

UNOFFICIAL COPY

0021079714

209100163 001 Page 1 of 22
2002-10-02 09:59:41
Cook County Recorder 66.00



0021079714

**AMENDED AND RESTATED
AGREEMENT FOR THE
SALE AND REDEVELOPMENT
OF LAND**

(The Above Space For Recorder's Use Only)

This Amended and Restated Agreement for the Sale and Redevelopment of Land ("Restated Agreement") is made on or as of the 27th day of September, 2002, by and between the City of Chicago, an Illinois municipal corporation ("City"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 and Fellowship Missionary Baptist Church, an Illinois not-for-profit corporation ("Purchaser"), located at 45th Place and Princeton Avenue, Chicago, Illinois 60609 and Fellowship Manor Ltd., an Illinois not-for-profit corporation ("Approved Transferee"), located at 410 Otis C. Wright, 226 W. Jackson, 3rd fl., Chicago 60601

22 Box

RECITALS

WHEREAS, on September 9, 1998 the City approved the sale of the real property legally described on Exhibit A attached hereto ("Property") to the Purchaser; and

WHEREAS, on December 15, 1998 the City and the Purchaser entered into that certain Agreement for the Sale and Redevelopment of Land recorded as document No.99059008 ("Redevelopment Agreement"); and

WHEREAS, the Purchaser intends that a sixty (60) unit mid-rise senior citizen apartment building ("Improvements" or "Project") be constructed on the Property which Improvements are consistent with the 51st and Princeton Redevelopment Area Plan ("Plan") for the Project Area; and

WHEREAS, the Purchaser intends that the Project be constructed and operated using funds ("Grant") from the United States Department of Housing and Urban Development ("HUD") pursuant to Section 202 of the Federal Housing Act of 1959, as amended (12 U.S.C. 1701 et seq.); and

WHEREAS, upon acquisition of the Property the Purchaser shall transfer the Property to the Approved Transferee, as permitted under Section 11 hereunder, which entity shall be responsible for all of the Purchaser's obligations under this Restated Agreement; and

WHEREAS, the Property is located in a redevelopment area known as the 51st and Princeton Redevelopment Project Area ("Project Area") and is commonly referred to as Parcel I-1; and

Box 333

UNOFFICIAL COPY

Property of Cook County Clerk's Office

WHEREAS, the City and the Purchaser desire to amend and restate the terms of the Redevelopment Agreement to reflect the terms of the Grant; and

WHEREAS, this Restated Agreement replaces and supercedes the Redevelopment Agreement in its entirety and all provisions of the Redevelopment Agreement are null and void and of no force and effect whatsoever as of the execution of this Restated Agreement;

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them hereby covenant and agree with the other as follows:

SECTION 1. INCORPORATION OF RECITALS.

The recitals set forth above constitute an integral part of this Restated Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

SECTION 2. SALE AND PURCHASE PRICE.

Subject to the terms, covenants and conditions of this Restated Agreement, the City agrees to sell the Property to the Purchaser, and the Purchaser agrees to purchase the Property from the City for the amount of Eighty Thousand and 00/100 Dollars (\$80,000.00) ("Purchase Price") to be paid by certified check or by such other means as shall be satisfactory to the City.

SECTION 3. CONVEYANCE OF PROPERTY.

A. Form of Deed. The City shall convey to the Purchaser title to the Property by Quitclaim Deed ("Deed"). The conveyance and title shall, in addition to the provisions of this Restated Agreement, be subject to:

1. The standard exceptions in an ALTA insurance policy.
2. Taxes which are not yet due and owing.
3. Easements, encroachments, covenants and restrictions of record and not shown of record.
4. Such defects which cannot reasonably be cured but will not affect the use or marketability of the Property.

B. Title commitment and Insurance. The City shall provide the Purchaser with a title commitment issued by Chicago Title Insurance Company showing the City in title to the Property.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

The Purchaser shall be responsible for any title insurance or endorsements it deems necessary.

C. Survey. The Purchaser shall be responsible for any survey it deems necessary.

D. The Closing. The closing ("Closing") shall take place at City Hall on _____ or on such date and at such place as the parties may mutually agree to in writing.

E. Real Estate Taxes. The City shall obtain the waiver of all delinquent general real estate tax liens, if any, on the Property. The Purchaser shall be responsible for all taxes accruing after the Closing. Until a Certificate of Completion (as described in Section 9, below) is issued by the City, the Purchaser shall notify the City that the real estate taxes have been paid in full or that a petition for tax exemption has been filed with the appropriate taxing authorities within ten (10) days of the due date of such payment. If the City is unable to obtain the waiver of any such tax liens, either party may terminate this Restated Agreement. Upon such termination, the City shall return the Earnest Money and Good Faith Deposit (as described in Section 4, below) to the Purchaser.

