

24-R-99

A Resolution

**Authorizing the City Manager to Enter
Into a Ninety Nine-Year Easement Agreement with
Cyrus Homes, Inc.**

WHEREAS, the City owns and has title to certain real estate located in the City of Evanston, Cook County, Illinois, which includes a portion of the right of way on the south side of Central Street in the 2900 Block; and

WHEREAS, Ordinance 51-0-98 granted certain zoning relief to Cyrus Homes, Inc. to permit construction of a drive-through bank and multiple-family dwelling at 2953 Central Street; and

WHEREAS, the west foundation and a subsurface vertical load support, commonly called a "footing", are located so as to encroach upon the public way under the surface of a certain portion of the public right of way at 2953 Central Street; and

WHEREAS, the City Council finds and determines that the best interests of the City and its residents will be served by the granting of a ninety-nine year easement to the Cyrus Homes, Inc. for the aforescribed purpose of providing for the subsurface location of west foundation and footing,

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

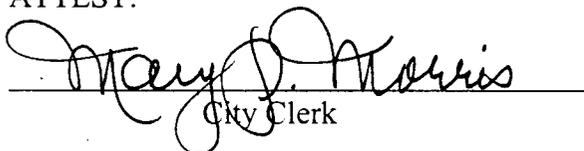
SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized to attest on behalf of the City of Evanston, a ninety-nine year easement, in substantial conformance with that in Exhibit 1, attached hereto and made a part hereof, by and between the City as Grantor and Cyrus Homes, Inc. as Grantee, for purposes of providing for the encroachment on the public right of way of the west foundation wall and a footing servicing premises constructed by Grantee at 2953 Central Street, Evanston, Illinois.

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

SECTION 3 That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.


Mayor pro tem

ATTEST:


City Clerk

Adopted: April 5, 1999

**Exhibit 1 to Foundation and
Subsurface Footing Encroachment
on the Public Way at 2953 Central Street
Ninety-Nine Year Easement**

The Easement Agreement is made and entered into this day of , 1999, by and between the CITY OF EVANSTON, Cook County, Illinois, an Illinois municipal corporation (hereinafter referred to as "Grantor") and Cyrus Homes (hereinafter referred to as "Grantee"):

WHEREAS, Grantee has acquired the property commonly known as 2953 Central Street, (hereinafter referred to as the "2953 Land"); and

WHEREAS, Grantee is constructing a mixed-use building (hereinafter, "the Building") on the 2953 Land; and

WHEREAS, the weight of the Building is such that underground vertical load supports commonly known as footings are necessary to support the Building; and

WHEREAS, footings distribute the weight of the building to a depth at which the density of the soil provides the needed bearing capacity; and

WHEREAS, footings are rectilinear objects of the type called "spread footings"; and

WHEREAS, the west foundation of the Building and one footing will be located so as to encroach on a portion of the Grantor's public right-of-way within the real estate legally described in Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Easement Parcel"); and

WHEREAS, Grantor and Grantee are desirous of entering into an easement agreement providing for the aforescribed encroachment of the west foundation and the footing on the public right-of-way,

NOW THEREFORE, in consideration of the foregoing recitals, the various covenants herein and the sum of one dollar (\$1.00) and other good and valuable consideration, receipt of which are hereby acknowledged, it is agreed by and between the parties as follows:

1. Grantor hereby grants and conveys to Grantee, its successors, grantees, agents, and assigns, a ninety-nine year easement appurtenant to the 2953 Land to install maintain, operate, replace, and remove the aforescribed west foundation and footing within the Easement Parcel.

