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Doc#: 093272069 Fee: \$170.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/23/2009 02:18 PM Pg: 1 of 68

8487513 2009/11/23

REDEVELOPMENT AGREEMENT

(For Sale Projects -
Rehabilitation/Resale -
MPS LLC Interim Ownership
Assignment to Big Developer Model)
(09/09/09 Version)

Property Address: 3417 W. Hirsch Street
PIN: 16-02-217-016-0000

This instrument was prepared by,
and after recording, please return to:

Steven J. Holler
Deputy Corporation Counsel
Department of Law
City of Chicago
121 N. LaSalle Street, Room 600
Chicago, Illinois 60602

(The Above Space For Recorder's Use Only)

This **REDEVELOPMENT AGREEMENT** ("**Agreement**") is made as of the _____ day of November 2009, by and between the City of Chicago, an Illinois municipal corporation and home rule unit of government (the "**City**"), acting by and through its Department of Community Development ("**DCD**"), having its principal office at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602, Mercy Portfolio Services, a Colorado non-profit corporation ("**MPS**"), having its principal office at 120 South LaSalle Street, Suite 1850, Chicago, Illinois 60603, and MPS Community I, LLC, an Illinois limited liability company ("**MPS LLC**"), having its principal office at 120 South LaSalle Street, Suite 1850, Chicago, Illinois 60603. As used in this Agreement, references to the "**Developer**" shall refer to MPS LLC until such time as MPS LLC has conveyed title to the NSP Property to a Participating Entity, and thereafter shall refer to such Participating Entity (the foregoing capitalized terms are defined below).

RECITALS

A. The City has or will receive certain funds in the approximate amount of \$55,238,017 (the "**Program Funds**") from the United States Department of Housing and

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Urban Development ("**HUD**") pursuant to the provisions of the Housing and Economic Recovery Act of 2008, Public Law 110-289 – July 30, 2008, Title III – Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 2301 *et seq.*, as the same may be hereafter amended, restated or supplemented from time to time (the "**Act**") and the Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Developers under the Housing and Economic Recovery Act, 2008 issued by HUD and found at the Federal Register/Vol. 73, No. 194/Monday, October 6, 2008/Notices, as the same may be hereafter amended, restated or supplemented from time to time (the "**Regulations**").

B. The City has submitted to HUD, and HUD has approved, the City's Substantial Amendment application to HUD governing the City's use of the Program Funds in a City neighborhood stabilization program (the "**Program**") in accordance with the Act and the Regulations to address the critical impact of increasing numbers of foreclosed properties within the City of Chicago. Pursuant to such approval, the City and HUD have entered into that certain Grant Agreement dated effective as of March 27, 2009 (the "**Grant Agreement**"). The Act, the Regulations, and the Grant Agreement are collectively referred to herein as the "**NSP Legal Requirements**").

C. The NSP Legal Requirements require the City to use the Program Funds for certain eligible activities, including, without limitation: (a) establishing financing mechanisms for the purchase and redevelopment of abandoned or foreclosed homes and residential properties; (b) acquisition and rehabilitation of homes and residential properties that have been abandoned or foreclosed upon in order to sell, rent, or redevelop such homes and properties; (c) establishing a land bank for homes that have been abandoned or foreclosed; (d) demolition of blighted structures; and (e) redevelopment of demolished or vacant properties (collectively, the "**Eligible Activities**").

D. The NSP Legal Requirements require that the City allocate 25% of the Program Funds to purchase and redevelop abandoned or foreclosed upon residential properties for housing individuals whose incomes do not exceed 50% of the area median income.

E. The NSP Legal Requirements further require that the City allocate 100% of the Program Funds to Eligible Activities benefiting communities and households whose incomes do not exceed 120% of the area median income.

F. The City and MPS LLC's affiliate, MPS, have entered into that certain Agreement Between The City Of Chicago and Mercy Portfolio Services For Neighborhood Stabilization Program dated June 30, 2009 (the "**Subgrant Agreement**"), pursuant to which the City has agreed to make the Program Funds available to MPS for Eligible Activities subject to the terms and conditions of such Subgrant Agreement.

G. In furtherance of the Program, MPS LLC, which is an affiliate of MPS,

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shall assist by taking title to the NSP Property (as defined in Recital H) acquired pursuant to the Program. MPS LLC shall hold title only on an interim basis in order to facilitate the initial acquisition of the property, and shall thereafter convey the property to a qualified developer ("**Participating Entity**"), who shall then rehabilitate the property and arrange for the disposition of the property.

H. Pursuant to the Real Estate Purchase and Sale Agreement dated September 10, 2009 (the "**REO Purchase Agreement**") between CitiMortgage, Inc. (the "**REO Lender**") and MPS LLC, MPS LLC has contracted to acquire the property legally described on **Exhibit A** attached hereto and improved with the improvements described on **Exhibit A** to this Agreement (the parcel of real property and the improvements, an "**NSP Property**") for the acquisition price specified in such exhibit (the "**NSP Acquisition Price**").

I. Pursuant to the NSP Legal Requirements, prior to such acquisition, the City and MPS have (i) completed the environmental review required pursuant to 24 CFR Part 58, (ii) obtained a current market value appraisal in conformity with the appraisal requirements of 49 CFR Part 24.103, and (iii) prepared a HUD Housing Quality Standards inspection report and scope of work with respect to the NSP Property.

J. Pursuant to that certain Loan Agreement dated September 2, 2009 by and between the Local Initiatives Support Corporation ("**LISC**") and MPS LLC (the "**Acquisition Loan Agreement**"), LISC has agreed to make an acquisition financing facility available to MPS LLC to enable MPS LLC to acquire the NSP Property in a timely manner under the REO Purchase Agreement. In connection with the acquisition of the NSP Property, LISC has agreed to advance funds to MPS LLC for the NSP Property in the allocable amount specified in **Exhibit A** to this Agreement (the "**NSP Acquisition Loan Amount**").

K. No later than ninety (90) days from the date of this Agreement, the City shall pay Program Funds to LISC in an amount equal to the NSP Acquisition Loan Amount, plus any accrued interest thereon, in order to repay the LISC acquisition loan described above.

L. Upon acquiring the NSP Property MPS LLC shall secure the property. MPS LLC and the City shall thereafter identify the Participating Entity that shall rehabilitate the NSP Property and, upon such identification, shall convey the NSP Property to such Participating Entity, which shall thereafter complete the rehabilitation work specified herein and in the Exhibits attached hereto.

M. After the date hereof, the Participating Entity shall enter into a loan agreement with a to-be-identified private lender reasonably acceptable to MPS LLC and the City, for financing up to an amount necessary to complete the rehabilitation of the NSP Property, as specified in **Exhibit A** to this Agreement (the "**NSP Rehabilitation Loan Amount**"). The sum of the NSP Rehabilitation Loan Amount and NSP Acquisition Price shall equal the "**NSP Total Development Cost,**" as specified in **Exhibit A** to this

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Agreement.

N. After completing the rehabilitation of the NSP Property, the Developer shall sell such property in accordance with the NSP Legal Requirements and this Agreement to a homebuyer or, in the alternative, shall sell such property to a qualified not-for-profit entity, which thereafter shall rent such property to an income-qualified household in accordance with the NSP Legal Requirements and this Agreement under a lease-to-own program acceptable to the City and MPS (any such resale, a "Disposition").

O. At the time of the Disposition, any net proceeds arising from such Disposition and the permanent refinancing of the property shall, after repayment of the NSP Rehabilitation Loan, together with any interest accrued and payable, be paid to City as program income under the Program. In the event that such net proceeds are insufficient to repay the NSP Rehabilitation Loan and any interest payable thereon, the City shall, at the time of the Disposition closing, pay Program Funds to the Rehabilitation Lender in an amount sufficient to repay the amount owed the Rehabilitation Lender.

P. The NSP Legal Requirements require the Developer's execution of this Redevelopment Agreement in favor of the City and MPS (collectively, the "NSP Parties"), which secures certain performance and payment covenants intended to assure that the Developer complies with such legal requirements and achieves the affordable housing objectives of the Program.

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

SECTION 1. INCORPORATION OF RECITALS AND EXHIBITS.

The recitals set forth above, together with the information set forth in the Exhibits attached hereto, constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

SECTION 2. ACQUISITION.

Subject to its receipt of sufficient Program Funds, MPS LLC agrees to purchase the NSP Property on the Closing Date (as defined below) for the NSP Acquisition Price set forth in Exhibit A to this Agreement. Based on such Exhibit, the NSP Acquisition Price shall be \$48,318.76.

SECTION 3. CLOSING COSTS.

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Subject to its receipt of the NSP Acquisition Loan Amount, MPS LLC shall pay all due diligence, closing and other reasonable and customary costs associated with its acquisition of the NSP Property, including, without limitation: (a) a survey of such NSP Property, which may or may not be an ALTA/ASCM survey, but which shall be sufficient to enable a title insurer to issue extended coverage over the standard exceptions that relate to survey issues; (b) an owner's policy of title insurance in the amount of the NSP Acquisition Price with respect to the NSP Property (the "**Title Policy**"); and (c) an inspector's report detailing the condition of the NSP Property and setting forth a required scope of rehabilitation work for such NSP Property prior to its resale, which scope of work shall, together with any additional work items identified by MPS LLC as a result of its inspection of the NSP Property, serve as the basis for the required work applicable to such NSP Property, as set forth on **Exhibit B** to this Agreement (the "**Required Work**").

MPS LLC shall also provide customary purchaser closing documents, such as, for example, transfer tax declarations, and ALTA statements, in connection with the acquisition by MPS LLC of the NSP Property, and customary seller documents in connection with the disposition by MPS LLC of the NSP Property. The Participating Entity shall also provide customary purchaser and seller closing documents in connection with such entity's acquisition and disposition of the NSP Property.

SECTION 4. TERMS OF CONVEYANCE OF NSP PROPERTIES.

MPS LLC acknowledges that, upon acquiring the NSP Property, it shall hold title to such property subject to the NSP Legal Requirements and this Agreement. Notwithstanding the foregoing, the City acknowledges and agrees that MPS LLC's primary obligations under this Agreement are to: (i) facilitate the acquisition of the NSP Property; (ii) hold title to the NSP Property acquired by MPS LLC until a Participating Entity is identified to rehabilitate such property and title to such property is conveyed to such Participating Entity; (iii) secure and provide property management services for the NSP Property acquired by MPS LLC until conveyance of such property to such Participating Entity; and (iv) convey the NSP Property acquired by MPS LLC to the Participating Entity chosen for such property and to assign to such Participating Entity MPS LLC's rights and obligations under this Agreement. At the time of such conveyance and the execution by MPS LLC and such Participating Entity of a written assignment and assumption agreement, MPS LLC shall be released from any further obligations under this Agreement with respect to the NSP Property so conveyed to such Participating Entity, except for its obligation to make available to such Participating Entity the Rehabilitation Loan Amount that the Rehabilitation Lender has agreed to fund, and MPS LLC has agreed to borrow, for the rehabilitation of the NSP Property, notwithstanding such conveyance, assignment and assumption.

Prior to purchasing the NSP Property under the REO Purchase Agreement, the City, MPS and MPS LLC have conducted such due diligence as is appropriate to reasonably satisfy themselves as to all title, survey, real estate tax, environmental, zoning, accessibility, and other matters, including, without limitation, the physical condition of such NSP Property and any necessary or appropriate repairs, including,

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without limitation, the Required Work for the property.

MPS LLC shall (in arriving at the NSP Acquisition Price paid to the REO Lender, or otherwise) pay-off, cause to be paid-off or otherwise cause the termination and release all liens (other than real estate taxes, which are dealt with below) of a definite and ascertainable amount. The Title Policy shall insure title in MPS LLC free and clear of any such liens.

MPS LLC shall also (in arriving at the NSP Acquisition Price paid to the REO Lender, or otherwise) pay or cause to be paid all general real estate taxes due and payable as of the Closing Date (as defined below). MPS LLC shall also pay all general real estate taxes that become due and payable during the period in which MPS LLC is in title to the NSP Property (including any taxes attributable to the period prior to the Closing Date, but which become due and payable during the period in which MPS LLC is in title). Upon any assignment by MPS LLC to the Participating Entity of its rights and obligations under this Agreement, such Participating Entity shall assume such payment obligation. Such Participating Entity shall also provide any purchaser of the NSP Property with a customary credit or proration for general real estate taxes attributable to the period prior to the conveyance date to such purchaser that become due and payable after such conveyance date.

SECTION 5. CLOSING DATE.

Provided that the conditions precedent set forth in Section 6 below have been satisfied, MPS LLC shall acquire the NSP Property on the closing date established under the REO Purchase Agreement at such location as MPS LLC and the REO Lender may designate. If such conditions precedent have not been satisfied by such closing date, the closing date shall occur upon MPS LLC's satisfaction of such conditions, provided the REO Lender agrees to extend the closing date. One or more closings may occur under this Agreement. The date on which any such closing occurs, as determined pursuant to this Section 5, is referred to herein as a "Closing Date".