F. Recordation of Deed. The Purchaser shall promptly file the Deed for recordation with the Office of the Cook County Recorder of Deeds. The Purchaser shall pay all costs for so recording the Deed.

G. Escrow. In the event the Purchaser requires conveyance through escrow, the Purchaser shall pay all escrow fees.

SECTION 4. EARNEST MONEY AND PERFORMANCE DEPOSIT.

A. Earnest Money. The City acknowledges that the Purchaser has deposited with the City the amount of Four Thousand and 00/100 Dollars (\$4,000.00) which shall be credited against the Purchase Price at the Closing ("Earnest Money").

B. Performance Deposit. The City acknowledges that the Purchaser has deposited with the City the amount of Four Thousand and 00/100 Dollars (\$4,000.00), as security for the performance of its obligations of this Restated Agreement ("Performance Deposit"), which deposit shall be retained by the City until a Certificate of Completion (as described in Section 9, below) has been issued by the City.

C. Interest. The City shall be under no obligation to pay interest on the Earnest Money or Performance Deposit set forth in this Section 4.

SECTION 5. PROJECT BUDGET; PROOF OF FINANCING.

Not less than fourteen (14) days prior to the Closing, the Purchaser shall submit to the City for approval a project budget ("Budget") and evidence of funds adequate to finance the construction of the Improvements. If the Purchaser fails to provide the City with a Budget or proof of financing

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021079714

to the City's reasonable satisfaction, the City may declare this Restated Agreement null and void and return the Earnest Money and Performance Deposit to the Purchaser.

SECTION 6. SITE PLANS AND ARCHITECTURAL DRAWINGS.

The Purchaser agrees to construct the Improvements on the Property in accordance with those certain Site Plans and Architectural Drawings which have been approved by the City's Department of Planning and Development ("DPD") and which are attached hereto as Exhibit B ("Drawings"). No material deviation from the Drawings shall be made without the prior written approval of DPD.

The Purchaser shall be solely responsible for and shall pay all costs in regard to: the relocation, installation or construction of public or private utilities; curb cuts and driveways; the repair or reconstruction of any curbs, sidewalks or parkways deteriorated or damaged as a result of the Purchaser's redevelopment; the removal of existing pipes, utility equipment or building foundations; and the termination of existing water or other services.

SECTION 7. LIMITED APPLICABILITY.

DPD's approval of the Drawings are for the purposes of this Restated Agreement only and do not constitute the approval required by the City's Building Department or any other City department; nor does the approval by DPD pursuant to this Restated Agreement constitute an approval of the quality, structural soundness or the safety of any improvements located or to be located on the Property. The approval given by DPD shall be only for the benefit of the Purchaser and such transferees as permitted under Section 11 hereof, and any lienholder authorized by this Restated Agreement.

SECTION 8. COMMENCEMENT AND COMPLETION OF IMPROVEMENTS.

The construction of the Improvements shall be commenced within three (3) months of the conveyance of the Property to the Purchaser, and except as otherwise provided in this Restated Agreement, shall be completed (as evidenced by the issuance of the Certificate by the City) within eighteen (18) months after such conveyance or within such time period as mutually agreed to in writing by the parties or such later time as may be permitted by HUD pursuant to that certain Capital Advance Agreement concerning the construction and operation of the Improvements between the Approved Transferee, as defined in Section 11 below, and HUD. Within five (5) days from the commencement of construction, the Purchaser shall notify the City that construction has begun.

SECTION 9. CERTIFICATE OF COMPLETION.

Promptly after completion of the Improvements in accordance with this Restated Agreement, the City shall furnish the Purchaser with a Certificate of Completion ("Certificate"). The Certificate shall be a conclusive determination of satisfaction and termination of the covenants in this Restated Agreement and the Deed with respect to the obligations of the Purchaser to construct the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Improvements. The Certificate shall be in recordable form. Within forty-five (45) days after receipt of a written request by the Purchaser for a Certificate, the City shall provide the Purchaser with either the Certificate or a written statement indicating in adequate detail how the Purchaser has failed to complete the Improvements in conformity with this Restated Agreement, or is otherwise in default, and what measures or acts will be necessary, in the reasonable opinion of the City, for the Purchaser to take or perform in order to obtain the Certificate. If the City requires additional measures or acts to assure compliance, the Purchaser shall resubmit a written request for the Certificate upon compliance with the City's response. Upon issuance of the Certificate, the City shall return the Performance Deposit to the Purchaser.