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2. The Grantor expressly retains its interest in and right to the use and occupation of the Easement Parcel subject to the easement rights herein granted.
3. The grant of easement gives Grantee no surface or above-surface rights, provided that Grantee may carry out such surface, above surface, and, and subsurface work as may be necessary to effectuate the purpose of this easement. Grantee acknowledges that it has not, nor will it ever, acquire any interest in, or right to, the Easement Parcel, other than that described in this Agreement.
4. Grantee will obtain all required permits at its own expense.
5. Grantee may occupy the public right-of-way to effectuate the purpose of this easement, provided that Grantee will schedule all work related to the foundation and footing in such a manner and at such times as to cause minimum disruption to the flow of traffic. Grantee shall not obstruct the public right-of-way without first having notified the City's Engineering Division as to the date and time during which said obstruction will exist and without first having obtained the City's Engineers' consent to said closing.
6. Grantee will promptly, after said foundation and footing placements are completed, restore the surface to its replacement condition, including any repaving which may be associated therewith. All such restoration is to be done at Grantee's sole expense and in compliance with all applicable legislation.
7. At the termination of this easement, Grantee shall, at the City's option, be required to remove the encroachments at its own expense and restore the easement property and surface.
8. (a) Grantee, its successors, grantees, agents and assigns, by acceptance of this Easement, shall indemnify and save harmless the Grantor against any and all loss, damage, claims, injuries, deaths and costs expenses caused by, arising out of, or alleged to arise out of this Easement, including, but not limited to reasonable attorneys' fees. (b) In consideration of the grant of this Easement, Grantee hereby fully releases and discharges Grantor, its elected officials, officers, agents, and employees, from any and all claims from injuries, including death, damages or loss, which may arise or which may be alleged to have arisen out of, or in connection with the grantee of this Easement Agreement.

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9. The making, execution, and delivery of this Easement by Grantor have been induced by no representations, statements, warranties, or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings written or oral, in effect between the parties, their officers, agents, representatives, and employees, relating to the subject matter hereof. This Easement may be amended or modified only by an instrument of equal formality, signed by the duly authorized officers of the respective parties.

10. This easement shall terminate, at Grantor's sole option, if a) the purpose for which it is granted shall cease to exist; b) use of the Building is abandoned, which abandonment shall be evidenced by total lack of occupancy for one hundred eighty (180) consecutive days, c) if Grantor's City Council determines that use of the easement property for public purposes is the best interests of the citizens of Evanston, or if Grantee fails, upon ten (10) days' written notice, or less in the event of Grantor's determination of a threat to the public health, welfare, and/or safety, to correct to Grantor's satisfaction, any violation of the terms of this easement.

11. Grantee shall record this easement at its own expense within 60 days of approval of Resolution 24-R-99 by the City Council. Grantee shall promptly after recordation, provide a copy of same to Grantor's City Engineer, as a condition to issuance of a final certificate of occupancy.

12. Any notices required of given hereunder shall be in writing and shall be delivered personally by nationally recognized overnight courier service or a via return receipt mail, first class postage prepaid, addressed to the parties as follows, unless otherwise in the future.

If to Grantor: City Engineer
 Evanston Civic Center
 2100 Ridge Avenue
 Evanston, IL 60201

with a copy to Law Department
 Evanston Civic Center
 2100 Ridge Avenue
 Evanston, IL 60201

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If to Grantee:

With a copy to:

Notice shall be deemed effective upon receipt.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement at Evanston, Illinois, on the date first above written.

GRANTOR

CITY OF EVANSTON, COOK COUNTY,
ILLINOIS

By: _____

Typed Name: Roger Crum

Title: City Manager

Attest: _____

Mary Morris, City Clerk

GRANTEE

CYRUS HOMES, INC.

By: _____

Typed Name:

Title:

EXHIBIT "A"

EASEMENT AGREEMENT

THAT PART OF THE CENTRAL PARK AVENUE RIGHT OF WAY DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF CENTRAL STREET AND EAST RIGHT OF WAY LINE OF CENTRAL PARK AVENUE, THENCE NORTHERLY ALONG THE AFORESAID EASTERLY RIGHT OF WAY LINE OF CENTRAL PARK AVENUE A DISTANCE OF 8.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH ALONG THE AFORESAID EASTERLY RIGHT OF WAY LINE OF CENTRAL PARK AVENUE A DISTANCE OF 66.00 FEET, THENCE WESTERLY AT RIGHT ANGLE TO LAST DESCRIBED COURSE A DISTANCE OF 0.67 FEET, THENCE SOUTHERLY PARALLEL TO EASTERLY RIGHT OF WAY LINE OF CENTRAL PARK AVENUE A DISTANCE OF 66.00 FEET, THENCE EASTERLY TO THE POINT OF BEGINNING, ALL FROM BOTTOM OF FOOTING ELEVATION ± 17.36 FEET TO THE TOP OF FOOTING ELEVATION ± 18.36 FEET (CITY DATUM), ALL IN THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS.



SCALE: 1"=20'

