

**19-R-10**

**A RESOLUTION**

**Authorizing the City Manger to Execute a Letter of Agreement with Robert L. Canel for the Sale of Real Estate Transfer Tax Stamps and the Issuance of Real Estate Transfer Tax Exemptions**

**WHEREAS**, the ability to sell City of Evanston real estate transfer tax stamps and issue real estate transfer tax exemptions provided for by Title 3, Chapter 29 of the Evanston City Code of 1979, as amended, in downtown Chicago would be a service to the numerous property sellers and buyers who would find it convenient to purchase such stamps and obtain such exemptions there; and

**WHEREAS**, Robert L. Canel has offered to sell City of Evanston real estate transfer tax stamps and issue real estate transfer tax exemptions at his office located in downtown Chicago; and

**WHEREAS**, Robert L. Canel has represented to the City that he is experienced in the sale of real estate transfer tax stamps and the issuance of real estate transfer tax exemptions; and

**WHEREAS**, an Agreement with Robert L. Canel providing for the sale of City of Evanston real estate transfer tax stamps and the issuance of real estate transfer tax exemptions is in the best interests of the citizens of Evanston;


**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 is hereby authorized and directed to attest on behalf of the City

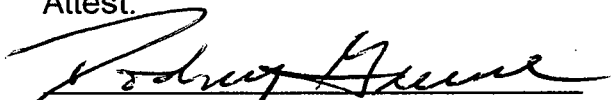
of Evanston, a Letter of Agreement between the City of Evanston and Robert L. Canel for the sale of City of Evanston real estate transfer tax stamps and the issuance of real estate transfer tax exemptions, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

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

**SECTION 3:** That this Resolution 19-R-10 shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: March 8, 2010

Exhibit A

**Letter of Agreement between the  
City of Evanston and Robert L. Canel**

February 17, 2010

**Letter of Agreement between the  
City of Evanston and Robert L. Canel for the  
Sale of Real Estate Transfer Stamps and the  
Issuance of Real Estate Transfer Tax Exemptions**

**THIS AGREEMENT** is entered into this 9<sup>th</sup> day of March, 2010, by and between the City of Evanston, an Illinois municipal corporation (the "City"), located at 2100 Ridge Avenue, Evanston, Illinois, and Robert L. Canel ("Canel"), an individual; and

**WHEREAS**, the City of Evanston has found it desirable to be able to sell its real estate transfer tax stamps and to issue real estate transfer tax exemptions at a location in downtown Chicago; and

**WHEREAS**, Robert L. Canel has offered to sell City of Evanston real estate transfer tax stamps and issue real estate transfer tax exemptions at his office in downtown Chicago; and

**WHEREAS**, Robert L. Canel has represented to the City of Evanston that he is experienced in selling real estate transfer tax stamps and issuing real estate transfer tax exemptions; and

**WHEREAS**, the City Council of the City of Evanston has authorized the City Manager to execute this Letter of Agreement by Resolution 19-R-10,

**NOW, THEREFORE**, the City of Evanston and Robert L. Canel agree as follows:

1. The foregoing recitals are found as fact and made a part hereof.
2. That transactions for the sale of City of Evanston real estate transfer tax stamps and the issuance of City of Evanston real estate transfer tax exemptions shall be conducted at Canel's office located at Stewart Title Company, 2 North LaSalle Street, Suite 1400, Chicago, Illinois 60602, during regular office hours, 9:00 a.m. to 4:00 p.m.

3. That the City will provide Canel with its real estate transfer tax stamps and other articles required for the issuance of said stamps and exemptions. Canel will maintain all such articles in a secure location and will allow no one else to use them. Canel will return all such articles to the City Clerk promptly upon termination of this Agreement for any reason and as a condition to City payout of his final compensation.

4. That Canel shall be compensated at the rate of fifteen dollars (\$15.00) per transaction involving the issuance of City of Evanston real estate transfer tax stamps or exemptions. The City will pay Canel on a monthly basis by check issued within five (5) days after City Council approval of each payment application submitted by Canel.

5. That the City Clerk will provide Canel with training in the issuance of City of Evanston real estate transfer tax stamps and exemptions. Canel will issue said stamps and exemptions in accordance with Title 3, Chapter 29 of the Evanston City Code of 1979, as amended, attached hereto as Exhibit #1 and incorporated herein by reference.

