

STATE OF ILLINOIS)
) ss.
COUNTY OF KENDALL)

Ordinance No. 2008-29

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF
202 E. COUNTRYSIDE PARKWAY, UNITED CITY OF YORKVILLE,
KENDALL COUNTY, ILLINOIS**

WHEREAS, the United City of Yorkville, Kendall county, Illinois, is committed to increasing the recreational facilities and park areas available to its residents thereby improving the quality of life within the community; and,

WHEREAS, the owners and operators of Club 47 Health and Fitness Center located at 202 E. Countryside Parkway in Yorkville (“*Club 47*”) have decided to sell this facility and its business operation; and,

WHEREAS, the Park and Recreation Board of the City have recommended to the Mayor and City Council that the City acquire Club 47 in order to assure its continued operation as a health and fitness center serving the Yorkville community; and,

WHEREAS, after extensive investigation and discussion, the Mayor and City Council have determined that it is in the best interest that Club 47 continue to operation at its present location and that its operation should be expanded to provide additional recreational services for the citizens of Yorkville and the surrounding community; and,

WHEREAS, the Mayor and City Council have determined that leasing the facility and acquiring an option to purchase the facility and the business operation during the lease term is in

the best interest of its residents in order to ascertain whether such facility should become a permanent part of the City's Park and Recreation Department; and,

WHEREAS, after extensive negotiations with the owners and operators of Club 47, it has been determined that it is in the best interests of the City to enter into a lease agreement with an option to purchase pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the United City of Yorkville, Kendall County, Illinois, as follows:

Section 1: That the City Attorney be directed to prepare a lease with an option to purchase the business and the facility located at 202 E. Countryside Parkway pursuant to the terms and conditions as set forth on *Exhibit A* attached hereto and made a part hereof.

Section 2. That the Mayor and City Clerk are hereby authorized to execute said lease and option to purchase incorporating the terms and conditions as itemized on *Exhibit A*.

Section 3: This Ordinance shall be in full force and effect immediately from and after its passage and approval according to law.

Passed by the City Council of the United City of Yorkville, Kendall County, Illinois, this 22 day of April, A.D. 2008.

ROBYN SUTCLIFF [Signature]
ARDEN JOE PLOCHER [Signature]
GARY GOLINSKI [Signature]
ROSE SPEARS [Signature]

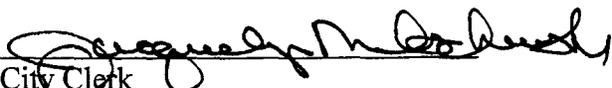
JOSEPH BESCO [Signature]
WALLY WERDERICH [Signature]
MARTY MUNNS [Signature]
Bud [Signature]

APPROVED by me, as Mayor of the United City of Yorkville, Kendall County, Illinois,
this 22 day of APRIL, A.D. 2008.



Mayor

Attest:



City Clerk

EXHIBIT A

LEASE/ PURCHASE OPTION OF CLUB 47 FACILITY AGREEMENT POINTS

1. Building and property purchase price: \$4,000,000.
2. City pays \$100,000 capital improvement payment at signing of lease to be put toward mutually agreeable improvements as agreed to by Parks Director and Lessor.
3. Purchase price increases \$100,000 per year through term of lease.
4. City purchases fixed assets for \$250,000 at time of building purchase from Club 47.
5. Lease would be \$17,500 per month and includes Club 47 and rental unit D for years 1 and 2 of the lease.
6. Lease would increase \$500 per month in years 3 to 5. It would increase \$500 per month in years 6 to 10.
7. Proposed Lease Commencement is June 1, 2008.
8. City is responsible for real estate taxes, sanitation pick up, snowplowing, and outdoor maintenance for entire site, including units A, B, and C.
9. City carries insurance on its operation of the building. The private businesses in the rental units carry insurance on their operations. Walker Custom Homes, Inc. carries insurance on whatever it deems appropriate for its assets.
10. Term is 10 years. Should City seek to purchase or build another recreation center, the purchase of Club 47 will receive precedent over the other building.
11. If not purchased by the City during the term of lease, city must pay \$100,000 termination fee to owner.
12. Owner may not publically market the building, but may accept unsolicited purchase offers. City has first right of refusal. Another purchaser must assume the lease.
13. Walkers retain the ability to pledge the property or the lease payments with the City as collateral for financial obligations during the lifetime of the lease. They agree to a clause that in no event shall they pledge the asset for more than the balance due under the terms of the lease or ultimate purchase from the City.
14. Any additional capital improvements paid for by the Owner would increase the sale price of the building, ie. roof replacement, HVAC replacement, or major repair.
15. Any alterations or improvements to the property must be approved in writing by both parties.
16. City would grant Walkers use privileges for their immediately family, Ron's parents, and his brothers during the life of the Agreement.

MAINTENANCE OBLIGATIONS

City of Yorkville

- Maintenance on all exercise equipment
- Maintenance of all light fixtures
- HVAC systems, filters, belts, etc.
- Pool pumps, filters, belts, etc.
- Hot water heaters, softeners, etc.
- Floor surfaces
- Electronic equipment, computers, phone systems, tvs, appliances, stereos, etc.

Walker Custom Homes, Inc.

- Roof leaks
- Underground filtration lines to the pool. Main water and sewer lines
- Any structural repair

June 20, 2008 FINAL AGREEMENT

Lease Between
Walker Custom Homes, Inc.
and
United City of Yorkville, Kendall County, Illinois
For A Recreation and Fitness Center at
202 East Countryside Parkway, Yorkville, Illinois

July 1, 2008

LANDLORD: Walker Custom Homes, Inc., an Illinois corporation
LANDLORD'S ADDRESS: 62 Woodland Drive
Yorkville, Illinois 60560
TENANT: United City of Yorkville (the "City")
800 Game Farm Road
TENANT'S ADDRESS: Yorkville, Illinois 60560
ADDRESS OF PREMISES: 202 East Countryside Parkway
Yorkville, Illinois

PREMISES: 202 East Countryside Parkway, Yorkville, Illinois
Unit D and Main Area
USE: Recreation and Fitness Center
PREMISES RENTABLE AREA: Approximately 38,500 square feet
(Unit D = 1,000 sq. ft.)
(Main Area = 37,500 sq. ft.)

COMMENCEMENT DATE: July 1, 2008
RENT COMMENCEMENT DATE: July 1, 2008

LEASE TERM: July 1, 2008 through June 30, 2013 with an option to renew
for an additional 5 years from July 1, 2013 through June 30,
2018 with notice of renewal to Landlord on or before
December 31, 2011.

TERMINATION DATE: The last day of the Lease Term or upon exercise of Option to
Purchase.

ANNUAL RENT: July 1, 2008 through June 30, 2010 – \$17,500 per month
July 1, 2010 through June 30, 2011 – \$18,000 per month
July 1, 2011 through June 30, 2012 – \$18,500 per month
July 1, 2012 through June 30, 2013 - \$19,000 per month
July 1, 2013 through June 30, 2018 to increase \$500 per
month per Lease year

SECURITY DEPOSIT:

None

REAL ESTATE BROKER DUE COMMISSION:

Tenant and Landlord represent and warrant to each other than it has not used a real estate broker, finder or any other person that may seek compensation for this lease.

MAINTENANCE AND REPAIR OF HEATING AND VENTILATION SYSTEM:

Tenant will be responsible for maintaining the HVAC system and all portions of the Premises in accordance with all applicable governmental laws and regulations. Landlord will be responsible for maintaining the structural integrity of the Building, as specified in this Lease.

This Reference Page information is incorporated into and made a part of this Lease. In the event of any conflict between this Reference Page information and the Lease, this Lease shall control. Landlord nor Tenant shall not be held liable for any representations made in this Lease unless both Landlord and Tenant have fully executed the Lease. This Lease includes Exhibits A through ~~F~~ ^E, all of which are made a part hereof.

Handwritten initials: "UB" and "UB" with a line through them.

LANDLORD

TENANT

Walker Custom Homes, Inc., an Illinois corporation

United City of Yorkville, Kendall County, Illinois, an Illinois municipal corporation

By: *Ronald S. Walker*
President

By: *Valerie Burd*
Mayor Valerie Burd

Attest:

Attest:

Suzanne K. Walker
June 20, 2008

Tina Pickering
DEPUTY City Clerk

LEASE

This Lease is made as of July 1, 2008. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises described on the Reference Pages, including all terms defined therein, which are incorporated as part of this Lease.

