

ORDINANCE NO. 26-O-10

AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$5,500,000 AGGREGATE PRINCIPAL AMOUNT OF REVENUE BONDS, SERIES 2010 (CHIARAVALLE MONTESSORI SCHOOL) OF THE CITY OF EVANSTON, ILLINOIS; THE EXECUTION OF A LOAN AGREEMENT AND OTHER DOCUMENTS RELATED THERETO; AUTHORIZING THE SALE OF SAID BONDS TO THE PURCHASER THEREOF; AND RELATED MATTERS THERETO.

WHEREAS, pursuant to the provisions of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois, the City of Evanston, a municipality and home rule unit of the State of Illinois (the "City"), is authorized and empowered to exercise any power or perform any function pertaining to its government or affairs, including the issuance of revenue bonds to finance projects within the territorial limits of the City or to refund bonds issued to finance said projects, and may authorize the issuance of such bonds by ordinance of the City; and

WHEREAS, Chiaravalle Montessori School, an Illinois not for profit corporation (the "Borrower"), has requested that the City Council of the City approve the issuance by the City of qualified 501(c)(3) revenue bonds under Section 145 of the *Internal Revenue Code of 1986*, as amended (the "Code"), the proceeds of which bonds will be used, together with other available funds to (i) refund the Illinois Development Finance Authority Adjustable Rate Revenue Bonds, Series 1998 (Chiaravalle Montessori School Project) (the "Prior Bonds"), the proceeds of which were used to finance the renovation, interior expansion and improvement of an existing school facility owned by the City and leased and operated by the Borrower (the "School Facility"); (ii) finance or refinance, or reimburse the Borrower for, the costs of the acquisition of land at 425 Dempster Street in Evanston, Illinois and the School Facility located thereon and the further renovation, improvement and equipping of the School Facility (collectively, the "Project"); (iii) fund certain working capital; and (iv) pay certain costs incurred in connection with the issuance of the Bonds and the refunding of the Prior Bonds (collectively, the "Financing Purposes"); and

WHEREAS, the City wishes to provide financing to the Borrower for the foregoing purposes through the issuance and sale of its Revenue Bonds, Series 2010 (Chiaravalle Montessori School) (the "Bonds") pursuant to a Loan Agreement (the "Loan Agreement") by and among the City, the Borrower and The Northern Trust Company, as the initial lender and purchaser of the Bonds (the "Lender"), and in accordance with this Ordinance authorizing the Bonds; and

WHEREAS, the financing of the Project will be beneficial economically to the Borrower and will enable the Borrower to offer more of its services to the City's residents thereby promoting the well being of the residents of the City and will enhance the quality of life of the residents of the City and therefore is for a proper public purpose; and

WHEREAS, the proposed form of the Loan Agreement has been prepared and presented to this meeting; and

WHEREAS, the Bonds shall be limited obligations of the City, payable solely from the revenues and income pursuant to the Loan Agreement, and the Bonds shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision; and no holder of any Bond shall have the right to compel any exercise of the taxing power of the City to pay the principal of the Bonds or the interest or premium, if any, thereon; and

WHEREAS, the Borrower has requested the City to sell the Bonds on a negotiated basis to the Lender; and

WHEREAS, pursuant to the provisions of Section 147(f) of the *Internal Revenue Code of 1986*, as amended, (the "Code") a public hearing on the proposed plan of refunding the Prior Bonds and financing the Project and the issuance of the Bonds was held by the Mayor and the City Council on April 26, 2010, pursuant to notice published at least fourteen (14) days prior to such public hearing in *The Evanston Review*, a newspaper of general circulation in the City, on April 8, 2010; and

WHEREAS, the funding of the Financing Purposes through the issuance of the Bonds and entering into the transactions contemplated by this Ordinance is for a proper public purpose of the City, pertains to the affairs of the City and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, ILLINOIS, AS FOLLOWS:

Section 1: All of the recitals contained in the preambles to this Ordinance are true, correct and complete, and are hereby incorporated by reference thereto and are made a part hereof.

Section 2: The Financing Purposes are hereby authorized and determined to be in the public interest and in furtherance of the public purposes of the City.

In order to provide for the Financing Purposes, there shall be and there is hereby authorized to be issued by the City its Revenue Bonds, Series 2010 (Chiaravalle Montessori School), in the aggregate principal amount not to exceed five million, five hundred thousand dollars (\$5,500,000), dated the date of issuance thereof.

The Bonds shall initially bear interest at variable interest rates determined as provided in the Loan Agreement; the Bonds shall be dated and executed in the manner set forth in the Loan Agreement; shall bear interest from their date on the

unpaid principal thereof at rates not exceeding twenty percent (20%) per annum; shall mature no later than April 1, 2041; and shall be subject to redemption and tender prior to maturity at the times, under the circumstances, in the manner and at the redemption prices or purchase prices set forth in the Loan Agreement, as executed and delivered.