SECTION 6. CONDITIONS PRECEDENT TO CLOSING.

Prior to the Closing Date, MPS LLC shall have prepared or obtained, and, at the City's request, delivered to the City, each of the following, unless the City, in its sole discretion, elects to waive such a closing condition.

A. Insurance. Evidence of insurance satisfying the requirements of Exhibit C attached hereto.

B. Project Budget and Cash Flow Statements. A project budget and cash flow statement, for the NSP Property, setting forth: (i) the cost of the Required Work for such NSP Property, including any emergency repairs needed to address immediate health and safety issues, necessary to bring such NSP Property into compliance with the NSP Legal Requirements and applicable Laws (as defined in Section 8 hereof) and

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in a condition suitable for resale; (ii) any initial operating losses (i.e., negative cash flow prior to the time that the Developer's rehabilitation work is complete and the Disposition of such NSP Property), including all real estate taxes for the period of the ownership of such NSP Property by MPS LLC and any Participating Entity prior to the disposition of such NSP Property (both real estate taxes payable during such period, and any accruing real estate taxes that may become payable after such period of ownership) ("**Initial Operating Losses**"), and (iii) a reasonable developer's fee permitted under the Regulations and approved by the City (the "**Permitted Developer's Fee**"), or such other project budget and cash flow statement for such NSP Property as shall be acceptable to the City (collectively, the "**Approved Budget**").

C. Organizational and Authority Documents With respect to MPS LLC, copies of its good standing certificate or certificate of existence; certified copies of its articles of organization and operating agreement; and an officer's certificate identifying the persons authorized to act on behalf of MPS LLC and including specimen signatures.

D. Reconveyance Deed A deed from MPS LLC for the NSP Property conveying such NSP Property to the City, which the City shall hold in trust as security for MPS LLC's performance of its obligations under this Agreement. Such deed shall be cancelled by the City and returned to MPS LLC concurrently with the conveyance of such property by MPS LLC to the Participating Entity. If an NSP Property is conveyed to a Participating Entity for rehabilitation, such Participating Entity shall, concurrently with such conveyance, execute and deliver to the City separate reconveyance deeds for the NSP Property conveying such NSP Property both (i) to the City, and, in the alternative, (ii) to MPS LLC. The City shall hold such deeds in trust as security for such Participating Entity's obligations under this Agreement and shall not record them unless a default occurs under this Agreement or the City exercises its repurchase rights under Section 8 of this Agreement (subject to the City's payment of the amounts due thereunder).

E. Preliminary Site Drawings or Plans and Specifications Preliminary site drawings and plans and specifications ("**Preliminary Drawings**") for the Required Work for the NSP Property.

F. General Contract The general contract for the Required Work for the NSP Property, to the extent that MPS LLC or the Developer engages a general contractor for the Required Work.

G. Sworn Statements An owner's sworn statement from MPS LLC and a general contractor's sworn statement from the general contractor for the Required Work for the NSP Property.

H. Financing Evidence of financing under the Rehabilitation Loan Agreement or other financing acceptable to the City, and evidence of developer equity for the NSP Property, not less than the sum of the NSP Acquisition Price, the cost of the Required Work, any Initial Operating Losses and the Permitted Developer's Fee, or

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such other amount as City, in its sole discretion, may deem necessary or appropriate.

I. Performance Deposit. If MPS LLC is to be the Developer, in lieu of a payment or performance bond, MPS LLC shall provide to the City a performance deposit ("**Performance Deposit**") that shall be held as security under this agreement to secure the completion of the Required Work. Such Performance Deposit shall be funded in an amount equal to three (3) months of holding costs (e.g., real estate taxes, insurance costs, financing costs and property management costs), as reasonably estimated by the City. If it is anticipated that the Participating Entity shall act as Developer, such Performance Deposit shall be made at the time of the conveyance of the NSP Property by MPS LLC to such Participating Entity. Such Performance Deposit shall be further subject to the provisions of Section 9 and Section 15.5 below.

J. City Mortgage; Other Documents. A mortgage encumbering the NSP Property in favor of the City and such other documents as may be required under the NSP Legal Requirements or which the City may reasonably require.

If any closing conditions in this Section 6 have not been satisfied to the reasonable satisfaction of the City with respect to the NSP Property within forty-five (45) days of the date of this Agreement, the City may, at its option, terminate this Agreement as to the NSP Property, in which event, except as otherwise specifically provided, neither party shall have any further right, duty or obligation hereunder with respect to the NSP Property. Alternatively, at its option, the City may opt to delay the Closing until such time as any unsatisfied closing conditions have been satisfied as to the NSP Property.

As a condition to the conveyance of the NSP Property by MPS LLC to the Participating Entity, MPS LLC and the City shall obtain the deliveries required under Sections 6.A, C, D, E (except that such Preliminary Drawings shall have been finalized into permit-ready final drawings ("**Final Drawings**"), F, G, H, I and J above, as applicable to the Participating Entity and its general contractor.

SECTION 7. LIMITED APPLICABILITY.

The approval of any Preliminary Drawings or Final Drawings by the City is for the purposes of this Agreement only and does not constitute the approval required by the City's Department of Buildings or any other City department; nor does any approval by the City pursuant to this Agreement constitute an approval by the City of the quality, structural soundness or safety of any improvements located on the NSP Property, or their compliance with the NSP Legal Requirements, any Laws (as defined in Section 8 below), or any covenants, conditions or restrictions of record.

The submission of any Preliminary Drawings by MPS LLC for the purposes of satisfying condition precedent Section 6.E. does not constitute a representation or warranty by the MPS LLC of such preliminary drawings' compliance with the NSP Legal Requirements, any Laws (as defined in Section 8 below), or any covenants, conditions

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or restrictions of record. Final Drawings shall comply with the NSP Legal Requirements, any applicable Laws, and any applicable covenants, conditions and restrictions.

SECTION 8. REHABILITATION AND RESALE OF IMPROVEMENTS.

The Developer shall: (a) commence the Required Work for the NSP Property promptly upon acquiring title to such property and shall thereafter diligently proceed to complete such Required Work within six (6) months of such acquisition date (this requirement shall not apply to MPS LLC with respect to the NSP Property that is to be conveyed to a Participating Entity for rehabilitation); and (b) use commercially reasonable efforts to resell the NSP Property (i.e., actually close on the resale) within six (6) months after the date that such rehabilitation is complete. If, despite such commercially reasonable efforts, the Developer has failed to resell such NSP Property within such second six (6) month period, such failure shall not be deemed a default under this Agreement. However, such failure shall entitle the City to elect, at its sole option, to repurchase such NSP Property from the Developer for an amount equal to the sum of (i) the NSP Acquisition Price, (ii) the costs reasonably incurred by the Developer in performing the Required Work for such property (not to exceed the amount thereof included in the Approved Budget), (iii) any Initial Operating Losses to date, and (iii) one-half of the Permitted Developer's Fee. The City may offset against such purchase price an amount equal to any subsidies from Program Funds provided by the City with respect to such NSP Property (or pledged to any lender providing acquisition or rehabilitation financing in repayment of any such financing), and may also offset any other amounts owed by the Developer under this Agreement. The City may cause the reconveyance deed(s) deposited pursuant to Section 6.D to be recorded in order to consummate such repurchase in accordance with Section 8 below. If the reconveyance deed runs to MPS LLC, upon the City's written request, MPS LLC shall thereafter convey such NSP Property to the City. The Developer shall cooperate in executing any additional documents required in connection therewith.

The Required Work for the NSP Property shall be completed in accordance with the NSP Legal Requirements, this Agreement, the Drawings and all applicable Laws. "Laws" shall mean and include all federal, state and local laws, statutes, ordinances, rules, regulations, OMB Circulars, and executive orders as are now or may be in effect during the term of the Agreement, which may be applicable to the Developer, such Required Work, and the Developer's obligations under this Agreement, including but not limited to: (i) the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. Section 4831(b); (ii) the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 327 et seq., as supplemented by U.S. Department of Labor regulations at 29 C.F.R. Part 5; (iii) the Copeland "Anti-kickback" Act, 18 U.S.C. Section 874, as supplemented by U.S. Department of Labor regulations at 29 C.F.R. Part 3; (iv) Section 104(g) of the Housing and Community Development Act of 1974, 42 U.S.C. Section 5301 et seq., and 24 C.F.R. Part 58; (v) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 and implementing regulations at 24 C.F.R. Part 8, Subpart C; (vi) 24 C.F.R. Part 24; (vii)

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the Americans with Disabilities Act of 1990, Public Law 101-336 dated July 26, 1990; (viii) the Fair Housing Amendments Act of 1988, Public Law 100-430 dated September 13, 1988; (ix) the Davis-Bacon Act (unless determined by HUD to be inapplicable); (x) the City of Chicago Landlord - Tenant Ordinance, Municipal Code of Chicago, Chapter 5-12; (xi) Title I of the Housing and Community of Development Act of 1974, as amended and as applicable, and the Community Development Block Grant Regulations promulgated pursuant thereto at 24 CFR Part 570; and (xii) all environmental laws, including but not limited to the Municipal Code of Chicago, Section 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560, whether or not in the performance of this Agreement.

SECTION 9. CERTIFICATE OF COMPLETION.

Upon the completion of the Required Work for the NSP Property, the Developer may request from MPS a certificate of completion ("Certificate of Completion") for such property. The Developer may execute a contract to sell the NSP Property, but may not close under such contract prior to the issuance of a Certificate of Completion for such property. If, at the time that MPS receives such a request from the Developer with respect to the NSP Property, the Developer has not completed the Required Work for such property satisfactorily, as reasonably determined by the NSP Parties, or has otherwise failed to perform its obligations under this Agreement, the NSP Parties shall so advise the Developer. The Developer shall have the right to satisfactorily complete any Required Work for such property and perform any unperformed obligation and to re-request the issuance of a Certificate of Completion for such property. Upon issuance of the Certificate of Completion, the Performance Deposit shall be refunded to the Developer, provided no amounts are owed by the Developer to the City under this Agreement.

SECTION 10. RESTRICTIONS ON USE.

The Developer agrees that it:

10.1 Shall not discriminate based upon race, color, religion, sex, gender identity, disability, marital status, parental status, national origin or ancestry, military discharge status, sexual orientation, source of income, age or handicap, in the sale, lease, rental, use or occupancy of the NSP Property; and

10.2 Shall rehabilitate the NSP Property acquired by the Developer by performing the Required Work for such NSP Property and, upon completion of the Required Work for such NSP Property, resell such rehabilitated NSP Property only (a) to an income-qualified household in accordance with the NSP Legal Requirements (as determined under the City Junior Mortgage, as defined below), and (b) pursuant to a sale contract in form and substance reasonably acceptable to MPS and the City but which, at a minimum, shall (i) include a one year warranty with respect to the Required Work performed by the Developer, and (ii) attach as an exhibit the Mortgage, Security and Recapture Agreement, Including Residency, Transfer, Resale, Financing and

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Refinancing Covenants and Due on Sale Provision in the form of **Exhibit D** to this Agreement (the "**City Junior Mortgage**"); and

10.3 Shall, in connection with the closing of the sale of such NSP Property, cause the homebuyer to execute a City Junior Mortgage encumbering such property and cause such instrument to be recorded in the Recorder's Office concurrently with the recording of the deed conveying such NSP Property to such homebuyer.

SECTION 11. PROHIBITION AGAINST TRANSFER OF NSP PROPERTY.

Prior to the issuance of the Certificate of Completion for an NSP Property, the Developer may not, without the prior written consent of MPS and the City, which consent shall be in the sole discretion of MPS and the City: (a) directly or indirectly sell or convey such NSP Property or any part thereof or any interest therein or the Developer's controlling interests therein (except the conveyance by MPS LLC to a Participating Entity); or (b) directly or indirectly assign this Agreement (except in connection with an assignment of this Agreement by MPS LLC to a Participating Entity). If the Developer is a business entity, no principal party of the Developer (e.g., a general partner, member, manager or shareholder) may sell, transfer or assign any of its interest in the Developer prior to the issuance of the Certificate of Completion for all NSP Properties acquired by the Developer to anyone other than another principal party of the Developer without the prior written consent of MPS and the City, which consent shall be in the sole discretion of MPS and the City. In the event of a proposed sale of an NSP Property, the Developer shall provide MPS and the City with copies of any and all sale contracts and such other information as MPS and the City may reasonably request. The proposed buyer must be qualified to do business with the City (including, without limitation, the anti-scofflaw requirement). Any transfer of an NSP Property shall be subject to the NSP Legal Requirements and this Agreement.

SECTION 12. LIMITATION UPON ENCUMBRANCE OF NSP PROPERTY.

