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**MORTGAGE, SECURITY AND RECAPTURE AGREEMENT,  
INCLUDING RESIDENCY TRANSFER AND FINANCING AND REFINANCING  
COVENANTS, AND INCLUDING DUE ON SALE PROVISION  
(CPAN)**

	APPLICABLE SUBSIDIES (Enter Amount or "None")		AFFORDABILITY PERIOD
A.	CPAN Subsidy	\$63,158.00	Thirty(30) Years
B.	HOME Purchase Price Subsidy	None	Forty (40) Years
	<b>TOTAL SUBSIDY AMOUNT (A+B)</b>	<b>\$63,158.00</b>	

THIS MORTGAGE, SECURITY AND RECAPTURE AGREEMENT, INCLUDING RESIDENCY, TRANSFER AND FINANCING COVENANTS, AND INCLUDING DUE ON SALE PROVISION ("Mortgage") is made as of this 29 day of May, 2007 from EDWARD BRICE, individually ("Mortgagor") to the CITY OF CHICAGO, an Illinois municipal corporation, having its principal office at 121 N. LaSalle Street, Chicago, Illinois 60602 ("City") with regard to the HOME Purchase Price Subsidy (as further described below) and to 740 Fulton LLC, an Illinois limited liability company, having an address of 357 West Chicago Avenue, Chicago, IL 60610 (the "Developer") with regard to the CPAN Subsidy (as further described below). Upon execution of this Mortgage, Developer has assigned any and all rights as a mortgagee under this Mortgage with regard to the CPAN Subsidy to THE CHICAGO LOW-INCOME HOUSING TRUST FUND, an Illinois not for profit corporation, or such other entity or fund as the City may designate (the "Trust"), pursuant to the Assignment of Note and Mortgage attached hereto as Exhibit A. The City and the Trust are collectively referred to herein as "Mortgagee". Capitalized terms not otherwise defined herein shall have the meaning set forth in Section 1.

Box 334

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## RECITALS

A. The City Council of the City ("**City Council**") has previously adopted ordinances on March 28, 2001 (published in the Journal of Proceedings of the City Council ("**Journal**") for such date at page 55634-55638), October 31, 2001 (published in the Journal for such date at pages 71262-71273), June 19, 2002 (published in the Journal for such date at pages 88591-88592) December 14, 2005 (published in the Journal for such date at pages 66745-66747) and November 1, 2006 (published in the Journal for such date at pages 89913-89922) (collectively, the "**CPAN Program Ordinance**"), pursuant to which the City has established a program (the "**CPAN Program**") by which the City encourages market rate developments to include affordable housing units, subject to a housing developers' write-down of the cost difference between the market rate purchase price of a single family housing unit and the CPAN Maximum Purchase Price (defined below), by providing homebuyers with financial assistance and waiving certain fees imposed by the City that would otherwise be applicable to and incurred by the developers of such developments.

B. The CPAN Program was designed and implemented in order to promote the construction and sale of (a) high-quality, owner-occupied, affordable single-family housing, whether constructed as a detached single-family house, a townhome, or a condominium unit in a multi-unit building (each, an "**Affordable Housing Unit**") with a maximum base purchase price (i.e., exclusive of upgrades) that is both (a) affordable to homebuyer whose household income is at or below one hundred percent (100%) of the median income of the Chicago primary metropolitan statistical area ("**AMI**"), as determined by the City's Department of Housing ("**DOH**") from time to time, and (b) at least Twenty-Five Thousand and No/100 Dollars (\$25,000) less than the market rate price for a comparable housing unit in the applicable development (the "**CPAN Maximum Purchase Price**"). This Mortgage constitutes the CPAN Mortgage required under Section 5(e) of the CPAN Program Ordinance.

C. Pursuant to the objectives of the CPAN Program, the Developer executed that certain Chicago Partnership for Affordable Neighborhoods (CPAN) Application and Mortgage applied to the City for purchase price assistance for homebuyers for the purchase of an Affordable Housing Unit in the housing development that was constructed or redeveloped by the Developer in accordance with the CPAN Program.

D. Mortgagor represents and warrants that Mortgagor has a household income at or below 100% of the median income of the Chicago Metropolitan statistical area and the mortgage is a qualified affordable homebuyer pursuant to the terms and conditions of the CPAN Program eligible to purchase the Affordable Housing Unit described on **Exhibit B** at a purchase price below the market rate for such Affordable Housing Unit. The amount of the subsidy granted to Homebuyer is equal to the price difference between the market rate purchase price and the CPAN Maximum Purchase Price, which difference is in the amount of SIXTY THREE THOUSAND ONE HUNDRED FIFTY EIGHT and NO/100 DOLLARS (\$63,158.00) (the "**CPAN Subsidy**").

