



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
www.chicityclerk.com

## Legislation Text

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City of Chicago Richard M. Daley, Mayor

Gene R. Saffold Chief Financial Officer

Suile 600

33 North LaSalle Street Chicago, Illinois 60602 (312)744-1034 (312)744-0014 (FAX)

<<http://www.cityofchicago.org>>

December 2<sup>o</sup>, 2010

Miguel Del Valle City Clerk

121 North LaSalle Street Room 107

Chicago, Illinois 60602

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RE: \$45,000,000 Recovery Zone Facility Revenue Bonds, SSj (Asphalt Operating Services of Chicago Project)

Dear Mr. Del Valle:

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Attached is the Notification of Sale which is required to be filed with your office pursuant to Section 11 of the ordinance authorizing the issuance of the above-referenced bonds, which was passed by the City Council on May 12, 2010.

Please direct this filing to the City Council.

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NOTIFICATION OF SALE S 'Q

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**\$45,000,000 zj-Jj <sup>TM</sup> g**

**CITY OF CHICAGO -<£ no**

RECOVERY ZONE FACILITY REVENUE BONDS, SERIES 201 Opo ~ 2m

(ASPHALT OPERATING SERVICES OF CHICAGO PROJECT) 5"^\ ^ \*"

To: The City Council of the City of Chicago w ^

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Please be advised that responsive to authority contained in the Bond Ordinance adopted by the City Council (the "Ciyy Council ") of the City of Chicago (the "City") on May 12, 2010 (the "Ordinance"), providing for the issuance of the \$45,000,000 City of Chicago Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) (the "Bonds") each of the following documents was entered into by me as Chief Financial Officer on behalf of the City: (i) a Loan Agreement dated as of December 1, 2010 (the "Loan Agreement") between the City and Asphalt Operating Services of Chicago, LLC (the "Borrower"), (ii) an Indenture of Trust dated as of December 1, 2010 (the "Indenture") between the City and Amalgamated Bank of Chicago (the "Trustee"), and (iii) a Bond Purchase Agreement dated December 10, 2010 (the "Purchase

Agreement') providing for the sale of the Bonds at an aggregate purchase price of \$44,550,000 among the City, the Borrower and William Blair & Company LLC, as representative of the Underwriters named therein. Capitalized terms defined in the Ordinance are used with the same meanings herein.

The Ordinance provided that the Bonds may be issued in an aggregate principal amount of \$45,000,000, mature on such dates (not later than December 1, 2018) and in such principal amounts, bear interest from their dates on the unpaid principal amount thereof at an interest rate per annum (not to exceed 8%), be subject to redemption prior to maturity, and be subject to purchase on such terms as are set forth in the form of Indenture. The Ordinance authorized the Chief Financial Officer to execute and deliver a Bond Purchase Agreement (which Purchase Agreement is to be in substantially similar form as other bond purchase agreements executed by the City in transactions similar to the Bonds) and provided the aggregate purchase price of the Bonds shall be not less than 98% of their original purchase amount (less any net original issue discount used in their marketing). William Blair & Company, L.L.C. acted as Representative of the Underwriters for the Bonds. The Bonds were sold to the Underwriters at a purchase price of \$44,550,000, which reflected an Underwriter's discount of \$450,000 and was not less than 98% of the principal amount thereof. The Bonds mature on December 1, 2018 and are subject to redemption and prepayment, respectively, as set forth in Appendix A and as provided in the Indenture.

Attached hereto as Exhibit A is a copy of the Loan Agreement.

Attached hereto as Exhibit B is a copy of the Indenture.

Attached hereto as Exhibit C is a copy of the Bond Purchase Agreement

Attached hereto as Exhibit D is a copy of the Limited Offering Memorandum.

Respectfully submitted this 17<sup>th</sup> day of December 2010.

Chief Financial Officer

#### **ACKNOWLEDGEMENT OF FILING**

The Notification of Sale of the \$45,000,000 City of Chicago Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) was filed in the Office of the City Clerk of the City of Chicago this 17<sup>th</sup> day of December 2010.

City Clerk

[SEAL]

v.

#### **APPENDIX A**

##### **TERMS OF BOND**

Re: City of Chicago Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project)

The Bond is dated December 17, 2010, matures December 1, 2018, is in the principal amount of \$45,000,000 and is subject to redemption and purchase as described in the Indenture.

#### **EXHIBIT A**

Execution Copy

LOAN AGREEMENT between

CITY OF CHICAGO, ILLINOIS and

ASPHALT OPERATING SERVICES OF CHICAGO, LLC Dated as of December 1, 2010

\$45,000,000 City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project)

CHI2\_2261871.16

#### **TABLE OF CONTENTS**

Page

ARTICLE I DEFINITIONS AND EXHIBITS.....2

Section 1.1. Definitions.....	2
Section 1.2. Exhibits.....	9
ARTICLE II REPRESENTATIONS AND COVENANTS.....	10
Section 2.1. Representations and Covenants of Issuer.....	10
Section 2.2. Representations and Covenants of Borrower.....	11
Section 2.3. Covenants relating to Municipal Code of Chicago.....	14
Section 2.4. Bond Counsel May Rely on Representations and Warranties.....	17
ARTICLE III DESIGN, CONSTRUCTION AND EQUIPPING OF PROJECT.....	18
Section 3.1. Agreement to Design, Construct and Equip Project.....	18
Section 3.2. Agreement to Issue Bonds; Application of Bond Proceeds.....	18
Section 3.3. Disbursements from Project Fund.....	18
Section 3.4. Establishment of Completion Date.....	20
Section 3.5. Obligation of Parties to Cooperate in Furnishing Documents; Trustee Reliance.....	20
Section 3.6. Borrower Required to Pay Costs in Event Project Fund Insufficient.....	20
Section 3.7. Remedies to be Pursued against Contractors and Subcontractors and their Sureties.....	21
ARTICLE IV PAYMENT OBLIGATIONS OF BORROWER.....	21
Section 4.1. Payment Obligations of Borrower; Pledge of Revenues.....	21
Section 4.2. Payment of the Loan.....	21
Section 4.3. Administrative Expenses.....	21
Section 4.4. Debt Service Reserve Fund.....	22
Section 4.5. Rebate Fund.....	22
Section 4.6. Income Tax Reserve Account.....	22
Section 4.7. Operating Reserve Account.....	23
Section 4.8. Priority of Funds and Accounts.....	23
Section 4.9. Obligations of Borrower Hereunder Unconditional; Certain . Payments Assigned.....	23
ARTICLE V CONCERNING THE PROJECT.....	24
Section 5.1. Operation of Project.....	24
Section 5.2. Modification of Project.....	24
Section 5.3. Removal of Equipment.....	25
Section 5.4. No Warranty by Issuer.....	26
Section 5.5. Transfer of Project.....	26
ARTICLE VI ADDITIONAL INDEBTEDNESS.....	27
Section 6.1. Additional Indebtedness.....	27
Section 6.2. Permitted Indebtedness.....	27
CHI2 2261871.16	
i	
ARTICLE VII TAXES AND INSURANCE.....	27
Section 7.1. Taxes, Other Governmental Charges and Utility Charges.....	27
Section 7.2. Insurance Required.....	28
Section 7.3. Application of Net Proceeds of Insurance.....	30
Section 7.4. Insurance Awards.....	30
Section 7.5. Condemnation and Title Defects.....	31
ARTICLE VIII SPECIAL COVENANTS.....	33
Section 8.1. Business Operations.....	33
Section 8.2. Compliance with Tax Agreement.....	33

Section 8.3. Access to Project.....	33
Section 8.4. Release and Indemnification Covenants.....	33
Section 8.5. Tax-Exempt Status of Bonds.....	34
Section 8.6. Borrower to Maintain Existence; Consolidation or Merger; Single Purpose Entity.....	35
Section 8.7. Financial Statements.....	35
Section 8.8. Annual Certificate.....	36
Section 8.9. Recording and Maintenance of Liens.....	37
Section 8.10. No Liens.....	37
Section 8.11. Creation, Perfection and Priority of Security Interest.....	37
Section 8.12. Other Borrower Covenants.....	38
Section 8.13. Terminalling Agreements; Terminalling Agreement Assignments.....	38
ARTICLE IX ASSIGNMENTS AND AMENDMENTS.....	39
Section 9.1. Assignment.....	39
Section 9.2. Amendment of Agreement.....	39
ARTICLE X EVENTS OF DEFAULT AND REMEDIES.....	39
Section 10.1. Events of Default Defined.....	39
Section 10.2. Remedies on Default.....	39
Section 10.3. No Remedy Exclusive.....	40
Section 10.4. Agreement to Pay Attorneys' Fees and Expenses.....	40
Section 10.5. Waivers; No Additional Waiver Implied by One Waiver.....	40
Section 10.6. Trustee to Exercise Issuer's Rights.....	41
Section 10.7. Notice of Default; Opportunity to Cure Defaults.....	41
ARTICLE XI PREPAYMENTS.....	41
Section 11.1. Option to Prepay Upon Occurrence of Certain Events.....	41
Section 11.2. Option to Prepay in Connection with Optional Redemption of Bonds.....	42
Section 11.3. Miscellaneous Provisions Governing Prepayments.....	42
ARTICLE XII MISCELLANEOUS PROVISIONS.....	43
Section 12.1. Notices.....	43
Section 12.2. Binding Effect.....	44
Section 12.3. Severability.....	44
Section 12.4. Further Assurances and Corrective Instruments.....	44
Section 12.5. Execution in Counterparts.....	44
Section 12.6. Applicable Law.....	44
Section 12.7. Borrower and Issuer Representatives.....	44
Section 12.8. Captions.....	44
Section 12.9. Limited Obligation of Issuer.....	45
Section 12.10. No Recourse Against the Issuer.....	45
Section 12.11. Indemnification of and Fees and Expenses of the Issuer and the Trustee.....	45
Section 12.12. Indenture Provisions.....	45
Section 12.13. Default by Issuer; Limited Liability.....	46
EXHIBIT A FORM OF MORTGAGE, SECURITY AND PLEDGE AGREEMENT	

iii

CHI2 2261871.16

## LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of December 1, 2010, between the City of Chicago, Illinois, a municipal corporation and home rule unit of local government organized and existing under the laws of the State of Illinois (the "Issuer"), and Asphalt Operating Services of Chicago, LLC, an Illinois limited liability company (the "Borrower"),

WITNESSETH:

WHEREAS, pursuant to the powers of the Issuer under the provisions of the Constitution of the State of Illinois, the provisions of the Industrial Project Revenue Bond Act, 65 Illinois Compiled Statutes 5/11-74, as amended (the "Act") and an Ordinance duly adopted by the City Council of the Issuer (the "Ordinance"), the Issuer is authorized to provide financing and refinancing for certain "industrial projects," as defined in the Act, located within the State of Illinois;

WHEREAS, the Issuer is further authorized by the Act to issue its revenue bonds, payable solely and only from the revenues and receipts to be derived by the Issuer from the financing of such industrial projects, to provide funds to pay in whole or in part the costs of financing or refinancing the acquisition, construction and equipping of such industrial projects;

WHEREAS, pursuant to an ordinance adopted by the City Council of the City on November 18, 2009, the City has declared that the entire City constitutes a "recovery zone" within the meaning of Section 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended, and thus the Project is in a "recovery zone" as defined therein;

WHEREAS, the Borrower has requested the City to issue its recovery zone facility revenue bonds to finance or reimburse the Borrower for certain permitted costs in connection with the design, construction and equipping of a liquid asphalt through-put facility including an office building and lab, maintenance and boiler building and a truck scale building totaling approximately 12,300 square feet, 5 storage tanks, stream blenders, a barge unloading station, truck and rail loading positions and other ancillary structures and related site improvements (the "Project"), which Project is to be owned and operated by the Borrower and located at 2835 East 106th Street, which is the southeast corner of 106<sup>th</sup> Street and Torrence Avenue, in Chicago, Illinois, which is within a recovery zone, and the City is authorized to do so,;

WHEREAS, pursuant to and in accordance with the provisions of the Act and the Ordinance, the Issuer has authorized \$45,000,000 aggregate principal amount of its Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) (the "Series 2010 Bonds") to finance, together with other funds of the Borrower (i) all or a portion of the costs of the Project, (ii) a deposit into the Debt Service Reserve Fund (as hereinafter defined), (iii) capitalized interest on the Series 2010 Bonds and (iv) all or a portion of the costs of issuance of the Series 2010 Bonds;

WHEREAS, the Borrower has agreed to make payments pursuant to this Agreement sufficient in the aggregate to pay when due the principal of, premium, if any, and interest on the Series 2010 Bonds, and related expenses; CHI2 2261871.16

WHEREAS, the Borrower has made the necessary arrangements for the Project, and by this Agreement the Issuer and the Borrower have further specified the terms and conditions of the design, construction and equipping of the Project and the financing of the same by the Issuer;

WHEREAS, the execution and delivery of this Agreement and that certain Indenture of Trust, dated as of December 1, 2010 (the "Indenture"), between the Issuer and Amalgamated Bank of Chicago, as Trustee (the "Trustee"), and the issuance of the Series 2010 Bonds, have been in all respects duly and validly authorized by an ordinance of the Issuer, duly adopted and approved; and

WHEREAS, the Issuer and the Borrower desire to enter into this Agreement to set forth the terms and conditions upon which the Issuer will make the loan of the proceeds received from the sale of the Series 2010 Bonds for the purpose of financing the design, construction and equipping of the Project;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby

acknowledged, the parties hereto agree as follows:

## **ARTICLE I DEFINITIONS AND EXHIBITS**

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified. Any capitalized term used but not defined herein shall bear the meaning ascribed to that term in the Indenture.

"Accountant" or "Accountants" shall mean a firm of recognized independent certified public accountants selected by the Borrower.

"Act of Bankruptcy" shall mean the dissolution or liquidation of the Borrower (except in accordance with Section 8.6), or the filing of a voluntary petition in bankruptcy by the Borrower, or the consent by the Borrower to the filing of a bankruptcy petition against the Borrower, or the failure by the Borrower promptly to institute judicial proceedings to lift any execution, garnishment or attachment of such consequence as will materially impair its ability to carry on its operations, or the filing of a petition by or against (which is not dismissed within 90 days of filing) the Borrower under the Federal Bankruptcy Code (11 USC 101, et seq.), or the adjudication of the Borrower as a bankrupt, or any assignment by the Borrower for the benefit of its creditors, or the application for, or consent to, the appointment of any receiver, trustee, custodian or similar officer by the Borrower, or the entry by the Borrower into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Borrower in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Code, or under any similar act which may hereafter be enacted; provided, however, that no involuntary petition in bankruptcy, or appointment of a trustee, custodian or receiver, without the consent of the Borrower, shall constitute an Act of Bankruptcy until 90 days shall have elapsed from the date of filing thereof, during which time the Borrower has been unable to obtain the dismissal of the petition.

CHI2 2261871.16

"Additional Bonds" shall mean bonds that may be issued pursuant to Section 2.10 of the Indenture.

"Additional Indebtedness" shall mean Indebtedness (other than Indebtedness evidenced by Additional Bonds or by the Permitted Indebtedness) incurred by the Borrower subsequent to the issuance of the Series 2010 Bonds.

"Affiliate" shall mean a corporation, partnership, limited liability company, joint venture, association, business trust or similar entity (a) which controls, is controlled by or is under common control with, directly or indirectly, the Borrower; or (b) a majority of the shareholders, partners, owners or members of the Directing Body of which are shareholders, partners, owners or members of the Directing Body of the Borrower. For the purposes of this definition, control means with respect to: (a) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation; (b) a not for profit corporation not having stock, having the power to elect or appoint, directly or indirectly, a majority of the members of the Directing Body of such corporation; or (c) any other entity, including, without limitation, a limited liability company, the power to direct the management of such entity through the ownership of at least a majority of its voting securities or the right to designate or elect at least a majority of the members of its Directing Body, by contract or otherwise. For the purposes of this definition, "Directing Body" means with respect to: (a) a corporation having stock, such corporation's board of directors and the owners, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporation's directors (both of which groups shall be considered a Directing Body); (b) a not for profit corporation not having stock, such corporation's members if the members have complete discretion to elect the corporation's directors, or the corporation's directors if the corporation's members do not have such discretion; and (c) any other entity, including, without limitation, a limited liability company, its governing board or body or officers, including without limitation, a manager. For the purposes of this definition, all references to directors and members shall be deemed to include all entities performing the function of directors or members however denominated.

"Agreement" shall mean this Loan Agreement, including all amendments or restatements hereof or supplements hereto.

"Asphalt Terminalling Agreements" or "Terminalling Agreements" means: (i) the Asphalt Terminalling Agreement dated November 12, 2009 between BP Products North America Inc. and the Borrower, as amended; (ii) the Asphalt Terminalling Agreement dated October 8, 2010 between Associated Asphalt Distribution, LLC and the Borrower, as amended; and (iii) the Asphalt Terminalling Agreement dated June 10, 2010 between Suit-Kote Corporation and the Borrower, as amended.

"Assignment" shall mean collectively, the Collateral Assignments and the Terminalling Agreement Assignments.

3

CHI2\_2261871.16

"Bond Ordinance" shall mean the Ordinance adopted by the City Council of the Issuer on May 12, 2010, authorizing the issuance, delivery and sale of the Series 2010 Bonds.

"Bond Purchase Agreement" means the Bond Purchase Agreement dated December 10, 2010 among the Issuer, the Underwriter and the Borrower relating to the Series 2010 Bonds.

"Bond Year" means the initial period beginning on the date of issuance of the Series 2010 Bonds and ending on November 30, 2011, and thereafter each one year period beginning on each December 1 and ending on the following November 30 or if earlier the date on which all Outstanding Bonds are retired.

"Borrower Agreements" shall mean this Agreement, the Bond Purchase Agreement, the Mortgage, the Assignment and the Tax Agreement.

"Borrower Representative" shall mean the Person(s) designated by the Borrower to act on behalf of the Borrower pursuant to a written instrument filed with the Trustee and the Issuer containing the specimen signature of such Person(s). Such instrument may designate an alternate or alternates. The Borrower may remove any Person as a Borrower Representative by directing a different Borrower Representative to file a written instrument to such effect with the Trustee and the Issuer.

"Budget" has the meaning set forth in Section 8.7(c) of this Loan Agreement.

"Closing Date" means December 17, 2010, the date of issuance of the Series 2010 Bonds.

"Collateral Assignments" means: (i) the Collateral Assignment dated the Closing Date pursuant to which the Borrower has assigned its rights under that certain Design-Build Construction Agreement dated October 15, 2010 as amended between Borrower and ECF, Inc. ("ECF") in favor of the Trustee; (ii) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement Between Design-Builder and Contractor [Civil] between ECF and Carlson Constructors Corp. dated October 15, 2010 as amended, in favor of the Trustee; (iii) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement Between Design-Builder and Contractor [Mechanical] between ECF and Carlson Constructors Corp. dated October 15, 2010 as amended, in favor of the Trustee; (iv) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement Between Design-Builder and Contractor between ECF and CBI Services, Inc. dated October, 2010 as amended, in favor of the Trustee; (v) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement Between Design-Builder and Contractor between ECF and RailWorks Track Services, Inc. dated November 1, 2010 as amended, in favor of the Trustee; (vi) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement Between Design-Builder and Contractor between ECF and Raffin Construction Co. dated November 22, 2010 as amended, in favor of the Trustee and each of the Terminalling Agreement Assignments; and (vii) the Collateral Assignment of Management Agreement dated the Closing Date in favor of the Trustee.

CHI2 2261871.16

4

"Completion Date" shall mean the date of completion of the acquisition, construction and equipping of the

Project, as that date shall be certified as provided in Section 3.4 hereof.

"Construction Period" shall mean the period between the beginning of acquisition, construction, renovation and equipping of the Project, or the date on which Series 2010 Bonds are first delivered to the purchasers thereof, whichever is earlier, and the Completion Date.

"Costs of the Project" shall mean any costs incurred with respect to the Project as described in Section 3.3 hereof.

"Debt Service" shall mean the principal and interest payments required to be made pursuant to the Indenture with respect to the Series 2010 Bonds and any Additional Bonds.

"Debt Service Coverage Ratio" shall mean as of the date of determination, the ratio of (x) actual Revenues minus Operating Expenses for the prior twelve month period, to (y) the maximum amount of principal and interest coming due on the Bonds for the prior twelve month period.

"Equipment" shall mean those building and operating items of machinery, storage tanks, equipment, furnishings and other personal Project required or permitted herein to be acquired and installed in the Project with a portion of the proceeds from the sale of the Bonds and any other building and operating items of machinery and equipment acquired by the Borrower and installed in the Project, unless otherwise provided for herein. All Equipment shall be deemed to be part of the Project.

"Fiscal Year" shall mean any 12-month period beginning on January 1 of any calendar year and ending on December 31 of the same calendar year or such other consecutive 12-month period selected by the Borrower as the Fiscal Year for the Borrower.

"Indebtedness" shall mean (a) all guaranties by the Borrower (b) all liabilities, including capitalized lease obligations (exclusive of deferred revenue and reserves such as those established for deferred taxes or litigation), recorded or required to be recorded as such on the audited financial statements of the Borrower in accordance with generally accepted accounting principles and (c) all obligations incurred or assumed by the Borrower for the repayment of borrowed money (other than deposits held in segregated funds or accounts).

"Indemnified Party" shall have the respective meanings set forth in Section 8.4(a) and Section 8.4(b) hereof.

