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Cook County Clerk

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and when recorded return to:

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## SECOND AMENDED AND RESTATED REGULATORY AGREEMENT

THIS SECOND AMENDED AND RESTATED REGULATORY AGREEMENT entered into as of this February 25, 2022 (this "Regulatory Agreement"), by and between the City of Chicago (the "City"), an Illinois municipal corporation, by and through its Department of Housing ("DOH") with offices at 121 North LaSalle Street, Room 1000, Chicago, Illinois, 60602, and Tinesse Jacqueline Brinson, individually, with offices located at 936 South Olive Street Apartment 629, Los Angeles, California 90015 (the "Borrower").

Simultaneously herewith, Celadon-Kimbark, LLC, an Illinois limited liability company (the "Previous Borrower"), has conveyed the NSP Property (as hereinafter defined) and assigned the indebtedness evidenced by the Note (as hereinafter defined) to the Borrower, and as of the date hereof and hereafter the Borrower will be bound by all the obligations hereunder.

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## WITNESSETH

**WHEREAS**, the City has received certain funds in the approximate amounts of \$55,238,017, \$98,008,384, and \$15,996,360 (collectively, the "Program Funds") from the United States Department of Housing and 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.* ("HERA"), as amended by the American Recovery and Reinvestment Act of 2009, H.R. 1 (the "Recovery Act"), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, H.R. 4173 ("Dodd-Frank Act"), as the same may be hereafter amended, restated or supplemented from time to time (HERA, the Recovery Act and the Dodd-Frank Act are collectively referred to herein as the "Act"); 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 Notice of Fund Availability for the Neighborhood Stabilization Program<sup>2</sup> under the Recovery Act (Docket No. FR-5321-N-01, May 4, 2009) as the same may be hereafter amended, restated or supplemented from time to time, the Notice of Fund Availability for Fiscal year 2009 NSP<sup>2</sup> Program under the Recovery Act, Correction (Docket No. FR-5321-C-02, June 11, 2009; Docket No. FR-5321-C-03, November 9, 2009, Docket No. FR-5321-C-04, and Docket No. FR-5321-N-04); the Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants (Docket No. FR-5447-N-01, October 19, 2010 (the "NOFA")) as the same may be hereafter amended, restated or supplemented from time to time; and the HUD regulations at 24 CFR Part 570 (as modified by the NOFA and as now in effect and as may be amended, restated or supplemented from time to time) (collectively, the "Regulations"); and

**WHEREAS**, the City has submitted to HUD, and HUD has approved, the City's NSP1 Substantial Amendment application to HUD, NSP2 application to HUD and NSP3 Substantial Amendment 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, that certain Funding Approval and Grant Agreement signed on February 11, 2010, and that certain Funding Approval and Grant Agreement dated effective as of March 17, 2011 (collectively, the "Grant Agreement"). The Act, the Regulations, and the Grant Agreement are collectively referred to herein as the "NSP Legal Requirements;" and

**WHEREAS**, 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 and operating land banks for homes and residential properties that have been abandoned or

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foreclosed; (d) demolition of blighted structures; and (e) redevelop properties (collectively, the "Eligible Activities"); and

**WHEREAS**, 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; and

**WHEREAS**, 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; and

**WHEREAS**, pursuant to the NSP Legal Requirements, prior to the acquisition of the NSP Property, 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; and

**WHEREAS**, the City has adopted certain affordability restrictions from the HOME Program (as defined herein) in connection with the administration of the Program; and

**WHEREAS**, the City loaned an amount to the Previous Borrower (hereinafter referred to as the "Loan") of NSP Program funds in connection with the acquisition and rehabilitation of certain property legally described on Exhibit A attached hereto and hereby made a part hereof (the "NSP Property"), the operation of which shall be in compliance with the NSP Legal Requirements and the affordability requirements set forth herein (the "Project"); and

**WHEREAS**, the Loan was evidenced and secured by certain documents in favor of the City and referred to collectively as the Loan Documents in the Third Amendment, as hereinafter defined; and

**WHEREAS**, pursuant that certain Fourth Amendment, Assignment and Assumption of Loan Documents entered into by and among the City, the Previous Borrower, and the Borrower and dated as of the date hereof (the "Fourth Amendment"), the Previous Borrower (i) conveyed the NSP Property to the Borrower, and (ii) assigned, transferred, sold and conveyed to the Borrower all of its responsibilities, duties, and obligations under the Loan Documents, and (iii) the Borrower assumed all of the responsibilities, duties and obligations of the Previous Borrower under the Loan Documents;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Borrower and the City each agree as follows:

## SECTION 1 DEFINITIONS AND INTERPRETATIONS.

Additional definitions on Exhibit B hereto are hereby incorporated in this Section 1 by

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reference.

The following terms shall have the respective meaning assigned to them in this Section 1 unless the context in which they are used clearly requires otherwise:

"Affirmative Marketing Plan" shall mean the affirmative marketing plan submitted by the Borrower and approved by DOH.

