

④ 211431

UNOFFICIAL COPY

This Document Prepared by
~~and after Recording Return to:~~

Grant McCorkhill
Holland & Knight LLP
131 South Dearborn
30th Floor
Chicago, IL 60603
312/715-5743



Doc#: 0730331041 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/30/2007 10:25 AM Pg: 1 of 20

Above Space For Recorder's Use Only

Second MORTGAGE, SECURITY AND RECAPTURE AGREEMENT,
INCLUDING RESIDENCY, TRANSFER AND FINANCING AND REFINANCING
COVENANTS, AND INCLUDING DUE ON SALE PROVISION
(New Homes For Chicago)

	APPLICABLE SUBSIDIES (Enter Amount or "None")		AFFORDABILITY PERIOD
A.	Land Fair Market Value	\$23,400.00	None
B.	Base Land Value (Up to \$50,000)	\$23,400.00	Four (4) Years
C.	Additional Land Value (A minus B)	\$ 0.00	Thirty(30) Years
D.	Purchase Price Subsidy	\$10,000.00	Four (4) Years
E.	Additional Purchase Price Subsidy	\$20,000.00	Forty (40) Years
F.	DDA Purchase Price Subsidy	None	Four (4) Years
	TOTAL SUBSIDY AMOUNT (B+C+D+E+F)	\$53,400.00	

THIS MORTGAGE, SECURITY AND RECAPTURE AGREEMENT, INCLUDING RESIDENCY, TRANSFER AND FINANCING COVENANTS, AND INCLUDING DUE ON SALE PROVISION ("Mortgage") is made as of this *24th* day of August, 2007 from CAMILLE ~~HOLMES~~ HOLMES*, individually ("Mortgagor"), to the CITY OF CHICAGO, an Illinois municipal corporation, having its principal office at 121 N. LaSalle Street, Chicago, Illinois 60602 ("City" or "Mortgagee"). Capitalized terms not otherwise defined herein shall have the meaning set forth in Section 1. **a single person*

RECITALS

A. The City Council of the City, by ordinance adopted June 7, 1990, established the New Homes for Chicago Program (as amended from time to time, the "New Homes Program") to facilitate the construction of new single family housing within the City which shall be affordable to many families. By ordinance adopted April 26, 2006 and published in the Journal of Proceedings of the City Council for such date at pages 75201 - 75212 (the "Restated

uc

Box 430

UNOFFICIAL COPY

Program Ordinance"), the New Homes Program was amended and restated to set forth the City's current affordability objectives and requirements, which are being incorporated into this Mortgage.

B. Pursuant to the objectives of the New Homes Program, the City and KARRY L. YOUNG DEVELOPMENT, LLC, an Illinois limited liability company ("**Developer**"), have executed that certain "Redevelopment Agreement, New Homes For Chicago Program, Karry L. Young Construction, Inc." entered into between the City and Developer as of January 27, 2005 and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on August 23, 2006 as document #0623532008, as amended by that certain Amendment to Redevelopment Agreement entered into between the City and Developer as of August 22, 2006 and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on August 23, 2006 as document #0623532009 (collectively the "**Redevelopment Agreement**"), pursuant to which Developer has constructed on the real property legally described on **Exhibit A** attached hereto (the "**Land**") a single family housing unit or two-flat building (as applicable, the "**Home**"), which the Developer is now selling to the Mortgagor.

C. When the City sold and conveyed the Land to the Developer, the Land had a fair market value of approximately **Twenty Three Thousand Four Hundred and 00/100 Dollars (\$23,400.00)** (the "**Land Fair Market Value**").

D. Pursuant to the New Homes Program, and subject to the terms and conditions of the Redevelopment Agreement, including, without limitation, the Mortgagor's execution of this Mortgage and the recapture provisions herein, the City sold and conveyed the Land to the Developer for the sum of One Dollar (\$1.00).