ARTICLE 1 DEFINITIONS

1.1 In addition to other terms that are elsewhere defined in this Lease, the following terms shall have the meanings set forth in this section:

(a) **HEALTH AND FITNESS:** The real estate depicted on Exhibits A-1, and all improvements constructed thereon from time to time.

(b) **THE PREMISES:** The Recreation and Fitness Center as outlined in red on Exhibits A-1 and parking areas all as legally described and depicted on the survey attached hereto and made a part hereof as Exhibit A-2, prepared by registered surveyors licensed by the State of Illinois; and all fixtures and equipment as itemized on Exhibit B attached hereto and made a part hereof, which list of fixtures and equipment states the date of acquisition and general condition.

(c) **COMMENCEMENT DATE:** The Commencement Date shall be July 1, 2008.

(d) **LEASE TERM OR TERM:** The period of time commencing with the Commencement Date and terminating on the Termination Date.

(e) **LEASE YEAR:** The term "Lease Year" shall mean the period from the Commencement Date to the succeeding June 30; thereafter "Lease Year" shall mean each successive twelve calendar month period following the expiration of the first Lease Year.

(f) **TAX YEAR:** The term "Tax Year" or "Tax Years" shall mean, the year or years in which Taxes assessed against the Premises are due and payable.

(g) **TERMINATION DATE:** The last day of the Lease Term or upon exercise of Option to Purchase.

ARTICLE 2 RENT

2.1 One-Twelfth of the Annual Rent shall accrue each month from the Commencement Date until the Termination Date or any extension thereof and shall be payable to Landlord, 62 Woodland Drive, Yorkville, Illinois 60560 unless otherwise directed by Landlord in writing.

2.2 The first monthly installment of Annual Rent shall be due and payable upon the Commencement Date and a like installment shall be due and payable without notice on or before the fifth day of each calendar month during the Lease Term.

2.3 In addition to the Annual Rent, upon execution of this Lease, the Tenant shall deposit the sum of \$100,000 (the "Leasing Execution Fee") in an escrow to be held by the City, which escrow fund shall be held and the contents thereof applied in accordance with the Escrow Agreement attached hereto and made a part hereof as Exhibit C. It is the intent of the parties that all funds shall be used for improvements to the premises within the first five years of this Lease.

ARTICLE 3 TAXES

3.1 Tenant shall pay all taxes levied against Tenant's Premises and its fixtures from the Commencement Date through the Lease Term. If such taxes for which Tenant is liable are levied against Landlord or Landlord's property and if Landlord elects to pay the same, Tenant shall pay to Landlord within thirty (30) business days that part of such taxes for which Tenant is liable hereunder.

3.2 The Real Estate Taxes payable for the real estate described on Exhibit A02 as to units A, B, C, D, E inclusive (the "Real Estate Taxes") hereunder for the first and last Lease Years of the Lease Term shall be prorated on the basis of a 365-day year, with Tenant's obligation to commence as of the Commencement Date. Nothing herein contained shall require Tenant to pay Landlord's corporation, franchise, income, estate, gift or inheritance taxes.

3.3 So long as the Lease is in full force and effect, the real estate tax bill for the Premises shall be forwarded to the Tenant upon receipt by the Landlord for payment on or before the due date; provided, however, for the first and last Lease Years of the Lease Term, the Tenant shall pay to the Landlord its Proportionate Share of the real estate taxes for that portion of the first and last Lease Year of the Lease Term, or the last Lease Year of the renewed Lease Term to the Landlord and the Landlord shall pay the real estate taxes for the Premises on or before the due date.

ARTICLE 4 USE OF PREMISES; TENANT COVENANTS

4.1 The Tenant covenants to continue to conduct business in the Premises as a Health and Fitness Center but shall have the right to conduct or carry on any other program, business or operation generally conducted by a municipal parks and recreation department.

4.2 Tenant shall keep its Premises open for business at any time determined by Tenant to be in the best interests of its general operation and Tenant shall be permitted to close the Premises as determined by the Tenant without written permission from Landlord.

ARTICLE 5
MAINTENANCE AND REPAIR OF PREMISES ALTERATIONS

5.1 Landlord shall be responsible to maintain the structural integrity of the Premises and shall be solely responsible to maintain the building structure, to make all necessary roof repairs; to maintain all underground filtration lines to the pool; and, to maintain, repair all water and sewer lines of comparable size, but not expansion of said lines serving the Premises. If the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord, and Landlord shall not be responsible for failure to make any such repairs until a reasonable time after the giving of such written notice. Tenant shall have the right to make repairs at Landlord's expense after a reasonable time has elapsed since the giving of written notice. In the event Tenant has given Landlord notice as required above, and Landlord fails to commence the repairs that are the subject of such notice within twenty (20) business days following Landlord's receipt of such notice, then Tenant shall have the right to make such repairs; provided, such work is performed by skilled and experienced contractors at a reasonable cost and the cost thereof deducted from each monthly payment of the Annual Rent until the Tenant is reimbursed in full.

5.2 Tenant shall, at its sole cost and expense, except as provided in Articles 10.1 hereof, make all needed maintenance and repairs to the non-structural portions of the Premises, including, but not limited to, (i) the heating, ventilating, and air conditioning systems serving the Premises; (ii) hot water heaters and water softeners within the Premises, (iii) all light fixtures serving the Premises and located therein; (iv) all interior walls, floors and ceilings; (v) all exercise equipment; (vi) all swimming pool pumps and filters; (vii) all electronic equipment, phone systems and appliances; and, (viii) any of Tenant's improvements. If at any time, and from time to time during the Term, and any extensions and renewals thereof, Tenant shall fail to perform any maintenance or repairs in and to the Premises as required in this Lease, Landlord shall have the right, but not the obligation, to enter the Premises and to make the same for and on behalf of Tenant, and all reasonable sums so expended by Landlord shall be paid by Tenant within twenty (20) days of Landlord's delivery of an invoice to Tenant for the cost of such repairs.

5.3 Landlord shall repair known roof leaks and replace missing down spouts and extensions within sixty (60) days of execution of this Lease. Landlord shall also test the corroded metal support girders to assure structural integrity has not been diminished within the same time period.

5.4 Neither the Landlord nor the Tenant shall make any alterations, additions or replacements to the Premises, the cost of which is in excess of Ten Thousand Dollars and No Cents (\$10,000.00), without the prior written consent of the other party, which consent may not be unreasonably withheld, except for the installation of unattached moveable fixtures, which may be installed without drilling, cutting or otherwise defacing the Premises. Any additional capital improvements made or advanced by the Landlord prior to entry into the Lease with the consent of Tenant, or by Landlord during the Lease with the consent of the Tenant (other than the improvements made with the Lease Execution Fee) shall be added on to the purchase price contemplated hereunder. Capital improvements shall not include repairs to the Premises which are required to maintain the structural integrity of the Premises, other than repairs to the drivit.

Landlord and Tenant shall consent to all of those improvements or repairs in excess of said amount to determine whether items need to be replaced or repaired.

5.5 All Tenant's improvements and all repairs, alterations, additions and improvements done by Tenant within the Premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements. All alterations, additions and improvements made in and to the Premises and all floor covering that is adhesively affixed to the floor and all fixtures which are installed in the Premises shall remain in and be surrendered with the Premises and shall become the property of Landlord at the expiration of this Lease, without compensation to Tenant.

5.6 Tenant shall keep the Premises and Tenant's leasehold interest in the Premises free from any liens arising out of any work performed, materials furnished by Tenant. In the event that Tenant shall not, within thirty (30) business days following the imposition of any such lien, cause the same to be released of record, Landlord shall have the right to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien caused by Tenant. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be considered additional rent and shall be payable to it by Tenant within ten (10) days.