"Annual Owner's Certification" shall mean the annual AOC report from the Borrower in substantially the form set forth in Exhibit C attached hereto and hereby made a part hereof, as the same may be amended from time to time.

"Associated Person" shall mean any Person that includes the Borrower or those with whom the Borrower has or had family or business ties.

"Borrower" shall mean Tinesse Jacqueline Brinson, an individual, and at any subsequent time of reference, the Person or Persons, if any, who shall succeed to the legal or beneficial ownership of all or any part of the Project.

"Business Day" shall mean a day on which banks in the City of Chicago, Illinois are not authorized or required to remain closed and which shall not be a public holiday under the laws of the State or any ordinance or resolution of the City of Chicago, Illinois.

"City" shall mean the City of Chicago, Illinois, an Illinois municipal corporation, and its successors and assigns.

"DOH" shall mean the Department of Housing of the City, and any successor to said department.

"Eligible Costs" shall mean those costs for which Loan proceeds may be used to pay for Eligible Activities under the NSP Legal Requirements.

"Eligible-Income Families" shall mean and include Families whose annual Income (as defined below) does not exceed 120 percent of the Chicago-area median income, adjusted for Family size, as such annual Income and Chicago-area median income are determined from time to time by HUD. Notwithstanding the foregoing, HUD may establish an income ceiling that is higher or lower than 120 percent of the Chicago-area median income, and thereafter such income limit shall apply to this definition.

"Family" shall have the meaning assigned to such term in 24 C.F.R. Section 5.403.

"First Reporting Date" shall mean the first January 31 following the date hereof.

"HOME Program" shall mean the HOME Program created under the National Affordable Housing Act.

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"HOME Regulations" shall mean 24 C.F.R. Part 92, and such additional regulations, orders, rulings, interpretations and directives for the HOME Program as may be promulgated or issued by HUD from time to time.

"HUD" shall mean the U.S. Department of Housing and Urban Development.

"Income" shall mean the gross amount of Income of all adult household members that is anticipated to be received during the coming 12-month period, as provided in 24 C.F.R. Part 5. "Inspection Period" shall mean a period beginning on the date hereof and ending on the later of (a) the Termination Date, or (b) the fifth anniversary of the Repayment Date.

"Last Reporting Date" shall mean the first January 31 following the end of the Project Term.

"Mercy" shall mean Mercy Portfolio Services, a Colorado non-profit corporation.

"Mortgage" shall mean that certain Mortgage, Security Agreement and Financing Statement encumbering the NSP Property in favor of the City to secure the Loan, as hereafter supplemented, amended and restated from time to time.

"MPS" shall mean MPS Community I, LLC, an Illinois limited liability company.

"National Affordable Housing Act" shall mean the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. Section 12701 et seq.

"Note" shall mean that certain promissory note in favor of the City and evidencing the Loan which was assumed by the Borrower pursuant to the Third Amendment.

"Persons" shall mean natural persons, firms, partnerships, associations, corporations, trusts and public bodies.

"Project Term" shall mean the number of years during which the Project must comply with this Regulatory Agreement. The Project Term shall continue, except as provided in Sections 2.15(b), 2.16, 2.17, 6.2 and 15 hereof, through and including the later of (a) the Repayment Date, or (b) the Termination Date.

"Redevelopment Agreement" shall mean the Redevelopment Agreement as defined in the Fourth Amendment, as hereafter amended, supplemented and restated from time to time.

"Regulatory Agreement" shall mean this Regulatory Agreement, as supplemented, amended and restated from time to time.

"Repayment Date" shall mean the date as of which the principal of and interest, if any, on the Loan and all other amounts due and payable to the City under the Documents (as defined in

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the Mortgage) shall have been paid in full (or deemed by the City to have been paid in full).

"Source Documentation" shall have the meaning given to such term in Section 2.16 hereof.

"State" shall mean the State of Illinois.

"Tenant Income Certification" shall mean the certification in substantially the form set forth in Schedule II of Exhibit C, attached hereto and hereby made a part hereof, as the same may be amended from time to time.

"Termination Date" shall mean the later of (a) May 11, 2032 or (b) the date of a Transfer.

"Transfer" shall have the meaning given to such term in Section 6.2(a) hereof.

"Utilities" shall mean the monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant, as further set forth in Exhibit B.

"Violence Against Women Act (VAWA) Requirements" shall mean those requirements set forth in Exhibit D hereto and made a part hereof.

"Very Low-Income Family" shall mean any Family whose annual Income does not exceed 50 percent of the Chicago-area median income, adjusted for Family size, as such annual Income and Chicago-area median income are determined from time to time by HUD. Notwithstanding the foregoing, HUD may establish an income ceiling that is higher or lower than 50 percent of the Chicago-area median income, and thereafter such income limit shall apply to this definition.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings given such terms in the Redevelopment Agreement or the Mortgage, as applicable.