Prior to the issuance of the Certificate of Completion for an NSP Property, the Developer shall not, without the prior written consent of MPS and the City, which consent shall be in the sole discretion of MPS and the City, engage in any financing or other transaction which creates an encumbrance or lien on such NSP Property, except for the financing provided under the Acquisition Loan Agreement and the Rehabilitation Loan Agreement.

SECTION 13. MORTGAGEES NOT OBLIGATED TO CONSTRUCT.

The holder of any mortgage on an NSP Property approved pursuant to Section 6.H hereof shall not itself be obligated to construct or complete the Required Work for such NSP Property, but shall be bound by the covenants running with the land specified in Section 14. If any such mortgagee succeeds to the Developer's interest in an NSP Property prior to issuance of a Certificate of Completion for such property, whether by foreclosure, deed-in-lieu of foreclosure or otherwise, and thereafter transfers its interest

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in such NSP Property to another party, such transferee shall be obligated to complete the Required Work for such property, and shall also be bound by all other obligations of the Developer under this Agreement with respect to such property.

SECTION 14. COVENANTS RUNNING WITH THE LAND.

The parties agree that, in addition to the NSP Legal Requirements, the covenants provided in Sections 8 (Rehabilitation and Resale of Improvements), 10 (Restrictions on Use), 11 (Prohibition Against Transfer of NSP Property) and 12 (Limitation Upon Encumbrance of NSP Property) will be covenants running with the land, binding on the Developer and its successors and assigns (subject to the limitation set forth in Section 13 above as to any permitted mortgagee) to the fullest extent permitted by law and equity, for the benefit and in favor of the NSP Parties, and shall be enforceable by either of the NSP Parties. The covenant contained in Section 10.1 shall have no limitation as to time. The covenants provided in Sections 8, 10.2, 10.3, 11 and 12 shall terminate as to an NSP Property upon the sale of such NSP Property in accordance with Section 10.2 and the recording of the City Junior Mortgage in accordance with Section 10.3.

SECTION 15. PERFORMANCE AND BREACH.

15.1 Time of the Essence. Time is of the essence in the Developer's performance of its obligations under this Agreement.

15.2 Permitted Delays. The Developer shall not be considered in breach of its obligations under this Agreement in the event of "force majeure" delays due to unforeseeable causes beyond the Developer's control and without the Developer's fault or negligence. The time for the performance of the obligations shall be extended only for the period of the delay. This Section 15.2 shall not operate to excuse the performance of any action required under the NSP Legal Requirements.

15.3 Cure. If the Developer defaults in the performance of its obligations under this Agreement, including any obligation under the NSP Legal Requirements incorporated herein by reference, the Developer shall have thirty (30) days after written notice of default from the NSP Parties to cure the default. Notwithstanding the foregoing, no notice or cure period shall apply to defaults under Sections 15.4 (d) or (f).

15.4 Event of Default. The occurrence of any one or more of the following, which is not cured within the cure period provided for in Section 15.3, shall constitute an "Event of Default" under this Agreement:

- (a) The Developer fails to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations under this Agreement, including any obligation under the NSP Legal Requirements; or
- (b) The Developer makes or furnishes a warranty, representation,

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statement or certification to any of the NSP Parties (whether in this Agreement, an Economic Disclosure Statement, or another document) that is not true and correct; or

(c) A petition is filed by or against the Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereafter existing, which is not vacated, stayed or set aside; or

(d) The Developer abandons or substantially suspends completion of the Required Work with respect to the NSP Property acquired by the Developer; or

(e) The Developer fails to timely pay real estate taxes or permits any levy or attachment, lien, or any other encumbrance unauthorized by this Agreement to attach to the NSP Property acquired by the Developer; or

(f) The Developer makes an assignment, pledge, unpermitted financing, encumbrance, transfer or other disposition in violation of this Agreement; or

(g) There is a change in the Developer's financial condition or operations that would materially affect the Developer's ability to complete any Required Work for the NSP Property acquired by the Developer.

15.5. Remedies. If an Event of Default occurs prior to the issuance of the Certificate of Completion for the NSP Property, and the default is not cured in the time period provided for herein, either of the NSP Parties may exercise any and all remedies available at law or in equity, including, without limitation, the right to record the reconveyance deed, re-enter and take possession of such NSP Property, terminate the Developer's estate in such NSP Property, and vest title to such NSP Property in the City or MPS LLC; provided, however, the vesting of title in the City or MPS LLC shall be limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by Section 6.H of this Agreement. In addition, the NSP Parties shall be entitled to recover from the Developer any costs incurred in enforcing the remedies of the NSP Parties or in curing the Event of Default, shall be entitled to retain the Performance Deposit, and shall be entitled to exercise any other rights and remedies available under this Agreement. The terms of this Section 15.5 shall in no way limit the rights of the NSP Parties under Section 8 hereof.

15.6 Reimbursement of City from Transfer Proceeds. If, as a result of the exercise of the remedies provided for under this Section 15, the City or MPS LLC reacquires title to the NSP Property, or causes title to the NSP Property to be conveyed to a new developer, the net transfer proceeds from any such transfer of such NSP Property shall be utilized to reimburse the NSP Parties for:

(a) costs and expenses incurred (including, without limitation, salaries of

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- personnel) in connection with the reacquisition of title, management and resale of such NSP Property (less any income derived from such NSP Property in connection with such management); and
- (b) all unpaid taxes, assessments, and water and sewer charges assessed against such NSP Property; and
 - (c) any payments made (including, without limitation, reasonable attorneys' fees and court costs) to release or discharge encumbrances or liens due to obligations, defaults or acts of the Developer; and
 - (d) any expenditures made or obligations incurred with respect to the Required Work for such NSP Property; and
 - (e) any other amounts owed to the NSP Parties, or either of them, by the Developer; and
 - (f) any reserves that MPS LLC or the City, in its sole discretion, determines should be established to assure the continued maintenance of such NSP Property in accordance with the NSP Legal Requirements and this Agreement prior to its resale.

The Developer shall be entitled to receive any remaining proceeds, if any, up to the amount of one-half of the Developer's permitted Developer's Fee (or, if MPS LLC is the Developer, MPS shall be entitled to receive any such remaining proceeds up to the amount of the permitted project services fee payable under the Management Agreement dated June 30, 2009 between the City and MPS).

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

15.8 Direct Enforcement By City or MPS. If, after the date hereof, the City elects to directly enforce the rights of the NSP Parties under this Agreement, and delivers written notice of such election to the Developer, then the City, and not MPS, shall be entitled to exercise the rights afforded and the remedies provided for herein. The Developer acknowledges that, in such event, it shall continue to be subject to the enforcement of such rights and remedies. Without limiting the generality of the foregoing, in such event, the reconveyance deed(s) to MPS LLC deposited pursuant to Section 6.H. shall be cancelled and destroyed and the City shall be entitled to record the reconveyance deed(s) to the City conveying the NSP Property held by the Developer (other than an NSP Property for which a Certificate of Completion has been issued). In the alternative, MPS, with the written consent of the City, shall be entitled to

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exercise the rights afforded and the remedies provided for herein. The Developer acknowledges that in such event, the reconveyance deed(s) to the City deposited pursuant to Section 6.D shall be cancelled and destroyed and MPS shall be entitled to record the reconveyance deeds to MPS LLC conveying the NSP Property held by the Developer (other than an NSP Property for which a Certificate of Completion has been issued).

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

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

SECTION 17. INDEMNIFICATION.

The Developer agrees to indemnify, defend and hold the NSP Parties harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by any NSP Party arising from or in connection with: (a) the failure of such Developer to perform its obligations under the NSP Legal Requirements or under this Agreement; (b) the failure of such Developer or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Required Work for the NSP Property acquired by such Developer; (c) any misrepresentation or omission made by such Developer or agents, employees, contractors or other persons acting under the control or at the request of such Developer; (d) the failure of such Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (e) any activity undertaken by such Developer on the NSP Property prior to or after the Closing. This indemnification shall survive the Closing or any termination of this Agreement (regardless of the reason for such termination).

SECTION 18. ENVIRONMENTAL MATTERS.

The NSP Parties make no covenant, representation or warranty as to the environmental condition of the NSP Property or the suitability of the NSP Property for any purpose whatsoever, and the Developer agrees to accept the NSP Property "as is."

If the environmental condition of the NSP Property is not in all respects entirely suitable for its intended use, it shall be the Developer's sole responsibility and obligation

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to take such action as is necessary to put such NSP Property in a condition which is suitable for its intended use. The Developer hereby waives, releases and indemnifies the NSP Parties from any claims and liabilities relating to or arising from the environmental condition of the NSP Property, including, without limitation, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and shall undertake and discharge all liabilities of the NSP Parties arising from any environmental condition which existed on the NSP Property prior to the Closing, including, without limitation, liabilities arising under CERCLA. The provisions of this paragraph shall survive the Closing or any termination of this Agreement (regardless of the reason for such termination).

SECTION 19. DEVELOPER'S EMPLOYMENT OBLIGATIONS.

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

(a) Neither the Developer nor any Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, gender identity, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Section 2-160-010 et seq. of the Municipal Code of Chicago, as amended from time to time (the "**Human Rights Ordinance**"). The Developer and each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon the foregoing grounds, and are treated in a non-discriminatory manner with regard to all job-related matters, including, without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer and each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Developer and each Employer, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon the foregoing grounds.

(b) To the greatest extent feasible, the Developer and each Employer shall present opportunities for training and employment of low and moderate income residents of the City, and provide that contracts for work in connection with the construction of the Required Work for the NSP Property acquired by the Developer be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the City.

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(c) The Developer and each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including, without limitation, the Human Rights Ordinance, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1993), and any subsequent amendments and regulations promulgated thereto.

(d) The Developer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) The Developer and each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the construction of the Required Work for the NSP Property acquired by the Developer, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any affiliate operating on such NSP Property, so that each such provision shall be binding upon each contractor, subcontractor or affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 19.1 shall be a basis for the City to pursue remedies under the provisions of Section 15.

19.2 City Resident Employment Requirement.

(a) The Developer agrees, and shall contractually obligate each Employer to agree, that during the construction of the Required Work for the NSP Property acquired by the Developer, it and they shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in Section 2-92-330 of the Municipal Code of Chicago (at least fifty percent of the total worker hours worked by persons on the construction of the Required Work for such NSP Property shall be performed by actual residents of the City of Chicago); provided, however, that in addition to complying with this percentage, the Developer and each Employer shall be required to make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

(b) The Developer and the Employers may request a reduction or waiver of this minimum percentage level of actual residents of the City of Chicago as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City of Chicago.

(c) **"Actual residents of the City of Chicago"** shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only

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true, fixed and permanent home and principal establishment.

(d) The Developer and the Employers shall provide for the maintenance of adequate employee residency records to ensure that actual residents of the City of Chicago are employed on the construction of the Required Work for the NSP Property acquired by the Developer. The Developer and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

(e) The Developer and the Employers shall submit weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) to the Department of Community Development of the City in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Developer or Employer hired the employee should be written in after the employee's name.

(f) The Developer and the Employers shall provide full access to their employment records to the Chief Procurement Officer, DCD, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The Developer and the Employers shall maintain all relevant personnel data and records for a period of at least three (3) years from and after the issuance of the Certificate of Completion.

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

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

(i) If the City determines that the Developer or an Employer failed to ensure the fulfillment of the requirements of this Section concerning the worker hours performed by actual residents of the City of Chicago or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to actual residents of the City of Chicago to the degree stipulated in this Section. If such non-compliance is not remedied in accordance with the breach and cure provisions of Section 15.3, the parties agree that 1/20 of 1 percent (.05%) of the aggregate hard construction costs set forth in the Budget shall be surrendered by the Developer and for the Employers to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees

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entirely and correctly shall result in the surrender of the entire liquidated damages as if no actual residents of the City of Chicago were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer and/or the other Employers or employees to prosecution.

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

(k) The Developer shall cause or require the provisions of this Section 19.2 to be included in all construction contracts and subcontracts related to the construction of the Required Work for the NSP Property acquired by the Developer.

19.3 Developer's MBE/WBE Commitment. The Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the general contractor to agree that during the construction of the Required Work for the NSP Property acquired by the Developer:

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 19.3, during the course of construction of the Required Work for such NSP Property, at least 24% of the aggregate hard construction costs shall be expended for contract participation by minority-owned businesses ("MBEs") and at least 4% of the aggregate hard construction costs shall be expended for contract participation by women-owned businesses ("WBEs").

