

UNOFFICIAL COPY

**THIS INSTRUMENT PREPARED BY,
AND AFTER RECORDING RETURN TO:**

Glenn I. Becker, Esq.
Sonnenschein Nath & Rosenthal
8000 Sears Tower
233 S. Wacker Drive
Chicago, Illinois 60606



0030278795

5480/0053 54 001 Page 1 of 12
2003-02-27 10:37:21

Cook County 46.50



PERMANENT INDEX NUMBER:

24-14-100-045-0000

PROPERTY ADDRESS:

10349 South Pulaski Avenue
Chicago, Illinois 60655

ABOVE SPACE RESERVED FOR COUNTY RECORDER

RIGHT OF FIRST REFUSAL

THIS RIGHT OF FIRST REFUSAL (this "Agreement") is entered into as of this 31st day of January, 2003, by and between DR. JOHN R. HAMM, an individual, EDWARD SPORKA, an individual, and FOUNDERS BANK, not individually but as Trustee under a Trust Agreement dated November 29, 2002 and known as Trust No. 6100 (collectively, "Owner"), and SAINT XAVIER UNIVERSITY, an Illinois not-for-profit corporation ("Holder").

RECITALS

A. Owner represents and warrants to Holder that Owner is the sole owner of certain real property legally described on Exhibit A attached hereto and made part hereof, commonly known as 10349 South Pulaski Avenue, Chicago, Illinois 60655 (the "Subject Property").

B. Holder is desirous of obtaining a right of first refusal to purchase fee title in and to all or any portion of the Subject Property on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are hereby incorporated into the operative provisions hereof), Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

UNOFFICIAL COPY

30278795

AGREEMENTS

1. Right of First Refusal. Holder shall have and is hereby granted the right of first refusal to purchase at any time or from time to time during Owner's "Period of Ownership" (as defined in Section 2 below): (i) all or any portion of the Subject Property; (ii) if Owner is or becomes a land trust, 100% or a controlling percentage of the beneficial interest and/or power of direction in such land trust (collectively, the "Beneficial Interests"); (iii) if Owner is or becomes a partnership whose sole or primary asset is the Subject Property, a controlling number of units ("Units") of partnership interests in Owner, or any number of Units which may result in a change in control of Owner; and/or (iv) if Owner is or becomes a corporation or limited liability company whose sole or primary asset is the Subject Property, a controlling number of shares, membership interests, or distributional interests (collectively, "Shares") of the Owner, or any number of Shares which may result in a change in control of Owner. In the event, at any time or from time to time during Owner's Period of Ownership, Owner receives and is willing to accept a bona fide offer or contract respecting the purchase of all or any portion of the Subject Property, Beneficial Interests, Units, and/or Shares (each, an "Acceptable Offer"), Holder shall have the right of first refusal to acquire all or any portion of the Subject Property, Beneficial Interests, Units, and/or Shares at the same price and on the same terms and conditions as are contained in said Acceptable Offer. Upon Owner's receipt of each Acceptable Offer, Owner shall provide Holder with (i) a true, correct and complete copy of such Acceptable Offer, and (ii) true, correct and complete copies of all organizational and due diligence materials as Owner shall have in its possession or control pertaining to the Subject Property, Beneficial Interests, Units, and/or Shares (or portions thereof) which is the subject of such Acceptable Offer (the Subject Property, Beneficial Interests, Units, and/or Shares or such portions thereof which are the subject of an Acceptable Offer being referred to herein as the "Applicable Property Interests"), including,

without limitation, title reports, underlying title documents, surveys, leases, licenses, contracts, land trust agreements, partnership agreements, corporate and limited liability company by-laws and governance documents, and environmental and soil test results and reports. Holder shall have a period of twenty-one (21) days after its receipt of the items described in the immediately preceding sentence (the "Notice Period") within which to exercise its right of first refusal hereunder with respect to the Applicable Property Interests by giving written notice of such exercise to Owner accompanied by the Acceptable Offer bearing Holder's signature.

Any such exercise of Holder's right of first refusal shall create a binding purchase agreement between the Owner and Holder with respect to the Applicable Property Interests at the price and upon the same terms and conditions as are contained in the Acceptable Offer.

In the event Holder does not exercise its right of first refusal with respect to an Acceptable Offer within the Notice Period in the manner described above, Owner may sell the Applicable Property Interests but only at the same price and on the same terms and conditions as are specified in such Acceptable Offer. Notwithstanding the foregoing, in the event the Applicable Property Interests are not so sold within the period set forth in the Acceptable Offer, Owner shall again submit to Holder any Acceptable Offer for all or any portion of the Subject Property, Beneficial Interests, Units, and/or Shares as provided for herein prior to making any subsequent sale thereof, and Holder shall have a right of first refusal with respect thereto in accordance with the provisions set forth in this Section 1.

In the event Owner receives an Acceptable Offer for a portion of the Subject Property, Beneficial Interests, Units, and/or Shares, the right of first refusal granted herein shall continue as to the balance of the Subject Property, Beneficial Interests, Units, and/or Shares during Owner's Period of Ownership thereof.