E. Mortgagor has executed that certain Promissory Note ("**Promissory Note**") of even date herewith in an original principal amount equal to the amount of the CPAN Subsidy,

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made payable to Developer with an interest rate of three percent (3%) per annum (simple interest) pursuant to such terms and conditions set forth in the Promissory Note. Developer has endorsed and assigned the Promissory Note and assigned all of its mortgage rights under this Mortgage to the Trust as of the date hereof together to evidence and secure the CPAN Subsidy.

F. In connection with the sale of such an Affordable Housing Unit to a household at or below 80% of the AMI (an "**Income Eligible Family**"), the City has agreed to provide such household with a homebuyer purchase price subsidy from City funds derived from an allocation of HOME Investment Partnership grants funds ("**HOME Funds**") pursuant to the Cranston-Gonzalez National Affordable Housing Act 42 U.S.C. Section 12701 *et seq.* ("**HOME Act**"), and the regulations promulgated pursuant thereto at 24 C.F.R. Part 92 (the "**HOME Regulations**").

G. In connection with the purchase of the Affordable Housing Unit, the City has also agreed to provide the Mortgagor with a HOME Purchase Price Subsidy in the amount of **No Subsidy Provided (None)** (the "**HOME Purchase Price Subsidy**") to enable such Mortgagor to purchase the Affordable Housing Unit, subject to Mortgagor's execution of this Mortgage in favor of Mortgagee, which secures certain performance and payment covenants intended to assure that the City achieves the affordable housing objectives of the CPAN Program and complies with the HOME Regulations applicable to the HOME Purchase Price Subsidy.

H. The Mortgagor further represent and warrants that it is an Income Eligible Family eligible to receive such a HOME Purchase Price Subsidy.

I. As a result of the CPAN Subsidy and the HOME Purchase Price Subsidy, the Mortgagor has been able to buy the Mortgaged Property for a base purchase price equal to the market rate price, less the CPAN Subsidy, and less the HOME Purchase Price Subsidy (such price, the "Base Purchase Price") and to become a homeowner.

NOW, THEREFORE, to secure the performance and observance by Mortgagor of all the terms, covenants and conditions described herein, and in order to charge the properties, interests and rights hereinafter described with such consideration, Mortgagor has executed and delivered the Mortgage and does hereby grant, convey, assign, mortgage, grant a security interest in, and confirm unto Mortgagee and its successors and assigns forever, Mortgagor's interest (both fee simple, and Mortgagor's undivided interest in any common elements and limited common elements, as applicable) in all of the following described property (which is hereinafter sometimes referred to as "**Mortgaged Property**"):

- (A) The land on which the Affordable Housing Unit is located;
- (B) All structures and improvements of every nature whatsoever now or hereafter situated on the land on which the Affordable Housing Unit is located, including, without limitation, the Affordable Housing Unit, all fixtures of every kind and nature whatsoever which are or shall be attached to said buildings, structures or improvements, and now or hereafter owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing ("**Improvements**");

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(C) All rents and issues of the land and Improvements from time to time and all of the estate, right, title, interest, property, possession, claim and demand at law, as well as in equity of Mortgagor, in and to the same;

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein;

WITHOUT limitation of the foregoing, Mortgagor hereby further grants unto Mortgagee, pursuant to the provisions of the Uniform Commercial Code of the State of Illinois, a security interest in all of the above-described property, which are or are to become fixtures.

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of all recapture amounts described herein, (b) performance of residency, transfer and financing covenants described herein and in Exhibit C attached hereto, and (c) the payment and performance of all other obligations, covenants, conditions and agreements contained herein and in any other agreement, document or instrument to which reference is expressly made in the Mortgage.

## SECTION I

### INCORPORATION OF RECITALS; DEFINITIONS

The recitals set forth above constitute an integral part of the Mortgage and are hereby incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties. As used herein, the following capitalized terms shall be defined as follows:

**"Base Purchase Price"** shall mean \$211,842, which is the base purchase price that the Developer sold the Mortgaged Property to the Mortgagor, after giving effect to the CPAN Subsidy and the HOME Purchase Price Subsidy.

**"Commissioner"** shall mean the Commissioner of the Department of Housing of the City of Chicago, or any successor department thereto.

