreement includes:

(a) the real property legally described on Exhibit A attached hereto, consisting of a one-story below-grade commercial condominium unit containing approximately 8,000 square feet of net rentable area, one parking space in an underground garage, and accessory storage space (the "Units");

(b) all improvements currently located upon or within the Units and owned by Seller, including all systems, fixtures and equipment, now attached or appurtenant to the real property (the "Improvements"; the Units and Improvements are collectively referred to as the "Premises");

(c) all tangible personal property located in or on the Premises and owned by Seller, which specifically excludes (i) the vintage posters in the entry foyer; (ii) two 8' aluminum tables; (iii) two 30" aluminum high boys; (iv) one 4' x 4' riser; (v) 20-25 red upholstered musicians chairs; (vi) one podium; (vii) computers, printers and phones that are City inventory/asset tagged; (viii) twelve 3' x 3' parquet dance floor sections with edging; and (ix) miscellaneous portable audio/sound equipment, including microphone/amplifier; and

(d) all Seller's right, title and interest, if any, in and to the name "Maxim's," and the domains maximschicago.org and maximschicago.com [and any and all other trade names, marks, goodwill and other intangible property related to the ownership and operation of the Premises].

**Section 2. Purchase Price.** The purchase price for the Property is ONE MILLION THREE HUNDRED SEVENTY-SIX THOUSAND DOLLARS (\$1,376,000.00) (the "Purchase Price").

**Section 3. Earnest Money; Default.**

(a) Buyer has delivered a security deposit in the amount of ONE HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$137,500.00) to Seller's Broker (defined below) (the "Earnest Money"). Except as otherwise provided under this Agreement, the Earnest Money shall be non-refundable and shall be applied to the Purchase Price at the closing.

(b) If either party shall default in any of their respective material obligations under this Agreement, the other party, by notice to such defaulting party specifying the nature of the default and the date on which this Agreement shall terminate (which date shall be not less than thirty (30) days after the giving of such notice), may terminate this Agreement, and upon such date, unless the default so specified shall have been cured, this Agreement shall terminate. In the case of any material default by Buyer, the Earnest Money shall be promptly forfeited to Seller as Seller's sole and exclusive remedy. In the case of any material default by Seller, upon termination of this Agreement, the Earnest Money shall be returned to Buyer. Buyer also shall

have the right to specifically enforce this Agreement, provided that any action therefor is commenced within six (6) months after such right arises.

**Section 4. Closing.** The closing shall occur within 15 days after the expiration or waiver by Buyer in writing of the contingencies in Section 14 hereof at the offices of the Commercial Division of Chicago Title Insurance Company (the "**Title Company**"), 10 South LaSalle Street, Chicago, Illinois 60603. At the closing, Seller shall deliver into escrow the documents provided for under this Agreement. The closing shall be through an escrow with the Title Company. Payment of Purchase Price and delivery of deed shall be made through the escrow. The cost of the closing escrow and all other closing costs shall be paid by Buyer.

**Section 5. Payment of Balance.** In addition to the Earnest Money, the balance of the Purchase Price shall be paid at closing, plus or minus agreed prorations, by cashier's check or money order made payable to "The City of Chicago."

**Section 6. Prorations.** Condominium assessments and other proratable items shall be prorated to the date of closing. To the extent the Premises are not currently exempt from real estate taxes due to ownership and use by Seller as a unit of local government, general real estate taxes and assessments which are due and payable as of the closing date (including if applicable, without limitation, 2013 real estate taxes payable in 2014), shall be paid by Seller at or prior to the closing. Real estate taxes assessed against the Property for the year in which the closing occurs (payable in the subsequent year) and for any prior year for which bills have not been issued shall be prorated at closing on the basis of 100% of the last full-year real estate tax bill. There shall be no re-prorations.

**Section 7. Transfer Taxes.** The transaction contemplated by this Agreement is exempt from transfer taxes as a transfer from a governmental body.