E. Pursuant to the New Homes Program and the Redevelopment Agreement, the first Fifty Thousand Dollars (\$50,000) of such Land Fair Market Value (or such lesser amount as may be applicable) constitutes and is referred to hereinafter as the "**Base Land Value**" and the amount by which the Land Fair Market Value exceeds Fifty Thousand Dollars (\$50,000) (if any) constitutes and is referred to hereinafter as the "**Additional Land Value**".

F. Pursuant to the New Homes Program and the Redevelopment Agreement, the City, simultaneously with the execution and recording of this Mortgage, has agreed to provide to the Mortgagor an additional subsidy of City funds in the amount of **Ten Thousand and No/100 Dollars (\$10,000.00)** (the "**Purchase Price Subsidy**") which purchase price subsidy will be disbursed to Mortgagor to enable the Mortgagor to purchase the Mortgaged Property at a further reduced price.

G. Pursuant to the New Homes Program and the Redevelopment Agreement, the City, simultaneously with the execution and recording of this Mortgage, has agreed to provide to the Mortgagor, which is a household at or below 80% of the area median income, as determined by the United States Department of Housing and Urban Development (an "**Income Eligible Family**"), an additional 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., and the regulations

UNOFFICIAL COPY

promulgated pursuant thereto at 24 C.F.R. Part 92 (the "**HOME Regulations**"), in the amount of **Twenty Thousand and No/100 Dollars (\$20,000.00)** (the "**Additional Purchase Price Subsidy**") which will also be disbursed to the Mortgagor to enable the Mortgagor to purchase the Mortgaged Property at a further reduced price.

H. Pursuant to the New Homes Program and the Redevelopment Agreement, the City has determined that the area in which the Land is located is a difficult to develop area, and so, simultaneously with the execution and recording of this Mortgage, has agreed to provide to the Mortgagor an additional subsidy of City funds derived from funds on deposit in the Affordable Housing Opportunity Fund or other legally available funds of the City in the amount of **None [No subsidy provided]** (the "**DDA Purchase Price Subsidy**") which will also be disbursed to the Mortgagor to enable the Mortgagor to purchase the Mortgaged Property at a further reduced price.

I. The City's agreement to sell the Land to the Developer was conditioned upon the Developer's undertaking to construct the Home and then sell the Mortgaged Property to Mortgagor for the Base Purchase Price (defined below), 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 New Homes Program and complies with the HOME Regulations applicable to the Additional Purchase Price Subsidy.

J. As a result of the land value write-down and subsidies described above, the Mortgagor has been given the opportunity to buy the Mortgaged Property for the Base Purchase Price and to become a homeowner.

K. Mortgagor has covenanted to Mortgagee herein that it meets the income eligibility requirements to participate as an initial homebuyer under the New Homes Program, is also an Income Eligible Family and is purchasing the Home to live in as Mortgagor's principal residence.

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, all of the following described property (which is hereinafter sometimes referred to as "**Mortgaged Property**"):

(A) The Land;

(B) All structures and improvements of every nature whatsoever now or hereafter situated on the Land, including, without limitation, the Home, 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**");

UNOFFICIAL COPY

(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 the all recapture amounts described herein, (b) performance of residency, transfer and financing covenants described herein and in **Exhibit B** 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:

"Additional Land Value Recapture Amount" shall mean an amount, determined as of any applicable determination date prior to the thirtieth (30th) anniversary of the Purchase Date, equal to the Additional Land Value, plus simple interest thereon at the rate of three percent (3%) per annum, compounded annually on each anniversary date of the Purchase Date, through the later to occur of (a) the event giving rise to Additional Land Value Recapture Amount repayment obligation, and (b) the City's receipt of the Additional Land Value Recapture Amount.

"Additional Purchase Price Subsidy Recapture Amount" shall mean an amount, determined as of the applicable determination date, which amount shall initially be the Additional Purchase Price Subsidy Amount, which shall be non-amortizing, and which on each annual anniversary of the Purchase Date shall increase by an amount equal to the product of: (a) three percent (3%), and (b) such Additional Purchase Price Subsidy Amount, but which after the fortieth (40th) anniversary date, shall equal zero dollars (\$0.00). The incremental amount by which the Additional Purchase Price Subsidy 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 mortgaged property over time.

