



Office of the City Clerk

City Hall
121 N. LaSalle St.
Room 107
Chicago, IL 60602
www.chicityclerk.com

Legislation Text

File #: O2017-3021, Version: 1

O R D I N A N C E

WHEREAS, the City of Chicago (the "City"), a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois, has heretofore found and does hereby find that there exists within the City a serious shortage of decent, safe and sanitary rental housing available to persons of low and moderate income; and

WHEREAS, the City has determined that the continuance of a shortage of affordable rental housing is harmful to the health, prosperity, economic stability and general welfare of the City; and

WHEREAS, the City has certain funds available from a variety of funding sources ("Multi-Family Program Funds") to make loans and grants for the development of multi-family residential housing to increase the number of families served with decent, safe, sanitary and affordable housing and to expand the long-term supply of affordable housing, and such Multi-Family Program Funds are administered by the City's Department of Planning and Development ("DPD"); and

WHEREAS, DPD has preliminarily reviewed and approved the making of a loan to Brainerd Park Apartments Limited Partnership, an Illinois limited partnership (the "Borrower"), of which Brainerd Park GP, LLC, an Illinois limited liability company (the "General Partner"), is the sole general partner (of which Full Circle Communities, Inc., an Illinois not-for-profit corporation ("FCC"), is the managing member and Christian Community Health Center, an Illinois not-for-profit corporation, is a member), in an amount not to exceed \$1,900,000 (the "Loan"), to be funded from Multi-Family Program Funds pursuant to the terms and conditions set forth in Exhibit A attached hereto and made a part hereof; and

WHEREAS, FCC desires to purchase twelve vacant, City-owned parcels of real property commonly known as 8902-8956 South Loomis Street, Chicago, Illinois (the "City Property"), for the sum of Twelve and 00/100 Dollars (\$12.00) (i.e., \$1.00 per parcel), and which are legally described in Exhibit B attached hereto; and

WHEREAS, the appraised aggregate fair market value of the City Property is One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000); and

WHEREAS, FCC proposes to immediately reconvey the City Property to the Borrower; and

WHEREAS, Borrower proposes to cause to be constructed on the Property a multifamily housing project as described in Exhibit A attached hereto and incorporated herein (the "Project"); and

WHEREAS, by Resolution No. 17-017-21, adopted by the Plan Commission of the City (the "Plan Commission") on February 16, 2017, the Plan Commission recommended the sale of the City Property; and

WHEREAS, public notices advertising the intent of the Department to enter into a negotiated sale with Owner, and requesting alternative proposals appeared in the Chicago Sun-Times on February 24, and March 2 and 6, 2017; and

WHEREAS, no alternative proposals have been received by the deadline indicated in the

aforesaid notice; and

WHEREAS, the Illinois General Assembly pursuant to 20 ILCS 3805/7.28 (as supplemented, amended and restated from time to time, the "Act") has authorized a program allowing the allocation of certain tax credits for qualified donations made in connection with affordable housing projects; and

WHEREAS, on January 16, 2002, the City Council enacted an ordinance published in the Journal of Proceedings for such date at pages 77362 through 77366, inclusive, as amended by an ordinance adopted by City Council on September 4, 2003 and published in the Journal of Proceedings for such date at pages 6475 through 6626, inclusive, which authorized the establishment of a program (as supplemented, amended and restated from time to time, the "Donation Tax Credit Program") to be implemented by DPD in connection with the use of certain tax credits authorized by the Act; and

WHEREAS, the City's conveyance of the City Property to FCC may qualify under the Donation Tax Credit Program as an eligible donation, and may generate certain additional proceeds for the Project; and

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Incorporation of Recitals. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. Loan. Upon the approval and availability of the Additional Financing as shown in Exhibit A hereto, the Commissioner of DPD (the "Commissioner") or any successor department thereto and a designee of the Commissioner (collectively, the "Authorized Officer") are each hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Loan. The Authorized Officer is hereby authorized, subject to the approval of the Corporation Counsel, to negotiate any and all terms and provisions in connection with the Loan which do not substantially modify the terms described in Exhibit A hereto. Upon the execution and receipt of proper documentation, the Authorized Officer is hereby authorized to disburse the proceeds of the Loan to the Borrower.

SECTION 3. Qualification as Affordable Housing. The Project shall be deemed to qualify as "Affordable Housing" for purposes of Chapter 16-18 of the Municipal Code of Chicago. Section 2-45-115 of the Municipal Code of Chicago shall not apply to the Project or the Property (as defined on Exhibit A hereto).

