

UNOFFICIAL COPY



Doc#: 0509514252
Eugene "Gene" Moore Fee: \$84.00
Cook County Recorder of Deeds
Date: 04/05/2005 01:37 PM Pg: 1 of 21

AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND

(The Above Space For Recorder's Use Only)

This **AGREEMENT** is made on or as of the 27th day of July, 2004, 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 **HOUSING OPPORTUNITIES FOR PEOPLE EVERYWHERE**, an Illinois not-for-profit corporation ("Developer"), located at 25059 Doolittle Drive, Monee, Illinois 60449.

RECITALS

WHEREAS, the Developer desires to purchase from the City the vacant parcels of property commonly known as 1302, 1308-10, 1314-16 and 1322-24 West 52nd Street, Chicago, Illinois 60609, which are legally described on Exhibit A attached hereto (the "Property"); and

WHEREAS, the Developer intends to construct seven single family homes on the Property (hereinafter referred to as either the "Improvements" or the "Project");

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

SECTION 1. INCORPORATION OF RECITALS.

The recitals set forth above constitute an integral part of this 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. PURCHASE PRICE.

Subject to the terms, covenants and conditions of this Agreement, the City agrees to sell the Property to the Developer, and the Developer agrees to purchase the Property from the City for \$35,000.00 ("Purchase Price").

Box 400-CTCC

10/2

Rotk

DI

G# 8177191

21/7

UNOFFICIAL COPY

SECTION 3. EARNEST MONEY AND PERFORMANCE DEPOSIT.

A. Earnest Money. The City acknowledges that the Developer has deposited with the City the amount of \$1,750.00, which will be credited against the Purchase Price at the Closing ("Earnest Money").

B. Performance Deposit. The City acknowledges that the Developer has deposited with the City the amount of \$1,750.00, as security for the performance of its obligations of this Agreement ("Performance Deposit"), which will be retained by the City until a Certificate of Completion (as described in Section 9) has been issued by the City.

C. Interest. There will be no interest paid to the Developer on the Earnest Money or Performance Deposit.

SECTION 4. CONVEYANCE OF PROPERTY.

A. Form of Deed. The City shall convey fee simple title to the Developer by quitclaim deed ("Deed"), subject only to the terms of this Agreement and the following:

1. The standard exceptions in an ALTA title 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 agrees to provide the Developer with a title commitment issued by Chicago Title Insurance Company (the "Title Company") showing the City in fee simple title to the Property. Any updated title commitment shall be obtained at the Developer's sole cost and expense. The Developer shall pay the cost of, and shall be responsible for, obtaining any title insurance, extended coverage or endorsements it deems necessary.

C. Survey. The Developer will be responsible for any survey it deems necessary.

D. The Closing. The closing ("Closing") shall take place at the downtown offices of the Title Company, 171 North Clark Street, Chicago, Illinois 60601, on September 20, 2004, or on such date and at such place as the parties mutually agree to in writing; provided, however, in no event shall the Closing occur any later than six months from the date of this Agreement.

E. Building Permits. The Developer agrees to apply for all necessary building permits and approvals within a reasonable time after the execution of this Agreement by the parties.

UNOFFICIAL COPY

Notwithstanding Section 4.D., above, the parties agree that the City, in its sole discretion, may delay the Closing until such time as all necessary permits and approvals have been issued.

F. Real Estate Taxes. The City agrees to obtain the waiver of any delinquent real estate tax liens on the Property. If the City is unable to obtain the waiver of any such tax liens, either party may terminate this Agreement. Upon such termination, the City shall return the Earnest Money and Performance Deposit to the Developer. The Developer shall be responsible for all taxes accruing after the Closing. Until a Certificate of Completion (as described in Section 9) is issued by the City, the Developer shall notify the City that the real estate taxes have been paid in full within ten days of such payment.

G. Recordation of Deed. Promptly after the Closing, the Developer, at its expense, shall record the Deed at the Office of the Cook County Recorder of Deeds.