**Section 8. Deed and Closing Documents.** At closing, Seller shall execute and deliver to Buyer, or cause to be executed and delivered to Buyer, a recordable quit claim deed, a quit claim bill of sale with respect to personal property, and a quit claim assignment with respect to licenses, permits, approvals, entitlements, warranties and intangible property, all in customary form reasonably acceptable to the parties. Seller shall also deliver to the Title Company at closing all necessary state, county and municipal real estate transfer tax declarations, a City of Chicago water certification, a non-foreign certification, an ALTA statement (based upon Seller's actual knowledge) and a settlement statement which is consistent with this Agreement. Seller will not provide an affidavit of title or personal undertaking. At or prior to closing, Buyer shall deliver all documents and instruments, each executed and acknowledged (where appropriate) by Buyer, which Seller may reasonably determine are necessary to evidence the authority of Buyer to enter into and perform this Agreement. Any reference to Seller's knowledge in this Agreement shall mean the actual knowledge of Robert Wolf.

**Section 9. As-Is Sale.**

(a) Buyer acknowledges that it has had or will have adequate opportunity to inspect and evaluate the structural, physical and environmental condition and risks of the Property and accepts the risk that any inspection may not disclose all material matters affecting the Property. Notwithstanding anything to the contrary contained in this Agreement, it is expressly understood and agreed that Buyer is buying the Property in its "as is" and "where is" condition as of the time of closing, and with all faults and defects, latent or otherwise, and that Seller has not and does not hereby make any covenant, representation or warranty, express or implied, of any kind, or

give any indemnification of any kind to Buyer, with respect to the physical, structural or environmental condition or value of the Property, its compliance with any statute, ordinance or regulation, its habitability, suitability, merchantability or fitness for any purpose whatsoever. Buyer acknowledges that it is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the Seller or its agents or employees with respect thereto. Buyer agrees that it is Buyer's sole responsibility and obligation to perform any work and take such other action as is necessary to put the Property in a condition which is suitable for its intended use.

(b) Buyer acknowledges that Seller is not liable for, or bound in any manner by, any express or implied warranties, guarantees, promises, statements, inducements, representations or information pertaining to the Property made or furnished by any real estate agent, broker, employee, or other person representing or purporting to represent the Seller, including, without limitation, with respect to the physical condition, size, zoning, income potential, expenses or operation thereof, the uses that can be made of the same or in any manner or thing with respect thereof.

(c) Buyer, on behalf of itself and its successors and assigns, and their respective officers, directors, employees, members, managers, agents and representatives (collectively, "Buyer Parties"), expressly releases, renounces and waives any claims or causes of action it may have against Seller, its officers, agents and employees, under any existing or future theory of law (federal, state or local, or by common law), whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, now existing or occurring after the closing, based upon, arising out of or in any way connected with, directly or indirectly, the structural, physical or environmental condition of the Property, including, without limitation, the presence or suspected presence of hazardous or toxic materials, substances, wastes or other environmentally regulated substances, or other contaminants or pollutants in, on, under or about the Property, and shall undertake and discharge all liabilities of the City arising from any structural, physical or environmental condition that existed on the Property prior to the Closing.

(d) This Section 9 shall survive the closing.

**Section 10. Seller Representations and Warranties.** Seller represents and warrants to Buyer as follow, which representations and warranties shall be deemed to be remade as of the closing and shall survive the closing for a period of one (1) year:

(a) Seller is authorized by the Illinois Constitution and/or Illinois law to enter into this Agreement and consummate the transaction contemplated by this Agreement.

(b) There are no other contracts of sale or leases or, to Seller's actual knowledge, license agreements or other agreements granting any third parties the right to purchase, use or occupy the Property.

(c) After the Effective Date, Seller shall not enter into any new leases, license agreements or other contracts with respect to the Property that will survive the closing without the prior written consent of Buyer.

(d) To Seller's actual knowledge, there are no unresolved citations or violations relating to the Property under any applicable governmental laws, ordinances, codes, rules and



regulations, including, without limitation, zoning ordinances, building codes and environmental laws. If Seller receives notice of any such citation or violation, it shall promptly notify Buyer.

(e) To Seller's actual knowledge, there is no pending or threatened condemnation or eminent domain action or proceeding relating to the Property.

