

8/15/94
8/25/94

91-0-94

AN ORDINANCE

AUTHORIZING THE CITY MANAGER TO ENTER INTO
A REAL ESTATE CONTRACT FOR THE SALE OF
PROPERTY AT 1616 DARROW AVENUE, EVANSTON, ILLINOIS

WHEREAS, the City of Evanston owns the real property commonly known as 1616 Darrow Avenue, Evanston, Illinois, legally described as follows:

See Exhibit A

WHEREAS, the City Council of the City of Evanston has determined that ownership of the aforesaid real estate is no longer necessary, appropriate, required or in the best interest of the City of Evanston; and

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

WHEREAS, pursuant to Ordinance 79-0-94, the City Council by a vote of 2/3 of the elected Aldermen then holding office did direct that the process to sell said Property be by negotiation on behalf of the City; and

WHEREAS, pursuant to said Ordinance said negotiations have occurred; and

WHEREAS, the City Manager recommends that a sale between the City of Evanston, as seller, and Uptown Habitat for Humanity

as buyer, be hereby accepted by the City Council of the City of Evanston for the aforesaid real property legally described in Exhibit A; and

WHEREAS, the City Council finds and determines that the best interest of the City of Evanston and its residents will be served by conveying the aforesaid real property to Uptown Habitat for Humanity on terms consistent with the Redevelopment Agreement set forth in attached Exhibit B, attached hereto and incorporated herein by reference;

WHEREAS, the notice of intent to sell City property has been published in a newspaper of general circulation in the City of Evanston as required by ordinance; and

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

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

SECTION 2: The negotiated sale to Uptown Habitat for Humanity as buyer, is hereby accepted by the City Council of the City of Evanston for the real property legally described in Exhibit A and commonly known as vacant land located at 1616 Darrow Avenue, Evanston, Illinois.

SECTION 3: The City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest, the Redevelopment Agreement in Exhibit B, 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 real property as he 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 the sale herein authorized, including other documents referred to in said contracts.

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

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

Introduced August 31, 1994

Adopted: August 31, 1994

Approved: September 1, 1994

Lorraine A. Norton
Mayor

ATTEST:

Kirsten Davis
City Clerk

Approved as to form:

David We
Corporation Counsel

Ordinance 91-0-94

Exhibit A

Lot 8 in Wilson's Subdivision of Lots 1, 2, 3, 4, and 5, in Block 4, in Hinman's Addition to Evanston, in the Northwest 1/4 of the Southwest 1/4 of Section 13, Township 41 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois; commonly known as 1616 Darrow, Evanston, Illinois.

REDEVELOPMENT AGREEMENT

This Redevelopment Agreement ("Agreement") is entered into as of this ____ day of _____, 1994, by and between the City of Evanston, a municipal corporation (the "City") and Uptown Habitat for Humanity ("Uptown").

RECITALS:

A. The City has the authority to promote the health, safety and welfare of its inhabitants, to develop affordable housing and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes.

B. The City owns three (3) vacant parcels of real estate commonly known as 1928 Foster, 1616 Darrow and 1816 Dodge, Evanston, Illinois (individually, a "Lot" and collectively, the "Lots") the development of which for affordable housing is desirable.

C. Uptown is experienced in the development of single family housing and desires to construct affordable housing residences upon the Lots.

D. The City desires to convey fee simple title to the Lots to Uptown provided Uptown agrees to construct single-family housing on the Lots to be made available for low-income families as provided herein.

E. This Agreement sets forth the terms and conditions upon which the City and Uptown shall develop such affordable housing on the Lots.

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

1. Transfer of Title. In accordance with the terms of this Agreement and upon the request of Uptown, the City shall convey to Uptown by Quit Claim Deeds (individually, a "Deed") fee simple title to each Lot. The conveyance and title of each Lot shall be subject to

real estate taxes not yet due and payable, covenants, restrictions and easements of record and any and all liens recorded against the property by the City, the amount of such liens not to exceed \$5,000.00 per Lot. The City shall deliver to Uptown the Deed to each Lot within ten (10) days of such request. If Uptown shall fail to request the transfer of title to any Lot within thirty (30) months of the date hereof, Uptown shall have waived its rights to obtain ownership of such lot, and this Agreement shall be of no force and effect with respect to such Lot.