**"CPAN Affordability Period"** shall mean the thirty (30) year period commencing on the Purchase Date.

**"CPAN Recapture Amount"** the amount due and payable upon the date on which the earliest of the following occurs: (a) the Home is sold or abandoned in whole or in part by Mortgagor; or (b) Mortgagor seeks to refinance the Senior Mortgage identified in Section 2.04 below (except where such refinance is solely for the purpose of lowering the monthly principal and interest payment thereon, and without increasing the principal amount thereof). The CPAN Recapture Amount shall equal the outstanding principal balance of the Promissory Note (i.e., the original CPAN Subsidy, plus accrued unpaid simple interest thereon at the rate of three percent (3%) per annum) and any other sums due hereunder, which amount shall become immediately

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due and payable in full at such time. If the CPAN Subsidy secured by this Mortgage is not previously repaid pursuant to the terms of this Mortgage, it shall be forgiven upon the thirty (30) year anniversary date of the Promissory Note and the portions of the Mortgage securing the CPAN Subsidy shall be released.

**"HOME Funds Recapture Amount"** If Mortgagor conveys the Mortgaged Property, or executes a deed in lieu of foreclosure, or seeks to refinance the Senior Mortgage identified in Section 2.04 below, prior to the expiration of the HOME Regulations Affordability Period, (except as permitted under the CPAN Recapture Amount definition), the City shall be entitled to recapture, and Mortgagor shall be obligated to pay the City, the greater of the following sums: (a) an amount equal to the HOME Purchase Price Subsidy, which shall be non-amortizing, and which on each annual anniversary of the Purchase Date shall increase by an amount equal to three percent (3%) of the HOME Purchase Price Subsidy, but which amount on the fortieth (40<sup>th</sup>) annual anniversary date, shall equal ZERO Dollars (\$0.00), and (b) the amount determined by the provisions of the then current and applicable HOME Act and HOME Regulations. The incremental amount by which the HOME Funds Recapture Amount increases on each such anniversary date shall constitute an equity sharing component intended to permit the City to share in the increase in the appreciation of the Affordable Housing Unit over time.

**"HOME Regulations Affordability Period"** shall mean the forty (40) year period commencing on the Purchase Date.

**"Mortgagor's Total Purchase Price"** shall mean the sum of (a) the Base Purchase Price paid by the Mortgagor on the Purchase Date, plus (b) the cost of extras and upgrades paid for by the Mortgagor on the Purchase Date, plus (c) the cost of additional capital improvements made by Mortgagor to the Mortgaged Property after the Purchase Date, provided reasonable evidence of the cost of such additional capital improvements is submitted to approved by DOH.

**"Net Transfer Proceeds"** shall mean the gross sales proceeds arising from a direct or indirect sale or transfer of the Mortgaged Property, minus (a) the amount of any permitted Senior Mortgage indebtedness or any permitted refinancing thereof repaid at the time of such sale or transfer, (b) any commercially reasonable, third party brokerage fee paid by Mortgagor with respect to such sale or transfer, (c) any transfer taxes which, pursuant to applicable law, are paid by the Mortgagor, (d) customary title, escrow and recording charges paid by the Mortgagor, (e) customary pro rations or credits made pursuant to the contract for such sale or transfer, and (f) such other amounts, if any, as the Commissioner, in the Commissioner's sole discretion, may agree are necessary, appropriate and equitable.

**"Purchase Date"** shall mean the date on which the Mortgagor purchased the Mortgaged Property, which shall be deemed to be the date on which this Mortgage is recorded.



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## SECTION II

### GENERAL COVENANTS, REPRESENTATIONS AND WARRANTIES

Mortgagor covenants and agrees with Mortgagee that:

#### 2.01 Taxes and Assessments.

(a) Mortgagor will pay when due all general taxes and assessments, special assessments, water charges and all of the charges against the Mortgaged Property and shall, upon written request, furnish to Mortgagee receipts evidencing payment thereof, provided that Mortgagor, in good faith and with reasonable diligence, may contest the validity or amount of any such taxes, assessments or charges, provided that during any such contest the enforcement of the lien of such taxes, assessments or charges is stayed.

(b) Mortgagor will not suffer (unless bonded or insured over) any mechanic's, laborer's, materialmen's, or statutory lien to remain outstanding upon any of the Mortgaged Property. Mortgagor may contest such lien, provided that Mortgagor shall first post a bond in the amount of the contested lien, or provide title insurance over such contested lien, and further provided that Mortgagor shall diligently prosecute the contested lien and cause the removal of the same.