5.7 Landlord shall be liable to Tenant for any interruption of Tenant's business or inconvenience caused Tenant or Tenant's assigns, sublessees, customers, invitees, employees, licensees or concessionaires in the Premises on account of Landlord's performance of any repair, maintenance or replacement in the Premises, any other work therein pursuant to Landlord's rights or obligations under this Lease. Any injury to or interference with Tenant's business caused by Landlord's repairs, alterations or improvements to the Premises or to any portion of the Premises, the cost of which is not covered pursuant to Article 10, shall be paid by Landlord to Tenant upon receipt of thirty (30) days prior written notice and together with evidence of the injury to or interference with Tenant's business.

ARTICLE 6 SIGNS AND STORE FRONTS

6.1 Tenant shall install at Tenant's expense, any exterior sign the Tenant chooses so long as the Tenant, at all times shall keep all signs the Tenant installs at the Premises clean and in good condition, proper operating order, with the consent of said Landlord, said consent not to be unreasonably withheld, conditioned, or delayed.

6.2 Tenant shall not modify, paint, change colors or change materials of the exterior of the Premises which alter the appearance of the exterior walls or building fascia in any manner without the prior written consent of Landlord, such consent not to be unreasonably, withheld, conditioned or delayed.

**ARTICLE 7
UTILITIES**

7.1 Tenant shall promptly pay all charges for electricity, water, sanitary sewer, telephone, alarm service and refuse collection furnished to the Premises, and the refuse collection from Units A, B and C adjacent to the Premises.

7.2 Except for its negligent acts or omissions, Landlord shall not be liable nor shall any rent be abated in the event of any interruption in the supply of any utilities. Tenant agrees that it will not intentionally install any equipment which will exceed or overload the capacity of any utility facilities serving the Premises and that if any equipment installed by Tenant shall require additional utility facilities, installation of the same shall be at Tenant's expense, but only after Landlord's written approval of same.

**ARTICLE 8
INDEMNITY AND NON-LIABILITY**

8.1 Landlord will indemnify and hold Tenant harmless from such claims to the extent caused by the negligent or willful act or omission of Landlord, or its agents, employees or contractors. Tenant shall indemnify and hold harmless and defend Landlord, its beneficiaries directors, partners or shareholders against any and all claims, liability or costs for any damage to any property or any injury to any person occurring in, on or about the Premises when such injury or damage shall be caused by or arise from, in part or in whole from any and all claims, any activity conducted on the premises at or by direction of Tenant and from any intentional breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to this Lease. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability arising prior to such termination.

**ARTICLE 9
LIABILITY INSURANCE**

9.1 Tenant shall, at its sole cost and expense, procure and maintain throughout the Term of this Lease a policy or policies of insurance on an occurrence basis (if available), insuring Tenant, Landlord and any other person designated by Landlord having an interest in the Premises against any and all liability for injury to or death of a person or persons and or damage to property occasioned by or arising out of the condition of the Premises, the use or occupancy of the Premises or any construction work being done on the Premises by Tenant. Such policies shall be non-cancelable except after thirty (30) days written notice to Landlord. Each policy or a duly executed certificate of insurance showing Landlord of Landlord as an additional insured shall be delivered to Landlord prior to the Commencement Date. Tenant shall further provide in such certificate of insurance at the coverage afforded by Tenant to Landlord under said additional party insured clause shall be primary coverage from a liability point of view as to the Landlord.

9.2 Landlord shall, at its sole cost and expense, procure and maintain throughout the Lease Term or the renewed Lease Term, a policy or policies of insurance on the Premises in an amount deemed sufficient to reconstruct the Premises or repair or replace the Premises in the event of any damage to the Premises by fire or other casualty, including, but not limited to,

extreme weather conditions, war, terrorism, earthquake, tornado, flooding, destruction or by any movable machinery.

ARTICLE 10 DAMAGE BY CASUALTY

10.1 Tenant shall immediately give written notice to Landlord of any damage caused to the Premises by fire or other casualty. In the event that the Premises shall be damaged or destroyed by fire or other casualty and Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. If the Premises shall be destroyed or substantially damaged, such destruction and/or damage equaling fifty percent (50%) or more of the Premises, by a casualty not covered by Landlord's insurance; or the holder of any indebtedness secured by a mortgage or deed of trust covering any part of the Premises requires that any insurance proceeds be applied to such indebtedness, then in any of such events, Landlord may elect to terminate this Lease, or Landlord or the Tenant may elect to proceed to rebuild and repair the Premises. Should Landlord elect to terminate, it shall give written notice of such election to Tenant within sixty (60) days after the occurrence of such casualty; otherwise, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises.

10.2 If pursuant to Article 10.1, the Premises are to be restored, Tenant shall, unless such damage is the result of the negligence or willful misconduct of Tenant, or its agents, employees, or invitees, be entitled to a proportionate abatement in the Annual Rent and Tenant's Real Estate Taxes from the date of such damage, such reduction to be based on the extent to which the damage and the making of such repairs shall interfere with the use and occupancy by Tenant of the Premises. In the event of the giving of a notice to terminate, this Lease shall expire upon payment to the Tenant of its Leasing Execution Fee and all interest of the Tenant in the Premises shall terminate as of the date of such payment as if such date had been originally fixed in this Lease or the expiration of the Term.

10.3 In the event of damage to the Premises by any peril covered by the provisions of this Article, Tenant shall, upon notice from Landlord, remove forthwith and ultimately replace after said damage is repaired, at its sole cost and expense, such portion of the property belonging to Tenant or its licensees, from such portion of the Premises as Landlord shall request.

ARTICLE 11 DEFAULTS AND REMEDIES

11.1 The following events shall be deemed to be events of default under this Lease:

(a) Tenant shall fail to pay when due any sum of money due Landlord hereunder, whether such sum be any installment of rent, or any other payment or reimbursement to Landlord required herein, and such failure shall continue for a period of thirty (30) days from the date such payment was due. If Tenant is more than sixty (60) days in default on payment, Tenant agrees to assign to Landlord all membership fees and dues generated from the Leased premises until Tenant becomes current on all obligations; or

(b) Tenant shall fail to comply with any term, provision or covenant of this Lease (other than by failing to pay when due any sum of money due Landlord hereunder), and, except as otherwise provided in this Lease, shall not cure such failure within thirty (30) days (forthwith, if the default involves a hazardous condition) after written notice to Tenant; or unless such cure cannot reasonably be performed within thirty (30) days but Tenant has taken steps to perform and is diligently pursuing the cure; or,

(c) Unless otherwise permitted by Landlord, Tenant shall fail to vacate the Premises immediately upon termination of this Lease, by lapse of time or otherwise, or of Tenant's right to possession only.

11.2 Upon the occurrence of any of such events of default described in this Article or elsewhere in this Lease, Landlord shall have the option to pursue any one or more of the following remedies:

(a) Landlord may terminate this Lease or without terminating this Lease, terminate Tenant's right to possession only, and thereupon, in either case, subject to written notice to Tenant and process of law, Tenant shall surrender possession and vacate the Premises within thirty (30) days of receipt of said written notice, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord free right to enter into the Premises subject to written notice to Tenant and process of law and to repossess Landlord of the Premises as Landlord's former estate.

(b) Landlord shall relet the Premises or any part thereof for such rent and upon such terms as Landlord in its sole reasonable discretion shall determine.

ARTICLE 12 HOLDING OVER

12.1 Tenant shall pay Landlord for each day Tenant retains possession of the Premises or part thereof after termination hereof by lapse of time or otherwise at the rate of one hundred ten percent (110%) of the daily amount of the Annual Rent for the last period prior to the date of such termination Tenant shall also pay the Real Estate Taxes, as provided for herein, prorated on a daily basis. This provision shall not be deemed to waive Landlord's right to reentry (to the extent permitted by law) or any other right hereunder or at law.

ARTICLE 13 SUBORDINATION AND ATTORNMENT

13.1 Without the necessity of any additional document being executed by Tenant, this Lease shall be subordinate at all times to the lien of any mortgages or deeds of trust now or hereafter affecting the Premises, Landlord's interest or estate therein, provided that Tenant receives from such lien holders "non-disturbance agreements" in form reasonably acceptable to such lien holders; further provided, however, that if Landlord, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease executed before or after said instrument, it shall be superior to the Lease. Upon request of Landlord, Tenant covenants and agrees to execute and deliver upon demand such further instruments evidencing such subordination or superiority of the lien of any mortgage or deeds of trust, as the case may

be. In the event Tenant fails to do so, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney in fact in its name, place and stead to execute such instruments.