(b) For purposes of this Section 19.3 only:

(i) The Developer (and any party to whom a contract is let by the Developer in connection with the Required Work) shall be deemed a "contractor" and this Agreement (and any contract let by the Developer in connection with the Required Work for such NSP Property) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

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(ii) The term “minority-owned business” or “MBE” shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

(iii) The term “women-owned business” or “WBE” shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed by the Developer on the Required Work for the NSP Property acquired by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture, or (ii) the amount of any actual work performed on the Required Work for such NSP Property by the MBE or WBE); by the Developer utilizing a MBE or a WBE as the general contractor (but only to the extent of any actual work performed on the Required Work for such NSP Property by the general contractor); by subcontracting or causing the general contractor to subcontract a portion of the construction of the Required Work for such NSP Property to one or more MBEs or WBEs; by the purchase of materials or services used in the construction of the Required Work for such NSP Property from one or more MBEs or WBEs; or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this Section 19.3. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE general contractor or subcontractor without the prior written approval of DCD.

(d) The Developer shall deliver quarterly reports to the City's monitoring staff and MPS during the construction of the Required Work for the NSP Property acquired by the Developer describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by the Developer or the general contractor to work on the Required Work for such NSP Property, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the construction of the Required Work for such NSP Property, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in

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determining the Developer's compliance with this MBE/WBE commitment. The Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the construction of the Required Work for such NSP Property for at least five years after completion of the Required Work for such NSP Property, and the City's monitoring staff and MPS shall have access to all such records maintained by the Developer, on prior notice of at least five business days, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the construction of the Required Work for such NSP Property.

(e) Upon the disqualification of any MBE or WBE general contractor or subcontractor, if the disqualified party misrepresented such status, the Developer shall be obligated to discharge or cause to be discharged the disqualified general contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.

(f) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 19.3 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable. Evidence of any such reduction or waiver shall be delivered to MPS and the City.

(g) Prior to the commencement of the construction of the Required Work for the NSP Property acquired by the Developer, the Developer shall meet with the City's monitoring staff with regard to the Developer's compliance with its obligations under this Section 19.3. The general contractor and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer shall demonstrate to the City's monitoring staff and MPS its plan to achieve its obligations under this Section 19.3, the sufficiency of which shall be approved by the City's monitoring staff. During the construction of the Required Work for such NSP Property, the Developer shall submit the documentation required by this Section 19.3 to the City's monitoring staff and MPS LLC, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements (unless such prevailing wage requirements are determined by the Corporation Counsel of the City to be inapplicable to the Required Work for such NSP Property); (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; and (vii) evidence that MBE/WBE contractor associations have been informed of the Required Work for such NSP Property via written notice and hearings. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that the Developer is not complying with its obligations under this Section 19.3, shall, upon the delivery of written notice to the Developer, be deemed an Event of Default. Upon the occurrence of

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any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to the Developer to halt the Required Work for such NSP Property, (2) withhold any further payment of any City funds to the Developer or the general contractor, or (3) seek any other remedies against the Developer available at law or in equity.

(h) Notwithstanding anything to the contrary in Section 19, any obligation of MPS LLC, in its capacity as a Developer under this Section 19, shall be tested on an aggregate basis, with respect to all of the NSP Properties rehabilitated by MPS LLC (including NSP Properties that may be rehabilitated by MPS LLC pursuant to a separate redevelopment agreement), and not for each individual NSP Property.

SECTION 20. HEADINGS.

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

SECTION 21. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties. The Commissioner of DCD, without further action of the City Council, but subject to the approval of the Corporation Counsel, shall have the right to execute such amendments to this Agreement as may be necessary, appropriate or desirable to implement the purposes and objectives of this Agreement, including amendments in connection with a "work-out" of this Agreement and transfer of any NSP Property (or a portion thereof) to a new developer.

SECTION 22. SEVERABILITY.

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

SECTION 23. NOTICES.

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

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If to the City: City of Chicago
 Department of Community Development
 121 North LaSalle Street
 Chicago, Illinois 60602
 Attention: Commissioner

With copies to: City of Chicago
 Department of Law
 121 North LaSalle Street, Room 600
 Chicago, Illinois 60602
 Attn: Real Estate and Land Use Division

And to: City of Chicago
 Department of Law
 121 N. LaSalle Street, Room 600
 Chicago, Illinois 60602
 Attn: Finance Division

If to MPS LLC or MPS: Mercy Portfolio Services
 120 South LaSalle Street, Suite 1850
 Chicago, Illinois 60603
 Attn: William L. Goldsmith

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon confirmed transmission by facsimile, respectively, provided that such facsimile transmission is confirmed as having occurred prior to 5:00 p.m. on a business day. If such transmission occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the business day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

SECTION 24. ORGANIZATION AND AUTHORITY.

The Developer represents and warrants that it is a duly organized and validly existing legal entity under the laws of the state of its organization and, to the extent applicable, qualified to transact business as a foreign entity in the State of Illinois, with full power and authority to acquire, own and redevelop the NSP Property acquired by the Developer, and that the person signing this Agreement on behalf of the Developer has the authority to do so.

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SECTION 25. SUCCESSORS AND ASSIGNS.

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

SECTION 26. RECORDATION OF AGREEMENT.

This Agreement shall be recorded at the Office of the Cook County Recorder of Deeds as part of the Closing.

SECTION 27. COUNTERPARTS.

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

SECTION 28. GOVERNING LAW.

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

SECTION 29. PATRIOT ACT CERTIFICATION.

Neither the Developer nor any Affiliate thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to the Developer that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Developer, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

SECTION 30. CITY PAYMENT OF PROGRAM FUNDS.

Subject to the terms and conditions of the NSP Legal Requirements, the City has agreed to fund to MPS LLC for payment to LISC and, if necessary, to the Acquisition Lender (or to fund directly to LISC and/or to the Acquisition Lender), Program Funds in an amount sufficient to repay the funds borrowed by MPS LLC pursuant to the Acquisition Loan Agreement and the Rehabilitation Loan Agreement (or borrowed by a

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Participating Entity with respect to the Rehabilitation Loan Agreement). In connection with the disbursement of the Program Funds, the City may cause such funds to be disbursed through a construction escrow pursuant to an agreement in form and substance reasonably acceptable to the City, MPS LLC, LISC (if LISC deems itself a necessary party) and the Rehabilitation Lender (and Participating Entity), as applicable. The City agrees to execute such documents as may be reasonably requested by LISC, the Rehabilitation Lender and other third parties to assure the City's payment of such Program Funds, provided such documents are consistent with the NSP Legal Requirements and this Agreement.

SECTION 31. MAINTENANCE OF RECORDS; RIGHT TO INSPECT.

The Developer shall keep and maintain such books, records and other documents as shall be required by the NSP Parties and HUD to reflect and disclose fully the amount and disposition of the total cost of activities paid for in whole or in part, with the Program Funds, and the nature of all activities of the Developer in connection with the NSP Property which are supplied or to be supplied by other sources. All such books, records and other documents shall be available at the offices of the Developer for inspection, copying (including excerpts and transcriptions), audit and examination at all reasonable times by any authorized representatives of any of the NSP Parties and HUD. Any authorized representative of the City or of HUD shall, at all reasonable times, have access to all portions of the NSP Property.

SECTION 32. NO BUSINESS RELATIONSHIP WITH CITY ELECTED OFFICIALS.

Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to this Agreement or in connection with the transactions contemplated thereby, shall be grounds for termination of this Agreement and the transactions contemplated thereby. The Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Agreement or the transactions contemplated thereby.

SECTION 33. JOINT AND SEVERAL LIABILITY.

In the event that more than one person or entity has signed this Agreement on behalf of the Developer, the obligations of such signatories under this Agreement shall be joint and several.

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SECTION 34. NON-LIABILITY OF PUBLIC OFFICIALS.

The Developer and any assignee or contractor of the Developer must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution or any breach of this Agreement.

SECTION 35. PROHIBITION ON CERTAIN CONTRIBUTIONS - MAYORAL EXECUTIVE ORDER NO. 05-1.

Consistent with the intent of Mayoral Executive Order No. 05-1, compliance with the substance of which is intended by this Section 35, the Developer hereby agrees that the Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in the Developer of more than 7.5 percent, the General Partner or Managing Member, any person or entity who directly or indirectly has an ownership or beneficial interest in the General Partner or Managing Member of more than 7.5 percent, Owner, any person or entity who directly or indirectly has an ownership, beneficial or other controlling interest in Owner of more than 7.5 percent (collectively, "**Controlling Owners**"), spouses and domestic partners of such Controlling Owners, (collectively, all the preceding classes of persons and entities are hereinafter referred to as the "Ownership Parties") shall not make a contribution of any amount to the Mayor of the City ("**Mayor**") or to his political fundraising committee (i) after execution of this Agreement by the Developer, and (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between the Developer and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

The Developer hereby agrees to require that the General Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in the General Contractor of more than 7.5 percent, any Subcontractor, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent (collectively, "**Interested Parties**"), and spouses and domestic partners of such Interested Parties (collectively, all the preceding classes of persons and entities are hereinafter referred to, together with the Ownership Parties, as the "**Identified Parties**") shall not make a contribution of any amount to the Mayor or to his political fundraising committee (i) after execution of this Agreement by the Developer, and (ii) while the Construction Contract or any Subcontract is executory, (iii) during the term of the Construction Contract or any Subcontract, or (iv) during any period while an extension of the Construction Contract or any Subcontract is being sought or negotiated.

The Developer represents and warrants that as of the later of (i) February 10, 2005, or (ii) the date that the City approached the Developer, or the Developer approached the City, as applicable, regarding the formulation of this Agreement, no

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Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

The Developer agrees that it shall not and it shall require all other Identified Parties to not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Developer agrees that it must not and it shall require all other Identified Parties to not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1. The Developer shall impose the restrictions of this Section 32 in the Construction Contract and shall specifically require the General Contractor to impose the restrictions of this Section 32 in all Subcontracts.

The Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source that are then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City to which the Developer is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal NSP Property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are **"Domestic Partners"** if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and

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- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:
 - 1. The partners have been residing together for at least 12 months.
 - 2. The partners have common or joint ownership of a residence.
 - 3. The partners have at least two of the following arrangements:
 - a. joint ownership of a motor vehicle;
 - b. a joint credit account;
 - c. a joint checking account;
 - d. a lease for a residence identifying both domestic partners as tenants.
 - 4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

SECTION 36. MERCY PORTFOLIO SERVICES.

The parties acknowledge and agree that MPS is an express agent of MPS LLC and all obligations, responsibilities and rights of MPS LLC under this Agreement may be performed by MPS, as agent for MPS LLC.

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SECTION 37. TERMINATION OF SUBGRANT AGREEMENT.

In the event that the Subgrant Agreement is terminated, and if at such time MPS LLC is in title to the NSP Property, the City may, at its election, either (a) allow MPS LLC to continue to serve as Developer under this Agreement, or (b) record the reconveyance deed previously deposited with the City. If the City elects option (b), then provided that MPS LLC is not otherwise in default under this Agreement at the time of such election and, after such election, reasonably cooperates with the City by assigning such contracts and taking such other actions as may be reasonably necessary for the City to complete the Required Work, MPS LLC shall be released from its obligations under this Agreement.

SECTION 38. COOPERATION WITH OFFICE OF COMPLIANCE.

In accordance with Chapter 2-26-110 et seq. of the Municipal Code, the Developer acknowledges that every officer, employee, department and agency of the City shall be obligated to cooperate with the Executive Director of the Office of Compliance in connection with any activities undertaken by such office with respect to this Agreement, including, without limitation, making available to the Executive Director the NSP Properties and the Developer's equipment, personnel, books, records and papers. The Developer agrees to abide by the provisions of Chapter 2-26-110 et seq..

SECTION 39. SECTION 3 COMPLIANCE

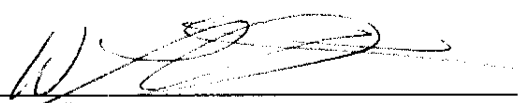
The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701), as implemented by the regulations set forth at 24 CFR Part 135. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located. The Developer agrees to comply with such Section 3 requirements.

[SIGNATURES APPEAR ON NEXT PAGE]

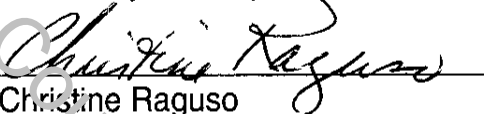
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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the date first above written.

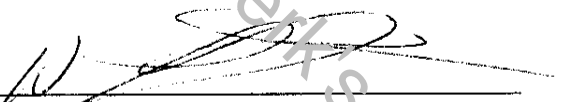
MPS COMMUNITY I, LLC, an Illinois limited liability company

By: 
Name: William L. Goldsmith
Title: President

CITY OF CHICAGO, an Illinois municipal corporation, acting by and through its Department of Community Development

By: 
Christine Raguso
Acting Commissioner

MERCY PORTFOLIO SERVICES, a Colorado non-profit corporation

By: 
Name: William L. Goldsmith
Title: President

Property of COOK County Clerk's Office

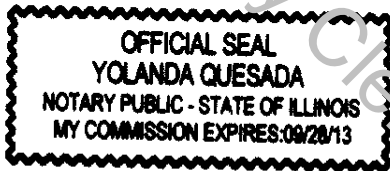
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Yolanda Quesada, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Christine Raguso, personally known to me to be the Acting Commissioner of the Department of Community Development of the City of Chicago, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that, as the Acting Commissioner, she signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago as her free and voluntary act and as the free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 28 day of Oct, 2009.

