

76-R-06

A RESOLUTION

**Authorizing the City Manager to
Execute Certain Settlement
Agreement and Mutual Release of
Claims Regarding Litigation Between
Main & Chicago, L.L.C., and Illinois Limited Liability Company (the
"Owner"), Bernard Katz and Associates, an Illinois Corporation (the
"Contract Buyer") and the City of Evanston**

WHEREAS, in 1998, Owner acquired the property commonly known as 518-522 Main Street and 845-849 Chicago Avenue located in the City (the "Property") and is the current Owner thereof; and

WHEREAS, in 2003 and as more particularly set forth in the Appellate Court decision attached hereto as **Exhibit A**, of the attachment marked as the **SETTLEMENT AGREEMENT**, and incorporated herein by reference (the "**Decision**"), litigation arose between the City and the Owner concerning, among other things, the Zoning classification of the Property, and it was held as set forth on page 18 of the Decision, that the Owner has "a vested right in the B-3 zoning classification on the [P]roperty;" and

WHEREAS, in order to resolve certain ambiguities and uncertainties as set forth in the Decision and to provide specific standards for development and construction, the Owner and the Contract Buyer desire to construct a building on the Property in substantial accordance with the list of Development Plans attached hereto as **Exhibit B**, of the attachment marked as the **SETTLEMENT AGREEMENT**, and incorporated herein by reference (the "**Compromise Plans**") which have, among

others, the following development features: (i) a maximum building height of ninety-nine feet (99') to the top of the flat roof (one hundred feet two inches (100'2") to the top of the parapet) and a regulatory building height of approximately seventy-seven feet (77') (versus a maximum building height of feet one hundred twenty-five feet (125') otherwise authorized pursuant to the Decision); (ii) a maximum density of seventy-one (71) market-rate dwelling units (versus a maximum density of seventy-six (76) dwelling units otherwise authorized pursuant to the Decision); (iii) the implementation of specific elevations and materials (whereas no architectural guidelines are part of the Decision); and (iv) an overall maximum floor area ratio for the Property of approximately 3.51 in order to construct larger and more desirable dwelling units without increasing the maximum permitted density on the Property (versus a maximum FAR of 3.0 otherwise authorized pursuant to the Decision) (collectively, the "**Project**") (the Compromise Plans are attached hereto as **Exhibit B-1**, of the attachment marked as the **SETTLEMENT AGREEMENT**, and incorporated herein by reference); and

WHEREAS, the Planning and Development Committee of the City Council (the "**Committee**"), at its November 27, 2006 and December 11, 2006 meetings, after providing written notice to all property owners within one thousand two hundred feet (1,200') of the Property, conducted a public hearing and received testimony and other evidence with respect to this Agreement, including the Compromise Plans, made a *verbatim* record and recommended to the City Council that it is in the best interests of the City to approve this Agreement, including the Compromise Plans; and

WHEREAS, the City Council considered the record and recommendations of the Planning and Development Committee at its December 11, 2006 meeting and adopted the respective records and recommendations at its December 11, 2006 meeting; and

WHEREAS, the parties have now agreed to settle and terminate the litigation with prejudice; and

WHEREAS, Owner and Contract Buyer have proposed a Settlement Agreement and Mutual Release of Claims, and has tendered a signed and executed copy of said Settlement Agreement and Mutual Release of Claims which is attached to this Resolution as **Exhibit C**; and

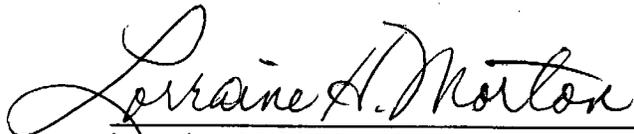
WHEREAS, it is desirable and in the best interest of the citizens of the City of Evanston to enter into the Settlement Agreement and Mutual Release of Claims and put an end to litigation between the parties;

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

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, a Settlement Agreement between the City of Evanston and Main & Chicago, L.L.C. and Bernard Katz & Associates, Inc. Such Agreement shall be in substantial conformity with the document marked as the **SETTLEMENT AGREEMENT** attached hereto and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the said **SETTLEMENT AGREEMENT** as determined to be in the best interests of the City.

SECTION 3: That this Resolution 76-R-06 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.



Lorraine H. Morton, Mayor

Attest:



Mary P. Morris, City Clerk

Adopted: December 11, 2006