Notwithstanding the foregoing, a determination by HUD that construction has been substantially completed shall be binding on the City as to the determination of completion, and upon such determination by HUD, the City shall promptly issue the Certificate.

SECTION 10. RESTRICTIONS ON USE.

The Purchaser agrees that it:

A. Shall devote the Property to a use approved by the Plan until January 15, 2037. Notwithstanding the foregoing, any use permitted under Section 202 aforesaid is hereby declared to be a permitted use under the Plan.

B. Shall not discriminate based upon race, color, religion, sex, national origin or ancestry, military status, sexual orientation, source of income, age, handicap, in the sale, lease, rental, use or occupancy of the Property or any improvements located or to be erected thereon, except as expressly permitted under the HUD Section 202 program.

SECTION 11. PROHIBITION AGAINST TRANSFER OF PROPERTY.

Prior to the issuance of the Certificate by the City with regard to completion of the Improvements, the Purchaser shall not, without the prior written consent of the City: (a) sell or convey the Property or any part thereof; or (b) create any assignment with respect to this Restated Agreement or the Property that would take effect prior to the issuance of the Certificate by the City; or (c) contract or agree to: (1) sell or convey the Property, or (2) create any assignment with respect to this Restated Agreement or the Property that would take effect prior to the issuance of the Certificate by the City provided, however, that the Purchaser shall have the right to convey the Property to Fellowship Manor Ltd., an Illinois not-for-profit corporation ("Approved Transferee"), an affiliate of the Purchaser, subject to the review and approval by DPD of an economic disclosure statement for said entity, which approval shall not be unreasonably withheld. The provisions of this Section 11 shall not limit the Purchaser's rights under Section 12 of this Restated Agreement. In addition, the foregoing restrictions on the transfer shall not apply to transfers approved jointly by HUD and the City to avoid a mortgage default.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

SECTION 12. LIMITATION UPON ENCUMBRANCE OF PROPERTY.

Prior to the completion of the Project and the issuance of the Certificate by the City, the Purchaser shall not engage in any financing or other transaction which creates an encumbrance or lien upon the Property, except for the purposes of obtaining: (a) funds necessary to acquire the Property; (b) funds necessary to construct the Improvements; or (c) funds necessary for architects, surveyors, appraisers, environmental consultants or attorneys in connection with the Project. Specifically, the mortgage to the United States of America acting by and through the Secretary of HUD ("Mortgage") and all HUD grant documents are hereby permitted prior to the issuance of the Certificate.

SECTION 13. MORTGAGEES NOT OBLIGATED TO CONSTRUCT.

Notwithstanding any other provision of this Restated Agreement or of the Deed, the holder of any mortgage on the Property authorized by Section 12 of this Restated Agreement shall not be obligated to construct or complete the Improvements; provided, however, that the foregoing provision shall not apply to any purchaser, other than the holder of the mortgage, of the Property at a foreclosure sale. Nothing in this Section nor in any other section of this Restated Agreement shall be deemed or construed to permit or authorize any such holder of a mortgage to devote the Property to any use, or to construct any improvements thereon, other than those uses or improvements permitted in the Plan.

SECTION 14. COVENANTS RUNNING WITH THE LAND.

The parties agree, and the Deed shall so expressly provide, that the covenants provided in Sections 8, 10, 11 and 12 shall be covenants running with the land, binding the Purchaser and its successors and assigns to the fullest extent permitted by law and equity for the benefit and in favor of the City, and shall be enforceable by the City. The covenants provided in Sections 8, 11 and 12 shall be terminated upon issuance of the Certificate described in Section 9. The covenant contained in Section 10.B shall have no limitation as to time.

SECTION 15. PERFORMANCE AND BREACH.

A. Time of the Essence. Time is of the essence in the parties' performance of their obligations under this Restated Agreement.

B. Permitted Delays. The Purchaser shall not be considered in breach of its obligations with respect to the commencement or completion of construction of the Improvements in the event of a delay in the performance of such obligations due to unforeseeable causes beyond the Purchaser's control and without the Purchaser's fault or negligence, including but not limited to, delays or halts in construction of the Improvements which are compelled by court order, acts of God, acts of the public enemy, acts of the United States government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather or delays of subcontractors due to such cause. The time for the performance of the obligations shall be extended only for the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

period of the delay if the Purchaser requests it in writing of the City within twenty (20) days after the beginning of any such delay.

