

2/11/2010

16-R-10

A RESOLUTION

Authorizing the City Manager to Execute a Declaration of Easements Agreement with Chiaravalle Montessori School, an Illinois Not-for-Profit Corporation

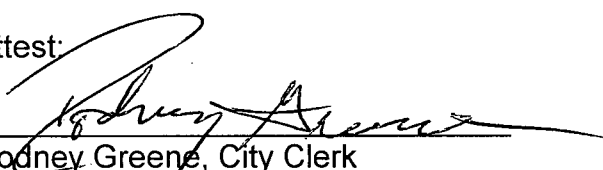
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest on behalf of the City of Evanston, a Declaration of Easements Agreement with Chiaravalle Montessori School, an Illinois not-for-profit corporation, attached hereto as Exhibit A and made a part hereof.

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

SECTION 3: That this Resolution 16-R-10 shall be in full force and effect from and after its passage and approval in the manner provided by law.

Attest:


Rodney Greene, City Clerk



Elizabeth B. Tisdahl, Mayor

Adopted: February 22, 2010

EXHIBIT A

**Declaration of Easements Agreement between the City of Evanston
and Chiaravalle Montessori School**

This document was prepared by
and after recording should be
returned to:

Steven D. Friedland
Applegate & Thorne-Thomsen, P.C.
322 S. Green Street, Suite 400
Chicago, Illinois 60607

DECLARATION OF EASEMENTS

This Declaration of Easements (this "**Declaration**") is made as of the 28th day of April, 2010, by and between The City of Evanston, a home rule unit of local government located in Cook County, Illinois (the "**City**"), and Chiaravalle Montessori School, an Illinois not-for-profit corporation ("**Grantee**").

WITNESSETH:

WHEREAS, the City and Grantee executed a Purchase Agreement dated as of September 1, 2009 (the "Purchase Agreement") whereby the City agreed to sell and Grantee agreed to purchase the property commonly known as 425 Dempster Street, Evanston, Illinois, which is more particularly described on Exhibit A attached hereto and made a part hereof (the "**Benefited Property**"); and

WHEREAS, the City owns record title to Curry Park which is directly adjacent to the Benefited Property and which is more particularly described on Exhibit B attached hereto and made a part hereof (the "**City Property**"); and

WHEREAS, the Purchase Agreement contemplated that the City may grant certain easements to Grantee over and across the City Property in order to continue to use and occupy the Benefited Property and to permit Grantee to complete certain improvements to the Benefited Property, including but not limited to the construction of a new addition to the existing improvements in substitution of the existing building addition; and

WHEREAS, contemporaneous with execution and delivery of this Declaration, the City is conveying the Benefited Property to Grantee in accordance with the Purchase Agreement

To that end, the parties hereto agree as follows:

1. *Maintenance and Construction Easement.* The City hereby grants to Grantee, from time to time, a non-exclusive easement under, over and through the City Property for the purpose of allowing Grantee to maintain, repair, replace and construct existing and future improvements located on the Benefited Property (the "**Construction Easement**"). The Construction Easement shall be subject to the following terms and conditions:

- a. At least thirty (30) days prior to Grantee's use or occupation of any of the City Property pursuant to the Construction Easement (except in the case of emergency where subsequent notice shall be permitted), Grantee shall send written notice to the City Manager detailing the scope and manner of Grantee's use and occupation of the City Property. Grantee shall use reasonable efforts to minimize Grantee's use of the City Property for the Construction Easement.
- b. The Construction Easement shall include the right of Grantee to (i) stage construction materials and equipment used in connection with the maintenance, repair, replacement and construction of improvements located on the Benefited Property and (ii) to enter upon such portions of the City Property as may be reasonable and necessary to effectuate the purpose of the Construction Easement.

