

8/7/2017

70-R-17

A RESOLUTION

Authorizing the City Manager to Execute a Development and Affordable Housing Agreement for the Construction of a Residential Home at 2005 Grey Avenue

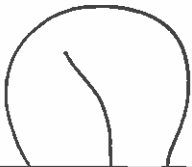
NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The City Manager is hereby authorized to execute the Development and Affordable Housing Agreement attached hereto as Exhibit 1 and incorporated herein by reference, by and among the City, Evanston Township High School District No. 202, and Community Partners for Affordable Housing for a collaborative project to construct a residential home on ETHS property and then the home will be placed on the vacant lot at 2005 Grey Avenue.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as he may determine to be in the best interests of the City.

SECTION 3: This resolution 70-R-17 shall be in full force and effect from and after its passage and approval in the manner provided by law.

Attest:



Devon Reid, City Clerk


Stephen H. Hagerty, Mayor

Adopted: _____

7 September 11th, 2017

EXHIBIT 1

**Development and Affordable Housing Agreement by and among the Evanston
Township High School District No. 202, Community Partners for Affordable
Housing and the City of Evanston**

DEVELOPMENT AND AFFORDABLE HOUSING AGREEMENT

THIS DEVELOPMENT AND AFFORDABLE HOUSING AGREEMENT (the “Agreement”) is between the BOARD OF EDUCATION OF EVANSTON TOWNSHIP HIGH SCHOOL DISTRICT NO. 202, Cook County, Illinois (“ETHS”), the CITY OF EVANSTON, an Illinois municipal corporation and home rule unit as described in the Illinois Constitution (the “City”), and COMMUNITY PARTNERS FOR AFFORDABLE HOUSING, an Illinois not-for-profit corporation (“CPAH”). Collectively ETHS, City, and CPAH are referred to as the “Parties”.

WITNESSETH

WHEREAS, the City of Evanston purchased certain real property commonly known as 2005 Grey Avenue, Evanston, Illinois, to support the City’s affordable housing goals and utilized the Evanston Affordable Housing Fund to buy the property (the “Subject Property”); attached as Exhibit 1 is the legal description of the Subject Property; and

WHEREAS, CPAH is a non-profit corporation devoted to providing affordable housing in communities in the northern suburbs of Chicago and seeks to aid the City in achieving its goals and objectives; and

WHEREAS, ETHS offers to its students a class known as ‘Geometry in Construction’ which seeks to explore alternative channels and methods for educating students outside of a traditional classroom setting on various subject matters such as design, mathematics, technical, and construction related subjects; and

WHEREAS, the City, ETHS, and CPAH desire to enter into this Agreement to memorialize an agreement between the Parties for the construction of a single-family home by ETHS students and staff, to be placed on the Subject Property post-construction (the “Project”), which will be available as affordable housing to qualified individuals; and

WHEREAS, the Parties wish to associate, cooperate, and enter into a development agreement to define the rights and responsibilities regarding the Project; and

WHEREAS, this Agreement shall be executed in addition and shall have no effect upon any other mutual aid agreements or other agreements between the Parties;

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants and undertakings hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, it is agreed between the Parties, as follows:

Section 1. Recitals. The Parties have relied upon the recitals first written above, and they are hereby incorporated into this Agreement by reference.

Section 2. General Requirements.

A. **Administration of Agreement.** The City Manager, or the City Manager's designee, shall administer this Agreement on behalf of the City, the ETHS Superintendent, or Superintendent's designee, shall administer this Agreement on behalf of ETHS, and CPAH's Executive Director, or the Executive Director's designee, shall administer this Agreement on behalf of CPAH.

B. **Costs.** The Parties acknowledge that each Party shall bear their own costs and expenses incurred to comply with the terms of this Agreement and performance obligations for the Project. The Parties shall bear their own attorneys' fees and costs for all dispute resolution and/or litigation except when indemnified under paragraph E of this Section.

C. **Supplementary Documents.** The Parties agree to cooperate fully, to execute all supplementary documents, and to take all additional actions which are consistent with and which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

D. **Default.** In the event of any substantive breach of the terms and conditions of this Agreement, the aggrieved Party shall notify the Party alleged to be in breach of the nature of the breach (and provide a copy of such notice to all other Parties hereunder). The Party alleged to be in breach shall have 15 days to cure the breach; if the nature of the breach is such that a cure cannot reasonably be effected within 15 days, the Party alleged to be in breach shall not be held in default so long as it commences a cure in the 15-day period and diligently pursues completion of the breach. Upon default of this Agreement, the non-defaulting Party shall have all legal and equitable remedies arising from the breach.

E. **Indemnification.**

1. **ETHS Indemnification.** To the extent authorized by the laws of the State of Illinois, ETHS shall indemnify and hold the City and CPAH harmless against all claims, demands, damages, liabilities, and costs incurred by the City and CPAH which resulted from any negligent act or omission of ETHS, its employees, or agents pertaining to its activities and obligations under this Agreement.

