

RESOLUTION NO. 23-18

A RESOLUTION WAIVING CITY COUNCIL RULE 6-1 AND AUTHORIZING THE TRANSFER OF PROPERTY LOCATED AT 4921 TEMPLETON GAP ROAD ALSO KNOWN AS LOT 2 SUNDOWN SQUARE SUB FIL NO 1 TO GRECCIO HOUSING UNLIMITED, INC., A COLORADO NONPROFIT CORPORATION, AS THE ONE LOGICAL POTENTIAL PURCHASER

WHEREAS, the City of Colorado Springs ("City") has title to a parcel of land located at 4921 Templeton Gap Road ("Property"); and

WHEREAS, the Property is surplus and no City Department or Enterprise has expressed an interest in retaining the Property; and

WHEREAS, the Property was donated to the City, and Community Development has determined that the transfer of the Property would benefit the community for the public purpose of encouraging the development of affordable housing; and

WHEREAS, City Staff recommends authorization and approval for the City's Real Estate Services Manager to enter into an agreement to transfer the Property to Greccio, Housing Unlimited, Inc., a Colorado Nonprofit Corporation, ("Greccio") as the one logical potential purchaser.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council finds that the Property, known as 4921 Templeton Gap Road, also known as LOT 2 SUNDOWN SQUARE SUB FIL NO 1, is surplus property that is not necessary for the operations of the City and is unneeded for the proper conduct of any other City affairs.

Section 2. City Council Rule of Procedure 6-1 is waived so that the Property may be transferred to Greccio, as the one logical potential purchaser.

Section 3. City Council hereby finds, in accord with the provisions of Colorado Constitution Article XI, § 2, that a public purpose exists in the conveyance of the Property to Greccio for the purpose of developing affordable housing.

Section 4. City Council authorizes the sale of the Property to Greccio for the purchase price of one dollar (\$1.00) pursuant to the terms and limitations of the Real Estate Purchase Agreement (Attachment 1).


Section 5. The Real Estate Services Manager is authorized to execute all documents necessary to close the Property transaction in accord with this Resolution.

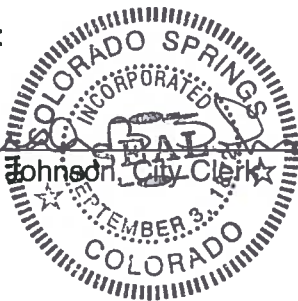
Dated at Colorado Springs, Colorado this 27th day of March, 2018.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



REAL ESTATE PURCHASE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement"), dated this 4th day of MAY 2018, is entered into and between the CITY of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, having an address at 30 South Nevada Avenue, Suite 502, Colorado Springs, CO 80903 the Seller ("CITY"), and Greccio Housing Unlimited, Inc. a Colorado Nonprofit Corporation, its successors and assigns, having an address at 1015 East Pikes Peak Avenue, Suite 110, Colorado Springs, CO 80903, the Buyer ("GRECCIO"). CITY and GRECCIO may be referred to collectively as the "Parties" or singularly as a "Party".

RECITALS

WHEREAS, the CITY is the owner in fee simple of certain real property more specifically referred to herein as the Property;

WHEREAS, the City desires to sell the Property to GRECCIO at a below market value for the development of affordable housing;

WHEREAS, the Parties are now entering into this Agreement in furtherance of the foregoing.

AGREEMENT

NOW, THEREFORE, in consideration for the mutual covenants and agreements set forth here, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties each agree as follows:

I. PURCHASE OF PROPERTY

1.1 Property. CITY is the owner of that certain real property ("Property") located in the County of El Paso, State of Colorado, as described as follows:

LOT 2 SUNDOWN SQUARE SUB FIL NO 1
COMMONLY KNOWN AS 4921 TEMPLETON GAP ROAD

GRECCIO desires to purchase the Property from the CITY on the terms and conditions contained in this Agreement.

1.2 Earnest Money. The CITY and GRECCIO each agree that execution of this Agreement is for the mutual benefit of all Parties, and that as a result, no earnest money is required.