**Section 11. Buyer Representations and Warranties.** Buyer represents and warrants to the Seller as follow, which representations and warranties shall be deemed to be remade as of the closing and shall survive the closing for a period of one (1) year:

(a) Buyer is an Illinois limited liability company duly organized, validly existing, and qualified to do business in the state of Illinois. Buyer has the right, power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance by Buyer of its obligations under this Agreement has been duly authorized by all necessary limited liability company action, and does not violate Buyer's articles of organization or operating agreement, as the same may be amended and supplemented, nor any applicable provision of law, nor does it constitute a material breach of, default under or require any consent under any agreement, instrument or document to which Buyer is now a party or by which it is now or may become bound.

(b) Buyer has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with this Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("**City Contract**") as an inducement for the City to enter into this Agreement or any City Contract with the Buyer in violation of Chapter 2-156-120 of the Municipal Code of the City.

(c) All certifications and statements contained in the Economic Disclosure Statements submitted to the City by Buyer (and any legal entity holding an interest in Buyer) are true, accurate and complete as of the date of certification and the closing date. No individual holding a direct or indirect ownership interest of more than 7.5 percent in Buyer has any outstanding water bills, traffic or parking tickets, child support payments or other obligations to the City of Chicago.

**Section 12. Possession; Condition of Property at Closing.** Seller agrees to surrender possession of the Property at closing. If the Property is not materially in the same condition on the date of closing as it was on the Effective Date, ordinary wear and tear excepted, Buyer shall have as its sole remedy the right to receive a refund of all of the Earnest Money and terminate this Agreement; provided, however, Buyer shall first deliver written notice to Seller of the objectionable condition and allow Seller thirty (30) days (or such longer period as shall be reasonably necessary) to restore the Property to its prior condition. Notwithstanding anything to the contrary contained in this Agreement, Seller shall have no obligation in the event of casualty or other loss or destruction to restore the Property to its prior condition.

**Section 13. Title and Survey.**

(a) Buyer acknowledges that the City has obtained a commitment for an owner's policy of title insurance for the Premises, Commitment No. 40007064, with an effective date of May 30, 2013, issued by Greater Illinois Title Company, showing the City in title to the Premises (the "**Initial Commitment**"). Buyer shall be solely responsible for and shall pay all costs associated with updating the Initial Commitment or obtaining a new title commitment (including all search, continuation and later-date fees), and obtaining title insurance, extended coverage or

any other endorsements it deems necessary (the "Title Policy"). Buyer shall be responsible for obtaining any utility letters or other documents needed to obtain extended coverage. Buyer may also, at its expense, obtain a current survey of the Premises within twenty (20) days after the Effective Date. Within five (5) days after Buyer receives the survey and any updated or new title commitment (which Buyer may request from the Title Company at any time and from time to time in its sole discretion), Buyer shall furnish a copy of the same to Seller. Within thirty (30) days after the Effective Date, Buyer shall deliver notice to Seller of any objectionable title or survey matter or defect disclosed on the survey or the Initial Commitment, and within five (5) days after receipt of an updated title commitment, Buyer shall deliver notice to Seller of any objectionable title or survey matter or defect not previously disclosed on any earlier title commitment and disclosed on such updated title commitment (a "Title Objection Notice"). With respect to previously undisclosed exceptions identified on an updated title commitment issued less than thirty (30) days prior to the closing, the closing shall be extended for up to thirty (30) days as necessary to allow Buyer and Seller to exercise their rights and remedies provided in this subsection (a) and in subsection (b) below. Any objections to matters on the title commitment and survey not made within the time periods set forth herein shall be deemed to be waived by Buyer, and any exceptions not objected to by Buyer as provided above shall be permitted exceptions hereunder. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, however, Seller shall have the obligation to remove liens of a definite and ascertainable amount not caused by Buyer which can be removed by the payment or deposit of a sum of money at closing up to the amounts set forth in the Initial Commitment (together with interest and penalties, if any, on delinquent taxes); provided, however, the Commissioner of the Department of Housing and Economic Development shall have the authority to pay additional amounts that may be identified in any updated or new title commitment. In lieu of making such payments or deposits, Seller may insure over such liens.