13.2 If any such mortgage or trust deed be foreclosed (or a deed given in lieu of foreclosure), or if any such ground or underlying lease be terminated, upon the request of the mortgagee, holder or lessor, as the case may be, Tenant will attorn to the purchaser at foreclosure sale (or grantee of deed in lieu of foreclosure) or lessor under such lease, as the case may be, and will execute such instruments as may be necessary or appropriate to evidence such attornment; provided that the Terms of this Lease shall be binding upon the Landlord's successor with no amendments, revisions, addendums or alterations unless agreed by Tenant.

ARTICLE 14 OPTION TO PURCHASE

14.1 Landlord hereby grants the Tenant an Option to Purchase the Premises and Units A, B, C which are located at 202 Countryside, all being legally described on Exhibit A-2 in accordance with the purchase price and all other terms as set forth on the Purchase and Sale Agreement attached hereto and made a part hereof as Exhibit D (the "Option to Purchase") for a period commencing on the Commencement Date of the Lease Term (July 1, 2008) and terminating on the Termination Date as may be extended in the event of renewal (June 30, 2018) of the Lease Term (the "Option Term"). The agreed upon purchase price for the Option to Purchase the building is Four Million (\$4,000,000) Dollars in an "AS IS, WHERE IS" condition except to the extent Tenant and Landlord agree to make capitol improvements, the cost of said capitol improvements (excluding any capital improvement made with the Lease Execution Fee to be added as additional purchase price payable by Tenant to Landlord in the event the Option to Purchase is in fact executed. Capital Improvements shall not include repairs to the Premises which are required to maintain the structural integrity of the Premises, other than repairs to the drivit.

14.2 In the event the Tenant does not exercise its Option to Purchase during the Option Term or the Tenant terminates the Lease at any time during the Lease Term or the Renewal of the Lease Term, the Tenant shall pay \$100,000 to the Landlord as a penalty, which penalty shall constitute the Landlord's sole remedy for the Tenant's failure to exercise said Option to Purchase, unless the Lease has been terminated pursuant to Article 10. In the event the Tenant terminates the Lease prior to the first 5 year period expiring, City shall be responsible in addition to the Lease Fee, the remaining period of the first 5 year lease term.

14.3 It is understood and agreed by the Landlord and Tenant that the Landlord may not take any action to market the Premises during the Option Term, provided, however, that in the event the Landlord receives a firm offer to purchase the Premises from a third party, the Tenant shall have the right of first refusal. It is further understood and agreed that any offer to the Landlord from a third party shall be subject to the leasehold interest of the Tenant and the Landlord must provide sufficient evidence as may be required that any offer to purchase from a third party is a firm offer and financing to proceed with the closing and acquisition of title is readily available.

14.4 In the event Tenant determines that in its best interest not to execute the Option to Purchase, and equipment having been replaced or substituted for existing exercise equipment

within the premises shall be retained by Landlord without any debt obligation or encumbrance thereon. Said equipment must be of comparable quality of existing equipment.

ARTICLE 15 ADDITIONAL UNDERSTANDINGS

15.1 All written subscribers or membership contracts or agreement permitting use of the Premises after the Commencement Date shall be assigned to the Tenant. Any bills received by Tenant after occupancy of the premises for business operations approved, performed, or ordered by Landlord, prior to July 1, 2008 shall be paid in full by the Landlord.

15.2 Landlord has delivered to the Tenant a computer listing of all subscribers, members or users having any outstanding right, privilege, contract or agreement to use the Premises, or any portion thereof after the Commencement Date. No changes in memberships, or new contracts shall be executed by Tenant with any current members prior to City Counsel approval and execution of this written Lease with Option to Purchase Agreement by Tenant.

15.3 As of the Commencement Date, the Landlord shall have terminated any service contract of any kind relating to the Premises unless otherwise directed, in writing by the Tenant.

15.4 The immediate family of Ronald Walker which shall consist of parents and brothers and sisters of Ronald Walker and Susan Walker shall have the privilege of a free membership in the operation of a health and fitness center by the Tenant during the Lease Term and any extension thereof as named on Exhibit E attached hereto.

15.5 The Tenant agrees to be responsible for refuse collection, real estate taxes, snow plowing and outdoor maintenance for the Premises, including Units A, B and C. Landlord shall be permitted to keep the cam charges paid by Tenants in Units A, B, and C.

15.6 The Tenant shall be required to give notice of no less than eighteen (18) months of the Tenant's intent to renew or terminate this Lease.

ARTICLE 16 MISCELLANEOUS

16.1 The captions used in this Lease are for convenience only and do not in any way affect the terms hereof. Whenever the singular is used the same shall include the plural, and words of any gender shall include the other.

16.2 One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

16.3 Landlord hereby covenants and agrees that if Tenant shall perform all of the covenants and agreements herein required to be performed on the part of Tenant, Tenant shall, subject to the terms of this Lease, at all times during the continuance of this Lease have the

peaceable and quiet enjoyment and possession of the Premises. Landlord shall not be liable for any interference or disturbance by other tenants or third persons, nor shall Tenant be released from any of the obligations of this Lease because of such interference or disturbance. - In the event that the activities of other tenants shall interfere with Tenant's quiet enjoyment as required under this Section, Landlord shall use all reasonable business efforts to cause such activities to end.

16.4 This Lease and the Exhibits contain the entire agreement between the parties and no agreement, representation or inducement shall be effective to change, modify or terminate this Lease in whole or in part unless in writing and signed by the parties.

16.5 Tenant warrants that it has had no dealings with any broker in connection with the negotiations or execution of this Lease.

16.6 The terms, provisions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, assigns, successors in interest and legal representatives except as otherwise herein expressly provided and except that all claims, demands or causes of action which Tenant may at any time have against Landlord or Landlord's agent because of failure to comply with any provisions hereof, shall be enforceable against the Landlord, its manager, members, affiliates or no person or other property of Landlord shall be subject to any such claim, demand or cause of action.

16.7 Time is of the essence in this Lease.

16.8 The laws of the State of Illinois shall govern the interpretation, validity, performance and enforcement of this Lease.

16.9 If any provision of this Lease is held to be invalid or unenforceable, the validity and enforceability of the remainder of this Lease shall not be affected thereby.

16.10 Landlord represents and warrants that the building of which the Premises is a part and the land upon which that building is constructed is not the subject of a ground lease or similar transaction that creates a leasehold interest in the land.

16.11 If Landlord fails to perform its obligations in accordance with any of the provisions of this Lease, Landlord agrees that it shall, to the extent and under the conditions provided for in this Lease, be liable to Tenant on account of any damages caused thereby. The obligations contained in this Lease are to be performed by Landlord's successors and assigns, only during their respective periods of ownership.

16.12 Landlord agrees to grant Tenant a right of first refusal to lease units A,B, and C prior to entering into any new lease covering Units A, B and C located adjacent to the Premises.

16.13 Landlord represents and warrants that it has full capacity, right, power and authority to execute, deliver and perform this Lease and all documents to be executed by Landlord pursuant hereto, and all required action and approvals therefore have been duly taken and obtained. The individuals signing this Lease and all other documents executed pursuant hereto on behalf of Landlord are duly authorized. This Lease and all documents to be executed

pursuant hereto by Landlord are binding upon and enforceable against Landlord in accordance with their respective terms, and the transaction contemplated hereby will not result in a breach of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, or other agreement to which Landlord or the Premises is subject or by which Landlord or the Premises is subject or by which Landlord or the Premises is bound.

16.14 In the event the City purchases or builds a recreation facility, the purchase of Club 47 will receive precedent over the other building.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the date and year written on the Reference Pages.