SECTION 4. Agreement. The sale of the City Property to FCC in the amount of Twelve and 00/100 Dollars (\$12.00) is hereby approved. This approval is expressly conditioned upon the City entering into a Loan agreement with the Borrower.

SECTION 5. Deed. The Mayor or his proxy is authorized to execute, and the City Clerk is authorized to attest, one or more quitclaim deeds conveying the City Property to FCC, or to a land trust of which FCC is the sole beneficiary, or to a business entity of which the FCC is the sole controlling party or which is comprised of the same principal parties, for immediate re-conveyance to the Borrower.

The following provisions shall govern the City's conveyance of the City Property to FCC:

i) Form of Quitclaim Deed. The City shall convey to FCC title to the City Property by quitclaim deed for the sum of Twelve and 00/100 Dollars (\$12.00), which shall be paid by FCC to the City on the date the City conveys the City Property. FCC acknowledges and agrees that the City Property has an appraised fair market value price of approximately One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000). Without limiting the quitclaim nature of the deed, the conveyance of and title to the City Property shall, in addition to the provisions of this Ordinance, be subject to:

- a) general real estate taxes and any special assessments or other taxes;
- b) all easements, encroachments, covenants and restrictions of record and not shown of record;
- c) such other title defects as may exist; and
- d) any and all exceptions caused by the acts of FCC, its affiliates or its agents.

ii) Taxes. The City shall use reasonable efforts to obtain the waiver or release of any delinquent real estate taxes or tax liens on the City Property prior to the closing, to the extent such taxes or tax liens can be waived or released through submission of an abatement letter to the Cook County Treasurer, a motion to vacate a tax sale or a petition for exemption. If the City is unable to obtain the waiver or release of any such tax liens or is unable to cause the title company to insure over such tax liens, or if the City Property is encumbered with any other unpermitted exceptions, FCC shall have the option to do one of the following: (a) accept title to the City Property subject to the unpermitted exceptions, which shall then become permitted exceptions; or (b) elect not to purchase the City Property.

iii) Financing. Neither FCC nor the Borrower shall, without prior written consent of DPD, which shall be in DPD's sole discretion, engage in any financing or other transaction which would create an encumbrance or lien on the City Property (other than Financing described on Exhibit A).

iv) Closing. The closing for the City Property to FCC and FCC's re-conveyance of the City Property to the Borrower shall take place simultaneously and sequentially and on such date and at such place as the parties may mutually agree to in writing.

v) Recordation of Quitclaim Deed(s). FCC shall promptly record, or cause to be recorded, the quitclaim deed(s) for the City Property in the Office of the Recorder of Deeds of Cook County, Illinois. FCC or the Borrower shall pay all costs for so recording the quitclaim deed(s).

vi) Escrow. In the event that FCC requires conveyance through an escrow, FCC shall pay all escrow fees.

vii) "AS IS" SALE. FCC ACKNOWLEDGES THAT IT HAS HAD ADEQUATE OPPORTUNITY TO INSPECT AND EVALUATE THE STRUCTURAL, PHYSICAL AND ENVIRONMENTAL CONDITION AND RISKS OF THE PROPERTY AND ACCEPTS THE RISK THAT ANY INSPECTION MAY NOT DISCLOSE ALL MATERIAL MATTERS AFFECTING THE

PROPERTY (AND ANY IMPROVEMENTS THEREON). FCC OR THEIR REPRESENTATIVE MUST OBTAIN A RIGHT OF ENTRY AGREEMENT FROM THE CITY PRIOR TO ACCESSING THE PROPERTY AT ANY TIME PRIOR TO CONVEYANCE. THE CITY MUST APPROVE THE SCOPE OF WORK ASSOCIATED WITH THE RIGHT OF ENTRY BEFORE IT IS CONDUCTED. FCC AGREES TO ACCEPT THE PROPERTY IN ITS "AS IS," "WHERE IS" AND "WITH ALL FAULTS" CONDITION AT CLOSING WITHOUT ANY COVENANT, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, AS TO THE STRUCTURAL, PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PURPOSE WHATSOEVER. FCC ACKNOWLEDGES THAT IT IS RELYING SOLELY UPON ITS OWN INSPECTION AND OTHER DUE DILIGENCE ACTIVITIES AND NOT UPON ANY INFORMATION (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL STUDIES OR REPORTS OF ANY KIND) PROVIDED BY OR ON BEHALF OF THE CITY OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. FCC AGREES THAT IT IS FCC'S SOLE RESPONSIBILITY AND OBLIGATION TO PERFORM ANY ENVIRONMENTAL REMEDIATION WORK AND TAKE SUCH OTHER ACTION AS IS NECESSARY TO PUT THE PROPERTY IN A CONDITION WHICH IS SUITABLE FOR ITS INTENDED USE.

