

6-O-19

AN ORDINANCE

**Authorizing the City Manager to Execute a Sale Contract for
City Owned Real Property located at 1729 Dodge Avenue to
Evanston Township High School District No. 202**

WHEREAS, the City of Evanston owns real property located at 1729 Dodge Avenue, Evanston, Illinois, 60201 and legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Subject Property"); and

WHEREAS, the City acquired the Subject to implement the Intergovernmental Agreement for Affordable Housing Agreement ("Agreement") dated June 26, 2018 by and between the City and Evanston Township High School District No. 202 (ETHS); and

WHEREAS, ETHS will construct a home through the Geometry in the Classroom program and the home will be relocated to the Subject Property; and

WHEREAS, the City Council of the City of Evanston has determined that ownership of the aforesaid Subject Property is no longer necessary, appropriate, required, or in the best interests of the City of Evanston and seeks to sell the Subject Property to ETHS to further implement terms of the Agreement for affordable housing; and

WHEREAS, pursuant to Ordinance 5-O-19, the City Council, by a vote of at least two-thirds ($\frac{2}{3}$) of the elected Aldermen then holding office, did direct the City Manager to negotiate the sale of 1729 Dodge; and

WHEREAS, pursuant to Ordinance 5-O-19, the City Manager has negotiated the sale of the Subject Property; and

WHEREAS, the City Manager recommends that the City Council hereby approve the sale of the Subject Property, with the City as Seller and ETHS as Buyer; and

WHEREAS, the City Council hereby finds and determines that the best interests of the City of Evanston and its residents will be served by conveying the Subject Property, on terms consistent with the Sale Agreement for Real Estate, attached hereto as Exhibit B and incorporated herein by reference (hereinafter, the "Agreement"); and

WHEREAS, as required by Section 1-17-4-2-(B) of the Evanston City Code, 2012, as amended (the "City Code"), a Notice of Intent to Sell Certain Real Estate, was published in the *Evanston Review*, a newspaper in general circulation in the City of Evanston, on February 7, 2019, neither less than fifteen (15) nor more than thirty (30) days before the date on which the City Council considered adoption of this ordinance authorizing the sale of the Property,

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

SECTION 1: The foregoing recitals are hereby found as fact and incorporated herein by reference.

SECTION 2: The City Council of the City of Evanston hereby approves the negotiated sale of the Subject Property with the City as Seller and ETHS as Buyer.

SECTION 3: The City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest, the Agreement, 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 Subject Property as the City Manager 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 effectuate the sale herein authorized.

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.

SECTION 7: If any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications hereof that can be given effect without the invalid provision or application, and each invalid application hereof is severable.

SECTION 8: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Ayes: 9

Nays: 0

Introduced: February 25, 2019

Adopted: March 11, 2019

Approved: April 4, 2019

Stephen H. Hagerty
Stephen H. Hagerty, Mayor

Attest:



Devon Reid, City Clerk

Approved as to form:

Michelle Masoncup
Michelle L. Masoncup, Corporation Counsel

EXHIBIT A

LEGAL DESCRIPTION

THE NORTH 25 FEET AND THE SOUTH 25 FEET OF LOT 19 AND THE NORTH 16 2/3 FEET OF LOT 18 IN BLOCK 3 IN MERRILL LADD'S SECOND ADDITION TO EVANSTON, A SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMON ADDRESS: 1729 Dodge Avenue, Evanston, IL 60201

PERMANENT INDEX NUMBERS: 10-13-220-008-0000

EXHIBIT B

Sale Agreement of Real Estate

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made as of the date the last party signs this Agreement (the “Effective Date”), and is by and between the City of Evanston, an Illinois home rule unit of government located in Cook County, Illinois (“Seller”), and Board of Education of Evanston Township High School District No. 202, City of Evanston, Cook County, Illinois (“Purchaser”).

WITNESSETH:

WHEREAS, Seller is the owner of that certain property commonly known as 1729 Dodge, Evanston, Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (the “Property”); and

WHEREAS, the Seller desires to convey the Property to Purchaser,

NOW, THEREFORE, for and in consideration of the promises and of the mutual covenants and agreements hereinafter set forth, the parties agree to the terms of this Agreement, which reads in its entirety as follows:

1. Agreement to Purchase. Purchaser agrees to purchase and Seller agrees to sell and convey or cause to be conveyed to Purchaser, or its designee, by Special Warranty Deed (the “Deed”), good and merchantable title to the Property at the price and subject to the terms, conditions and provisions hereinafter set forth. The Deed shall be substantially in the form attached hereto as Exhibit B.
2. Purchase Price. Purchaser agrees to pay and Seller agrees to accept as the purchase price the sum of \$1.00 (“Purchase Price”) payable at closing.
3. Survey. Seller will not be providing a survey and the Buyer may obtain one at its own cost and expense.
4. Taxes.
 - (a) Taxes for Years Prior to Closing. Seller will pay in full all general real property taxes that are levied with respect to the Realty for tax years prior to the year of closing.
 - (b) Tax Challenges. If any tax challenge is ongoing with respect to the Realty for general real estate taxes levied for any tax years prior to the year of Closing, Seller will receive the full benefit of any refund arising out of such tax challenge. If any tax challenge commenced by Seller results in a reduction in taxes for the general real estate taxes levied for the year of Closing, the parties shall re-prorate taxes for the year of Closing upon receipt of the actual tax bill or adjusted tax bill. This Section 9(b) expressly survives Closing.