Yolanda Quesada
NOTARY PUBLIC



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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Eva L. Garrett, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William L. Goldsmith, personally known to me to be the President of MPS COMMUNITY I LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that she signed and delivered the foregoing instrument pursuant to authority given by said company, as her free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 17th day of November, 2009.

Eva L. Garrett

NOTARY PUBLIC



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Eva L. Garrett, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William L. Goldsmith, personally known to me to be the President of MERCY PORTFOLIO SERVICES, a Colorado non-profit corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that he/she signed and delivered the foregoing instrument pursuant to authority given by said company, as his/her free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 17th day of November, 2009.

Eva L. Garrett

NOTARY PUBLIC



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EXHIBIT A

NSP PROPERTY INFORMATION

Legal Description of Land: Legal Description of Land: LOT 108 IN DICKEY'S ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTH ½ OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 2 TOWNSHIP 39 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 3417 WEST HIRSCH STREET

PIN: 16-02-217-016-0000

Existing Improvements on the Land: SINGLE FAMILY RESIDENTIAL BUILDING

NSP Acquisition Price: \$48,318.76

¹Estimated NSP Acquisition Loan Amount: \$53,150.64

²Estimated NSP Rehabilitation Loan Amount: \$150,897

³Estimated NSP Total Development Cost \$199,216

¹As more particularly set forth in that certain Settlement Agreement dated as of even date herewith.

²As more particularly set forth in the final Rehabilitation Loan Agreement upon transfer of the Property to the Participating Entity.

³As more particularly set forth in the Approved Budget.

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EXHIBIT B

REQUIRED WORK

The Required Work is set forth in that certain preliminary scope of work prepared by Building One Consulting, LLC, dated August 25, 2009 (the "Scope of Work"). The Scope of Work shall be supplemented at such time that the Property is transferred to the Participating Entity.

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EXHIBIT C

INSURANCE REQUIREMENTS

[SEE ATTACHMENT]

Property of Cook County Clerk's Office

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EXHIBIT D

FORM OF CITY JUNIOR MORTGAGE

[SEE ATTACHMENT]

Property of Cook County Clerk's Office

A large, handwritten signature in black ink is written across the diagonal watermark. The signature is cursive and appears to be a name, possibly "J. Hirsch".

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EXHIBIT C

INSURANCE REQUIREMENTS

The Developer shall provide and maintain at Developer's own expense or cause to be provided, during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Construction contractors and subcontractors performing work for the Developer must maintain limits of not less than \$1,000,000 with the same terms herein.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Developer must provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

4) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Developer must provide or cause to be provided with respect to the operations that Developer or subcontractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

5) Builders Risk/Installation

When Developer undertakes any construction, including improvements, betterments, and/or repairs, the Developer must provide or cause to be provided, All Risk Builders Risk/Installation Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the

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relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance must provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Developer.

The Developer hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Developer in no way limit the Developer's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Developer under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Developer is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Developer must require all contractors and subcontractors to provide the insurance required herein, or Developer may provide the coverages for contractor and subcontractors. All contractors and subcontractors are subject to the same insurance requirements of Developer unless otherwise specified in this Agreement.

If Developer, contractors or subcontractors desire additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

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permanent facility/project. The City of Chicago is to be named as an additional insured and loss payee/mortgagee if applicable.

6) Professional Liability

When any architects, engineers, construction managers, project managers or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

7) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

8) Contractors Pollution Liability

When any environmental remediation work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided or cause to be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

ADDITIONAL REQUIREMENTS:

The Developer must furnish the City of Chicago, Department of Community Development, 121 North LaSalle Street, Room 1000, Chicago, 60602 and Comptroller Office, Special Accounting Division, 33 North LaSalle, Suite 800, Chicago, 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Developer must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain certificates or other insurance evidence from Developer is not a waiver by the City of any requirements for the Developer to obtain and maintain the specified coverages. The Developer must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not

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INSURANCE CERTIFICATE OF COVERAGE

Named Insured: _____
 Address: _____
 (Number and Street) _____ Project Description: _____
 (City) (State) (ZIP)

Description of Operation/Location	
-----------------------------------	--

The insurance policies and endorsements indicated below have been issued to the designated named insured with the policy limits as set forth herein covering the operation described within the Contract involving the named insured and the City of Chicago. The Certificate issuer agrees that in the event of cancellation, non-renewal or material change involving the indicated policies, the issuer will provide at least sixty (60) days prior written notice of such change to the City of Chicago at the address shown on this Certificate. This certificate is issued to the City of Chicago in consideration of the Contract entered into with the named insured, and it is mutually understood that the City of Chicago relies on this certificate as a basis for continuing such agreement with the named insured.

Type of Insurance	Insurer Name	Policy Number	Expiration Date	Limits of Liability All Limits in Thousands
General Liability <input type="checkbox"/> Claims made <input type="checkbox"/> Occurrence <input type="checkbox"/> Premises-Operations <input type="checkbox"/> Explosion/Collapse Underground <input type="checkbox"/> Products/Completed-Operations <input type="checkbox"/> Blanket Contractual <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Personal Injury <input type="checkbox"/> Pollution				CSL Per Occurrence \$ _____ General Aggregate \$ _____ Products/Completed Operations Aggregate \$ _____
Automobile Liability				CSL Per Occurrence \$ _____
<input type="checkbox"/> Excess Liability <input type="checkbox"/> Umbrella Liability				Each Occurrence \$ _____
Workers Compensation and Employer's Liability				Statutory/Illinois Employers Liability \$ _____
Builders Risk/Course of Construction				Amount of Contract
Professional Liability				\$ _____
Owner Contractors Protective				\$ _____
Other				\$ _____

- a) Each insurance policy required by this agreement, excepting policies for worker's compensation and professional liability, will read: "The City of Chicago is an additional insured as respects operations and activities of, or on behalf of the named insured, performed under contract with or permit from the City of Chicago."
- b) The General, Automobile and Excess/Umbrella Liability Policies described provide for severability of interest (cross liability) applicable to the named insured and the City.
- c) Workers Compensation and Property insurers shall waive all rights of subrogation against the City of Chicago.
- d) The receipt of this certificate by the City does not constitute agreement by the City that the insurance requirements in the Contract have been fully met, or that the insurance policies indicated by this certificate are in compliance with all contract requirements.

Name and Address of Certificate Holder and Recipient of Notice	Signature of Authorized Rep.
Certificate Holder/Additional Insured	Agency/Company
City of Chicago Department of _____ 121 N. LaSalle St. # _____ Chicago, IL 60602	Address: _____
	Telephone: _____

UNOFFICIAL COPY**EXHIBIT D**

This instrument prepared by
and when recorded return to:

Assistant Corporation Counsel
City of Chicago
Office of Corporation Counsel
Room 600
121 North LaSalle Street
Chicago, Illinois 60602

JUNIOR MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS JUNIOR MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made as of this ___ day of _____, by [INSERT NAME OF BORROWER], a(n) [INSERT STATE AND ENTITY STATUS] ("Mortgagor"), to the City of Chicago, Illinois together with its successors and assigns, having its principal office at 121 North LaSalle Street, Chicago, Illinois 60602 ("Mortgagee").

All capitalized terms, unless defined herein, shall have the same meanings as are set forth in that certain Redevelopment Agreement dated of even date herewith between Mortgagor and Mortgagee (as the same may be amended, supplemented or restated from time to time, the "Redevelopment Agreement").

WITNESSETH:

WHEREAS, Mortgagor has concurrently herewith executed and delivered the Redevelopment Agreement in consideration of Mortgagor's conditional grant of Program Funds to Mortgagee in an amount up to the maximum principal sum described on Schedule 1 attached hereto (the "NSP Funds Amount"); and

WHEREAS, the NSP Funds Amount represents the sum of certain acquisition and rehabilitation financing that the Mortgage has provided to Mortgagor from Program Funds, which financing has enabled the Mortgagor to acquire, and will enable the Mortgagor to rehabilitate, the Premises (as defined below); and

WHEREAS, Mortgagee desires to secure the conditional repayment of the NSP Funds Amount in accordance with the terms of the Redevelopment Agreement and this Mortgage, and to secure any additional indebtedness or obligations incurred by Mortgagor on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Redevelopment Agreement or this Mortgage;

NOW, THEREFORE, in order to secure the conditional repayment of the NSP Funds Amount and all other payments due to Mortgagee by Mortgagor under the Redevelopment

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Agreement or this Mortgage, and to secure the performance of the covenants and agreements of Mortgagor contained in the Redevelopment Agreement and this Mortgage, including any substitutions, extensions or modifications hereto, Mortgagor does grant, assign, warrant, convey and mortgage to Mortgagee, its successors and assigns, and grants to Mortgagee, its successors and assigns forever a continuing security interest in and to, all of the following rights, interests, claims and property:

(A) all of the real estate, as more particularly described on **Exhibit A** attached hereto and hereby made a part hereof, together with all easements, water rights, hereditaments, mineral rights and other rights and interests appurtenant thereto (the "Real Property");

(B) all buildings, structures and other improvements of every kind and description now or hereafter erected, situated or placed upon the Real Property, together with any fixtures or attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with or incorporated in the Real Property, including all extensions, additions, betterments, renewals, substitutions and replacements of any of the foregoing (the "Improvements");

(C) any interests, estates or other claims of every name, kind or nature, both at law and in equity, which Mortgagor now has or may acquire in the Real Property, the Improvements, the Equipment (as hereinafter defined) or any of the property described in clauses (D), (F), (G), (H) or (I) hereof;

(D) all of Mortgagor's interest and rights as lessor in and to all leases, subleases and agreements, written or oral, now or hereafter entered into, affecting the Real Property, the Improvements, the Equipment or any part thereof, and all income, rents, issues, proceeds and profits accruing therefrom (provided that the assignment hereby made shall not diminish or impair the obligations of Mortgagor under the provisions of such leases, subleases or agreements, nor shall such obligations be imposed on Mortgagee);

(E) all right, title and interest of Mortgagor in and to all fixtures, personal property of any kind or character now or hereafter attached to, contained in and used or useful in connection with the Real Property or the Improvements, together with all furniture, furnishings, apparatus, goods, systems, fixtures and other items of personal property of every kind and nature, now or hereafter located in, upon or affixed to the Real Property or the Improvements, or used or useful in connection with any present or future operation of the Real Property or the Improvements, including, but not limited to, all apparatus and equipment used to supply heat, gas, air conditioning, water, light, power, refrigeration, electricity, plumbing and ventilation including all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing, and all proceeds therefrom (the "Equipment");

(F) all of the estate, interest, right, title or other claim or demand which Mortgagor now has or may acquire with respect to (i) proceeds of insurance in effect with respect to the Real Property, the Improvements or the Equipment, and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding of all or any portion of the Real Property, the Improvements or the Equipment;

(G) all intangible personal property, accounts, licenses, permits, instruments, contract rights, and chattel paper of Mortgagor, including, but not limited to cash, accounts receivable, bank accounts, certificates of deposit, rights (if any) to amounts held in escrow, deposits,

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judgments, liens and causes of action, warranties and guarantees, relating to the Real Property, the Equipment or the Improvements or as otherwise required under the Redevelopment Agreement or this Mortgage;

(H) all other property rights of Mortgagor of any kind or character related to all or any portion of the Real Property, the Improvements or the Equipment; and

(I) the proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding clauses.

All of the property referred to in the preceding clauses (A) through (I) shall be called, collectively, the "Premises."

IT IS FURTHER agreed, intended and declared that all the aforesaid property rights and interests shall, so far as permitted by law, be deemed to form a part and parcel of the Premises and be covered by this Mortgage.

TO HAVE AND TO HOLD the Premises unto Mortgagee and its successors and assigns, forever, for the purposes and uses herein set forth.

If Mortgagor hereunder is described as a trustee under a trust agreement, said trust arrangement constitutes a "land trust" as said term is defined in Section 5/15-1205 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et seq.*, as amended, supplemented and restated from time to time (the "Act").

To protect the security of this Mortgage, Mortgagor further covenants and agrees as follows:

(1) Conditional Repayment of NSP Funds Amount. Mortgagor shall, if required, pay promptly when due the NSP Funds Amount and any other sums required to be paid under the Redevelopment Agreement or under this Mortgage at the times and in the manner provided therein or herein and shall pay any other indebtedness secured hereby as the same becomes due and shall perform and observe all of the covenants, agreements and provisions contained in the Redevelopment Agreement and this Mortgage.