"Independent Consultant" shall mean a certified public accounting firm, investment banking or management consulting firm selected by the Borrower and acceptable to the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, having the skill and experience necessary to render the particular report required and having a favorable and nationally recognized reputation for such skill and experience, which firm shall have no interest, direct or indirect, in the Borrower and shall not have a partner, member, director, officer or employee who is a partner, member, director, officer or employee of the Borrower, it being understood that an arm's-length contract between such firm and the Borrower for the

CHI2 2261871.16

## 5

performance of accounting, investment banking or management services shall not in and of itself be regarded as creating an interest in or an employee relationship with the Borrower.

"Independent Counsel" shall mean an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office, who is not a full-time employee of the Trustee, the Issuer or the Borrower.

"Insurance Consultant" shall mean a firm specializing or experienced in providing insurance consulting services selected by the Borrower and acceptable to the Trustee, having the skill and experience necessary to render the particular report required and having a favorable and nationally recognized reputation for such skill and experience, which firm shall have no interest, direct or indirect, in the Borrower and shall not have a partner, member, director, officer or employee who is a partner, member, director, officer or employee of the Borrower, it being understood that an arm's-length contract between such firm and the Borrower for the performance of accounting or management services shall not in and of itself be regarded as creating an interest in or an employee relationship with the Borrower.

"Issuer Agreements" shall mean this Agreement, the Bond Purchase Agreement, the Indenture and the Tax



Agreement.

"Issuer Representative" shall mean the Mayor, the Chief Financial Officer or the City Comptroller of the City of Chicago, Illinois or any other Person designated by the Issuer to act on behalf of the Issuer pursuant to a written instrument filed with the Trustee and the Borrower containing the specimen signature of such Person. Such instrument may designate an alternate or alternates.

"Mortgage" shall mean the Mortgage and Security Agreement dated the Closing Date, relating to the Project, together with all modifications and exhibits, securing the obligations of the Borrower under this Agreement.

"Mortgage and Title Requirements" shall mean an ALTA form loan policy of title insurance issued to the Trustee in the amount of the purchase price of the applicable Project insuring the Mortgage as a first priority mortgage lien against the applicable Project subject only to the standard exceptions and exclusions contained in the policy and those schedule B exceptions which constitute Permitted Encumbrances.

"Operating Expenses" shall mean budgeted and customary operating expenses (other than depreciation, amortization, interest expense and taxes) of the Borrower in relation to the Project for the relevant period, determined in accordance with generally accepted accounting principles consistently applied as regularly described in the Borrower's financial statements for such period.

"Permitted Encumbrances" shall mean the following:

(a) the Mortgage and any other lien securing the obligations of the Borrower to the Issuer under this Agreement;

CHI2 2261871.16

6

(b) with the consent of the owners of a majority in aggregate principal amount of the Bonds, any mortgage or any other lien securing the obligations of the Borrower with respect to any construction financing obtained to finance the Project subsequent to the issuance of the Series 2010 Bonds which the Borrower intends to refinance with Additional Bond proceeds, which mortgage or other lien may have a first priority mortgage lien above the Mortgage against the portion of the Project being financed until such time as the Borrower has paid and satisfied its obligations with respect to such construction financing, at which time the Mortgage shall constitute a first priority mortgage lien against the Project;

(c) liens arising by reason of good faith deposits with the Borrower in connection with tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), utility deposits, deposits made by the Borrower to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges; any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Borrower to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, pensions or profit sharing plans or other social security plans or programs, or to share in the privileges or benefits required for corporations participating in such arrangements;

(d) with the consent of the owners of a majority in aggregate principal amount of the Bonds, any lien on Project if such lien (i) equally and ratably secures the Series 2010 Bonds, any Additional Bonds and any Additional Indebtedness incurred by the Borrower or (ii) secures the repayment of any Permitted Indebtedness or Additional Indebtedness or (iii) secures any Operating Financing as described in clause (iii) of the definition of Permitted Indebtedness;

(e) leases, licenses or similar rights granted by the Borrower to third parties which (1) relate to the Project and is of a type that is customarily the subject of such leases and which the Borrower enters into in the ordinary course of business, including, without limitation the Asphalt Terminalling Agreements or (2) are entered into in accordance with the provisions of this Agreement relating to the disposition of the Project, or any portion thereof (and, in each case, any renewals and extensions thereof);

- (f) liens for taxes and special assessments which are not then delinquent, or if then delinquent, are being contested diligently and in good faith by the Borrower;
- (g) utility, access and other easements and rights-of-way, restrictions, encumbrances and exceptions which do not materially interfere with or materially impair the operation of the Project affected thereby (or, if such Project is not being then operated, the operation for which it was designed or last modified);
- (h) any statutory or common law liens, including mechanic's, laborer's, materialman's, supplier's, carriers, environmental or vendor's lien or right in respect thereof if

CHI2 2261871.16

7

payment is not yet due under the contract in question or if such lien is being contested diligently and in good faith by the Borrower;

- (i) such liens, defects, irregularities of title and encroachments on adjoining property as normally exist with respect to property similar in character to the Project and which do not materially adversely affect the value of, or materially impair, the Project as affected thereby for the purpose for which it was acquired or is held by the owner thereof, including without limitation statutory liens granted to banks or other financial institutions, which liens have not been specifically granted to secure Indebtedness and which do not apply to the Project which has been deposited as part of a plan to secure Indebtedness;
- (j) zoning laws and similar restrictions which are not violated by the Project affected thereby;
- (k) all right, title and interest of the state where the Properties are located, and all right, title and interest of municipalities and the public in and to tunnels, bridges and passageways over, under or upon a public way;
- (l) liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Borrower shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall be in existence;
- (m) any security interest in any depreciation reserve, debt service or interest reserve, debt service fund or any similar fund established pursuant to the terms of any indenture or loan document with respect to Indebtedness of the Borrower;
- (n) such liens, covenants, conditions and restrictions, if any, which are set forth in the Title Policy issued on the Closing Date to the Trustee;
- (o) first lien purchase money security interests to finance tanks or personal property being acquired with proceeds of Permitted Indebtedness permitted under this Loan Agreement provided such security interests do not grant liens on the Revenues; and
- (p) terms and provisions of Consent Order entered in proceeding had in Case No. 96 CH 14146, evidence by instrument recorded June 6, 1997 as Document 97404691.

"Permitted Indebtedness" shall mean indebtedness of the Borrower relating to (i) financing for furniture, electronic technology, computer equipment, software and any other equipment relating to the operation of the Project; (ii) any construction financing obtained to finance the Project subsequent to the issuance of the Series 2010 Bonds and (iii) financing for operations of the Project, including without limitation, lines of credit and similar loans and arrangements ("Operating Financing");

"Project" has the meaning set forth in the recitals.

"Qualified Costs" means that portion of the Costs of the Project which are used for purposes consistent with the provisions of the Tax Agreement and will not cause any of the

8

CHI2 2261871.16

representations or certifications contained in the Tax Agreement to be untrue or result in a violation of any covenant in the Tax Agreement.

"Revenues" means (a) all revenues, rentals, third-party payments, receipts, contributions or other income of the Borrower and the Project, including the rights to receive such revenues, all as calculated in accordance with

sound accounting practices, including, without limitation, proceeds derived from insurance, condemnation awards, accounts, contract rights and other rights and assets, whether now or hereafter owned, held or possessed by the Borrower and including all investment income; and (b) all grants (including, but not limited to, grants from State and local agencies), contributions (including income and profits therefrom) to the extent not restricted to any specific purpose or purposes which would not permit their use for any of the payments required hereunder and (c) capital contributions and capital infusions, including from any Affiliate.

"State" shall mean the State of Illinois.

"Surplus Project Fund Moneys" shall have the meaning assigned to such term in Section 3.3(b) hereof.

"Terminalling Agreement Assignments" means: (i) the Collateral Assignment dated the Closing Date pursuant to which the Borrower has assigned its rights under that certain Asphalt Terminalling Agreement dated November 12, 2009 between BP Products North America Inc. and the Borrower as amended and that certain Guaranty Agreement dated November 18, 2010 by BP Corporation North America Inc. for the benefit of the Borrower in favor of the Trustee; (ii) the Collateral Assignment dated the Closing Date pursuant to which the Borrower has assigned its rights under that certain Asphalt Terminalling Agreement dated October 8, 2010 as amended between Associated Asphalt Distribution, LLC and the Borrower and that certain Guaranty dated October 8, 2010 by Associated Asphalt Partners, LLC for the benefit of the Borrower, in favor of the Trustee; and (iii) the Collateral Assignment dated the Closing Date pursuant to which the Borrower has assigned its rights under that certain Asphalt Terminalling Agreement dated June 10, 2010 as amended between Suit-Kote Corporation and the Borrower, in favor of the Trustee.

"Trustee" shall mean Amalgamated Bank of Chicago, the trustee under that certain Indenture of Trust, dated as of December 1, 2010, between the Issuer and the Trustee.

"Unassigned Rights" shall mean the rights of the Issuer pursuant to Sections 4.3, 8.4, and 10.4 of this Agreement, and the right of the Issuer to receive notices and other documents and to give and withhold consents hereunder (other than an amendment to Exhibit A to this Agreement for which the Issuer has no consent rights) and under the Indenture.

"Underwriter" or "Underwriters" means William Blair & Company, LLC and Estrada Hinojosa & Company, Inc. as Co-Underwriters for the Series 2010 Bonds.

Section 1.2. Exhibits. The following Exhibits are attached to, and by reference made a part of, this Agreement:

Exhibit A - Form of Mortgage

CHI2 2261871.16

9

## ARTICLE II REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of Issuer. The Issuer makes the following representations and covenants as the basis for its undertaking herein contained:

(a) The Issuer is a duly constituted and existing municipality and home rule unit of local government within the meaning of Section 6(a), Article VI of the 1970 Constitution of the State (the "Constitution") and as such may legislate matters which pertain to its government and affairs, including the issuance of the Series 2010 Bonds and the entering into the transactions contemplated by the Issuer Agreements. The Issuer is authorized and empowered by the Ordinance and the laws of the State to carry out its obligations under the Issuer Agreements, and by proper action of its governing body has been duly authorized to issue the Series 2010 Bonds and execute and deliver the Issuer Agreements.

(b) The Issuer has performed all duties, undertaken all acts, made all findings, obtained all approvals, published all notices and held all hearings prerequisite to the adoption of the Ordinance, the issuance, sale and delivery of the Series 2010 Bonds, and the Issuer's execution and delivery of the Issuer Agreements.

(c) The Issuer and the Borrower have agreed that the Issuer will finance the Costs of the Project. As such, the Issuer now proposes to issue its Series 2010 Bonds in the aggregate principal amount of \$45,000,000. The Series 2010 Bonds will be dated, mature, bear interest and be subject to redemption at the times and the redemption prices set forth in the Indenture.

(d) The Series 2010 Bonds are to be issued under and secured by the Indenture, pursuant to which certain of the Issuer's interests in this Agreement, and the revenues and receipts to be derived by the Issuer pursuant to this Agreement, will be pledged and assigned to the Trustee as security for payment of the principal or purchase price of, premium, if any, and interest on the Series 2010 Bonds. The Issuer covenants that it has not and will not pledge or assign its interest in this Agreement, or the revenues and receipts derived pursuant to this Agreement, excepting Unassigned Rights, other than to the Trustee under the Indenture to secure the Series 2010 Bonds.

(e) Neither the Issuer's execution and delivery of the Issuer Agreements, the Issuer's consummation of the transactions contemplated on its part thereby, nor the Issuer's fulfillment of or compliance with the terms and conditions of the Issuer Agreements conflicts with or results in a breach of the terms, conditions or provisions of any material restriction, agreement or instrument to which the Issuer is a party, or by which it or any of its Project is bound, or constitutes a default under any of the foregoing.

(f) The Issuer will not purchase any of the Series 2010 Bonds.

(g) In connection with the Series 2010 Bonds, the Issuer shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected thereby. The Issuer will execute such instruments as may be necessary in connection with such filing or recording.

10

CHI2 2261871.16

(h) The execution and delivery by the Issuer of the Indenture, the Bond Purchase Agreement, the Tax Agreement, the Series 2010 Bonds and this Agreement, and the performance by the Issuer of its obligations hereunder and thereunder are within the purposes, power and authority of the Issuer, and comply with the Constitution and laws of the State. The Issuer Agreements are legal, valid and binding limited obligations of the Issuer except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization, or other laws affecting the enforcement of creditors' rights generally and general principles of equity.

(i) The City Council of the Issuer has approved the Ordinance, and the Ordinance has not been amended, modified or rescinded and is in full force and effect as of the date of the execution and delivery hereof.

Section 2.2. Representations and Covenants of Borrower. The Borrower makes the following representations and covenants as the basis for its undertaking herein contained:

(a) The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, is authorized to do business in, and is in good standing under the laws of, the State, and has full power to execute and deliver the Borrower Agreements.

(b) The execution and delivery of the Borrower Agreements on the Borrower's part have been duly authorized by all necessary corporate action, and neither the Borrower's execution and delivery of the Borrower Agreements, the Borrower's consummation of the transactions contemplated on its part thereby, nor the Borrower's fulfillment of or compliance with the terms and conditions thereof, conflicts with or results in a material breach of the Operating Agreement of the Borrower or any material agreement or instrument to which the Borrower is now a party or by which it or any of its Project is bound, or constitutes a material default (or would constitute a material default with due notice or the passage of time or both) under any of the foregoing, or, except as described herein or as permitted by the Borrower Agreements, results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the Project or assets of the Borrower under the terms of any material instrument or agreement to which the Borrower is now a party or by which it, or any of its Project, is bound.

(c) The Project is comprised of the design, construction and equipping of certain of the Borrower's facilities and building operating equipment for use in the Borrower's trade and business. The Borrower intends to operate and use the completed Project within the City of Chicago which is within a Recovery Zone from the Completion Date to the expiration or earlier termination of the term of this Agreement as provided herein.

(d) No amount shall be withdrawn from the Project Fund except to pay, or to reimburse the Borrower for, any Costs of the Project.

(e) The Borrower will cause the Project to comply upon the Completion Date in all material respects with all applicable rules, regulations, ordinances, resolutions and laws of the Issuer, the State and the federal government.

CHI2 2261871.16

11

(f) The Borrower Agreements have been executed and delivered by duly authorized officers of the Borrower and constitute the legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and the availability of equitable relief. No authorization or approval of any other governmental body or agency not already obtained is required for the execution by the Borrower of the Borrower Agreements or the performance by the Borrower of the transactions contemplated on its part thereby; provided, however, this representation shall not apply to any such authorizations or approvals not required, as of the date hereof, to be obtained by the Borrower in connection with the Project.

(g) The Borrower will comply fully with its covenants and agreements under the Tax Agreement.

(h) The Borrower has good and marketable title to the Project, subject only to Permitted Encumbrances.

(i) The Borrower has complied and will comply, in all material respects, with all of the terms and conditions of this Agreement and the Series 2010 Bonds and the Borrower has not caused and will not cause to occur any "Event of Default" or any event which with the lapse of time or the giving of notice or both would constitute such an "Event of Default."

(j) There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against the Borrower affecting in any material manner whatsoever the right of the Borrower to execute the Borrower Agreements, or the ability of the Borrower to make the payments required hereunder or thereunder or to otherwise comply with its obligations contained herein or therein.

(k) The Project is of the type authorized and permitted by the Code, and the Borrower expects that the Cost of the Project will not be less than \$62,000,000.

(l) The Borrower will not take or permit to be taken any action which would have the effect, directly or indirectly, of subjecting interest on any of the Bonds to federal income taxation.

(m) Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all filing, registration and recording fees incident to any filing, registration or recording required to perfect and protect the lien and security interest granted or assigned to the Trustee under the Indenture, and all expenses incident to the preparation, execution and acknowledgment of any instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Indenture and such instruments of further assurance.

(n) The Borrower shall, through the term of this Agreement and at no expense to the Issuer, promptly comply or cause compliance with all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the Americans with Disabilities Act, the Illinois Accessibility Code, all federal,

12

CHI2 2261871.16

State and local environmental and health and safety laws, rules, regulations and orders applicable to or pertaining to the Project, the Federal Worker Adjustment and Retraining Notification Act and the Prevailing Wage Act.

(o) The Borrower warrants and represents to the Issuer that neither the Borrower, the Managing Member, the Owner, if any, nor any Affiliate of the Borrower, the Managing Member and/or the Owner, if any, 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 Issuer 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.

(p) The Borrower covenants to the Issuer as follows:

(i) No member, official or employee of the Issuer shall have any personal interest, direct or indirect, in the Borrower's business or shall participate in any decision relating to the Borrower's business which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly interested; and

(ii) No former member, official or employee of the Issuer shall, for a period of one year after the termination of the member's, official's or employee's term of office or employment, assist or represent the Borrower in any business transaction involving the Issuer or any of its agencies, if the member, official or employee participated personally and substantially in the subject matter of the transaction during his/her term of office or employment, provided that if the member, official or employee exercised contract management authority with respect to a contract (including any loan from the Issuer), this prohibition shall be permanent as to that contract.

(q) Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the Issuer, 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 any of the Bond Documents, or in connection with the transactions contemplated thereby, shall be grounds for termination of the Loan Documents and the transactions contemplated thereby. The Borrower 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 any of the Borrower Agreements, the Indenture or the transactions contemplated thereby.

(r) The Borrower covenants and agrees to pay, and to contractually obligate and cause each General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "Department"), to all Project employees.

13

CHI2 2261871.16

All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the Issuer's request, the Borrower shall provide the Issuer with copies of all such contracts entered into by the Borrower and each General Contractor to evidence compliance with this paragraph (r).

Section 2.3. Covenants relating to Municipal Code of Chicago.

The Borrower agrees for itself and shall contractually obligate the general contractors to agree that during the Project:

(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 2.3, during the course of the Project, at least the following percentages of the aggregate hard construction costs (as set forth in the Project Budget) shall be expended for contract participation by minority-owned businesses ("MBEs") and by

women-owned businesses ("WBEs"):

(b) For purposes of this Section 2.3 only:

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

(ii) The term "minority-owned business" or "MBE" shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the Issuer's Department of Procurement Services, or otherwise certified by the Issuer'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 Issuer's Department of Procurement Services, or otherwise certified by the Issuer'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 Borrower's MBE/WBE commitment may be achieved in part by the Borrower's status as an

(1) (2)

At least 24 percent by MBEs. At least four percent by WBEs.

14

CHI2 2261871.16

MBE or WBE (but only to the extent of any actual work performed on the Project by the Borrower) 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 Project by the MBE or WBE), by the Borrower utilizing a MBE or a WBE as the general contractors (but only to the extent of any actual work performed on the Project by the general contractors), by subcontracting or causing the general contractors to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Project 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 Borrower's MBE/WBE commitment as described in this Section 2.3. In accordance with Section 2-92-730, Municipal Code of Chicago, the Borrower shall not substitute any MBE or WBE general contractor or subcontractor without the prior written approval of DCD.

(d) The Borrower shall deliver quarterly reports to the Issuer's Department of Community Development ("DCD") during the Project 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 Borrower or the general contractors to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, 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 DCD in determining the Borrower's compliance with this MBE/WBE commitment. The Borrower shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and DCD shall have access to all such records maintained by the Borrower, on five Business Days' notice, to allow the Issuer to review the Borrower's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(e) Upon the disqualification of any MBE or WBE general contractor or subcontractor, if such status was misrepresented by the disqualified party, the Borrower 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 Borrower's MBE/WBE commitment as described in this Section shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

(g) Prior to the commencement of the Project, the Borrower shall be required to meet with the monitoring staff of DCD with regard to the Borrower's compliance with its obligations under this Section 2.3. The general contractors and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Borrower shall demonstrate to DCD its plan to achieve its obligations under this Section 2.3, the sufficiency of which shall be approved by DCD. During the Project, the Borrower shall submit the documentation required by this Section 2.3 to the monitoring staff of DCD. Failure to submit such documentation on a

15

CHI2 2261871.16

timely basis, or a determination by DCD, upon analysis of the documentation, that the Borrower is not complying with its obligations under this Section 2.3, shall, upon the delivery of written notice to the Borrower, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided under any of the Loan Documents, the Issuer may: (1) issue a written demand to the Borrower to halt the Project, or (2) seek any other remedies against the Borrower available at law or in equity.

(h) The Borrower agrees for itself and its successors and assigns, and shall contractually obligate the general contractors and shall cause the general contractors to contractually obligate the subcontractors, as applicable, to agree, that during the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the Issuer as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the Issuer); provided, however, that in addition to complying with this percentage, the Borrower, each general contractor and the subcontractors shall be required to make good faith efforts to utilize qualified residents of the Issuer in both unskilled and skilled labor positions.

The Borrower may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the Issuer (the "Chief Procurement Officer").

"Actual Residents of the Issuer" shall mean persons domiciled within the Issuer. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The Borrower, the general contractors and the subcontractors shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the Project. The Borrower, the general contractors and the subcontractors shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commission of DCD in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

The Borrower, each general contractor and the subcontractors shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DCD, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The Borrower, each general contractor and the subcontractors shall maintain all relevant personnel data and records for a period of at least three years after final acceptance of the work constituting the Project.

CHI2\_2261871.16

16

At the direction of DCD, affidavits and other supporting documentation will be required of the Borrower, each general contractor and the subcontractors to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the Borrower, each general contractor and the subcontractors to provide



utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section 2.3(h) concerning the worker hours performed by actual Chicago residents.