LANDLORD
Walker Custom Homes, Inc., an Illinois corporation

By: *Ronald S. Walker*
President

Attest:

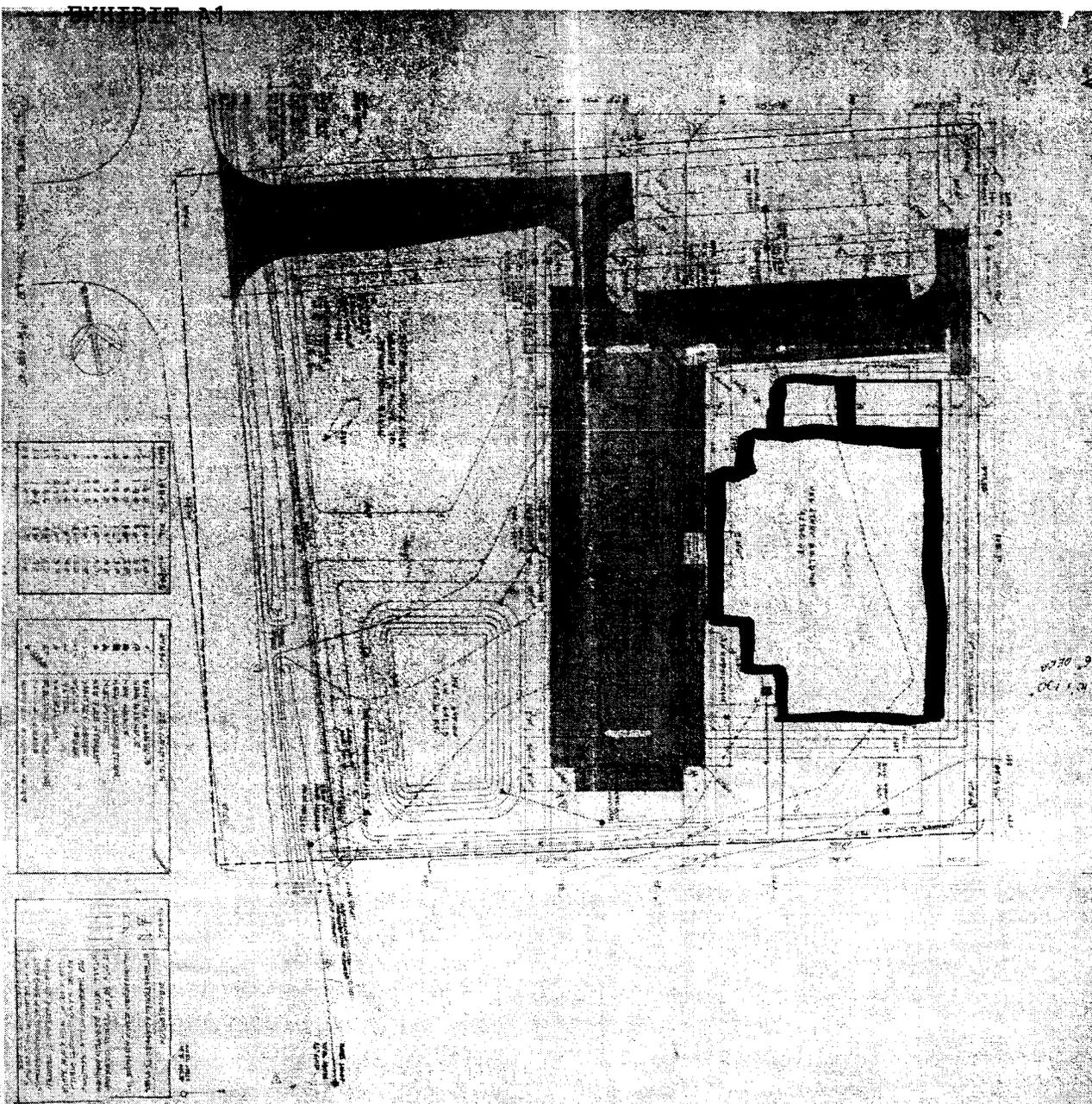
 Susanne K. Walker
June 20, 2008

TENANT
United City of Yorkville, Kendall
County, Illinois, an Illinois municipal
corporation

By: *Valerie Burd*
Mayor Valerie Burd

Attest:

 Twa Pickering
DEPUTY City Clerk



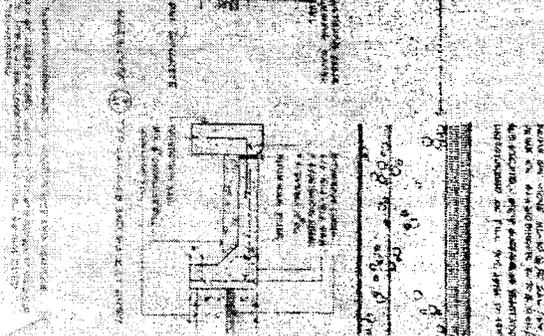
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<p>WILLIAM ALBERT ARCHITECT</p>	<p>12.1.100</p>	<p>12.1.100</p>	<p>12.1.100</p>
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EXHIBIT A1

Legal Description
202 E. Countryside Parkway

Parcel #02 28 126 010

SEC 28-37-7, Lot 2 Parkway Addition City of Yorkville

EXHIBIT B

Rec & Competition Gym Area						Current	Total	New	
Item	#	Make	Model	Condition		Value	Value	Value	Notes
Category	0					\$0	\$0		
1998 Nautilus Skate Machine	1	nautilus				\$1,320	\$1,320	\$2,200	
2002/03 Rucumbent bike	5	Life Fitness	9500 HR			\$1,395	\$6,975	\$2,196	
1996 Upright bike	2	Life Fitness	9500 HR			\$1,400	\$2,800		
2003/04 Cross Trainer	3	Life Fitness	9500			\$1,995	\$5,985	\$4,195	
2002 Treadmill	7	Life Fitness	9500 HR NG			\$2,800	\$19,600	\$4,084	
1997 Treadmill	2	Life Fitness	9100 HR			\$1,800	\$3,600	\$3,900	
1996 Steppers	2	Life Fitness	9500 HR			\$1,700	\$3,400		
2002 Sci-Fit Pro	1					\$2,200	\$2,200	\$3,375	
2002 Cross Trainer	3	Precor EFX power	546			\$3,025	\$9,075	\$5,043	
2002 Cross Trainer	3	Precor EFX manual	546			\$2,595	\$7,785	\$4,328	
2004 Staimaster Step Mill	2	Step Mill				\$1,800	\$3,600	\$3,396	
2001/05 Spin Bikes	16	Star Trac				\$283	\$4,528	\$425	
2007 Spin Bikes	21	Keiser	M-3			\$965	\$20,265	\$1,073	
2002 CMF Machines	2					\$1,050	\$2,100	\$1,750	
Cardio Theater	1	Enercise				\$3,155	\$3,155	\$4,852	
1996 Weight Training	1	Body Master	MD etc			\$31,500	\$31,500	\$48,467	
2003 Weight Training	1	Body Master	CX			\$15,400	\$15,400	\$22,000	
2000 Weight Training	1	Apex				\$2,900	\$2,900	\$4,400	
1996 Weight Training	1	Hammer	ISO			\$3,850	\$3,850	\$6,513	
2003 Dumbells and racks	1	Hampton	rubber	2 sets		\$3,680	\$3,680	\$5,075	
2004/05 Steps, power weights, body bars (including original steps)	1 0	Reebok etc				\$4,250 \$0	\$4,250 \$0	\$6,070	
Mats, Balls, Misc	1					\$1,500	\$1,500		
Aqua Noodles, aqua dumbells, balls	1					\$1,500	\$1,500		
CD's sound systems	2					\$725	\$1,450	\$1,000	
	0					\$0	\$0		
1996 Batting Cages	1					\$8,400	\$6,400	\$8,560	
1996 Volleyball standards	1					\$6,200	\$6,200	\$10,357	
2001 Tanning Beds	2					\$6,250	\$12,500	\$8,750	
1996 Basketball Goals	1	Porter	large/sm gym			\$22,000	\$22,000	\$38,000	
1996 Sound System	1					\$15,500	\$15,500	\$31,000	
	0					\$0	\$0		
TOTALS							\$225,018		