C. Breach.

1. Generally. Except as otherwise provided in this Restated Agreement, in the event of a default by either party in the performance of its obligations under this Restated Agreement, the defaulting party, upon written notice from the other, shall cure or remedy the default not later than sixty (60) days after receipt of such notice. If the default is not capable of being cured within the sixty (60) day period but the defaulting party has commenced action to cure the default and is diligently proceeding to cure the default within the sixty (60) day period, then the sixty (60) day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the aggrieved party may terminate this Restated Agreement and institute such proceedings at law or in equity as may be necessary or desirable in its sole discretion to cure and remedy the default, including but not limited to, proceedings to compel specific performance.
2. Event of Default. For purposes of this Restated Agreement, the occurrence of any one or more of the following shall constitute an "event of default":
 - a. The Purchaser fails to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations required under this Restated Agreement; or
 - b. The Purchaser makes or furnishes a warranty representation, statement or certification to the City which is not true and correct in any material respect; or
 - c. A petition is filed by or against the Purchaser under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereinafter existing, which is not vacated, stayed or set aside within thirty (30) days after filing; or
 - d. The Purchaser abandons or substantially suspends the construction work, and such abandonment or suspension is not cured, ended, or remedied within sixty (60) days of the date the Purchaser receives written demand by the City to cure such default; or
 - e. The Purchaser fails to timely pay or file an exemption application from real estate taxes or assessments affecting the Property or suffers or permits any levy or attachment, material suppliers' or mechanics' lien, or any other lien or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

encumbrance unauthorized by this Restated Agreement to attach to the Property; or

- f. The Purchaser makes an assignment, pledge, encumbrance, transfer or other disposition in violation of this Restated Agreement; or
 - g. The Purchaser's financial condition or operations adversely changes to such an extent that would materially affect the Purchaser's ability to complete the Improvements; or
 - h. The Purchaser fails to comply with the terms of any other written agreement entered into with the City or any loan issued by the City.
3. Prior to Conveyance. If prior to the conveyance of the Property, the Purchaser defaults in any specific manner described in this Section 15.C, the City may terminate this Restated Agreement, institute any action or proceeding at law or in equity against the Purchaser, and retain the Earnest Money and Performance Deposit.
4. After Conveyance. If prior to the expiration of the Plan and subsequent to the conveyance of the Property to the Purchaser the Purchaser defaults in any specific manner described in this Section 15.C, the City shall give written notice to the Purchaser and additionally, shall give written notice to HUD within thirty (30) days of the occurrence of such default. The Purchaser and HUD shall have the right within three (3) months from the receipt of such notice to correct the default. In the event that the Purchaser fails to correct the default or HUD is unable to or elects not to correct said default, HUD shall, if HUD desires, select a qualified and financially responsible party or parties ("Subsequent Purchaser") which shall be approved by HUD only after consultation with and approval of the city to complete the construction of the Improvements and/or to own and operate the Project. The Subsequent Purchaser shall enter into an amended and restated redevelopment agreement with the City whereby the Subsequent Purchaser shall assume the covenants contained in this Restated Agreement, the Deed, the Mortgage and Capital Advance Agreement with regard to completion, ownership and operation of the Project. The execution of the amended and restated redevelopment agreement between the City and the Subsequent Purchaser shall occur after the submission to the City and HUD of proof of financing and economic disclosure statement by the Subsequent Purchaser, and shall be recorded with the Recorder's Office immediately prior to the recordation of the quitclaim deed from the Purchaser or Approved Transferee to the Subsequent Purchaser, and the assumption of the Mortgage and the Capital Advance Agreement by the Subsequent Purchaser. The conveyance of the Project by the Purchaser or the Approved Transferee to the Subsequent Purchaser shall be in accordance with all applicable federal, state and local laws, ordinances and regulations and consistent with the objectives of this Restated Agreement, provided,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

however, that the transfer of the title shall not defeat, render invalid or otherwise limit any lien or mortgage placed upon the Project, including without limitation, the HUD Section 202 Mortgage. Subject to Section 15 herein, the City shall be entitled to recover from the Purchaser only, all costs and expenses, including reasonable attorney's fees, incurred in transferring title to the Subsequent Purchaser.