"Affordability Period" shall mean any or all of the New Homes Affordability Period, the Home Regulations Affordability Period, and the New Homes Extended Affordability Period.

UNOFFICIAL COPY

"Base Land Value Recapture Amount" shall mean an amount, determined as of any applicable determination date, which shall initially equal the Base Land Value, but which shall decline proportionately (i.e. by twenty-five percent (25%) of the original amount) on the first, second, third and fourth anniversary dates of the Purchase Date, and after such fourth anniversary date, shall equal zero dollars (\$0.00).

"Base Purchase Price" shall mean **\$185,000.00**, which is the base purchase price that the Developer sold the Mortgaged Property to the Mortgagor for under the New Homes Program, after giving effect to the land value write-down and purchase price subsidies described herein.

"DDA Purchase Price Subsidy Recapture Amount" shall mean an amount, determined as of the applicable determination date, which shall initially equal the Additional Purchase Price Subsidy, but which shall decline proportionately (i.e. by ten percent (10%) of the original amount) on each anniversary date of the Purchase Date, and after the tenth (10th) anniversary date, shall equal zero dollars (\$0.00).

"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 the Mortgagor to the Mortgaged Property after the Purchase Date, provided reasonable evidence of the cost of such additional improvements is submitted to an 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 of the Department of Housing, in the Commissioner's (the "**Commissioner**") sole discretion, may agree are necessary, appropriate and equitable, but in no event an amount shall the Net Transfer Proceeds be greater than the Additional Purchase Price Subsidy Recapture Amount.

"New Homes Affordability Period" shall mean the four (4) year period commencing on the Purchase Date.

"New Homes Extended Affordability Period" shall mean the thirty (30) year period commencing on the Purchase Date.

"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.

"Purchase Price Subsidy Recapture Amount" shall mean an amount, determined as of any applicable determination date, which shall initially equal the Purchase Price Subsidy, but which shall decline proportionately (i.e. by twenty-five percent (25%) of the original amount) on

UNOFFICIAL COPY

the first, second, third and fourth anniversary dates of the Purchase Date, and after such fourth anniversary date, shall equal zero dollars (\$0.00).

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.

UNOFFICIAL COPY

(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 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 August 24, 2007, between Mortgagor and National City Mortgage ("Senior Lender"), recorded with the Office of the Recorder of Deeds of Cook County, Illinois on Oct. 30th, 2007 as document #0730331040 to secure indebtedness in the original principal amount not to exceed the Base Purchase Price ("Senior Mortgage") pursuant to the terms of the Redevelopment Agreement. 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 to senior financing in a greater amount. **EXHIBIT B EXPLAINS IN GREATER DETAIL THE ADDITIONAL REFINANCING RESTRICTIONS THAT APPLY TO THE MORTGAGOR AND ANY LENDERS MAKING LOANS SECURED BY THE MORTGAGED PROPERTY.**

2.05 Income Eligibility.

Mortgagor covenants to Mortgagee that it meets the income eligibility requirements established by the City pursuant to the New Homes Program in order to participate as an initial homebuyer under the New Homes Program and that it is also an Income Eligible Family.

2.06 Income Eligibility of Households Which Rent the Rental Unit.

If the Home is a Two-Flat Building, then with regard to the rental of the housing unit ("Rental Unit") which is not occupied by the Mortgagor, the Mortgagor hereby covenants that during the New Homes Affordability Period, each household occupying the Rental Unit shall meet the income eligibility requirements of the New Homes Program.

Prior to the commencement of the initial occupancy of the Rental Unit, the Mortgagor shall deliver to the City's Department of Housing an affidavit attesting to the monthly rent of the Rental Unit, the lease term, and containing a statement that the tenants of the Rental Unit shall meet the income eligibility standards of the New Homes Program. This affidavit shall thereafter be delivered to the Department of Housing on an annual basis during the New Homes Affordability Period.

UNOFFICIAL COPY

2.07 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 B** 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 New Homes 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 Lender and the Mortgagor for the purpose of avoiding low-income affordability restrictions pertaining to the Mortgaged Property or of avoiding payment of the recapture amounts due under this Mortgage.