(c) Taxes for Current Year of Closing. All general real property taxes that are levied with respect to the Realty for the year of Closing will be prorated at the rate of 105% between Buyer and Seller as of the business day immediately prior to the Closing Date. If the precise amount of taxes levied for the year of Closing cannot be determined, then the proration shall be computed on the basis of the lesser of (i) the taxes on the Realty levied for the immediately preceding tax year; or (ii) an amount equal to the taxable valuation, if available, of the Property in the year of Closing multiplied by the prior tax year's total tax rate.

5. Title Policy.

(a) At Purchaser's expense, Purchaser shall obtain a title commitment (the "Commitment") with respect to the Property. The Commitment shall establish that the Property is clear of all liens and encumbrances whatsoever, except for general real estate taxes not due and payable, covenants, conditions, restrictions and other matters of record. If the Commitment discloses unpermitted exceptions, Seller may elect, within 30 days after the date of delivery thereof, to have such exceptions removed from the Commitment or to have the title insurance company commit to insure against loss or damage that may be occasioned by such exceptions. If at the end of said 30-day period Seller fails to have the unpermitted exceptions removed or insured against, Purchaser may elect, upon notice to Seller within ten days after expiration of the 30-day period, to accept title as it then is. If Purchaser does not elect to accept title as it then is, Purchaser shall have the right to terminate this Agreement and will have no obligation to acquire the Property.

(b) Purchaser shall, at Purchaser's expense, obtain a title insurance policy by Chicago Title Insurance Company through its agent, Greater Illinois Title Company, or another title company acceptable to Purchaser ("Title Insurer"), dated as of the date Closing (as hereinafter defined) in a nominal amount with extended coverage over the general exceptions, free and clear of all liens and encumbrances whatsoever, except for general real estate taxes not due and payable, covenants, conditions, restrictions and other matters of record shown on the title commitment and those additional matters approved by Purchaser (the "Permitted Exceptions").

(c) The title commitment shall be conclusive evidence of good and merchantable title as therein shown as to all matters insured by the policy, subject only to the exceptions as therein stated. Seller shall also furnish Purchaser an affidavit of title in customary form covering the date of Closing and showing title in Seller subject only to the Permitted Exceptions.

6. Representations.

(a) Seller's Representations. As an inducement to Purchaser to enter into this Agreement Seller hereby represents to Purchaser and agrees as follows:

(i) Seller has the right, power and authority to sell the Property, subject to the terms and conditions provided for in this Agreement, and to execute, deliver and perform its obligations under this Agreement and all other instruments, conveyances and documents to be executed and delivered in connection with the transaction contemplated herein. This Agreement and all other documents executed and delivered, or to be executed and delivered by Seller in connection with this Agreement have been, or at the appropriate time will be, duly executed and delivered and constitute or, upon such execution and delivery will constitute, the legal, valid and binding obligations of Seller, enforceable in accordance with the respective terms and provisions. No consent or approval of any person, firm, corporation or governmental authority is required to be obtained by Seller in order for Seller to enter into this Agreement.

(ii) To the best of Seller's knowledge, there exists no action, suit, litigation or proceeding affecting the Property to which Seller is a party, and to the knowledge of Seller, there is no such action, suit, litigation or proceeding threatened.

(iii) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said Section. Seller shall furnish Purchaser at Closing the exemption certification set forth in said Section.

(b) Purchaser's Representations. As an inducement to Seller to enter into this Agreement Purchaser hereby represents to Seller and agrees as follows:

(i) Purchaser has the right, power and authority to purchase the Property, subject to the terms and conditions provided for in the Agreement, and to execute, deliver and perform its obligations under this Agreement and all other instruments, conveyances and documents to be executed and delivered in connection with the transaction contemplated herein. This Agreement and all other documents executed and delivered, or to be executed and delivered by Purchaser in connection with this Agreement have been, or at the appropriate time will be, duly executed and delivered and constitute or, upon such execution and delivery will constitute, the legal, valid and binding obligations of Purchaser, enforceable in accordance with the respective terms and provisions. No consent or approval of any person, firm, corporation or governmental authority is required to be obtained by Purchaser in order for Purchaser to enter into this Agreement.

7. Closing of Sale.

(a) The Closing ("Closing") shall take place on or before 90 days after the execution of this Agreement or such other date mutually agreeable to the parties.