6. That Canel shall accept no cash from real estate transfer tax applicants. All payments therefor must be by check or money order made payable to the "City of Evanston".

7. That Canel shall transmit all real estate transfer tax funds, applications, and related information to the City Clerk, no less often than once each week, by reliable delivery service at the City's expense. The City Clerk and Canel shall agree on a schedule for such transmissions, which they may modify.

8. The City will indemnify Canel, his successors and heirs, for any loss or damage to Canel and the Stewart Title Company and Canel arising out of or in connection with the grant of this Agreement. The City will not indemnify Canel or the Stewart Title Company and Canel for any wrongful or negligent acts of Canel, their officers, agents, or employees.

9. That the parties agree to a trial period of ninety (90) days, beginning on March 9, 2010. If neither party terminates this Agreement by giving five (5) business days notice thereof, in writing, effective no later than June 1, 2010, said Agreement shall remain in force until terminated as provided for herein.

10. That this Agreement may be terminated by either party upon a written notice forty-five (45) days prior to said termination provided, however, that either may terminate this Agreement upon five (5) days' written notice in the event of material breach or for Canel's inability to perform under this Letter of Agreement.

11. That the City, at its cost, shall obtain a bond to secure the faithful performance of his duties under this Agreement in the amount of twenty-five thousand dollars (\$25,000.00). Said bond shall be in form and content satisfactory to the City, and with a surety acceptable to the City. The City shall audit Canel's records made and practices and procedures conducted or required to be made or conducted pursuant to this Agreement no less often than once each year throughout its term. The City may conduct such an audit more frequently than annually if circumstances require or the surety so demands. Canel shall cooperate fully with the City in all audits. His failure to do so is a material breach of this Agreement for which the City may invoke the five (5) day termination period provided for in paragraph 10 above.

12. That Canel shall have the status of independent contactor and not that of an agent or employee of the City of Evanston.

13. That this Agreement is non-assignable.

14. That, except as stated in paragraph 7 above, this Agreement may be modified only by an instrument of like formality.

15. That this Letter of Agreement was made in the City of Evanston, County of Cook, State of Illinois. In the event of litigation between the parties, venue shall be within Cook County.

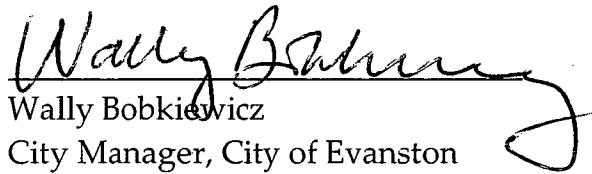
16. Notice required or given under this Agreement shall be in writing and sent by first-class mail, proper postage prepaid as indicated below:

*to the City:* City Clerk  
City Clerk's Office  
Morton Civic Center  
2100 Ridge Avenue  
Evanston, Illinois 60201

*with a copy to:* City Attorney  
Law Department  
Morton Civic Center  
2100 Ridge Avenue  
Evanston, Illinois 60201

*and to:* Mr. Robert L. Canel  
Stewart Title Company  
2 North LaSalle Street, Suite 1400  
Chicago, Illinois 60602

*(Signature page follows)*

  
Wally Bobkiewicz  
City Manager, City of Evanston

March 9, 2010

  
Robert L. Canel

MARCH 9, 2010

*Exhibit #1*

**Title 3, Chapter 29 of the Evanston City Code of 1979, as amended**

## CHAPTER 29

**REAL ESTATE TRANSFER TAX**

## SECTION:

- 3-29- 1: Definitions
- 3-29- 2: Imposition Of Tax
- 3-29- 3: Primary Liability For Tax
- 3-29- 4: Declaration Forms
- 3-29- 5: Deeds
- 3-29- 6: Exempt Transactions
- 3-29- 7: Exemptions
- 3-29- 8: Revenue Stamps Required
- 3-29- 8-1: Exempt Transaction Charge
- 3-29- 9: Real Estate Transfer Declaration; Filing
- 3-29-10: Transfer In Trust
- 3-29-11: Lien Created; Enforcement
- 3-29-12: Enforcement; Suit For Collection
- 3-29-13: Interest And Penalties
- 3-29-14: Proceeds Of Tax
- 3-29-15: Penalty For Violation
- 3-29-16: Effective Date
- 3-29-17: Severability
- 3-29-18: Payment Of Delinquent Water And Sewer Charges
- 3-29-19: Payment Of Obligations