Mortgagor shall pay promptly when due any sums due under the senior loan documents identified on Schedule I, if any (the "Senior Loan Documents") and shall perform promptly and fully any acts required under any such Senior Loan Documents. Mortgagor will not, without prior written consent of Mortgagee, modify, extend or amend the Senior Loan Documents nor increase the amount of the indebtedness secured under the Senior Loan Documents, nor change the repayment terms of such senior indebtedness, nor incur any other indebtedness secured by the Premises. Mortgagor shall promptly give Mortgagee a copy of any notice received by Mortgagor from Senior Lender, if any, or given by Mortgagor to Senior Lender, if any, pursuant to any of the Senior Loan Documents.

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(2) Preservation, Restoration and Use of Premises. Mortgagor shall:

(a) promptly repair, restore, replace or rebuild any portion of the Premises which may become damaged, destroyed, altered, removed, severed or demolished, whether or not insurance proceeds are available or sufficient for the purpose, with replacements at least equal in quality and condition as existed prior thereto, free from any security interest in, encumbrances on or reservation of title thereto except Permitted Encumbrances (including but not limited to those listed on Exhibit C hereto);

(b) keep and maintain the Premises in good condition and repair, without waste, and free from mechanics' liens, materialmen's liens or other liens and claims except Permitted Encumbrances;

(c) complete, within the time period described in the Redevelopment Agreement, the Required Work to be performed with respect to the Premises;

(d) comply with all statutes, rules, regulations, orders, decrees and other requirements of any federal, state or local governmental body having jurisdiction over the Premises and the use thereof and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions that are applicable to the ownership, renovation, use and occupancy of the Premises;

(e) upon completion of the Project, make no material alterations in the Premises (except those required by law) without Mortgagee's prior written consent;

(f) upon completion of the Project, suffer or permit no change in the general nature of the occupancy or use of the Premises except as permitted under the Redevelopment Agreement;

(g) pay all operating costs of the Premises when due, including all utility charges and all other assessments or charges of a similar nature;

(h) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent;

(i) not abandon the Premises, nor do anything whatsoever to depreciate or impair the value of the Premises or the security of this Mortgage;

(j) refrain from any action and correct any condition which would increase the risk of fire or other hazard to all or any portion of the Premises;

(k) not permit any unlawful use or nuisance to exist upon the Premises; and

(l) comply with all instruments and documents of record or otherwise affecting the use or occupancy of all or any portion of the Premises.

(3) Taxes and Charges. Mortgagor agrees to pay or cause to be paid, prior to delinquency, all Charges (as hereinafter defined) which are assessed or imposed upon the Premises, or which are payable under any of the Senior Loan Documents, or which become due and payable and which create, may create or appear to create a lien upon the Premises or any part

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thereof; provided, however, that if by law any such Charge is payable or, at the option of Mortgagor, may be paid in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Charge in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. ("Charge" shall mean and include all federal, state, county, city, municipal or other governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances related to the Premises, Mortgagor, Mortgagor's owners, or the Senior Loan Documents.

Mortgagor shall furnish Mortgagee within 30 days after the date upon which any Charge is due and payable by Mortgagor, official receipts of the appropriate authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof. Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Charge by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay collection of the contested Charge and prevent the imposition of a lien or the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Charge at the time and in the manner provided in this Mortgage unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to contest or object to a Charge and, unless at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that legal proceedings instituted by Mortgagor contesting or objecting to such Charge shall conclusively operate to prevent a lien against or the sale or forfeiture of the Premises or any part thereof as satisfaction of such Charge prior to final determination of such proceedings, and (ii) Mortgagor shall furnish to Mortgagee or Senior Lender, if any, (and if to Senior Lender, notice thereof to Mortgagee) a good and sufficient bond or surety, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, in an amount (x) not less than 125% of such Charge and (y) adequate fully to pay all such contested Charges and all interest and penalties upon the adverse determination of such contest.

(4) **Insurance.** Mortgagor shall procure and maintain, or cause to be maintained, at all times, at Mortgagor's own expense, until final repayment of the indebtedness secured hereby, the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois covering all operations contemplated in connection with the Project, whether performed by Mortgagor, the General Contractor, any subcontractor or others.

The kinds and amounts of insurance required are as follows:

(a) Workers Compensation and Occupational Disease Insurance

Workers compensation and occupational disease insurance, in accordance with the laws of the State of Illinois, or any other applicable jurisdiction, covering all employees who are to provide a service in connection with the Project and employer's liability coverage with limits of not less than \$100,000 per each accident or illness.

(b) Commercial Liability Insurance (Primary and Umbrella)

Commercial liability insurance or equivalent with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury, personal injury and/or property damage liability. Coverage extensions shall include the

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following: all premises and operations, products/completed operation, independent contractors, cross liability and contractual liability coverages (with no limitation endorsement). Mortgagee, its employees, elected officials, agents and representatives shall be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Project.

(c) Automobile Liability Insurance (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with the Project, Mortgagor shall provide comprehensive automobile liability insurance with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury and property damage. Mortgagee shall be named as an additional insured on a primary, non-contributory basis.

(d) All Risk Property Damage

Mortgagor shall obtain an all risk property policy in the amount of full replacement value, including improvements and betterments, covering damage to or loss of the Premises. The insurance shall include the following extensions: business interruption/loss of rents, and boiler and machinery, if applicable. The policy shall list Mortgagee as loss payee as their interest may appear.

(e) All Risk Builders Risk Insurance

When Mortgagor, the General Contractor or any subcontractor undertakes any construction, including improvements, betterments and/or repairs, to the Premises, all risk builder's risk insurance shall be procured and maintained to cover materials, supplies, equipment, machinery and fixtures that are or will be part of the Premises. Mortgagee shall be named as loss payee as their interest may appear.

(f) Railroad Protective Liability Insurance

When, in connection with the Project, any work is to be done adjacent to or on property owned by a railroad or public transit entity, Mortgagor shall procure and maintain, or cause to be procured and maintained, with respect to the operations that Mortgagor, the General Contractor or any subcontractor shall perform, railroad protective liability insurance in the name of such railroad or public transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence, combined single limit, and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(g) Contractors' Pollution Liability Insurance

When any environmental remediation work is undertaken by Mortgagor, the General Contractor or any subcontractor in connection with the Project, contractors' pollution liability insurance shall be procured with limits of not less than \$1,000,000 covering all construction and related work undertaken in connection with the Project. Mortgagee is to be named as an additional insured on a primary, non-contributory basis. Mortgagor, the General Contractor and any subcontractor shall comply with any additional insurance requirements that are

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stipulated by the Interstate Commerce Commission's regulations, Title 49 of the Code of Federal Regulations, Department of Transportation; Title 40 of the Code of Federal Regulations, Protection of the Environment and any other federal, state or local regulations concerning the removal and transportation of Hazardous Materials.

Mortgagor shall furnish the City of Chicago, Department of Community Development, 121 North LaSalle Street, 10th Floor, Chicago, Illinois 60602, original certificates of insurance evidencing the required coverages to be in force on the date hereof, and renewal certificates of insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term hereof.

The receipt of any certificate does not constitute agreement by Mortgagee that the insurance requirements of this Section have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements. The failure of Mortgagee to obtain certificates or other insurance evidence from Mortgagor shall not be deemed to be a waiver by Mortgagee. Mortgagor shall advise all insurers of the provisions of this Section regarding insurance. Non-conforming insurance shall not relieve Mortgagor of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions of this Section may constitute an Event of Default, and Mortgagee retains the right to suspend disbursement of Program Funds until proper evidence of insurance is provided.

All insurance policies shall provide that Mortgagee shall be given 30 days' prior written notice of any modification, nonrenewal or cancellation.

If Mortgagor fails to obtain or maintain any of the insurance policies required under this Mortgage or to pay any premium in whole or in part when due, Mortgagee may (without waiving or releasing any obligation or Event of Default by Mortgagor hereunder) obtain and maintain such insurance policies and take any other action which Mortgagee deems advisable to protect its interest in the Premises, including repayment of the NSP Funds Amount. All sums so disbursed by Mortgagee, including attorneys' fees, court costs and expenses, shall be reimbursed by Mortgagor upon demand by Mortgagee.

Mortgagor shall require the General Contractor and all subcontractors to carry the insurance required herein, or Mortgagor may provide the coverage for any or all of the General Contractor and subcontractors, and, if so, the evidence of insurance submitted shall so stipulate.

Any and all deductibles or self-insured retention on the insurance coverages required herein shall be borne by Mortgagor, the General Contractor or the appropriate subcontractor, as applicable.

Mortgagor expressly understands and agrees that any insurance coverages and limits furnished by Mortgagor shall in no way limit Mortgagor's liabilities and responsibilities specified under the Redevelopment Agreement or this Mortgage or by law.

Mortgagor agrees and shall cause the General Contractor to agree that all insurers shall waive their rights of subrogation against Mortgagee, its employees, elected officials, agents or representatives.

Mortgagor expressly understands and agrees that any insurance or self-insurance programs maintained with respect to the Premises by Mortgagee shall apply in excess of and not

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contribute with insurance provided by Mortgagor, the General Contractor or any subcontractor under this Section.

The insurance required hereunder to be carried shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

If Mortgagor, the General Contractor or any subcontractor desires additional coverage, higher limits of liability, or other modifications for its own protection, Mortgagor, the General Contractor or such subcontractor, as appropriate, shall be responsible for the acquisition and cost of such additional protection.

Mortgagee maintains the right to modify, delete, alter or change these requirements.

(5) Inspection of Premises and of Books and Records. Mortgagor shall permit Mortgagee, the United States Department of Housing and Urban Development and/or their agents to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct records at Mortgagor's office showing in detail the income and expenses of the Premises and shall make such books, records and all supporting vouchers, data and other documents available for inspection, copying (including excerpts and transcriptions) audit and examination upon request by Mortgagee, HUD and their respective agents, successors and assigns until the fifth anniversary from the date on which a release of this Mortgage is recorded.

(6) Insurance Proceeds. In the event of any damage to, or destruction of the Premises, Mortgagor will give written notice to mortgagee of such damage or destruction within five Business Days thereafter and, subject to the rights granted to Senior Lender, if any, under the Senior Mortgage (as defined in Section 33 below), if any, authorize Mortgagee to proceed as follows:

(a) In the event of any loss covered by insurance policies, Mortgagee is hereby authorized at its option to either (i) settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. Mortgagee shall, and is hereby authorized to, collect any such insurance proceeds, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be deemed additional indebtedness secured by this Mortgage and shall be reimbursed to Mortgagee by Mortgagor upon demand.

(b) In the event of any insured damage to, or destruction of, the Premises or any part thereof, Mortgagee shall apply the proceeds of insurance to reimburse or, at the option of Mortgagee, pay directly Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises if (i) an Event of Default hereunder or an event of default under the Redevelopment Agreement or the Senior Loan Documents, if any, shall not have occurred and be continuing; (ii) such insurance proceeds shall be in an amount sufficient to restore the Premises to at least the same value and substantially the same character as the Premises had immediately prior to such damage or destruction (and subject to no liens or encumbrances other than Permitted Encumbrances), or if such proceeds are not so sufficient, Mortgagor shall promptly deposit with Mortgagee funds equal to the amount of such deficiency; (iii) Mortgagor shall obtain all required governmental approvals with respect to such restoration, repair, replacement or rebuilding; (iv) prior to such restoration, repair, replacement or rebuilding, Mortgagee shall receive and approve plans and specifications and a detailed budget and cost breakdown with respect to such work;

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and (v) such restoration, repair, replacement or rebuilding is reasonably susceptible to completion not less than six months prior to the 15th anniversary of the recording of this Mortgage.

(c) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value, and substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee, and to expend all such proceeds and any funds deposited by Mortgagor pursuant to Section 6(b)(ii) hereof prior to the further disbursement of any Loan proceeds. If the amount of such insurance proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

(d) If all of the conditions described in paragraph (b) of this Section with respect to the application of proceeds of insurance shall not be met, Mortgagee may, in its sole discretion, apply such proceeds to the indebtedness secured hereby in such order or manner as Mortgagee may elect.

(e) To the extent that any amount of proceeds of insurance remain unexpended after completion of the restoration, repair, replacement or rebuilding of the Premises, such amount shall be applied to the indebtedness secured hereby.

