



City of Chicago



O2014-3350

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	4/30/2014
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Intergovernmental agreement with Board of Trustees of University of Illinois for access to City-owned property at 1836 West Washburne Ave for non-public parking
Committee(s) Assignment:	Committee on Housing and Real Estate



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

April 30, 2014

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Fleet and Facility Management, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the University of Illinois regarding property use.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

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

SECTION 1: The Commissioner of the Department of Fleet and Facility Management is authorized to execute on behalf of the City of Chicago an Intergovernmental Agreement with the Board of Trustees of the University of Illinois governing the Board of Trustees of the University of Illinois access to City-owned property located at 1836 West Washburne Avenue for use as non-public parking; such Intergovernmental Agreement to be approved as to form and legality by the Corporation Counsel in substantially the following form:

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2014, by and between, **THE CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of government (herein referred to as the "the City") and **THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS**, a body politic and corporate of the State of Illinois (hereinafter referred to as the "the University").

RECITALS

WHEREAS, the City owns the real property located at 1836 West Washburne Avenue, Chicago, Illinois; and

WHEREAS, the University owns a public health clinic, known as the Mile Square Health Center, located at 1220 South Wood Street, which shall be serviced by an adjacent parking lot (the "the University Lot"); and

WHEREAS, the 1836 West Washburne Avenue property is bounded on the north, east, and west by the University Lot, and has no present municipal use; and

WHEREAS, the University has requested access to the 1836 West Washburne Avenue property so that it may be combined to form the University Lot for use by the University's staff, clients, contractors, or visitors to the University's public health clinic located at 1220 South Wood Street; and

WHEREAS, the City's Department of Planning and Development is negotiating a transfer of the 1836 West Washburne Avenue property for use as part of the University Lot with the University; and

WHEREAS, the University has requested access to approximately 3,192 square feet of vacant land located at 1836 West Washburne Avenue as described in **Exhibit A**, attached hereto and made a part hereof, to be used by the University as part of the University Lot as non-public vehicle parking for exclusive use by the University's 1220 South Wood Street staff, clients, contractors, and visitors.

NOW THEREFORE, in consideration of the covenants, terms and conditions set forth herein, the parties hereto agree and covenant as follows:

SECTION 1. GRANT

1.1 **Grant.** The City hereby provides the University with access to the following described premises situated in the City of Chicago, County of Cook, State of Illinois, to wit:

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Approximately 3,192 square feet of vacant land located at 1836 West Washburne Avenue, Chicago Illinois (PIN 17-19-201-031 – the “Premises”).

SECTION 2. TERM

2.1 Term. The term of this Agreement ("Term") shall commence on the date of execution ("Commencement Date"), and shall end on December 31, 2015, unless sooner terminated as set forth in this Agreement.

SECTION 3. RENT, UTILITIES, AND TAXES

3.1 Rent. During the Term the University shall pay rent for access to the Premises in the amount of:

One Dollar (\$1.00) for the entire Term, with the receipt and sufficiency of said sum hereby acknowledged by both parties.

3.2 Utilities. The University shall pay when due all charges for gas, electricity, water, power, and all other utility services used in or supplied to the Premises.

3.3 Taxes. The University acknowledges and represents that the Premises and University's permitted use hereunder are exempt from leasehold, real estate, and other property taxes. Notwithstanding the foregoing, the University agrees that shall pay when due any leasehold, real estate, and other property taxes lawfully assessed or levied on the Premises where attributable to the University's use of the Premises. Nothing herein shall preclude the University from contesting any charge or tax levied against the Premises. The failure of the University to pay such taxes during the pendency of the contest shall not constitute a default under this Agreement. The University's tax responsibilities under this section shall survive the expiration, cancellation, or termination of this Agreement.

3.4 Accord and Satisfaction. No payment by the University or receipt of such by the City of a lesser amount than any installment or payment due hereunder shall be deemed to be other than on account of the amount due, and no endorsement of statement or any check or any letter accompanying any check or payment of rent shall be deemed an accord and satisfaction. The City may accept such check or payment without prejudice as to the City's right to recover the balance of such installment or payment or to pursue any other remedies available to the City.