(b) At Closing, each party shall, without further consideration, execute and deliver such additional instruments as may be reasonably requested by the other party in order to complete and effectuate the transfer of title and ownership of the Property, provided that such additional instruments (other than these specifically provided for in this Agreement, and customary Closing documents) shall not impose cost or liability on any party. This transaction shall be closed in accordance with the general provisions of the usual form of New York style escrow agreement then in use by the Title Insurer, the costs of which escrow shall be paid by Purchaser. Seller shall pay any State, County or other transfer tax imposed by local ordinance.

8. "As Is" Sale. Purchaser acknowledges that it will have adequate opportunity to inspect the Property and accepts the risk that any inspection may not disclose all material matters affecting the Property. SUBJECT ONLY TO THE TERMS OF SECTION 5(a) AND IF PURCHASER CLOSES THE TRANSACTION CONTEMPLATED HEREUNDER, PURCHASER AGREES TO ACCEPT THE PROPERTY IN ITS "AS IS" "WHERE IS" AND "WITH ALL FAULTS" CONDITION AT CLOSING AND THAT PURCHASER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ITS AGENTS OR BROKERS, OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF SELLER, AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition and aspects of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose, (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the condition of title to the Property (except the deed warranties), or (viii) any other fact or condition which may affect the Property, including without limitation, the physical condition, value, economics of operation or income potential of the Property.

9. Brokerage. Purchaser and Seller each represent and warrant to the other that it has had no dealings with any broker or agent in connection with this Agreement and the subject matter hereof, and each party agrees to pay, and hold harmless and indemnify the other from and against, any and all costs, expenses or liabilities for compensation, commissions and other amounts claimed by any other broker or agent allegedly retained, consulted or employed by such indemnifying party.

10. Indemnification. Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, claims, actions, liabilities, damages, liens, costs and expenses,

including reasonable attorneys' fees, incurred by Seller (or its agents, consultants or affiliates) arising out of or related to (i) any activities upon the Property by Buyer, its agents, contractors and employees, or (ii) the failure by Buyer to observe or perform any of its covenants, representations or obligations under this Contract. This Section 13 shall survive the Closing or termination of this Contract.

11. Miscellaneous.

- (a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective successors and assigns.
- (b) This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.
- (c) This Agreement (i) contains the entire understanding between the parties hereto with respect to the transactions contemplated herein; and (ii) may be altered or amended from time to time only by written instrument executed by both parties hereto.
- (d) This Agreement shall be interpreted in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.
- (e) The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement this day and year first written above.

SELLER:

CITY OF EVANSTON,

A Home Rule unit of government

By: _____

Print Name: Wally Bobkiewicz

Its: City Manager

PURCHASER:

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

An Illinois high school district

By: _____

Print Name: Eric Witherspoon

Its: Superintendent

Exhibit A

LEGAL DESCRIPTION

THE NORTH 25 FEET AND THE SOUTH 25 FEET OF LOT 19 AND THE NORTH 16 2/3 FEET OF LOT 18 IN BLOCK 3 IN MERRILL LADD'S SECOND ADDITION TO EVANSTON, A SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMON ADDRESS: 1729 Dodge Avenue, Evanston, IL 60201

PERMANENT INDEX NUMBERS: 10-13-220-008-0000

After recording return to:

Board of Education of ETHS District No. 202

Attn: Mary Rodino
1600 Dodge Avenue
Evanston, IL 60201

SPECIAL WARRANTY DEED

City of Evanston, an Illinois municipal corporation ("Grantor") having an address of 2100 Ridge Avenue, Evanston, IL 60201, for and in consideration of ONE AND NO/100 DOLLARS (\$1.00) and other good and valuable considerations in hand paid, the receipt and sufficiency of which are hereby acknowledged, by these presents does grant, convey, bargain, and warrant to Board of Education of Evanston Township High School District No. 202, Cook County, Illinois ("Grantee") having an address of 1600 Dodge Avenue, Evanston, Illinois, all the following real property situated in the County of Cook, in the State of Illinois ("Property"), to wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

Subject to the matters set forth in Exhibit B attached hereto and made a part hereof.

Grantor covenants as follows:

1. The real property is free from all encumbrances made by Grantor.
2. Grantor will warrant and defend the real property hereby conveyed against all lawful claims and demands of persons claiming by, through or under Grantor, but against no other person.

Permanent Real Estate Index Number: 10-13-220-008-0000

Address of Real Estate: 1729 Dodge Avenue, Evanston, Illinois 60201

In Witness Whereof, said Grantor has executed this instrument as of _____, 2019.

CITY OF EVANSTON

By: _____
Wally Bobkiewicz, City Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, an Illinois notary public, does hereby certify that _____, personally known to me to be the _____ of Grantor, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in the County stated above this day in person and severally acknowledged that as such _____, he/she signed and delivered the said instrument, and as his/her free and voluntary act for the uses and purposes set forth therein.

Given under my hand and notarial seal this ____ day of _____, 2019.

Notary Public

SEND SUBSEQUENT TAX BILLS TO:

Board of Education of Evanston Township High School District No. 202
1600 Dodge Avenue
Evanston, Illinois 60201

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