2. **City Indemnification.** To the extent authorized by the laws of the State of Illinois, the City shall indemnify and hold ETHS and CPAH harmless against all claims, demands, damages, liabilities, and costs incurred by ETHS and CPAH which resulted from any negligent act or omission of the City, its employees, or agents pertaining to its activities and obligations under this Agreement.

3. **CPAH Indemnification.** To the extent authorized by the laws of the State of Illinois, CPAH shall indemnify and hold ETHS and the City harmless against all claims, demands, damages, liabilities and costs incurred by ETHS and the City which resulted from any negligent act or omission of CPAH, its employees, or agents pertaining to its activities and obligations under this Agreement.

Section 3. ETHS Role and Responsibilities.

A. **ETHS to Construct Project Home.** ETHS students and staff members shall construct a two-story single-family home that is approximately 1,200 – 1,500 square feet in size (the “Project Home”). All aspects of the construction will be coordinated and supervised by ETHS, including installation of all improvements and fixtures in compliance with all applicable codes and regulations. ETHS shall coordinate and perform all aspects of the construction in an efficient, workmanlike, and safe manner in compliance with all federal, state, and local laws and regulations. The Project’s primary structure will be constructed on ETHS property (1600 Dodge Avenue, Evanston, Illinois).

B. **Relocation of Project Home and Duration of Construction.** After the home has been constructed at the ETHS school, ETHS will arrange to move the home to the Subject Property to an appropriate foundation where the mechanical systems, including electrical, plumbing and HVAC, as well as interior and exterior finishing will be completed by subcontractors hired by ETHS. Subject to Force Majeure, ETHS shall use due diligence and commercially reasonable efforts to ensure completion and receipt of a Temporary Certificate of Occupancy by November, 2018.

C. **Permits.** ETHS shall be responsible for obtaining all building and occupancy permits for the Project and for the Project Home to enable it to be occupied on the Subject Property.

D. **ETHS Costs.** All costs for the construction of the Project Home and its placement on the Subject Property will be borne by ETHS, including but not limited to construction materials, permit fees, labor costs, and removal expenses from the School District Property to the Subject Property and including landscaping and site improvements on the Subject Property.

E. **Insurance.** During the term of this Agreement, ETHS, at its sole cost and expense, and for the benefit of the City and CPAH, shall carry and maintain comprehensive general liability and property damage insurance, insuring against all liability of ETHS arising out of its involvement in constructing and relocating the Project Home, with a minimum combined single limit of Two Million (\$2,000,000.00) dollars per occurrence. In addition, ETHS shall keep and maintain Workers’ Compensation Insurance covering all costs, statutory benefits, and liabilities under State Workers’ Compensation and similar laws for ETHS’ respective employees. The comprehensive general liability and property damage insurance policy shall name the City, CPAH, and their respective Boards, Board members, employees, agents, and successors as an additional insured. ETHS shall provide the City and CPAH with certificates of insurance evidencing the existence of the coverage described above, including form and deductibles. ETHS’ obligation to provide insurance under this Agreement and name the City and CPAH as an additional insured shall terminate upon CPAH’s transfer of title of the Subject Property in accordance with Section 5.B of this Agreement.

F. **ETHS to Obtain Title to Subject Property.** Prior to ETHS undertaking any work or construction on the Subject Property or moving the Project Home to the Subject Property, ETHS will acquire title to the Subject Property and the City will issue a special warranty deed

conveying the Subject Property to ETHS for \$1.00 and the parties will execute all necessary conveyance and assumption documents, including the sale contract and title company transfer documents.

G. ETHS to Transfer Title to Maintain Affordability Restrictions. After the installation of the Project Home and the issuance of a certificate of occupancy for the Project Home, ETHS shall donate the Subject Property at no cost to CPAH. The conveyance from ETHS shall be by a special warranty deed conveying fee simple title to the Subject Property. At the closing, ETHS shall deliver all necessary closing documents to allow for the transfer of the title to the Subject Property to CPAH and then, immediately thereafter, an income qualified buyer and to enable the title company to issue a title policy that shows the new buyer as the owner of the Subject Property. ETHS shall pay all closing expenses. The closing shall occur no later than December 31, 2018.

Section 4. City Role and Responsibilities.

A. City Inspection. City staff members will inspect the Project during construction and the finished Project Home prior to its removal from the ETHS property to ensure compliance with all applicable codes and regulations.

B. Affordability Control. CPAH is responsible for ensuring that the Subject Property is affordable. CPAH's responsibility is to ensure that ETHS (a) donates the Subject Property to CPAH; and then (b) the Subject Property is sold to a buyer whose household income does not exceed 120% of the area median income at the time of purchase that will own the property as their primary residence. Area Median Income means the maximum income limit set by the Chicago-Joliet-Naperville, Illinois HUD Metro FMR Area, which is based on household size as determined annually by the United States Department of Housing and Urban Development. Preference will be given to buyers that are employees of ETHS or City of Evanston. Affordability will be maintained by CPAH through a 99-year renewable ground lease that will be recorded. When the property is re-sold, the income of the household purchasing it shall not exceed 120% of the area median income at the time of purchase and a new 99-year ground lease will be recorded at the time of sale.