3-29-1: **DEFINITIONS:****PERSON:**

Any natural person, receiver, administrator, executor, conservator, assignee, trust in perpetuity, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Illinois, domestic or foreign corporation, association, syndicate, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof. Whenever the term "person" is used in any

clause prescribing and imposing a penalty, the term as applied to associations shall mean the owners or part owners thereof, and as applied to corporations, the officers thereof.

**RECORDATION:** The recording of deeds with the office of the recorder of deeds or the registration of deeds with the registrar of titles of Cook County, Illinois.

**VALUE:** The amount of the full actual consideration for any transfer covered hereunder, including the amount of any mortgage or other lien assumed by the grantee or purchaser. (Ord. 33-0-86)

**3-29-2: IMPOSITION OF TAX:** A tax is imposed on the transfer of title to real property located in the city as evidenced by the recordation of a deed by any person or by the delivery of any deed or assignment of interest of said real property, made after May 1, 1986, whether investing the owner with the beneficial interest in or legal title to said property or merely the possession or use thereof for any purpose or to secure future payment of money or the future transfer of any such real property.

(A) The tax imposed shall be five dollars (\$5.00) for every one thousand dollar (\$1,000.00) value or fraction thereof as stated in the declaration.

(B) The term "deed" as used in this section shall mean all documents transferring or reflecting the transfer of legal title, equitable title, or both legal and equitable title to real property, or the beneficial interest in a land trust. Delivery of any deed shall be deemed to have occurred when the transferee or purchaser, or his representative or agent, receives possession of the deed or in the case of a land trust when the trustee receives possession of a valid assignment of a beneficial interest. (Ord. 120-0-91)

**3-29-3: PRIMARY LIABILITY FOR TAX:** The primary liability for payment of said tax shall be borne by the grantor or seller involved in any such transaction unless otherwise negotiated by contract; provided, however, it shall be unlawful for the grantee or purchaser to accept a conveyance if the transfer tax has not been paid. If the tax has not been paid and the stamps affixed to the deed, then the grantee's title shall be subject to the lien provided in section 3-29-11 of this chapter and the grantee or purchaser shall be liable for payment of the tax. The tax herein levied shall be in addition to any and all other taxes. (Ord. 33-0-86)

3-29-4: **DECLARATION FORMS:** At the time the tax is paid, or an exemption applied for, there shall also be presented to the director of finance or his designee, on a form prescribed by him, a declaration signed by at least one of the sellers or grantors and also signed by at least one of the purchasers or grantees involved in the transaction, or by their attorneys or agents, or by a licensed real estate salesperson or broker having knowledge of the terms of the transaction, which declaration shall state the full consideration for the property so transferred and shall be deemed a confidential record by the city clerk. Where the declaration is signed by an attorney, agent, licensed real estate salesperson or broker, on behalf of sellers or buyers who have the power of direction to deal with the title to the real estate under a land trust agreement, the trustees being the mere repository of record legal title with a duty of conveying the real estate only when and if directed in writing by the beneficiary or beneficiaries having the power of direction, said attorney, agent, licensed real estate salesperson, or broker need only identify the land trust which is the repository of record legal title and not the beneficiary or beneficiaries having the power of direction under the land trust agreement. (Ord. 33-0-86)

3-29-5: **DEEDS:** Every deed shall show the date of the transaction which it evidences, the names of the grantor and grantee, and a legal description of the property to which it relates. (Ord. 33-0-86)

3-29-6: **EXEMPT TRANSACTIONS:** The tax imposed by this chapter shall not apply to the following transactions, provided said transaction in each case is accompanied by a certificate setting forth the facts or such other certificate of record or sworn statement as the director of finance may require at the time of filing of the declaration form:

- (A) Transactions involving property acquired by or from any governmental body;
- (B) Transactions in which the deeds secure debt or other obligations;
- (C) Transactions in which the deeds, without additional consideration, confirm, correct, modify or supplement deeds previously recorded;
- (D) Transactions in which the actual consideration covering the sale of any owner occupied residential unit is less than fifty thousand dollars (\$50,000.00) and the seller qualifies under section 8 housing assistance payment program income guidelines of the U.S. housing act of 1937, as amended from time to time;
- (E) Transactions in which the actual consideration is less than five hundred dollars (\$500.00);

- (F) Transactions in which the deeds are tax deeds;
- (G) Transactions in which the deeds are releases of property which is security for a debt or other obligation;
- (H) Transactions in which the deeds are pursuant to a court decree;
- (I) Transactions made pursuant to mergers, consolidations, or transfers or sales of substantially all of the assets of a corporation pursuant to plans of reorganization;
- (J) Transactions between subsidiary corporations and their parents for no consideration other than the cancellation or surrender of the subsidiary corporation's stock;
- (K) Transactions representing transfers subject to the imposition of a documentary stamp tax imposed by the government of the United States; and
- (L) A transfer by lease. (Ord. 119-0-05)

3-29-7: **EXEMPTIONS:** The taxes imposed by this chapter shall not be imposed on or transferred by an executor or administrator to a legatee, heir or distributee where the transfer is being made pursuant to will or by intestacy. The tax imposed by this chapter shall further be exempt where the transaction is effected by operation of law or upon delivery or transfer in the following instances, provided, however, that a declaration form is filed:

- (A) From a decedent to his executor or administrator;
- (B) From a minor to his guardian or from a guardian to his ward upon attaining majority;
- (C) From an incompetent to his conservator, or similar legal representative, or from a conservator or similar legal representative to a former incompetent upon removal or disability;
- (D) From a bank, trust company, financial institution, insurance company or other similar entity, or nominee, custodian, or trustee therefor, to a public officer or commission, or person designated by such officer or commission or by a court, in the taking over of its assets, in whole or in part, under state or federal law regulating or supervising such institutions, nor upon redelivery or retransfer by any such transferee or successor thereto;

- (E) From a bankrupt or person in receivership due to insolvency to the trustee in bankruptcy or receiver, from such receiver to such trustee or from such trustee to such receiver, nor upon redelivery or retransfer by any such transferee or successor thereto;
- (F) From a transferee under subsections (A) through (E) of this section, to his successor acting in the same capacity, or from one such successor to another;
- (G) From a foreign country or national thereof to the United States or any agency thereof, or to the government of any foreign country directed pursuant to the authority vested in the president of the United States by section 5(b) of the trading with the enemy act<sup>1</sup>, as amended, by the first war powers act<sup>2</sup>;
- (H) From trustees to surviving, substitute, succeeding or additional trustees of the same trust;
- (I) Upon the death of a joint tenant or tenant by the entirety to the survivor or survivors. (Ord. 33-0-86)

3-29-8: **REVENUE STAMPS REQUIRED:** The tax herein levied and imposed shall be collected by the director of finance or his designee for the city through the sale of revenue stamps, which shall be caused to be prepared by said director of finance in such quantities and denominations as said director of finance may from time to time prescribe. Such revenue stamps shall be available for sale at and during the regular business hours of the city offices or at other locations designated by the director of finance. Upon payment of the tax herein levied and imposed, the revenue stamps so purchased shall be affixed to the deed or other instrument of conveyance. Any person so using and affixing a revenue stamp or stamps shall cancel it and so deface it as to render it unfit for use by marking it with his initials and the day, month and year when the affixing occurs. Such markings shall be made by writing or stamping in indelible ink or by perforating with a machine or punch. However, the revenue stamp(s) shall not be so defaced as to prevent ready determination of its denomination and genuineness. (Ord. 11-0-87, eff. 4-1-1987)

3-29-8-1: **EXEMPT TRANSACTION CHARGE:** An exempt stamp shall be required for all real estate transfers which are exempt pursuant to sections 3-29-6 and 3-29-7 of this chapter. There shall be a one hundred dollar (\$100.00) administrative charge for any exempt transaction enumerated in said sections 3-29-6 and 3-29-7 of this chapter. The property owner shall be responsible for payment of said charge. (Ord. 39-0-06)

1. 40 Stat. 415.

2. 55 Stat. 839.