H. Escrow. In the event that the Developer notifies the City that it would like to close through an escrow, the parties agree that the Closing shall take place in accordance with the general provisions of the usual form Deed and Money Escrow Agreement customarily used by the Title Company, with such special provisions inserted therein as may be required to conform the Deed and Money Escrow to this Agreement. Developer agrees to pay all escrow fees.

SECTION 5. PROJECT BUDGET; PROOF OF FINANCING.

Not less than thirty days prior to the Closing, the Developer shall submit to the City's Department of Planning and Development ("DPD") for approval a project budget ("Budget") and evidence of funds adequate to finance the purchase of the Property and the construction of the Improvements. If the Developer fails to provide the City with a Budget or proof of financing to the City's reasonable satisfaction, the City may declare this Agreement null and void.

SECTION 6. SITE PLANS AND ARCHITECTURAL DRAWINGS.

A. Site Plans. The Developer agrees to construct the Improvements on the Property in accordance with the Site Plans and Architectural Drawings prepared by Group Design Associates, Inc., dated March 2004, which have been approved by DPD and which are incorporated herein by reference ("Drawings"). No material deviation from the Drawings may be made without the prior written approval of DPD, which approval shall not be unreasonably withheld. Each building shall have a green roof.

B. Relocation of Utilities, Curb Cuts and Driveways. The Developer shall be solely responsible for and shall pay all costs in regard to: (a) the relocation, installation or construction of public or private utilities, curb cuts and driveways; (b) the repair or reconstruction of any curbs, sidewalks or parkways deteriorated or damaged as a result of the Developer's redevelopment; (c) the removal of existing pipes, utility equipment or building foundations; and (d) the termination of existing water or other services. Any streetscaping, including any paving of sidewalks, landscaping and lighting provided by the Developer as part of the Project must be approved by the City, which approval shall not be unreasonably withheld.

UNOFFICIAL COPY

C. Inspection by the City. During the construction of the Project, the Developer agrees to permit the City or its designated inspector or architect to enter onto the Property for the purpose of determining whether the work is being performed in accordance with the terms of this Agreement; provided, however, that the City or its inspector or architect does not unreasonably interfere with the Developer's activities on the Property and the City holds Developer harmless from any injury suffered by any employee or agent of the City or accident arising out of such entry upon the Property for such purposes, excluding accidents arising out of Developer's negligence or willful acts.

D. Barricades and Signs. The Developer agrees to erect such signs as the City may reasonably require identifying the Property as a City redevelopment project. Prior to the commencement of any construction activity requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. The City shall have the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades, which approval shall not be unreasonably withheld or delayed.

SECTION 7. LIMITED APPLICABILITY.

DPD's approval of the Drawings are for the purposes of this 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 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 Developer and any lienholder authorized by this Agreement.

SECTION 8. COMMENCEMENT AND COMPLETION OF IMPROVEMENTS.

The construction of the Improvements shall be commenced ^{to (10)} within eight months of the conveyance of the Property to the Developer, and except as otherwise provided in this Agreement, shall be completed (as evidenced by the issuance of the Certificate of Completion by the City) within twelve months after such conveyance. The Developer shall promptly notify the City when construction has begun.

SECTION 9. CERTIFICATE OF COMPLETION.

Upon the completion of the Improvements in accordance with this Agreement, the Developer shall request from the City a "Certificate of Completion" which shall constitute a conclusive determination of satisfaction and termination of the covenants in this Agreement and the Deed with respect to the obligations of the Developer to construct the Improvements. Within forty-five days after receipt of a written request by the Developer for a Certificate of Completion, the City shall provide the Developer with either the Certificate of Completion or a written statement indicating in adequate detail how the Developer has failed to complete the Improvements in conformity with this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the sole opinion of the City, for the Developer to take or perform in order to obtain the Certificate of

UNOFFICIAL COPY

Completion. If the City requires additional measures or acts to assure compliance, the Developer shall resubmit a written request for the Certificate of Completion upon compliance with the City's response. The Certificate of Completion shall be in recordable form. Upon issuance of the Certificate of Completion, the City shall return the Performance Deposit to the Developer.

