

4/18/2011

32-O-11

AN ORDINANCE

**Authorizing an Amendment to the Real Estate Contract for
the Sale of City-Owned Real Property, Located in the
700 Block of Chicago Avenue, to Evanston Devco, LLC**

WHEREAS, on September 22, 2008, the City Council approved, by the unanimous adoption of Ordinance 96-O-08, attached hereto as Exhibit 1 and incorporated herein by reference, the negotiated sale of the City-owned real property in the 700 block of Chicago Avenue in Evanston, Illinois (the "Subject Property") to Evanston Devco, LLC; and

WHEREAS, due to the substantial decline in the real estate market since the Subject Property was last appraised in 2008, Purchaser requested a new appraisal of the Subject Property; and

WHEREAS, pursuant to the new appraisal and further negotiations with Evanston Devco, LLC, the City Council wishes to amend the negotiated sale price to seven hundred seventy thousand eighty five dollars (\$770,085.00).

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That the foregoing recitals are found as fact and incorporated herein by reference.

SECTION 2: That the City Council of the City of Evanston hereby approves the negotiated sale of the Subject Property, with the City of Evanston as Seller and Evanston Devco, LLC, as Buyer, on terms consistent with the Agreement for Purchase

and Sale of Real Estate attached to Ordinance 96-O-08 as Exhibit B thereto (the "Agreement"), for the amended price of seven hundred seventy thousand eighty five dollars (\$770,085.00).

SECTION 3: The City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest, the Agreement, as amended hereby, pursuant to the terms of which the Subject Property shall be conveyed. The City Manager is further authorized to negotiate any changes or additional terms and conditions with respect to the sale of the aforesaid Subject Property as the City Manager may deem fit and proper.

SECTION 4: The City Manager and the City Clerk, respectively, are hereby authorized and directed to execute, attest, and deliver such other documents, agreements, and certificates as may be necessary to effectuate the sale herein authorized.

SECTION 5: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 7: That if any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid application of this ordinance is severable.

Ayes: 9


Nays: 0

Introduced: May 9, 2011

Adopted: May 23, 2011

Approved:

May 26, 2011


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Approved as to form:



W. Grant Farrar, City Attorney

EXHIBIT 1

Ordinance 96-O-08

8/5/2008

96-O-08

AN ORDINANCE

**Authorizing the City Manager to
Execute a Real Estate Contract for
the Sale of City-Owned Real Property Located in
the 700 Block of Chicago Avenue in Evanston, Illinois
to Evanston Devco, LLC**

WHEREAS, the City of Evanston owns real property in the 700 block of Chicago Avenue in Evanston, Illinois, legally described in Exhibit A attached hereto and incorporated herein by reference (the "Subject Property"); and

WHEREAS, the City Council of the City of Evanston has determined that ownership of the aforesaid Subject Property is no longer necessary, appropriate, required, or in the best interests of the City of Evanston; and

WHEREAS, the City Council has determined that the best interests of the City of Evanston would be served by the sale of said Subject Property to a qualified party for private use; and

WHEREAS, pursuant to Ordinance 87-O-08, the City Council, by a vote of at least two-thirds (2/3) of the elected Aldermen then holding office, did direct the City Manager to negotiate the sale of said Subject Property on behalf of the City; and

WHEREAS, pursuant to Ordinance 87-O-08, the City Manager has negotiated the sale of the Subject Property; and

WHEREAS, the City Manager recommends that the City Council hereby approve the negotiated sale of the Subject Property, with the City of Evanston as Seller and Evanston Devco, LLC, as Buyer; and

WHEREAS, the City Council hereby finds and determines that the best interests of the City of Evanston and its residents will be served by conveying the aforesaid Subject Property to Evanston Devco, LLC, on terms consistent with the Agreement for Purchase and Sale of Real Estate, attached hereto as Exhibit B and incorporated herein by reference (hereinafter, the "Agreement"); and

WHEREAS, as required by City Code §1-17-4-2 (B), a Notice of Intent to Sell Certain Real Estate, which is attached hereto as Exhibit C and incorporated herein by reference, has been published in the *Evanston Review*, a newspaper of general circulation in the City of Evanston, and said publication was not less than fifteen (15), nor more than thirty (30) days before the date on which the City Council considered adoption of this ordinance authorizing the sale of the Property,

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That City Council of the City of Evanston finds as fact the recitals hereinabove set forth.

SECTION 2: That the City Council of the City of Evanston hereby approves the negotiated sale of the Subject Property, with the City of Evanston as Seller and Evanston Devco, LLC, as Buyer.

SECTION 3: The City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest, the Agreement, pursuant to the terms of which the Subject Property shall be conveyed. The City Manager is further authorized to negotiate any changes or additional terms and conditions with respect to the sale of the aforesaid Subject Property as the City Manager may deem fit and proper.

SECTION 4: The City Manager and the City Clerk, respectively, are hereby authorized and directed to execute, attest, and deliver such other documents, agreements, and certificates as may be necessary to effectuate the sale herein authorized.

SECTION 5: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: That this Ordinance 96-O-08 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 7: That if any provision of this Ordinance 96-O-08 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid application of this ordinance is severable.

Ayes: 9

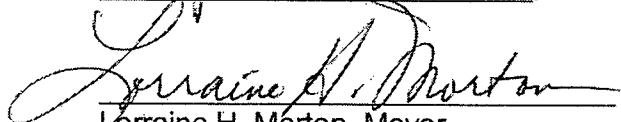
Nays: 0

Introduced: August 11, 2008

Approved:

Adopted: September 22, 2008

September 23, 2008


Lorraine H. Morton, Mayor

Attest:


Rodney Greene, City Clerk

Approved as to form:

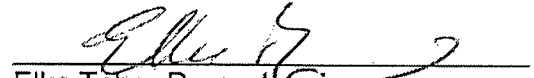

Elke Tober-Purze, Interim
First Assistant Corporation Counsel

EXHIBIT A

Legal Description

LOTS 9 AND 10 IN BLOCK 2 IN KEDZIE AND KEENEY'S ADDITION TO EVANSTON, A SUBDIVISION OF PART OF THE SOUTH ½ OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 41, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 11-19-407-027-0000

EXHIBIT B

**Evanston Devco, LLC Agreement for
Purchase and Sale of Real Estate**

**AGREEMENT FOR PURCHASE
AND SALE OF REAL ESTATE**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (this "Agreement") is entered into as of the Effective Date per Section 10.18, which is _____, 2008, by and between THE CITY OF EVANSTON ("Seller"), and EVANSTON DEVCO, LLC, a Delaware limited liability company ("Purchaser").

RECITALS:

A. Seller legally or beneficially owns the land (the "Land") which is legally described on Exhibit A-1 attached hereto and depicted on Exhibit A-2 attached hereto. The Land consists of approximately 17,100 square feet and is located on Chicago Avenue, south of the intersection with Kedzie Street, in the City of Evanston, County of Cook, State of Illinois.

B. The Land, all improvements, fixtures, and tangible personal property located on the Land; all easements and appurtenances belonging to the Land; and all interest of the titleholder of the Property in any streets or other rights of way adjacent to the Land, are collectively referred to as the "Property".

D. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser the Property on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1
AGREEMENT TO PURCHASE AND SELL**

Purchaser agrees to purchase and Seller agrees to sell the Property to Purchaser or its nominee at the Purchase Price described below, subject to the terms and conditions set forth in this Agreement. In furtherance of such agreement, Seller agrees to convey or cause to be conveyed to Purchaser good and marketable fee simple title to the Property subject to the Permitted Exceptions (defined below). Such conveyance shall be by recordable special warranty deed and the other instruments specified in Section 8.4 below.

**ARTICLE 2
PURCHASE PRICE**

2.1 Purchase Price. The purchase price for the Property to be paid by Purchaser to the Seller shall be NINE HUNDRED THOUSAND and NO/100 Dollars (\$900,000.00) (the "Purchase Price").

2.2 Payment of the Purchase Price. The Purchase Price, less the Earnest Money, and plus or minus any adjustments, credits or pro-rations provided for herein, shall be paid at the Closing, by cashier's or certified check or by wire transfer of current funds.

2.3 Earnest Money.

(a) Within three (3) Business Days after the Effective Date, Purchaser shall pay into a strict joint order escrow with Seller at Chicago Title Insurance Company (the "Title Insurer") the sum of \$50,000.00 as earnest money (together with any interest earned thereon, the "Earnest Money").

(b) The Earnest Money may be invested by the Title Insurer as Purchaser directs in United States Treasury Bills or a federally insured money market account. Seller and Purchaser shall share equally the cost of the joint order escrow, but Purchaser shall bear the cost of any investment fee charged by the Title Insurer as escrowee. If this Agreement is terminated because of a Seller default or failure of an Article 3 contingency or another condition to Purchaser's obligation to close set forth in this Agreement, then the Earnest Money shall be refunded to Purchaser. The Earnest Money shall be applied to the Purchase Price at the Closing.

2.4 Closing Costs. Seller shall pay the cost of: (a) the Title Commitment and Title Policy (including extended coverage and the Contiguity Endorsement); and (b) obtaining and recording any releases of any mortgages, liens or other encumbrances which are not Permitted Exceptions. Purchaser shall pay the cost of: (v) recording the deed; (w) the cost of any title endorsements other than the Contiguity Endorsement; (x) the cost of the Survey; (y) all other escrow and other fees imposed in connection with the closing of Purchaser's purchase money loan (if any), and (z) the cost of applying for and securing the Governmental Approvals. Purchaser and Seller shall share equally the escrow fees for the Closing. All other closing costs shall be apportioned according to prevailing local custom. Each party shall pay its own legal fees.

2.5 Closing Pro-rations and Adjustments. All items of income or expense other than real estate taxes and assessments ("Taxes") shall be pro-rated according to prevailing local custom. If the Property is currently tax exempt, there shall be no real estate tax pro-ration at Closing. Provided that the Property is not currently tax exempt, unpaid Taxes for the applicable tax year which are not yet due and payable on the Closing Date shall be pro-rated as follows. Any Taxes which are assessed only against the Property as a separate parcel shall be pro-rated to the Closing Date on the basis of 105% of the most recent ascertainable bill or assessment therefor. Such pro-ration shall be re-pro-rated upon receipt of the actual bill. If all or a portion of the Property is located in a tax or assessment parcel (a "Tax Parcel") which also includes other property, then any unpaid Taxes for the applicable tax year which are not then due and payable on the Closing Date with respect to such Tax Parcel shall be pro-rated to the Closing Date as follows. Purchaser's credit shall be based on 105% of the portion of the most recent ascertainable bill or assessment for the Tax Parcel which is allocable to the Property.

**ARTICLE 3
CONDITIONS PRECEDENT**

In addition to the terms and conditions set forth elsewhere in this Agreement, Purchaser's obligation to purchase the Property shall be subject to the following conditions precedent:

3.1 Land Due Diligence Contingency; Review Period.

(a) During the sixty (60) day period (the "Land Due Diligence Review Period") following the Effective Date, Purchaser and its agents and contractors shall have the right to enter upon the Property and conduct such tests and investigations as may be necessary for Purchaser to determine whether there are any matters which in Purchaser's judgment would make unfeasible Purchaser's intended use of the Property together with the McKay Property and McKone Property (each as defined in Section 3.3 below) for a residential apartment community having a number of apartment units satisfactory to Purchaser but not more than 232, and approximately 8,400 square feet of retail or business uses with four (4) residential stories above two (2) levels of parking, retail and residential space for a total building height above grade of not more than 67 feet (the "Intended Use"). Among the matters Purchaser will investigate are (i) a zoning of the Property; (ii) soils and environmental matters; (iii) the state of title to the Property as evidenced by the Title Commitment; (iv) matters shown on the Preliminary Survey; (v) the availability and sufficiency of utilities, including water, sanitary sewer, storm/retention facilities, telephone, gas and electricity; and (vi) the existence of any laws, regulations or judicial matters affecting the Property. Within five (5) business days after the Effective Date, Seller shall provide Purchaser with a copy of each of the items (the "Delivery Items") described on Exhibit B that affect the Property and which are in Seller's possession or control. The Land Due Diligence Review Period shall be extended day to day for each day Seller is late in delivering the Delivery Items to Purchaser.

(b) In the event the Purchaser, acting in its sole discretion, determines that any of the matters reviewed by Purchaser would make unfeasible Purchaser's Intended Use or purchase of the Property, then Purchaser may elect to terminate this Agreement by delivering written notice of termination to Seller at any time on or prior to the last day of the Land Due Diligence Review Period. If Purchaser fails to give Seller notice of termination by the end of the Land Due Diligence Review Period, then the Land Due Diligence Contingency will be deemed waived.

(c) If Purchaser so elects to terminate this Agreement, the Earnest Money shall be refunded to Purchaser. In such event, Purchaser shall (i) return to Seller any materials Seller had delivered to Purchaser in connection with Purchaser's review, and (ii) deliver to Seller (without cost to Seller) any and all title reports, surveys, soil tests, or environmental studies pertaining to the Property which Purchaser has obtained during the Land Due Diligence Review Period. Items (i) and (ii) are called the "Return Items".

(d) Purchaser shall repair any damage to the Property resulting from Purchaser's activities on the Property under this Agreement. Purchaser shall indemnify, defend, and hold harmless Seller and Seller's elected and appointed officials, employees and agents from and against any and all loss, damage, liability or expense (including reasonable attorneys fees) and claims and liens of mechanics or materialmen any of the indemnified parties may incur as a result of Purchaser's access, other than any property damage or injury to any person, which damage or injury is (i) related to Hazardous Materials (as defined in Section 6.1(f) below) in existence on the Property or (ii) is caused by the negligence of Seller. The indemnity obligations of Purchaser under this Section 3.1 shall survive the Closing or a termination of this Agreement, notwithstanding anything contained to the contrary in this Agreement. Any investigation or inspection conducted by Purchaser pursuant to this Agreement, in order to verify satisfaction of

any conditions precedent to Purchaser's obligations under this Agreement or to determine whether Seller's representations and warranties are true and accurate, shall not affect (or constitute a waiver by Purchaser of) any of the provisions of this Agreement or Purchaser's reliance on such provisions.