Prior to conveyance by the City to Uptown, the City shall permit Uptown access to the Lots for purposes of planning, surveying, conducting environmental inspections and testing and similar purposes.

2. **Closing Documents.** At the time of transfer for each Lot requested by Uptown, the parties shall deliver to each other the following:

- (a) Uptown's documents:
 - (i) Written request for transfer;
 - (ii) ALTA Statement.
- (b) City's documents:
 - (i) Deed to the Lot requested by Developer (with appropriate transfer tax exemptions);
 - (ii) ALTA Statement;
 - (iii) Statement of amount of liens, if any, in favor of the City to which title to such Lot shall be subject;
 - (iv) Such other documents as may be reasonably required by Uptown to obtain good and marketable title to the Lot and appropriate title insurance insuring the same.

3. **Conditions to Transfer.** As conditions precedent to the transfer of title to the each Lot requested to be conveyed by Uptown, Uptown shall provide the City with the following:

- (a) evidence reasonably satisfactory to the City that Uptown has obtained a commitment for financing or has sufficient funds available for the cost of the development of the Lot;

(b) evidence of builder's risk, liability, worker's compensation and other insurance reasonably requested by the City;

(c) copies of the plans prepared by Uptown in connection with development of the Lots; and

(d) copies of the form of deed by Uptown in favor of any initial purchaser of a Dwelling Unit or Lot and form of the note and mortgage evidencing and securing any seller financing provided by Uptown to such purchasers, all in form reasonably satisfactory to the City.

4. Construction of Dwelling Units. Uptown shall develop residential housing ("Dwelling Units") on each of the Lots in accordance with applicable statutes, regulations, codes and ordinances. Uptown shall diligently proceed with the construction of the Dwelling Units to completion, which construction shall commence as to each Lot within three (3) months from the date of delivery of the Deed for such Lot from the City to Uptown, and shall be completed by Uptown within thirty-six (36) months of the date of this Agreement. For purposes hereof, "diligently proceeding" shall mean that the foundation for each Dwelling Unit shall be poured and framing in place pursuant to and in accordance with permits within six (6) months after transfer of title to the underlying Lot. Receipt by Uptown of a temporary certificate of occupancy (conditional only upon seasonal or insubstantial details of construction) or a final certificate of occupancy for the Dwelling Unit(s) located on a Lot and occupancy by a family selected in accordance herewith within such thirty-six (36) month period shall be a conclusive determination of satisfaction and termination of the covenant to proceed diligently contained in this Section 4 with respect to the construction of the Dwelling Unit(s) on such Lot.

5. Uptown's Covenants. Uptown acknowledges and affirms the goals of the City with regard to the creation of affordable housing for local families and the involvement of local minority owned contractors. Uptown agrees that it shall (a) use its best efforts to cause occupancy of the Dwelling Units by families that contain at least five (5) members, of which two (2) members have been Evanston residents for a minimum of two years, and to involve Evanston-based minority contractors (provided, however, Uptown shall not be required to do

or perform any act that would be in contravention of any federal, state, or local law, statute, ordinance, or regulation with regard to non-discrimination in the construction, sale and marketing of the Dwelling Units and Lots), (b) counsel, through a committee established by Uptown (the "Homeowner Development Committee"), all initial purchasers of the Dwelling Units in matters of budgeting, property maintenance and home ownership responsibilities and issues, and (c) establish, prior to the sale of any Dwelling Unit, a Family Selection Committee a majority of which shall be Evanston residents and at least one Evanston Housing Commission Member, which committee shall be responsible for the review and selection of families identified by Uptown in accordance with subparagraph (a) above. Uptown shall not discriminate based upon age, handicap, race, color, religion, sex, or national origin in the marketing and sale of any Dwelling Unit(s) constructed on any of the Lots pursuant to the terms of this Agreement.