2. *No Build Easement.* The City hereby grants to Grantee a non-exclusive easement under, over and through the City Property (the "**No Build Easement**") and hereby covenants to not build or erect any improvements on that portion of the City Property shown on **Exhibit C**, attached hereto and made a part hereof, and described as the "No Build Easement" (the "**No Build Easement Area**"). The purpose of the No Build Easement is to ensure that the existing and future improvements located on the Benefited Property will comply with required setbacks from other structures imposed by the Evanston Building Code. Subject to the terms of this Declaration, the City reserves and retains the right to use and occupy the No Build Easement Area so long as no improvements are located on the No Build Easement Area that would cause any improvements on the Benefited Property to violate the setback from other structure requirement imposed by the Evanston Building Code.

3. *Other Easements.* The City hereby grants to Grantee a non-exclusive easement under, over and through the City Property (a) to permit Grantee, its guests, invitees, students and faculty ingress to and egress from the Benefited Property, (b) to use the City Property as a park in common with the general public, and (c) for all utility facilities located under, over and through the City Property as of the date hereof and connected to the Benefited Property (and any replacements thereof) which provide the Benefited Property with utility services.

4. *Storm Water Easement.* The City hereby grants to Grantee a non-exclusive easement under, over and through the City Property (the “**Storm Water Easement**”), for storm water detention and discharge through the storm water detention system and sewer line to-be-installed by Grantee in connection with future improvements to be located on the Benefited Property (the “**Storm Water Facilities**”). The Storm Water Facilities will be located within an approximately 4,000 square foot area of the City Property (for the detention vault or pipes) and include a connection to the sewer main located in Hinman Avenue, which area (the “**Storm Water Easement Area**”) shall be designated by Grantee in writing to the City at such time as Grantee proceeds with the development of any future improvements on the Benefited Property, subject to the City’s approval of such location, which approval will not be unreasonably withheld, conditioned or delayed. The City acknowledges that those portions of the City Property shown cross-hatched on Exhibit D, attached hereto and made a part hereof are acceptable locations for the Storm Water Facilities. The Storm Water Easement shall include the right to enter in a reasonable manner upon adjacent and contiguous property outside of the Storm Water Easement Area as shall be reasonable and necessary for the purpose of access to the Storm Water Area to exercise the rights and perform the obligations as set forth herein. Grantee shall perform, at its sole cost and expense, any installation, maintenance, repair and replacement of the Storm Water Facilities. Should Grantee fail to maintain, repair and replace the Storm Water Facilities and such failure shall adversely affect the City Property or endanger persons using the City Property, then the City shall have the right, upon ten (10) days prior written notice to Grantee (except in the case of emergency where subsequent notice shall be permitted), to maintain, repair and/or replace the Storm Water Facilities. Grantee shall reimburse the City for the City’s reasonable costs and expenses arising out of the City’s maintenance, repair or replacement of the Storm Water Facilities undertaken in accordance with this Section 4.

5. *Restoration of Easement Area.* In the event Grantee damages or disturbs any portion of the City Property in its exercise of the easement rights granted by this Declaration, Grantee shall restore in a timely manner, at its sole cost and expense, such portion of the City Property to a condition as good as that which existed prior to such damage or disturbance.

6. *Notice.* Any notice required by this Declaration shall be in writing and addressed to the other party at the address set forth in the signature block for this Declaration. Any notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository; or (iii) via facsimile transmission, provided a copy of the facsimile transmission is also mailed to the recipient via first class mail, postage prepaid. The date of delivery for a facsimile transmission shall be the date of the transmission.

7. *Termination and Release of Easements.* The easements granted pursuant to this Declaration shall remain in full force and effect in perpetuity until released or terminated. The easements granted pursuant to this Declaration shall be terminated in the

event the improvements located on the Benefited Property are demolished or destroyed, provided, however, such easements shall not terminate if Grantee intends to rebuild or replace such improvements and proceeds with such rebuilding or replacement within a reasonable period of time.

8. *Indemnity.* Grantee shall indemnify and hold the City harmless from and against any and all liability, loss, damage, costs and expenses (including reasonable attorney's fees) including but not limited to injury to person or death or property damage or claim of lien, arising out of this Agreement as a result of the negligent or wrongful act of the Grantee or the Grantee's employees, agents, contractors, subcontractors, suppliers and materialmen.