#### 2.02 Insurance.

Mortgagor shall keep the Mortgaged Property continuously insured in such amounts and against such risks as required of Mortgagor by the Senior Lender (as hereinafter defined), paying the premiums for said insurance as they become due. Policies of insurance shall name Mortgagee as an additional insured. All policies of insurance shall provide that the same shall not be canceled, except upon thirty (30) days prior written notice to Mortgagee.

#### 2.03 Maintenance of the Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair, will not commit or suffer any waste thereof, and will keep the same in a clean, orderly and attractive condition. Mortgagor shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Mortgagor will immediately give written notice of the same to Mortgagee.

(c) Mortgagee or its representatives shall have the right to inspect the Mortgaged Property to assure compliance with the terms of this Mortgage.

(d) Mortgagor shall promptly comply, and cause the Mortgaged Property to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof and with all

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instruments and documents of record or otherwise affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Mortgagor, subject to the rights of co-insurer, will promptly restore the Mortgaged Property to the equivalent of its condition prior to the casualty, to the extent of any insurance proceeds made available to Mortgagor for that purpose.

## 2.04 Subordination.

The Mortgage shall be subject and subordinate in all respects to that certain mortgage dated as of \_\_\_\_\_, 2007, between Mortgagor and \_\_\_\_\_ ("**Senior Lender**"), recorded with the Office of the Recorder of Deeds of Cook County, Illinois to secure indebtedness in the original principal amount not to exceed the Base Purchase Price ("**Senior Mortgage**"), unless the Commissioner, in the Commissioner's sole discretion, agrees in writing to senior financing in a greater amount. This Mortgage shall also be subordinate to any subsequent mortgage that refinances the Senior Mortgage, so long as such refinancing is not in an original principal amount greater than the Base Purchase Price, unless the Commissioner, in the Commissioner's sole discretion, agrees in writing to senior financing in a greater amount or is otherwise permitted under **Exhibit C. EXHIBIT C EXPLAINS IN GREATER DETAIL THE ADDITIONAL REFINANCING RESTRICTIONS THAT APPLY TO MORTGAGOR, THE MORTGAGED PROPERTY AND ANY LENDERS MAKING LOANS SECURED BY THE MORTGAGE PROPERTY.**

## 2.05 Income Eligibility.

Mortgagor covenants to Mortgagee that: (i) Mortgagor is an Income Eligible Family and is eligible to receive HOME Purchase Price Subsidy; and (ii) Mortgagor qualifies as an affordable homebuyer under the CPAN Program and is entitled to receive the CPAN Subsidy.

## 2.06 Foreclosure of Senior Mortgage.

In the event of a transfer of title of the Mortgaged Property through foreclosure or recording of deed in lieu of foreclosure to the Senior Lender pursuant to the Senior Mortgage, Mortgagee acknowledges and agrees that the residency, transfer and financing covenants set forth in **Exhibit C** attached hereto, and any other provisions contained herein restricting the sale and occupancy of the Mortgaged Property to buyers or occupants which meet the income eligibility requirements of the CPAN Program shall be released and shall have no further force or effect; provided, however, that all such covenants and affordability restrictions shall be revived according to the original terms if, during the applicable affordability period, the Mortgagor or any member of Mortgagor's household or family reacquires an ownership interest in the Mortgaged Property [See 24 CFR Part 92.254(a)(5)(i)(A)]. Any other person (including the successors and/or assigns of Senior Lender) receiving title to the Mortgaged Property through a foreclosure or deed in lieu of foreclosure of the Senior Mortgage shall also receive title to the Mortgaged Property free and clear of such restrictions, but only if such transfer of title pursuant to such foreclosure or deed in lieu of foreclosure did not involve collusion between the Senior

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Lender and the Mortgagor for the purpose of avoiding low-income affordability restrictions pertaining to the Mortgaged Property or of avoiding payment of the applicable recapture amount to the Mortgagee.

Further, if Senior Lender acquires title to the Mortgaged Property pursuant to a deed in lieu of foreclosure, the lien of this Mortgage and the restrictions contained herein shall automatically terminate upon the Senior Lender's acquisition of title to the Mortgaged Property, provided that: (i) the Senior Lender has given written notice to Mortgagor of a default under the Senior Mortgage in accordance with its terms, (ii) the Mortgagor shall not have cured the default under the Senior Mortgage within any applicable cure period(s) provided for therein; (iii) any proceeds from any subsequent sale of the Mortgaged Property, if any, which Mortgagee is entitled to receive after payment of all amounts due pursuant to the Senior Mortgage and pursuant to this Mortgage, are paid to Mortgagee; and (iv) such acquisition of title by the Senior Lender did not involve collusion between the Senior Lender and the Mortgagor for the purpose of avoiding low-income affordability restrictions pertaining to the Mortgaged Property or of avoiding payment of the applicable recapture amount to the Mortgagee.