SECTION 4. CONDITION AND ENJOYMENT OF PREMISES, ALTERATIONS AND ADDITIONS, SURRENDER

4.1 Covenant of Quiet Enjoyment. The City covenants and agrees that the University, upon observing and keeping all of the covenants, agreements, and conditions of this Agreement on its part to be kept, observed, and performed, shall lawfully enjoy the Premises (subject to the provisions of this Agreement) during the Term without hindrance or molestation by the City.

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4.2 University's Duty to Maintain Premises. The University shall, at the University's expense, keep the Premises in a condition of thorough repair and good order, and in compliance with all applicable provisions of the Municipal Code of Chicago, including but not limited to those provisions in Title 14 ("Electrical Equipment and Installation"), and Title 10 and Title 17 ("Landscape Ordinance") which may be applicable to University's permitted use of the Premises.

4.3 Use of the Premises. The University shall not use the Premises in a manner that would violate any law. The University further covenants not to do or suffer any waste or damage, comply in all respects with the laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governmental departments which may be applicable to the Premises or to the use or manner of use of the Premises. Any activities on the Premises must be limited to the non-public parking of automobiles by the University's staff, clients, contractors, or visitors to the University's health clinic located at 1220 South Wood Street (the "Use"). The University shall not be permitted to charge any fee for this Use of the Premises, but for the avoidance of any doubt, University may charge a parking fee for use of the surrounding University Lot; nor shall the University allow general public parking on the Premises by any other users. The Use must be consistent with the University's not-for-profit purposes, which include, among other things, lessening the burdens of government by providing subsidized and low cost public health care services through operation of the Mile Square Health Center. The Use does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. The University shall not use said Premises for political or religious activities. The University agrees that in utilizing the Premises the University shall not discriminate against any member of the public because of race, creed, color, sexual orientation, political perspective, immigration status, or national origin. The University shall not operate the Premises so as to cause the Premises to be deemed a "Competing Parking Facility" under the Chicago Metered Parking System Agreement dated December 4, 2008 by and between the City of Chicago and Chicago Parking Meters, LLC.

4.4 Alterations, Additions, and Improvements. The University may not make any alterations, additions and improvements on the Premises without the prior written consent of the City's Commissioner of the Department of Planning and Development. Any additions and improvements shall be without cost to the City and shall become property of the City at termination without offset or other credit to the University. Any alterations, additions and improvements shall be in full compliance with the applicable law, permit requirements, and building codes.

SECTION 5. ASSIGNMENT, SUBLEASE, AND LIENS

5.1 Assignment and Sublease. The University shall not assign this Agreement in whole or in part, or sublet the Premises or any part thereof without the prior written consent of the City's Department of Planning and Development.

5.2 Covenant against Encumbering Title. The University shall not do any act which shall in any way encumber the fee simple estate of the City in and to the Premises, nor shall the interest or estate of the City in the Premises be in any way subject to any claim by way of lien or

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encumbrance, whether by operation of law or by virtue of any express or implied contract by the University. Any claim to, or lien upon, the Premises arising from any act or omission of the University shall accrue only against the leasehold estate of the University and shall be subject to and subordinate to the paramount title and rights of the City in and to the Premises.

5.3 Covenant against Liens. The University shall not permit the Premises to become subject to any mechanic's, laborer's, or materialmen's liens on account of labor or material furnished to the University or claimed to have been furnished to the University. In case of any such lien attaching, the University shall immediately pay and remove such lien or furnish security or indemnify the City in a manner satisfactory to the City in its sole discretion to protect the City against any defense or expense arising from such lien. Except during any period in which the University appeals any judgment or obtains a rehearing of any such lien, or in the event judgment is stayed, the University shall immediately pay any judgment rendered against the University, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If the University fails to pay and remove any lien or contest such lien in accordance herewith, the City, at its election, may pay and satisfy same, and all sums so paid by the City, with interest from the date of payment at the rate set at 12% per annum provided that such rate shall not be deemed usurious by any Federal, State, or Local law.