9. *Insurance.* Grantee, at its sole cost and expense, shall maintain and keep in effect comprehensive commercial general liability insurance in the minimum amount of \$2,000,000, covering, without limitation, any liability for personal injury, bodily injury (including, without limitation, death) and property damage arising out of Grantee's acts, omissions and use of the City Property pursuant to this Declaration. All general liability policies of insurance required herein shall name the City as an additional insured.

10. *Successors and Assigns.* This Declaration shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. *Counterparts.* This Declaration may be executed in counterparts, each of which upon such execution shall be deemed an original.

[remainder of page left blank intentionally]

SIGNATURE PAGE

The City and Grantee have caused this Declaration to be executed and delivered as of the date first above written.

The City:

City of Evanston, a home rule unit of local government located in Cook County, Illinois

By: Wally Bobkiewicz

Name: Wally Bobkiewicz

Its: City Manager

Address:
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attention: City Manager

Grantee:

Chiaravalle Montessori School, an Illinois not-for-profit corporation

By: Bonnie Maslana

Name: Bonnie Maslana

Its: Director of Finance & Operations

Address:
Chiaravalle Montessori School
425 Dempster Street
Evanston, IL 60201
Attention: Head of School

By: Bill Greer

Name: Bill Greer

Its: Trustee

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, DELPHYNE JOAN HANKE-WOODS, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Wally Bobkiewicz, City Manager of the City of Evanston, is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such City Manager, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes there set forth.

GIVEN under my hand and official seal, this 14 day of APRIL, 2010.

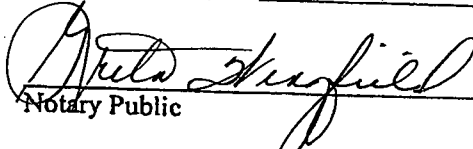


My Commission Expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, GRETA WINGFIELD, a Notary Public in and for said county, DO HEREBY CERTIFY that Jill Greer, Trustee of Chiaravalle Montessori School, an Illinois not-for-profit corporation, 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 he signed and delivered said instrument as his free and voluntary act for the use and purposes therein set forth.

GIVEN under my hand and official seal this 27th day of APRIL, 2010.


Notary Public

My Commission Expires:

Jan. 14, 2012



EXHIBIT A
BENEFITED PROPERTY

LOT 2 IN THE CHIARAVALLE SUBDIVISION, BEING A SUBDIVISION OF LOTS
10 THROUGH 15 IN BLOCK 37 OF EVANSTON IN THE SOUTH EAST ¼ OF
SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD
PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 425 Dempster, Evanston, IL

PIN: _____

(formerly PINs 11-18-419-032-8001
11-18-419-032-8002
11-18-419-033-8001
11-18-419-033-8002)

EXHIBIT B

CITY PROPERTY

LOT 1 IN THE CHIARAVALLE SUBDIVISION, BEING A SUBDIVISION OF LOTS 10 THROUGH 15 IN BLOCK 37 OF EVANSTON IN THE SOUTH EAST ¼ OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

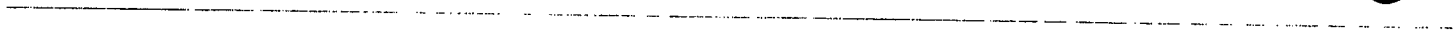
Commonly known as Curry Park at Dempster and Hinman, Evanston, IL

PIN: _____

(formerly PINS 11-18-419-030-8001
11-18-419-030-8002
11-18-419-031-8001
11-18-419-031-8002)