## SECTION III

### RESIDENCY, TRANSFER AND FINANCING COVENANTS

Mortgagor also covenants to comply with the residency, transfer and financing covenants set forth in **Exhibit C**, which covenants are all materially related to the City's achievement of the affordable housing objectives of the CPAN Program described in the Recitals and the City's compliance with the HOME Regulations.

## SECTION IV

### DEFAULT

#### 4.01 Events of Default.

The terms "Event of Default" or "Events of Default", wherever used in the Mortgage, shall mean any one or more of the following events:

(a) Mortgagor's breach of one or more of the residency, transfer or financing covenants set forth in **Exhibit C**, which breach is not cured by Mortgagor within ten (10) days of Mortgagor's receipt of written notice from Mortgagee of such breach; or

(b) Mortgagor's breach of any other material term, covenant, condition, or agreement of this Mortgage, which breach is not cured by Mortgagor within thirty (30) days of Mortgagor's receipt of written notice from Mortgagee of such breach; provided, however, that in the event such default cannot reasonably be cured within such thirty (30) day period and if Mortgagor has



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commenced efforts to cure, then the time to cure shall be extended so long as said party diligently continues to cure such default; or

(c) Any default continuing beyond all applicable cure periods under the Senior Mortgage that permits the Senior Lender to foreclose its lien thereunder.

## 4.02 Remedies.

(a) If an Event of Default arising from a breach of one or more of the covenants set forth in **Exhibits C** occurs (such a default, a "**Recapture Default**"), one or more of the following amounts, as applicable, shall, at Mortgagee's sole option, become immediately due and payable and subject to recapture without further notice or demand:

(i) If the Recapture Default occurs during the CPAN Affordability Period (i.e., during the first thirty (30) years), the Mortgagee shall be entitled to immediate payment of the CPAN Recapture Amount and the HOME Funds Recapture Amount.

(ii) If the Recapture Default occurs after the expiration of the CPAN Affordability Period but before the expiration of the HOME Regulations Affordability Period (i.e., after the first thirty (30) years, but before the end of the fortieth (40<sup>th</sup>) year), Mortgagee shall be entitled to immediate payment of the HOME Funds Recapture Amount.

(b) If a Recapture Default or any other Event of Default occurs, Mortgagee shall also be entitled to declare all other amounts secured hereby immediately due and payable without further notice or demand and shall have such rights and remedies as may be available at law or at equity, including, without limitation, and subject to the rights of the Senior Lender, the right to foreclose the lien hereof. The Mortgage and the right of foreclosure hereunder shall not (to the extent permitted by law) be impaired or exhausted by any foreclosure of the Senior Mortgage, and may be foreclosed successively and in parts, until all of the Mortgaged Property has been foreclosed against. In any such foreclosure, or upon the enforcement of any other remedy of Mortgagee hereunder, there shall be allowed and included as additional indebtedness, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs involved in title insurance and title examinations. All expenditures and expenses of the nature in this Section 4.02(b) mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of the Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting the Mortgage, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the lesser of the highest rate permitted by law or fifteen percent (15%) per annum, and shall be secured by the Mortgage. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in this section; (ii) repayment of any indebtedness secured by any permitted Senior Mortgage or a permitted refinancing

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thereof; (iii) all recapture amounts and other amounts due under this Mortgage; and (iv) any remaining amounts due to Mortgagor, its successors or assigns, as their rights may appear.

(c) Notwithstanding the terms and conditions of this Section 4.02(a) above, but subject to Section 4.09 below, if a sale or other transfer occurs giving rise to a Recapture Default and the sales proceeds (before repayment of the Senior Mortgage indebtedness) are insufficient to repay an amount equal to the sum of the Mortgagor's Total Purchase Price, as set forth in Section 1, plus the total amount due and payable to Mortgagee under all provisions of this Mortgage, as determined by Mortgagee, Mortgagor shall pay Mortgagee an amount equal to the product of (i) such sales proceeds as remain after repayment of the Senior Mortgage indebtedness, and (ii) a fraction, the numerator of which is the Total Subsidy Amount set forth on the first page of this Mortgage and the denominator of which is the Total Subsidy Amount plus the Base Purchase Price. For example, if the (1) Total Subsidy Amount is \$40,000, (2) the Base Purchase Price is \$160,000, (3) Mortgagor's Total Purchase Price is \$175,000, (4) the Senior Mortgage indebtedness is \$150,000, (5) the unpermitted sale or transfer yields proceeds of \$210,000, and (6) the total amount due and payable Mortgagee is \$20,000, then the Mortgagor would be obligated to pay the Mortgagee the following amount  $[\$210,000 - \$150,000] \times \$40,000 / [\$40,000 + \$160,000] = \$60,000 \times .20 = \$12,000$ .