## SECTION 2 BORROWER'S REPRESENTATIONS AND COVENANTS.

The Borrower hereby represents, warrants, covenants and agrees as follows.

2.1 The Borrower hereby acknowledges that the amount of the Loan outstanding as of the date hereof is \$368,337.20 (the "Loan Balance"). Pursuant to the Third Amendment, the Loan Balance shall be forgiven on a pro rata basis annually commencing on the date hereof and concluding on May 11, 2032 (the "Maturity Date"), subject to compliance by the Borrower with all of the terms and conditions of this Regulatory Agreement; provided however, that the Maturity Date shall also mean such earlier date as of which the outstanding Loan Balance may become due and payable because of acceleration or prepayment as provided in any of the Loan Documents.

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2.2 The Project was acquired and rehabilitated by the Borrower for the purpose of providing residential rental property, and the Borrower shall own, manage and operate the Project as residential rental units and facilities functionally related and incidental thereto.

2.3 None of the units in the Project shall at any time be used on a transient basis, and neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court.

2.4 Subject to Sections 2.7 and 2.9 hereof, all of the units in the Low-Income Project shall be occupied only by households who qualify as Very Low-Income Families upon initial occupancy.

2.5 The rents for all the units in the Low-Income Project shall not exceed the lesser of (a) the fair market rent for comparable units in the area as established by HUD under 24 C.F.R. Section 888.111, less Utilities or (b) 30 percent of the adjusted Income of a Family whose gross Income equals 50 percent of the median income for the Chicago area, with adjustment for the number of bedrooms in the unit (as determined by HUD), as such adjusted Income and Chicago-area median income are determined from time to time by HUD, less Utilities.

2.6 The rents for all the units in the Project shall not exceed 30 percent of the adjusted Income of a Family whose gross Income equals 120 percent of the median income for the Chicago area, with adjustment for the number of bedrooms in the unit (as determined by HUD), as such adjusted Income and Chicago-area median income are determined from time to time by HUD, less Utilities.

2.7 Sections 2.4 and 2.9 hereof shall be deemed satisfied, without regard to increases in the Income of existing tenants. All vacancies shall be filled in accordance with the affordability requirements of this Regulatory Agreement.

2.8 The rents described in Sections 2.5 and 2.6 as prepared by the Borrower shall be subject to review and approval by DOH annually and shall be less than the maximum amount(s) provided by DOH annually to the Borrower for the Project. The amount(s) proposed by the Borrower as Utilities shall also be subject to the annual review and approval of DOH. The Borrower shall not increase rents for units of the Project during any year during the Project Term until Borrower submits a rent increase approval request, in the form attached hereto as Schedule III of Exhibit C, to DOH and receives DOH's approval of such rent increase. [§92.252(f)]

2.9 100 percent of the units in the Project shall, at all times during the Project Term, be occupied by Families whose adjusted annual Income at initial occupancy do not exceed 120 percent of the median Family income for the Chicago area, as determined by HUD.

2.10 The Borrower shall not refuse to lease any unit of the Project to a certificate or voucher holder under 24 C.F.R. Part 982, or to a holder of a comparable document evidencing

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participation in a HOME Program tenant-based rental assistance program, the prospective tenant as a holder of such certificate, voucher or comparable HOME Program tenant-based assistance document. [§92.252(d)]

2.11 All tenant leases shall be written, shall be in conformity with all applicable laws, including without limitation the City of Chicago Residential Landlord and Tenant Ordinance, the NSP Legal Requirements and the HOME Regulations, and shall contain clauses, *inter alia*, wherein each individual lessee: (i) certifies the accuracy of the statements made in the Tenant Income Certification and (ii) agrees that the Family Income and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy, that he/she will comply with all requests for information with respect thereto from the Borrower, the City or HUD, and that the failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a substantial violation of an obligation of his/her tenancy.

2.12 All leases for the Project shall be for a period of not less than six months. Notwithstanding the foregoing, rents will not be set more than one year in advance. Leases for units in the Project shall not contain any of the following provisions:

- (a) agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Borrower in a lawsuit brought in connection with the lease;
- (b) agreement by the tenant that the Borrower may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties (this prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit; the Borrower may dispose of this personal property in accordance with applicable local and State law);
- (c) agreement by the tenant not to hold the Borrower or the Borrower's agents legally responsible for any action or failure to act, whether intentional or negligent;
- (d) agreement by the tenant that the Borrower may institute a lawsuit without notice to the tenant;
- (e) agreement by the tenant that the Borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties;
- (f) agreement by the tenant to waive any right to a trial by jury;
- (g) agreement by the tenant to waive the tenant's right to appeal, or to



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otherwise challenge in court, a court decision in co. ....

- (h) agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Borrower against the tenant (provided, however, that the tenant may be obligated to pay costs if the tenant loses). [§92.253(a) and (b)]
- (i) Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered; [§92.253(a) and (b)] or
- (j) agreement by the tenant to waive any occupancy rights tenant has as set forth in the VAWA Requirements.