6. **Income Limitations.** Each of the Dwelling Units shall be occupied by families chosen by Uptown whose income at the initial time of occupancy as certified by such family to Uptown, does not exceed the median income of the area in which the Lots are located, as such median income is determined by the Department of Housing and Urban Development from time to time, with adjustments for smaller and larger families. Uptown shall require all families initially purchasing any of the Dwelling Units to covenant and agree that any subsequent purchasers of any Dwelling Unit shall meet the initial occupancy income and family size guidelines set forth above until the Termination Date.

7. **Repayment of Liens in Favor of the City.** The City agrees that it shall subordinate its lien arising pursuant to Section 1 herein to any seller financing provided by Uptown to any purchasers of a Lot. The City shall be repaid, if at all, from any proceeds remaining from a sale of the applicable Lot and any Dwelling Unit thereon, after repayment in full of any seller financing provided by Uptown to such purchasers.

8. Seller Financing; Shared Appreciation. Any seller financing provided by Uptown to any initial purchaser of any Dwelling Unit or Lot shall be evidenced and secured by a note (each a "Note", and collectively, the "Notes") and mortgage substantially in a form satisfactory to the City. The City hereby agrees to the form of Note attached hereto as Exhibit B. The seller financing shall not exceed eighty percent of the value of the Dwelling Unit or Lot secured by the mortgage. Uptown agrees that any sums constituting the Shared Appreciation Amount under any of the Notes secured by a mortgage encumbering a Lot or portion thereof upon which a Dwelling Unit is located shall, when repaid, be deposited into a joint escrow account at an F.D.I.C. insured lending institution satisfactory to Uptown and the City of Evanston. Such funds shall be made available to Uptown on an as-needed basis for the planning, development and financing of subsequent low-income housing projects located within the City of Evanston for City of Evanston residents or, if so desired by Uptown, for the repurchase of any Dwelling Unit pursuant to any right of first refusal contained in the documents evidencing the seller financing. Such projects (other than for the right to repurchase) shall be subject only to the ministerial approval of the City of Evanston City Council to confirm conformance with the foregoing requirements. In the event Uptown or its successors or permitted assigns fail to propose such a project for Evanston, or if any proposed project does not receive approval as required above within two (2) years of the date of deposit of such funds, such funds and any interest earned thereon shall revert to the City to be used for the development or promotion of development by others of low-income housing.

9. Reversion to City. In the event (a) Uptown fails to "diligently proceed" or complete construction of any Dwelling Unit within the time period allowed, subject to force majeure delays or other matters beyond the reasonable control of Uptown, or (b) any transfer of title to a Dwelling Unit during the term of this Agreement is made to a family exceeding the initial income limitations set forth herein, then, in either instance, title to the Lot upon which such Dwelling Unit is to be constructed shall revert to the City after thirty (30) days

prior written notice from the City to Uptown or the then current owner of the Dwelling Unit of such failure. Uptown shall be entitled to remedy such failure within such thirty (30) day period, and upon doing so, title shall not revert to the City.

10. **Environmental Conditions.** Uptown agrees that it will not initiate any action against the City arising out of the presence of any hazardous waste or other environmental condition found on any Lot after the date on which Uptown accepts title to such lot. The first sale by Habitat to any purchaser shall be subject to this waiver of claims against the City. Uptown agrees to indemnify and hold harmless City, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, and settlements and compromises of litigation, including without limitation, reasonable legal, accounting, consulting, engineering and other expenses, which may be imposed upon or incurred by City, arising out of or in connection with any environmental contamination or pollution found or occurring on any Lot after the date on which Uptown accepts title to such Lot, including the exposure of any person to any such environmental contamination or pollution regardless of whether such environmental contamination or pollution resulted from any activities of any third party. This indemnity shall survive the transfer of title.

11. **Term of Agreement.** The covenants and agreements set forth in this Agreement shall be deemed to run with, bind and burden each of Lots and shall be deemed to bind any future owners of any of the Lots and the holder of any legal, equitable or beneficial interest therein until October 31, 2004 (the "Termination Date"). Effective as of the Termination Date, this Agreement shall terminate without further action on the part of either party hereto and shall be of no further force and effect, provided, however, the City agrees to execute and deliver a release of this Memorandum in recordable form upon the request of Uptown or any successor in interest to any of the Lots.