(b) No later than fifteen (15) days after receipt of a Title Objection Notice, Seller shall notify Buyer in writing as to which objections set forth in the Title Objection Notice Seller has elected to cure, if any. If Seller fails to deliver such a notice with respect to any objection, elects not to cure any objection, or is unable to cure any objection in a manner satisfactory to Buyer prior to the closing date (each, an "Uncured Objection"), then Buyer may elect to either: (i) proceed to closing and take title "as is" without reduction of the Purchase Price, in which event any unacceptable conditions and exceptions shall be deemed permitted exceptions hereunder, or (ii) terminate this Agreement by notice to Seller. Further, if Seller notifies Buyer that Seller intends to attempt to cure the objections by the closing date but Seller fails to cure such objections by such date, then Buyer shall be entitled to exercise its option under subsection 13(b)(i) or (ii) above, provided that the option under subsection 13(b)(ii) above shall be exercised prior to or on the closing date (as may be extended pursuant to subsection (a) above). Upon any termination of this Agreement pursuant to this Section 13(b), all Earnest Money paid by Buyer shall be refunded to Buyer, and this Agreement shall be deemed null and void and of no further force or effect with Buyer and Seller having no further rights, obligations or liabilities hereunder except as otherwise set forth herein.

(c) This Section 13 shall survive closing.

#### **Section 14. Due Diligence Investigation and Contingencies.**

(a) The contingency described in this Section 14(a) is defined as the "Zoning Contingency." Within one hundred twenty (120) days after the Effective Date (the "Zoning Contingency Period"), Buyer shall have the right to seek and obtain, at its sole cost and expense, zoning and land use approvals and entitlements from the City of Chicago and other

governmental authorities with respect to Buyer's "Intended Use" of the Property. "Intended Use" means an approximately 8,000 square foot restaurant including the sale of liquor for on-premises consumption, as more particularly described in Attachment "A" to Buyer's Bid Proposal Form dated March 25, 2013. Promptly upon Buyer's request, Seller shall provide written consent, as the contract seller, allowing Buyer to file applications for such approvals and entitlements. Buyer's obligation to proceed to closing shall be subject to Buyer's receipt in the Zoning Contingency Period of such approvals and entitlements in a form satisfactory to Buyer in its sole and absolute discretion.

Buyer understands and agrees that the City's approval of this Agreement does not constitute approval of any applications for such approvals and entitlements, nor does it constitute a commitment by the City to take any particular action in relation to such applications. Buyer shall have the right to receive a refund of the Earnest Money and terminate this Agreement upon notice given to Seller at any time prior to the expiration of the Zoning Contingency Period if Buyer determines in its sole discretion that it will not obtain, prior to the expiration of the Zoning Contingency Period, all zoning and land use approvals necessary and appropriate for Buyer's Intended Use.

(b) If not previously provided by Seller to Buyer, within five (5) days after the Effective Date, Seller shall furnish to Buyer, to the extent in Seller's possession (to Seller's actual knowledge): (i) environmental site assessments or any related environmental studies or reports; (ii) documents and correspondence from the Department of Buildings or Fire Bureau concerning open code violations; (iii) service contracts and warranties; and (iv) any drawings and floor plans of the Premises. Buyer shall have 60 days after the Effective Date (the "Due Diligence Period") to inspect all aspects of the Property, including, without limitation, all improvements, systems, components, conditions, reports, environmental conditions, contracts and other information. Buyer shall, in its sole discretion and for any reason or no reason, have the right to receive a refund of all of the Earnest Money and terminate this Agreement upon notice given to Seller at any time prior to the expiration of the Due Diligence Period.

**Section 15. Access to Property and Cooperation.** Buyer has conducted, or will conduct prior to the expiration of the Due Diligence Period, its own property investigation to the extent Buyer deems necessary or appropriate. Buyer, at Buyer's sole cost, shall also have the right to make such inspections, investigations and tests as Buyer may elect to make or obtain upon not less than three (3) business days' prior notice to Robert Wolf in the Department of Housing and Economic Development (which notice may be by telephone or e-mail during normal business hours) and subject to Seller's right to have a representative present. Any on-site inspections and examinations of the Premises shall be done during normal business hours. Prior to entering the Property, Buyer shall provide proof of insurance as required by Exhibit A of this Agreement. Buyer shall promptly repair any damage to the Premises caused by any actions of Buyer or its agents or contractors and restore the Premises to the condition which existed immediately prior to such activity. Buyer shall indemnify, defend (through an attorney reasonably acceptable to Seller) and hold harmless Seller and Seller's officers, employees, agents and representatives from any claim for liabilities, costs, expenses (including reasonable attorneys' fees actually incurred), damages, injuries, liens or other encumbrances arising out of or resulting from the inspection of the Premises by Buyer or its agents or contractors. The foregoing indemnity shall not include pre-existing conditions merely discovered and not exacerbated by Buyer, and any conditions caused by the willful misconduct of Seller. This Section 15 shall survive the closing or any termination of this Agreement (regardless of the reason for such termination).