The City hereby agrees and represents that on and after the date that the mortgage to the United States of America is recorded in the Office of the Recorder of Deeds of Cook County, Illinois, the City will not take any steps or any legal or equitable action to enforce any right or rights of reverter that it may have with respect to the Property unless and until it has received express written permission from HUD to take such steps or actions.

For purposes of this Section, the parties agree that HUD shall be deemed a third party beneficiary of this Agreement.

D. Waiver and Estoppel. Any delay by the City in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the City of or limit such rights in any way. No waiver made by the City with respect to any specific default by the Purchaser shall be construed, considered or treated as a waiver of the rights of the City with respect to any other defaults of the Purchaser.

E. Access to the Property. After the Closing, any duly authorized representative of the City shall have access to the Property at all reasonable times for the purpose of confirming the Purchaser's compliance with this Restated Agreement.

SECTION 16. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

The Purchaser warrants that no agent, official, or employee of the City shall have any personal interest, direct or indirect, in this Restated Agreement, nor shall any such agent, official or employee participate in any decision relating to this Restated Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No agent, official, or employee of the City shall be personally liable to the Purchaser or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Purchaser or successor or on any obligation under the terms of this Restated Agreement.

SECTION 17. INDEMNIFICATION.

The Purchaser agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' fees and court costs) suffered or incurred by the City arising from or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

in connection with: (i) the failure of the Purchaser to perform its obligations under this Restated Agreement; (ii) the failure of the Purchaser or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Improvements; (iii) a material misrepresentation or omission in the Plan which is the result of information supplied or omitted by the Purchaser or by any agents, employees, contractors or persons acting under the control or at the request of the Purchaser; (iv) the failure of the Purchaser to redress any misrepresentations or omissions in this Restated Agreement or any other agreement relating hereto; and (v) any actions resulting from any activity undertaken by the Purchaser on the Property prior to or after the conveyance of said Property to the Purchaser by the City. This indemnification shall survive any termination of this Restated Agreement. The source of any payments made by the Purchaser or the Approved Transferee, upon written approval of HUD, under this Section shall be Residual Receipts as defined by HUD in the Regulatory Agreement. No indemnitee shall have or assert any claim, lien or interest in or against the assets or income of the HUD project #071-EE092.

SECTION 18. ENVIRONMENTAL MATTERS.

The City makes no covenant representation or warranty as to the environmental condition of the Property or the suitability of the Property for any purpose whatsoever, and the Purchaser agrees to accept the Property "as is".

It shall be the responsibility of the Purchaser, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property. Prior to the Closing, the Purchaser shall have the right to request a right of entry for the purpose of conducting environmental tests on the Property. If such a request is made, the City shall grant the Purchaser a right of entry for such purpose. The granting of the right of entry, however, shall be contingent upon the Purchaser obtaining all necessary permits and the following types and amounts of insurance: a) commercial general liability insurance with a combined single limit of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage liability with the City named as an additional insured; b) automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury and property damage; and c) worker's compensation and occupational disease insurance in statutory amounts covering all employees and agents who are to do any work on the Property. All insurance policies shall be from insurance companies authorized to do business in the State of Illinois, and shall remain in effect until completion of all activity on the Property. The Purchaser shall deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Property. The Purchaser expressly understands and agrees that any coverage and limits furnished by the Purchaser shall in no way limit the Purchaser's liabilities and responsibilities set forth in this Restated Agreement.

The Purchaser agrees to carefully inspect the Property prior to the commencement of any activity on the Property to make sure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Purchaser shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect any work being done on the Property. The Purchaser's activities on the Property shall be limited to those reasonably

UNOFFICIAL COPY

Property of Cook County Clerk's Office

necessary to perform the environmental testing. Upon completion of the work, the Purchaser agrees to restore the Property to its original condition. The Purchaser shall keep the Property free from any and all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Purchaser, and agrees to indemnify and hold the City harmless against any such liens.

The Purchaser agrees to deliver to the City a copy of each report prepared by or for the Purchaser regarding the environmental condition of the Property. If prior to the Closing, the Purchaser's environmental consultant determines that contamination exists on the Property to such an extent that the parties agree that the estimated cost of remediation (such estimated cost being determined by the consultant) is too excessive for the Purchaser, the Purchaser may declare this Restated Agreement null and void. In such event, the City shall return the Earnest Money and Performance Deposit to the Purchaser. The Purchaser agrees that a request to terminate this Restated Agreement shall not be made until all reports concerning the condition of the Property have been reviewed by the City.