Section 5. CPAH Role and Responsibilities.

A. Obligation to accept Donation of the Subject Property. After ETHS acquires the Subject Property, CPAH is obligated to accept the donation of and take title to the Subject Property. CPAH must take title to the Subject Property within 90 days after the Final Certificate of Occupancy is issued.

B. Declaration of Covenants, Conditions, and Restrictions. After the Subject Property is donated to CPAH, CPAH will record a declaration of covenants, conditions and restriction's applicable to the Subject Property in substantially the form attached as Exhibit 2 to this Agreement (the "Deed Restrictions"). CPAH will then sell the Subject Property subject to the terms of the Deed Restrictions to provide opportunities for low, moderate, and middle income persons and families to secure housing. All the agreements, covenants, rights, and

restrictions set forth in these Deed Restrictions shall run with the Property and shall be binding upon each Owner, and all heirs, successors and assigns, for the benefit of, and enforceable by CPAH and its successors and assigns for the maximum duration permitted by law.

C. Sale of Subject Property by CPAH. CPAH shall take all necessary actions to sell the Subject Property. CPAH shall be responsible for maintaining the affordability of the Subject Property and shall limit the sale of the Subject Property to households whose incomes do not exceed 120% of the Area Median Income, as determined annually by the U.S Department of Housing and Urban Development, adjusted for family size.

D. Donation of Sale Proceeds to ETHS. Within 14 days after CPAH's receipt of the proceeds from the sale of the Subject Property, CPAH will donate all proceeds from the sale of the Subject Property to ETHS minus any costs incurred by CPAH and approved by ETHS in writing. The donation funds shall be used exclusively for the next ETHS home build project.

Section 6. Miscellaneous.

A. Notices. All notices required to be given hereunder shall be in writing and shall be properly served on the date delivered by courier or on the date deposited, postage prepaid, with the U. S. Postal Service for delivery *via* certified mail, return receipt requested, addressed:

If to City:

Wally Bobkiewicz
City Manager
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

Sarah Flax
Housing & Grants
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

W. Grant Farrar
Corporation Counsel
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

If to ETHS:

Dr. Eric Witherspoon
Superintendent
1600 Dodge Avenue
Evanston, IL 60201

Mary Rodino
Chief Financial Officer
1600 Dodge Avenue
Evanston, IL 60201

Brian Crowley
Franczek Radelet
300 South Wacker, Ste. 3400
Chicago, IL 60606

If to CPAH:

Kim Ulbrich
Executive Director
400 Central Avenue #111
Highland Park, IL 60035

Karen A. Lamont
Attorney
1824 Stewart Avenue
Park Ridge, IL 60068

B. Binding Agreement. This Agreement shall be binding on and shall inure to the benefit of the Parties, their respective successors, and assigns.

Execution Copy

C. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by the Parties to this Agreement.

D. Governing Laws. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

E. Authority to Execute. The Parties warrant and represent that the persons executing this Agreement on their behalf have been properly authorized to do so.

F. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each provision of this Agreement shall be construed as though all Parties participated equally in the drafting of this Agreement. Because of the foregoing, any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

G. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

H. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the Parties.

I. Entire Agreement. It is understood and agreed that all understandings and agreements between the Parties are merged in this Agreement and no Party is relying upon any statement or representation not embodied in this Agreement. Each Party expressly acknowledges that, except as expressly provided in this Agreement, the other Parties and the agents and representatives of the other Parties have not made, and the other Parties are not liable for or bound in any manner by, any express or implied warranties, guaranties, promises, statements, inducements, representations, or information pertaining to the transaction contemplated hereby.

J. Assignment. This Agreement cannot be assigned by any Party without the written consent of the other Parties and should any assignment be made by one Party without the written consent of the other Parties, such assignment will be null and void.

K. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, federal, State, or ETHS holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, federal, State, or ETHS holiday.

L. Exhibits. Exhibits 1 and 2 are incorporated into and made part of this Agreement.

M. Captions. The captions at the beginning of the several sections, respectively, are for convenience in locating the contents, but are not part of the context.

N. Counterpart Signatures. For the convenience of the Parties, this Agreement may be executed in similar counterparts, each counterpart shall be deemed an original instrument, and such counterparts taken together shall constitute one and the same.

O. Effective Date. The Agreement shall be deemed dated and become effective on the date the last of the Parties signs as set forth below the signature of their duly authorized representatives.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as set forth below.

**BOARD OF EDUCATION OF
EVANSTON TOWNSHIP HIGH SCHOOL
DISTRICT NO. 202:**

By: _____
Superintendent

Date: _____

CITY OF EVANSTON:

By: _____
City Manager

Date: _____

**COMMUNITY PARTNERS FOR
AFFORDABLE HOUSING:**

By: _____
Executive Director

Date: _____

EXHIBIT 1

LEGAL DESCRIPTION

Lot 3 in Community Hospital of Evanston Resubdivision of Lots 25 through 29 in Block 2 in Whipple's Addition to Evanston in Section 13, Township 41 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois

PIN: 10-13-104-026-0000

EXHIBIT 2

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

[to be inserted]