When work at the Project is completed, in the event that the Issuer has determined that the Borrower failed to ensure the fulfillment of the requirement of this Section 2.3(h) concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the Issuer will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of noncompliance, it is agreed that 1/20 of 1 percent, 0.0005, of the aggregate hard construction costs set forth in the Project Budget (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Borrower to the Issuer in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Borrower, each general contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to the Borrower pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the Issuer pending the Chief Procurement Officer's determination whether the Borrower must surrender damages as provided in this paragraph.

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 Loan Agreement or the other Loan Documents.

The Borrower shall cause or require the provisions of this Section 2.3(h) to be included in the Construction Contract and all applicable Subcontracts.

Section 2.4. Bond Counsel May Rely on Representations and Warranties. The Issuer and the Borrower agree that Co-Bond Counsel, shall be entitled to rely upon the factual representations and warranties of the Issuer and the Borrower set forth in this Article II in connection with the delivery of their opinions on the date of issuance of the Bonds.

CHI2 2261871.16

17

### **ARTICLE III**

#### **DESIGN, CONSTRUCTION AND EQUIPPING OF PROJECT**

Section 3.1. Agreement to Design, Construct and Equip Project.

(a) The Borrower shall make all contracts and do all things necessary for the acquisition, construction and equipping of the Project, with or without advertising for bids, and shall complete the Project in accordance with this Agreement and the Tax Agreement. Such completion shall be made substantially in accordance with the plans and specifications, if any, for the Project. Upon written request of the Issuer or the Trustee, the Borrower agrees to make available to the requesting party for review and copying, subject to any required consent, all then current plans and specifications for the Project and the budget for the Project. It is understood, however, that the plans and specifications are the proprietary property of the Borrower, and, thus, the requesting party shall, to the extent permitted by law, keep such information confidential. The Borrower may supplement or amend the description of the Project or the plans and specifications (including additions thereto or omissions therefrom) by written notice furnished to the Issuer and the Trustee. In the event of a supplement or amendment to the description of the Project, the Issuer and the Borrower shall amend the description of the Project set forth in the recitals to this Agreement (without the necessity of obtaining the consent of the Bondholders with respect thereto) to reflect such supplement or amendment. Notwithstanding the above, however, the Borrower shall not have to provide written notice to the Issuer and the Trustee for any supplement or amendment to the plans and

specifications so long as such supplement(s) or amendment(s) do(es) not increase or decrease the budget for the Project by more than five (5%) percent thereof.

(b) The Borrower agrees to cause the Project to be completed as soon as may be practicable. For any Costs of the Project that were paid prior to the receipt of the proceeds to be derived from the sale of the Series 2010 Bonds, the Borrower has advanced all funds necessary for such purposes, which advances may be paid to the Borrower as provided in the Indenture to the extent permitted by the Tax Agreement. Nothing contained in this Section shall relieve the Borrower of the obligation on its part with respect to the requirements under Section 4.2, Section 4.3 or Article XI hereof.

Section 3.2. Agreement to Issue Bonds; Application of Bond Proceeds. In order to provide funds to finance the Costs of the Project, the Issuer agrees that it will issue the Series 2010 Bonds and cause them to be delivered to the Underwriter. Upon receipt of the proceeds of the sale of the Series 2010 Bonds, the Trustee will deposit such proceeds in accordance with the Indenture.

Section 3.3. Disbursements from Project Fund.

(a) The Issuer has, in the Indenture, authorized and directed the Trustee to disburse the moneys from the Project Fund for payment or reimbursement of the Costs of the Project set forth in subparagraphs (i) - (vii) below, subject in each case to the limitations and restrictions contained in the Tax Agreement. All disbursements from the Project Account of the Project Fund shall be evidenced by a completed Requisition Certificate in the form of Exhibit B to the Indenture. In addition, amounts disbursed from the Project Fund for the design, construction and

CHI2 2261871.16

18

equipping of the Project shall be disbursed, pursuant to an Escrow Agreement in the form of Exhibit C to the Indenture, to a title insurance company (or its escrow agent). The Trustee shall disburse amounts set forth in the Costs of Issuance Account of the Project Fund upon receipt of the written consent of the Borrower.

(i) Costs of (A) preparation of plans and specifications for the Project (including any preliminary study or plan of the Project, or any aspect thereof), (C) clearing and site improvements to the land constituting a portion of the Project, (D) the construction of buildings, (E) the acquisition and equipping (including relocation) of machinery, storage tanks and equipment, and (F) the acquisition and equipping of utility services or other facilities, and all real or personal properties, deemed necessary in connection with the Project (including architectural, engineering and supervisory services with respect to any of the foregoing).

(ii) Costs of labor, services, materials and supplies used or furnished in the construction of the Project.

(iii) To such extent as they shall not be paid by a contractor for construction or equipping with respect to any part of the Project, payment of the premiums on all insurance taken out and maintained during the Construction Period.

(iv) Expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the Project.

(v) Other capitalizable expenditures of the Borrower related to the Project.

(vi) Costs of operating the Project during the period of acquisition, construction, renovation and equipping the Project.

(vii) Costs incurred in connection with the issuance of the Series 2010 Bonds.

(viii) Construction loan payments which comprise otherwise permitted costs and expenses set forth in subparagraphs (i) - (vii) above.

(b) All proceeds of the Series 2010 Bonds, including moneys earned pursuant to the provisions hereof (other than amounts required to be held in the Rebate Fund which shall be applied in accordance with the Tax Agreement), remaining in the Project Fund on the Completion Date established pursuant to Section 3.4 hereof, and after payment of all other items provided for in subsection (a) of this Section, then due and payable (hereinafter referred to as "Surplus Project Fund Moneys") shall be applied, (i) by the Trustee for transfer to the Bond Fund for application to the redemption of Series 2010 Bonds in accordance with Section 2.02(b)(v) of the

Indenture or (ii) for any other use as directed by the Borrower Representative, provided that the Trustee is furnished with an opinion of Bond Counsel to the effect that such use will not adversely affect the exclusion from federal income taxation of interest on any of the Series 2010 Bonds.

CHI2 2261871.16

19

(c) Each payment for Costs of the Project shall be made only upon receipt by the Trustee of a requisition in substantially the form set forth in Exhibit B to the Indenture, signed by the Borrower Representative. Each requisition will be consecutively numbered. j

Section 3.4. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee and the Issuer by the following documents:

(a) A certificate signed by the Borrower Representative on behalf of the Borrower stating that, except for amounts retained by the Trustee for Costs of the Project not then due and payable, or the liability for which the Borrower is in good faith contesting and disputing, (i) the Project has been completed to the satisfaction of the Borrower and, based on the certificate referenced in subsection (b) of this Section and to the best of Borrower's knowledge, in substantial accordance with the plans and specifications, if any, for the Project, as amended, (ii) to the best of Borrower's knowledge, all labor, services, materials and supplies used in connection with the Project have been paid for, (iii) the Project as so completed is suitable and sufficient for its efficient operation as described herein, (iv) to Borrower's knowledge, except as otherwise permitted by the Tax Agreement, all of the proceeds derived from the sale of the Series 2010 Bonds (including investment earnings thereon) have been used to provide land or property of a character subject to the allowance for depreciation under Section 167 of the Code, or have been deposited in the Bond Fund for application to the redemption of Series 2010 Bonds and (v) all Bond proceeds have been applied solely to the payment of the Costs of the Project on account of which the Series 2010 Bonds were issued.

(b) A certificate signed by the Borrower Representative on behalf of the Borrower (i) stating that, to Borrower's knowledge, the Project has been fully completed substantially in accordance with the plans and specifications, if any, for the Project, as then amended, (ii) setting forth the date of completion of the Project and (iii) stating that all permits necessary for the occupancy and use of the Project have been obtained and are in full force and effect.

Section 3.5. Obligation of Parties to Cooperate in Furnishing Documents: Trustee Reliance. The Borrower agrees to furnish to the Trustee the requisition certificates referred to in Section 3.3 hereof to effect payments out of the Project Fund. Such agreement shall not extend beyond moneys in the Project Fund available for payments under the terms of the Indenture. In making any such payments from the Project Fund, the Trustee may conclusively rely on any such orders, requisitions and certifications delivered to it pursuant to, and in conformance with the requirements of, Section 3.3 hereof.

Section 3.6. Borrower Required to Pay Costs in Event Project Fund Insufficient. In the event the moneys in the Project Fund available for payment of the Costs of the Project are not sufficient to make such payment in full, the Borrower agrees to pay directly, or to deposit moneys in the Project Fund for the payment of, such costs of completing the Project as may be in excess of the moneys available therefor in the Project Fund. THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, THAT THE MONEYS WHICH WILL BE DEPOSITED INTO THE PROJECT FUND, AND WHICH UNDER THE PROVISIONS OF THIS AGREEMENT WILL BE AVAILABLE FOR PAYMENT OF THE COSTS OF THE PROJECT, WILL BE SUFFICIENT TO PAY ALL OF THE COSTS WHICH WILL BE INCURRED IN CONNECTION THEREWITH. The

CHI2 2261871.16

20

Borrower agrees that if, after exhaustion of the moneys in the Project Fund, the Borrower should pay, or deposit moneys in the Project Fund for the payment of, any portion of the Costs of the Project pursuant to the provisions of this Section, then the Borrower shall not be entitled to any reimbursement therefor from the

Issuer, the Trustee or the holders and owners of the Bonds, nor shall it be entitled to any diminution of the amounts to be paid by the Borrower or held by the Trustee out of Revenues deposited by the Borrower hereunder, including without limitation Section 4.2, Section 4.3, Section 4.4, Section 4.5 or Article XI hereof. Title to all portions of the Project acquired, constructed or equipped at the Borrower's cost shall immediately vest in the Borrower and be subject to the liens of this Agreement and the Mortgage. The Borrower shall execute, deliver and record or file (or cause to be executed, delivered, recorded and filed) such instruments as the Issuer or the Trustee may request in order to create or protect their liens in and to such portions of the Project.

Section 3.7. Remedies to be Pursued against Contractors and Subcontractors and their Sureties. In the event of default of any contractor or subcontractor under any contract made by it in connection with the Project or in the event of a breach of warranty with respect to any materials, workmanship, or performance guaranty, the Borrower shall promptly proceed to exhaust the remedies of the Borrower against the contractor or subcontractor so in default. The Borrower agrees to advise the Trustee of the steps it intends to take in connection with any such default. The Borrower may prosecute or defend any action or proceeding or take any other action involving any such contractor or subcontractor surety which the Borrower deems reasonably necessary.

#### **ARTICLE IV PAYMENT OBLIGATIONS OF BORROWER**

Section 4.1. Payment Obligations of Borrower; Pledge of Revenues. As security for the payment of its obligations under this Agreement, including, without limitation, its obligations set forth in this Article IV, the Borrower hereby pledges and grants a security interest in the Revenues to the Issuer.

Section 4.2. Payment of the Loan. The Issuer hereby agrees to make the Loan to the Borrower in accordance with the provisions of this Agreement in order to finance the Costs of the Project, including without limitation, any costs of issuance of the Series 2010 Bonds. As consideration for the issuance of the Series 2010 Bonds and the making of the Loan to the Borrower by the Issuer in accordance with the provisions of this Agreement, the Borrower agrees to deposit all Revenues in Borrower's possession directly with the Trustee, as assignee and pledgee of and for the account of the Issuer, for deposit in the Revenue Account of the Bond Fund in accordance with Section 4.04 of the Indenture. Such deposit shall be made on the 20th day or next business day of each month. All such deposits shall be made with the Trustee at its designated corporate trust office in lawful money (immediately available) of the United States of America.

Section 4.3. Administrative Expenses. Upon passage and approval of the Bond Ordinance, the Borrower shall pay to the Issuer an application fee in the amount of \$1500. The Issuer's administrative fee for the Project is \$346,500 or 0.77% of the original principal amount of the Bonds which shall be paid from Series 2010 Bond proceeds or from funds contributed by

21

CHI2 2261871.16

the Borrower on the date of issuance of the Series 2010 Bonds. The Borrower shall pay the Issuer's legal reserve fee of 0.10% of the original principal amount of the Series 2010 Bonds on the date of issuance of the Series 2010 Bonds. Such fee, which may be paid from Bond proceeds or from funds contributed by the Borrower, shall be used by the Issuer to pay legal costs or other expenses in connection with the Project, the Bonds or other bond issues of the Issuer. The Borrower will also pay the following within 30 days after receipt of a bill therefor (provided that payments required pursuant to subsection (a) shall be made prior to or contemporaneously with the issuance of the Series 2010 Bonds):

(a) The reasonable fees and expenses of the Issuer in connection with and as provided in this Agreement and the Series 2010 Bonds, such fees and expenses to be paid directly to the Issuer or as otherwise directed in writing by the Issuer;

(b) The fees and expenses of the Trustee and all other fiduciaries and agents serving under the Indenture (including any expenses in connection with any redemption of the Series 2010 Bonds), and (ii) all fees and expenses, including counsel fees, of the Trustee for any extraordinary services rendered by it under the

Indenture. All such fees and expenses are to be paid directly to the Trustee or other fiduciary or agent for its own account as and when such fees and expenses become due and payable; and

(c) If the Borrower should fail to make any of the payments required in this Section, then the item or installment which the Borrower has failed to pay shall continue as an obligation of the Borrower until the same shall have been fully paid, with interest thereon at the rate of 2% per annum above the prime rate in effect as determined by the Trustee, to the extent permitted by law, until paid in full.

Section 4.4. Debt Service Reserve Fund. The Borrower shall be obligated to maintain in the Debt Service Reserve Fund moneys and/or Qualified Investments and/or Debt Service Reserve Fund Instruments in an aggregate amount equal to the Debt Service Reserve Fund Requirement. The Borrower agrees that, pursuant to Section 4.04 of the Indenture, the Trustee shall make any required deposits to the Debt Service Reserve Fund from the Revenues of the Borrower to cure any deficiencies in accordance with the requirements of Section 4.07 of the Indenture.

Section 4.5. Rebate Fund. As provided in the Tax Agreement, the Borrower shall be obligated to make all payments required for deposit in the Rebate Fund.

Section 4.6. Income Tax Reserve Account. Upon the issuance of the Series 2010 Bonds, the Borrower shall establish and maintain a separate account with the Trustee to be designated the "City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) - Income Tax Reserve Account" (the "Income Tax Reserve Account"). The Income Tax Reserve Account shall be funded from Revenues of the Borrower as set forth in the Indenture. The Income Tax Reserve Account shall not be funded with proceeds of the Series 2010 Bonds. The Borrower hereby agrees to withdraw and use moneys in the Income Tax Reserve Account in accordance with Section 4.04(e) of the Indenture solely for the following purposes: (i) to distribute to its members funds to be used to pay estimated income taxes due by the members for the current period; and (ii) prior to any

22

CHI2 2261871.16

withdrawal from the Debt Service Reserve Fund or the Operating Reserve Account replenishing the Principal and Interest Payment Account of the Bond Fund in the event of any deficiency of amounts required to pay, on a timely basis, principal of and interest on the Series 2010 Bonds. The Borrower shall maintain the Income Tax Reserve Account for as long as the Series 2010 Bonds or any Additional Bonds are Outstanding.

Section 4.7. Operating Reserve Account. Upon the issuance of the Series 2010 Bonds, the Borrower shall establish and maintain a separate account with the Trustee to be designated the "City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) - Operating Reserve Account" (the "Operating Reserve Account"). The Operating Reserve Account shall be funded from Revenues of the Borrower in an amount equal to \$500,000 (the "Operating Reserve Requirement") as set forth in the Indenture. The Operating Reserve Requirement shall not be funded with proceeds of the Series 2010 Bonds. The Borrower hereby agrees to withdraw and use moneys in the Operating Reserve Account in accordance with Section 4.04(f) of the Indenture solely for the following purposes:

(i) to pay expenses relating to the operation of the Project in any month in which the amounts in the Operating Expense Account are insufficient; and (ii) prior to any withdrawal from the Debt Service Reserve Fund, replenishing the Principal and Interest Payment Account of the Bond Fund in the event of any deficiency of amounts required to pay, on a timely basis, principal of and interest on the Series 2010 Bonds. The Borrower shall maintain the Operating Reserve Account for as long as the Series 2010 Bonds or any Additional Bonds are Outstanding.

*Section 4.8. Priority of Funds and Accounts. To the extent the Revenue of the Borrower is not sufficient to make all of the deposits required under this Article IV and under Section 4.04 of the Indenture, the Borrower's Revenue shall be deposited in priority as described in Section 4.04 of the Indenture. >*

Section 4.9. Obligations of Borrower Hereunder Unconditional; Certain Payments Assigned.

(a) The obligations of the Borrower to make the payments required under this Agreement and to perform and

observe the other agreements contained herein shall be absolute and unconditional, and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach of the Issuer or the Trustee of any obligation to the Borrower or otherwise with respect to the Project, whether hereunder, under any of the other Borrower Agreements, under the Indenture or otherwise, or out of any indebtedness or liability at any time owing to the Borrower by the Issuer or the Trustee.

(b) Until such time as all of the Series 2010 Bonds shall have been fully paid or redeemed, the Borrower (i) will not suspend or discontinue any payments provided for herein,

(ii) will perform and observe all other agreements contained in this Agreement and (iii) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or temporary use of any or all of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof, or any failure of the Issuer or the Trustee

23

CHI2 2261871.16

to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, this Agreement or any of the other Borrower Agreements. Nothing contained in this Section 4.9 shall be construed to release the Issuer from the timely performance of any of the agreements on its part herein contained or contained in any of the other Issuer Agreements, or to release the Trustee from the performance of any of the agreements on its part contained in the Indenture or the Tax Agreement, and in the event the Issuer or the Trustee should fail to perform any such agreements on its part, the Borrower may institute such action against the Issuer or the Trustee as the Borrower may deem necessary to compel performance as long as such action does not abrogate the obligations of the Borrower contained in the first sentence of this Section. The Borrower may, however, at the Borrower's own cost and expense and in the Borrower's own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving third persons which the Borrower deems reasonably necessary in order to secure or protect the Borrower's right of possession, occupancy and use of the Project hereunder, and in such event the Issuer hereby agrees to cooperate fully with the Borrower and to take all lawful action necessary to effect the substitution of the Borrower for the Issuer in any such action or proceeding if the Borrower shall so request.

#### **ARTICLE V CONCERNING THE PROJECT**

Section 5.1. Operation of Project. Unless the Project is sold or disposed of as provided in Section 5.5 hereof, the Borrower agrees that during the term of this Agreement, the Project shall be operated and maintained, in substantial compliance with all governmental laws, building codes, ordinances, and regulations and zoning laws as shall be applicable. The Borrower agrees that during the term of this Agreement it will at its own expense (a) keep the Project in as reasonably safe condition as the operations at the Project permit and (b) except to the extent the Borrower has determined that any portion of the Project is obsolete or not useful in its operations, keep the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof. The Borrower shall keep, or cause to be kept, the Project continuously insured in accordance with Section 7.2 hereof. The Borrower agrees that the Issuer and the Trustee shall have no duties or responsibilities whatsoever with respect to the operation or maintenance of the Project or the performance of the Project for its designed purposes.

Section 5.2. Modification of Project. The Borrower may, also at its own expense, make from time to time any additions, modifications or improvements to the Project it may deem desirable for its purposes that do not substantially reduce their value; provided that all such additions, modifications and improvements made by the Borrower which are affixed to the Project shall become a part of the Project. The Borrower will not permit any liens, security interests or other encumbrances other than Permitted Encumbrances to be established or to remain against the Project for labor or materials furnished in connection with the Project or any additions, modifications, improvements, repairs, renewals or replacements made by it to the Project; provided that if the

Borrower first notifies the Trustee of its intention to do so, and if the Borrower posts a bond, cash, letter of credit or title indemnity with the Trustee in form satisfactory to the Trustee, the Borrower may in good faith contest any mechanics' or other liens

CHI2 2261871.16

## 24

filed or established against the Project and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Project or any part thereof will be subject to loss or forfeiture, in which event the Borrower shall promptly pay and cause to be satisfied and discharged all such unpaid items, provided that in the case of mechanic's liens or other liens individually in the amount of \$50,000 or less or in the aggregate of \$ 150,000 or less such security shall not be required. The Issuer and the Trustee will, at the expense of the Borrower, cooperate fully with the Borrower in any such contest. In the event that the Borrower shall fail to pay any of the foregoing items required by this Section 5.2 to be paid by the Borrower (after final, nonappealable judgment is entered thereon), the Issuer or the Trustee may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Borrower under this Agreement to the one making the advance, which amount the Borrower agrees to pay on demand together with interest thereon at a rate equal to the lesser of (i) 3% per annum above the highest rate of interest borne by any of the Series 2010 Bonds and (ii) the maximum rate permitted by law.

### Section 5.3. Removal of Equipment.

(a) Subject to Section 5.3(b), in any instance where the Borrower determines any Equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Borrower may remove such Equipment and shall sell, trade in, exchange or otherwise dispose of it (as a whole or in part), provided that the Borrower shall either:

(i) Substitute (by direct payment of the costs thereof) and install anywhere in the Project from which the Equipment was removed, other machinery, equipment, furnishings or other personal property having equal or greater value and utility (but not necessarily having the same function) in the operation of the Project (provided such removal and substitution shall not impair the Borrower's ability to operate the Project in an efficient manner);

(ii) Not make any such substitution and installation, provided (except as set forth in the next paragraph of this Section) (A) that in the case of the sale of any such Equipment to anyone, other than itself or in the case of the scrapping thereof, the Borrower shall pay to the Trustee for deposit into the Revenue Account of the Bond Fund the net proceeds from such sale or the scrap value thereof, as the case may be, (B) that in the case of the trade-in of such Equipment for other machinery, equipment, furnishings or other personal property not to be installed in the Project, the Borrower shall pay to the Trustee for deposit into the Revenue Account of the Bond Fund the amount of the credit received by it in such trade-in and (C) that in the case of any other disposition thereof the Borrower shall pay to the Trustee for deposit into the Revenue Account of the Bond Fund an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting principles; or

(iii) In the event removal of Equipment, in the reasonable judgment of the Trustee, materially reduces the value of the Project, the Trustee may require the Borrower at the Borrower's option (A) to pay sufficient moneys (as provided in the next paragraph of this Section) to the Trustee for deposit into the Revenue Account of the Bond Fund to

CHI2\_2261871.16

## 25

offset such reduction, or (B) to replace the Equipment or (C) to place substitute Equipment within the Project.