**Section 16. Uniform Vendor and Purchaser Risk Act.** The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Agreement.

**Section 17. Brokerage Commissions.** Seller and Buyer represent and warrant to each other that, other than to Jones Lang LaSalle, there are no real estate sales or brokerage commissions or like commissions that are or may be due in connection with this transaction. The fees of Jones Lang LaSalle shall be paid by Seller pursuant to a separate agreement. Each party shall indemnify, defend (with legal counsel reasonably acceptable to the other party) and hold harmless the other party for, from and against any claims by third parties made by or through the acts of such party, for real estate or brokerage commissions, or a finder's fee, in connection with the transactions provided herein, and all costs and expenses incurred by the other party in connection therewith including, but not limited to, reasonable attorneys' fees.

**Section 18. Confidentiality.** Buyer and Seller shall keep confidential and not make any public announcement or disclose to any person (a) the existence or any terms of this Agreement, (b) any information disclosed by Buyer's inspections of the Property, or in Seller's due diligence materials or Buyer's due diligence reports, and (c) any other documents, materials, data or other information with respect to the Property which is not generally known to the public (the "**Confidential Information**"). Notwithstanding the foregoing, Buyer and Seller may disclose any Confidential Information (a) to the extent such information is already known by Buyer as of the Effective Date; (b) to the extent required by court order or under applicable local, state or federal law, including, without limitation, the Illinois Freedom of Information Act (5 ILCS 140), the Illinois Open Meetings Act (5 ILCS 120) and any notice, publication or hearing requirements under the Municipal Code of the City of Chicago, or (c) to any person on a "need-to-know" basis, such as their respective directors, officers, partners, members, employees, attorneys, accountants, engineers, surveyors, consultants, lenders (if any), investors, managers, franchisors and such other persons whose assistance is required to consummate the transactions contemplated in this Agreement; provided, however, that Seller or Buyer (as the case may be) shall (x) advise such person of the confidential nature of such Confidential Information, and (y) use commercially reasonable efforts to cause such person to maintain the confidentiality of such information.

**Section 19. Non-Foreign Person.** Seller represents and warrants that it is not a foreign person as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and is therefore exempt from the withholding requirements of said Section. At closing, if required by the Title Company to issue the Title Policy, Seller shall furnish to Buyer at the closing the non-foreign certification provided for in said Section. Seller agrees to indemnify Buyer from any liability, loss, cost and expense, including reasonable attorney's fees and expenses, which result from any inaccuracy in representation and warranty set forth above or in the said non-foreign certification.

**Section 20. Days and Time.** Any reference in this Agreement to a "day" or "days" shall mean a calendar day or days, and not a business day or days, unless the provision expressly refers to a "business" day or day. In the event that a day or date or the last day of a period provided for or referred to in this Agreement shall fall on a Saturday, Sunday or legal holiday in the City of Chicago, then such day or date or the last day of such period shall be automatically extended to the next day which is not a Saturday, Sunday or legal holiday in the City of Chicago. If the term "business day" is used in this Agreement, such term means any day which is not a legal holiday in the City of Chicago.

**Section 21. Time of Essence.** Time is of the essence of this Agreement and of each and every provision hereof.

**Section 22. Notices.** All notices and other communications provided for in this Agreement (“Notices”) shall be in writing. A Notice may be given by a party to this Agreement or by a party’s attorney. The “Notice Addresses” of the parties for purposes of this Agreement are the respective addresses set forth on the signature page of this Agreement. A Notice to a party shall be effective when delivered during normal business hours to such party’s Notice Address by any means, including, without limitation, personal delivery by the party giving the Notice, delivery by United States regular, certified or registered mail, delivery by a commercial courier or delivery service or delivery by facsimile or other electronic transmission. If delivery of a Notice is refused, it shall be deemed to have been delivered at the time of such refusal of delivery. The party giving a Notice shall have the burden of establishing the fact and date of delivery or refusal of delivery of a Notice.