SECTION 10. NO DISCRIMINATION.

The Developer agrees that it 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.

SECTION 11. PROHIBITION AGAINST TRANSFER OF PROPERTY.

Prior to the issuance of the Certificate of Completion by the City with regard to completion of the Improvements, the Developer may not, without the prior written approval of the City, which approval shall not be unreasonably withheld: (a) sell or convey the Property or any part thereof or any interest therein; or (b) create any assignment with respect to this Agreement or the Property that would take effect prior to the issuance of the Certificate of Completion by the City in accordance with Section 9; or (c) contract or agree to: (1) sell or convey the Property or any part thereof or interest therein, or (2) create any assignment with respect to this Agreement or the Property that would take effect prior to the issuance of the Certificate of Completion by the City. Further, if the Developer is a business entity, no principal party of the Developer (e.g., a general partner, member, manager or shareholder) may sell, transfer or assign any of its interest in the Developer to anyone other than to another principal party of the Developer prior to the issuance of the Certificate of Completion, without the prior written approval of the City, which approval shall not be unreasonably withheld. The provisions of this Section shall not limit the Developer's rights under Section 12 of this Agreement.

SECTION 12. LIMITATION UPON ENCUMBRANCE OF PROPERTY.

Prior to the completion of the Project and the issuance of the Certificate of Completion by the City, the Developer shall not engage in any financing or other transaction which creates an encumbrance or lien on the Property, except for the purposes of obtaining: (a) funds necessary to acquire the Property and construct the Improvements thereon; or (b) funds necessary for architects, surveyors, appraisers, environmental consultants or attorneys in connection with the Project.

SECTION 13. MORTGAGEES NOT OBLIGATED TO CONSTRUCT.

Notwithstanding any other provision of this Agreement or of the Deed, the holder of any mortgage on the Property authorized by Section 12 of this 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.

UNOFFICIAL COPY

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 will be covenants running with the land, binding on the Developer 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 the issuance of the Certificate of Completion.

SECTION 15. PERFORMANCE AND BREACH.

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

B. Permitted Delays. The Developer 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 Developer's control and without the Developer'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 period of the delay and only if the Developer requests it in writing of the City within twenty days after the beginning of any such delay.

C. Breach.

1. Generally. Except as otherwise provided in this Agreement, in the event of a default by either party in the performance of its obligations under this Agreement, the defaulting party, upon written notice from the other, shall cure or remedy the default not later than sixty days after receipt of such notice. If the default is not capable of being cured within the sixty day period but the defaulting party has commenced action to cure the default and is diligently proceeding to cure the default within the sixty day period, then the sixty 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 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 Agreement, the occurrence of any one or more of the following shall constitute an "event of default":
 - a. The Developer fails to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations required under this Agreement; or

UNOFFICIAL COPY

- b. The Developer 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 Developer 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 days after filing; or
- d. The Developer abandons or substantially suspends the construction work; or
- e. The Developer fails to timely pay 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 encumbrance unauthorized by this Agreement to attach to the Property; or
- f. The Developer makes an assignment, pledge, encumbrance, transfer or other disposition in violation of this Agreement; or
- g. The Developer's financial condition or operations adversely changes to such an extent that would materially affect the Developer's ability to complete the Improvements; or
- h. The Developer 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 Developer defaults in any specific manner described in Section 15.C.2., and the default is not cured by the Developer pursuant to Section 15.C.1 above, the City may terminate this Agreement, institute any action or proceeding at law or in equity against the Developer, and retain the Earnest Money and Performance Deposit.
4. After Conveyance. If subsequent to the conveyance of the Property to the Developer but prior to the issuance of the Certificate of Completion, the Developer defaults in any specific manner described in Section 15.C.2., and the default is not cured by the Developer pursuant to Section 15.C.1 above, the City, by written notice to the Developer, may utilize any and all remedies available to the City at law or in equity, including but not limited to, the right to re-enter and take possession of the Property, terminate the estate conveyed to the Developer, and re-vest title to the Property in the City; provided, however, that the re-vesting of title in the City shall be limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by this Agreement.
5. Resale of the Property. Upon the re-vesting in the City of title to the Property as provided in Section 15.C.4., the City shall employ its best efforts to convey the