(7) Condemnation/Eminent Domain. Mortgagor shall give Mortgagee prompt notice of any proceedings, pending or threatened, seeking condemnation or taking by eminent domain or any like process ("Taking"), of all or any portion of the Premises or affecting any easement thereon or appurtenance thereto and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings, and Mortgagor hereby assigns and transfers to Mortgagee, subject to the rights granted to Senior Lender, if any, under the Senior Mortgage, if any, the entire proceeds of all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities said awards and is further authorized to give appropriate receipts therefor. In the event of any such Taking, but subject to any rights granted to Senior Lender, if any, under the Senior Mortgage, if any, Mortgagee may, in its sole discretion, (i) apply the proceeds of all awards resulting from such Taking to the indebtedness secured hereby in such order or manner as Mortgagee may elect, or (ii) apply such proceeds to reimburse or, at the option of Mortgagee, pay directly Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises. In the event that such proceeds, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value and substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee. If the amount of such proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

(8) Transfer and Encumbrance of Premises. Mortgagor shall not create, effect, contract for, commit to, consent to, suffer or permit any direct or indirect conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing, other than a contract for sale or for financing to pay in full the Senior Loan and all other amounts due and owing by Mortgagor to Mortgagee under the Redevelopment Agreement or this Mortgage, provided that any such contract shall be expressly contingent upon the receipt of prior written consent to such sale or financing by

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Mortgagee. Such consent shall not be unreasonably withheld by Mortgagee with respect to any contract providing for the assumption by the purchaser of the Mortgagor's obligations under the Redevelopment Agreement and this Mortgage or for payment in full of the Senior Loan and all other amounts due and owing by Mortgagor to Mortgagee under the Redevelopment Agreement or this Mortgage). Any other transfer, occurring directly or indirectly, by willful act, by operation of law or otherwise, of all or any portion of the Premises or any interest therein (other than Permitted Encumbrances) or any interest in Mortgagor or any partner thereof shall be referred to herein as a "Prohibited Transfer". If Mortgagor shall do or allow any of the foregoing Prohibited Transfers without Mortgagee's prior written consent, Mortgagee at its option, has the right to immediately require the repayment of the NSP Funds Amount without notice to Mortgagor and exercise Mortgagee's other rights and remedies under the Redevelopment Agreement and this Mortgage. Any waiver by Mortgagee of the provisions of this paragraph shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this paragraph in the future.

Notwithstanding the foregoing, Mortgagee shall not unreasonably withhold its consent to the replacement and/or addition of any direct or indirect owner of Mortgagor, and such transfer of interests shall not be considered a Prohibited Transfer, provided such replacement and/or addition involves a direct or indirect owner who is not either (a) a controlling party (e.g., a general partner or managing member), or (b) the holder of 51% or more of Mortgagor's ownership interests.

(9) Mortgagee's Options; Subrogation. (a) In case of an Event of Default hereunder by Mortgagor, Mortgagee may (but is not obligated to) make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may (but is not obligated to) make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Premises from any tax sale or forfeiture affecting the Premises or contest any tax or assessment thereon. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be deemed additional indebtedness secured hereby, and shall become immediately due and payable, with interest thereon at a rate of the lesser of 15% per annum or the maximum amount permitted by law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

(b) To the extent that Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Mortgagor or any other person or entity pays any such sum with the proceeds of the indebtedness secured hereby, Mortgagee shall have and be entitled to a lien or other interest on the Premises equal in priority to the lien or other interest discharged and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby.

(10) Events of Default. The following shall constitute an "Event of Default" under this Mortgage:

- (i) Mortgagor's failure to pay, when due, the NSP Funds Amount, or any portion thereof, if the same becomes due and payable, or any other sums required to be paid by Mortgagor under the Redevelopment Agreement or this Mortgage;

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- (ii) subject to Section 33 hereof, default by Mortgagor in the performance or observance of any condition, warranty, representation, covenant, provision or term (other than as referred to in the other paragraphs of this Section 10) contained herein or in the Redevelopment Agreement, which remains unremedied for 30 days after notice thereof from Mortgagee to Mortgagor, provided, however, that if any such default cannot reasonably be remedied within said 30-day period and if Mortgagor shall have commenced to remedy such default within said 30-day period and shall thereafter continue diligently to effect such remedy, then said 30-day period shall be extended to 60 days upon written request from Mortgagor to Mortgagee delivered during such 30-day period, and upon further written request from Mortgagor to Mortgagee delivered during said 60-day period, said 60-day period shall be extended to 90 days (provided, however, that Mortgagee shall not be precluded during any such periods from exercising any remedies available under the Redevelopment Agreement or this Mortgage if its security becomes or is about to become materially jeopardized by any failure to cure a default within such period);
- (iii) the occurrence of a default or an event of default under any of the Senior Loan Documents, if any, which default or event of default is not timely cured pursuant to any applicable cure period as set forth in the Senior Loan Documents, if any;
- (iv) a writ of execution, attachment or any similar process shall be issued or levied against all or any portion of the Premises or any interest therein, or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on all or any portion of the Premises or any interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 30 days after its entry or levy;
- (v) any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor proving to have been false in any material respect when made or furnished;
- (vi) prepayment of principal of the Senior Loan, if any, except in accordance with the terms of the Senior Loan Documents;
- (vii) the abandonment by Mortgagor of all or any portion of the Premises;
- (viii) the occurrence of any event of default with respect to the payment of any monies due and payable to Mortgagee by Mortgagor or the occurrence of a default in the performance or observance of any material obligation, provision or condition by Mortgagor under any agreement or other instrument other than in connection with the Redevelopment Agreement or the Senior Loan, if any, to which

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Mortgagor is now or hereafter a party, or the occurrence of any other event under any such agreement or instrument upon which any holder of indebtedness outstanding thereunder may declare the same due and payable, and in each such case the continuation of such default beyond any applicable cure periods;

- (ix) Mortgagor's failure to discharge any Charge in accordance with the terms hereof or a failure to procure or maintain any insurance required hereunder;
- (x) the dissolution of Mortgagor or the entry of a decree or order for relief by a court having jurisdiction with respect to Mortgagor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of Mortgagor or for the Premises or for any substantial part of the property of Mortgagor or ordering the winding-up or liquidation of the affairs of Mortgagor and the continuance of any such decree or order unstayed and in effect for a period of 30 consecutive days;
- (xi) the commencement by Mortgagor of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Mortgagor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of Mortgagor or the Premises or of any substantial part of the property of Mortgagor or of any royalties, revenues, rents, issues or profits therefrom, or the making by Mortgagor of any assignment for the benefit of creditors or the failure of Mortgagor generally to pay its debts as such debts become due or the taking of action by Mortgagor in furtherance of any of the foregoing;
- (xii) a final judgment for the payment of money in excess of \$100,000 shall be rendered by a court of record against Mortgagor and Mortgagor shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof, within 60 days from the date of entry thereof, or such longer period during which execution of such judgment shall have been stayed;
- (xiii) Mortgagor's sale, partial sale, transfer, refinancing, conveyance, mortgage, pledge, grant of security interest, assignment, syndication or other disposition of all or any portion of the Premises or any interest therein without the prior written consent of Mortgagee, whether by operation of law, voluntarily or otherwise or if Mortgagor shall enter into a contract to do any of the foregoing without the prior written consent of Mortgagee or any other violation of Section 8 hereof);

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- (xiv) the sale or other transfer by Owner, if any, of all or a controlling interest in the ownership of Mortgage or its controlling party (e.g., general partner or managing member) without the prior written consent of Mortgagee;
- (xv) any event of default under the Redevelopment Agreement which has not been cured within any applicable grace period;
- (xvi) [INTENTIONALLY DELETED];
- (xvii) any transfer of funds from the Escrow Account without the prior written consent of Mortgagee;
- (xviii) the execution of any amendment or modification to or restatement of the Construction Contract without the prior written consent of Mortgagee;
- (xix) commencement of the Project without the prior written consent of Mortgagee; or
- (xx) the occurrence of a violation of Section 2-156-030(b) of the Municipal Code of Chicago by any elected official, or any person acting at the direction of such official, with respect to the Redevelopment Agreement or the transactions contemplated thereby.

(11) Acceleration, Etc. Upon the occurrence of an Event of Default hereunder, Mortgagee may elect to require the repayment of the NSP Funds Amount, together with all other amounts then due and owing by Mortgagor to Mortgagee under the Redevelopment Agreement or this Mortgage, and as such amounts shall become immediately due and payable at the place of payment as aforesaid, and Mortgagee may proceed to foreclose this Mortgage and to exercise any rights and remedies available to Mortgagee under this Mortgage or the Redevelopment Agreement and to exercise any other rights and remedies against Mortgagor, or with respect to the Redevelopment Agreement, which Mortgagee may have at law, in equity or otherwise; provided, however, that upon the occurrence of an Event of Default under Section 10(x) or (xi) hereof, the entire NSP Funds Amount shall, without any declaration, notice or other action on the part of Mortgagee, be immediately due and payable, anything herein or in the Redevelopment Agreement to the contrary notwithstanding. Mortgagee may also elect to commence an action to enforce specifically any of the provisions contained herein or in the Redevelopment Agreement.

Upon the occurrence of an event of default under any of the Senior Loan Documents, if any, Mortgagee may at its option proceed to cure, if possible, such event of default; subject to Section 9(b) hereof, all amounts so expended by Mortgagee in the course of such action shall be reimbursed by Mortgagor to Mortgagee upon demand and shall be additional indebtedness of Mortgagor secured by this Mortgage and the Redevelopment Agreement.

(12) Remedies. Mortgagee's remedies as provided in this Mortgage or the Redevelopment Agreement shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Mortgagee and may be exercised as often as occasion therefor shall arise, and shall not be exclusive but shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. Failure of Mortgagee, for any period of time or on more than one occasion, to exercise any such remedy shall not constitute a

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waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Event of Default. No act of omission or commission of Mortgagee, including specifically any failure to exercise any right or remedy, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Mortgagee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of Mortgagee's rights or remedies hereunder. Except as otherwise specifically required herein, notice of the exercise of any right or remedy granted to Mortgagee by the Redevelopment Agreement is not required to be given.

(13) Additional Indebtedness. In the event that: (a) the Redevelopment Agreement or this Mortgage is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Mortgagee in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under the Redevelopment Agreement or this Mortgage; (c) an attorney is retained to protect or enforce the lien of this Mortgage or the rights of the City under the Redevelopment Agreement; or (d) an attorney is retained to represent Mortgagee in any other proceedings whatsoever in connection with the Redevelopment Agreement or this Mortgage, or any property subject thereto, then Mortgagor shall pay to Mortgagee all attorneys' fees, and all costs and expenses incurred in connection therewith.

(14) Waiver. Mortgagee's failure to require strict performance by Mortgagor of any provision of this Mortgage shall not waive, affect or diminish any right of Mortgagee thereafter to demand strict compliance and performance therewith, nor shall any waiver by Mortgagee of an Event of Default waive, suspend or affect any other Event of Default under this Mortgage, whether the same is prior or subsequent thereto, or of the same or a different type. Mortgagee's delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights hereunder or under the Redevelopment Agreement, shall not operate as a waiver of such rights or limit them in any way so long as an Event of Default shall be continuing.

(15) Right of Possession. To the extent permitted by law, in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the institution of such proceedings or before or after sale thereunder, Mortgagor shall, at the option of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of all or any portion of the Premises personally or by its agents or attorneys, and Mortgagee, in its sole discretion, may enter upon, take and maintain possession of all or any portion of the Premises.

Upon taking possession of the Premises, Mortgagee may make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as it may deem judicious to insure, protect and maintain the Premises against all risks incidental to Mortgagee's possession, operation and management thereof, and may receive all rents, issues and profits therefrom. Mortgagee shall have, in addition to any other power provided herein, all powers and duties as provided for in Sections 5/15-1701, 5/15-1702 and 5/15-1703 of the Act.

(16) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after foreclosure sale, without notice, without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness hereby secured, without

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regard to the value of the Premises at such time and whether or not the same is then occupied as a homestead, and without bond being required of the applicant. Mortgagee or any employee or agent thereof may be appointed as such receiver. The receiver shall have the power to take possession, control and care of the Premises and to collect all rents and profits thereof during the pendency of such foreclosure suit, and all powers and duties provided for in Section 5/15-1704 of the Act, and such other powers as the court may direct.

(17) Foreclosure Sale. The Premises or any interest or estate therein sold pursuant to any court order or decree obtained under this Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by Illinois law. At any such sale, Mortgagee may bid for and acquire, as purchaser, all or any portion of the Premises and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

(18) Application of Proceeds from Foreclosure Sale. Proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, (ii) to the repayment of amounts owed the Senior Lender under the Senior Loan Documents, (iii) all other items which, under the terms hereof, constitute secured amounts subject to repayment under the Redevelopment Agreement or this Mortgage, and (iv) any surplus or remaining funds to Mortgagor, its successors or assigns, as their rights may appear.

(19) Insurance Upon Foreclosure. Wherever provision is made in this Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the Premises, shall be used to pay the amount due in accordance with any foreclosure decree that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

(20) Waiver of Statutory Rights. To the extent permitted by law, Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, reinstatement, stay, extension or exemption laws or any so-called "Moratorium Laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage and 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 Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. To the extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and rein-statement, on its own behalf and on behalf of each and every person having a beneficial interest in Mortgagor, it being the intent hereof that any and all such rights of redemption or rein-statement of Mortgagor and of all other persons are and shall be deemed to be hereby waived. Mortgagor acknowledges that the Premises do not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act.