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 recapture amounts due under this Mortgage .

SECTION III

ELIGIBILITY, PRINCIPAL RESIDENCY, TRANSFER, FINANCING AND REFINANCING COVENANTS

Mortgagor also covenants to comply with the residency, transfer and financing covenants set forth in **Exhibit B** , which covenants are all materially related to the City's achievement of the affordable housing objectives of the New Homes Program and the City's compliance with the HOME Regulations (as applied to the Additional Purchase Price Subsidy).

UNOFFICIAL COPY

SECTION IV

ADDITIONAL PURCHASE PRICE RECAPTURE AMOUNT DUE UPON SALE

Mortgagor also covenants that upon any direct or indirect sale or transfer of the Home, or the Mortgagor's interest therein, regardless of whether such sale or transfer constitutes an "Event of Default" under this Mortgage, Mortgagor shall, at the time of such sale or transfer, repay the City the Additional Purchase Price Recapture Amount from any available Net Transfer Proceeds, subject to any applicable limitations upon repayment set forth in the HOME Regulations.

Notwithstanding the foregoing, 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.

Notwithstanding the first paragraph of this Section IV, if a sale or other transfer giving rise to a repayment obligation under such first paragraph occurs and the gross sales proceeds are insufficient to repay an amount equal to the sum of (a) the Mortgagor's Total Purchase Price, plus (b) 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) the Net Transfer Proceeds, and (ii) a fraction, the numerator of which is the Additional Purchase Price Subsidy amount set forth in Recital E of this Mortgage and the denominator of which is the sum of such Additional Purchase Price Subsidy amount plus Mortgagor's Total Purchase Price. For example, if (1) the gross sales proceeds are \$210,000, (b) the Mortgagor's Total Purchase Price is \$200,000, (3) the total amount due and payable to the Mortgagee under all the provisions of this Mortgage is \$25,000, (4) the Net Transfer Proceeds are \$20,000, and (5) the Additional Purchase Price Subsidy amount is \$20,000, then the Mortgagor would be obligated to pay the Mortgagee the following amount: $[\$20,000 \times [\$20,000/(\$20,000 + \$200,000)]] = \$20,000 \times .0909 = \$1,818.18$.

SECTION V

DEFAULT

5.01 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 B**, which breach is not cured by Mortgagor within ten (10) days of Mortgagor's receipt of written notice from Mortgagee of such breach; or

UNOFFICIAL COPY

(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 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.

5.02 Remedies.

(a) If an Event of Default arising from a breach of one or more of the covenants set forth in **Exhibits B** occurs (and unless the last paragraph of such Exhibit applies) (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 New Homes Affordability Period (four (4) years), the Mortgagee shall be entitled to immediate payment of the Base Land Value Recapture Amount, the Additional Land Value Recapture Amount, the Purchase Price Subsidy Recapture Amount, the Additional Purchase Price Subsidy Recapture Amount and the DDA Purchase Price Subsidy Recapture Amount.

(ii) If the Recapture Default occurs after the expiration of the New Homes Affordability Period (four (4) years) but before the expiration of the New Homes Extended Affordability Period (thirty (30) years), the Mortgagee shall be entitled to immediate payment of the Additional Land Value Recapture Amount, the Additional Purchase Price Subsidy Recapture Amount and the DDA Purchase Price Subsidy 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 5.02(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

UNOFFICIAL COPY

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 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 Section 5.02(a) above, 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 $[\$210,000 - \$150,000] \times \$40,000 / [\$40,000 + \$160,000] = \$60,000 \times .20 = \$12,000$.

5.03 Mortgagor Waivers.

Mortgagor shall not and will not apply for or avail itself of any appraisement, 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.

5.04 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,

UNOFFICIAL COPY

from time to time (i) make all necessary and proper maintenance, repairs, renewals, 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.

5.05 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.

5.06 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.

5.07 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.

UNOFFICIAL COPY

5.08 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 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 or account of any breach or default by Mortgagor.