(b) The removal of any portion of the Equipment pursuant to the provisions of this Section shall not entitle the Borrower to any postponement, abatement, or diminution of the deposits and other payments required to be made under this Agreement. The Borrower will promptly report in writing to the Trustee, when aggregate

removals pursuant to this Section during a Fiscal Year of the Borrower are \$100,000 or more, each subsequent removal, substitution, sale or other disposition under clauses (i) and (ii) of Section 5.3(a). If the aggregate amount of all sales, trade ins or other dispositions previously reported during the then current Fiscal Year of the Borrower, valued in accordance with clause (ii) of Section 5.3(a) equals \$100,000 or more, the Borrower will pay to the Trustee all amounts in excess of \$100,000 during such Fiscal Year required by clauses (i) and (ii)(A) of Section 5.3(a) to be paid into the Revenue Account of the Bond Fund promptly after any sale, trade in or other disposition requiring such payment.

Section 5.4. No Warranty by Issuer. THE BORROWER RECOGNIZES THAT THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE ISSUER'S OR THE BORROWER'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OF ILLINOIS OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

Section 5.5. Transfer of Project.

(a) While the Series 2010 Bonds are Outstanding, the Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any part thereof to another entity other than an Affiliate unless it obtains the prior written consent of the Bondowners who own a majority of the Series 2010 Bonds then Outstanding other than: (i) sales or other dispositions of Equipment in accordance with Section 5.3; (ii) transfers in conjunction with actions permitted by Section 8.6; or (iii) sales or dispositions of any insubstantial portion of the Project (determined in the reasonable judgment of the Borrower) that does not materially adversely affect the ability of the Borrower to provide the same range and level of services and facilities at the Project as was provided prior to such sale or disposition and provided, that prior

26

CHI2 2261871.16

to such sale, transfer or other disposition, the Borrower provides to the Issuer and the Trustee an opinion of Bond Counsel to the effect that the transfer is permitted under the Indenture, this Agreement, the Mortgage and will not adversely affect the exclusion from gross income for purposes of federal income taxation of the interest on the Series 2010 Bonds.

(b) Notwithstanding anything contained in this Agreement to the contrary, while the Series 2010 Bonds are Outstanding, the Borrower may sell, transfer or otherwise dispose of the Project, or any part thereof to another entity other than an Affiliate without obtaining the prior written consent of any portion of the Bondholders if in conjunction therewith the Borrower also creates an escrow using non-callable U.S. Treasury securities in an amount sufficient to pay all principal and interest on the Series 2010 Bonds then Outstanding in accordance with Section 5.01 of the Indenture.

The Borrower shall, within 15 days after execution thereof by all parties thereto, furnish to the Issuer and the Trustee a true and complete copy of the agreements or other documents effecting any such sale, transfer or other disposition.

## ARTICLE VI ADDITIONAL INDEBTEDNESS



Section 6.1. Additional Indebtedness. The Borrower covenants that it will not incur, assume, guarantee or otherwise become liable in respect of any Additional Indebtedness.

Section 6.2. Permitted Indebtedness. The Borrower may incur Permitted Indebtedness provided that prior to the incurrence thereof, the Borrower shall have delivered to the Trustee a certificate to the effect that any such Permitted Indebtedness: (i) has no claim on the Trust Estate or the Property or has a claim on the Trust Estate or the Property that is subordinate and junior to the claim of the Series 2010 Bonds and any Additional Bonds, (ii) has been incurred for a lawful purpose of the Borrower in connection with the operation of the Project and (iii) has a maturity of no more than ten years and does not cause the Borrower to have a Debt Service Coverage Ratio that is less than 1.10 when aggregated with any other Indebtedness incurred and outstanding in accordance with this Section. For purposes of this Section 6.2 the Debt Service Coverage Ratio shall mean the ratio of (x) actual Revenues minus Operating Expenses for the prior fiscal year to (y) the maximum amount of principal and interest coming due on the Bonds and the Permitted Indebtedness to be issued in any Bond Year except there shall be excluded principal coming due on the Bonds in the year of the final maturity of the Series 2010 Bonds.

## **ARTICLE VII TAXES AND INSURANCE**

Section 7.1. Taxes, Other Governmental Charges and Utility Charges.

(a) The Borrower will pay promptly, as the same become due, (i) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any interest therein, which, if not paid, will become a lien on the Project or a charge on the Revenues, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Properties and (iii) all

27

CHI2 2261871.16

assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as may have become due during the term of this Agreement.

(b) The Borrower may, at its expense, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges contested to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of the Trustee, the Project shall be subject to immediate loss or forfeiture, in which case such taxes, assessments or charges shall be paid promptly or secured by posting a bond with the Trustee in form satisfactory to the Trustee. The Issuer at the expense of the Borrower shall cooperate fully with the Borrower in any such contest. In the event that the Borrower shall fail to pay any of the foregoing items required by this Section to be paid by the Borrower, the Issuer or the Trustee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Borrower to the one making the advance, which amount the Borrower agrees to pay on demand together with interest thereon at a rate equal to the lesser of (i) 3% per annum above the highest rate of interest borne by any of the Bonds and (ii) the maximum rate permitted by law.

Section 7.2. Insurance Required.

(a) The Borrower shall maintain with respect to the Project, a loan title insurance policy conforming to the Mortgage and Title Requirements.

(b) Throughout the term of this Agreement, the Borrower shall maintain or cause to be maintained the following insurance coverages (or prior to the Completion Date, those of the following customarily carried in connection with the construction of facilities of similar size and character as the Project) and pay or cause to be paid, as the same becomes due and payable, all premiums with respect thereto:

(i) Insurance against loss or damage to the Project and all improvements therein (including, during any period of time when the Borrower is making alterations, repairs or improvements to the Project, improvements and

betterments coverage), all subject to standard form exclusions, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State, in an amount equal to the full replacement value of the Project.

(ii) Commercial general liability and automobile liability insurance against claims arising in, on or about the Properties, including in, on or about the sidewalks or premises adjacent to the Properties, providing coverage limits not less than the coverage limits customarily carried by owners or operators of facilities of similar size and character within the State.

CHI2\_2261871.16

28

(iii) Fidelity insurance or bonds on those of its officers and employees who handle funds of the Borrower, both in such amounts and to such extent as are customarily carried by organizations similar to the Borrower and operating properties similar in size and character to the facilities of the Borrower.

(iv) Business interruption insurance covering all risks as to which insurance is required pursuant to (a) above, in an amount equal to not less than the amounts required to be deposited pursuant to Section 4.04(a) of the Indenture for a period of not less than 12 months. If any such loss or damage has occurred, the Borrower shall continue to be obligated with respect to the amounts required to be deposited pursuant to Section 4.04(a) of the Indenture, and any proceeds of such insurance shall be applied against all or part of such payment obligations of the Borrower.

(v) Such other forms of insurance as the Borrower is required by law to provide with respect to the Project, including, without limitation, any legally required worker's compensation insurance and disability benefits insurance.

(vi) All insurance required to be maintained by the Borrower per the Asphalt Terminalling Agreements.

All the insurance coverage required by this subsection (b) may be subject to deductible clauses in such amounts as are customary for facilities of similar size and character within the State and as permitted by the Asphalt Terminalling Agreements. At least once every three years, beginning December 1, 2011, the Borrower shall employ (or cause to be employed), at its expense, an Insurance Consultant to review the insurance coverage required by this Section and to render to the Issuer, the Borrower and the Trustee a report as to the adequacy of such coverage and as to its recommendations, if any, for adjustments thereto. The insurance coverage provided by this Section may be reduced or otherwise adjusted by the Borrower without the consent of the Trustee or the Issuer, provided that all coverages after such reduction or other adjustment are certified by the Insurance Consultant to be adequate and customary for facilities of like size and type, taking into account the availability of such insurance, the terms upon which such insurance is available, and the costs of such available insurance. The insurance coverage provided by this sub-section (b) shall be increased or otherwise adjusted by the Borrower if as a result of such review the Insurance Consultant finds that the existing coverage is inadequate, taking into account the availability of such insurance, the terms upon which such insurance is available, and the cost of such available insurance. The insurance coverage required by this Section, and modification thereof permitted or required by this paragraph, shall at all times be adequate and customary for facilities of like size and type, and the Insurance Consultant shall so certify in the report required by this paragraph.

All policies maintained (or caused to be maintained) by the Borrower pursuant to this subsection (b) shall be taken out and maintained in generally recognized, responsible insurance companies, which may include "captive" insurance companies or governmental insurance pools, selected by the Borrower. The insurance policies required by clauses (i) and (iv) shall name the Trustee, the Issuer and the Borrower as insureds as their respective interests may appear (provided that with respect to insurance maintained pursuant to clauses (i) and (iv) of this

29

CHI2\_2261871.16

subsection (b), the Trustee shall also be named as a mortgagee under the terms of a standard Illinois mortgagee loss payable endorsement), and the Trustee shall also be named as an additional insured on the policy required

by clause (iii) of this subsection, and, provided further that all hazard insurance proceeds shall be paid directly to the Trustee. Such policies or certificates of insurance shall (x) provide that the insurer will give at least 30 days' written notice by mail to the Issuer and the Trustee of any cancellation prior to expiration of such policy, and (y) be satisfactory in all other respects to the Issuer.

The Borrower shall deliver to the Trustee (a) upon the commencement of the term of this Agreement, the originals or certified copies thereof of all insurance policies (or certificates thereof) which the Borrower is then required to maintain pursuant to this Section, together with evidence as to the payment of all premiums then due thereon, (b) at least 30 days prior to the expiration of any such policies evidence as to the renewal thereof, if then required by this Section, and the payment of all premiums then due with respect thereto, and (c) promptly upon request by the Issuer or the Trustee, but in any case within 90 days after the end of each Fiscal Year, a certificate of a Borrower Representative setting forth the particulars as to all insurance policies maintained by the Borrower pursuant to this Section and certifying that such insurance policies are in full force and effect, that such policies comply with the provisions of this Section and that all premiums then due thereon have been paid.

Section 7.3. Application of Net Proceeds of Insurance. The net proceeds of the insurance carried pursuant to Section 7.2(b)(i) hereof shall be applied as provided in Section 7.4 hereof. The net proceeds of insurance carried pursuant to Section 7.2(b)(ii) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the fidelity insurance carried pursuant to Section 7.2(b)(iii) hereof shall be held by the Borrower to replace the funds lost. The net proceeds of the business interruption insurance carried pursuant to Section 7.2(b)(iv) hereof shall first be applied against the payments required to be made by the Borrower pursuant to this Agreement during such period of business interruption and then to pay expenses as determined by the Borrower.

Section 7.4. Insurance Awards. Unless the Borrower shall have exercised its option to prepay the Loan in full pursuant to Article XI hereof, if the Project, or any portion thereof, is destroyed or damaged by fire or other casualty to such extent that the claim for loss under any insurance policies resulting from such event of destruction or damage is less than \$1,000,000, the net proceeds of insurance resulting from such claims for losses shall be paid to the Borrower and shall be held or used by the Borrower for such purposes as the Borrower, in its discretion, may deem appropriate. The Borrower shall not by reason of the payment of net proceeds for such destruction or damage be entitled to any reimbursement from the Issuer, the Trustee or the Bondowners or any postponement, abatement or diminution of the deposits and other payments required to be made under this Agreement.

Unless the Borrower shall have exercised its option to prepay the Loan in full pursuant to Article XI hereof, if the Project, or any portion thereof, is destroyed or damaged (in whole or in part) by fire or other casualty to such extent that the claim for loss under any insurance policies resulting from such event of destruction or damage is \$1,000,000 or more, the Borrower shall promptly give written notice thereof to the Trustee and the Issuer. All net proceeds of insurance

30

CHI2 2261871.16

resulting from such claims for losses of \$1,000,000 or more shall, at the option of the Borrower, either be used to redeem Bonds as provided in the following paragraphs or be held by the Trustee in a separate trust account, whereupon in the event Borrower does not elect to redeem Outstanding Bonds, (a) the Borrower will promptly repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Borrower and as will not impair the Borrower's ability to operate the Project in an efficient manner, and (b) the Trustee, upon receipt of an architect's certificate that such payment is required for such purpose, will apply so much as may be necessary of the net proceeds of such insurance to payment of the costs of such repair, rebuilding or restoration as the work progresses. All property acquired in such repair, rebuilding and restoration shall become part of the Project and

shall become subject to the Mortgage. Any balance of such net proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be transferred to the Principal and Interest Payment Account of the Bond Fund and applied to the payment of principal of the Bonds on the next payment date or dates thereof. In the event such net proceeds are not sufficient to pay in full the costs of such repair, rebuilding or restoration, the Borrower will nonetheless complete the work thereof and will pay any costs thereof in excess of the amount of said net proceeds. The Borrower shall not by reason of the payment of such excess costs be entitled to any reimbursement from the Issuer, the Trustee or the Bondowners or any postponement, abatement or diminution of the Deposits and other payments required to be made under this Agreement.

All net proceeds of insurance resulting from claims for losses specified in the first sentences of the two preceding paragraphs may be used to redeem Bonds; provided (i) all of the Bonds are to be redeemed in accordance with the Indenture upon exercise of the option to prepay the Loan in full provided for in Article XI hereof or (ii) in the event that less than all of the Bonds are to be redeemed, the Borrower shall furnish to the Trustee an independent architect's certificate stating (A) that the property forming a part of the Project damaged or destroyed is not essential to the Borrower's use or occupancy of the Project, or (B) that the Project has been restored to a condition substantially equivalent to their condition prior to the damage or destruction or (C) that improvements have been acquired which are suitable for operation similar to the damaged or destroyed portion of the Project.

Section 7.5. Condemnation and Title Defects. Unless the Borrower shall have exercised its option to prepay the Loan in full pursuant to Article XI hereof, in the event that title to, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain or because of a title defect, the Borrower shall be obligated to continue to make the Deposits and other payments required to be made under this Agreement. In the event that the net proceeds from any award made in such eminent domain proceedings or from any insurance policies purchased pursuant to Section 7.2(a) hereof is less than \$1,000,000, all of such net proceeds shall be paid to the Borrower and shall be held or used by the Borrower for such purposes as the Borrower, in its discretion, may deem appropriate. In the event that the net proceeds from any award made in such eminent domain proceedings or from any insurance policies purchased pursuant to Section 7.2(a) hereof is \$1,000,000 or more, all of such net proceeds shall be paid to and held by the Trustee in a separate trust account for the equal benefit of the Bondowners, to be applied to one or more of the following purposes as shall be directed in writing by the Borrower:

31

CHI2 2261871.16

(a) The restoration of the Project to substantially the same condition as it existed prior to such condemnation or without such title defect (to the extent practicable) and otherwise, to a condition sufficient to permit use in substantially the same manner as before such condemnation.

(b) The acquisition, by construction or otherwise, of other improvements suitable for operation similar to the Project.

(c) The redemption of the Bonds; provided that such condemnation award or title insurance proceeds may be applied for such redemption only if (i) all of the Bonds are to be redeemed in accordance with the Indenture upon exercise of the option to prepay the Loan in full provided for in Article XI hereof or (ii) in the event that less than all of the Bonds are to be redeemed, the Borrower shall furnish to the Issuer and the Trustee an independent architect's certificate stating (A) that the property forming a part of the Project taken by such condemnation proceedings or loss due to a defect in title is not essential to the Borrower's use or occupancy of the Project, or (B) that the Project has been restored to a condition substantially equivalent to their condition prior to the taking by such condemnation proceedings or without such title defect, or (C) that improvements have been acquired which are suitable for the Borrower's operations at the Project as contemplated by the foregoing subparagraph (b) of the first paragraph of this Section.

In the event the Borrower elects either of the options set forth in subparagraph (a) or (b) of the first paragraph of this Section, the Trustee, upon receipt of an architect's certificate supervising such repair, rebuilding or

restoration that payment is required for such purpose, will apply so much as may be necessary of the net proceeds of such condemnation award or title insurance proceeds to payment of the costs of such restoration, acquisition or construction, as the work progresses.

In the event the Borrower elects either of the options set forth in subparagraph (a) or (b) of the first paragraph of this Section, and the net proceeds received from eminent domain or title insurance proceeds are insufficient to pay in full the cost of restoring, acquiring or constructing improvements of substantially the same condition as the Project prior to the taking or without such title defect, the Borrower will nonetheless complete the work thereof and will pay any costs thereof in excess of such net proceeds. The Borrower shall not by reason of the payment of such excess be entitled to any reimbursement from the Issuer, the Trustee or the Bondowners or any postponement, abatement or diminution of the Deposits and other payments required to be made under this Agreement.

Unless the Borrower has exercised its option to prepay the Loan in full pursuant to Article XI hereof, within 90 days of a final order in any eminent domain proceeding granting condemnation or from the date of taking pursuant to a title defect, whichever is later, the Borrower shall direct the Issuer and the Trustee in writing which of the ways specified in this Section the Borrower elects to have the net proceeds of the condemnation award or insurance proceeds applied. Any balance of the net proceeds of the award in such eminent domain proceedings or insurance proceeds remaining after payment of all the costs of such restoration, acquisition or construction shall be applied to pay or redeem Bonds. The balance to be used to pay or redeem Bonds shall be transferred to the Principal and Interest Payment Account of the

CHI2\_2261871.16

## **32**

Bond Fund and applied to the payment of the principal of the Bonds on the next payment date or dates thereof. The Issuer shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof. In no event will the Borrower voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of the Issuer and the Trustee except for any condemnation proceedings involving portions of the Project having a value of \$50,000 or less.

All property acquired pursuant to this Section shall become part of the Project and shall become subject to the Mortgage.

## **ARTICLE VIII SPECIAL COVENANTS**

Section 8.1. Business Operations. So long as any Bonds are Outstanding, the Borrower covenants and agrees to manage the Project so that the Borrower shall receive Revenues in each Fiscal Year in an amount sufficient to pay (a) all of the Borrower's expenses during such Fiscal Year for the operation, maintenance and repair of the Project, (b) all payments required pursuant to this Agreement, and (c) all material other obligations of the Borrower payable during such Fiscal Year.

Section 8.2. Compliance with Tax Agreement. The Borrower agrees to comply with the provisions of and perform faithfully its obligations under the Tax Agreement.

Section 8.3. Access to Project. The Borrower agrees that the Issuer, the Trustee and any representative thereof shall have the right at all reasonable times, upon not less than five Business Days' prior written notice, to enter upon, examine and inspect the Project for the purpose of determining whether the Borrower is in compliance with the terms of this Agreement or the Tax Agreement.

Section 8.4. Release and Indemnification Covenants.

(a) The Issuer and its officers, agents, employees, successors and assigns or other elected or appointed officials of the Issuer, past, present, or future (hereinafter the "Indemnified Persons") shall not be liable to the Borrower for any reason. The Borrower shall defend, indemnify and hold the Issuer, the Indemnified Persons and the Trustee harmless from any loss, claim, damage, tax, penalty or expense (including reasonable counsel fees), or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from, or in any way connected with: (i) the financing, installation, operation, use, or maintenance of

the Project, (ii) any act, failure to act, or misrepresentation by any Indemnified Person in connection with the issuance, sale or delivery of the Bonds, or (iii) any act, failure to act, or misrepresentation by the Issuer or the Trustee in connection with this Agreement or any other document involving the Issuer or the Trustee in this matter. If any suit, action or proceeding is brought against the Issuer, any Indemnified Person or the Trustee, that suit, action or proceeding shall be defended by counsel to the Issuer, the Borrower or the Trustee, as the

33  
CHI2 2261871.16

Issuer or the Trustee shall determine. If the defense is by counsel to the Issuer or the Trustee, the Borrower shall indemnify the Issuer, Indemnified Persons and the Trustee for the reasonable cost of that defense including reasonable counsel fees. If the Issuer or the Trustee determine that the Borrower shall defend the Issuer, any Indemnified Person or the Trustee, the Borrower shall immediately assume the defense at its own cost. Neither the Issuer, Trustee, nor the Borrower shall be liable for any settlement of any proceeding made without each of their consent (which consent shall not be unreasonably withheld).

(b) The Borrower shall also indemnify (1) the Issuer, Indemnified Persons and the Trustee for all reasonable costs and expenses, including reasonable counsel fees, incurred in: (i) enforcing any obligation of the Borrower under this Agreement, the Mortgage, the Assignment or any related agreement, (ii) taking any action requested by the Borrower, (iii) taking any action required by this Agreement, the Mortgage, the Assignment or any related agreement, or (iv) taking any action considered necessary by the Issuer or the Trustee and which is authorized by this Agreement, the Mortgage, the Assignment or any related agreement and (2) the Trustee for all reasonable costs and expenses, including reasonable legal fees and expenses, arising out of or in connection with the acceptance or administration of the trusts established pursuant to the Indenture.