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(21) Partial Payments. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest, if any, thereon, immediately due and payable without notice, or any other rights of Mortgagee at that time or any subsequent time, without its express written consent, except and to the extent otherwise provided by law.

(22) Rescission of Election. Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed. In either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and powers of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

(23) Notice. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested.

IF TO MORTGAGEE: Department of Community Development
City of Chicago
121 North LaSalle Street, 10th Floor
Chicago, Illinois 60602
Attention: Commissioner

WITH COPIES TO: Office of the Corporation Counsel
City of Chicago
City Hall
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attention: Finance & Economic
Development Division

Department of Finance
City of Chicago
33 North LaSalle Street, Suite 600
Chicago, Illinois 60602
Attention: Comptroller

IF TO MORTGAGOR: As specified on Exhibit B.

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the Business Day immediately following deposit with the overnight courier and, if sent pursuant to clause (d) above, shall be deemed received two Business Days following deposit in the mail.

(24) Time. Time is of the essence with respect to this Mortgage.

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(25) Modifications. This Mortgage may not be altered, amended, modified, cancelled, changed or discharged except by written instrument signed by Mortgagor and Mortgagee or their respective successors and assigns.

(26) Headings. The headings of articles, sections, paragraphs and subparagraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

(27) Construction of Mortgage. This Mortgage shall be construed and enforced according to the internal laws of the State of Illinois without regard to its conflict of laws principles.

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

(29) Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

(30) Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Whenever Mortgagee is referred to herein, such reference shall also include the holder of this Mortgage, whether so expressed or not.

(31) Further Assurances. Mortgagor will perform, execute, acknowledge and deliver every act, deed, conveyance, transfer and assurance necessary or proper, in the sole judgment of Mortgagee, for assuring, conveying, mortgaging, assigning and confirming to Mortgagee all property mortgaged hereby or property intended so to be, whether now owned or hereafter acquired by Mortgagor, and for creating, maintaining and preserving the lien and security interest created hereby on the Premises. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and its agents as attorney-in-fact for that purpose. Mortgagor will reimburse Mortgagee for any sums expended by Mortgagee in making, executing and recording such documents including attorneys' fees and court costs.

(32) Indemnification. In addition to all other indemnities in favor of Mortgagee specifically provided in this Mortgage, Mortgagor shall indemnify Mortgagee and save Mortgagee harmless from and against any and all Losses incurred by Mortgagee in any claim brought by reason of any such Loss, excluding, however, any Loss arising out of Mortgagee's gross negligence or willful misconduct following Mortgagee's acquisition of title to or control of the Premises, unless such act is taken in response to (i) any willful misconduct or negligent act or omission of Mortgagor, its controlling party or owner(s), if any, or (ii) any breach (other than failure to repay the Loan) by Mortgagor, its controlling party or owner, if any, of any provisions of the instruments executed by Mortgagor, such controlling party or owner, if any, in connection with the Loan.

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(33) Initial First Priority Mortgage; Subsequent Subordination to Senior Mortgage. Mortgagee anticipates that on or after the date of this Mortgage, Mortgagor shall execute and deliver that certain [INSERT DOCUMENT NAME] (the "Senior Mortgage") in favor of [Community Investment Corporation] ("Senior Lender"), which shall be recorded in the Office of the Cook County Recorder of Deeds, and shall secure Mortgagee's note to the Senior Lender in the principal amount of approximately \$ _____. Until such execution, delivery and recording of such Senior Mortgage, this Mortgage shall constitute a first priority mortgage lien on the Premises. Upon the execution, delivery and recording of such Senior Mortgage, by operation of this Section 33, and without the recording of any separate subordination instrument, the lien of this Mortgage and the rights of the Mortgagee hereunder shall be subordinated to the lien of the Senior Mortgage and the rights of the Senior Lender thereunder and this Mortgage shall thereafter be a junior mortgage on the Premises and shall be subject and subordinate in each and every respect to any and all rights of any kind created by the Senior Mortgage in favor of the Senior Lender.

So long as the Senior Mortgage is in effect, in the event of any conflict between the provisions of this Mortgage and the Senior Mortgage, the provisions of the Senior Mortgage shall prevail. Any waiver or forbearance by the Senior Lender under the Senior Loan Documents shall not impair the priority of its lien under the Senior Mortgage. Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to provide to Mortgagee any dollar amounts or any documents as may be required herein because such amounts or documents are required to be deposited with Senior Lender pursuant to the provisions of the Senior Mortgage shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of the deposit of such amounts or documents with Senior Lender (together with copies of such documents). Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to comply with any provision hereof (other than the payment of amounts or the provision of documents to Mortgagee) due to conflict between the provisions of the Senior Mortgage and the provisions hereof shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of such conflict and of the actions taken by Mortgagor pursuant to the Senior Mortgage.

(34) Security Agreement. This 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 Premises which constitutes fixtures or personal property. Mortgagee shall have all the rights with respect to such fixtures or personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by this Mortgage or any other agreement. Upon the recording hereof, this Mortgage shall constitute a financing statement under the Uniform Commercial Code. This Mortgage is a "construction mortgage" as that term is defined in Section 9-334(h) of said Uniform Commercial Code.

(35) No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien thereof do not merge in fee simple title, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee, as evidenced by an appropriate document duly recorded, this Mortgage and the lien thereof 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.

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(36) Protective Advances; Maximum Amount of Indebtedness. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of the Senior Mortgage, if any, or other prior lien or encumbrance; (ii) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 5/15-1704 of the Act;

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(iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if the loan secured hereby is a construction or rehabilitation loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction or rehabilitation, as may be authorized by the applicable commitment or the Redevelopment Agreement; (viii) pursuant to any lease or other agreement for occupancy of the Premises; and (ix) if this Mortgage is insured, payments of FHA or private mortgage insurance.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the Act.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (1) the determination of the amount of indebtedness secured by this Mortgage at any time;
- (2) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;
- (4) the determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (5) the application of income in the hands of any receiver or mortgagee in possession; and
- (6) the computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

The maximum amount of indebtedness secured by this Mortgage shall be \$ _____ [DOUBLE THE NSP FUNDS AMOUNT] plus any disbursements for the payment of taxes and insurance on the Premises, plus interest thereon, and any other sums advanced in accordance with the terms hereof or the Redevelopment Agreement to protect the

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security of this Mortgage or the rights of the Mortgagor under the Redevelopment Agreement plus interest thereon.

(37) Non-Recourse Loan. Subject to the terms of Exhibit B hereto and notwithstanding any provision herein to the contrary, the indebtedness secured hereunder shall be non-recourse and in the event of default hereunder, Mortgagee's sole source of satisfaction of repayment of the amounts due to Mortgagee hereunder or under the Redevelopment Agreement shall be limited to Mortgagee's rights with respect to the collateral pledged and assigned hereunder or under the Redevelopment Agreement.

(38) Advances. The Redevelopment Agreement is referred to herein as the "Commitment". Mortgagee has bound itself and does hereby bind itself to make advances pursuant to and subject to the terms of the Commitment, and the parties hereby acknowledge and intend that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Act.

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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and attested to on the day and year first above written.

[INSERT NAME OF BORROWER]

By: [INSERT NAME OF CONTROLLING PARTY],
a(n) [INSERT NAME OF STATE AND ENTITY
STATUS] of Mortgagor

By:
Its:

Property of Cook County Clerk's Office

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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 _____, personally known to me to be the _____ of [INSERT NAME OF CONTROLLING PARTY] (the "General Partner/Managing Member"), a(n) [INSERT NAME OF STATE AND ENTITY STATUS] [INSERT NAME OF BORROWER] (the "Mortgagor"), an [INSERT NAME OF STATE AND ENTITY STATUS], personally known to me to be the _____ of the [INSERT ENTITY] and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____, (s)he signed and delivered the said instrument and caused the corporate seal of the [INSERT ENTITY] to be affixed thereto, pursuant to authority given by the [Board of _____] of the [INSERT ENTITY] as their free and voluntary act, and as the free and voluntary act and deed of the [INSERT ENTITY] and the Mortgagor for the uses and purposes therein set forth.

GIVEN under my hand and official seal this _____ day of _____, _____.

Notary Public

(SEAL)

Notary of Cook County Clerk's Office

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SCHEDULE 1

NSP Funds Amount: \$ _____

A. NSP Acquisition Loan Amount: \$ _____

B. NSP Rehabilitation Loan Amount: \$ _____

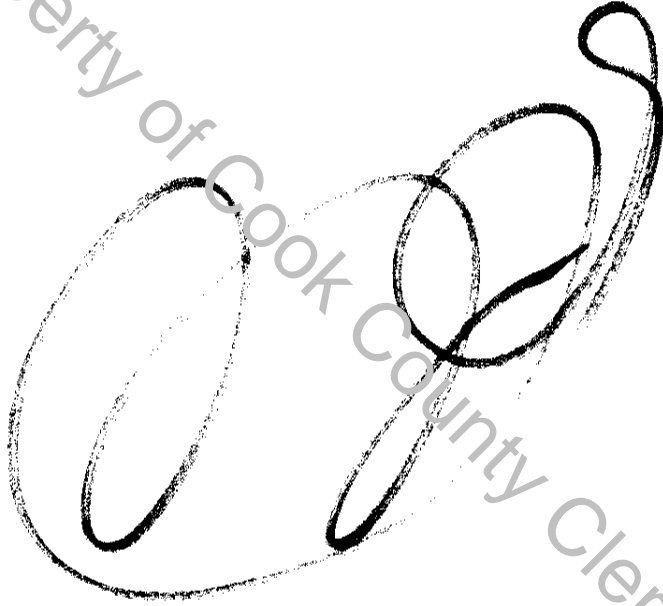
Senior Loan Documents: [INSERT DESCRIPTION]

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EXHIBIT A
LEGAL DESCRIPTION

Property of Cook County Clerk's Office



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EXHIBIT B

1. Address of Mortgagor: _____

With Copies to: _____

1. Non-Recourse Provisions:

(a) Notwithstanding Section 37 of the Mortgage, nothing herein or in any of the Redevelopment Agreement shall limit the rights of Mortgagee, following any of the events hereinafter described, to take any action as may be necessary or desirable to pursue Mortgagor, its general partner or managing members, if any, for any and all losses incurred by Mortgagee arising from: (i) a material misrepresentation, fraud made in writing or misappropriation of funds by Mortgagor, its general partner or managing members, if any; (ii) intentional or material waste to the Premises; (iii) use of Program Funds for costs other than eligible costs; (iv) the occurrence of a Prohibited Transfer without Mortgagee's prior written consent, to the extent such Prohibited Transfer results from the intentional, willful, voluntary and/or negligent acts or omissions of Mortgagor, its general partner or managing members, if any; (v) any breach of Mortgagor's representations, warranties or covenants regarding Hazardous Materials or Environmental Laws contained in the Redevelopment Agreement; (vi) the occurrence of any uninsured casualty to the Premises or other collateral or security provided under the Redevelopment Agreement for which there has been a failure to maintain insurance coverage as required by the terms and provisions of the Redevelopment Agreement; (vii) the misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Premises or other collateral or security provided under the Redevelopment Agreement; (viii) any inaccuracy in the statements in the Affidavits, or (ix) a breach of NSP Legal Requirements, but only to the extent that such breach results in a demand by HUD or Mortgagee for repayment of the NSP Funds Amount in whole or in part, and only to the extent that as a result of such demand, Mortgagee is legally obligated to make such payment to HUD. If Mortgagee so chooses, Mortgagee shall pursue a diligent contest of any such demand by HUD through the administrative procedures outlined in 24 C.F.R. Section 92.552, as amended, supplemented and restated from time to time, but shall not be required to pursue the matter any further than reasonably prudent, as determined by Mortgagee. Mortgagor agrees to pay, as a recourse obligation of Mortgagor, all attorneys', experts' and consulting fees and disbursements and expenses incurred in connection with any such contest.

(b) Mortgagee waives any and all right to seek or demand any personal deficiency judgment against Mortgagor, in conjunction with a foreclosure proceeding, under or by reason of any of the non-recourse monetary obligations of Mortgagor; provided, however, that the foregoing shall not limit or affect Mortgagee's right to sue or otherwise seek recourse against Mortgagor, its general partner or managing members, if any, and/or Owner, if any, in any separate action or proceeding for all losses incurred by Mortgagee arising from any of the matters described in the foregoing paragraph(s) of this Section 6.

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EXHIBIT C

PERMITTED ENCUMBRANCES

- 1) Those matters set forth as Schedule B title exceptions in Mortgagee's title insurance policy issued by _____ as of the closing of the Redevelopment Agreement.
- 2) Residential leases entered into in the ordinary course of the Mortgagor's business in connection with the operation of the Premises.