3.2 Governmental Approvals Contingency.

(a) Both Purchaser's and Seller's obligation to close shall be contingent upon Purchaser's ability to obtain the Governmental Approvals (defined in subparagraph (b) below) for the Property, McKay Property and McKone Property (collectively the "Assembled Property") which are necessary for Purchaser's Intended Use and which are satisfactory in all respects to both Purchaser and Seller. During the Land Due Diligence Review Period and thereafter through the Governmental Approvals Period (defined below), Purchaser at its expense shall seek to obtain or to confirm the availability of the Governmental Approvals. It is understood that Seller being a party to this Agreement shall not in any way obligate it to grant the Governmental Approvals for the Assembled Property, and that Purchaser's application(s) for the Governmental Approvals will be reviewed under normal City of Evanston processes subject to the normal City of Evanston standards of review without regard to the existence of this Agreement. If Purchaser determines in its sole discretion at any time during the Governmental Approvals Period that it will not be able to secure satisfactory Governmental Approvals, Purchaser shall have the right, by written notice to Seller, to terminate this Agreement. If Purchaser fails to give notice of satisfaction of the Governmental Approvals by the end of the Governmental Approvals Period, Purchaser shall be deemed to have terminated this Agreement. If Purchaser gives a notice of satisfaction of the Governmental Approvals, then Seller shall have the right to give notice that Seller is not satisfied with the Governmental Approvals. If Seller fails to give such notice within ten (10) days after receipt of Purchaser's satisfaction notice, then Seller will be deemed to be satisfied with the Governmental Approvals and the contingency in this Section 3.2 shall be satisfied. If Seller gives notice that it is not satisfied with the Governmental Approvals after Purchaser has given a notice of satisfaction, then at Purchaser's election Purchaser may by notice to Seller elect to (i) terminate this Agreement or (ii) reinstate the Governmental Approvals Period. If Purchaser fails to give notice of its election to Seller within ten (10) days after receipt of Seller's dissatisfaction notice, Purchaser will be deemed to have elected to reinstate the Governmental Approval Period. Upon a termination of this Agreement under this Section 3.2, the Earnest Money shall be returned to Purchaser and Purchaser shall deliver the Return Items to Seller. As used in this Agreement, the "Governmental Approvals Period" shall mean the period beginning on the Effective Date and running through the later of June 30, 2009 and the termination of Governmental Approvals Period in the McKay and McKone Agreement.

(b) As used in this Agreement, the "Governmental Approvals" shall mean the obtaining of the following items on terms and conditions satisfactory to Purchaser and Seller: (i) approval of a Planned Development suitable for Purchaser's Intended Use, (ii) approval of a final site plan and final subdivision plat for Purchaser's Intended Use, (iii) satisfactory negotiation of any fees, impositions, donations or other governmental requirements associated with the Planned Development or Purchaser's Intended Use, (iv) approval of any variations, special uses, zoning text amendments, or other zoning, subdivision, building or other code relief needed for Purchaser's Intended Use, (v) approval of any curb cuts or access permits needed for Purchaser's Intended Use, (vi) Purchaser satisfying itself that water, sanitary and storm sewer services

sufficient to service Purchaser's Intended Use will be available to serve the Property on terms and conditions satisfactory to Purchaser, and that each can be used by Purchaser at tap-on fees and rates satisfactory to Purchaser, and (vii) Purchaser satisfying itself that it can obtain building permits and other authorizations from Seller and other public agencies and authorities as may be necessary or appropriate for Purchaser's Intended Use.

3.3 McKay and McKone Contingency.

An affiliate of Purchaser has previously entered into an Agreement for Purchase and Sale of Real Estate dated December 7, 2007 (as amended, the "McKay and McKone Agreement") with Gettysburg Partners LLC, an Illinois limited liability company ("McKone Seller") and McEvan LLC, an Illinois limited liability company ("McKay Seller") to purchase that certain parcel of land commonly known as Lots 3, 4, 5 (except the portion thereof owned by Commonwealth Edison), 6, 7 and 8 being approximately 47,160 square feet on Chicago Avenue north of the Property and depicted on Exhibit A-2 hereto (the "McKay Property") and Lots 1 and 2 being approximately 19,200 square feet on the corner of Kedzie Street and Chicago Avenue north of the McKay Property and depicted on Exhibit A-2 hereto (the "McKone Property"). Both Purchaser's and Seller's obligation to close on the purchase of the Property shall be further contingent on Purchaser closing on the acquisition of the McKay Property and the McKone Property pursuant to the McKay and McKone Agreement, simultaneous with the Closing under this Agreement. If Purchaser is unable for any reason to close the McKay and McKone Agreement and the McKay and McKone Agreement terminates, Purchaser shall provide written notice of such termination to Seller, at which point either party shall have the right by written notice to the other party, to terminate this Agreement effective 30 days after such termination notice, provided that if the McKay and McKone Agreement is reinstated during such 30-day period, such reinstatement will nullify the termination notice, and further provided that in the event of a seller's default under the McKay and McKone Agreement for so long as Purchaser is proceeding diligently and in good faith to enforce the McKay and McKone Agreement, such agreement shall not be regarded as terminated, and the time for Closing under this Agreement will be extended. Upon a termination of this Agreement under this Section 3.3, the Earnest Money shall be returned to Purchaser and Purchaser shall deliver the Return Items to Seller.

3.4 Financial Contingency.

It shall be a condition to Seller's obligation to close, that Seller verify, to Seller's commercially reasonable satisfaction, that Purchaser has secured adequate equity and/or debt funding sources to construct the improvements pursuant to Purchaser's Intended Use (the "Financial Contingency"). If Purchaser fails to meet the Financial Contingency as set forth above prior to Closing, Seller may, by giving written notice to Purchaser, terminate this Agreement, but if this transaction closes then Seller will be deemed to have waived the Financial Contingency. Upon such a termination, the Earnest Money shall be returned to Purchaser and Purchaser shall deliver the Return Items to Seller.

ARTICLE 4
TITLE INSURANCE AND SURVEYS

4.1 Title Commitment; Preliminary Survey. Within thirty (30) days after the Effective Date Purchaser at its expense will obtain:

(a) a preliminary survey of the Property ("Preliminary Survey") by a licensed surveyor approved by Purchaser acting reasonably (the "Surveyor"), certified as having been made in compliance with 2005 ALTA/ACSM Land Survey Standards, including Table A items 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 16, 17 and 18.

(b) a commitment for the Property (together with all subsequent versions thereof issued prior to the Closing, the "Title Commitment") for a title policy in the form of an ALTA 2006 Form owner's title insurance policy issued by the Title Insurer with extended coverage over the standard printed exceptions and with, access, owner's comprehensive, zoning 3.0, survey, and separate tax lot endorsements, and an endorsement specifically insuring that the Property and the McKay Property are contiguous to one another (the "Contiguity Endorsement"); and

(c) copies of all documents evidencing the exceptions raised on the title commitment other than mortgage debt to be paid off at the Closing.