SECTION 6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. The University shall procure and maintain at all times, at the University's own expense, during the term of this Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement. The kinds and amounts of insurance required are as follows:

a) Workers Compensation and Employers Liability Insurance. Workers Compensation and Employers Liability Insurance, in accordance with the laws of the State of Illinois, covering all the University's employees and Employer's Liability coverage with limits of not less than \$100,000 each accident or illness.

b) Commercial Liability Insurance. (Primary and Umbrella). Commercial 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 extensions shall include the following: All premises and operations, products/completed operations, defense, separation of insureds, and contractual liability (with no limitation endorsement). The City of Chicago, its employees, elected officials, agents, and representatives are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the Agreement. Said coverage shall be evidenced on the Certificate of Insurance covering the Premises.

c) Automobile Liability Insurance. (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the University shall provide Comprehensive Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence, for bodily injury and property damage.

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The University shall be responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools and supplies), owned or rented, by the University.

6.2 Other Terms of Insurance. The University will furnish to the City of Chicago, Department of Fleet and Facility Management, Office of Real Estate Management, 30 North LaSalle Street, Suite 300, Chicago, Illinois 60602 original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The University shall submit evidence on insurance prior to Agreement award. The receipt of any certificates does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from the University shall not be deemed to be a waiver by the City. The University shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve the University of its obligation to provide Insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate the Agreement until proper evidence of insurance is provided.

The insurance shall provide for thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by the University.

The University agrees that insurers shall waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

The University expressly understands and agrees that any coverages and limits furnished by the University shall in no way limit the University's liabilities and responsibilities specified within the Agreement documents or by law.

The University expressly understands and agrees that any insurance or self-insurance programs maintained by the City of Chicago shall apply in excess of and not contribute with insurance provided by the University under the Agreement.

The required insurance shall not be limited by any limitations expressed in the liability language herein or any limitation placed on the liability therein given as a matter of law.

The City of Chicago, Department of Finance, Office of Risk Management, maintains the right to reasonably modify, delete, alter or change these requirements. The City shall provide the University with thirty (30) day prior written notice of such modification, deletion, alteration, or change of these requirements.

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6.3 Liability. It is understood and agreed that neither party to this Agreement shall be legally liable for any negligence or wrongful act either of omission or commission chargeable to the other unless such liability is imposed by law and that this Agreement shall not be construed as seeking either to enlarge or diminish any obligation or duty owed by one party to the other or to third parties.

SECTION 7. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS

7.1 Conflict of Interest. No official or employee of the City of Chicago, nor any member of any board, commission or agency of the City of Chicago, shall have any financial interest (as defined in Chapter 2-156 of the Municipal Code), either direct or indirect, in the Premises. Nor shall any such official, employee, or member participate in making or in any way attempt to use his/her position to influence any governmental decision or action with respect to this Agreement.

7.2 Duty to Comply with Governmental Ethics Ordinance. The City and the University shall comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics," including but not limited to section 2-156-120, which states that no payment, gratuity, or offer of employment shall be made in connection with any the City of Chicago contract, as an inducement for the award of that contract or order. Any contract or lease negotiated, entered into, or performed in violation of any of the provisions of Chapter 2-156 shall be voidable as to the City. Nothing contained herein shall be deemed a waiver of University's sovereign immunity.

SECTION 8. CERTIFICATIONS

8.1 Compliance with Law; No Required Referrals. Each party expressly acknowledges that the compensation to be paid pursuant to this Agreement, if any, has been, and any changes therein will be, the result of arms' length negotiations between the parties, has not been determined in a manner that takes into account the volume or value of referrals or business otherwise generated between the parties (or any individuals or entities related to the parties). Neither party to this Agreement, nor any of their respective affiliates, employees, or agents shall be required to make any referrals to the other. The parties shall and intend to comply with all applicable laws.

8.2 Certification. Under penalties of perjury, the City, by signing this Agreement, certifies that its Federal Taxpayer Identification Number is 36-6005820 and that it is a Municipal Corporation of the State of Illinois.

8.3 Availability of Funds. This Agreement is subject to termination and cancellation without any penalty, accelerated payment, or other recoupment mechanism as provided herein in any fiscal year for which the Illinois General Assembly, the Board of Trustees of the University of Illinois, or Federal funding source fails to make an adequate appropriation to make payments under the terms of this Agreement.