If after the Closing, the environmental condition of the Property is not in all respects entirely suitable for the use to which the Property is to be utilized, it shall be the sole responsibility and obligation of the Purchaser to take such action as is necessary to put the Property in a condition entirely suitable for the intended use of the Property. The Purchaser agrees to release and indemnify the City from any claims and liabilities relating to or arising from the environmental condition of the Property and to undertake and discharge all liabilities of the City arising from any environmental condition which existed on the Property prior to the Closing.

SECTION 19. PURCHASER'S EMPLOYMENT OBLIGATIONS.

A. Employment Opportunity. The Purchaser agrees, and shall contractually obligate its various contractors, subcontractors or any affiliate of the Purchaser operating on the Property (collectively, the "Employers" and individually, an "Employer") to agree that with respect to the provision of services in connection with the construction of the Improvements or occupation of the Property:

1. Neither the Purchaser nor any Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Section 2-160-010 et seq. of the Municipal Code of Chicago, as amended from time to time (the "Human Rights Ordinance"). The Purchaser and each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without

UNOFFICIAL COPY

Property of Cook County Clerk's Office

limitation: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Purchaser and each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Purchaser and each Employer, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

2. To the greatest extent feasible, the Purchaser and each Employer is required to present opportunities for training and employment of low and moderate income residents of the City; and to provide that contracts for work in connection with the construction of the Improvements be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the City.
3. The Purchaser and each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including, but not limited to, the Human Rights Ordinance, and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.
4. The Purchaser, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.
5. The Purchaser and each Employer shall include the foregoing provisions of subparagraphs 1 through 4 in every contract entered into in connection with the construction of the Improvements, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or affiliate, as the case may be.
6. Failure to comply with the employment obligations described in this Section 19.A shall be a basis for the City to pursue remedies under the provisions of Section 15, above.

B. City Resident Employment Requirement. The Purchaser agrees, and shall contractually obligate the Employers to agree that during the construction of the Improvements they shall comply with the minimum percentage of total worker hours performed by actual residents of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021079714

the City of Chicago as specified in Section 3-92-330 of the Municipal Code of Chicago (at least fifty percent of the total worker hours worked by persons on the construction of the Improvements shall be performed by actual residents of the City of Chicago); provided, however, that in addition to complying with this percentage, the Purchaser and the Employers shall be required to make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

The Purchaser and the Employers may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Purchasing Agent of the City of Chicago.

"Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The Purchaser and the Employers shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the construction of the Improvements. The Purchaser and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to DPD in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

The Purchaser and the Employers shall provide full access to their employment records to the Purchasing Agent of the City, DPD, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The Purchaser and the Employers shall maintain all relevant personnel data and records for a period of at least three (3) years from and after the issuance of the Certificate.

At the direction of DPD, the Purchaser and the Employers shall provide affidavits and other supporting documentation to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the Purchaser and the Employers to provide work for actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Purchasing Agent) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

In the event that the City has determined that the Purchaser or an Employer failed to ensure

UNOFFICIAL COPY

Property of Cook County Clerk's Office

the fulfillment of the requirements of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance which has not been remedied in accordance with the breach and cure provisions contained in Section 15.C herein, it is agreed that 1/20 of 1 percent (.05%) of the aggregate hard construction costs set forth in the Purchaser's budget shall be surrendered by the Purchaser and for the Employers to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Purchaser and/or the other Employers or employee to prosecution.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Restated Agreement.

The Purchaser shall cause or require the provisions of this Section 19.B to be included in all construction contracts and subcontracts related to the construction of the Improvements.

C. The Purchaser's MBE/WBE Commitment. The Purchaser agrees, and shall contractually obligate the Employers to agree, that during the construction of the Improvements:

1. Consistent with the findings which support the Minority-Owned and Women Owned Business Enterprise Procurement Program (the "MBE/WBE" Program"), Section 2-92-420 et seq. of the Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 19.C, during the course of construction of the Improvements, at least the following percentages of the aggregate hard construction costs shall be expended for contract participation by minority-owned businesses ("MBEs") and by women-owned businesses ("WBEs"):

- a. At least 25% by MBEs.
- b. At least 5% by WBEs.

2. For purposes of this Section 19.C only, the Purchaser (and any party to whom a contract is let by the Purchaser pursuant to this Restated Agreement) shall be deemed a "Contractor" and this Restated Agreement (and any contract let pursuant thereto) shall be deemed a "Contract" as such terms are defined in Section 2-92-420 of the Municipal Code of Chicago. In addition, the term "minority-owned business" or MBE shall mean a business enterprise identified in the Directory of Certified Minority Business Enterprises published by the City's Purchasing Department, or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021079714

otherwise certified by the City's Purchasing Department as a minority-owned business enterprise; and the term "women-owned business" or WBE shall mean a business enterprise identified in the Directory of Certified Women Business Enterprises published by the City's Purchasing Department, or otherwise certified by the City's Purchasing Department as a women-owned business enterprise.