3-29-9:       **REAL ESTATE TRANSFER DECLARATION; FILING:** A signed copy of the real estate transfer declaration filed pursuant to section 3 of the real estate transfer act of the state shall be filed with the city clerk by the grantee of any deed or assignee of beneficial interest within ten (10) days after delivery of the deed or assignment of beneficial interest, or at the time of payment of the tax herein levied or imposed, whichever first occurs. (Ord. 33-0-86)

3-29-10:       **TRANSFER IN TRUST:** No trustee of real estate shall accept or acknowledge an assignment of beneficial interest in real estate located in the city without first obtaining a real estate transfer declaration from the assignor and assignee and unless revenue stamps in the required amount, as set forth in this chapter, have been affixed to the assignment. (Ord. 33-0-86)

3-29-11:       **LIEN CREATED; ENFORCEMENT:** In the event a deed is filed for recordation or there is an assignment of beneficial interest conveying real estate within the corporate limits of the city without the revenue stamps provided by this chapter, a lien is declared against said real estate conveyed in the amount of the tax. The fact that the deed or assignment does not contain an Evanston revenue stamp in an amount equal to five (5) times the amount of state transfer taxes shall constitute constructive notice of lien. The lien may be enforced by proceedings to foreclose, as in cases of mortgages or mechanic's liens. Suit to foreclose this lien must be commenced within three (3) years after the date of recording the deed. Nothing herein shall be construed as preventing the city from bringing a civil action to collect the tax imposed by this chapter from any person who has the ultimate liability for payment of the same, including interest and penalties as hereinbelow provided. (Ord. 33-0-86)

3-29-12:       **ENFORCEMENT; SUIT FOR COLLECTION:** Whenever any person shall fail to pay any taxes herein provided, or any purchaser or grantee shall accept a conveyance where the tax has not been paid, the city's corporation counsel shall, upon request of the city manager, bring or cause to be brought an action to enforce the payment of said tax, including interest and penalties as hereinbelow provided, on behalf of the city in any court of competent jurisdiction. (Ord. 33-0-86)

3-29-13:       **INTEREST AND PENALTIES:** In the event of failure by any person to collect and pay to the director of finance the tax required hereunder when the same shall be due, interest shall accumulate and be due upon said tax at the rate of one percent (1%) per month commencing as of the first day following the day when the tax becomes

due. In addition, a penalty of ten percent (10%) of the tax and interest due shall be assessed and collected against any person who shall fail to pay the tax imposed by this chapter. (Ord. 33-0-86)

3-29-14:     **PROCEEDS OF TAX:** All proceeds resulting from the imposition of the tax under this chapter, including interest and penalties, shall be paid to the city and shall be credited to and deposited in the general fund of the city. (Ord. 33-0-86)

3-29-15:     **PENALTY FOR VIOLATION:** In addition to the remaining provisions of this chapter, any person found guilty in a court of competent jurisdiction of violating, disobeying, omitting, neglecting or refusing to comply with or resisting or opposing the enforcement of any provision of this chapter, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00). (Ord. 33-0-86)

3-29-16:     **EFFECTIVE DATE:** These provisions shall be in full force and effect from May 1, 1986, provided, however, that these provisions shall not apply to contracts for the transfer of title to real property executed prior to April 1, 1986. (Ord. 33-0-86)

3-29-17:     **SEVERABILITY:** If any provision, clause, sentence, paragraph, section or part of this chapter, or application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent of the city council that this chapter would have been adopted had such unconstitutional or invalid provisions, clause, sentence, paragraph, section or part thereof not been included. (Ord. 33-0-86)

3-29-18:     **PAYMENT OF DELINQUENT WATER AND SEWER CHARGES:** The director of finance shall issue no transfer tax stamps unless the city collector verifies that any delinquent water and sewer assessments and penalties related thereto are paid in full, and unless the declaration form contains information necessary for the billing and collection of the final water and sewer assessment charges. (Ord. 33-0-86)

3-29-19

3-29-19

3-29-19:     **PAYMENT OF OBLIGATIONS:** The director of finance shall issue no transfer tax stamps unless the city collector verifies that there are no unpaid judgments in favor of the city, water bills, liens, or other sums due and owing to the city. (Ord. 58-0-09)