If this transaction Closes then at Closing Seller shall reimburse Purchaser for the respective costs of the Preliminary and Final Survey and Title Commitment.

4.2 Permitted Exceptions. Prior to the end of the Land Due Diligence Review Period, Purchaser shall provide Seller with a list of those title exceptions (including matters of survey) which are satisfactory to Purchaser, acting reasonably. Such list shall be attached to this Agreement as Exhibit C and shall constitute the "Permitted Exceptions" under this Agreement unless and except to the extent that the list is modified pursuant to Section 4.4 hereof. Prior to the end of the Land Due Diligence Review Period, Purchaser acting reasonably may also specify any additional endorsements it shall require on each Title Policy. The provision of such endorsements shall be a condition to Closing, but the expense of such endorsements shall be borne by Purchaser.

4.3 Title Policy; Final Survey.

(a) Prior to the Closing, Purchaser shall obtain an updated survey of the Property (the "Final Survey") which shall: (i) reflect the recording of any subdivision plat to be recorded pursuant to Section 3.2 hereof; (ii) indicate the monumenting of the Property corners; (iii) be certified to Purchaser, Purchaser's lender, if any, Seller and the Title Insurer; and

(b) At the Closing, Seller shall deliver to Purchaser an Owner's Title Insurance Policy in the form of the 2006 ALTA Form Owner's Policy from the Title Insurer, or in lieu thereof a marked-up title commitment from the Title Insurer (either being referred to herein as the "Title Policy") which shall: (i) be dated the Closing Date; (ii) name Purchaser or its permitted assignee as the insured; (iii) have a liability amount equal to the Purchase Price; (iv) show Purchaser or its permitted assignee as the owner of the Property in fee simple subject to no exceptions other than the Permitted Exceptions; (v) include extended coverage over the standard

printed exceptions; (vi) include the endorsements listed in Section 4.1(b) together with any other endorsements specified by Purchaser pursuant to Section 4.2; and (vii) include the Contiguity Endorsement. At Purchaser's option the Title Policy shall be a combined Policy for the Assembled Property provided Seller will not be obligated to pay more than the portion of the cost thereof that is equitably allocable to the Property.

4.4 Objection and Cure Period. If any Title Commitment or Preliminary Survey or any updates of any of them contain any matters not constituting Permitted Exceptions or liens which are of a definite and ascertainable amount which can be removed at Closing by payment of money ("Removable Liens"), then the Seller may, at its election, within thirty (30) days after Seller's receipt from Purchaser of the Permitted Exceptions or a subsequent version of the Title Commitment or Survey, as the case may be: (a) cause the non-permitted matters to be deleted from the Title Commitment; (b) subject to Purchaser's approval of such arrangement (acting reasonably), cause the Title Insurer expressly to insure over such non-permitted matters; or (c) object in writing to Purchaser to the exclusion of any one or more of such matters as a Permitted Exception.

If Seller fails or elects not to cause all of the non-permitted matters to be deleted or insured over within the aforementioned thirty (30) day period, Purchaser may by written notice to Seller within five (5) days after the expiration of Seller's 30-day objection and cure period elect to: (x) terminate this Agreement, in which case all of the Earnest Money shall be returned to Purchaser, or (y) agree to take title subject to the matters at issue, in which case the Permitted Exceptions shall be expanded to include the additional matters not deleted or insured over, but with a deduction from and offset against the Purchase Price for all Removable Liens. If the updated Title Commitment or Survey containing the non-permitted matter is issued within thirty (30) days prior to the Closing, the Closing Date shall be extended as necessary to give the Seller the benefit of the full 30-day objection and cure period and to give Purchaser the benefit of the full five-day election period referred to above.

ARTICLE 5 COVENANTS

5.1 Seller's Covenants. Seller with respect to the Property hereby makes the following covenants to Purchaser which shall be applicable so long as this Agreement is in effect:

(a) Seller shall not from and after the date of this Agreement voluntarily or consensually perform any act which results in any additional exceptions to title that would survive the Closing without Purchaser's consent.

(b) Seller shall not enter into any agreements (including leases) or amend any existing agreements which affect the Property and which would survive the Closing without Purchaser's consent;

(c) Seller shall not participate in any discussions or negotiations with any other party regarding the sale or any similar transaction involving the Property;

(d) Seller shall furnish Purchaser with any notices Seller receives from governmental authorities pertaining to the Property;

(e) Seller shall promptly notify Purchaser of any event or circumstance which Seller becomes aware of which causes a representation or warranty in this Agreement to be untrue or a covenant or condition in this Agreement incapable or unlikely to be performed or satisfied;

(f) Seller shall not remove or materially disturb any portion of the Property including cutting trees, removing landscaping, or performing site grading, without Purchaser's consent; and

(g) Seller shall allow Purchaser access to the Property throughout the term of this Agreement on the terms and conditions set forth in Section 3.1.

If Seller breaches any of the foregoing covenants in any material respect by the Closing Date then Purchaser may elect to terminate this Agreement. If Purchaser elects to terminate, the Earnest Money shall be returned to Purchaser, without limiting any other remedies available to Purchaser under Section 9.2 below.

5.2 Purchaser's Covenants. Purchaser with respect to the Property hereby makes the following covenants to Seller which shall survive the Closing:

(a) **Right of Reverter.** The deed to be delivered by Seller at Closing pursuant to Section 8.4(a) below shall contain the following reservation of a right of reverter in favor of Seller: "This conveyance is subject to a right of reverter in favor of Grantor if certain conditions are met, which right is as set forth in Exhibit D of an Agreement for Purchase and Sale of Real Estate between Grantor and Grantee dated _____, 2008. Such right of reverter shall expire on the four (4)-year anniversary date of this deed if such right has not been exercised, which exercise would be evidenced by recordation of a quitclaim deed re-conveying the Property from Grantee to Grantor." Seller and Purchaser hereby agree to the terms of Exhibit D attached hereto which terms shall survive the closing.

(b) **AMLI Control.** Until the Approved Development (as defined in Exhibit D) on the Assembled Property has received its final certificate of occupancy, unless Seller approves otherwise, the developer of such Approved Development shall be an entity controlled by AMLI Residential Properties, L.P. This restriction shall not apply to any institutional construction mortgage lender who provided funding for construction of the Approved Development and who acquires title to the Assembled Property by reason of such mortgage or to any party acquiring title through such lender. Purchaser agrees that the text of this subsection 5.2(b) may be incorporated into the Planned Development Ordinance for the Approved Development.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Seller's Representations and Warranties. Seller, with regard to the Property, represents and warrants to Purchaser as follows:

(a) **Authority.** Seller is the owner of the fee simple absolute title to the Property. Seller has full power and authority to sell and convey or to cause the conveyance of the Property as provided for in this Agreement and this Agreement is binding and enforceable against Seller.

(b) **Agreements.** Neither the execution and delivery of this Agreement by Seller nor the consummation of the transactions contemplated hereby will result in any breach or violation of or default under any judgement, decree, order, mortgage, lease, agreement, indenture or other instrument to which Seller is a party.