3. Consistent with Section 2-92-440 of the Municipal Code of Chicago, the Purchaser's MBE/WBE commitment may be achieved by the Purchaser utilizing a MBE or a WBE as a contractor, by subcontracting or causing a contractor to subcontract a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the construction of the Improvements from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Purchaser's MBE/WBE commitment as described in this Section 19.C.
4. The Purchaser shall deliver quarterly reports to the Department describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include inter alia the name and business address of each MBE and WBE solicited by the Purchaser or a contractor to work on the Improvements, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the construction, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the Department in determining the Purchaser's compliance with this MBE/WBE commitment. The Department shall have access to the Purchaser's books and records, including, without limitation, payroll records and tax returns, to allow the City to review the Purchaser's compliance with its commitment to MBE/WBE participation.
5. The City shall have the right to terminate this Restated Agreement upon the disqualification of a contractor as a MBE or WBE, if the contractor's status as a MBE or WBE was a factor in the approval of the Purchaser, and such status was misrepresented by the contractor or the Purchaser. In addition, the City shall have the right to terminate this Restated Agreement upon the disqualification of any MBE or WBE subcontractor or supplier of goods or services if the subcontractor's status as a MBE or WBE was a factor in the approval of the Purchaser, and such status was misrepresented by the contractor or the Purchaser. In the event that the Purchaser is determined not to have been involved in any misrepresentation of the status of the disqualified contractor, subcontractor or supplier, the Purchaser shall be obligated to discharge or cause to be discharged the disqualified contractor or subcontractor or to terminate any contract or business with the disqualified supplier, and, if possible, identify a qualified MBE or WBE as a replacement. Failure by the Purchaser to diligently pursue such course of action will result in the City's option to unilaterally terminate this Restated Agreement. For purposes of this subparagraph 5, the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

disqualification procedures are further described in Section 2-92-540 of the Municipal Code of Chicago.

6. Any reduction or waiver of the Purchaser's MBE/WBE commitment as described in this Section 19.C shall be undertaken in accordance with Section 2-92-450 of the Municipal Code of Chicago.

D. Pre-Construction Meeting: Monitoring Requirements. Prior to the commencement of construction of the Improvements, the Purchaser shall meet with the monitoring staff of DPD with regard to the Purchaser's compliance with its employment obligations, the sufficiency of which must be approved by DPD as a pre-condition to DPD's approval to allow the Purchaser to commence with the construction of Improvements. During the construction of the Improvements, the Purchaser shall submit documentation (as required in Sections 19.A and 19.C, above) to the monitoring staff of DPD. Failure to submit such documentation on a timely basis, or a determination by DPD based upon analysis of the documentation that the Purchaser is not complying with its employment obligations described in this Section 19, shall upon the delivery of written notice to, be deemed a default. In such event, in addition to any remedies described in this Section 19, the City may: (1) issue a written demand to the Purchaser to halt construction of Improvements; (2) withhold certain pertinent sums from payment to the Purchaser or the general contractor, if applicable; or (3) seek any other remedies against the Purchaser available at law or in equity.

E. In the event of a default by the Purchaser in the performance of its obligations under this Section 19, the notice and cure provisions contained in Section 15, above, shall apply.

SECTION 20. PROVISIONS NOT MERGED WITH DEED.

The provisions of this Restated Agreement shall not be merged with the Deed, and the delivery of the Deed shall not be deemed to affect or impair the provisions of this Restated Agreement.

SECTION 21. HEADINGS.

The headings of the various sections of this Restated Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions thereof.

SECTION 22. GOVERNING LAW.

This Restated Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021079714

SECTION 23. ENTIRE AGREEMENT.

This Restated Agreement constitutes the entire agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the subject matter hereof. This Restated Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

SECTION 24. SEVERABILITY.