(c) Any provision of this Agreement or any other instrument or document executed and delivered in connection therewith to the contrary notwithstanding, the Issuer retains the right to (i) enforce any applicable federal or state law or regulation or ordinance of the Issuer and (ii) enforce any rights accorded to the Issuer by federal or state law or regulation or ordinance of the Issuer, and nothing in this Agreement shall be construed as an express or implied waiver thereof.

(d) If the Issuer is to take any action under this Agreement or any other instrument executed in connection herewith for the benefit of the Borrower, it will do so if and only if (i) the Issuer is a necessary party to any such action or proceeding, (ii) the Issuer has received specific written direction from the Borrower, as required hereunder or under any other instrument executed in connection herewith, as to the action to be taken by the Issuer and (iii) a written agreement of indemnification and payment of costs, liabilities and expenses satisfactory to the Issuer has been executed by the Borrower prior to the taking of any such action by the Issuer.

(e) The obligations of the Borrower under this indemnification section shall survive any assignment or termination of this Agreement and any resignation or removal of the Trustee.

#### Section 8.5. Tax-Exempt Status of Bonds.

(a) The Issuer covenants that it will not knowingly take any action or knowingly permit any action on its part to be taken which would cause the interest on the Series 2010 Bonds to be included in the gross income of the Owners of the Series 2010 Bonds for purposes of federal income taxation and covenants to cooperate with the Borrower and the Trustee in any reasonable manner required to enable the Borrower and the Trustee to meet their respective obligations thereunder and under the Indenture.

(b) The Borrower covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation,

34

CHI2 2261871.16

making or permitting any use of the proceeds of the Series 2010 Bonds) if taking or omitting to take such action would cause the interest on the Series 2010 Bonds to be included in the gross income of the recipients thereof for federal income tax purposes. Toward that end, the Borrower covenants that it will comply with all provisions of the Tax Agreement. This provision shall control in case of conflict or ambiguity with any other

provision of this Agreement.

(c) The Borrower covenants that it shall observe and perform each of its obligations and undertakings under the Borrower Agreements, and cooperate with the Issuer and the Trustee in any reasonable manner required to enable the Issuer and the Trustee to meet their respective obligations thereunder and under the Indenture.

(d) The Borrower further covenants and agrees, as long as the Series 2010 Bonds are Outstanding, that it will not take, or fail to take, any action which would constitute a default by the Borrower under the Indenture or the Borrower Agreements or would or could cause the Issuer or the Trustee to be in default thereunder.

(e) The Borrower agrees to be bound by the covenants and other provisions of the Indenture applicable to it, receipt of an executed copy of which is hereby acknowledged.

Section 8.6. Borrower to Maintain Existence; Consolidation or Merger; Single Purpose Entity. Except as otherwise permitted by Section 5.5 of this Agreement, the Borrower agrees that throughout the term of this Agreement it shall maintain its existence and shall not merge or consolidate with any other entity and shall not transfer or convey all or substantially all of its property, assets and licenses to another entity other than an Affiliate in each case, without the prior written consent of the Bondholders who own a majority of the Series 2010 Bonds Outstanding.

The Borrower warrants (i) that it is and throughout the term hereof it will continue to be qualified to do business in the State, and (ii) that if it elects to consolidate with, or merge into or transfer all or substantially all of its assets to another entity in accordance with this Section, and such other entity is not organized under the laws of State, the Borrower, as a condition of such consolidation, merger or transfer of assets, shall cause such other entity to qualify to do business as a foreign corporation in the State and to remain so qualified continuously during the term hereof.

The Borrower will operate as a single-purpose entity and, as such, agrees and represents that it will not engage in any business or activity other than the ownership, operation and maintenance of the Project, and activities incidental thereto.

Section 8.7. Financial Statements.

(a) The Borrower will maintain a standard system of accounting in accordance with generally accepted accounting principles and will furnish to the Trustee, the Underwriter and any Bondholder with \$1,000,000 or more of Bonds, as soon as available, and in any event within 90 days after the close of each Fiscal Year of the Borrower, and, upon request, to the Issuer, a copy of the audited financial statements as of the close of such Fiscal Year including a balance sheet, statement of activities, and statement of cash flows or their equivalents howsoever after designated of the Borrower for such period, and accompanying notes thereto, all in reasonable

35  
CHI2 2261871.16

detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an opinion thereon of a firm of independent public accountants of recognized national standing, selected by the Borrower and satisfactory to the Trustee, to the effect that the financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and present fairly in accordance with generally accepted accounting principles the financial condition of the Borrower as of the close of such Fiscal Year and the results of operations for the Fiscal Year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary under the circumstances. Such accountant's report shall include a calculation of the Debt Service Coverage Ratio for such period. Without limiting the foregoing the Borrower will permit the Trustee (or such Persons as the Trustee may designate) to visit and inspect, at the expense of the Borrower, any of the properties of the Borrower and to discuss the affairs, finances and accounts of the Borrower with its officers, all upon reasonable prior written notice and at such reasonable times and as often as the Trustee may reasonably require.

(b) The Borrower will furnish to the Trustee, the Underwriter and any Bondholder owning \$1,000,000 or more

of Bonds, as soon as available, quarterly unaudited financial reports within 60 days after the close of each such quarter including a statement of current fund revenues and expenses in comparative form with the Borrower's operating budget.

(c) The Borrower will furnish to the Trustee, the Underwriter and any Bondholder owning \$1,000,000 or more of Bonds, on or before January 1 of each year an operating budget which sets forth for the succeeding calendar year on a monthly basis Operating Expenses, including maintenance and repair, budgeted for each month for such calendar year (the "Budget"). The Borrower shall provide a certificate to the Trustee on each January 1 and July 1 which shows actual Operating Expenses for the preceding six month period. In addition, the Borrower shall set forth any capital expenditures that it anticipates funding for the calendar year.

(d) The Borrower will furnish to the Trustee, the Underwriter and any Bondholder owning \$1,000,000 or more of Bonds quarterly statements of the through-put received pursuant to each individual Terminalling Agreement, and such other data and information as may reasonably be requested by the Trustee from time to time.

Section 8.8. Annual Certificate. The Borrower will furnish to the Issuer and to the Trustee, on or before January 31 of each calendar year, a certificate of the Borrower signed by the Borrower Representative stating that the Borrower has made a review of its activities during the preceding year for the purpose of determining whether or not the Borrower has complied with all of the terms, provisions and conditions of this Agreement and, to the best of the Borrower's knowledge, the Borrower has kept, observed, performed and fulfilled in all material respects each and every covenant, provision and condition of this Agreement on its part to be performed and is not in default in any material respect in the performance or observance of any of the terms, covenants, provisions or conditions hereof, or if the Borrower shall be in default, such certificate shall specify all such defaults and the nature thereof.

CHI2 2261871.16

36

Section 8.9. Recording and Maintenance of Liens.

(a) The Borrower will, at its own expense, take all necessary action to maintain and preserve the liens and security interest of this Agreement, the Mortgage and the Indenture so long as any principal installment of, premium, if any, or interest on the Series 2010 Bonds remains unpaid.

(b) The Issuer shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected thereby. The Issuer will execute such instruments as may be necessary in connection with such filing or recording.

Section 8.10. No Liens.

The Borrower shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to its Project which are not Permitted Encumbrances.

Section 8.11. Creation, Perfection and Priority of Security Interest.

(a) The Borrower, in consideration of the issuance of the Bonds by the Issuer and the loaning of the proceeds of the Bonds to the Borrower, and to secure the payment of the principal of and interest on the Bonds, hereby grants, assigns, transfers, pledges and confirms a security interest in and unto the Issuer, its successor and assigns of all Revenues now owned or hereafter acquired by the Borrower, and all proceeds therefrom, whether cash or noncash, all as defined in Article 9 of the Uniform Commercial Code, as amended, in Illinois, for the equal and pro rata benefit and security of all obligations issued under the Indenture and all obligations owed hereunder and under the Bonds. The pledge and grant of a security interest in the Revenues have been duly authorized and are valid and binding obligations of the Borrower, enforceable in accordance with their terms, subject to the effect of bankruptcy, insolvency and other laws affecting creditor's rights generally.

(b) Assuming (i) the prior filing by the Issuer with the Secretary of State of Illinois of an appropriately completed UCC-1 financing statement reasonably identifying the Revenues as collateral and (ii) the proper continuation of such financing statement under applicable law, under the laws of the State of Illinois the security interest of a lien creditor arising after the date hereof in the Revenues shall be subordinate to the rights of the Issuer in the Revenues, to the extent that the Revenues and the proceeds thereof may be perfected solely



through the filing of a UCC financing statement.

(c) Except for Permitted Encumbrances, the Borrower has not heretofore made a pledge of, granted or made a pledge of, granted a lien on or security interest in, or made an assignment or sale of the Revenues that ranks on a parity with or is senior to the pledge and security interest granted hereby. Except for the financing statement filed in favor of the Issuer, the Borrower has not described the Revenues in any Uniform Commercial Code financing statement that will remain effective when the Bonds are issued. Except for Permitted Encumbrances, Borrower shall not hereafter (i) make or knowingly permit to exist any pledge or assignment of, lien on, or security interest in the Revenues or (ii) file any Uniform Commercial

37

CHI2 2261871.16

Code financing statement describing the Revenues in favor of any party other than the Trustee or the Issuer.

Section 8.12. Other Borrower Covenants. In the event the Debt Service Coverage Ratio on all Bonds outstanding for any six-month period is less than 1.10 to 1.0 as set forth in the certificate required to be delivered to the Trustee pursuant to this Section and Section 4.04(g) of the Indenture, the Borrower will, at the direction of a majority of the Bondholders and at its own expense, retain a professional consulting, accounting, investment banking or commercial banking firm acceptable to the Trustee (the "Consultant") to make recommendations with respect to the rates, fees and charges of the Borrower and the Borrower's methods of operation and other factors affecting its financial condition in order to increase such Debt Service Coverage Ratio to at least 1.10 to 1.0. If the Debt Service Coverage Ratio remains below 1.10 to 1.0 for the most recent six month period after the delivery of the Consultant's report, the Borrower shall implement such recommendations which are in the reasonable control of the Borrower unless it receives the written consent of the Owners of a majority in aggregate principal amount of the Bonds outstanding. The Borrower covenants that it shall deliver to the Trustee the certificate required to be delivered pursuant to Section 4.04(g) of the Indenture on or prior to June 1 and December 1 of each year, commencing June 1, 2011.

Section 8.13. Terminalling Agreements; Terminalling Agreement Assignments.

(a) The Borrower represents that the copies of the Terminalling Agreements (including the guarantees of the Terminalling Agreements) and the Terminalling Agreement Assignments (collectively, the "Terminalling Documents") which are contained in the closing transcript for the Bonds are true, correct and complete copies of such agreements, including all amendments to date. The Terminalling Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower and are in full force and effect. No default or event of default thereunder has occurred and to the best of the Borrower's knowledge, there are no grounds or basis for the occurrence of a default or event of default by any party thereto as of the Closing Date.

(b) The Borrower certifies that all of the conditions to the effectiveness of the Terminalling Agreement with BP Products North America, Inc. contained in Article XIX of such agreement have been met or waived.

(c) The Borrower knows of no reason as of the Closing Date why it might be unable to meet the Completion Deadlines (both the "Interim Completion Deadline" and the "Completion Deadline" or, in certain Terminalling Agreements, the "Completion Date")) set forth in Section 4.2 of each Terminalling Agreement. Toward that end, the Borrower certifies that those items which were scheduled to occur prior to the Closing Date as set forth in Exhibit E to the Design-Build Construction Agreement dated October 15, 2010 between the Borrower and ECF, Inc. have occurred, and the Borrower is not aware of any material delays in the implementation of that contract or the construction of the Project

CHI2 2261871.16

38

## ARTICLE IX ASSIGNMENTS AND AMENDMENTS

Section 9.1. Assignment. The Issuer's rights under this Agreement (exclusive of Unassigned Rights), including the right to receive and enforce the assigned payments to be made by the Borrower under this Agreement, have been assigned to the Trustee pursuant to the Indenture, and the Borrower hereby consents to such assignment. The Borrower shall not assign its obligations hereunder except as specifically permitted by the Agreement.

Section 9.2. Amendment of Agreement. The Borrower and the Issuer shall not alter, modify or cancel, or agree or consent to alter, modify or cancel, this Agreement, except pursuant to and in accordance with Article XI of the Indenture.

#### **ARTICLE X EVENTS OF DEFAULT AND REMEDIES**

Section 10.1. Events of Default Defined. The following shall be "events of default" under this Agreement, and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any of the following events:

- (a) Failure by the Borrower to pay or cause to be paid pursuant to this Agreement any payment required to be paid or prepaid under Article IV or Article XI hereof, when and as the same becomes due and payable.
- (b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in subsection (a) of this Section, or any representation made by the Borrower hereunder shall be materially false or inaccurate.
- (c) The occurrence of an Act of Bankruptcy.
- (d) An "event of default," within the meaning of the Mortgage, shall have occurred thereunder.
- (e) Default shall occur in the payment of the principal of, premium, if any, or interest on any Additional Indebtedness or Permitted Indebtedness if the unpaid amount in default, together with the unpaid amount in default under all other Additional Indebtedness or Permitted Indebtedness equals or exceeds \$500,000 and is not being contested in good faith.
- (f) In any Bond Year, the Debt Service Coverage Ratio is below 1.0 to 1.0.

Section 10.2. Remedies on Default. Whenever any event of default referred to in Section 10.1 hereof shall have happened, then:

- (a) If the Series 2010 Bonds are accelerated pursuant to the Indenture, the principal of the Loan, together with all interest accrued thereon, shall become immediately due and payable upon delivery of the notice required by Section 6.02 of the Indenture.

39

CHI2\_2261871.16

- (b) The Issuer and the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the payments due hereunder and thereafter to become due during the term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement or the Mortgage.
- (c) The Trustee on behalf of the Issuer may take any action permitted under the Indenture.
- (d) The Issuer retains the right to enforce any or all of the Unassigned Rights, and may take independent action to so enforce such Unassigned Rights.

Any amounts collected pursuant to action taken under this Section shall be applied in accordance with the Indenture.

Section 10.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive, and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay in exercising or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

Section 10.4. Agreement to Pay Attorneys' Fees and Expenses. If the Borrower should default under any of the provisions hereof or of the Tax Agreement, and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or defense of any litigation brought against the Trustee or the Issuer as a result of such default by the Borrower or agreement on the part of the Borrower herein contained, then the Borrower agrees that it will pay to the Issuer or the Trustee the reasonable fees and expenses of such attorneys and such other reasonable expenses, so

incurred by the Issuer or the Trustee. The Borrower shall also pay any reasonable costs incurred in connection with any action requested of the Issuer by the Borrower.

Section 10.5. Waivers; No Additional Waiver Implied by One Waiver.

(a) The Trustee may in its discretion waive (which waiver shall be binding on the Issuer) any event of default hereunder and its consequences, and shall do so upon the written request of the Owners of a majority in aggregate principal amount of the Series 2010 Bonds then Outstanding; provided, however, that no uncured or unwaived event of default then exists under the Indenture. Should the Trustee waive an event of default hereunder it shall give prompt written notice thereof to the Issuer, the Borrower and, if it has previously given notice of such event of default to the Bondholders, the Bondholders.

(b) If any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

40

CHI2\_2261871.16

Section 10.6. Trustee to Exercise Issuer's Rights. Certain of the Issuer's rights and remedies under this Agreement, except for Unassigned Rights and the Issuer's continuing rights to enforce them, including the rights and remedies given to the Issuer under this Article, have been assigned to the Trustee under the Indenture, to which assignment the Borrower hereby consents. Such rights and remedies may be exercised by the Trustee as provided in the Indenture.

Section 10.7. Notice of Default; Opportunity to Cure Defaults. Anything herein to the contrary notwithstanding, no default under Sections 10.1(b) or (d) hereof shall constitute an event of default until actual notice of such default by registered or certified mail shall be given to the Borrower by the Issuer or the Trustee, and the Borrower shall have had 30 days after receipt of such notice at its option to correct said default or to cause said default to be corrected, and shall not have corrected said default or caused such default to be corrected within the applicable period; provided, however, that if said default be such that it can be corrected but cannot be corrected within the applicable period, it shall not constitute an event of default if corrective action is instituted by the Borrower, within the applicable period and diligently pursued until the default is corrected.

**ARTICLE XI PREPAYMENTS**

Section 11.1. Option to Prepay Upon Occurrence of Certain Events.

(a) The Borrower shall have, and is hereby granted, the option to prepay the Loan in whole or in part (without premium) in order to effect redemption of all or a portion of the Series 2010 Bonds pursuant to Section 2.02(b) (iv) of the Indenture, and to cancel or terminate this Agreement, if any of the following shall have occurred:

(i) The Project or any portion thereof shall have been damaged or destroyed to such an extent that, in the judgment of the Borrower, (A) it cannot be reasonably restored within a period of three consecutive months following such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project for a period of three or more consecutive months following such damage or destruction or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(ii) title in and to, or the temporary use of, all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority, or person acting under governmental authority (including such a taking as, in the judgment of the Borrower, results in the Borrower being prevented thereby from carrying on its normal operations at the Project for a period of three or more consecutive months); provided that the Borrower has satisfied the requirements of Section 7.5(c) of this Agreement; or

(iii) legal curtailment of the Borrower's use or occupancy of all or substantially all of the Project for any reason (other than that set forth in subsection (a)(ii))

41

CHI2 2261871.16

of this Section), which curtailment shall, in the judgment of the Borrower, prevent the Borrower from carrying

on its normal operations at the Project for a period of three or more consecutive months.

(b) To exercise the option granted in this Section, the Borrower (after it becomes aware of such event) (i) shall, within 90 days following the event giving rise to the Borrower's desire to exercise such option, deliver to the Issuer and the Trustee a certificate, executed by the Borrower Representative, stating (A) the event giving rise to the exercise of such option, (B) that the Borrower has elected to cause the Trustee to redeem Series 2010 Bonds in accordance with the provisions of Section 2.02(b)(iv) of the Indenture and (C) the date upon which such redemption is to occur, which date shall be at least 45 days after the date such notice is delivered and (ii) shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption.

Section 11.2. Option to Prepay in Connection with Optional Redemption of Bonds. The Borrower shall have, and is hereby granted, the option to prepay the Loan in whole or in part, and to direct the Trustee to redeem Series 2010 Bonds in whole or in part pursuant to Section 2.02(b)(i) of the Indenture on any date selected by the Borrower on which the Series 2010 Bonds are subject to redemption. At such time as the Loan is subject to prepayment, the prepayment price shall be equal to that amount which is required to pay the principal of, premium, if any, and accrued interest to the redemption date of the portion of the then Outstanding Series 2010 Bonds to be redeemed. To exercise the option granted in this Section, the Borrower shall, not less than 45 days next preceding the date on which redemption is to occur, give written notice to the Trustee of its intention to prepay the Loan in whole or in part, and if in part shall specify therein the principal amount and maturities of Series 2010 Bonds to be redeemed on such date with the moneys received from such prepayment. Upon the exercise of any such option, the Borrower shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption of the Series 2010 Bonds.

Section 11.3. Miscellaneous Provisions Governing Prepayments.

(a) Should the Borrower have authority hereunder to select or determine the date on which a redemption of Series 2010 Bonds will occur as a result of a prepayment by the Borrower under this Article, the Borrower shall not select any redemption date earlier than the earliest redemption date for which the Trustee can comply with the notice provisions of the Indenture. All partial redemptions shall comply with the provisions of Section 2.08 of the Indenture.

(b) By or before 9:00 a.m., Chicago time, on or before each redemption date, the Borrower shall pay to the Trustee, for deposit in the Principal and Interest Payment Account of the Bond Fund, the amount of the redemption price (including premium, if any) for the Series 2010 Bonds to be redeemed under the Indenture plus the accrued interest thereon to the redemption date, all such payments to be made in immediately available funds.

(c) The Borrower shall also pay all reasonable expenses of redemption and the fees and expenses of the Issuer and the Trustee, accrued and to accrue until such payment and redemption of the Series 2010 Bonds.

CHI2 2261871.16

## 42

(d) If the Borrower exercises the option to prepay the Loan in whole, the prepayment price to be paid to the Trustee shall be the sum of (i) an amount of money which, when added to the amounts then on deposit in the Bond Fund (other than in the Rebate Fund), the Debt Service Reserve Fund and the Operating Reserve Account, will be sufficient to pay and redeem all of the then Outstanding Series 2010 Bonds on the redemption date, including, without limitation, principal (without premium) plus accrued interest thereon to said redemption date, plus (ii) an amount of money equal to the Trustee's and the Issuer's fees and expenses under the Indenture accrued and to accrue until such final payment and redemption of the Series 2010 Bonds.