(c) **Code Violations.** Seller has not received any written notice of and is not aware of any violation or claimed violation of any applicable zoning, subdivision, building, fire, health, environmental, and other codes, statutes, ordinances or laws affecting the Property, except as disclosed in writing to Purchaser by Seller prior to or during the Land Due Diligence Review Period.

(d) **Litigation.** There is no litigation, proceeding, claim or investigation, including, without limitation, any condemnation, zoning, or environmental proceeding, pending or, to the best of the Seller's knowledge, threatened, which affects the Property or this transaction, except as disclosed in writing to Purchaser by Seller prior to or during the Land Due Diligence Review Period.

(e) **Zoning.** The Property is zoned C1a (Commercial Mixed Use) in the City of Evanston, Illinois. There are no actions pending or threatened to change the zoning or comprehensive plan designation of the Property.

(f) **Hazardous Materials.** Except as may be set forth in any environmental reports delivered to Purchaser and listed on Exhibit E: (i) Seller has no knowledge of any Hazardous Materials currently located on the Property, and (ii) Seller has not used, stored, or placed any Hazardous Materials under, on, or at the Property, and (iii) to the best of Seller's knowledge, all underground storage tanks previously located on the Property were either removed or closed in accordance with all Environmental Laws, and (iv) to the best of Seller's knowledge, there are no violations or claimed violations of Environmental Laws with respect to the Property. As used herein "Environmental Laws" shall mean all statutes specifically described in the definition of "Hazardous Materials" and all other federal, state or local laws, regulations or orders relating to or imposing liability or standards of conduct concerning any Hazardous Material. As used herein, "Hazardous Materials" shall mean any hazardous, toxic or dangerous substance, material, waste, gas or particulate matter which is defined as such for purposes of regulation by any local government authority, the State where the Property is located, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sec. 1251 et seq. (33 U.S.C. Sec. 1317), (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq. (42 U.S.C. Sec. 6903), or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive

Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9601 et seq. (42 U.S.C. Sec. 9601).

(g) **Surviving Agreements.** There are no leases, service agreements, or other agreements affecting the Property which will survive the Closing, except the lease/sublease to the auto dealership which the City will terminate at closing if the tenant/subtenant thereunder have agreed to terminate.

(h) **Utilities.** To Seller's knowledge, all water, sewer, gas, electric and telephone utilities are installed to the boundaries of the Property or in contiguous streets, and there are no recapture agreements or other agreements requiring any out-of-the-ordinary payments for connection to such utilities.

(i) **Disclosure.** During the Land Due Diligence Review Period, Seller delivered to Purchaser true and correct and complete copies of all Delivery Items in Seller's possession or control, and Seller has not failed or omitted to communicate in writing to Purchaser any other agreement, document or fact which is material to the Property or this Agreement.

6.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller as follows:

(a) **Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the consummation of the transactions contemplated hereby will result in any breach or violation of or default under any judgement, decree, order, mortgage, lease, agreement, indenture or other instrument to which Purchaser is a party;

(b) **Authority.** Subject to obtaining any necessary investment committee or other internal approval of this transaction, which can be presumed if Purchaser does not terminate this Agreement at or before the end of the Governmental Approvals Period, Purchaser has full power and authority to execute this Agreement and purchase the Property as provided for in this Agreement and this Agreement is binding and enforceable against Purchaser.

(c) **Property Tax Covenant.** At the Closing, Purchaser shall record a restrictive covenant or deed restriction that shall run with the land which states as follows: "In the event that the Purchaser, its successors, or assigns, are or become exempt from the payment of real estate taxes, said tax-exempt entity or entities shall make annual payments *in lieu* of taxes, at the then-current rate applicable to that portion of the Property said tax-exempt entity or entities own, to the City of Evanston, Evanston/Skokie Community Consolidated School District 65, and Evanston Township High School District 202, for a period of thirty (30) years."

6.3 Breach of Representations and Warranties. Each party warrants that each of the representations and warranties made by it in this Article 6 or appearing in other parts of this Agreement is true as of the date of this Agreement and will also be true as of the Closing. Each party shall notify the others promptly if such party becomes aware prior to the Closing Date of any matter which would render any of the representations or warranties of such party untrue in any material respect. If any of the representations and warranties by Seller shall not be true as of the Closing and such breach has been disclosed to Purchaser and is other than as a result of Seller's deliberate or willful act, Purchaser may alternatively as its sole remedy either (a) waive

such breach and close the transaction contemplated herein, or (b) terminate this Agreement, in which event the Earnest Money shall be returned to Purchaser. In the case of a breach of any of Seller's representations or warranties as a result of Seller's willful or deliberate act, the Purchaser may exercise its remedies under Article 9.

6.4 NO OTHER WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER IS SELLING ITS APPLICABLE PROPERTY TO PURCHASER IN AN "AS-IS" CONDITION, AND PURCHASER AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO PURCHASER REGARDING THE PROPERTY.

**ARTICLE 7
INTENTIONALLY OMITTED**

**ARTICLE 8
THE CLOSING**

8.1 Definition: Time and Place. The performance by Seller and Purchaser of their respective obligations under this Agreement directly or through the completion of the escrow deposits required of them to be made and the delivery of the Purchase Price to the Seller by the Closing Escrowee after delivery of the Title Policy to Purchaser and delivery of possession of the Property to Purchaser shall constitute the closing of the sale (the "Closing"). The date of the Closing (the "Closing Date") shall be forty-five (45) days after the expiration or Purchaser's waiver of the Governmental Approvals Period, or such later date as may be extended by mutual written consent of Purchaser and Seller or by operation of this Agreement. Notwithstanding anything herein to the contrary, in addition to the Governmental Approvals condition this transaction is additionally conditioned on satisfaction of the conditions set forth in Sections 3.3 and 3.4 above, or waiver of such conditions by the party or parties benefited by such conditions. Purchaser may extend the Closing Date as needed for satisfaction of such conditions so long as Purchaser is pursuing such satisfaction diligently and in good faith. The Closing shall take place at the Chicago office of the Title Insurer.

8.2 Possession. Possession of the Property shall be delivered at the Closing.

8.3 Escrow. This sale shall be closed through a "New York style" escrow (the "Escrow") with the Title Insurer (the "Closing Escrowee"), in accordance with the general provisions of the usual form of escrow agreement then in use by the Closing Escrowee, with such special provisions inserted in the escrow agreement as may be required to conform with this Agreement (the "Escrow Agreement"). The Escrow and Escrow Agreement shall be auxiliary to this Agreement, and this Agreement shall govern in the event of any inconsistency with the Escrow Agreement. Upon the creation of the Escrow, payment of the Purchase Price and delivery of the deed and other closing documents shall be made through the Escrow and the Earnest Money shall be deposited in the Escrow. The attorneys for the parties are hereby authorized to execute the Escrow Agreement and any amendments thereto. Each party shall have the right to inspect all documents prior to or at the time of deposit in the Escrow. The

escrow fee for the Escrow shall be shared equally by the parties, except that the escrow fees attributable to any ancillary money lender's agreement shall be borne by Purchaser alone.