**Section 23. Entire Agreement; No Reliance.** This Agreement sets forth the entire agreement of the parties and supersedes all prior agreements and understandings of the parties. Each party acknowledges that it is executing this Agreement without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein.

**Section 24. Assignability.** Buyer may not assign its rights under this Agreement without the consent of Seller, which consent may be given or withheld by Seller in its sole discretion.

**Section 25. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 26. Modifications and Amendments.** This Agreement may be modified or amended only by a written instrument signed by the party sought to be bound by such modification or amendment.

**Section 27. Counterparts; Electronic Signatures.** This Agreement and any modification or amendment to this Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same document. Receipt of an executed signature page to this Agreement or any modification or amendment of this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

**Section 28. Governing Law.** This Agreement shall be governed by the law of the State of Illinois.

**Section 29. Effective Date.** The “Effective Date” of this Agreement shall be the date upon which this Agreement becomes fully executed by the parties as set forth on the following signature page(s).

**Section 30. City’s Representatives Not Individually Liable.** No agent, official or employee of the City shall be personally liable to Buyer, or any successor in interest to Buyer, in the event of any default or breach by the City under the terms of this Agreement.

**Section 31. Conflict of Interest.** Buyer represents and warrants that no agent, official or employee of the City shall have any personal interest, direct or indirect, in Buyer, this Agreement, the Property or the Intended Use of the Property, nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, association or other entity in which he or she is directly or indirectly interested.

**Section 32. Business Relationships.** Buyer acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code, (b) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "**Business Relationship**" (as defined in Section 2-156-080 of the Municipal Code), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Buyer hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

**Section 33. Patriot Act Certification.** Buyer represents and warrants that neither Buyer nor any Affiliate (as hereafter defined) thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. An "**Affiliate**" shall be deemed to be a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Buyer, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

**Section 34. Prohibition on Certain Contributions (Executive Order No. 05-1).**

34.1 Buyer agrees that Buyer, any person or entity who directly or indirectly has an ownership or beneficial interest in Buyer of more than 7.5 percent ("**Owners**"), spouses and domestic partners of such Owners, Buyer's contractors (i.e., any person or entity in direct contractual privity with Buyer regarding the subject matter of this Agreement) ("**Contractors**"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("**Sub-owners**") and spouses and domestic partners of such Sub-owners (Buyer and all the other preceding classes of persons and entities are together the "**Identified Parties**"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "**Mayor**") or to his political fundraising committee (a) after execution of this Agreement by Buyer, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or

negotiated. This provision shall not apply to contributions made prior to February 10, 2005, the effective date of Executive Order 2005-1.

34.2 Buyer represents and warrants that from the later of (a) February 10, 2005, or (b) the date the City approached Buyer, or the date Buyer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

34.3 Buyer agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

34.4 Buyer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

34.5 Notwithstanding anything to the contrary contained herein, Buyer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Section 34 or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

34.6 If Buyer intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the closing, the City may elect to decline to close the transaction contemplated by this Agreement.

34.7 For purposes of this provision:

(a) "**Bundle**" means to collect contributions from more than one source, which contributions are then delivered by one person to the Mayor or to his political fundraising committee.

(b) "**Other Contract**" means any other agreement with the City to which Buyer is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.

(c) "**Contribution**" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code, as amended.

(d) Individuals are "**domestic partners**" if they satisfy the following criteria:

(i) they are each other's sole domestic partner, responsible for each other's common welfare; and

(ii) neither party is married; and

(iii) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

(iv) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and

(v) two of the following four conditions exist for the partners:

(1) The partners have been residing together for at least 12 months.

(2) The partners have common or joint ownership of a residence.

(3) The partners have at least two of the following arrangements:

(A) joint ownership of a motor vehicle;

(B) joint credit account;

(C) a joint checking account;

(D) a lease for a residence identifying both domestic partners as tenants.