(d) Notwithstanding the terms and conditions of Section 4.01 and this Section 4.02, a sale or transfer arising from the death of the Mortgagor, which operates to transfer the Mortgagor's interest in the Mortgaged Property to the Mortgagor's heirs or beneficiaries, whether by will, trust or a similar estate planning instrument, or by intestacy, shall not be subject to the foregoing due on sale provision, but the successor(s) in title to the Mortgagor's interest in the Mortgaged Property shall continue to hold such title subject to the terms of this Mortgage.

#### 4.03 Mortgagor Waivers.

Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of the Mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the Mortgaged Property subsequent to the date of the Mortgage.

#### 4.04 Additional Mortgagee Rights.

Upon any other entering upon or taking of possession of the Mortgaged Property after the occurrence of an Event of Default other than by means of a foreclosure, Mortgagee, subject to the rights of the Senior Lender, may hold, use, manage and control the Mortgaged Property and, from time to time (i) make all necessary and proper maintenance, repairs, renewals,

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replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property required in connection therewith; (ii) insure or keep the Mortgaged Property insured; (iii) manage the Mortgaged Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may reasonably determine to be to its best advantage. Mortgagee may collect and receive all the rents, issues, profits and revenues of the same, including those past due as well as those accruing thereafter, and, after deducting to the extent reasonable: (aa) expenses of taking, holding and managing the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other similar charges as Mortgagee may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Mortgagee, shall apply the remainder of the monies and proceeds so received by Mortgagee first to payment of accrued interest; and second to the payment of principal. The balance of such funds, if any, after payment in full, of all of the aforesaid amounts (including, without limitation, the entire outstanding principal balance under this Mortgage) shall be paid to Mortgagor.

#### 4.05 Right to Receiver.

Subject to the rights of the Senior Lender, if an Event of Default shall have occurred, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall otherwise have all of the rights and powers to the fullest extent permitted by law.

#### 4.06 Purchase by Mortgagee.

Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price; provided, however, that the Senior Lender has been paid in full.

#### 4.07 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to Mortgagee by the Mortgage is intended to be exclusive of any other right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

#### 4.08 No Waiver By Mortgagee.

No delay or omission of Mortgagee or of any holder of this Mortgage to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such

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right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by the Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. No consent or waiver, expressed or implied, by Mortgagee to or of any breach or Event of Default by Mortgagor in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies on account of any breach or default by Mortgagor.

#### 4.09 Priority of Repayment of HOME Funds Recapture Amount.

Any other term or condition of this Mortgage or the Promissory Note notwithstanding, at any time when Mortgagor is obligated to pay Mortgagee, or its designee, the CPAN Recapture Amount and HOME Funds Recapture Amount, the HOME Funds Recapture Amount shall be paid in full prior to the repayment of the CPAN Recapture Amount. Once the HOME Funds Recapture Amount has been paid in full, any and all remaining funds shall then be used to repay the CPAN Recapture Amount.

## SECTION V

### MISCELLANEOUS PROVISIONS

#### 5.01 Successors and Assigns.

The Mortgage shall inure to the benefit of and be binding upon Mortgagor and Mortgagee and their respective legal representatives, successors and assigns. Whenever a reference is made in the Mortgage to Mortgagor or to Mortgagee, such reference shall be deemed to include a reference to legal representatives, successors and assigns of Mortgagor or Mortgagee, as applicable.

#### 5.02 Terminology.

All personal pronouns used in the Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and sections are for convenience only and neither limit nor amplify the provisions of the Mortgage, and all references herein to sections shall refer to the corresponding sections of the Mortgage unless specific reference is made to such sections of another document or instrument.

#### 5.03 Severability.

If any provision of the Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the Mortgage and the

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application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by law.

## 5.04 Security Agreement.

The Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Mortgaged Property which constitutes fixtures. Mortgagee shall have all the rights with respect to such fixtures afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by the Mortgage or any other agreement.

## 5.05 Modification.

No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns. Mortgagor shall have no right to convey the Mortgaged Property into a land trust without obtaining the prior written consent of the Mortgagor.

## 5.06 No Merger.

It being the desire and intention of the parties that the Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee as evidenced by an appropriate document duly recorded, the Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

## 5.07 Applicable Law.

The Mortgage shall be interpreted, construed and enforced under the laws of the State of Illinois.