(viii) Environmental Requirements:

1. Phase I Environmental Site Assessment (ESA) must be conducted in conformance with ASTM E- 1527-13 is required and must be performed within 180 days prior to closing. A reliance letter naming the City of Chicago as an authorized user must be provided by the environmental professional conducting the Phase I ESA.

2. FCC must enroll the Project in the Illinois Environmental Protection Agency's ("IEPA") Site Remediation Program ("SRP") and obtain a comprehensive residential No Further Remediation Letter.

3. FCC shall undertake all investigation, removal, response, disposal, remediation and other activities that may be required and take all necessary and proper steps to obtain a comprehensive residential Final No Further Remediation Letter ("Final NFR Letter") from the IEPA approving the use of the Property for the Project.

4. FCC must obtain the Draft No Further Remediation Letter ("Draft NFR Letter") from IEPA prior to closing.

5. Any underground storage tanks ("USTs") identified must be removed and closed in accordance with applicable regulations and any identified leaking USTs must be properly addressed in accordance with 35 Ill. Adm. Code 734.

6. FCC shall be solely responsible for all site preparation, SRP and environmental oversight costs, including, but not limited to, report preparation, IEPA fees, remediation oversight, the removal of soil, pre-existing building foundations, soil exceeding the IEPA's Tiered Approach to Cleanup Objectives for the proposed uses of the Project, and demolition debris, the removal, disposal, storage, remediation, removal or treatment of "Hazardous Substances" (as defined below) from the Property, and the construction of any engineered barriers required to obtain the Final NFR Letter. "Hazardous Substance" means any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of)

any Environmental Laws, or any pollutant, toxic vapor, or contaminant, and shall include, but not be limited to, petroleum (including crude oil or any fraction thereof), any radioactive material or by-product material, polychlorinated biphenyls and asbestos in any form or condition.

7. The City, acting through 2FM, shall have the right to review and approve in advance all documents submitted to the IEPA under the SRP, as amended or supplemented from time to time, including, without limitation; the Comprehensive Site Investigation Report/Remedial Objectives Report/Remedial Action Report, the Remedial Action Completion Report, the Comprehensive Draft NFR Letter, the Final NFR Letter and any changes thereto.

8. FCC shall promptly transmit to the City copies of all SRP Documents prepared or received after the date hereof, including, without limitation, any written communications delivered to or received from the IEPA or other regulatory agencies with respect to the Remediation Work.

9. FCC acknowledges and agrees that the City will not issue a Certificate of Completion or a Certificate of Occupancy for the Project and occupancy may not occur until the IEPA has issued, and the City has approved, a Final NFR Letter for the Project.

10. FCC must record and abide by the terms and conditions of the Final NFR Letter, including but not limited to the maintenance of all preventative, engineering and institutional controls.

11. FCC must comply with all applicable "Environmental Laws" (as defined below). "Environmental Laws" means any and all Laws (as defined below) relating to the regulation and protection of human health, safety, the environment and natural resources now or hereafter in effect, as amended or supplemented from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., any and all regulations promulgated under such Laws, and all analogous state and local counterparts or equivalents of such Laws, including, without limitation, the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., and the common law, including, without limitation, trespass and nuisance. "Laws" means all applicable federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders and judgments, including, without limitation, Sections 7-28 and 11-4 of the Municipal Code of Chicago relating to waste disposal (collectively, "Laws")

(ix) Release and Indemnification.