UNOFFICIAL COPY

Property (subject to the mortgage liens described in this Section) to a qualified and financially responsible party (as solely determined by the City) who shall assume the obligation of completing the construction of the Improvements or such other improvements as shall be satisfactory to the City.

6. Disposition of Resale Proceeds. If the City sells the Property, the proceeds from the sale shall be utilized to reimburse the City for:
- a. costs and expenses incurred by the City in connection with the Property, including but not limited to, salaries of personnel in connection with the recapture, management and resale of the Property (less any income derived by the City from the Property in connection with such management); and
 - b. all unpaid taxes, assessments, and water and sewer charges assessed against the Property; and
 - c. any payments made (including reasonable attorneys' fees) to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer; and
 - d. any expenditures made or obligations incurred with respect to construction or maintenance of the Improvements; and
 - e. any other amounts owed to the City by the Developer.

The Developer shall be entitled to receive any proceeds up to the amount of the Developer's investment in the Property not utilized in meeting the expenses of the City described herein.

In addition to, and without in any way limiting the City's rights under this Section 15, the City shall have the right to retain the Performance Deposit in the event of a default by the Developer.

Notwithstanding anything contained in this Section 15 to the contrary, in no event will the City exercise any remedy or right hereunder (including any right of reverter) if doing so will jeopardize the tax-exempt status of any bonds issued in furtherance of the Project. However, in the exercise of any remedy or right hereunder by the City, the City is entitled to rely on an opinion of nationally recognized bond counsel that it is more likely than not that such proposed remedy or right will not jeopardize the tax-exempt status of any bonds. The City shall not be required to obtain such an opinion before enforcing any remedies or rights hereunder, but if it does obtain such opinion of counsel, then the Developer will not be entitled to use as a defense against the City that such exercise of a remedy or right hereunder by the City might adversely affect the tax-exempt status of any bonds.

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 Developer shall be construed, considered or treated as a waiver of the

UNOFFICIAL COPY

rights of the City with respect to any other defaults of the Developer.

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

The Developer warrants that no agent, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such agent, official or employee participate in any decision relating to this 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 Developer 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 Developer or successor or on any obligation under the terms of this Agreement.

SECTION 17. INDEMNIFICATION.

The Developer 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, reasonable attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with: (i) the failure of the Developer to perform its obligations under this Agreement; (ii) the failure of the Developer or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Improvements; (iii) the failure of the Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (iv) any actions resulting from any activity undertaken by the Developer on the Property prior to or after the conveyance of said Property to the Developer by the City. This indemnification shall survive any termination of this Agreement.

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 Developer agrees to accept the Property "as is."

It shall be the responsibility of the Developer, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property. Prior to the Closing, the Developer 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 Developer a right of entry for such purpose. The granting of the right of entry, however, shall be contingent upon the Developer 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

UNOFFICIAL COPY

business in the State of Illinois, and shall remain in effect until completion of all activity on the Property. The Developer shall deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Property. The Developer expressly understands and agrees that any coverage and limits furnished by the Developer shall in no way limit the Developer's liabilities and responsibilities set forth in this Agreement.

The Developer 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 Developer 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 Developer's activities on the Property shall be limited to those reasonably necessary to perform the environmental testing. Upon completion of the work, the Developer agrees to restore the Property to its original condition. The Developer 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 Developer, and agrees to indemnify and hold the City harmless against any such liens.