8.4 Documents To Be Delivered By Seller At Closing. At the Closing Seller shall deliver or cause to be delivered to Purchaser directly or, if either party elects, through the Escrow, the following with respect to its applicable Property, each of which shall be in form reasonably satisfactory to Purchaser and (if applicable) the Title Insurer:

(a) a duly executed and acknowledged special warranty deed to the Property subject only to the Permitted Exceptions;

(b) a bill of sale respecting any personal property to be conveyed;

(c) copies of the most recent tax or assessment bills or other items on which pro-rations are based;

(d) the Title Policy;

(e) evidence of authorization of Seller as to the execution of this Agreement and the sale of the Property to Purchaser and the performance of other acts required hereunder;

(f) an affidavit to the effect that Seller is not a foreign person under Section 1445(b) of the United States Internal Revenue Code (FRPTA);

(g) An assignment of the City's rights under the lease of the Property presently used by the auto dealership, or if such lease has terminated, the City will provide documentation evidencing such termination.

(h) evidence of payment and a lien waiver from any broker whose commission is to be paid by Seller under Section 10.2 below;

(i) all other documents (if any) required, pursuant to other provisions of this Agreement or to the Escrow Agreement, to be executed and delivered by Seller; and

(j) such other instruments and documents as may be reasonably required in order to carry out the purposes of this Agreement.

8.5 Documents To Be Delivered By Purchaser At Closing. At the Closing Purchaser shall deliver or cause to be delivered to Seller directly, or if any party elects through the Escrow, the following with respect to each Property, each of which shall be in form reasonably satisfactory to Seller and (if applicable) the Title Insurer:

(a) The Purchase Price, plus or minus adjustments, credits and pro-rations provided for herein;

(b) Evidence of authorization of Purchaser as to the execution of this Agreement and the purchase of the Property from Seller and the performance of the other acts required hereunder;

(c) Evidence of payment and a lien waiver from any broker whose commission is to be paid by Purchaser under Section 10.2 below.

(d) all other documents required pursuant to other provisions of this Agreement or the Escrow Agreement to be executed and delivered by Purchaser; and

(e) such other instruments and documents as may be reasonably required in order to carry out the purpose of this Agreement.

8.6 Documents to be Jointly Delivered by Seller and Purchaser at Closing. At the Closing Seller and Purchaser shall each execute and deliver, directly, or if any party elects, through the Escrow, the following with respect to each Property, each of which shall be in form reasonably satisfactory to the parties and (if applicable) the Title Insurer:

(a) Applicable transfer tax declarations for the State, the County and any necessary municipal transfer declarations all indicating that this transaction is "exempt" from transfer taxes;

(b) A Closing Statement (in triplicate); and

(c) ALTA Statements as required by the Title Insurer.

(d) such other instruments and documents as may be reasonably required in order to carry out the purpose of this Agreement.

ARTICLE 9 DEFAULTS; REMEDIES

9.1 Purchaser's Default. If the transaction contemplated hereby does not close by reason of a default by Purchaser in any of the terms hereof (as opposed to by reason of failure of any contingency to Purchaser's obligations hereunder), and such default is not cured within five (5) Business Days after written notice of such default is given by Seller to Purchaser, then Seller may, at its sole option and in lieu of any and all other legal and equitable remedies which Seller may have, receive all Earnest Money deposited to the date of such default as liquidated damages, allocable to Seller as set forth in Section 2.3 and Section 3.2 above. Seller and Purchaser acknowledge that actual damages in the event of a default by Purchaser will be difficult to ascertain, and that Seller's receipt of the Earnest Money as liquidated damages represents the parties' best estimate of such damages.

9.2 Seller's Default. If the transaction contemplated hereby does not close by reason of a default by Seller in any of the terms hereof, and such default is not cured within five (5) Business Days after written notice of said default is given by Purchaser to Seller, then Purchaser may: (a) rescind this Agreement and receive all of the Earnest Money and all other sums held on account of the Purchase Price; or (b) pursue against Seller an action for specific performance or other similar relief to enforce this Agreement; or (c) if such default was as a result of Seller's willful or deliberate act, pursue against Seller any other rights or remedies available at law or in equity, including, without limitation, an action for Purchaser's actual costs and damages, all in such order or concurrently as Purchaser may elect.

**ARTICLE 10
MISCELLANEOUS**

10.1 Uniform Risk Act. The Uniform Vendor and Purchaser Risk Act as enacted in the State in which the Property is located shall apply to this transaction.

10.2 Payment of Real Estate Brokers and Consultants. Each party represents to the other that no other real estate broker has been used in connection with this transaction. Purchaser agrees to indemnify, defend and hold Seller harmless from and against any claim for a real estate broker's commission or fee by any other party claiming through Purchaser. Seller agrees to indemnify, defend and hold Purchaser harmless from and against any claim for a real estate broker's commission or fee by any other party claiming through Seller.

10.3 Notices. All notices and other communications which are required to be, or which may be given under this Agreement shall be in writing, and shall be delivered at the addresses set out hereinbelow. Notice may be given by personal delivery, facsimile, recognized overnight courier, or by United States mail in the manner set forth below. Notice shall be deemed to have been duly given (a) if by personal delivery, on the first to occur of the date of actual receipt or refusal of delivery by any person at the intended address, (b) if by facsimile, upon confirmed transmission, (c) if by overnight courier, on the first (1st) Business Day after being delivered to a recognized overnight courier, or (d) if by mail, on the third (3rd) Business Day after being deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller:

Seller: The City of Evanston
2100 Ridge Avenue
Evanston, IL 60201-2796
Attn: City Manager
Phone: 847/866-2936
Fax: 847/448-8083

With a Copy to:

The City of Evanston
2100 Ridge Avenue
Evanston, IL 60201-2796
Attn: Law Department
Phone: 847/866-2937
Fax: 847/448-8093

And to:

The City of Evanston
2100 Ridge Avenue
Evanston, IL 60201-2796
Attn: Director of Community Development

Phone: 847/866-2929
Fax: 847/448-8120

If to Purchaser: Evanston Devco, LLC
200 West Monroe Street
Suite 2200
Chicago, Illinois 60606
Attn: President and Legal Department
Phone: 312/283-4700
Fax: 312/283-4723

With a Copy to: Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
Attn: Ivan P. Kane
Phone: 312/701-7167
Fax: 312/701-7711

or to such other address as either party may from time to time specify as its address for the receipt of notices hereunder, in a notice to the other party.

10.4 Assignment. Purchaser may designate a nominee as the party which will acquire the Property. In such event all instruments, documents and agreements required to be delivered to Purchaser under this Agreement shall be delivered to, and run for the benefit of such nominee. No such designation shall relieve Purchaser of its obligations hereunder. Prior to Closing, Purchaser may not assign or pledge any of its rights under this Agreement without the prior written consent of Seller, except Seller's consent shall not be necessary for an assignment to an entity in which Purchaser or an affiliate has an ownership interest where Purchaser remains liable for all of its obligations under this Agreement. Subject to the foregoing, this Agreement shall be binding upon the undersigned and each of their successors and assigns.

10.5 Intentionally Omitted.

10.6 Entire Agreement; Amendments. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof except as may be set forth in writing executed by both parties contemporaneously with or subsequent to this Agreement. The provisions of this Agreement may not be amended, changed or modified orally, but only by an agreement in writing signed by the party against whom any amendment, change or modification is sought.