SECTION VI

MISCELLANEOUS PROVISIONS

6.01 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.

6.02 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.

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

UNOFFICIAL COPY

6.04 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.

6.05 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 Land into a land trust without obtaining the prior written consent of the Mortgagor.

6.06 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.

6.07 Applicable Law.

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

6.08 Certificates of Compliance.

If no Event of Default exists and Mortgagor retains ownership of the Mortgaged Property, upon the expiration of the New Homes Affordability Period and the New Homes Extended 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 Mortgagor's full compliance with the covenants set forth in Exhibit B applicable during such period, and confirming the termination of any applicable recapture amounts.

6.09 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, giving rise to an Event of Default, and Mortgagor pays Mortgagee the amount Mortgagee is entitled to receive pursuant to the provisions of Section

UNOFFICIAL COPY

5.02 above, then Mortgagor shall be deemed to have fully complied with the provisions contained in this Mortgage. In such event, within thirty (30) days of receipt of a written request from Mortgagor, Mortgagee shall execute a release of the Mortgage. Said release shall be in recordable form.

6.10 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.

6.11 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.

6.12 Restated Program Ordinance Discretionary Authority.

Consistent with Section 8 of the Restated Program Ordinance, depending on market conditions, interest rates and any other attendant facts and circumstances related to a given resale of the Home, 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 if any Additional Purchase Price Subsidy was funded from HOME Funds, in no such event shall the recapture amount be less than the amount required under the Act and the regulations promulgated pursuant thereto.

Consistent with Section 10 of Restated 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]

UNOFFICIAL COPY

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


CAMILLE HOLMES

ix

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Camille ~~E~~ Holmes, ^{a single person} 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 24th day of August, 2007.

Emily Wachowicz
Notary Public

My commission expires _____.



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOT 33 IN LEE BROTHERS' 63RD STREET ADDITION TO ENGLEWOOD, BEING A RESUBDIVISION OF BLOCK 2 IN TEAR'S SUBDIVISION OF THE WEST 9-1/3 ACRES OF THE SOUTH 19 ACRES OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 38 NORTH; RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 5, 1891 AS DOCUMENT NUMBER 1482110 IN COOK COUNTY, ILLINOIS.

Commonly known as: 6229 S. Loomis^{St.}, Chicago, Illinois

Permanent Index Numbers: 20-17-329-011

UNOFFICIAL COPY

EXHIBIT B

Eligibility, Principal Residency, Transfer, Financing and Refinancing Covenants

In consideration of the Base Land Value subsidy, the Additional Land Value subsidy, the Purchase Price Subsidy, the Additional Purchase Price Subsidy and the DDA Purchase Price Subsidy that have been provided by the City, 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 New Homes Program in order to participate as an initial homebuyer of the Mortgaged Property under the New Homes Program and is also an Income Eligible Family.

(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, or except as otherwise consented to by the Commissioner, in the Commissioner's sole discretion. **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.**

Notwithstanding the above, Mortgagor may at any time, sell the Mortgaged Property to a subsequent homebuyer who meets the then applicable income eligibility requirements of the New Home Program (provided that the Mortgagor pays the Additional Purchase Price Subsidy Recapture Amount) and, with respect to the Additional Purchase Price Subsidy, the requirements of the HOME Regulations) and who pays an affordable purchase price under the then applicable affordability requirements of the New Homes Program (and, with respect to the Additional Purchase Price Subsidy, the requirements of the HOME Regulations), in each instance as

UNOFFICIAL COPY

determined by Mortgagee's Department of Housing (or any successor department thereto), provided such purchaser assumes the then-remaining obligations of Mortgagee under this Mortgage (except with respect to the repaid Additional Purchase Price Subsidy Recapture Amount). In such event, no Event of Default shall exist and no recapture amounts (other than the repaid Additional Purchase Price Subsidy Recapture Amount) shall be due and payable, provided that such successor homebuyer assumes the executor obligations of the Mortgagor under this Mortgage in writing.

4686123_v1

Property of Cook County Clerk's Office