Office, Computers, software & Misc						Current	Total	New	
Item	#	Make	Model	Condition		Value	Value	Value	
Category	0					\$0	\$0		
2004 Computer	1	Dell	Inspiron 5150			\$500	\$500	\$1,030	
2004 Computer	1	Dell Server, systems				\$2,250	\$2,250	\$4,536	
1999 computer	2	computers				\$550	\$1,100	\$1,120	
1997/2000 printer/copier/scanner/fax	2					\$175	\$350	\$260	
2002 Copy Machine	1	Canon	C310			\$650	\$650	\$1,062	
1997 Duplicator	1	Gestetner	5304			\$0	\$0		
2004 software	1	e-club				\$2,750	\$2,750	\$4,745	
software	1	quickbooks, misc				\$500	\$500	\$1,000	
	0					\$0	\$0		
1997 TV's	6	High Definition				\$395	\$2,370	\$850	
2005 TV's	1	Wal Mart				\$110	\$110	\$212	
2005	2	Vacuum				\$220	\$440	\$433	
2005 washer	1	Menards				\$320	\$320	\$550	
2001 Nursery	1	remodel				\$450	\$450	\$952	
2000 etc Pro Sho fixtures	1					\$450	\$450	\$750	
dryer	1					\$200	\$200	\$400	
bike rack	1					\$150	\$150	\$350	
1996 chairs and racks	1					\$850	\$850	\$1,923	
1996 Frontage sign	1					\$2,650	\$2,650	\$5,670	
1996 display sign	1					\$1,450	\$1,450	\$3,855	
1996 office blinds	1					\$200	\$200	\$500	
1996 koala changer locke room	1					\$150	\$150	\$300	
1996 message center/bulletin bd	1					\$535	\$535	\$1,070	
TOTALS							\$18,425		

LEASE EXECUTION FEE

ESCROW INSTRUCTIONS

These Escrow Instructions are entered into as of this 20th day of June, 2008, by and between the United City of Yorkville, Kendall County, Illinois.

WHEREAS, the parties entered into a Lease dated July 1, 2008, for the certain real property known as 202 East Countryside Parkway, Yorkville, Illinois (the "Lease"); and,

WHEREAS, the Lease requires the parties to enter into an escrow agreement with the Escrowee pursuant to which the Purchaser shall deposit the Earnest Money, as required under the Lease.

NOW, THEREFORE, pursuant to the requirements of the Lease and in consideration of the terms and conditions hereof, the parties hereby agree as follows:

1. *Deposit.* In accordance with paragraph 2.3 of the Lease, the City, as Escrowee, shall establish a segregated fund to be known as the Recreational Center Improvement Fund into which the Tenant under the Lease shall deposit the sum of One Hundred Thousand Dollars (\$100,000) for use as hereinafter set forth.

2. *Use of Funds.* Pursuant to the Lease, the Recreational Center Improvement Fund shall be used solely for improvements to be made to the Premises, as defined in said Lease. Prior to incurring the cost of any improvement, the Tenant shall submit to the Landlord an itemization of the improvements the Tenant desires to undertake and the cost of each improvement. Upon written approval of the Landlord, the Tenant or the Landlord may proceed with any improvement approved by the Landlord and deduct the cost thereof from the Escrow.

Intentionally Omitted

3. *Investment of the Recreational Center Improvement Account.* The Recreational Center Improvement Account shall be invested in (i) an insured money market account, (ii) government securities, or (iii) such other investment as is agreed by all parties. All interest earnings thereon shall be added to the balance and used as provided in paragraph 2 above as if such interest were added to the initial deposit.

4. The parties agree that the actions of, and the relationship between, the Landlord and Tenant shall be governed by the terms of the Lease, notwithstanding contrary provisions of this Escrow. Except as to deposits of funds for which Escrowee has received express written joint direction from the Landlord and Tenant concerning investment or other handling, the parties hereto agree that the Escrowee shall be under no duty to invest or reinvest any deposits at any time held by its hereunder; provided, however, the Escrowee may not commingle such deposits with other deposits or with its own funds or use any part or all such funds for its own benefit.

In the event any legal proceedings are instituted in connection with the disbursement of the funds held hereunder, the prevailing party shall be entitled to recover from the other party the prevailing party's costs and expenses in connection therewith, including but not limited to its legal fees.

5. *Escrow Fee.* The Escrowee shall not be entitled to any escrowee fee.

IN WITNESS WHEREOF this 20th day of June, 2008.

LANDLORD

Walker Custom Homes, Inc., an Illinois corporation

By: Harold S. Walker
President

Attest:

Suzanne H. Walker

TENANT

**United City of Yorkville, Kendall
County, Illinois, an Illinois municipal
corporation**

By: Valerie Burd
Mayor Valerie Burd

Attest:

Lisa Pickering
DEPUTY City Clerk

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Contract") is entered into on this ____ day of _____, 2008, by and between the United City of Yorkville, Kendall County, Illinois, an Illinois municipal corporation ("Tenant-Buyer") and Walker Custom Homes, Inc., an Illinois corporation.

WHEREAS, the Tenant-Buyer is a non-home-rule municipality organized and existing pursuant to the Illinois Municipal Code and the Illinois Constitution of 1970; and,

WHEREAS, the Tenant-Buyer has entered into a Lease Agreement with the Landlord-Seller dated June ____, 2008, whereby the Tenant-Buyer leased certain Premises owned by the Landlord-Seller and was granted an Option to Purchase the Premises and additional real estate (the "Property"), all as legally described on Exhibit A attached hereto and made a part hereof; and,

WHEREAS, as of the date written above, the Tenant-Buyer has determined it to be in its best interest to exercise said Option to Purchase on the terms and conditions as hereinafter set forth.

RECITALS:

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. *Property.* Landlord-Seller hereby agrees to sell and convey the Property to Tenant-Buyer, and Tenant-Buyer hereby agree to purchase the Property from Landlord-Seller, upon the terms and conditions set forth herein. The Property, as legally described in Exhibit A, is shown as being comprised of one parcel, identified by parcel no. _____. Landlord-Seller will transfer the Property by a recordable warranty deed to the Tenant-Buyer.

2. *Purchase Price.* The purchase price ("Purchase Price") for the Property shall be Four Million Dollars (\$4,000,000) as may be adjusted pursuant to the terms hereof. The Purchase Price, as adjusted, plus or minus prorations, shall be paid by Tenant-Buyer to Landlord-Seller at the Closing in certified funds or immediately available wire transferred funds.

3. *Purchase Price as Adjusted.* The Purchase Price of \$4,000,000, plus or minus prorations, shall be increased One Hundred Thousand Dollars per Lease Year after the First Lease Year in which the Option to Purchase is exercised by the Tenant-Buyer. For purpose of this Purchase and Sale Agreement, the term "Lease Year" shall have the same definition as set forth in the Lease, i.e. the twelve months commencing each July 1 and ending the following June 30.

4. In addition to the Purchase Price, plus or minus prorations, as may be adjusted pursuant to paragraph 3 above, the Tenant-Buyer shall pay to the Landlord-Seller Two Hundred

RSW/VB
SKW
6-20-08

Fifty Thousand Dollars for all fixtures, window coverings, HVAC equipment and all of the equipment identified on Exhibit B attached to said Lease, which Exhibit B is also attached hereto and made a part hereof (collectively, the "Equipment"). It is understood and agreed that the amount of \$250,000 shall not be reduced or adjusted whether or not any of the Equipment listed on Exhibit B is within the Property as of the date of closing. Title to the Equipment shall be transferred by the Landlord-Seller to the Tenant-Buyer by a Bill of Sale in a form acceptable to the Tenant-Buyer's legal counsel.

5. *Survey.* Thirty days after the execution of this Purchase and Sale Agreement, the Landlord-Seller shall provide the Tenant-Buyer with a survey of the Property dated no more than six months prior to the date of execution. The Survey shall be completed at Landlord-Seller's sole cost and expense, by an Illinois licensed land surveyor, which survey shall comply with the requirements for an ALTA/ACSM land title survey (the "Survey"), prepared in accordance with the 2005 ALTA/ACSM Land Survey Standards for Urban Properties and containing Table A item numbers 1, 2, 3, 4, 5, 6, 10, 11(a)(b), 13, 14 and 16, for the benefit of Tenant-Buyer, and the Title Company. The Survey shall show all encroachments and the location of all easements affecting the Property. The Survey shall in all respects be acceptable to Tenant-Buyer and Tenant-Buyer's obligation to close on the Property is contingent upon approval of the Survey.