The Bonds are issued in the exercise of the City's powers as a home rule unit of government under the provisions of Article VII, Section 6(a) of the *1970 Constitution of the State of Illinois* and this Ordinance. The Bonds do not and shall never constitute an indebtedness or obligation of the City, the State or any political subdivision thereof within the purview of any constitutional limitation or statutory provision, or a charge against the credit or general taxing powers, if any, of the State, the City, or any other political subdivision thereof. The Bonds are special, limited obligations of the City, payable solely out of the revenues and income of the City derived pursuant to the Loan Agreement. No owner of the Bonds shall have the right to compel any exercise of the taxing power of the City, the State or any other political subdivision thereof to pay the Bonds or the interest or premium, if any, thereon.

No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Loan Agreement against any past, present or future member, officer, alderman, agent, employee or official of the City. No covenant, stipulation, promise, agreement or obligation contained in the Bonds, the Loan Agreement or any other document executed in connection therewith shall be deemed to be the covenant, stipulation, promise, agreement or obligation of any present or future official, officer, alderman, agent or employee of the City in his or her individual capacity and neither any official of the City nor any officers executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 3: The Bonds shall be executed on behalf of the City with the official manual or facsimile signatures of the Mayor and attested with the official manual or facsimile signature of its City Clerk and shall have printed thereon a facsimile of its corporate seal or impressed thereon manually its corporate seal. In case any officer who shall have signed (whether manually or in facsimile) any of the Bonds shall cease to be such officer of the City before the Bonds have been delivered or sold, such Bonds with the signatures thereto affixed may nevertheless be delivered and may be sold by the City as though the person or persons who signed such Bonds had remained in office.

Section 4: The form, terms and provisions of the Loan Agreement and the Tax Compliance Agreement dated the date of delivery of the Bonds (the "Tax Compliance Agreement"), between the City and the Borrower are hereby in all respects approved, and the Mayor is hereby authorized, empowered and directed to execute and deliver the Loan Agreement and the Tax Compliance Agreement in the name and on behalf of the City. The Loan Agreement, as executed and delivered, shall be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officer of the City executing the same, and

the Tax Compliance Agreement, as executed and delivered, shall be in substantially the form approved by Bond Counsel. Execution of the Loan Agreement and the Tax Compliance Agreement constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the Loan Agreement now before this meeting and of the approval of the Tax Compliance Agreement provided by Bond Counsel; and from and after the execution and delivery of the Loan Agreement and the Tax Compliance Agreement, the officers, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute and approve all such documents as may be necessary to carry out the intent and accomplish the purposes of this Ordinance and the Loan Agreement, including the approval of a mortgage or other security interests granted by the Borrower to secure the Bonds, and to comply with and make effective the provisions of the Loan Agreement and the Tax Compliance Agreement, as executed.

Section 5: The sale of the Bonds to the Lender at a price equal to no less than ninety-eight percent (98%) of the principal amount thereof, is hereby authorized and approved.

Section 6: From and after the execution and delivery of the foregoing documents, the proper officials, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents, including a Letter of Representations with The Depository Trust Company, as may be necessary to carry out and comply with the provisions of said documents as executed, and to further the purposes and intent of this Ordinance, including the preambles hereto.

Section 7: The City hereby designates the Bonds as "qualified tax-exempt obligations" as defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986 (the "Code"). The City represents that the reasonably anticipated amount of tax-exempt obligations that are required to be taken into account for the purposes of Section 265(b)(3)(C) of the Code and that will be issued by or on behalf of the Borrower and all subordinate entities of the Borrower during 2010 does not exceed thirty million dollars (\$30,000,000). The City covenants that it will not designate and issue on behalf of the Borrower and such subordinate entities more than thirty million dollars (\$30,000,000) aggregate principal amount of tax-exempt obligations in 2010. For purposes of the two preceding sentences, the term "tax-exempt obligations" includes "qualified 501(c)(3) bonds" (as defined in Section 145 of the Code) but does not include other "private activity bonds" (as defined in Section 141 of Code).

Section 8: The Mayor and the City Council hereby acknowledge that a Public Hearing was held on April 26, 2010 and hereby approves the Project, the plan of financing, and the Financing Purposes.

Section 9: All acts and doings of the officials of the City that are in conformity with the purposes and intent of this Ordinance and in furtherance of the issuance of the Bonds be, and the same are hereby in all respects, approved and

confirmed. The City hereby covenants that it will take no action or fail to take any action that would cause the Bonds to become invalid.

Section 10: The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof.

Section 11: All ordinances, orders and resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed.

Section 12: A copy of this Ordinance shall be filed in the office of the City Clerk and shall be made available for public inspection in the manner required by law.

Section 13: This Ordinance 26-O-10 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Passed and adopted this 26th day of April, 2010, by roll call vote as follows:

Ayes: 9

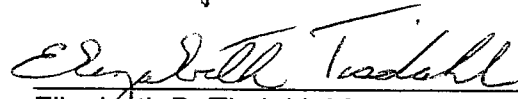
Nays: 0

Introduced: April 13, 2010


Adopted: April 26, 2010

Approved:


April 28, 2010


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Approved as to form:


W. Grant Farrar, Corporation Counsel