## 5.08 Certificates of Compliance.

If no Event of Default exists, upon the expiration of the CPAN Affordability Period and the HOME Regulations Affordability Period, as applicable, Mortgagor, within thirty (30) days of receipt of a written request from Mortgagee, shall execute a certificate of compliance in recordable form certifying to Mortgagee's full compliance with residency, transfer and financing covenants during such period, and confirming the termination of any applicable CPAN Subsidy recapture amounts.



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## 5.09 Release of Mortgage.

If: (a) Mortgagor is not then in default under this Mortgage and retains ownership of the Mortgaged Property until the expiration of the last applicable Affordability Period, or (b) Mortgagor conveys the Mortgaged Property and/or Mortgagor pays Mortgagee the full amount Mortgagee is entitled to receive pursuant to the provisions of Section IV above, then Mortgagor shall be deemed to have fully complied with the provisions contained in this Mortgage. In such event, upon receipt of a written request from Mortgagor, Mortgagee shall execute a release of the Mortgage. Said release shall be in recordable form.

## 5.10 Certificates of Compliance.

If no Event of Default exists, upon the expiration of the CPAN Affordability Period and the HOME Regulations Affordability Period, as applicable, Mortgagor, within thirty (30) days of receipt of a written request from Mortgagor, shall execute a certificate of compliance in recordable form certifying to Mortgagor's full compliance with residency, transfer and financing covenants during such period, and confirming the termination of any applicable recapture amounts.

## 5.11 Conflict

This Mortgage is intended to be consistent with and to implement the requirements of the HOME Regulations. In the event of a conflict between this Mortgage and the HOME Regulations, the HOME Regulations shall govern and control.

## 5.12 Further Assurances, Duty to Cooperate.

Mortgagor, on request of Mortgagee, from time to time covenants and agrees to execute and deliver such additional documents, amendments, agreements and undertakings as may be necessary to: correct any scrivener's error contained herein or in any related document; to perfect or to maintain as perfected valid lien(s) upon the Mortgaged Property any lien granted to Mortgagee under this Mortgage or any under any other agreement or undertaking; or to more fully and accurately set forth and reflect the affordability requirements of the New Homes Program.

## 5.13 CPAN Program Ordinance Discretionary Authority.

Consistent with Sections 5(e) and 6(c) of the CPAN Program Ordinance, depending on market conditions, interest rates and any other attendant facts and circumstances related to a given resale of the Affordable Housing Unit, the Commissioner, in the Commissioner's sole discretion, may determine that a lesser recapture amount shall be due and payable hereunder than as specified elsewhere in this Mortgage, but as to any HOME Purchase Price Subsidy, in no such event shall the recapture amount be less than the amount required under the HOME Act and the regulations promulgated pursuant thereto.

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Consistent with Section 14 of the CPAN Program Ordinance, if an Event of Default occurs hereunder, the Commissioner, in the Commissioner's sole discretion, but subject to the approval of the Corporation Counsel, and dependent upon market conditions, interest rates and any other attendant facts and circumstances, may settle any claims with respect to this Mortgage, including, without limitation, accepting payment of an amount less than the full amount that would otherwise be due and payable under this Mortgage, if equitable and necessary or appropriate.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned have caused this Mortgage to be executed as of the day and year first above written.



Edward Brice

**[ASSIGNMENT OF DEVELOPER MORTGAGE RIGHTS ATTACHED AS EXHIBIT A  
MUST BE EXECUTED BY THE DEVELOPER AND NOTARIZED]**

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STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

I, Mary Mundell, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **EDWARD BRICE**, personally known to me as the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 29 day of May, 2007.



Mary Mundell  
Notary Public

My commission expires \_\_\_\_\_.

Property of Cook County Clerk's Office

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## EXHIBIT A ASSIGNMENT OF DEVELOPER CPAN SUBSIDY MORTGAGE RIGHTS

740 FULTON LLC, an Illinois limited liability company ("Assignor"), having its principal office at having an address of 357 West Chicago Avenue, Chicago, IL 60610, this \_\_\_ day of May, 2007, hereby assigns to THE CHICAGO LOW-INCOME HOUSING TRUST FUND, an Illinois not for profit corporation ("Assignee"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all of Assignor's right, title and interest in and to that certain Mortgage from EDWARD BRICE, individually, as mortgagor, in favor of Assignor, as mortgagee, dated as of May \_\_\_, 2007 in the amount of SIXTY THREE THOUSAND ONE HUNDRED FIFTY EIGHT and NO/100 DOLLARS (\$63,158.00), and that certain Promissory Note ("Note") in favor of Assignor, dated as of May \_\_\_, 2007, in the amount of SIXTY THREE THOUSAND ONE HUNDRED FIFTY EIGHT and NO/100 DOLLARS (\$63,158.00), plus interest as provided in the Note.