2. Expiration of Right of First Refusal. The right of first refusal granted hereby shall be deemed a covenant running with the land which shall terminate upon the first to occur of the following events: (i) one hundred twenty (120) days after the expiration or termination of that certain unrecorded Driveway License Agreement dated of even date herewith, by and between Holder, as Grantor, and Owner, as Grantee; and (ii) the end of Owner's "Period of Ownership" (as hereinafter defined) of all or any portion of the Subject Property and/or Beneficial Interests. For purposes of this Agreement, Owner's "Period of Ownership" shall mean any time or from time to time during which all or any portion of the Subject Property and/or the Beneficial Interests are owned or held by: (i) Owner and/or family member(s) of Owner; (ii) a land trust under which Owner and/or family member(s) of Owner own or hold 100% or a controlling percentage of the Beneficial Interests; (iii) a partnership under which Owner and/or family member(s) of Owner own or hold a controlling number of Units of partnership interests in such partnership, or any number of Units which may result in a change in control of such partnership; and/or (iv) a corporation or limited liability company under which Owner and/or family member(s) of Owner own or hold a controlling number of Shares of such corporation or limited liability company, or any number of Shares which may result in a change in control of such corporation or limited liability company. Upon the expiration of the right of first refusal granted hereby and receipt of Owner's written request, Holder covenants and agrees to promptly execute and deliver a release (in recordable form) of this Agreement and the right of first refusal.

3. No Brokerage. Owner hereby represents and warrants to Holder and Holder hereby represents to Owner that no party shall be entitled to any commission, finder's fee or like compensation arising out of this Agreement or the transaction contemplated hereby. Owner and Holder each agree to indemnify, defend and hold the other harmless from and against any and all

claims, liability, loss, cost, damage and expense incurred by the indemnified party arising out of a breach of the foregoing representation and warranty.

4. Notices. All notices, demands, requests, consents or other communications which any party is required or desires to give to the other party hereunder shall be in writing and shall be sent by hand delivery (effective upon receipt) or Registered or Certified Mail, return receipt requested (effective on the date of delivery or first attempted delivery) addressed as follows:

If to Owner:

Dr. John R. Hamm
2617 Spruce Street
River Grove, Illinois 60171
Telephone No.: (708) 453-9194
Facsimile No.: _____

with a copy to:

Charles W. Siegel, Esq.
10345 S. Western Avenue
Chicago, Illinois 60643
Telephone No.: (773) 429-1500
Facsimile No.: (773) 429-0980

If to Holder:

Saint Xavier University
3700 West 103rd Street
Chicago, Illinois 60655
Attention: Susan Piros, Vice President of Business & Finance
Telephone No.: (773) 298-3000
Facsimile No.: (773) 298-3263

With a copy to:

Sonnenschein Nath & Rosenthal
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
Attention: John J. Lawlor, Esq.
Telephone No.: (312) 876-7459
Facsimile No.: (312) 876-7934

or to such other address as either party hereto may notify the other party of in writing pursuant to the aforesaid procedure.

5. Recording. Either party shall have the right to record this Agreement, at its sole cost and expense, with the Cook County Recorder of Deeds.

6. Deed and Title Policy. Concurrently with its execution and delivery of this Agreement, Owner covenants and agrees to furnish to Holder true, correct and complete copies of: (i) the deed which conveyed the Subject Property to Owner; and (ii) Owner's current policy of title insurance covering the Subject Property.

7. Time of the Essence. Time is of the essence of this Agreement.

8. Counterparts/Facsimile Transmission. This Agreement may be executed in multiple counterparts and shall be effective when all parties have signed a copy of this Agreement. A copy of this Agreement bearing an original signature shall constitute a counterpart, and all such counterparts shall, taken together, constitute one and the same agreement. It is the parties' desire to promptly confirm and communicate their respective signatures on this Agreement. It is agreed that a facsimile copy of a signed signature page of a counterpart agreement shall evidence and constitute valid execution of this Agreement and shall be binding on a party to the same extent as the original signature counterpart copy.

9. Authority. The individuals executing this Agreement represent and warrant that they have the power and authority to do so, and to bind the entities for whom they are executing this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

OWNER:

DR. JOHN R. HAMM
DR. JOHN R. HAMM, an individual

-and-

EDWARD SPORKA
EDWARD SPORKA, an individual

-and-

FOUNDERS BANK, not individually but as Trustee under a Trust Agreement dated November 29, 2002 and known as Trust No. 6190 and not personally

ATTEST:

By: Jayne L. Lewis
Its: A.V.P. + T.O.

By: [Signature]
Its: V.P. + T.

HOLDER:

SAINT XAVIER UNIVERSITY, an Illinois not-for-profit corporation

ATTEST:

By: _____
Its: _____

By: _____
Its: _____

UNOFFICIAL COPY 30278795

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

OWNER:

DR. JOHN R. HAMM, an individual

-and-

EDWARD SPORKA, an individual

-and-

FOUNDERS BANK, not individually but as Trustee under a Trust Agreement dated November 29, 2002 and known as Trust No. 6190

ATTEST:

By: _____
Its: _____

By: _____
Its: _____

HOLDER:

SAINT XAVIER UNIVERSITY, an Illinois not-for-profit corporation

ATTEST:

By: *Edward Sporka*
Its: V.P. for Business & Finance

By: *Edward Sporka*
Its: PRESIDENT

UNOFFICIAL COPY

30278795

STATE OF ILLINOIS)
)
COUNTY OF _____) ss.

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Richard Yambek and _____, personally known to me to be the President and _____, respectively, of SAINT XAVIER UNIVERSITY, an Illinois not-for-profit corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument, pursuant to authority given by said Corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 10th day of February, 2003.

Susan M. DeMatteo
Print Name: Susan M. DeMatteo

Notary Public State of Illinois

My commission expires: 6/10/06

[Notarial Seal]



EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

THE SOUTH 30 FEET OF THE WEST HALF OF LOT 117 IN J.S. HOVLAND'S RESUBDIVISION OF J.S. HOVLAND'S 103RD STREET SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Index Number: 24-14-100-045-0000

Common Address 10349 S. Pulaski Avenue
Chicago, Illinois 60655

Property of Cook County Clerk's Office