If any provision of this Restated Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof is held invalid, the remainder of this Restated Agreement shall be construed as if such invalid part were never included and this Restated Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

SECTION 25. NOTICES

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the City:

City of Chicago
Department of Planning and Development
121 North LaSalle Street
Room 1000 - City Hall
Chicago, Illinois 60602
Attn: Commissioner

With a copy to:

City of Chicago
Department of Law
121 North LaSalle Street
Room 610 - City Hall
Chicago, Illinois 60602
Attn: Real Estate Division

If to the Purchaser:

Fellowship Missionary Baptist Church
45th Place and Princeton Avenue
Chicago, Illinois 60609

With a copy to :

Earl L. Neal & Associates
111 West Washington Street
Chicago, Illinois 60602
Attn: Anne L. Fredd

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021079714

If to the Approved Transferee: Fellowship Manor, Ltd.

If to HUD:
Department of Housing and Urban Development
77 West Jackson Boulevard
Legal Dept. 26th Floor Chief Program Attorney
Chicago, Illinois 60604
(Note: a copy of any notice sent to the City, Purchaser,
or Approved Transferee shall be sent to HUD.)

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

SECTION 26. COUNTERPARTS.

This Restated Agreement may be executed in counterparts, each of which shall constitute an original instrument.

SECTION 27. ORGANIZATION AND AUTHORITY.

The Purchaser (if other than an individual) represents and warrants that it is duly organized and validly existing under the laws of the State of Illinois, with full power and authority to acquire, own and redevelop the Property, and that the person(s) signing this Restated Agreement on behalf of the Purchaser has the authority to do so.

SECTION 28. SUCCESSORS AND ASSIGNS.

Except as otherwise provided in this Restated Agreement, the terms and conditions of this Restated Agreement shall apply to and bind the successors and assigns of the parties.

SECTION 29. TERMINATION.

In the event that the Closing has not occurred within twelve (12) months from the date of this Restated Agreement, either party may terminate this Restated Agreement upon written notice to the other. Upon such termination, the City shall return the Earnest Money and Performance Deposit to the Purchaser. However, if the Closing has not occurred within twelve (12) months through no fault of the City, then the City may retain the Earnest Money and Performance Deposit as liquidated

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

damages.

0021079714

SECTION 30. RECORDATION OF AGREEMENT.

Either party may record this Restated Agreement at the Office of the Cook County Recorder of Deeds. The party so choosing to record this Restated Agreement shall pay the recording fees.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021079714

IN WITNESS WHEREOF, the City has caused this Restated Agreement to be duly executed in its name and behalf by its Commissioner of Planning and Development, and the Purchaser has signed the same on or as of the day and year first above written.

CITY OF CHICAGO,
an Illinois municipal corporation

By: *Alicia Mazur Berg*
Alicia Mazur Berg
Commissioner of Planning and Development

FELLOWSHIP MISSIONARY BAPTIST CHURCH,
an Illinois not-for-profit corporation

By: *[Signature]*
TITLE: _____

By: _____
TITLE: _____

FELLOWSHIP MANOR LTD.,
an Illinois not-for-profit corporation

By: *Steph C. Wright*
TITLE: *Secretary*

This instrument was prepared by:
After recording return to:
Maria E. Hoffman
Assistant Corporation Counsel
30 North LaSalle Street, Suite 1610
Chicago, Illinois 60602
(312) 744-6933

H:\DOCS\PRINCETO\Rda.Am.wpd

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

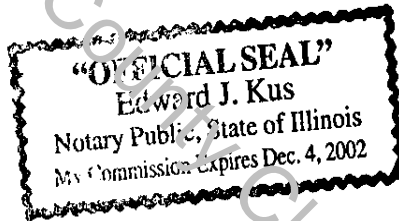
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

0021079714

I, EDWARD J. KUS, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Alicia Mazur Berg, personally known to me to be the Commissioner of Planning and Development of the City of Chicago, an Illinois municipal corporation, and 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 being first duly sworn by me acknowledged that as the Commissioner, she signed and delivered the instrument pursuant to authority given by the City of Chicago, as her free and voluntary act and as the free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 27th day of Sept., 2002.

Edward J. Kus
NOTARY PUBLIC



Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

0021079714

LEGAL DESCRIPTION OF PROPERTY

LOTS 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 IN SMITH AND FITCH'S SUBDIVISION OF PART OF THE WEST 1/2 OF BLOCK 2 IN O. A. BOGUE'S SECOND ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

ALSO

LOT 28 AND THE NORTH 8 FEET OF LOT 27 IN BLOCK 2 IN A. O. BOGUE'S SECOND ADDITION TO CHICAGO, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Numbers: 20-09-219-013 through 022; 20-09-219-051
Commonly known as: 5031-51 South Princeton Avenue, Chicago, Illinois.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office