The Developer agrees to deliver to the City a copy of each report prepared by or for the Developer regarding the environmental condition of the Property. If prior to the Closing, the Developer'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 Developer, the Developer may declare this Agreement null and void by giving written notice thereof to the City. In such event, the City shall return the Earnest Money and Performance Deposit to the Developer. The Developer agrees that a request to terminate this 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 Developer to take such action as is necessary to put the Property in a condition which is suitable for the intended use of the Property. The Developer 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. DEVELOPER'S EMPLOYMENT OBLIGATIONS.

A. Employment Opportunity. The Developer agrees, and shall contractually obligate its various contractors, subcontractors or any affiliate of the Developer 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 Developer nor any Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or

UNOFFICIAL COPY

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 Developer 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 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 Developer 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 Developer 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. The Developer and each Employer will use good faith efforts to present opportunities for 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 Developer 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 Developer, 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 Developer 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.

UNOFFICIAL COPY

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.

B. City Resident Employment Requirement. The Developer 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 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 Developer 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 Developer 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 Developer 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 Developer and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Monthly 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 Developer and the Employers shall provide full access to their employment records to the Chief Procurement Officer, DPD, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The Developer and the Employers shall maintain all relevant personnel data and records for a period of at least three years from and after the issuance of the Certificate of Completion.

At the direction of DPD, the Developer 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 Developer 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 Chief Procurement Officer) shall not suffice to replace

UNOFFICIAL COPY

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 Developer or an Employer failed to ensure 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 Developer's budget shall be surrendered by the Developer 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 Developer 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 Agreement.

The Developer 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 Developer's MBE/WBE Commitment The Developer 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 Developer (and any party to whom a contract is let by the Developer pursuant to this Agreement) shall be deemed a "Contractor" and this 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

UNOFFICIAL COPY

mean a business enterprise identified in the Directory of Certified Minority Business Enterprises published by the City's Purchasing Department, or 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 Developer's MBE/WBE commitment may be achieved by the Developer 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 Developer's MBE/WBE commitment as described in this Section 19.C.
4. The Developer shall deliver quarterly reports to DPD 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 Developer 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 DPD in determining the Developer's compliance with this MBE/WBE commitment. DPD shall have access to the Developer's books and records, including, without limitation, payroll records and tax returns, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation.
5. The City shall have the right to terminate this 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 Developer, and such status was misrepresented by the contractor or the Developer. In addition, the City shall have the right to terminate this 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 Developer, and such status was misrepresented by the contractor or the Developer. In the event that the Developer is determined not to have been involved in any misrepresentation of the status of the disqualified contractor, subcontractor or supplier, the Developer 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 Developer to diligently pursue such course of action will result in the City's option to unilaterally terminate this Agreement. For purposes of this subparagraph 5, the disqualification procedures

UNOFFICIAL COPY

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

6. Any reduction or waiver of the Developer'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 Developer shall meet with the monitoring staff of DPD with regard to the Developer'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 Developer to commence with the construction of Improvements. During the construction of the Improvements, the Developer shall submit documentation (as required in Sections 19.A. and 19.C.) to the monitoring staff of DPD. The failure to submit such documentation on a timely basis, or if DPD determines, upon analysis of the documentation, that the Developer 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 Developer to halt construction of Improvements; (2) withhold certain pertinent sums from payment to the Developer or the general contractor, if applicable; or (3) seek any other remedies against the Developer available at law or in equity.

E. May 26, 2004 Ordinance. In the event of a conflict between Section 19. A. through Section 19.D and the MBE/WBE ordinance passed by the City Council of the City on May 26, 2004, as determined by the Corporation Counsel of the City, the provisions of such ordinance shall control and this Section 19 shall be construed accordingly.

SECTION 20. PROVISIONS NOT MERGED WITH DEED.

The provisions of this 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 Agreement.