1. FCC, on behalf of itself and on behalf of its officers, directors, employees, successors, assigns and anyone claiming by, through or under them (collectively, the "Developer Parties"), or anyone claiming by, through, or under the Developer Parties, hereby releases, relinquishes and forever discharges the City from and against any and all Losses

which FCC or any of the Developer Parties ever had, now have, or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, arising out of or in any way connected with, directly or indirectly (a) any environmental contamination, pollution or hazards associated with the Property or any improvements, facilities or operations located or formerly located thereon, including, without limitation,

any release, emission, discharge, generation, transportation, treatment, storage or disposal of Hazardous Substances, or threatened release, emission or discharge of Hazardous Substances; (b) the structural, physical or environmental condition of the Property, including, without limitation, the presence or suspected presence of Hazardous Substances in, on, under or about the Property or the migration of Hazardous Substances from or to other property, unless the Hazardous Substances migrate from property owned by the City to the Property; (c) any violation of, compliance with, enforcement of or liability under any Environmental Laws, including, without limitation, any Losses arising under CERCLA, and (d) any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the Property or any improvements, facilities or operations located or formerly located thereon (collectively, "Released Claims"). Furthermore, the Developer shall defend, indemnify, and hold the City harmless from and against any and all Losses which may be made or asserted by any third parties arising out of or in any way connected with, directly or indirectly, any of the Released Claims.

2. The covenant of release set forth in this provision (ix) shall run with the Property, and shall be binding upon all successors and assigns of FCC with respect to the Property, including, without limitation, each and every person, firm, corporation, limited liability company, trust or other entity owning, leasing, occupying, using or possessing any portion of the Property under or through FCC following the date of the Deed. FCC acknowledges and agrees that the foregoing covenant of release constitutes a material inducement to the City's conveying the Property to FCC, and that, but for such release, the City would not have agreed to convey the Property to FCC for the Purchase Price. It is expressly agreed and understood by and between FCC and the City that, should any future obligation of FCC, or any of the Developer Parties, arise or be alleged to arise in connection with any environmental, soil or other condition of the Property, neither FCC, nor any of the Developer Parties, will assert that those obligations must be satisfied in whole or in part by the City because this provision (ix) contains a full, complete and final release of all such claims.

3. This provision (ix) shall survive the closing of the City's conveyance of the Property to FCC and any termination of the Loan agreement (regardless of the reason for such termination).

(x) Reconveyance Deed. Prior to the City's conveyance of the City Property to FCC, FCC shall deliver to the City a special warranty deed for the City Property in recordable form naming the City as grantee, for possible recording in the event FCC defaults under the Loan or the tax credit regulatory agreement(s), and such default is not cured in accordance with the terms of the Loan or the regulatory agreement(s).

SECTION 6. Donation Tax Credits. The City hereby approves the conveyance of the City Property. The conveyance of the City Property is approved as a donation to FCC from the City under the Donation Tax Credit Program in connection with the Project. The Authorized Officer is hereby authorized to transfer the tax credits allocated to the City under the Donation Tax Credit Program in connection with the conveyance of the City Property to an entity satisfactory to the Authorized Officer on such terms and conditions as are satisfactory to the Authorized Officer (the "Transfer"). The proceeds, if any, received by the City in connection with the Transfer are hereby appropriated, and the Authorized Officer is hereby authorized to use such proceeds, to make a grant to FCC, in his or her sole discretion, for use in connection with the Project (the "Grant"). Upon the execution and receipt of proper documentation, the Authorized Officer is hereby authorized to disburse the

proceeds of the Grant to FCC.

SECTION 7. Severance. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

SECTION 8. Effective Date. This ordinance shall be effective as of the date of its passage and approval.

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EXHIBIT A

Brainerd Park Apartments Limited Partnership, an Illinois limited partnership, of which Brainerd Park GP, LLC, an Illinois limited liability company, is the sole general partner (of which Full Circle Communities, Inc., an Illinois not-for-profit corporation, is the managing member and Christian Community Health Center, an Illinois not-for-profit corporation, is a member), and others to be hereafter selected as the limited partners.

Acquisition of land and construction of a building containing approximately 36 residential dwelling units to be located generally at 8902-56 South Loomis Street in Chicago, Illinois, for low- and moderate-income families, together with certain common areas and parking.

Source:

Amount:

Term:

Interest:

Security:

Multi-Family Program Funds Not to exceed \$1,900,000 Not to exceed 32 years Zero percent per annum

Non-recourse loan; mortgage (the "City Mortgage") on the Property

ADDITIONAL FINANCING

1. Amount: Not to exceed \$6,000,000 (the "Bridge Loan")
Term: Not to exceed 30 months, or another term acceptable to the Authorized Officer
Source: Capital One, or another entity acceptable to the Authorized Officer
Interest: A variable rate of interest not to exceed a rate calculated as 30-day LIBOR plus two and one-half percent (2.50%) per annum, or another interest rate acceptable to the Authorized Officer
Security: Mortgage on the Property senior to the lien of the City Mortgage, and/or such other security acceptable to the Authorized Officer