(4) Each partner identifies the other partner as a primary beneficiary in a will.

(e) "**Political fundraising committee**" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code, as amended.

**Section 35. Failure to Maintain Eligibility to Do Business with the City.** Failure by Buyer or any controlling person (as defined in Section 1-23-010 of the Municipal Code) thereto to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code shall be grounds for termination of this Agreement. Buyer shall at all times comply with Section 2-154-020 of the Municipal Code.

**Section 36. Inspector General and Legislative Inspector General.** It is the duty of every officer, employee, department, agency, contractor, subcontractor, developer and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the City's Legislative Inspector General and with the City's Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56, respectively, of the Municipal Code. Buyer understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code.

[SIGNATURE PAGE(S) FOLLOW THIS PAGE]



**Buyer:**

**MAXIM'S CHICAGO RESTAURANT  
PARTNERS LLC**, an Illinois limited liability  
company

By: \_\_\_\_\_  
Printed Name: Jeffrey M. Shapack  
Title: Authorized Agent  
Date: \_\_\_\_\_

Address:  
c/o Jeffrey M. Shapack  
856 W. Armitage, Unit 600  
Chicago, IL 60614

Fax Number: \_\_\_\_\_

**Seller:**

**CITY OF CHICAGO**, an Illinois municipal  
corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Address:  
c/o \_\_\_\_\_  
121 N. LaSalle Street, \_\_\_\_ Floor  
Chicago, IL 60602

Fax number: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

UNITS 'MR', 'UGP-2' AND 'UGS-2' IN THE ASTOR TOWER CONDOMINIUM, AS DELINEATED ON THE SURVEY OF THE FOLLOWING DESCRIBED PARCELS OF REAL ESTATE (HEREINAFTER COLLECTIVELY REFERRED TO AS "PARCEL"):

PARCEL 1:

THE SOUTH 7.07 FEET OF LOT 3 AND ALL OF LOTS 4, 5 AND 6 AND THAT PART OF LOT 7 LYING EAST OF A LINE DRAWN 21 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 7 IN THE SUBDIVISION OF LOT 9, 10 AND 11 IN BLOCK 4 IN STONE'S RESUBDIVISION OF ASTOR'S ADDITION TO CHICAGO, IN SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF E. GOETHE STREET AND N. ASTOR STREET DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF E. GOETHE STREET WHICH IS 23.5 FEET EAST OF THE SOUTHWEST CORNER OF LOT 7 AFORESAID; THENCE SOUTH AT RIGHT ANGLES TO THE NORTH LINE OF E. GOETHE STREET A DISTANCE OF 17.5 FEET; THENCE EAST ALONG A LINE WHICH IS 17.5 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF E. GOETHE STREET A DISTANCE OF 102 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE A DISTANCE 12.5 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE A DISTANCE OF 17.83 FEET TO A LINE WHICH IS 17.25 FEET EASTERLY OF, MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE WESTERLY LINE OF NORTH ASTOR STREET; THENCE NORTHERLY ON SAID PARALLEL LINE A DISTANCE OF 83 FEET MORE OR LESS TO A POINT IN A LINE WHICH IS 0.42 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTH 7.07 FEET OF LOT 3 AFORESAID; THENCE WEST ALONG SAID PARALLEL LINE A DISTANCE OF 17.46 FEET TO THE WESTERLY LINE OF NORTH ASTOR STREET; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF NORTH ASTOR STREET TO THE NORTH LINE OF E. GOETHE STREET; THENCE WEST ALONG THE NORTH LINE OF E. GOETHE STREET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS;

WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NO. 25146808, AND AS AMENDED FROM TIME TO TIME, TOGETHER WITH THEIR UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

## EXHIBIT B

### RIGHT OF ENTRY INSURANCE

Buyer shall procure and maintain, or cause its contractors and subcontractors to procure and maintain, at Buyer's sole expense (or the expense of its contractors and subcontractors as applicable), the types and amounts of insurance set forth below with insurance companies authorized to do business in the State of Illinois, covering all work under the right of entry granted under Section 15 of this Agreement (the "**Due Diligence Activities**"), whether performed by or on behalf of Buyer. All insurance policies shall remain in effect until completion of the Due Diligence Activities.