CITY Int: DAK

GRECCIO Int: VP

Date: 5-4-18

Date: 5-4-18

1.3 Purchase Price. CITY shall sell, and GRECCIO shall purchase, the Property on the terms and conditions of this Agreement for a purchase price of \$1.00.

1.4 Force and Effect. If any provision of this contract shall be determined to be invalid, illegal, or without force by a court of law or rendered so by legislative act then the remaining provisions of this contract shall remain in full force and effect.

II. DUE DILIGENCE

2.1 GRECCIO accepts the Property "AS IS" and acknowledges it has received sufficient time and rights to investigate matters pertaining to the Property that may be of importance to GRECCIO.

III. CLOSING

3.1 Time and Place. The Closing of the purchase of the Property shall be at Land Title Guarantee Company, 102 South Tejon Street, Suite 100, Colorado Springs, Colorado 80903 at a date and time to be determined by mutual agreement of both parties. The Closing shall take place on or before the third anniversary (the "Outside Closing Date") of the acceptance of this Agreement by City Council; provided however that, the CITY may extend the Outside Closing Date by written notice to GRECCIO or terminate this Agreement.

3.2 Conditions of Closing. The CITY shall not be obligated to close unless and until (i) GRECCIO has obtained funding commitments sufficient to fund the Project in accordance with Section 5.2, below, and (ii) GRECCIO has obtained any entitlements which may be required under the Code of the City of Colorado Springs in order to build the Project on the Property (provided that nothing herein shall obligate the CITY to grant such entitlements).

3.3 Procedure. At Closing, the following shall occur:

3.3.1 Conveyance Deed. CITY shall convey the Property to GRECCIO by Quitclaim Deed, subject to easements reserved in the Quitclaim deed and which shall include a reversion clause requiring GRECCIO, its heirs and assigns, to build an affordable housing development that is restricted to low to moderate income households, pursuant to HUD requirements ("Project"). The reversion clause shall require that the Project be completed, defined as date of issuance of the Certificate of Occupancy, within five (5) years of the date the Quitclaim deed is recorded or the Property shall automatically revert to the CITY's ownership without further action by the CITY. The CITY may, but shall not be required to, release its reversionary rights if potential financiers of the Project require such a release; provided that substitute assurances, of a kind and quality acceptable to the CITY in its sole discretion, are made that the Property shall be used to

construct affordable housing within a reasonable time period. The Quitclaim deed shall be substantially in the form of EXHIBIT A.

3.3.2 Purchase Price. GRECCIO shall deliver the purchase price to CITY.

3.3.3 Real Property Taxes. The CITY shall cause the Title Company to issue to GRECCIO a tax certificate evidencing the current status of the real property taxes for the Property. GRECCIO shall be responsible for directly paying all real property taxes which accrue following Closing.

3.3.4 Possession. CITY delivers possession of the Property to GRECCIO.

3.3.5 Closing Costs. The CITY shall pay recording fees and documentary fees, if any. If GRECCIO elects to close the sale through a title company, GRECCIO agrees to pay all costs of Closing.

IV. CONDITION OF PROPERTY

4.1 Physical Condition of Property. GRECCIO acknowledges that CITY has made no representations or warranties concerning the condition of soils on the Property, drainage conditions on the Property, or any other matter pertaining to the physical or environmental condition of the Property. GRECCIO has had sufficient opportunity to investigate the condition of the Property and during the term of this Agreement may undertake a Phase I environmental assessment and a property survey. Notwithstanding any due diligence undertaken by GRECCIO, GRECCIO accepts the physical and environmental condition of the Property in "as-is" condition.

4.2 From the date of this Agreement and until the end of 150 days thereafter (the "Inspection Period"), GRECCIO and its agents and/or employees may enter upon the Property for the purposes of making surveys, environmental inspections, engineering studies, soil tests, obtaining topographical information and for other similar inspection and pre-construction work. GRECCIO may terminate this Agreement in writing prior to the end of the Inspection Period for any reason whatsoever regarding the Property or otherwise including, without limitation, matters relating to the physical condition of the Property or the results of the tests and investigations of the Property.