2.13 The Borrower shall not terminate the tenancy or refuse to renew the lease of a tenant of the Project in violation of the occupancy rights tenant has as set forth in the VAWA Requirements, except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable federal, State or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause shall not include an increase in the tenant's income or refusal of the tenant to purchase the housing, or an incident of actual or threatened domestic violence, dating violence, sexual assault or stalking as described in the VAWA Requirements. To terminate or refuse to renew tenancy, the Borrower must serve written notice upon the tenant specifying the grounds for the action at least 30 days prior to the termination of tenancy. The Borrower shall also comply with all local, county or State law regarding tenant protections. [§92.253(c)]

2.14 Any increase in rents on the Project shall be subject to the provisions of outstanding leases, in addition to the prior written approval of DOH. Where the leases allow an increase in rent, the Borrower shall provide tenants with not less than 30 days' prior written notice before implementing any increase in rents. [§92.252(f)(3)]

2.15 (a) All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower which is unrelated to the Project, shall be maintained, as required by the City, in a reasonable condition for proper audit and shall be subject to examination during business hours by representatives of the City. If the Borrower employs a management agent for the Project, the Borrower shall require such agent to comply with the requirements of this Regulatory Agreement and shall include such requirements in any and all management agreements or contracts entered into with respect to the Project.

(b) The Borrower shall maintain records evidencing compliance with all the requirements of the Program for the Project; such records shall be maintained for the Inspection Period.

2.16 The Borrower shall obtain and maintain on file during the Project Term a sworn and

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notarized Tenant Income Certification with respect to each and every unrelated individual or Family who is a tenant in the Project, signed by the tenant or tenants (i.e., the individual or individuals whose name or names appear on the lease) and obtained by the Borrower (a) prior to such tenant or tenants occupying the unit or signing a lease with respect thereto and (b) thereafter at least annually so long as such individual, individuals or Family remain as tenants in the Project. The first Tenant Income Certification obtained from any tenant shall have attached thereto copies of source documentation (e.g., wage statements, interest statements and unemployment compensation statements) for such tenant income for a period of at least two months (the "Source Documentation"). Each Tenant Income Certification shall be kept on file with the Borrower during the Inspection Period; subject to Section 6.2 hereof, this covenant shall survive beyond the Termination Date. The Borrower shall assist each of the tenants in the Project in completing the Tenant Income Certification if necessary. If the Borrower shall become aware of evidence that any Tenant Income Certification failed to state completely and accurately information about the Family size or Income of the applicable tenants, the Borrower shall examine Source Documentation for such tenants. [§92.252(h)]

2.17 The Borrower agrees that it will take any and all actions required by the City to substantiate the Borrower's compliance with the restrictions set forth herein, including, but not limited to, submitting to the City an Annual Owner's Certification executed by the Borrower, commencing on the First Reporting Date and on each October 7 thereafter through and including the Last Reporting Date. Subject to Section 6.2 hereof, this covenant shall survive beyond the end of the Project Term.

2.18 The Borrower shall provide to the City a tenant profile (in the form provided to the Borrower by DOH) for each tenant for each unit in the Project within 30 days after such unit is leased to such tenant (or, for units occupied by tenants as of the date hereof, within 30 days from the date hereof). For each unit in the Project on the First Reporting Date the Borrower shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and Income-level characteristics (including gender identification of the head(s) of household). For each subsequent leasing of the unit, the Borrower shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics (including gender identification of the head(s) of household) of each tenant moving into the unit. [§92.508(a)(7)(A)]

2.19 The Borrower shall notify the City of the occurrence of any event of which the Borrower has notice and which event would violate any of the provisions of this Regulatory Agreement.

2.20 For every unit in the Project, the Borrower shall comply with affirmative marketing requirements established by DOH from time to time, including the following:

- (a) based on the Affirmative Marketing Plan, advertise in pre-identified commercial media, contact pre-identified places of worship, employment centers, community groups, fair housing groups, housing counseling agencies, and other agencies, and undertake other means to inform targeted groups of the availability of such units

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in the Project;

- (b) display conspicuously HUD's fair housing poster wherever rentals and showings of such units take place;

- (c) provide DOH upon request with an Annual Owner's Certification describing the Borrower's affirmative marketing activities with respect to the Project, including a description of the Borrower's outreach efforts (including copies of all advertisements and brochures) and, unless prohibited by law, a record of the racial/ethnic/gender characteristics of all individuals who look at units in the Project, those who apply for leases for such units, and those who actually sign such leases; and

- (d) maintain records of affirmative marketing efforts with respect to the leasing or re-leasing of each such unit to be made available for review by DOH for a period equal to the Project Term.