(a) Worker's Compensation and Employer's Liability Insurance. Buyer and its contractors shall procure and maintain Worker's Compensation Insurance, as prescribed by applicable law, covering all employees who are to enter the Property under this Agreement, and Employer's Liability Insurance with limits of not less than \$500,000 each accident or illness.

(b) Commercial General Liability Insurance (Primary and Umbrella). Buyer and its contractors shall procure and maintain Commercial General Liability Insurance, or equivalent, with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage shall include, at a minimum, all premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago shall be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Due Diligence Activities.

(c) Automobile Liability Insurance (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with the Due Diligence Activities, Buyer and its contractors shall procure and maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago shall be named as an additional insured with respect to such coverage on a primary, non-contributory basis.

(d) Professional Liability Insurance. When any architects, engineers, construction managers or other professional consultants perform work in connection with the Due Diligence Activities, such parties shall procure and maintain Professional Liability Insurance covering acts, errors, or omissions with limits of not less than \$1,000,000, with coverage including contractual liability. The City of Chicago shall be named as an additional insured with respect to such coverage on a primary, non-contributory basis.

Buyer shall deliver, or cause its contractors and subcontractors to deliver, certificates of insurance to the City prior to commencing any Due Diligence Activities on the Property. Buyer expressly understands and agrees that any coverage and limits furnished by Buyer shall in no way limit Buyer's liabilities and responsibilities set forth in this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements set forth herein. The failure of the City to obtain certificates or other evidence of insurance from Buyer (or its contractors or subcontractors as applicable) shall

not be deemed to be a waiver by the City of the insurance requirements set forth herein. Buyer shall advise all insurers of the insurance requirements set forth herein and the nature of its use of the Property.

Buyer agrees that insurers shall waive their rights of subrogation against the City. Buyer expressly understands and agrees that any coverages and limits furnished by it (or its contractors or subcontractors as applicable) shall in no way limit Buyer's liabilities and responsibilities specified in this Agreement or by law. Buyer expressly understands and agrees that its insurance (or that of its contractors or subcontractors as applicable) is primary and any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by Buyer (or its contractors or subcontractors as applicable) under this Agreement.



# RAY SUAREZ

ALDERMAN, 31ST WARD  
VICE MAYOR - CITY OF CHICAGO

4502 WEST FULLERTON AVENUE  
CHICAGO, ILLINOIS 60639  
TELEPHONE: (773) 276-9100  
FAX: (773) 276-2596

WWW.WARD31.COM

CITY COUNCIL - CITY OF CHICAGO  
CITY HALL, ROOM 200  
121 NORTH LA SALLE STREET  
CHICAGO, ILLINOIS 60602  
TELEPHONE: (312) 744-6102  
FAX: (312) 744-0770  
RSUAREZ@CITYOFCHICAGO.ORG

COMMITTEE MEMBERSHIPS:  
HOUSING AND REAL ESTATE  
(CHAIRMAN)  
COMMITTEES, RULES AND ETHICS  
(VICE-CHAIRMAN)  
AVIATION  
BUDGET AND GOVERNMENT OPERATIONS  
FINANCE  
TRANSPORTATION AND PUBLIC WAY  
WORKFORCE DEVELOPMENT AND AUDIT  
ZONING, LANDMARKS AND BUILDING STANDARDS

July 24, 2013  
CHICAGO, ILLINOIS

## TO THE PRESIDENT AND MEMBERS OF THE CITY COUNCIL:

Your Committee on Housing and Real Estate which was referred a substitute ordinance from the Department of Housing and Economic Development approving the sale of property located at **1300 N. Astor St.** to Maxim's Chicago Restaurant Partners, LLC.. **43<sup>RD</sup> WARD**  
(O2013-5416)

Having the same under advisement, begs leave to report and recommend that Your Honorable Body **Pass** the proposed substitute ordinance transmitted herewith.

This recommendation was concurred in by a unanimous vote of the members of the committee present with no dissenting votes.

(signed)

Ray Suarez, Chairman  
Committee on Housing & Real Estate