V. SPECIAL PROVISIONS

5.1 Appropriation of Funds. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal

obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, §20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the CITY which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (1) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the CITY. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

5.2 Funding Commitments. GRECCIO agrees to apply for and provide evidence of funding sufficient to complete the Project, whether obtained from tax credit financing, private investment, grants or otherwise. GRECCIO further agrees to provide evidence of firm commitments from all lenders, or other funding partners, required to fund the Project. At least one (1) source of funding shall require and bind GRECCIO to use the Property for the purpose of providing low income housing for a period of time reasonably acceptable to the CITY.

5.3 Entitlements. GRECCIO agrees, at GRECCIO'S expense, to secure the entitlements necessary to construct the Project in accordance with the Code of the City of Colorado Springs.

5.4 Assignability. GRECCIO shall have the right to transfer or assign its rights hereunder without the City's prior consent to a limited partnership or limited liability company, of which GRECCIO is the sole general partner or the sole managing member, and which is formed to use Low Income Housing Tax Credits. In connection with any such assignment GRECCIO shall provide written notice to CITY at least thirty (30) days prior to the Closing. GRECCIO shall provide, and the CITY shall have the right to review, any partnership agreement or operating agreement to confirm that GRECCIO remains in control of the Project. GRECCIO may not otherwise transfer or assign any interest in this Agreement without the CITY'S written consent, which may be withheld in the CITY'S sole and subjective discretion. In any event, GRECCIO shall remain involved in the development of this Project throughout.

5.5 City Council Approval. This Agreement is contingent on City Council passing a Resolution ratifying this Agreement and approving the sale.

VI. DEFAULT

6.1 Remedies. If GRECCIO is in default under this Agreement, CITY may terminate this Agreement by written notice to GRECCIO. If the City is in default under this Agreement, Greccio is entitled to specific performance.

6.2 Time. Time is of the essence of this Agreement.

VII. NOTICES AND OTHER DELIVERIES

7.1 Notices and Other Deliveries. Any notice or other documents or materials required or permitted to be delivered hereunder shall be deemed properly delivered upon receipt by the party to whom the same are to be delivered. Notices may be hand delivered, sent by first-class mail, return receipt requested, with postage prepaid, or transmitted by electronic facsimile. Either party may, by notice properly delivered, change the person or address to which future notices or deliveries to that party shall be made:

<p>GRECCIO: Greccio Housing Unlimited, Inc. Lee Patke Executive Director 1015 East Pikes Peak Avenue, Suite 110 Colorado Springs, CO 80903 Phone: 719-475-1422 ext. 112 E-mail: lpatke@greccio.org</p>	<p>CITY: CITY of Colorado Springs Darlene Kennedy Real Estate Services Manager 30 South Nevada Avenue, Suite 502 Colorado Springs, CO 80903 Phone: 719-385-5605 E-mail: dkennedy@springsgov.com</p>
--	---

VIII. INTERPRETATION OF AGREEMENT

8.1 Headings Incorporation of Recitals and Exhibits. The article and section headings in the Agreement are for convenience only, and shall not be used in the interpretation of or considered part of this Agreement. The recitals set forth at the beginning of this Agreement and all exhibits attached to this Agreement are incorporated herein by this reference.

8.2 Governing Law. This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a home rule City and Colorado municipal corporation. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado. The Parties agree that this Agreement shall be deemed to have been made in, and the place of

CITY Int: DAK GRECCIO Int: VP
Date: 5-4-18 Date: 5-4-18

performance is deemed to be in, the City of Colorado Springs, El Paso County, State of Colorado.

8.3 Headings. The article and section headings in this Agreement are for convenience only, and shall not be used in its interpretation or considered part of this Agreement.

8.4 Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements previously made, verbal or written, are merged in this Agreement, which may be amended only in writing, executed by duly authorized representatives of the parties hereto.

INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

SIGNATURE PAGES

Greccio Housing Unlimited, Inc., a Colorado Nonprofit Corporation

R. Lee Patke Jr.

By: R. Lee Patke Jr.

Its: Executive Director

Date: 5-4-18

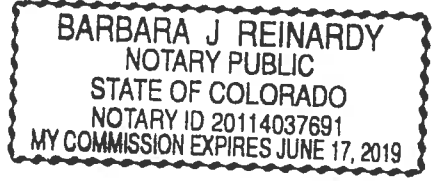
STATE OF COLORADO)
County of El Paso)ss.
)

The foregoing instrument was acknowledged before me this 4th day of May 2018, by R. Lee Patke, Jr., as Executive Director for Greccio Housing Unlimited, Inc., a Colorado Nonprofit Corporation.

Witness my hand and official seal

My Commission Expires: June 17, 2019

Barbara J. Reinardy
Notary Public



INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

CITY OF COLORADO SPRINGS:



Darlene J. Kennedy, Real Estate Services Manager

Date: May 4, 2018



Robert S. Posey, HUD Program Administrator

Date: 5.4.18

Approved as to form:



Benjamin Bolinger, Senior Attorney

May 4, 2018
Date

EXHIBIT A

QUITCLAIM DEED

The CITY OF COLORADO SPRINGS, Colorado, a home rule city and Colorado municipal corporation, acting by and through John W. Suthers, Mayor ("Grantor"), whose street address is 30 South Nevada Avenue, Suite 502, Colorado Springs, Colorado, 80903, City of Colorado Springs, County of El Paso and State of Colorado, for the consideration of the exchange of land and other good and valuable consideration in hand paid, hereby sells and quitclaims to Greccio, Housing Unlimited, Inc. a Colorado Nonprofit Corporation, its Successors successors and Assigns ("Grantee"), having an address at 1015 East Pikes Peak Avenue, Suite 110, Colorado Springs, CO 80903, County of El Paso and State of Colorado, all rights, title and interest the Grantor may have in and to the following described property, if any, situated in the City of Colorado Springs, Colorado, to wit (the "Property"):

LOT 2 SUNDOWN SQUARE SUB FIL NO 1
COMMONLY KNOWN AS 4921 TEMPLETON GAP ROAD

The Property is hereby conveyed for a period of five (5) years from the date of this Quitclaim Deed, and title shall automatically revert to the Grantor without further action by the parties unless, prior the expiration of the term, Grantee completes an affordable housing development on the Property that is restricted to low to moderate income households, pursuant to HUD requirements. Upon completion of such a project, Grantor shall provide a confirmatory document to Grantee in a recordable format. If Grantee fails to complete such a project, Grantee shall provide a confirmatory document to Grantor in a recordable format.

EXCEPTING AND RESERVING unto Grantor, its successors and assigns, those easements described on Exhibit A and depicted on Exhibit B, attached hereto and hereby incorporated by this reference [EXHIBITS WILL BE FINALIZED PRIOR TO CLOSING].

IN WITNESS WHEREOF, Grantor has caused its corporate seal to be hereto affixed and these presents to be signed and delivered by its duly authorized officer this ____ day of _____ 20____.

Grantor
City of Colorado Springs
By: _____
John Suthers, Mayor

ATTEST:

Sarah B. Johnson, City Clerk

City Council Resolution: _____

VP
5-4-18

DAK
5-4-18

EXHIBIT A

State of Colorado)
) ss.
County of El Paso)

The foregoing instrument was acknowledged before me this ____ day of _____
20____ by John W. Suthers as Mayor of the City of Colorado Springs, Colorado, a home rule
city and Colorado municipal corporation.

Witness my hand and seal

My Commission Expires: _____

EXHIBIT

Notary Public

Approved as to Form:

EXHIBIT

Benjamin J. Bolinger
Senior Attorney
Office of the City Attorney

VP
5-4-18
DAK
5-4-18