In the event any unpermitted title exception rises on the Title Commitment furnished pursuant to this Contract, or if any recorded document, encroachment or any other objective survey defect appears, Landlord/Seller shall have thirty (30) days with which to correct said defective Title exception or Survey condition and tender the same to Tenant-Buyer in writing. Tenant-Buyer shall thereafter have fourteen (14) days to approve said remedial act. In the event that Seller and Tenant-Buyer cannot agree upon the corrective action, the parties shall negotiate a corrective sum of money in lieu of any termination of this agreement.

6. *Title Insurance.* On the Closing Date, Landlord-Seller shall at Landlord-Seller's expense cause the Title Company to issue Tenant-Buyer an ALTA 1992 Owner's Policy of Title Insurance ("Owner's Policy") covering the Property in the amount of the Purchase Price as it may have been adjusted showing fee simple title vested in Tenant-Buyer. The Owner's Policy shall include extended coverage over the general title exceptions, and include the following endorsements: (i) a zoning 3.0 endorsement; (ii) access and entry endorsement; (iii) comprehensive endorsement; and, (iv) such other endorsements as counsel for Tenant-Buyer shall reasonably request at Tenant-Buyer's expense. The Owner's Policy shall only be subject to (1) general real estate taxes not yet due or payable; and, (2) matters created by, through or under Tenant-Buyer.

7. *Title.* At Closing, Landlord-Seller shall cause to be conveyed to Tenant-Buyer good and indefeasible fee simple title to the Property by a Warranty Deed, free and clear of any and all deeds of trust, mortgages, or other liens or indebtedness, encumbrances, conditions, easements, rights-of-way, assessments and restrictions; except for the following:

- (a) General real estate taxes with respect to the Property which are not then due and payable;
- (b) Permitted exceptions, as determined to be acceptable to the Tenant-Buyer.

ASW
ASW

8. *Closing.*

(a) The purchase and sale of the Property (the "Closing") shall occur at the office of the Title Company, or at another mutually agreeable location within forty-five (45) days of the date of this Purchase and Sale Agreement.

(b) The Closing shall be affected through a "New York" style deed and money escrow with the Title Company. Landlord-Seller and Tenant-Buyer each agree to execute a GAP Affidavit in standard form as may be required by the Title Company. The cost of the deed and money escrow and/or New York style closing shall be divided equally between the Landlord-Seller and Tenant-Buyer.

(c) At the Closing, Landlord-Seller shall execute and deliver to Tenant-Buyer by means of deposit into the escrow or otherwise, the following:

- (i) a Warranty Deed ("Deed") in recordable form conveying the Property to Tenant-Buyer, subject only to the matters set forth in paragraph 7;
- (ii) ALTA Statement executed by Landlord-Seller;
- (iii) Transfer Declarations;
- (iv) An affidavit ("FIRPTA Affidavit") in substantially the form attached hereto as Exhibit C;
- (v) Appropriate evidence of Landlord-Seller's authority to consummate the transactions contemplated by this Purchase and Sale Agreement.
- (vi) To the extent such are in Landlord-Seller's possession, copies of the most recent bills for taxes, or other items to be prorated which show the balance outstanding as of the Closing;
- (vii) An Affidavit of Title;
- (viii) The Title Policy, including endorsements, issued by the Title Company; and,
- (ix) Such other documents as may reasonably be requested to enable to consummate the transaction contemplated by this Purchase and Sale Agreement.

(d) At the Closing, the Tenant-Buyer shall execute and deliver to the Landlord-Seller by means of deposit into the escrow or otherwise, the following:

- (i) The balance of the Purchase Price as may be adjusted, plus or minus prorations;
- (ii) Appropriate evidence of Tenant-Buyer's authority to consummate the transactions contemplated by this Purchase and Sale Agreement.
- (iii) ALTA Statement executed by Tenant-Buyer;
- (iv) A Personal GAP undertaking, if required by the Title Company;
- (v) Such other documents as Landlord-Seller may reasonably request to enable Landlord-Seller to consummate the transaction contemplated by this Purchase and Sale Agreement.

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(e) The acceptance of the Deed by Tenant-Buyer shall be deemed to be full performance and discharge of every agreement and obligation on the part of Landlord-Seller hereunder, except those which are herein specifically stated to survive the delivery of the Deed, or which are specifically stated in any other closing document to survive the delivery thereof.

(f) Tenant-Buyer's obligation to close the purchase of the Property is conditioned upon Seller's satisfaction of the Terms of this Purchase and Sale Agreement and Closing Contingencies identified in paragraph 16.

9. *Prorations.* The following items as relating to that portion of the Property not included in the Lease between the parties hereto shall be apportioned at the Closing: (i) payments under any service and/or other contracts; (ii) gas, electricity and other utility charges, if any, which shall be apportioned on the basis of the last meter reading; (provided, however, that if possible, the parties will endeavor to obtain a final reading for Landlord-Seller's account and establish a new account for Tenant-Buyer); (iii) real estate taxes not yet due and payable based on 110% of the last ascertainable tax bill; and, (iv) other operating expenses, if any, of the Property incurred during the month in which the Closing occurs, if any. In making such apportionments, Tenant-Buyer shall be responsible for taxes and other expenses incurred the day after the Closing. All real estate taxes covering the Premises (as defined in the Lease) shall also be prorated as of the date of the Closing based upon 100% of the last ascertainable tax bill. All such apportionments shall be subject to post-closing adjustments as necessary to reflect later relevant information not available at the Closing and to correct any errors made at the Closing with respect to such apportionments; provided, however, that such apportionments (other than for real estate taxes) shall be deemed final and not subject to further post-closing adjustments if no such adjustments have been requested after a period of ninety (90) days from such time as all necessary information is available to make a complete and accurate determination of such apportionments and such apportionments shall in any event be deemed final and not subject to further post-closing adjustment after ninety (90) days following the Closing. The provisions, promises and obligations of this paragraph shall survive Closing and delivery of the Deed.

10. *Closing Costs.* (a) All attorney's fees and expenses of counsel shall be born by the party utilizing such counsel; (b) the cost of the Survey, shall be borne by Landlord-Seller; (c) the cost of the Title Commitment and the Owner's ALTA Title Insurance Policy, shall be borne by Landlord-Seller (d) the cost of extended coverage and all other endorsements to the Owner's Policy required by Tenant-Buyer, shall be born by Landlord-Seller; (e) recording fees for the deed shall be born by Tenant-Buyer; (f) state, county and any municipal transfer taxes, if any, shall be borne by Landlord-Seller; and, (g) recording fees for release deeds, shall be borne by Landlord-Seller, all other transaction costs actually incurred, including, without limitation, any escrow and other charges of the Title Company shall be equally divided between Landlord-Seller and Tenant-Buyer.

11. *Broker Commissions and Fees.* Tenant-Buyer has not been represented by a real estate broker in this transaction. Any real estate commission occasioned by the execution and/or consummation of this Contact shall be the sole responsibility of the party contracting therefore, and such party agrees to indemnify, protect, defend and hold harmless the other party from any and all claims for such real estate commissions. Landlord-Seller represents and warrants that it

has not retained, agreed to pay, or has been represented by a real estate broker in this transactions.

12. *Representations and Warranties.*

(a) *Landlord-Seller's Representations and Warranties.* Landlord-Seller represents and warrants to Tenant-Buyer that the following matters are true and correct as of the date hereof and Landlord-Seller's representations and warranties shall be remade at Closing:

- (i) There are no contracts or agreements of any kind relating to the Property, except those "Service Contracts" listed on Exhibit D hereto.
- (ii) Landlord-Seller has not received from any governmental authority notice of any violation of any environmental statute, ordinance, rule or regulation applicable to the Property, or any part thereof, that has not been cured or removed.
- (iii) There are no pending (or to Landlord-Seller's knowledge, threatened) judicial or administrative proceedings affecting the Property or in which Landlord-Seller is or will be a party by reason of Seller's ownership or operation of the Property or any portion thereof, including, without limitation, proceedings for or involving collections, condemnation, or environmental violations, or personal injuries or property damage alleged to have occurred on the Property or by reason of the condition, use of, or operations on the Property.
- (iv) Landlord-Seller has good and marketable fee simple title to the Property free and clear of all liens, covenants, conditions, restrictions, rights-of-way, easements and encumbrances of any kind or character whatsoever, except as disclosed in the Title Commitment, Survey, this Purchase and Sale Agreement and other matters that will and/or can be eliminated at or prior to Closing. There are currently no existing executory contracts, leases, options, or agreements executed by the Landlord-Seller, or of which the Landlord-Seller has knowledge which relate to or affect the Property, except this Purchase and Sale Agreement and as otherwise disclosed herein or as approved by the Tenant Buyer. Between the date hereof and the Closing date, Landlord-Seller shall not execute or enter into any leases or contracts of any kind with respect to the Property or any part thereof which may affect any right, title, interest or claim of the Landlord-Seller therein without the prior written consent of the Tenant-Buyer.
- (v) There are no other parties in possession of any portion of the Property as lessees, tenants at sufferance, trespassers, or otherwise.
- (vi) To Seller's knowledge, the Property contains no underground structures or tanks.