12. Assignability. This Agreement is not assignable by Uptown without the express written approval of the City, provided, however, Uptown may assign this Agreement to any local chapter of Habitat for Humanity, Inc. without such consent.

13. Tax-Exempt Status. Uptown will not seek tax-exempt status for real estate tax purposes any of the Lots transferred to Uptown pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

CITY OF EVANSTON, a municipal corporation

By: _____
Its: _____

UPTOWN HABITAT FOR HUMANITY,
an Illinois not for profit corporation

By: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, personally known to me to be the _____ of Uptown Habitat for Humanity, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____ he/she signed and sealed such instrument, duly authorized on behalf of such corporation as his/her free and voluntary act and the free and voluntary act of such corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 1994.

Notary Public

My Commission Expires:

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, personally known to me to be the _____ of the City of Evanston, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____ he/she signed and sealed such instrument, duly authorized on behalf of the City of Evanston as his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 1994.

 Notary Public

My Commission Expires:

Exhibit A

[Legal Description]

Exhibit B

[Form of Note]

PROMISSORY NOTE INCLUDING SHARED APPRECIATION

\$ _____, 199____
Chicago, Illinois

1. **Promise to Pay.** In return for a loan that I have received, the proceeds of which will be used to purchase _____ (the "Unit"), I promise to pay to Uptown Habitat for Humanity, Inc., its successors or its assigns (the "Noteholder"), c/o North Park College, 3225 West Foster Avenue, Chicago, Illinois 60625, the sum of U.S. \$ _____ (the "Loan Principal"), plus an amount equal to the Noteholder's Preference Return plus Shared Appreciation Amount (as defined below), all pursuant to the terms of this Note.

2. **Security.** This Note is secured by a mortgage dated _____, 199____ (the "Mortgage") encumbering the Unit in favor of the Noteholder on the terms contained in the Mortgage.

3. **Payment of Loan Principal.** I will repay the Loan Principal by making equal monthly payments of principal in the amount of [\$ _____] on or before the first day of each month beginning _____, 199____ and will continue to make such monthly payments on or before the first day of every month thereafter until I have paid all the Loan Principal and any other charges described below that I may owe under this Note. If I have not paid the entire amount of the Loan Principal on or before _____, 20____ (the "Final Payment Date") then I will pay the balance of the Loan Principal on such date.

4. **Payment of Noteholder's Preference Return and Shared Appreciation Amount.** I shall also pay to the Noteholder when required herein the Noteholder's Preference Return and the "Shared Appreciation Amount". The Shared Appreciation Amount is an amount which can be determined from time to time and is equal to the product of the Net Appreciated Value of the Unit multiplied by the applicable Appreciation Percentage. The Shared Appreciation Amount shall become due and payable when (x) the entire outstanding amount of the Loan Principal becomes due and payable pursuant to the terms of this Note or the Mortgage because I have defaulted in payment of this Note or I have defaulted under the Mortgage, or (y) I voluntarily prepay the entire outstanding amount of the Loan Principal prior to the Final Payment Date.

As used herein:

(a) "Appraised Value" means the value of the Unit as determined (i) by the agreement of the Noteholder and me ten (10) days prior to any payment of the full amount under this Note or my election to prepay this Note in full, or (ii) if we cannot so agree within such ten (10) day period, by an independent appraiser selected by the Noteholder.

(b) "Appreciation Percentage" means one hundred percent (100%) until the sixth anniversary date of this Note and ninety-three percent (93%) until the seventh anniversary date of this Note. The Appreciation Percentage shall continue to decrease by seven percent (7%) on each subsequent anniversary date of this Note thereafter until the Appreciation Percentage equals fifty percent (50%).

(c) "Homeowner's Equity Return" means a sum equal to the total amount of monthly principal and interest payments made by me pursuant to this Note until I voluntarily prepay the entire outstanding amount of the Loan Principal due to a sale of the Unit up to the maximum amount of \$[sum equal to 3 years of payments]. From and after the fifth anniversary of the date of this Note, the Homeowner's Equity Return shall be deemed to mean Zero and No/100 Dollars (\$0.00).