2.21 The Borrower has submitted or shall submit to the City a tenant selection plan which fully complies with Section 92.353(d) of the HOME Regulations and will implement such tenant selection plan to the satisfaction of the City in its sole discretion throughout the Project Term. Any limitation or preference in tenant selection for a particular segment of the population must be specifically approved by the City, and must not violate nondiscrimination requirements in Section 92.350 of the HOME Regulations. Such limitation or preference does not violate this Section 2.21 if the Project receives funding from a federal program that limits eligibility to a particular segment of the population, and the limit or preference is tailored to serve that segment of the population, expressly provided that such limitation or preference does not violate other State or local applicable law, including but not limited to the Chicago Human Rights Ordinance, Chapter 2-160 of the Municipal Code of Chicago, the Chicago Fair Housing Ordinance, Section 5-8-010 et seq. of the Municipal Code of Chicago, the Cook County Human Rights Ordinance, and the Illinois Human Rights Act, 775 ILCS 5/ et seq.

2.22 No Person in the United States shall on the grounds of race, color, national origin, sex, religion, familial status, or disability excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with the Project. In addition, the Borrower shall cause the Project to comply at all times with the Chicago Fair Housing Ordinance, Section 5-8-010 et seq. of the Municipal Code of Chicago.

2.23 The Borrower hereby acknowledges and affirms that it has reviewed the provisions of, and that the Project shall during the Project Term be in compliance with, each of the following applicable provisions of 24 C.F.R. Part 5, including but not limited to Section 5.105 with respect to nondiscrimination and equal opportunity: (1) The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in

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Federally Assisted Programs) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

To ensure equal access to HUD-assisted housing in compliance with 24 C.F.R. Part 5, the Borrower further specifically acknowledges and agrees that (i) housing in the Project shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status; and (ii) neither the Borrower nor any management agent employed by the Borrower in connection with the Project may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, housing in the Project, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled. [§92.350]

2.24 The Borrower shall take all reasonable steps to minimize the displacement of Families, individuals, businesses, not-for-profit organizations and farms (herein for the purposes of this paragraph collectively called "People") as a result of the Project. If displacement of People does occur as a result of the Project, the Borrower shall comply with the requirements of 24 C.F.R. Section 92.353, with respect to, among other things, temporary and permanent relocation of displaced People. The Borrower shall provide or cause all "displaced persons" (as defined in 24 C.F.R. Section 92.353(c)(2)) to be provided with relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), 42 U.S.C. Section 4201-4655, and 49 C.F.R. Part 24, and shall cause all such "displaced persons" to be advised of their rights under the Fair Housing Act. 40 U.S.C. Section 3601 et seq. [§92.353]

2.25 The acquisition of the real property on which the Project is located is subject to the requirements of the URA and the requirements of 49 C.F.R. Part 24, Subpart B. [§92.353(f)]

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2.26 The Project shall constitute HUD-associated housing Based Paint Poisoning Prevention Act (42 U.S.C. Section 4821 *et seq.*), and comply with the requirements thereof, and of 40 C.F.R. Part 745, Subpart E, and of 24 C.F.R. Part 35 and 24 C.F.R. Section 982.401(j) (except Section 982.401(j)(1)(i)), including without limitation the requirements of notice to tenants, prohibition of the use of lead-based paint and for the elimination of the hazards of lead-based paint. Any lead-based paint and defective paint debris shall be disposed of in accordance with applicable federal, State or local requirements. [§92.355]

2.27 The Borrower has not executed and shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

2.28 The Borrower shall, at all times during the Project Term, comply with the property standards provisions of Section 92.251 of the HOME Regulations to the satisfaction of the City in its sole discretion, including without limitation, the installation of permanent broadband infrastructure that meets the definition of "advanced telecommunications capability." Throughout the Project Term, all of the units in the Project shall be suitable for occupancy and the Borrower shall keep the Project in compliance with (a) the Multi-Unit Rehabilitation Construction Guidelines of DOH, (b) the accessibility requirements at 24 C.F.R. Part 8 which implement Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, (c) the design and construction requirements at 24 C.F.R. §100.205 which implement the Fair Housing Act, 42 U.S.C. §§3601-19, (d) the lead based paint disclosure requirements at 24 C.F.R. Part 35 which implement the Lead Based Paint Hazard Reduction Act of 1992, U.S.C. §4852d, (ee) the NSP Legal Requirements, (f) the Redevelopment Agreement, (g) the Drawings, (h) the HUD Quality Standards (24 CFR, Subtitle B, Chapter IX, Part 982, Subpart I), (i) all applicable local codes, including but not limited to the City of Chicago Building Code, rehabilitation standards, ordinances and zoning ordinances, and all applicable Laws.