## ARTICLE XII MISCELLANEOUS PROVISIONS

Section 12.1. Notices. Except as otherwise provided in this Agreement, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given (i) when personally delivered, (ii) three Business Days after deposit in the U.S. mail if sent by certified mail, postage prepaid, or (iii) on that same Business Day when sent by telecopy or facsimile transmission (receipt confirmed by telephone) or telegram, addressed as follows:

(a) If to the Issuer: City of Chicago, Illinois

Department of Community Development 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602

Attention: Commissioner

With a copy to: City of Chicago, Illinois

Department of Law 121 N. LaSalle Street, Room 600 Chicago, Illinois 60602

Attention: Finance and Economic Development Division

and

City of Chicago, Illinois Department of Finance 33 North LaSalle Street, Room 600, Chicago, Illinois 60602

Attention: City Comptroller

(b) If to the Trustee: Amalgamated Bank of Chicago

One West Monroe Street

Chicago, Illinois 60603

Attention: Corporate Trust Services

CHI2 2261871.16

**43**

**(c)**

If to the Borrower:

Asphalt Operating Services of Chicago, LLC

1603 South 9th Street

St. Louis, Missouri 63104

Attention: Al Meitl

With a copy to:

Maurides Foley & Tabangay L.L.C. 2N. LaSalle St., Suite 1800 Chicago, IL 60602 Attention: Adrian Tabangay

A duplicate copy of each notice given hereunder by either party hereto shall be given to the Trustee. Any person or entity listed above may, by notice given hereunder, designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 12.2. Binding Effect. This Agreement shall inure to the benefit of the Borrower, the Trustee and the Issuer and their respective successors and assigns, and shall be binding upon the Borrower and the Issuer and their respective successors and assigns.

Section 12.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4. Further Assurances and Corrective Instruments. The Borrower and the Issuer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or for carrying out the expressed intention of this Agreement.

Section 12.5. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6. Applicable Law. This Agreement shall be governed exclusively by and construed in accordance with the internal laws of the State, without giving effect to conflict of law principles.

Section 12.7. Borrower and Issuer Representatives. Whenever under the provisions of this Agreement the approval of the Borrower or the Issuer is required, or the Borrower or the Issuer is required to take some action at the request of the other, such approval or such request shall be given for the Borrower by the Borrower Representative and for the Issuer by the Issuer Representative, and the parties hereto and the Trustee shall be authorized to rely upon any such approval or request if given in the form required hereby.

Section 12.8. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of the Articles or Sections of this Agreement.

44

CHI2 2261871.16

Section 12.9. Limited Obligation of Issuer. The obligations of the Issuer hereunder are special, limited obligations of the Issuer, payable solely out of the revenues and income derived under this Agreement and as otherwise provided under this Agreement and the Indenture. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision thereof within the purview of any constitutional limitation or statutory provision, or a charge against the credit or general taxing powers, if any, of any of them. Neither the Issuer nor any officer, employee or agent of the Issuer nor any person executing the Series 2010 Bonds shall be liable personally for the 2010 Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 2010 Bonds.

Section 12.10. No Recourse Against the Issuer.

(a) No recourse shall be had for the payment of the principal of, redemption premium, if any, and interest on any of the Series 2010 Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Series 2010 Bonds, the Indenture, this Agreement or the Bond Purchase Agreement (or any other agreement entered into by the Issuer with respect thereto) against any past, present or future member, officer, agent or employee of the Issuer, or any incorporator, member, officer, employee, director or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture or this Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the Series 2010 Bonds.

(b) It is recognized that the Issuer's only source of funds with which to carry out its commitments with respect to this Agreement will be from the proceeds from the sale of the Series 2010 Bonds; and it is expressly agreed that the Issuer shall have no liability, obligation or responsibility with respect to the loan to be made pursuant to this Agreement except to the extent of funds available from such Bond proceeds. If, for any reason, the proceeds from the sale of the Series 2010 Bonds is not sufficient to finance the Costs of the Project in full, the Borrower shall pay the balance of the funds necessary to complete the Project and shall not be entitled to reimbursement therefor.

Section 12.11. Indemnification of and Fees and Expenses of the Issuer and the Trustee.

The covenants of the Borrower as to the indemnification of the Issuer and the Trustee as described in Section 8.4 hereof and the payment of fees and expenses of the Issuer and the Trustee as described in Section 10.4 hereof shall survive the termination of this Agreement and the resignation or removal of the Trustee.

Section 12.12. Indenture Provisions. The Indenture provisions concerning the Series 2010 Bonds and the other matters therein are an integral part of the terms and conditions of the Loan made by the Issuer to the Borrower pursuant to this Agreement and the execution of this Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Such duty or obligation, to the extent within Borrower's

45

CHI2 2261871.16

reasonable control, shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower hereby agrees to carry out and perform all of its obligations relating to making payments due to the Trustee under the Indenture as fully as if the Borrower were a party to the Indenture.

Section 12.13. Default by Issuer; Limited Liability. Notwithstanding any provision or obligation to the contrary hereinbefore set forth, no provision of this Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or to give rise to a charge upon the general credit of the Issuer with respect to making the Loan. The liability of the Issuer hereunder shall be limited to its interest, if any, in the Project, this Agreement

and all other related documents and collateral and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer, nor shall the Issuer be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Series 2010 Bonds or for the costs, fees, penalties, taxes, interest, omissions, charges, insurance or any other payments recited herein and shall be obligated to pay the same only out of the amounts payable by the Borrower hereunder. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Borrower if a default shall occur hereunder.

CHI2 2261871.16

46

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written. The Borrower has no seal.

CITY OF CHICAGO, ILLINOIS

Title: Chief Financial Officer

ASPHALT OPERATING SERVICES OF CHICAGO, LLC

[Signature Page to Loan Agreement]

EXHIBIT A

MORTGAGE AND SECURITY AGREEMENT from

ASPHALT OPERATING SERVICES OF CHICAGO, LLC, an Illinois limited liability company

AMALGAMATED BANK OF CHICAGO, an Illinois banking association organized and existing under the laws of the State of Illinois

Dated as of December 1, 2010

Permanent Tax Index Numbers and Address: This Instrument Prepared by and to be Returned

After Recording to:

See Exhibit A

Greenberg Traurig, LLP 77 West Wacker Drive, Suite 3100 Chicago, Illinois 60601 Attention: Scott H. Kapp

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT dated as of December 1, 2010, from ASPHALT OPERATING SERVICES OF CHICAGO, L.L.C, an Illinois, limited liability company (the "Mortgagor"), to AMALGAMATED BANK OF CHICAGO, an Illinois banking association duly organized and validly existing under the laws of the State of Illinois, (the "Mortgagee");

WITNESSETH:

WHEREAS, the Mortgagor and the City of Chicago, Illinois, a municipal corporation (the "Issuer") have previously entered into that certain Loan Agreement dated as of December 1, 2010 (as from time to time supplemented or amended, the "Loan Agreement"), which sets forth the terms and conditions upon which the Issuer has made a loan to Mortgagor of the proceeds received from the sale of Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) (the "Series 2010 Bonds");

WHEREAS, the Series 2010 Bonds have been issued to finance or reimburse the Mortgagor for certain permitted costs in connection with the design, construction and equipping of the Mortgagor's liquid asphalt through-put facility including the Real Estate described in Exhibit A attached hereto and the Improvements located thereon;

WHEREAS, the Mortgagor has agreed to make payments pursuant to the Loan Agreement sufficient in the aggregate to pay when due the principal of, premium, if any, and interest on the Bonds, and related expenses;

WHEREAS, the Mortgagee and Issuer have previously entered into that certain Indenture of Trust dated December 1, 2010 (as from time to time supplemented or amended, the "Indenture of Trust"), pursuant to which the Mortgagee, as trustee, has agreed to accept the rights, title and interest of Issuer under this Mortgage as related to Mortgagor's obligations under the Loan Agreement; and

WHEREAS, the Issuer may issue additional bond pursuant to the Indenture of Trust ( such additional bonds, together with the Series 2010 Bond are referenced herein as the "Bonds").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness hereby secured, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor for security purposes hereby irrevocably grants, assigns, transfers, conveys and mortgages to the Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, all of the Mortgagor's right, title and interest in and to the real property located in the County of Cook, State of Illinois, described in Exhibit A attached hereto and by this reference incorporated herein, including all Improvements now and hereafter located thereon;

TOGETHER WITH all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to the following:

(a) All rents, issues, profits, royalties and income with respect to the said Real Estate and Improvements and other benefits derived therefrom, subject to the right, power and authority given to the Mortgagor to collect and apply same; and

(b) All leases or subleases covering the said Real Estate and Improvements or any portion thereof now or hereafter existing or entered into, including, without limitation, all cash or

1

security deposits, advance rentals, and deposits or payments of ^imilar nature, and any and all guarantees of the lessee's obligations under any of such leases and subleases; and

(c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said Real Estate and Improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the said Real Estate and Improvements; and

(d) All easements, rights-of-way and rights used in connection with the said Real Estate and Improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto; and

(e) Any Land lying within the right-of-way of any street, open or proposed, adjoining the said Real Estate and Improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said Real Estate and Improvements; and

(f) Any and all buildings and Improvements now or hereafter erected on the said Real Estate, including, but not limited to, all the Fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and Improvements; and

(g) All materials intended for construction, reconstruction, alteration and repairs of the said Real Estate and Improvements, all of which materials shall be deemed to be included within the said Real Estate and Improvements immediately upon the delivery thereof to the said Real Estate; and

(h) All fixtures attached to or contained in and used in connection with the said Real Estate and Improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property used or useful in the operation of the said Real Estate and Improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said Real Estate and Improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property placed by the Mortgagor on and in the said Real Estate and Improvements shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be Real Estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the Real Estate or does not constitute a "fixture" (as such term is defined in the "Code" (as defined in Section 1.1 hereof), this Mortgage is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such property, which the Mortgagor hereby grants to the Mortgagee as secured party, fixtures shall also include all other personal property now or hereafter located at or used in connection with the Premises and owned by Mortgagor, including all building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements; and

(i) All the estate, interest, right, title or other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which the Mortgagor now has or may hereafter acquire in the said Real Estate and Improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said Real Estate and Improvements or personal property,

2



including without limitation any awards resulting from a change of grade of streets and awards for severance damages;

(j) All Revenues (as that term is defined in the Indenture of Trust); and

(k) All proceeds of all of the foregoing;

the said Real Estate and Improvements and the property and interests described in (a) through (j) above being collectively referred to herein as the "Premises"; and as to any portion of the Premises constituting property subject to the Code, this Mortgage is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such portion of the Premises, which the Mortgagor hereby grants to the Mortgagee as secured party. Any security interest granted hereunder shall be subject to the terms and conditions of the Bond Documents. Moreover, nothing contained herein shall limit the rights of the Mortgagor to incur any Permitted Indebtedness.

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

FOR THE PURPOSE OF SECURING the following (but not exceeding \$45,000,000 principal amount in the aggregate):

(a) Payment of all amounts due under the Loan Agreement and interest thereon and any and all modifications, extensions and renewals thereof, and performance of all obligations of the Mortgagor under the Loan Agreement; and

(b) Performance and observance by the Mortgagor of all of the terms, covenants and provisions of this Mortgage; and

(c) Performance and observance by the Mortgagor of all of the terms, covenants and provisions of the other Bond Documents (as defined in Section 1.1 hereof); and

(d) Payment of all sums advanced by the Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Bond Documents (as defined in Section 1.1 hereof), or otherwise advanced by the Mortgagee pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; and

(e) Performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any indebtedness hereby secured or any obligation secured hereby; and

(f) Payment of any future or further advances which may be made by the Mortgagee at its sole option to and for the benefit of the Mortgagor, its successors, permitted assigns and legal representatives.

PROVIDED, HOWEVER, that if the Mortgagor shall pay all amounts coming due under the Loan Agreement as therein provided, and shall perform all of its other obligations under the Loan Agreement, and the Mortgagor shall pay all other sums herein provided for, or secured hereby, and the Mortgagor shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

### 3

TO PROTECT THE SECURITY OF THIS MORTGAGE AND SECURITY AGREEMENT, THE MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

#### ARTICLE I DEFINITIONS

Section 1.1, Definitions. Each of the following terms shall have the meaning assigned in this Section 1.1 of this Mortgage (except as otherwise expressly provided or unless the context otherwise requires). Capitalized terms used but not defined herein shall have the respective meanings assigned in the Loan Agreement.

"Agreements" shall mean the Asphalt Terminalling Agreements, the construction contracts, and all contracts, agreements, warranties, representations, service agreements, maintenance contracts and agreements relating to the sale of any part or portion of the Project now or hereafter comprising any portion of the Real Estate or the use, occupancy, operation, management, leasing, repair and service of the Real Estate or any part thereof, whether presently existing or entered into after the date hereof.

"Bond Documents" means the Borrower Agreements, and all other documents and instruments at any time evidencing and securing the indebtedness and obligations secured by this Mortgage.

"Code" means the Uniform Commercial Code of the State of Illinois as from time to time in effect.

"Collateral" shall mean such of the Real Estate which constitutes personal property under the laws of the State of Illinois, including the Intangibles and any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the possession of any of the foregoing, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods,

fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing.

"Environmental Laws" means any present and future laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements and the like, as well as common law, issued, promulgated or entered into by any Governmental Authority, relating in any way to: (a) the environment, (b) health and safety matters or the effect of the environment on human health, (c) emissions, discharges or releases of pollutants, contaminants, Hazardous Materials or wastes into surface water, ground water or land, or (d) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials or the clean-up or other remediation thereof and includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including, but not limited to, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the

4

Endangered Species Act; the National Environmental Policy Act; the River and Harbors Appropriation Act, and those relating to Lead Based Paint..

"Environmental Lien" means a lien in favor of any Governmental Authority: (a) under any Environmental Law; or (b) for any liability or damages arising from, or costs incurred by, any Governmental Authority in response to the release or threatened release of any Hazardous Material.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Hazardous Materials" means and includes, but is not limited to, any and all substances (whether solid, liquid or gas) defined, listed or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes or words of similar meaning or regulatory effect under any present or future Environmental Laws, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, lead based paint and mold, provided however, that notwithstanding the foregoing, "Hazardous Material" does not include any Greenhouse Gases as defined by the United States Environmental Protection Agency, any substance, material and/or liquid contemplated to be stored, used, blended, transported, placed, conveyed, received, loaded, unloaded, and/or tested on, to, under or from the premises pursuant to the Asphalt Terminalling Agreements or used in the operation, repair or maintenance of the Asphalt Terminalling Facility or the Premises, including, without limitation, petroleum and petroleum products, liquid asphalt and similar materials provided that the same are stored, used, blended, transported, placed, conveyed, received, loaded, unloaded, and/or tested on in compliance with all Environmental Laws, except where such noncompliance would not have a material adverse effect upon the operations, business, properties conditions (financial or otherwise) or prospects of the Mortgagor taken as a whole.

"Intangibles" shall mean all the records and books of account now or hereafter maintained by Mortgagor in connection with the operation of the Real Estate; all contract rights, rights to the payment of money including tax refund claims, insurance proceeds and tort claims, chattel paper, documents, instruments, general intangibles, together with all income therefrom, increases thereunder and proceeds thereof in connection with the operation of the Real Estate; and all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the Real Estate or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to any of the Real Estate and proceeds of any sale, option or contract to sell the Real Estate or any portion thereof. Intangibles shall also include, to the maximum extent permitted by applicable law, all right, title and interest of Mortgagor in and to all general intangibles relating to design, development, operation, management and use of the Real Estate and Collateral, all certificates of occupancy, zoning variances, building, use or other Approvals in connection with the development, use, operation or management of the Real Estate and Collateral, all construction, service, engineering, consulting, development, management, leasing, architectural and other similar contracts concerning

the design, construction, development, management, administration, operation, occupancy and/or use of the Real Estate and Collateral, all architectural drawings, plans, specifications, soil tests, appraisals, engineering reports and similar materials relating to all or any portion of the Real Estate and Collateral and all payment and performance bonds or warranties or guarantees relating to the Real Estate and Collateral; and all right, title and interest of Mortgagor in and to all intellectual property, trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other source and business identifiers, trademark registrations and applications for

5

registration used exclusively at or relating exclusively to the Real Estate and Collateral or any portion thereof; all renewals, extensions and continuations-in-part of the items referred to above; any written agreement granting to Mortgagor any right to use any trademark or trademark registration at or in connection with any of the Real Estate and Collateral; and the right of Mortgagor to sue for past, present and future infringements of the foregoing;

"Improvements" shall mean all buildings, structures and Improvements to be constructed on the Land together with all related infrastructure and related facilities and all other buildings, structures, fixtures, personalty, appurtenances and Improvements now or hereafter on the Land.

"Issuer" means City of Chicago, Illinois, a municipal corporation and home rule unit of local government organized and existing under the laws of the State of Illinois.

"Land" shall mean the land legally described in Exhibit A hereto located in Cook County, Illinois, together with all easements, air rights, servitudes, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainder, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor, in and to the same.

"Losses" means and includes any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including, but not limited to, strict liabilities), obligations, debts, fines, penalties, charges, amounts paid in settlement (with the consent of Mortgagor), litigation costs, reasonable fees of attorneys incurred in connection with any judicial or administrative proceedings, actions, claims, suits judgments or awards.

"Mortgage" means this Mortgage and Security Agreement, as from time to time modified, amended, renewed and extended.

"Navistar Agreement" means that certain Purchase and Sale Agreement dated July 2, 2009, as amended from time to time entered into by and between Navistar, Inc., Chicago Title Land Trust Company, as trustee, under trust agreement dated November 27, 1989, also known as trust no. 109903-7, MCAL, LLC, GIFFORD 300, LLC and Mortgagor.

"NFR Letters" means collectively, that certain No Further Remediation Letter issued by the Illinois Environmental Protection Agency and Recorded December 8, 2006 as document number 0634206111 and recorded December 12, 2006 as document 0634634050 and that certain No Further Remediation Letter issued by the Illinois Environmental Protection Agency and Recorded August 26, 2009 as document number 0923831078.

"Permits" shall mean all building permits, certificates of occupancy and other assignable governmental permits, licenses and authorizations, including, without limitation, all state, county and local occupancy certificates, and other licenses, in any way applicable to the Real Estate or any part thereof or to the development, construction, ownership, use, occupancy, operation, maintenance, and leasing of the Real Estate.

"Permitted Encumbrances" shall have such meaning as is set forth in the Loan Agreement.

"Permitted Indebtedness" shall have such meaning as is set forth in the Loan Agreement.

6

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Premises" shall mean all of Mortgagor's right, title and interest in and to all of the Land, the Improvements, the Fixtures, the Permits, the Intangibles, the Agreements, and the rents, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage, together with any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the possession of any of the foregoing, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft,

damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing. Premises shall also include all renewals, substitutions, Improvements, accessions, attachments, additions, remainders, reversions, replacements and all proceeds to or of each of the foregoing, any greater estate in the Real Estate or any portion thereof that may be acquired by Mortgagor; and all conversions of the security constituted thereby so that, immediately upon such acquisition, construction, assemblage, placement or conversion, as the case may be, and in each such case, the foregoing shall be deemed a part of the Premises and shall automatically become subject to the lien of this Mortgage as full and completely and with the same priority and effect as though now owned by Mortgagor and specifically described herein, without any further mortgage, assignment or conveyance by Mortgagor.

"Real Estate" shall mean the Land, the Improvements and such other of the Premises as constitutes real property under the laws of the State of Illinois, together with any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the possession of any of the foregoing (including, without limiting the generality of the foregoing, any and all real estate tax abatements now or in the future accruing to the Real Estate), any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing.

"Remediation" means and includes, but is not limited to, any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Material; any actions to prevent, cure or mitigate any Release of any Hazardous Material; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing or laboratory or other analysis or evaluation relating to the presence, Release or threatened Release of any Hazardous Materials in, on or under the property, or to anything referred to herein.

"Release" means with respect to any Hazardous Material includes, but is not limited to, any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials in material violation of any Environmental Laws.

"Tax Agreement" means the Tax Compliance Agreement dated as of December 17, 2010, by and among the Issuer, the Mortgagor, and the Trustee, as from time to time supplemented and amended.

## 7

"Taxes" means taxes, assessments and governmental charges of any kind that may be lawfully assessed or levied against the Premises.

"Trustee" means, Amalgamated Bank of Chicago, as trustee, under that certain Indenture of Trust dated as of December 1, 2010, between the Issuer and the Trustee.

## ARTICLE II

### COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Indebtedness. The Mortgagor covenants and agrees that all amounts coming due under the Loan Agreement shall be paid when due, that all other sums which may become due pursuant thereto or hereto shall be paid when due, and that all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Mortgagor, as provided in Borrower Agreements, shall be paid when due, and that the Mortgagor will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Borrower Agreements provided to be performed and observed by the Mortgagor.

Section 2.2. Escrow Deposits. After the occurrence of an Event of Default and there are insufficient funds in the Insurance/Tax Account of the Bond Fund and deposits pursuant to Section 4.04 of the Indenture of Trust have ceased, in order to provide moneys for the payment of Taxes required to be paid by the Mortgagor pursuant to Section 7.1 of the Loan Agreement and the premiums on the insurance required to be carried by the Mortgagor pursuant to Section 7.2 of the Loan Agreement, the Mortgagor shall pay to the Mortgagee on the first day of each month, such amount as the Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Taxes and insurance premiums, through substantially equal monthly payments by the Mortgagor to the Mortgagee, amounts sufficient to pay such next annual Taxes and insurance premiums. Amounts held in such escrow

shall be made available by the Mortgagee to the Mortgagor for the payment of the Taxes and insurance premiums on the Premises when due, or may be applied thereto by the Mortgagee if it in its sole discretion so elects. The Mortgagee may at any time and from time to time waive the requirement for the escrow deposits provided for in this Section. In the event of any such waiver, the Mortgagee may thereafter in its sole discretion elect to require that the Mortgagor commence making such escrow deposits by giving the Mortgagor not less than 10 days' written notice of such election. No such waiver shall impair the right of the Mortgagee thereafter to require that such escrow deposits be made.