10.7 Severability. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and other applications thereof shall not be affected thereby.

10.8 Captions; Number. The captions contained in this Agreement are for the convenience of reference only, and shall not affect the meaning, interpretation or construction of

this Agreement. As used in this Agreement, the singular form shall include the plural and the plural shall include the singular, to the extent that the context renders it appropriate.

10.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

10.10 Governing Law. This Agreement and all rights, obligations and liabilities hereunder shall be governed by, and construed in accordance with, the laws of the State of Illinois.

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

10.12 Survival. All of the respective representations and warranties of Seller and Purchaser hereunder, and all of their respective rights and remedies with respect to the incorrectness or breach thereof, shall survive the Closing Date for a period of one (1) year from the date of Closing.

10.13 Recording. Purchaser at Purchaser's option may record this Agreement or the Memorandum of Real Estate Sale Contract (the "Memorandum") attached hereto as Exhibit F with the Recorder of Deeds at any time after the Land Due Diligence Review Period. Seller shall deliver an executed, acknowledged copy of the Memorandum to Purchaser at the same time as Seller delivers an accepted copy of this Agreement to Purchaser. Purchaser agrees to deliver a recordable release of such Memorandum at any time this Agreement is terminated for any reason other than a Seller's default.

10.14 Waiver. Except as otherwise expressly provided in this Agreement, no waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party whether or not the first party knows such breach at the time it accepts such payment or performance. Except as otherwise expressly provided in this Agreement, no failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

10.15 Business Days. If any date specified in this Agreement for the Closing Date or for commencement or expiration of time periods for termination or approvals or for notice occurs on a day other than a Business Day, then any such date shall be postponed to the following Business Day. As used herein, "Business Day" shall mean any day other than a Saturday, Sunday or a holiday observed by national banks or the Title Insurer.

10.16 Limitation of Purchaser's Liability. Any obligation or liability whatsoever of Purchaser which may arise at any time under this Agreement or any document delivered pursuant to this Agreement shall be satisfied, if at all, out of Purchaser's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had

to, the property of any of its members, or the partners, members, shareholders, trustees, officers, employees or agents of such members on any constituent level, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise. The negative capital account of any interest holder in Purchaser or the obligation of any interest holder in Purchaser to make a capital contribution to Purchaser shall not be deemed to be an asset of Purchaser.

10.17 Intentionally Omitted.

10.18 Effective Date. The "Effective Date" as used in this Agreement shall be the date on which this Agreement is executed and delivered in final form by both parties. The parties shall fill in the Effective Date when that is known.

[signature pages follow]

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

PURCHASER

**EVANSTON DEVCO, LLC,
a Delaware limited liability company**

By: PPF AMLI Devco, LLC, a Delaware limited liability company, its sole member

By: PPF AMLI Development, LLC, a Delaware limited liability company, its manager

By: AMLI Residential Properties, L.P., a Delaware limited partnership, its manager

By: AMLI Residential Partners LLC, a Delaware limited liability company, its general partner

By: _____

Name: _____

Title: _____

Date: _____

SELLER

**THE CITY OF EVANSTON,
an Illinois municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A-1
Legal Description of the Property

Lots 9 and 10 in Block 2 in Kedzie and Keeney's Addition to Evanston, a subdivision of part of the South $\frac{1}{2}$ of the North $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 19, Township 41, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

EXHIBIT A-2

Depiction of the Property, the McKone Property and the McKay Property

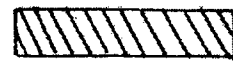
See attached.

EXHIBIT
A-2

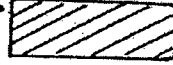
Legend:



= McKone
Property



= McKay
Property



= City Parcel

THE MCKAY GROUP & MORNINGSIDE GROUP
717-735 CHICAGO AVENUE, EVANSTON

EXHIBIT A



EXHIBIT B
Delivery Items

1. Any title insurance policies or commitments (most recent), soils reports, land surveys, topographic surveys, environmental reports, engineering plans or reports, traffic reports, utility studies or other similar physical or development studies of the Property.
2. Any agreements with a governmental authority or an utility provider, including any annexation agreements, impact fee or donation agreements, PD agreements, TIF agreements and recapture agreement.
3. Any ordinances, resolutions, licenses, permits, or other similar documents evidencing a governmental approval or other governmental action specific to the Property, including any planned development (PD) ordinances; ordinances approving or denying concept, tentative, preliminary or final plans; ordinances approving or denying a special use or variance; temporary use permits, or the like.
4. Any agreements with a private party including any leases, service agreements, and recapture agreements.
5. The latest tax bill, special assessment bill (if applicable), and any notice of reassessment received since the latest tax bill.
6. Any notices of violation of any law, regulation or private agreement which remain uncured.

EXHIBIT C
Permitted Exceptions

1. Acts done or suffered to be done by Purchaser.

*[OTHERS TO BE PROVIDED BY PURCHASER
DURING THE LAND DUE DILIGENCE REVIEW PERIOD]*

EXHIBIT D
Right of Reverter

1. The Property is sold to Purchaser with the intent that Purchaser will construct on the Assembled Property a residential apartment community with retail or business uses substantially in accordance with the Planned Development approved by the Seller by the ordinance and any amendments to such Planned Development or to the zoning of the Property which may be approved by Seller from time to time in its municipal capacity (the "Approved Development"). Seller wishes to be assured that such construction will take place in a timely manner so that Seller and the Evanston community realize the benefits that are expected from such construction. Accordingly, Seller and Purchaser agree that Seller will convey the Property subject to the right of reverter set forth in this Exhibit D.
2. Contemporaneously with the execution of the deed from Seller to Purchaser, Purchaser shall execute a quitclaim deed to Seller, transferring title to the Property from Purchaser to Seller for the consideration of one dollar (\$1.00). Said quitclaim deed to Seller shall bear the same date (the "Deed Date") as the special warranty deed from Seller to Purchaser. Seller shall have custody of this quitclaim deed.
3. Purchaser shall substantially commence and diligently pursue construction of the Approved Development not later than three (3) years after the Deed Date.
 - (a) If Purchaser does not abide by the terms of this paragraph 3 above, Seller may exercise its right of reverter by a majority vote of the Aldermen of Seller's City Council in a meeting held after at least ten (10) days prior notice to Purchaser, which vote authorizes the Corporation Counsel to record the quitclaim deed conveying title from Purchaser to Seller and to pay the amount set forth in subparagraph 3(b) below.
 - (b) If Seller records the quitclaim deed pursuant to paragraph 3(a) of this Exhibit D, Seller shall pay Purchaser the sum of EIGHT HUNDRED FIFTY THOUSAND and NO/100 Dollars (\$850,000.00) within ten (10) days of such recordation. Such amount will reimburse the Purchaser for the amount paid to Seller to purchase the Property, minus an amount equal to the Earnest Money (i.e.: \$50,000), which Seller shall retain.
 - (c) If Seller does not exercise this right of reverter by recording said deed by the four (4) year anniversary of the Deed Date, then all of Seller's rights under this Exhibit D shall expire. In addition, if Purchaser satisfies the conditions of the first sentence of paragraph 3, then on request Seller will execute and deliver to Seller a recordable release of Seller's rights under this Exhibit D in form reasonably satisfactory to Purchaser within ten (10) days of such request. If this right of reverter ceases by expiration or by release, Seller will return the quitclaim deed to Purchaser.
4. All conditions set forth in this Exhibit D shall survive the closing.