2.29 Intentionally Omitted.

2.30 The Borrower shall fully comply with the provisions regarding fraud-based activities in Section 92.257 of the HOME Regulations to the satisfaction of the City in its sole discretion. [§92.257]

2.31 (a) No person who is an employee, agent, consultant, officer or elected or appointed official of the City (and no person who was an employee, agent, consultant, officer or elected or appointed official within one year prior to the date hereof) and who exercises or has exercised any functions or responsibilities with respect to activities assisted with Program Funds or who is or was in a position to participate in a decision-making process or gain inside information with regard to such activities, has obtained, is obtaining or will obtain a financial interest or financial benefit from the Project, or has or will have any interest in any contract, subcontract or agreement with respect to the Project, or the proceeds thereunder, either for themselves or for those with whom they have business or immediate family ties. Immediate

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family ties include (whether by blood, marriage or adoption) the spouse (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(b) No individual who is an officer, employee, agent, consultant or elected or appointed official of the Borrower shall occupy a residential unit in the Project, unless otherwise permitted by Section 92.356 of the HOME Regulations, as determined by the City in its sole discretion.

2.32 Except as otherwise disclosed to the City in writing, all of the statements, representations and warranties of the Borrower submitted by the Borrower to the City in connection with the Project remain true and in effect as of the date hereof.

2.33 The Borrower agrees that it will pay any reasonable fee which the City may hereafter assess in its sole discretion to underwrite the costs of monitoring activities performed by the City in connection with the Project. The Borrower further agrees that it shall not impose any fee prohibited by Section 92.214(b) of the HOME Regulations, as determined by the City in its sole discretion, including, but not limited to fees to Low-Income Families for construction management or for inspections for compliance with property standards. Nothing in this Section shall prohibit the Borrower from charging (i) prospective tenants reasonable applications fees (as determined by the City in its sole discretion), (ii) parking fees, but only if such fees are customary for rental housing projects in the neighborhood (as determined by the City in its sole discretion), and/or (iii) fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged solely for services provided and are approved by the City in its sole discretion. [§92.214(b)]

2.34 No individual providing consultant services in an employer-employee type relationship with the Borrower shall be compensated in excess of the limits specified in 24 C.F.R. Section 92.358.

2.35 Additional representations and covenants of the Borrower contained on Exhibit B hereto and the VAWA Requirements of Exhibit D hereto are hereby incorporated herein by reference.

2.36 The City and Borrower agree that this Regulatory Agreement supersedes and replaces that certain Regulatory Agreement entered into as of September 7, 2011 by and between the City, DOH, Mercy, and MPS, as amended and restated from time to time, without the loss of priority.

**SECTION 3 INTENTIONALLY OMITTED.**

**SECTION 4 RELIANCE.**

The City and the Borrower hereby recognize and agree that the representations and covenants set forth herein made by the City and the Borrower, respectively, may be relied upon by the Borrower and the City, respectively. In performing its duties and obligations hereunder,

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the City may rely upon statements and certificates of the Borrower. Families and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the City may consult with counsel and the opinion of such counsel shall be evidence that such action or failure to act by the City was in good faith and in conformity with such opinion. The City and the Borrower agree that it is the Borrower's responsibility to determine that each potential tenant in the Low-Income Project qualifies as a Very Low-Income Family, and that in making each such determination, the Borrower shall exercise due diligence.

## SECTION 5 SALE OR TRANSFER OF THE PROJECT.

The Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (including, without limitation, a transfer by assignment of any beneficial interest under a land trust), or to violate any provision of the Mortgage relating to prohibitions on sales or transfers of the Project or any interest therein (whether or not the Mortgage remains of record), at any time during the Project Term, except as expressly permitted by the City. The Borrower hereby agrees and covenants that no portion of any building to which this Regulatory Agreement applies shall be transferred to any Person unless all of such building is transferred to such Person. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 5 shall be null, void and without effect, shall cause a reversion of title to the Borrower or any successor or assignee of the Borrower last permitted by the City, and shall be ineffective to relieve the Borrower or such successor or assignee, as applicable, of its obligations hereunder.

## SECTION 6 TERM.

6.1 This Regulatory Agreement is effective as of the date hereof. Subject to Sections 2.15(b), 2.16, 2.17, 6.2 and 15 hereof, this Regulatory Agreement shall remain in full force and effect for a term equal to the Project Term, it being expressly agreed and understood that the provisions hereof are intended to survive throughout the Project Term.

6.2 (a) Subject to the terms of Section 6.2(b) hereof and before the Termination Date, the terms and provisions of this Regulatory Agreement shall cease to be enforceable upon a transfer of title to the Project (i) pursuant to the foreclosure of the Senior Mortgage, if any (or, if the City so elects, of the Mortgage), or (ii) by an instrument in lieu of foreclosure of the Senior Mortgage, if any (or, if the City so elects, of the Mortgage); but only if such transfer (1) recognizes any contractual or legal rights of public agencies, nonprofit sponsors or others to take actions that would avoid termination of low-income affordability of the Project, and (2) is not for the purpose of avoiding low-income affordability restrictions pertaining to the Project, as determined by HUD. Such a transfer of title to the Project is hereinafter referred to as a "Transfer."

(b) If at any time following the occurrence of a Transfer but not later than the Termination Date, the Borrower or any Associated Person obtains an ownership interest in the Project, the terms and provisions of this Regulatory Agreement shall again be enforceable.