2. Amount: Not to exceed \$1,300,000
Term: Not to exceed 20 years, or another term acceptable to the Authorized Officer
Source: IFF, or another entity acceptable to the Authorized Officer
Interest: A fixed rate of interest not to exceed six percent (6%) per annum, or another interest rate acceptable to the Authorized Officer
Security: A mortgage on the Property senior to the City Mortgage, or such other security acceptable to the Authorized Officer

Any loan shall carry a fixed rate of interest not to exceed seven percent (7%) per annum, or another interest rate acceptable to the Authorized Officer Any loan to be secured by a mortgage on the Property to be junior to the lien of the City Mortgage, Recapture Mortgage, or such other security acceptable to the Authorized Officer

Approximately \$100

General Partner, or another source acceptable to the Authorized Officer

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Low-Income Housing Tax Credit ("LIHTC") Proceeds:

Source:

Amount: Term:

Source:

Interest:

Security:

Amount: Term:

Source:

Interest:

Security:

Amount: Term:

Source:

Approximately \$7,239,337, all or a portion of which may be paid on a delayed basis, and all or a portion of which may be used to retire the Bridge Loan To be derived from the syndication of a LIHTC allocation of approximately \$670,376 by the City

Approximately \$516,250

Not to exceed 32 years, or another term acceptable to the Authorized Officer

Capital contribution by the General Partner to the Borrower or a loan or loans from FCC to the Borrower or any combination of the foregoing, derived from the proceeds of the transfer of Donation Tax Credits in connection with the Project, or another source acceptable to the Authorized Officer Any loan shall carry a fixed rate of interest not to exceed seven percent (7%) per annum, or another interest rate acceptable to the Authorized Officer Any loan to be secured by a mortgage on the Property to be junior to the lien of the City Mortgage

Approximately \$123,892

Not to exceed 32 years, or another term acceptable to the Authorized Officer

Capital contribution by the General Partner to the Borrower or a loan or loans from FCC to the Borrower or any combination of the foregoing, derived from the proceeds of a grant from the Illinois Department of Commerce and Economic Opportunity, or another source acceptable to the Authorized Officer Any loan shall carry a fixed rate of interest not to exceed seven percent (7%) per annum, or another interest rate acceptable to the Authorized Officer Any loan to be secured by a mortgage on the Property to be junior to the lien of the City Mortgage

Approximately \$540,000

Not to exceed 32 years, or another term acceptable to the Authorized Officer

Capital contribution by the General Partner to the Borrower or a loan or loans from FCC to the Borrower or any combination of the foregoing, derived from the proceeds of a Federal Home Loan Bank grant through the Affordable Housing Program, or another source acceptable to the Authorized Officer

EXHIBIT B
LEGAL DESCRIPTION OF CITY PROPERTY (Subject to
Final Title and Survey)

LOT 1 (EXCEPT THE NORTH 42.50 FEET THEREOF) AND ALL OF LOTS 2 TO 12, INCLUSIVE, IN BLOCK 9 IN E.L BRAINER'S SUBDIVISION OF TELFORD BURNHAM'S SUBDIVISION (EXCEPT BLOCKS 1 AND 8 THEREOF) OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 8902-8956 South Loomis Street, Chicago, Illinois

P.I.N.s:	25-05-119-016-0000	25-05-119-018-0000
25-05-119-019-0000		25-05-119-
020-0000	25-05-119-021-0000	25-
05-119-022-0000		25-05-119-023-
0000	25-05-119-026-0000	25-05-
119-027-0000		25-05-119-028-
0000	25-05-119-030-0000	25-05-
119-031-0000		

CITY OF CHICAGO

RAHM EMANUEL
MAYOR

March 29, 2017

TO THE HONORABLE, THE CITY COUNCIL OF THE CITY OF
CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith ordinances authorizing the conveyance of city-owned property, together with the execution of multi-family loan agreements.

Your favorable consideration of these ordinances will be appreciated.

Mayor

Very truly yours,

CHICAGO April 19,2017 To the President

and Members of the City Council: Your Committee on Finance having had under consideration

An ordinance authorizing the Commissioner of the Department of Planning and Development to enter into and execute a Loan Agreement with Brainerd Park Apartments Ltd. Partnership.

02017-3021

Amount of Loan not to exceed:

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith
dissenting vote(s)7

**This recommendation was concurred in by
of members of the committee with**

Chairman