(d) "Homeowner's Preference Return" means a sum equal to \$1,000.00 beginning on the fourth anniversary of this Note. The Homeowner's Preference Return shall increase by \$1,000.00 on each subsequent anniversary of this Note.

(e) "Net Appreciated Value" means the positive difference, if any, between (i) the Net Sales Price of the Unit, and (ii) the sum of the Loan Principal, Homeowner's Equity Return, if any, Homeowner's Preference Return, Noteholder's Preference Return, and the repayment of any subordinate lien existing as of the date hereof in favor of the City of Evanston.

(f) "Net Sales Price" means (i) the gross sales price of the Unit pursuant to a bona fide arms-length contract of sale minus the expenses I incur and pay in connection with the sale, including, for example, real estate brokerage commissions, real estate transfer taxes, attorney's, recording and escrow fees and title insurance premiums, or (ii) if I am required or if I choose to pay the entire amount of this Note pursuant to the terms of this Note or the Mortgage, but I do not sell the Unit, the Appraised Value of the unit at the time of such payment.

(g) "Noteholder's Preference Return" means a sum equal to \$10,000.00, payable to the Noteholder.

5. Failure to Pay as Required.

(a) Late Charge for Overdue Payments. If the Noteholder has not received the full amount of any monthly payment by the fifteenth (15th) day after the date it is due, I will pay a late charge of \$15.00 to the Noteholder. I will pay this late charge promptly.

(b) Default. If I do not pay the full amount of each monthly payment within five (5) days after the date it is due, I will be in default under this Note. If I do not perform as I am obligated to perform under the Mortgage, I will be in default under this Note.

(c) Notice of Default. If I am in default under this Note, the Noteholder may send me a written notice telling me that if I do not pay the overdue amount or cure any other kind of default under the Note or the Mortgage within thirty (30) days of the date on which the notice is delivered or mailed to me, the Noteholder may require me to pay immediately the full amount of the outstanding Loan Principal, including the full amount of the Shared Appreciation Amount.

(d) No Waiver. Even if the Noteholder does not require me to pay this Note in full as described above at any time when I am in default under this Note, the Noteholder will still have the right to do so at any time if I am in default and the Noteholder has given me notice of such default as described above.

(e) Payment of Costs and Expenses. If the Noteholder has required me to pay in full all amounts owing under this Note as described above, I will also reimburse the Noteholder for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, costs of suit on this Note, foreclosure under the Mortgage, court costs and reasonable attorneys' fees.

6. Notices. Any notice that is given to me under this Note must be given by delivering it personally or by first class mail to me at the address of the Unit. Any notice that I give to the Noteholder must be given by first class mail to the Noteholder at:

Uptown Habitat for Humanity, Inc.
6580 North Sheridan
Chicago, Illinois 60626

with a copy to:

City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
Attention: Director of Community Development

or at such other address as the Noteholder may designate to me in writing.

7. Prepayment. I agree to give the Noteholder sixty (60) days prior written notice of any prepayment in full of this Note. I agree that this Note can be prepaid in whole or in part only after calculating and paying the Loan Principal, including the Shared Appreciation, and costs and other charges due hereunder.

8. Obligations of Persons Under this Note. If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. The Noteholder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay the full amount owed under this Note. Neither I nor any other person who signs this Note may assign an interest in this Note or the Mortgage to any other person.

9. Waivers. I and every other person who has obligations under this Note each waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Noteholder to demand payment of amounts due. "Notice of dishonor" means the right to require the Noteholder to give notice to other persons that amounts due have not been paid.

10. Loan Charges. If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Noteholder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

11. Governing Law. This Note is made under and governed by, and shall be construed and enforced in accordance with, the laws of the State of Illinois.

[HOMEOWNER]

or additional terms and conditions with respect to the sale of the aforesaid real property as he 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 the sale herein authorized, including other documents referred to in said contracts.

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

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

Introduced September 12, 1994

Adopted: October 10, 1994

Approved: October 12, 1994

Lorraine H. Marton
Mayor

ATTEST:

Kristen F. Davis
City Clerk (A.P.C., Deputy)

Approved as to form:

[Signature]
Corporation Counsel