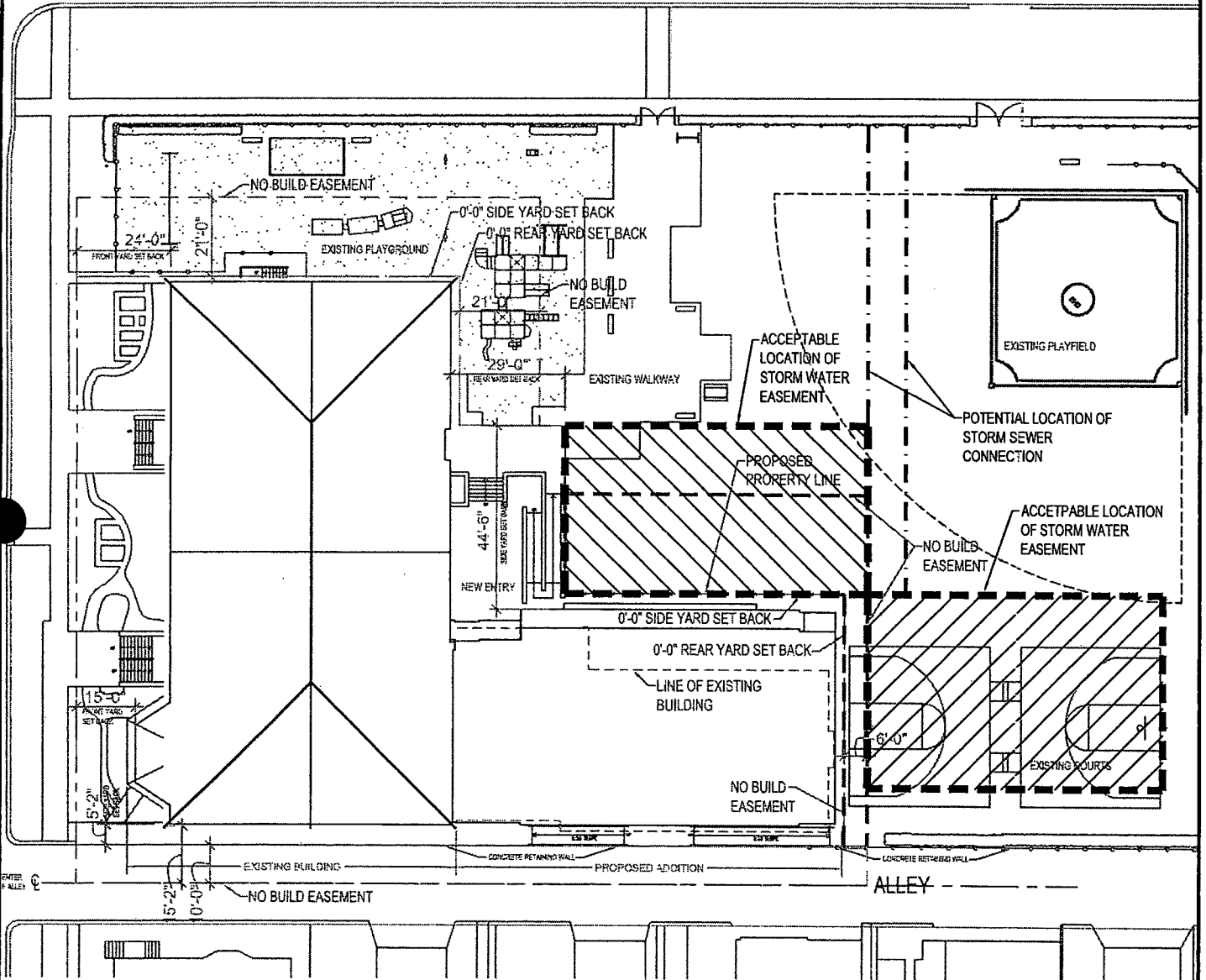
EXHIBIT C
NO BUILD EASEMENT AREA

EXHIBIT D
STORM WATER EASEMENT AREA





HINMAN AVENUE



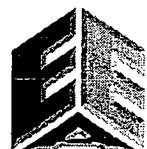
Title:

EXHIBIT D

Design By:	SL	Date:	02/03/10
Checked By:	GD	Project No.:	
Sheet No.:			

CHIARAVALLE MONTESSORI SCHOOL

425 Dempster Street
Evanston, Illinois



ERIKSSON ENGINEERING ASSOCIATES, LTD.

145 COMMERCE DRIVE, SUITE A
GRAYBLAKE, ILLINOIS 60030
PHONE (847) 223-4804
FAX (847) 223-4804
EMAIL CHAL@EERLTD.COM