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(c) Notwithstanding anything herein to the contrary, the [redacted] and [redacted] Regulatory Agreement shall cease and terminate as of the Termination Date upon a transfer prior to such date of title to the Project (i) pursuant to the foreclosure of the Senior Mortgage, if any (or, if the City so elects, of the Mortgage), or (ii) by an instrument in lieu of foreclosure of the Senior Mortgage, if any (or, if the City so elects, of the Mortgage). If any such transfer enumerated in subsections (i) or (ii) hereof shall occur on or after the Termination Date, the terms and conditions of this Regulatory Agreement shall automatically terminate as of the date of such transfer.

## SECTION 7 ENFORCEMENT.

7.1 If a violation of any of the foregoing representations or covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of 30 days after notice thereof from the City to the Borrower (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Borrower shall have commenced to cure such occurrence or attempt within said 30-day period and shall thereafter continue diligently to effect such cure, then said 30-day period shall be extended to 60 days upon written request from the Borrower to the City thereafter delivered during such 30-day period, and upon further written request from the Borrower to the City delivered during such 60-day period, said 60-day period shall be extended to 90 days; provided further, however, that the City shall not be precluded during any such periods from exercising any remedies hereunder if the City shall receive a request or notice from HUD to do so, or if the City shall determine that the continuation of such uncorrected occurrence or attempt shall result in any liability by the City to HUD), the City and its successors and assigns, without regard to whether the City or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by the Borrower of its obligations hereunder, or may declare an event of default under the Documents and exercise its rights thereunder, including without limitation foreclosure under the Mortgage. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recovery for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time.

7.2 If the Borrower fails to maintain the affordability requirements imposed hereunder, or otherwise takes any action which causes HUD to require repayment of all or any portion of the Loan by the City, the Borrower shall repay, as a recourse obligation of the Borrower, to the City upon demand the full amount of the Loan as an immediate repayment of the Loan.

7.3 All fees, costs and expenses of the City incurred in taking any action pursuant to this Section 7 shall be the sole responsibility of the Borrower.

7.4 The Borrower further specifically acknowledges that the beneficiaries of the Borrower's obligations hereunder cannot be adequately compensated by monetary damages in the event of any breach or violation of any of the foregoing representations or covenants.



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7.5 The Borrower and the City each acknowledge that a primary purpose of requiring the Borrower to comply with the restrictions provided in this Regulatory Agreement is to assure compliance of the Project and the Borrower with the provisions of the National Affordable Housing Act, the HOME Regulations, and the NSP Legal Requirements.

7.6 The City shall provide written notice to the Borrower if the City (a) does not receive from the Borrower an Annual Owner's Certification when due, (b) is not permitted to inspect, as provided in Section 15 hereof, the records maintained by the Borrower pursuant hereto, or (c) discovers by inspection, review or in some other manner that the Project is not in compliance with the provisions of this Regulatory Agreement, of the National Affordable Housing Act, the HOME Regulations, or the NSP Legal Requirements. Subject to Section 6.2 hereof, this Section 7.6 shall survive beyond the Termination Date.

## SECTION 8 RECORDING AND FILING.

The Borrower shall cause this Regulatory Agreement and all amendments, assignments and supplements hereto, to be recorded and filed in the conveyance and real property records of the county in which the Project is located and in such other places as the City may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Borrower shall immediately transmit to the City an executed original of this Regulatory Agreement showing the date and recording number of record.

## SECTION 9 COVENANTS TO RUN WITH THE LAND.

The Borrower hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall, throughout the Project Term, be deemed covenants, reservations and restrictions running with the land to the extent permitted by law, and shall pass to and be binding upon the Borrower's successors in title to the Project throughout the Project Term, subject to Section 6.2 hereof. The Borrower hereby covenants to include the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another Person in order that such transferee has notice of, and is bound by, such restrictions, and to obtain from any transferee the agreement to be bound by and comply with the requirements set forth in this Regulatory Agreement; provided, however, that each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (including, without limitation, any transfer of a beneficial interest in a land trust or a portion thereof) shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. After the end of the Project Term or, in the event that the covenants, reservations and restrictions hereof terminate pursuant to the provisions of Section 6.2(c) hereof, on or after the applicable date of termination described in Section 6.2(c) hereof, the City, upon such termination and upon a written request from the Borrower or the Senior Lender, if any, shall execute and consent to the recording of a release of

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this Regulatory Agreement, at the expense of the party requesting . . .

## SECTION 10 GOVERNING LAW.

This Regulatory Agreement shall be construed in accordance with and governed by the internal laws of the State without regard to its conflict of laws principles, and, where applicable, the laws of the United States of America. In the event of any conflict between this Regulatory Agreement and the NSP Legal Requirements, the National Affordable Housing Act or the HOME Regulations, the NSP Legal Requirements shall control.