Section 2.3. Zoning of the Premises. The Mortgagor shall not initiate or acquiesce in any zoning change or reclassification of the Premises in such a manner that would adversely affect the intended use of the Premises for the purposes of the Project (as defined in the Loan Agreement) and without the consent of the Mortgagee.

Section 2.4. Actions by Mortgagee to Preserve Premises. Should the Mortgagor fail to make any payment or to do any act as and in the manner provided herein, the Mortgagee in its own discretion, without obligation so to do and without releasing the Mortgagor from any obligation, may, after notice and a reasonable opportunity to cure, make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith, without limiting its general powers, the Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Premises; (ii) to make additions, alterations, repairs and Improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of the Mortgagee; (iv) subject to the Mortgagor's right to contest Taxes set forth in 7.1(b) of the Loan Agreement, to pay any Taxes asserted against the

8

Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity thereof; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of the Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Mortgagor shall immediately, upon demand therefor by the Mortgagee, pay all reasonable costs and expenses incurred by the Mortgagee in connection with the exercise by the Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys fees, together with interest thereon at the rate equal to the lesser of (i) 3% per annum above the highest rate of interest borne by any of the Bonds and (ii) the maximum rate permitted by law (the "Default Rate") all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable.

Section 2.5. Title, Liens and Conveyances.

(a) The Mortgagor represents and warrants that it holds good and marketable title to the Premises, subject only to Permitted Encumbrances and the Asphalt Terminalling Agreements.

(b) In the event title to the Premises is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(c) In the event that the Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Premises in violation of the Loan Agreement, whether by operation of law, voluntarily, or otherwise, or the Mortgagor shall contract to do any of the foregoing except as set forth in the the Asphalt Terminalling Agreement dated November 12, 2009 as amended between BP Products North America Inc. and the Mortgagor, the Mortgagee, at its option, shall have the unqualified right to declare an Event of Default hereunder.

(d) Any waiver by the Mortgagee of the provisions of this Section shall not be deemed to be a waiver of the right of the Mortgagee to insist upon strict compliance with the provisions of this Section in the future.

Section 2.6. Taxes Affecting Mortgage.

(a) If at any time any federal, State or municipal law shall require any documentary stamps or other tax hereon, or shall require payment of any tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Mortgagee upon 30 days' notice to the Mortgagor; provided, however, that said election shall be unavailing and this Mortgage shall be and remain in effect, if the Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of the Mortgagee and the Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

(b) In the event of the enactment after the date of this Mortgage of any law of the State in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in

9

the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder hereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if, in the reasonable opinion of counsel for the Mortgagee or counsel for the Issuer, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be due and payable within 30 days from the giving of such notice.

#### Section 2.1. Environmental Matters.

(a) The Mortgagor hereby represents, warrants and covenants to the Mortgagee that: (i) neither the Mortgagor nor any of its Affiliates (as defined in the Loan Agreement), nor, to the best of the Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof (except as set forth in the reports, approvals and correspondence (including, without limitation, no further remediation letters) addressing the remediation of the Premises and listed on Schedule 2.7 attached hereto) (collectively, the "Environmental Report"), (ii) that none of the property described above has ever been used by the Mortgagor or any of its Affiliates or, to the best of the Mortgagor's knowledge, by any other person or entity, as a treatment, storage and disposal facility as regulated by the Resource Conservation and Recovery Act, as amended, whether permanent or temporary, for any Hazardous Material (except as set forth in the Environmental Report), (iii) that any underground storage tanks located on the Premises are in compliance with all applicable laws; (iv) that all uses and operations on or of the Premises owned by Mortgagor shall be in compliance with all Environmental Laws, except where such noncompliance would not have a material adverse effect upon, the operations, business, properties, condition (financial or otherwise) or prospects of the Mortgagor taken as a whole; (v) there shall be no Releases of Hazardous Materials in, on, under or from the Premises by Mortgagor, except where such Release of Hazardous Materials would not have a material adverse effect upon, the Premises or the operations, business, condition (financial or otherwise) or prospects of the Mortgagor taken as a whole; (vi) there shall be no Hazardous Materials in, on or under the Premises, except as set forth in the Environmental Report and except such substance, material and/or liquid contemplated to be stored, used, blended, transported, placed, conveyed, received, loaded, unloaded, and/or tested on, to, under or from the premises pursuant to the Asphalt Terminalling Agreements or necessary for the operation, repair or maintenance of the Asphalt Facility and Premises provided that the same are used and stored in compliance with all Environmental Laws and with permits issued pursuant thereto, except where such noncompliance would not have a material adverse effect upon, the Premises or the operations, business, condition (financial or otherwise) or prospects of the Mortgagor taken as a whole; (vii) Mortgagor shall keep the Premises free and clear of all Environmental Liens except where such Environmental Liens would not have a material adverse effect upon, the Premises or the operations, business, condition (financial or otherwise) or prospects of the Mortgagor taken as a whole; (viii) Mortgagor shall not and shall not allow any tenant or other user of the Premises to do any act contrary to any applicable Environmental Law that materially increases the dangers to human health and safety or the environment; (xi) Mortgagor shall immediately notify Mortgagee in writing of (1) any Release or threatened Release of Hazardous Materials associated with the premises required to be reported to Governmental Authorities under the Environmental Laws; (2) any material non-compliance with any Environmental Laws related in any way to the Premises; (3) any actual or potential material Environmental Lien; and/or (4) any Remediation of environmental conditions relating to the Premises required by Environmental Laws; and (ix) that all uses and operations on or of the Premises owned by Mortgagor shall be in material compliance with the NFR Letters except as permitted by applicable Environmental Laws or when such uses or operations pose no material increase risk to human health or the environment, such uses or operations are necessary to the uses or operations of the Asphalt terminalling Facility, or when such uses or operations are subject to the review and approval of

10

Governmental Authorities. Notwithstanding anything herein to the contrary, it is the intention of Mortgagor and Mortgagee to preserve all rights and agreements, including but not limited to any indemnifications, arising out of, provided to or

which could benefit Mortgagor as set forth in the Navistar Agreement and Mortgagor shall not be required to take any action which would materially reduce or mitigate any such rights pursuant to such Navistar Agreement.

(b) Mortgagor covenants and agrees, at its sole cost and expense, to protect, defend, indemnify, release and hold Mortgagee harmless from and against any and all Losses imposed upon or incurred by Mortgagee, but only to the extent such Losses arise directly or indirectly out of, or are related to, any one or more of the following, and specifically excluding any Losses arising from or relating to the Mortgagee's willful misconduct or negligence: (i) any presence of any Hazardous Materials in, on, above or under the Premises not in compliance with applicable Environmental Laws and with any applicable permits issued pursuant thereto; (ii) any past, present or threatened Release or presence of Hazardous Materials in, on, above, under or from the Premises not in compliance with applicable Environmental Laws and with any applicable permits issued pursuant thereto; (iii) any activity by any of the Mortgagor, any person affiliated with any of the Mortgagor and/or any person, tenant or other user of the Premises in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, relining, control, management, abatement, removal, handling, transfer or transportation to or from the Premises of any Hazardous Materials at any time located in, under, on or above the Premises not in compliance with applicable Environmental Laws and with any applicable permits issued pursuant thereto; (iv) any activity by any of the Mortgagor, any person and/or any tenant or other user of the Premises in connection with any actual or proposed Remediation of any Hazardous Materials at any time located in, under, on or above the Premises, whether or not such Remediation is voluntary or pursuant to court or administrative order, including, but not limited to, any removal, remedial or corrective action; (v) any past, present or threatened non-compliance or violation of or liability under applicable Environmental Law (or of any applicable permit issued pursuant to applicable Environmental Law) in connection with the Premises or operations thereon, including, but not limited to, any failure by any of the Mortgagor, any person affiliated with any of the Mortgagor and/or any tenant or other user of the Premises to comply with any order of any Governmental Authority in connection with applicable Environmental Laws; (vi) the imposition, recording or filing of any Environmental Lien encumbering the Premises; (vii) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Mortgage concerning Environmental Laws and Hazardous Materials; (viii) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Premises, resulting from Hazardous Materials, or the violation of applicable Environmental Law, including, but not limited to, costs to investigate and assess such injury, destruction or loss; (ix) any acts of any of the Mortgagor, any person affiliated with any of the Mortgagor and/or any tenant or other user of the Premises in arranging for the disposal or treatment, or arranging with a transporter for transport for the disposal or treatment, of Hazardous Materials related to the Premises at any facility or incineration vessel containing such or similar Hazardous Materials in violation of applicable Environmental Laws; (x) any acts of any of the Mortgagor, any person affiliated with any of the Mortgagor and/or any tenant or other user of the Premises in accepting any Hazardous Materials for transport to disposal or treatment facilities, incineration vessels or sites from which there is a Release or a threatened Release of any Hazardous Material in violation of applicable Environmental Laws which causes the incurrence of costs for Remediation; (xi) any personal injury, wrongful death or property or other damage arising under any statutory or common law or tort law theory from the presence of any Hazardous Materials or noncompliance of the Premises with applicable Environmental Law, including, but not limited to, damages assessed for private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Premises; and (xii) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to this Mortgage as they pertain to Environmental Laws and/or Hazardous Materials. Upon written request by any

11

Mortgagee, Mortgagor shall defend Mortgagee against any claim for which indemnification is required hereunder, by attorneys and other professionals reasonably approved by the Mortgagee. The amount of Mortgagor's liability under this Mortgage is unrelated to and independent of, the amount of any loss that Mortgagee may suffer by reason of the failure of the Loan to be repaid in full, and shall not be determined by reference to the amount of any Loan loss. No amount paid to Mortgagee pursuant to this Section 2.7(b) shall be considered to be paid on account of the Loan or any deficiency or loss suffered by Mortgagee by reason of the failure of the Loan to be repaid in full. The enforcement of this Section 2.7 by Mortgagee shall not be construed as an indirect attempt to recover any such Loan loss.

(c) The representations, warranties, covenants, indemnities and obligations provided for in this Section 2.7 shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Mortgage; provided, however, that such representations, warranties, covenants, indemnities and

obligations shall not apply with respect to Hazardous Materials which are first placed on the Premises on or after the date on which the Mortgagee or any other party obtains title to or possession of the Premises pursuant to an exercise by the Mortgagee of its remedies under this Mortgage or any of the other Bond Documents or as a result of a conveyance of title to the Premises by the Mortgagor to the Mortgagee or such other party in lieu of such exercise of remedies.

Section 2.8 Security Agreement. This Mortgage is both a real property deed to secure debt and a "security agreement" within the meaning of the Uniform Commercial Code and a "financing statement" within the meaning of the Uniform Commercial Code. The Premises includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Real Estate. By executing and delivering this Mortgage, Mortgagor hereby grants to Mortgagee, as security for the obligations, a security interest in the Collateral to the full extent that the Collateral may be subject to the Uniform Commercial Code. The beneficial owner and holder of such security interest is Mortgagee, Mortgagee will be deemed the "secured party" with respect to such security interest for all purposes of the Uniform Commercial Code and will be so identified on all financing statements filed in connection therewith, and Mortgagee shall be entitled upon the occurrence and continuation of an Event of Default to exercise all the remedies of a secured party under the Uniform Commercial Code as well as all other rights and remedies available at law or in equity. The information contained in this Section 2.8 is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code for mortgages to be effective as financing statements filed as a fixture filing. The name of the "debtor" is ASPHALT OPERATING SERVICES OF CHICAGO, LLC, an Illinois limited liability company; and the name of the "secured party" is AMALGAMATED BANK OF CHICAGO, an Illinois banking association, the mailing address of the "secured party" from which information concerning the security interest may be obtained and the mailing address of the "debtor" are as set forth in Section 5.12 below. The types, or the items, of collateral covered hereby consist of the Collateral and all other items set forth herein above in Section 1 which constitute fixtures or personal property. Mortgagor is the record owner of the Land. Mortgagor covenants and agrees that the filing of this Mortgage in the Official Records of the County where the Premises is located shall also operate from the date of such filing as a fixture filing in accordance with Section 9-402 of the Illinois Uniform Commercial Code.

Section 2.9 Uniform Commercial Code. Mortgagor (as debtor) and Mortgagee (as secured party) agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code with respect to the Collateral; (ii) that a security interest in and to the Collateral is hereby granted to Mortgagee; and (iii) that all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee; all to secure payment of the Obligations and to secure performance by Mortgagor of the terms, covenants and provisions hereof.

12

(a) Upon the occurrence and during the continuance of an Event of Default under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Uniform Commercial Code, shall have an option to proceed with respect to both the Real Estate and the Collateral in accordance with its rights, powers and remedies with respect to the Real Estate, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that if Mortgagee shall elect to proceed with respect to the Collateral separately from the Real Estate, Mortgagee shall have all remedies available to a secured party under the Uniform Commercial Code and ten (10) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that Mortgagor shall not, without the written consent of Mortgagee, dispose of, remove or permit to be removed from the Premises any of the Collateral except in the ordinary course of owning, maintain and operating the Project, and that all replacements for each and every item of Collateral shall be at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless Mortgagee otherwise consents, shall be free and clear of liens, encumbrances, title retention devices and security interests of others except Permitted Encumbrances.

(b) Mortgagor and Mortgagee agree, to the extent permitted by applicable law, that: (i) all of the goods described within the definition of the words "Improvements" and "Fixtures" herein are or are to become fixtures on the Land, (ii) this Mortgage constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code, as amended or recodified from time to time, covering any Premises which now is or later may become fixtures attached to the Land or



Improvements; and (iii) Mortgagor is the owner of the Land. The address of Mortgagor as "debtor", and the address of Mortgagee as "secured party" are as set forth in Section 5.12 of this Mortgage. Mortgagor agrees that the filing of a financing statement in the records normally having to do with personal Premises shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto, herein above stated, that everything used in connection with the production of income from the Premises and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the Real Estate irrespective of whether (i) any such item is physically attached to the Land or Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Mortgagor's interest as lessor in any present or future leases or subleases or rights to rents growing out of the use and/or occupancy of the Premises, whether pursuant to a lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) or (3) that notice of Mortgagee's priority of interest to be effective against a particular

13

class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government, must be filed in the Uniform Commercial Code records.

Section 2.10 Maintenance, Repair and Restoration. Mortgagor shall place and thereafter keep the Premises in good condition, order, repair and condition and as may be reasonably necessary to protect and preserve the value of the Premises, causing all reasonably necessary repairs, alterations, renewals, replacement, additions, betterments and improvements to be made promptly thereto, reasonable wear and tear excepted. Subject to the terms of this Mortgage and the Loan Agreement, Mortgagor shall promptly repair, restore or rebuild (or cause the same to be done) any of the Premises which may become materially damaged or be destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Nothing herein is intended to limit any right Mortgagor may have to the use of insurance proceeds or condemnation awards to the extent set forth in the Loan Agreement.

Section 2.11 Use Violations or Alterations. Mortgagor shall not knowingly use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Premises in any manner which violates any applicable laws. Mortgagor shall not commit or permit any waste of the Premises or any part thereof, and will not make or permit to be made any material alterations or additions to the Premises which have a materially adverse affect on the Project except for the construction of the Improvements or as required pursuant an amendment to the Project documents in accordance with the Loan Agreement. Mortgagor shall not abandon the Premises or leave the Premises unprotected, unguarded, vacant or deserted, and shall not knowingly allow any of the Premises to be misused, abused or wasted, or to deteriorate.

Section 2.12 Restrictions on Transfer. Mortgagor shall not create, effect, contract for, consent to or permit any conveyance, sale, assignment, transfer, pledge, mortgage, security interest or other voluntary lien, encumbrance or alienation of the Premises or any part thereof or interest therein, whether any such conveyance, sale, contract, assignment, transfer, pledge, mortgage, security interest, or other voluntary lien, encumbrance or alienation is effected directly or indirectly, except for any Permitted Encumbrances and except as expressly permitted by the terms and provisions this Mortgage or Section 5.5 of the Loan Agreement.

Section 2.13 Business Loan. Borrower stipulates, represents, warrants, affirms and agrees that each of the loans and other credit obligations secured hereby are constitute a "business loan" within the meaning of Sections 205/4(a) or (c) of Chapter 815 of the Illinois Compiled Statutes, as amended.

Section 2.14 No Property Manager Lien. Any property management agreement for or relating to all or any part of the Premises, whether now in effect or entered into hereafter by Mortgagor or on behalf of Mortgagor, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage and the Loan Agreement any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, Illinois Compiled Statutes, Chapter 770, Section 60/1. Such property management agreement or a short form thereof, including such subordination, shall, at the Mortgagee's request, be recorded with the office of the recorder of deeds for the county in which the Premises are located. Mortgagor's failure to cause any of the foregoing to occur shall constitute an Event of Default under this

Mortgage.

14

### ARTICLE III

#### LEASES: ASSIGNMENT OF LEASES AND DECLARATION OF SUBORDINATION TO LEASES

Section 3.1. Assignment of Leases. The Mortgagor does hereby grant, assign, transfer and mortgage unto the Mortgagee, its successors and assigns for security purposes, (i) all the rents, avails, issues and profits now due or which may hereafter become due under or by virtue of any lease or sublease, either oral or written, or any letting of or any agreement for the use or occupancy of any part of the Premises, which may have been heretofore or may be hereafter made or agreed to, or which may be made or agreed to by the Mortgagee under the power hereafter granted; (ii) all such leases and subleases and agreements referred to in (i) above; and (iii) any and all guarantees of the lessee's obligations under any of such leases and subleases and agreements.

Section 3.2. Rights of Mortgagor. Mortgagor retains the right to, during the term of the Loan Agreement, to grant easements, licenses and other similar rights which do not unreasonably interfere with Mortgagor's operations on or relative to the Premises.

Section 3.3. Leases of the Premises. The Mortgagor agrees that it will not enter into any lease of the Premises or any portion thereof without the prior written consent of the Mortgagee and that it will at all times duly perform and observe all of the terms, provisions, conditions and agreements on its part to be performed and observed under any and all leases of the Premises or any portion thereof, and shall not suffer or permit any default or event of default on the part of the lessor to exist thereunder. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of the lessor under any lease of the Premises, and except for Mortgagee's negligence or willful misconduct, the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any leases of the Premises or by reason of the assignment of rents; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys fees and expense, incurred by the Mortgagee in the defense of any claims or demands therefor, whether successful or not, shall be so much additional indebtedness secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor on demand.

Section 3.4. Declaration of Subordination to Leases. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by the Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

#### ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

Section 4.1. Events of Default. Any one or more of the following shall constitute an Event of Default under this Mortgage:

- (a) An Event of Default shall occur and be continuing beyond any applicable cure period, if any, under the Loan Agreement or any of the Where Borrower Agreements; or
- (b) If any representation or warranty of the Mortgagor contained herein shall be untrue or incorrect in any material respect when made; or

15

- (c) All or any substantial part of the Premises shall be taken by a Governmental Body or any other person other than by condemnation, eminent domain or as otherwise described in Section 7.5 of the Loan Agreement; or
- (d) Default by the Mortgagor shall occur in the performance, observance or compliance with any term, covenant, condition, agreement or provision contained herein other than as described in paragraphs (a) or (c) above and such default is not cured within 30 days after notice plus such additional period as may be reasonably required to cure such default with diligence and continued effort; or
- (e) If any Event of Default shall occur and be continuing under the Indenture; or

(f) If Mortgagor shall violate any of the terms, covenants or other provisions set forth in Section 2.12 of this Mortgage.

Section 4.2. Acceleration upon Event of Default; Additional Remedies. Upon or at any time after the occurrence of any Event of Default under this Mortgage, the Mortgagee may declare all amounts due under the Loan Agreement, and all other indebtedness secured by this Mortgage, to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter the Mortgagee may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon

and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises (and in such event Mortgagee in its discretion may, with or without force and with or without process of law, as permitted by law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, and each of their agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the rents, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent), sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of Taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage; and the entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues or profits, the Mortgagee shall be entitled to exercise every right provided for in any of the other Bond Documents or by law upon occurrence of any Event of Default; or

(b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or

16

(c) Sell the Premises, or any part thereof, or cause the same to be sold, and convey the same to the purchaser thereof, pursuant to the statute in such case made and provided, and out of the proceeds of such sale retain all of the indebtedness secured by this Mortgage including, without limitation, principal, accrued interest, costs and charges of such sale, the attorneys fees provided by such statute, or in the event of a suit to foreclose by court action, a reasonable attorneys fee, rendering the surplus moneys, if any, to the Mortgagor; provided, that in the event of public sale, such property may, at the option of the Mortgagee, be sold in one parcel or in several parcels as the Mortgagee, in its sole discretion, may elect; or

(d) Exercise any or all of the remedies available to a secured party under the Code and any notice of sale, disposition or other intended action by the Mortgagee, sent to the Mortgagor at the address specified in Section 5.12 hereof, at least five days prior to such action, shall constitute reasonable notice to the Mortgagor; or

(e) Exercise any of the rights and remedies provided for in this Mortgage, in any of the other Bond Documents or by applicable law, including, without limitation, the right of set off.

Section 4.3. Foreclosure; Expense of Litigation. When, as a result of the occurrence of an Event of Default, the indebtedness secured by this Mortgage, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee under this Mortgage or the other Bond Documents, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary, in its sole discretion, either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Bond Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable with interest at the Default Rate. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

Section 4.4. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 4.3 hereof; second, all amounts remaining unpaid under the Loan Agreement; and third, any remainder to the Mortgagor, its successors or assigns, as their rights may appear.