SECTION 9. HOLDING OVER

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9.1 Holding Over. Any holding over by the University shall be construed to be a tenancy from month to month only beginning on January 1, 2016 and the rent shall be the same as listed in Section 3.1 of this Agreement. During such holding over all other provisions of this Agreement shall remain in full force and effect.

SECTION 10. MISCELLANEOUS

10.1 Notice. All notices, demands and requests which may be or are required to be given, demanded or requested by either party to the other shall be in writing. All notices, demands and requests by the University to the City shall be delivered by national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid addressed to the City as follows:

City of Chicago
Department of Planning and Development
121 North LaSalle Street, Room 1000
Chicago, Illinois 60602

With a copy to:

City of Chicago
Fleet and Facility Management
Office of Real Estate Management
30 North LaSalle Street, Suite 300
Chicago, Illinois 60602

or at such other place as the City may from time to time designate by written notice to the University. All notices, demands, and requests by the City to the University shall be delivered by a national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the University as follows:

University of Illinois
Chief Executive Director
Mile Square Health Center
1220 South Wood Street
Chicago, Illinois 60608

With a copy to:

University of Illinois
Real Estate Planning and Services
Office of Business and Financial Services
809 South Marshfield Avenue (MC078)
Chicago, Illinois 60612

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or at such other place as the University may from time to time designate by written notice to the City. Any notice, demand or request which shall be served upon the University by the City, or upon the City by the University, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed.

10.2 Partial Invalidity. If any covenant, condition, provision, term or agreement of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Agreement shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Agreement shall be valid and in force to the fullest extent permitted by law.

10.3 Governing Law. This Agreement shall be construed and be enforceable in accordance with the laws of the State of Illinois.

10.4 Entire Agreement. All preliminary and contemporaneous negotiations are merged into and incorporated in this Agreement. This Agreement contains the entire agreement between the parties and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

10.5 Captions and Section Numbers. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement nor in any way affect this Agreement.

10.6 Binding Effect of Agreement. The covenants, agreements, and obligations contained in this Agreement shall extend to, bind, and inure to the benefit of the parties hereto and their legal representatives, heirs, successors, and assigns.

10.7 Time is of the Essence. Time is of the essence of this Agreement and of each and every provision hereof.

10.8 No Principal/Agent or Partnership Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

10.9 Authorization to Execute Agreement. The parties executing this Agreement hereby represent and warrant that they are duly authorized and acting representatives of the City and the University respectively and that by their execution of this Agreement, it became the binding obligation of the City and the University respectively, subject to no contingencies or conditions except as specifically provided herein.

10.10 Termination of Agreement. The City and/or the University shall have the right to terminate this Agreement without penalty by providing ninety (90) days prior written notice at any time after the Commencement Date. In addition, this Agreement shall automatically

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terminate on the day of closing in the event that the City conveys the Premises to the University pursuant to an intergovernmental agreement or other instrument of conveyance.

10.11 Force Majeure. When a period of time is provided in this Agreement for either party to do or perform any act or thing, the party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, wars, governmental regulation or control, and other causes beyond the reasonable control of the party, and in any such event the time period shall be extended for the amount of time the party is so delayed.

10.12 Amendments. From time to time, the parties hereto may administratively amend this Agreement with respect to any provisions reasonably related to the University's use of the Premises and/or the City's administration of said Agreement. Provided, however, that such amendment(s) shall not serve to extend the Term hereof nor serve to otherwise materially alter the essential provisions contained herein. Such amendment(s) shall be in writing, shall establish the factual background necessitating such alteration, shall set forth the terms and conditions of such modification, and shall be duly executed by both the City and the University. Such amendment(s) shall only take effect upon execution by both parties. Upon execution, such amendment(s) shall become a part of this Agreement and all other provisions of this Agreement shall otherwise remain in full force and effect.

SECTION 11. THE UNIVERSITY'S ADDITIONAL RESPONSIBILITIES

11.1 Satisfaction with Condition. The University agrees that the University has inspected the Premises and all related areas and grounds and that the University is satisfied with the physical condition thereof and that the University accepts the Premises in "as-is" condition.

11.2 Maintenance. The University shall provide at the University's expense, any and all service for maintenance of the Premises during the Term. The University acknowledges that the City shall not have any maintenance obligations with respect to the Premises.