## SECTION 11 AMENDMENTS.

This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the county in which the Project is located. The Borrower hereby expressly agrees to enter into all amendments hereto which, in the opinion of the City, are reasonably necessary for maintaining compliance under the NSP Legal Requirements.

## SECTION 12 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 facsimile or telecopy; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested.

IF TO CITY:

City of Chicago  
c/o Department of Housing  
121 North LaSalle Street Room 1000  
Chicago, Illinois 60602  
Attention: Commissioner

WITH COPIES TO:

Department of Finance  
City of Chicago  
121 North LaSalle Street, Suite 700  
Chicago, Illinois 60602  
Attention: Comptroller

and

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

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IF TO BORROWER: As specified on Exhibit B hereto.

Such addresses may be changed by notice to the other parties given in the same manner provided above. 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 any notice, demand or request sent pursuant to clause (d) above shall be deemed received two Business Days following deposit in the mail.

## SECTION 13 SEVERABILITY.

If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

## SECTION 14 COUNTERPARTS.

This Regulatory Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same Regulatory Agreement.

## SECTION 15 RIGHT TO INSPECT.

Subject to Section 6.2 hereof and upon 30 days' prior notice to the Borrower, the Borrower shall permit, and shall cause any management agent for the Project to permit the City, HUD and/or the Comptroller General of the United States to inspect the Project at all reasonable times during the Inspection Period and access thereto shall be permitted for that purpose. At any time during the Inspection Period (but during normal business hours) and as often as the City, HUD and/or the Comptroller General of the United States may deem necessary, the Borrower shall make available to the City, HUD and/or representatives of the Comptroller General of the United States all of its records with respect to matters covered by this Regulatory Agreement. During the Inspection Period, the Borrower shall permit, and shall cause any management agent for the Project to permit the City, HUD and/or representatives of the Comptroller General of the United States to audit, examine and make excerpts or transcripts from such records, and to make copies of records relating to personnel, conditions of employment and other data covered by this Regulatory Agreement.

## SECTION 16 NO THIRD PARTY BENEFITS.

This Regulatory Agreement is made for the sole benefit of the City and the Borrower and their respective successors and assigns and, except as otherwise expressly provided herein, no other party shall have any legal interest of any kind hereunder or by reason of this Regulatory Agreement. Whether or not the City elect to employ any or all of the rights, powers or remedies available to it hereunder, the City shall have no obligation or liability of any kind to any third

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party by reason of this Regulatory Agreement or any of the City's .....  
hereto or otherwise in connection herewith.

## SECTION 17 REFERENCES TO STATUTES, ETC.

All references herein to statutes, regulations, rules, executive orders, ordinances, resolutions or notices or circulars issued by any governmental body shall be deemed to include any and all amendments, supplements and restatements from time to time to or of such statutes, regulations, rules, executive orders, ordinances, resolutions, notices and circulars.

[SIGNATURES APPEAR ON NEXT PAGE]

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IN WITNESS WHEREOF, the City and the Borrower  
Agreement by their duly authorized representatives, all as of the \_\_\_\_\_

**CITY OF CHICAGO**, acting by and through its  
Department of Housing

By: Marisa Novara  
Name: Marisa Novara  
Title: Commissioner

**Tinese Jacqueline Brinson**, an individual  
\_\_\_\_\_

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the City and the Borrower . . . executed this Agreement by their duly authorized representatives, all as of the date first written hereinabove.

**CITY OF CHICAGO**, acting by and through its  
Department of Housing

By: \_\_\_\_\_  
Name: Marisa Novara  
Title: Commissioner

**Tinesse Jacqueline Brinson**, an individual  
Tinesse Jacqueline Brinson

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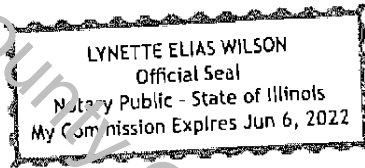
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Marisa Novara, personally known to me to be the Commissioner of the Department of Housing of the City of Chicago, Illinois (the "City") 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 acknowledged that as such Commissioner, he signed and delivered the said instrument pursuant to authority, as his free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of February, 2022.

*Lynette Elias Wilson*  
\_\_\_\_\_  
Notary Public

(SEAL)



# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

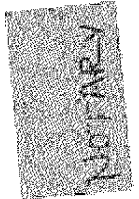
I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Tinese Jacqueline Brinson, individually, (the "Assignee"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me, acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and deed and as the free and voluntary act and deed for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 25<sup>th</sup> day of February, 2022.



*[Signature]*  
\_\_\_\_\_  
Notary Public

(SEAL)



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## EXHIBIT A

Legal Description of Land:

LOT 103 IN BROOKHAVEN, BEING S.E. GROSS SUBDIVISION OF THE SOUTH 23.569 ACRES OF THAT PART OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 7014-16 South Kimbark Road, Chicago, Illinois 60637

PIN: 20-23-419-021-0000

Property of Cook County Clerk's Office