SECTION 21. HEADINGS.

The headings of the various sections of this 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. ENTIRE AGREEMENT.

This 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 Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

UNOFFICIAL COPY

SECTION 23. SEVERABILITY.

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

SECTION 24. 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, provided that there is written confirmation of such communications; (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
With a copy to:	City of Chicago Department of Law 30 North LaSalle Street Suite 1610 Chicago, Illinois 60602 Attn: Real Estate Division
If to the Developer:	Housing Opportunities for People Everywhere 25059 Doolittle Drive Monee, Illinois 60449
With a copy to:	Steven Standusley, Esq. 20 North Clark Street Suite 1725 Chicago, Illinois 60602

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, provided that such electronic dispatch is confirmed as having occurred prior to 5:00 p.m. on a business day. If such dispatch occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. 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 business days after mailing. The parties, by notice given hereunder, may

UNOFFICIAL COPY

designate any further or different addresses to which subsequent notices, demands or communications shall be given.

SECTION 25. ORGANIZATION AND AUTHORITY.

The Developer 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 signing this Agreement on behalf of the Developer has the authority to do so.

SECTION 26. SUCCESSORS AND ASSIGNS.

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

SECTION 27. TERMINATION.

In the event that the Closing has not occurred within six months from the date of this Agreement through no fault of either party, either party may terminate this Agreement upon written notice to the other. Upon such termination, the City shall return the Earnest Money and Performance Deposit to the Developer.

SECTION 28. RECORDATION OF AGREEMENT.

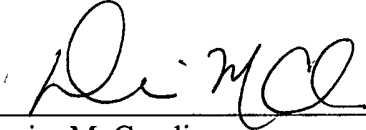
Either party may record this Agreement at the Office of the Cook County Recorder of Deeds. The party so choosing to record this Agreement shall pay the recording fees.

[SIGNATURE PAGE FOLLOWS]

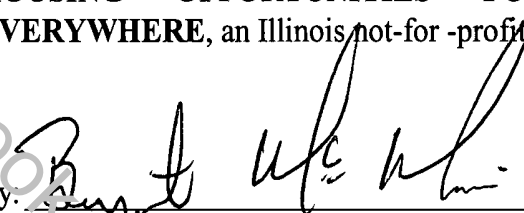
UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the date first above written.

CITY OF CHICAGO,
an Illinois municipal corporation

By: 
Denise M. Casalino
Commissioner of Planning and Development

**HOUSING OPPORTUNITIES FOR PEOPLE
EVERYWHERE,** an Illinois not-for-profit corporation

By: 
Bryant McMorris, President

This instrument was prepared by:
and after recording return to :
Jory Wishnoff
30 North LaSalle Street
Suite 1610
Chicago, Illinois 60602
(312) 744-6910

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Steven Sandosky, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Bryant McMorris, personally known to me to be the President of Housing Opportunities for People Everywhere, an Illinois not-for-profit 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 such President, he signed and delivered the foregoing instrument pursuant to authority given by the corporation as his 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 July, 2004.

Steven J. Sandusky
NOTARY PUBLIC



Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Yolanda Quesada, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Denise M. Casalino, 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 foregoing 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 29 day of July, 2004.

Yolanda Quesada
NOTARY PUBLIC



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOTS 22, 24, 25, 26, 27, 29 AND 30 IN RESUBDIVISION OF LOTS 123 TO 127 AND 169 TO 178 ALL INCLUSIVE IN THE SUBDIVISION OF THE NORTHWEST ¼ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ AND OF LOTS 24 TO 33 AND 60 TO 69 ALL INCLUSIVE IN THE SUBDIVISION OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ ALL IN SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 1302, 1308-10, 1314-16, 1322-24 West 52nd Street
Chicago, Illinois 60609

PINS: 20-08-305-036
20-08-305-037
20-08-305-039
20-08-305-040
20-08-305-041
20-08-305-042
20-08-305-044