THIS ASSIGNMENT SHALL BE EFFECTIVE AS OF THE DATE HEREOF. ASSIGNEE SHALL HAVE THE RIGHT TO RECORD THIS ASSIGNMENT WITH THE RECORDER OF DEEDS FOR COOK COUNTY, ILLINOIS.

DATED: May 29, 2007

ASSIGNOR:

740 FULTON LLC,  
an Illinois limited liability company

By: *Eliza O'Loughlin*  
Its: *Agent*

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

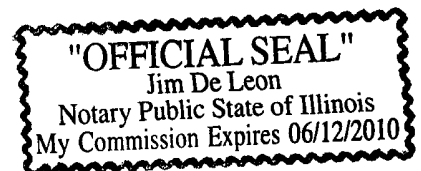
I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that *Elizabet O'Loughlin* [name], personally known to me to be the *Agent* [title] of 740 Fulton LLC, an Illinois limited liability company ("Assignor"), same person(s) whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she was duly authorized and empowered to sign and deliver said instrument and that he/she did sign and deliver said instrument as the free and voluntary act of Assignor for the uses and purposes therein set forth.

GIVEN under my hand and official seal this *May 29*, 2007.

(SEAL)

*Jim De Leon*  
NOTARY

My Commission Expires: *06/12/2010*





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## EXHIBIT B

### LEGAL DESCRIPTION:

UNIT 908 IN THE 740 FULTON CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

PART OF BLOCK 61 TOGETHER WITH PARTS OF VACATED WEST WAYMAN AVENUE IN ORIGINAL TOWN OF CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0707215073 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

Commonly known as: 740 W. Fulton, #908, Chicago, Illinois 60661

Permanent Index Numbers: 17-09-307-010-0000 (Part)

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## EXHIBIT C

### **Eligibility, Principal Residency, and Refinancing Covenants**

In consideration of the CPAN Subsidy and the HOME Purchase Price Subsidy that have been provided to Mortgagor, and that collectively have enabled the Mortgagor to purchase the Mortgaged Property for the Base Purchase Price, and as a condition to Mortgagor's receipt of such subsidies, Mortgagor covenants to Mortgagee that:

(a) Mortgagor meets the income eligibility requirements established by the City pursuant to the CPAN Program and the HOME Regulations in order to participate as an initial homebuyer of the Mortgaged Property under the CPAN Program and to participate as an Income Eligible Family under the HOME Program.

(b) Mortgagor shall own the Mortgaged Property, shall not lease the Mortgaged Property and shall utilize the Home as its primary residence.

(c) Mortgagor shall not directly or indirectly sell or otherwise transfer the Mortgaged Property, or execute a deed in lieu of foreclosure.

(d) Mortgagor shall not refinance the Mortgaged Property, except to refinance the Senior Mortgage in an amount not greater than the Base Purchase Price. **THIS REFINANCING RESTRICTION MEANS THAT THE HOMEOWNER IS RESTRICTED FROM USING THE MORTGAGED PROPERTY AS COLLATERAL FOR GETTING ADDITIONAL LOANS, INCLUDING, WITHOUT LIMITATION, LOANS TO REPAY CREDIT CARD DEBT, LOANS TO PURCHASE AUTOMOBILES, HOME EQUITY LOANS, DEBT CONSOLIDATION LOANS OR LOANS TO FINANCE THE PURCHASE OF OTHER PERSONAL OR REAL PROPERTY, UNLESS SUCH LOANS MEET THE REFINANCING REQUIREMENTS OF THE PREVIOUS SENTENCE. IF MORTGAGOR DESIRES TO GET A HOME IMPROVEMENT LOAN THAT WILL USE THE MORTGAGED PROPERTY AS COLLATERAL, AND IF THE COMMISSIONER CONSENTS TO SUCH LOAN, SUCH CONSENT MAY BE CONDITIONED UPON, AMONG OTHER THINGS, THE HOMEOWNER'S SUBMISSION TO THE CITY OF CHICAGO - DEPARTMENT OF HOUSING, AND THE DEPARTMENT OF HOUSING'S APPROVAL OF, CONSTRUCTION CONTRACTS, BUDGETS AND ESCROW OR OTHER FUNDING AGREEMENTS FOR SUCH HOME IMPROVEMENT PROJECT.**