5. The terms and conditions in this Exhibit D shall run with the land and be binding on heirs and successors in interest. Notwithstanding the following, Seller's rights under this Exhibit D shall be subordinate to the rights of any institutional mortgage lender who provides construction financing for the Approved Development, and Seller will execute any instrument reasonably requested by such lender to confirm such subordination.

EXHIBIT E
Environmental Reports

*[IF ANY, TO BE PROVIDED BY SELLER
DURING THE LAND DUE DILIGENCE REVIEW PERIOD]*

EXHIBIT F
Memorandum of Real Estate Sale Agreement

The undersigned, as Seller, and EVANSTON DEVCO, LLC, a Delaware limited liability company, as Purchaser, herein give notice of the existence of a certain Real Estate Sale Agreement dated _____, 2008 wherein Seller has agreed to convey to Purchaser, or to Purchaser's nominee, title to the real estate described on Rider A attached hereto.

This Memorandum of Real Estate Sale Agreement is dated this ___ day of _____, 2008.

PURCHASER

EVANSTON DEVCO, LLC, a Delaware limited liability company,

By: PPF AMLI Devco, LLC, a Delaware limited liability company, its sole member

By: PPF AMLI Development, LLC, a Delaware limited liability company, its manager

By: AMLI Residential Properties, L.P., a Delaware limited partnership, its manager

By: AMLI Residential Partners LLC, a Delaware limited liability company, its general partner

By: _____
Name: _____
Title: _____

SUBSCRIBED AND SWORN to before me
this ____ day of _____, 2008.

Notary

Date: _____

SELLER

SUBSCRIBED AND SWORN to before me
this ____ day of _____, 2008.

Notary

THE CITY OF EVANSTON, an Illinois municipal corporation

By: _____
Name: _____
Date: _____

EXHIBIT C

Publication Notice

1066- Public Notices**NOTICE OF INTENT TO
SELL CERTAIN
CITY-OWNED
REAL ESTATE INTEREST**

Public Notice is hereby given that on August 11, 2008, at 8:30 P.M., in the City Council Chambers at 2100 Ridge Avenue, The Evanston Civic Center, the Evanston City Council will consider the sale of the City's interest in certain real estate, with the following bounds:

The property is bounded on the north by an auto dealership, on the west by Chicago Avenue, on the south by a commercial shopping center and on the east by the alley located west of Hinman Avenue. The Property Identification Number (PIN) for the property is: 11-19-407-027. The property is located on the 700 Block of Chicago Avenue.

The legal description of the property is as follows:

Lots 9 and 10 in block 2 in Kedzie and Keeney's Addition to Evanston, a subdivision of part of the South 1/2 of the North 1/2 of the Southwest 1/4 of Section 19, Township 41, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Said property is presently vacant and will be used for purposes as set forth in the underlying real estate sales contract, as allowed by the City Zoning Ordinance, but said property shall not be declared tax-exempt.

Published in Pioneer Press
7/24/08 (1607202) N

FIRST AMENDMENT TO AGREEMENT
FOR PURCHASE AND SALE OF REAL ESTATE

This First Amendment to Agreement for Purchase and Sale of Real Estate (this "Amendment") is made and entered into as of the 21 day of June, 2011, by and between THE CITY OF EVANSTON ("Seller"), and EVANSTON DEVCO, LLC, a Delaware limited liability company ("Purchaser").

RECITALS

A. WHEREAS, Seller and Purchaser have previously entered into an Agreement for Purchase of Real Estate dated October 28, 2008 (the "Agreement"), whereby Seller agreed to sell and Purchaser agreed to purchase certain real property described in the Agreement (the "Property");

B. WHEREAS, Pursuant to that certain Ordinance Authorizing an Amendment to the Real Estate Contract for the Sale of City-Owned Real Property, Located in the 700 Block of Chicago Avenue, to Evanston Devco, LLC, 32-O-11, introduced May 9, 2011, Adopted May 23, 2011 and Approved May 26, 2011 (the "Approval"), Seller approved a reduction to the Purchase Price in the Agreement to \$770,085.

C. WHEREAS, as authorized by the Approval, the parties wish to amend the Agreement in the manner set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct and are hereby incorporated in their entirety.

2. Definitions. Capitalized terms used, but not defined, herein, shall have the same meanings herein as given to them in the Agreement.

3. Purchase Price. Section 2.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

"2.1 Purchase Price. The purchase price for the Property to be paid by Purchaser to the Seller shall be SEVEN HUNDRED SEVENTY THOUSAND EIGHTY FIVE and NO/100 Dollars (\$770,085.00) (the "Purchase Price")."

4. Ratifications. Except as specifically herein amended, all terms, provisions, conditions and exhibits contained in the Agreement are hereby confirmed, ratified and restated and shall remain unmodified and in full force and effect. In the event that any provision of this Amendment shall conflict with the terms, provisions, conditions, and exhibits of the Agreement, the terms, provisions, conditions and exhibits of this Amendment shall govern and control.

5. Governing Law. This Amendment shall be a contract made under, governed by and construed in accordance with, the terms of the laws of the State of Illinois.

6. Counterparts. This Amendment may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Amendment.

7. Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8. Captions. Captions used in this Amendment are provided for convenience and reference only and should not be used in construing this Amendment.

REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Amendment as of the day and year first above written.

PURCHASER

**EVANSTON DEVCO, LLC,
a Delaware limited liability company**

By: PPF AMLI Devco, LLC, a Delaware limited liability company, its sole member

By: PPF AMLI Co-Investment, LLC, a Delaware limited liability company, its manager

By: AMLI Residential Properties, L.P., a Delaware limited partnership its managing member

By: AMLI Residential Partners LLC, a Delaware limited liability company, its general partner

By: _____
Name: _____
Title: _____

SELLER

**THE CITY OF EVANSTON,
an Illinois municipal corporation**

By: Wally Bobkiewicz
Name: Wally Bobkiewicz
Title: City Manager

Approved as to form:
W. Grant Ferrar
W. Grant Ferrar
Corporation Counsel

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Amendment as of the day and year first above written.

PURCHASER

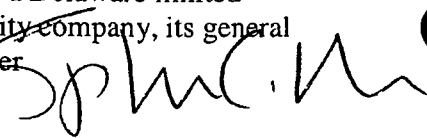
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By: AMLI Residential Properties, L.P., a Delaware limited partnership its managing member

By: AMLI Residential Partners LLC, a Delaware limited liability company, its general partner

By: 
Name: Stephen C. Ross
Title: Authorized Signatory

SELLER

**THE CITY OF EVANSTON,
an Illinois municipal corporation**

By: _____
Name: _____
Title: _____