If at or prior to the Closing, Landlord-Seller obtains knowledge that any of the representations or warranties made herein by Landlord-Seller are untrue, inaccurate or incorrect in any material respect, Landlord-Seller shall give Tenant-Buyer written notice thereof within five (5) business days of obtaining such knowledge (but, in any event, prior to the Closing). Landlord-Seller shall have the right to cure such misrepresentation or breach, then Tenant-Buyer may elect either: (a) to waive such misrepresentations or breaches of warranties and consummate the transaction

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contemplated hereby without any reduction of or credit against the Purchase Price as may have been adjusted; or, (b) to terminate this Purchase and Sale Agreement by written notice given to Seller on the Closing, in which event this Purchase and Sale Agreement shall be terminated, Landlord-Seller shall waive any penalty due to it pursuant to the Lease for the failure in the part of the Tenant-Buyer to execute and close on its Option to Purchase and shall reimburse all costs incurred by Tenant-Buyer in connection with this Purchase and Sale Agreement and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any paragraph hereof that by its terms expressly provides that it survives any termination of this Contract.

The representations and warranties made by Landlord-Seller in this Paragraph 12(a) shall survive the Closing and delivery of the Deed.

(b) *Tenant-Buyer's Representations and Warranties.* Tenant-Buyer hereby represents and warrants to Seller as follows: (i) Purchaser is duly organized, validly existing and qualified and empowered to conduct its business, and has full power and authority to enter into and fully perform and comply with the terms of this Purchase and Sale Agreement; (ii) neither the execution and delivery of this Purchase and Sale Agreement nor its performance by Tenant-Buyer will conflict with or result in the breach of any contract, agreement, law, rule or regulation to which Tenant-Buyer is a party or by which Tenant-Buyer is bound; and (iii) this Purchase and Sale Agreement is valid and enforceable against Tenant-Buyer in accordance with its terms and each instrument to be executed by Tenant-Buyer pursuant to this Purchase and Sale Agreement or in connection herewith will, when executed and delivered, be valid and enforceable against Tenant-Buyer in accordance with its terms.

13. *Landlord-Seller's Conduct Pending Closing.* From and after the date of this Purchase and Sale Agreement through Closing:

- (a) Landlord-Seller shall keep in full force and effect all insurance with respect to damage or injury to persons or property occurring on the Property in amount and scope of coverage and deductible amount which are the same or better than that which it has previously maintained;
- (b) After the date of this Purchase and Sale Agreement, Landlord-Seller shall not amend or cancel any contracts affecting the Property without, in each such instance, obtaining the prior written consent of Tenant-Buyer;
- (c) After the date of this Purchase and Sale Agreement, Landlord-Seller shall not hereafter contract for any services, or make or enter into any new leases, commitments or obligations which will bind Tenant-Buyer with respect to the Property, without obtaining the Tenant-Buyer's prior written consent;
- (d) After the date of this Purchase and Sale Agreement, Landlord-Seller shall not waive or release any material right which would otherwise accrue to Tenant-Buyer after Closing.

14. *Time of Essence.* Time is of the essence to both Landlord-Seller and Tenant-Buyer in the performance of this Purchase and Sale Agreement.

15. *Purchase and Sale Agreement and Closing Contingencies.* Notwithstanding anything to the contrary contained herein, this Purchase and Sale Agreement and the Closing contemplated herein are contingent upon the following conditions precedent (which may be waived by Tenant-Buyer in writing, in Tenant-Buyer's sole and absolute discretion):

- (a) All the representations and warranties of Landlord-Seller set forth in this Purchase and Sale Agreement being true and correct, except as otherwise stated herein, on the Closing Date, and Landlord-Seller shall have complied with all the covenants and agreements of Landlord-Seller set forth herein.
- (b) There shall be no material change in the substantive matters reflected on the Title Commitment from those matters appearing therein on the date thereof (except for those changes requested by Tenant-Buyer in its notice of Title Defects), and no encumbrance or Title Defect shall affect the Property except utility easements and such Liens that shall be released at the Closing.
- (c) That there be no material adverse change (including but not limited to a physical change) in the condition of the Property following the execution of this Purchase and Sale Agreement until the Closing.

17. *Notice.* Each Notice ("Notice") provided for under this Contract must comply with the requirements of this paragraph. Each Notice shall be in writing and sent by depositing it with the United States Postal Service or any official successor thereto, certified or registered mail, return receipt requested, with adequate postage prepaid, or with a nationally recognized. Overnight courier service which obtains receipts, or by facsimile transmission addressed to the appropriate party (and marked to a particular individual's attention if so indicated) as hereinafter provided. Each Notice shall be effective upon being so deposited, but the time period in which response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by the return receipt or facsimile conformation. The addresses of the parties hereto shall be as follows:

Notice to Landlord-Seller : Walker Custom Homes, Inc.
62 Woodland
Yorkville, IL 60560

Notice to Tenant-Buyer : United City of Yorkville
800 Game Farm Road
Yorkville, Illinois 60560



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18. *Counterpart Execution.* This Purchase and Sale Agreement may be executed in separate counterparts. It shall be considered as fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains the signatures of all the parties.

19. *Severability.* In the event any provision of this Purchase and Sale Agreement is held illegal or unenforceable, the remaining provisions of this Purchase and Sale Agreement shall not be affected thereby.

20. *No Waiver.* The waiver of a breach of any provision of this Purchase and Sale Agreement by Landlord-Seller or Tenant-Buyer or the failure of Landlord-Seller or Tenant-Buyer otherwise to insist upon the strict performance of any provision hereof shall not constitute a waiver of any subsequent breach or of any subsequent failure to perform.

21. *Entire Agreement; Amendment.* This Purchase and Sale Agreement, including all Exhibits hereto and the Lease, embodies the entire agreements between Landlord-Seller and Tenant-Buyer relating to the subject matter hereof and supersedes any and all other previous agreements, written or oral, between Landlord-Seller and Tenant-Buyer relating to the subject matter hereof. No amendment or modification of the terms of this Contract shall be binding upon Landlord-Seller and Tenant-Buyer unless reduced to writing and signed by duly authorized representatives of Landlord-Seller and Tenant-Buyer.

22. *Compliance.* Landlord-Seller and Tenant-Buyer agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Real Estate Settlement Procedures Act.

23. *Governing Law.* This Purchase and Sale Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois as to interpretation, enforcement, validity, construction, effect and in all other respects.

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement on the date first written above.

LANDLORD
Walker Custom Homes, Inc., an Illinois corporation

TENANT
**United City of Yorkville, Kendall
County, Illinois, an Illinois municipal
corporation**

By: _____
President

By: _____
Mayor Valerie Burd

Attest:

Attest:

City Clerk

Exhibit E

FAMILY MEMBER USE LIST

Ron & Sue Walker, Their children, future spouses & children.

Ashley

Amanda (employee) & Jim Hopkins

Kirsten (employee)

Ron's Parents: Carol Walker
Paul & Pat Walker

Siblings Terry & Kara Walker, sons Jake and Cory
Dave & Teresa Walker, and Jonah

Sue's Siblings: Patty & Bill Brown, Matt & Jen Brown (Kendra)
Mike & Bev Resner, Mickey, Sandy, Mary & Marty

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SKW
6-20-08