11.3 Custodial Service. The University shall provide and pay for custodial services which shall be construed as keeping the Premises clean and free of debris. The University shall keep the Premises clean, presentable, free of litter, and in good general repair.

11.4 Snow Removal. The University shall provide and pay for prompt removal of snow and ice from Premises and sidewalks which immediately abut the Premises. The University acknowledges that the City shall not have any snow or ice removal responsibilities.

11.5 Repairs for the University Negligence, Vandalism, or Misuse. The University shall assume all responsibility for any repairs to any portion of the Premises necessitated by the University's negligence, vandalism, misuse, or other acts on the Premises.

11.6 No Alcoholic Beverages or Drugs. The University agrees that no alcoholic beverages or illegal drugs shall be sold, given away, or consumed on the Premises.

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11.7 Illegal Activity. The University, or any of its agents or employees, shall not perform or permit any practice that is injurious to the Premises or unreasonably disturbs neighbors, is illegal, or increases the rate of insurance on the Premises.

11.8 Hazardous Materials. The University shall keep out of the Premises any materials which cause a fire hazard or safety hazard. The University shall not destroy, deface, damage, impair, nor remove any part of the Premises or facilities, equipment, or appurtenances thereto.

11.9 Permits. For any activity which the University desires to conduct on the Premises in which a license or permit is required, said license or permit must be obtained by the University prior to using the Premises for such activity. The City must be notified of any such license or permit. Failure to obtain a required license or permit shall constitute a material breach of the terms of this Agreement. The University understands that this Agreement shall in no way act as a substitute for any other permitting or approvals that may be required to undertake any activities on the Premises.

11.10 Full Liability. The University assumes full legal and financial responsibility and liability for any and all use of the Premises by the University, the University's staff, the University's agents, the University's contractors, or the University's invitees entering the Premises.

11.11 Condition at Termination. Upon the termination of this Agreement, the University shall surrender the Premises to the City in the same or better condition to the condition of the Premises at the beginning of the University's occupancy of the Premises. The University shall remove all equipment and/or materials placed on the Premises by the University or anyone acting by or under the University. Said removal shall be without cost to the City.

11.12 No Other Rights. This Agreement does not give the University any other right with respect to the Premises. Any rights not specifically granted to the University by and through this document are reserved exclusively to the City. Execution of this Agreement does not obligate the City in any manner and the City shall not undertake any additional duties or services.

11.13 Security. The University shall be responsible for securing the vehicles placed on the Premises. The City shall not have any security responsibilities or responsibility or liability for any stolen vehicles, vandalized vehicles, vehicles damaged by wind, hail or other natural elements, stolen personal property, or any accidents on the Premises arising from any use of the Premises.

11.14 Scavenger Services. The University shall provide its own scavenger service if necessary in the University's opinion. The City shall not have any scavenger service obligations relative to the University's use of the Premises.

11.15 No Profit. The University shall not charge a fee for access to the Premises. The University shall not receive any other payment for such access to the Premises, but for the avoidance of any doubt, University may charge a parking fee for use of the surrounding

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University Lot. The City shall not derive any revenue from the University's access to the Premises.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the Commencement Date.

THE CITY:

By: **THE CITY OF CHICAGO,**
an Illinois Municipal Corporation and Home Rule Unit of Government

DEPARTMENT OF FLEET AND FACILITY MANAGEMENT

By: _____
Commissioner

DEPARTMENT OF PLANNING AND DEVELOPMENT

By: _____
Commissioner

APPROVED AS TO FORM AND LEGALITY:
BY: DEPARTMENT OF LAW

By: _____
Deputy Corporation Counsel
Real Estate Division

THE UNIVERSITY:

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS,
a body corporate and politic of the State of Illinois

By: _____
Comptroller

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

LOT 35 IN T.F. BALDWIN'S SUBDIVISION OF BLOCK 3 OF THE DIVISION OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY ILLINOIS

PIN: 17-19-201-031

Common Address: 1836 West Washburne Avenue

**1836 West Washburne Avenue
Board of Trustees of the University of Illinois
Agreement No. 20309**

SECTION 2: This Ordinance shall be effective from and after the date of its passage and approval.