Section 4.5. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then-current value of the Premises and the Mortgage or any holder of

17

the Loan Agreement may be appointed as such receiver. Such receiver shall have power (i) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagor<sup>^</sup>except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

Section 4.6. Insurance After Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

Section 4.7. Remedies Not Exclusive; No Waiver of Remedies, (a) The Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Bond Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Bond Documents to the Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Mortgagee and the Mortgagee may pursue inconsistent remedies. Failure by the Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by the Mortgagee of partial payments, shall not be deemed a waiver by the Mortgagee of any Default or Event of Default hereunder or of its right to exercise any such rights thereafter.

(b) In the event the Mortgagee at any time holds additional security for any of the indebtedness secured by this Mortgage, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

18

Section 4.8. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to this Mortgage. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee (except in the event of negligence or willful misconduct), all such liability being expressly waived and released by Mortgagor.

Section 4.9. Waiver of Certain Rights. The 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.

Section 4.10. Mortgagee's Use of Deposits. With respect to any deposits made with or held by the Mortgagee or any depositary pursuant to any of the provisions of this Mortgage, when any Event of Default shall exist under this Mortgage, the Loan Agreement or any of the other Bond Documents, the Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Mortgage, the Loan Agreement or any of the other Bond Documents, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to the Mortgagor. Such deposits are hereby pledged as additional security for the prompt payment of the amounts due under the Loan Agreement and any other indebtedness hereunder and shall be held to be irrevocably applied by the depositary for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

Section 4.11 Compliance With Mortgage Foreclosure Law.

(a) If any provision of this Mortgage is inconsistent with any applicable provision of the Act (as defined below), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

(b) Without in any way limiting or restricting any of the Mortgagee's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, the Mortgagee shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to the Mortgagee any rights, remedies, powers or authorities upon default of Mortgagor which are more limited than the rights that would otherwise be vested in the Mortgagee under the Act in the absence of said provision, the Mortgagee shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by the Mortgagee, to the extent reimbursable, under Sections 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.

(d) Mortgagor waives, to the extent permitted by law, (i) all rights of reinstatement, redemption, homestead, moratorium, exemption, extension, stay of execution, notice of election to mature or declare due the whole of the obligations in the event of foreclosure of the liens hereby created, (ii) all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties, NS (iii) any rights, legal or equitable, to require

19

marshaling of assets or to require foreclosure sales in a particular order. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of reinstatement or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Premises shall be sold in the event of any sale or sales pursuant hereto and to have any of the Premises and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness. The Mortgagee shall have the right to determine the order in which any or all of the Premises shall be subjected to the remedies provided herein. The Mortgagee shall have the right to determine the order in which any or all portions of the obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, on behalf of itself and all persons now or hereafter

interested in the Premises, voluntarily and knowingly hereby: acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15-1101 et seq., herein the "Act"), or residential real estate (as defined in the Act).

Section 4.12 Proof of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding affecting Mortgagor, or any constituent member of Mortgagor, to the extent permitted by law, Mortgagee shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire amount due and payable by Mortgagor under the Loan Agreement, at the date of the institution of such proceedings, and for any amounts which may become due and payable by Mortgagor after such date.

Section 4.13 Discontinuance of Proceedings Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case Mortgagee and Mortgagor shall be restored to their respective former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred or had been taken.

#### ARTICLE V MISCELLANEOUS

Section 5.1. Recitals. The recitals hereto are hereby incorporated into and made a part of this Mortgage.

Section 5.2. Time of Essence. Time is of the essence of this Mortgage and of each and every provision hereof.

Section 5.3. Lien for Service Charges and Expenses. At all times, regardless of whether the Trustee has distributed moneys from the Project Fund, this Mortgage secures the payment of any and all fees, service charges, liquidated damages, expense and advances due to or incurred by the Mortgagee in connection with this transaction.

#### **20**

Section 5.4, Subrogation. To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Premises, the Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

Section 5.5. Recording. The Mortgagor shall cause this Mortgage at all times to be properly filed and/or recorded at the Mortgagor's own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee.

Section 5.6. Further Assurances. The Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired.

Section 5.7. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Loan Agreement.

Section 5.8. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

Section 5.9. Illegality of Terms. Nothing herein or in the other Borrower Agreements contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require the Mortgagor to pay interest at a rate greater than is lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require the Mortgagor to make any payment or do any act contrary to law. If any provision contained in this Mortgage shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and the Mortgagee shall be given a reasonable time to correct any such error.

Section 5.10. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgagor, without in any way releasing or discharging the Mortgagor from the covenants or undertakings hereunder.

Section 5.11. Releases. The Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Loan Agreement, this Mortgage, the other Bond Documents, or any guaranty given as additional security for the indebtedness secured hereby and without

21

in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage. In the event that (a) the Loan is repaid in full upon maturity, (b) the Loan is prepaid in full pursuant to Article XI of the Loan Agreement, or (c) the Indenture is discharged by Article V of the Indenture, Mortgagee will promptly release this Mortgage.

Section 5.12. Giving of Notice. All communications provided for herein shall be in writing and shall be deemed to be given or made when served personally or two business days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

(a) If to the Issuer: City of Chicago, Illinois

Department of Community Development

120 North LaSalle Street, Room 1000 Chicago, Illinois 60602 Attention: Commissioner

With a copy to:

City of Chicago, Illinois Department of Law

121 North LaSalle Street, Room 600 Chicago, Illinois 60602

Attention: Finance and Economic Development Division

(b) If to the Trustee: Amalgamated Bank of Chicago

One West Monroe Street

Chicago, Illinois 60603

Attention: Corporate Trust Services

**22**

(c) If to the Mortgagor: Asphalt Operating Services of Chicago, LLC

c/o ECF, Inc 1603 S. 9th Street St. Louis, MO 63104 Attention: Alan J. Meitl

With a copy to:

Heritage Illinois Asphalt LLC 5400 West 86th Street Indianapolis, IN 46268 Attention: John Vercruysse

Maurides Foley & Tabangay L.L.C. 2 North LaSalle Street Suite 1800 Chicago, IL 60602 Attention: Adrian Tabangay

or to such party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

Section 5.13. Binding Effect. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns, including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein, and shall inure to the benefit of the Mortgagee and its successors and assigns.

Section 5.14. Covenants to Run with the Land. All the covenants hereof shall run with the land.

Section 5.15. Entire Agreement. This Mortgage sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Mortgage, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.

Section 5.16. Governing Law; Severability; Modification. This Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not

affect other provisions hereof which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. Subject to the provisions of this Section, this Mortgage and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge. If at any time the Mortgagee shall be asked to enter into or to consent to any amendment or modification of this Mortgage as shall be deemed necessary and desirable by the Mortgagor for the purpose of amending and modifying, in any particular way, any of the terms or provisions contained in this Mortgage, the Mortgagee shall, upon being satisfactorily indemnified with respect to expenses, and after Mortgagor has approved the form of any such amendment or modification, cause notice of the proposed execution of such modification or amendment to be mailed by certified mail to the Bond Owners (as defined under the Indenture of Trust). Such notice shall briefly set forth the nature of the proposed amendment or modification and shall state that copies thereof are on file at the

**23**

designated corporate trust office of the Mortgagee for inspection by the Bond Owners. If, within 60 days following the mailing of such notice, the Owners (as defined under the Indenture of Trust) of not less than a majority in aggregate principal amount of the Bonds then Outstanding (as defined under the Indenture of Trust) at the time of the execution of any such amendment or modification shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof; or in any manner to question the propriety of the execution thereof; or to enjoin or restrain the Mortgagor or the Trustee from executing or consenting to the same or from taking any action pursuant to the provisions thereof.

Section 5.17. Meanings. Wherever in this Mortgage the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 5.18. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.19. Approval or Consent of Mortgagee. Wherever in this Mortgage provision is made for the approval or consent of the Mortgagee, or that any matter is to be to the Mortgagee's satisfaction, or that any matter is to be as estimated or determined by the Mortgagee, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction, estimate, determination or the like shall be made, given or determined by the Mortgagee pursuant to a reasonable application of judgment in accordance with institutional lending practice and commercial custom in connection with major real estate loans.

Section 5.20. Construction and Interpretation. The Mortgagor and the Mortgagee, and their respective legal counsel, have participated in the drafting of this Mortgage, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Mortgage.

Section 5.21. Effect of Loan Agreement. The covenants contained in this Mortgage are in each case subject to the terms and conditions of the Loan Agreement, including all notice requirements, limitations or remedies and rights to contest, and in the event of any conflict between this Mortgage and the Loan Agreement, the Loan Agreement will control.

Section 5.22 No Liability on Mortgagor. Notwithstanding anything contained herein to the contrary, Lender shall not be obligated to perform or discharge, any obligation, duty or liability of Mortgagor, whether under any of the leases or otherwise, and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, claim expense, loss or damage which Mortgagee may or might incur with respect to the Premises, or under or by reason of its exercise of rights hereunder, and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to be performed or discharged except any liability, claim expense, loss or damage arising solely and directly from Mortgagee's willful misconduct or negligence. Except at such time as Mortgagee is in actual possession, ownership or control of the Premises, to the exclusion of Mortgagor, Mortgagee shall not have responsibility for the control, care, management or repair of the Premises, or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger. Unless otherwise provided for herein, no liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted, and Mortgagor expressly waives and releases any such liability. Should Mortgagee incur any such liability, loss or damage, except to the extent resulting from Mortgagee's negligence or willful misconduct, under

**24**

any of the leases or under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse



Mortgagee immediately upon demand for the amount thereof, including costs, expenses and reasonable attorneys' fees. Section 5.23 Further Assurances. Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances reasonably necessary or proper for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee, all Premises mortgaged hereby or Premises intended so to be as contemplated hereunder, whether now owned by Mortgagor or hereafter acquired. Upon any failure by Mortgagor to do so after fourteen (14) days after written request therefor, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee its agent and attorney in fact for that purpose. Mortgagor will reimburse Mortgagee for any and all reasonable sums expended by Mortgagee in making, executing and recording such documents.

**Section 5.24 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT NOT OTHERWISE PROHIBITED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE. MORTGAGOR AND MORTGAGEE AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGOR TO ENTER INTO THE LOAN AGREEMENT. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS MORTGAGE.**

[SIGNATURE PAGE(S) AND EXHIBIT(S) FOLLOW THIS PAGE]

25

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be executed as of the date first above written. ASPHALT OPERATING SERVICES OF CHICAGO, LLC

By: Its:

26

STATE OF ILLINOIS )

) SS COUNTY OF COOK )

On\_, 2010, before me personally appeared\_,

personally known to me to be the person whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Notary Public My commission expires:

27

**EXHIBIT A LEGAL DESCRIPTION OF THE PREMISES**

**SCHEDULE 2.7**

CONSENT ORDER ENTERED IN PROCEEDING HAD LN CASE NO. 96CH14146, EVIDENCE BY INSTRUMENT DATED DECEMBER 20, 1996 AND RECORDED JUNE 6, 1997 AS DOCUMENT 97404691 WITH THE COOK COUNTY RECORDER OF DEEDS

ENVIRONMENTAL DISCLOSURE DOCUMENT(S) FOR TRANSFER OF REAL PROPERTY APPEAR OF RECORD WHICH WAS RECORDED WITH THE COOK COUNTY RECORDER OF DEEDS AS DOCUMENT NUMBER: 97391062 DATE OF RECORDING: JUNE 3, 1997

US ARMY CORPS OF ENGINEERS SITE CHARACTERIZATION INTERIM REPORT OF WISCONSIN STEEL WORKS DATED FEBRUARY 1994

FINAL PHASE II REMEDIAL INVESTIGATION REPORT (VOLUMES I AND II) PREPARED BY ARCADIS GERAGHTY & MILLER DATED JUNE 2001

APPROVAL BY ILLINOIS EPA DATED AUGUST 20, 2002 OF FPNAL PHASE II REMEDIAL INVESTIGATION REPORT (VOLUMES I AND II) PREPARED BY ARCADIS GERAGHTY & MILLER DATED JUNE 2001

GROUNDWATER TECHNICAL MEMORANDUM PREPARED BY ARCADIS GERAGHTY & MILLER DATED OCTOBER 16, 1998

APPROVAL BY ILLINOIS EPA DATED SEPTEMBER 27, 1998 OF GROUNDWATER TECHNICAL MEMORANDUM PREPARED BY ARCADIS GERAGHTY & MILLER DATED JUNE 22, 1998

GROUNDWATER COMPLIANCE DEMONSTRATION TECHNICAL MEMORANDUM PREPARED BY ARCADIS

G & M, PNC. DATED MAY 9, 2002  
COMMENTS BY ILLINOIS EPA DATED NOVEMBER 7, 2003 REGARDING GROUNDWATER COMPLIANCE  
DEMONSTRATION TECHNICAL MEMORANDUM AND TECHNICAL MEMORANDUM ROUND 5  
GROUNDWATER SAMPLING RESULTS  
RESPONSE BY ARCADIS G & M, INC. DATED JANUARY 23, 2004 TO COMMENTS BY ILLINOIS EPA DATED  
NOVEMBER 7, 2003  
TECHNICAL MEMORANDUM ROUND 5 GROUNDWATER SAMPLING RESULTS PREPARED BY ARCADIS G  
& M, INC. DATED MAY 10, 2002  
APPROVAL BY ILLINOIS EPA DATED APRIL 23, 2004 OF GROUNDWATER TECHNICAL MEMORANDUM  
AND GROUNDWATER COMPLIANCE TECHNICAL MEMORANDUM  
TECHNICAL MEMORANDUM ARSENIC BACKGROUND SAMPLING RESULTS AND ANALYSIS PREPARED  
BY ARCADIS GERAGHTY & MILLER DATED NOVEMBER 19, 1998  
LETTER FROM NAVISTAR DATED FEBRUARY 3, 1999 RE: RESPONSE TO ARSENIC TECH MEMO  
COMMENTS  
LETTER DATED MARCH 24, 1999 FROM ILLINOIS EPA ACCEPTING PROCEDURES FOR ANALYTICAL  
QUALITY ASSURANCE DATED MARCH 12, 1999, REVISED AMENDMENT TO PHASE II REMEDIAL  
INVESTIGATION WORK PLAN DATED MARCH 12, 1999 AND RESPONSE TO ARSENIC TECH MEMO  
COMMENTS DATED FEBRUARY 3, 1999  
TECHNICAL MEMORANDUM CHROMIUM SAMPLING RESULTS AND ANALYSIS DATED OCTOBER 5, 1998  
AND PREPARED BY ARCADIS GERAGHTY & MILLER  
FOUNDATION TECHNICAL MEMORANDUM DATED JUNE 2002 (VOLUMES I, II & III) PREPARED BY  
ARCADIS G & M, INC.  
TECHNICAL MEMORANDUM SEAWALL INSPECTION SUMMARY DATED JULY 22,  
2005 PREPARED BY ARCADIS G & M, INC.  
TECHNICAL MEMORANDUM SEAWALL REPAIR SUMMARY DATED DECEMBER  
2006 PREPARED BY ARCADIS G & M, INC.  
NORTH TRACT REVISED RISK ASSESSMENT REPORT DATED FEBRUARY 2004 PREPARED BY ARCADIS G  
& M, INC.  
LETTER FROM ARCADIS DATED MAY 29, 2003 RE: NORTH TRACT RISK ASSESSMENT REPORT  
NORTH TRACT RISK ASSESSMENT APPROVAL BY ILLINOIS EPA DATED SEPTEMBER 2, 2003  
NORTH TRACT RAP/RD/RAWD PLAN DATED JULY 2004 PREPARED BY ARCADIS G & W, INC.  
APPROVAL LETTER FROM ILLINOIS EPA DATED FEBRUARY 4, 2005 OF NORTH TRACT RAP/RD/RAWD  
PLAN  
NORTH TRACT REMEDIAL COMPLETION REPORT DATED JUNE 2006 PREPARED BY ARCADIS G & M, INC.  
NO FURTHER REMEDIATION LETTER FOR THE NORTH TRACT ISSUED BY THE ILLINOIS  
ENVIRONMENTAL PROTECTION AGENCY ON NOVEMBER 14, 2006, INCLUDING AS RECORDED WITH THE  
COOK COUNTY RECORDER OF DEEDS ON DECEMBER 8, 2006 AS DOCUMENT 0634206111 AND  
RERECORDED DECEMBER 12, 2006 AS DOCUMENT 0634634050  
TECHNICAL MEMORANDUM SLAG CHARACTERIZATION RESULTS AND ANALYSIS DATED JULY 14, 1999  
PREPARED BY ARCADIS GERAGHTY & MILLER  
LETTER FROM ILLINOIS EPA DATED NOVEMBER 2, 1999 RE: TECHNICAL MEMORANDUM SLAG  
CHARACTERIZATION RESULTS AND ANALYSIS  
RISK ASSESSMENT REPORT SLAG STORAGE AREA DATED AUGUST 2002 PREPARED BY ARCADIS G & M,  
INC.  
LETTER FROM ILLINOIS EPA DATED OCTOBER 20, 2002 APPROVING RISK ASSESSMENT REPORT SLAG  
STORAGE AREA  
REMEDIAL ACTION PLAN/REMEDIAL ACTION COMPLETION REPORT DATED OCTOBER 2002 PREPARED  
BY ARCADIS G & M, INC.  
SLAG MINEROLOGY ANALYTICAL RESULTS FROM S.F. ANALYTICAL LABORATORIES, INC. DATED  
NOVEMBER 27, 2002  
NO FURTHER REMEDIATION LETTER FOR SLAG PARCEL ISSUED BY THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY ON DECEMBER 3, 2002, INCLUDING AS RECORDED WITH THE COOK COUNTY

RECORDER OF DEEDS ON AS DOCUMENT 0021401533  
ECOLOGICAL RISK ASSESSMENT OF SLIPS DATED DECEMBER 3, 1999 PREPARED BY ARCADIS GERAGHTY & MILLER  
PHASE I ESA NORTH AND SOUTH SLIPS DATED OCTOBER 2006 PREPARED BY ARCADIS G & M, INC.  
PHASE I RISK ASSESSMENT NORTH AND SOUTH SLIPS DATED JUNE 2009 PREPARED BY ARCADIS  
TECHNICAL MEMORANDUM EXISTING DATA SUMMARY AND FUTURE SAMPLING RECOMMENDATIONS NORTH AND SOUTH SLIPS DATED OCTOBER 17, 2007 PREPARED BY ARCADIS  
LETTER FROM ILLINOIS EPA DATED MARCH 6, 2008 RE: TECHNICAL MEMORANDUM EXISTING DATA SUMMARY AND FUTURE SAMPLING RECOMMENDATIONS NORTH AND SOUTH SLIPS  
LETTER FROM ARCADIS DATED MARCH 28, 2008 RE: RESPONSE TO IEPA COMMENTS TO TECHNICAL MEMORANDUM EXISTING DATA SUMMARY AND FUTURE SAMPLING RECOMMENDATIONS NORTH AND SOUTH SLIPS  
LETTER FROM ILLINOIS EPA DATED JUNE 20, 2008 RE: RESPONSE TO COMMENTS TECHNICAL MEMORANDUM EXISTING DATA SUMMARY AND FUTURE SAMPLING RECOMMENDATIONS NORTH AND SOUTH SLIPS  
LETTER FROM ARCADIS DATED OCTOBER 1, 2008 RE: RESPONSE TO IEPA COMMENTS TO TECHNICAL MEMORANDUM EXISTING DATA SUMMARY AND FUTURE SAMPLING RECOMMENDATIONS NORTH AND SOUTH SLIPS  
SLIP SURROUNDINGS DATED APRIL 17, 1978  
RISK ASSESSMENT REPORT PARCEL W DATED FEBRUARY 2002 PREPARED BY ARCADIS  
LETTER DATED JUNE 26, 2002 FROM ARCADIS RE: RESPONSE TO COMMENTS FROM IEPA RE: RISK ASSESSMENT REPORT PARCEL W  
PARCEL W RISK ASSESSMENT AMENDMENT DATED MAY 19, 2003 PREPARED BY ARCADIS  
TECHNICAL MEMORANDUM PARCEL W RAILROAD TIE INVESTIGATION RESULTS AND ANALYSIS DATED APRIL 7, 2003 PREPARED BY ARCADIS  
ADDENDUM TO PARCEL W PHASE II SAMPLING PLAN DATED FEBRUARY 22, 2001 PREPARED BY ARCADIS GERAGHTY & MILLER  
TECHNICAL MEMORANDUM PARCEL W PHASE II RESULTS AND ANALYSIS DATED JULY 27, 2001 AND PREPARED BY ARCADIS GERAGHTY & MILLER  
LETTER FROM ILLINOIS EPA DATED MARCH 21, 2001 RE: APPROVAL OF PARCEL W PHASE II SAMPLING PLAN  
PHASE I ESA PARCEL W DATED OCTOBER 2000 PREPARED BY ARCADIS GERAGHTY & MILLER  
LETTER FROM ILLINOIS EPA DATED DECEMBER 11, 2000 RE: APPROVAL OF PHASE I ESA PARCEL W REMEDIAL ACTION PLAN/REMEDIAL ACTION COMPLETION REPORT DATED APRIL 2004 PREPARED BY ARCADIS G & M, INC.  
NO FURTHER REMEDIATION LETTER FOR PARCEL W ISSUED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ON NOVEMBER 18, 2004 AND AS RECORDED WITH THE COOK COUNTY RECORDER OF DEEDS ON DECEMBER 10, 2004 AS DOCUMENT 0434539071  
NORTHEAST PARCEL PHASE I/II ESA AND RAP/RD/RAWD PLAN DATED FEBRUARY 2007 AND PREPARED BY ARCADIS G & M, INC.  
LETTER FROM ILLINOIS EPA DATED APRIL 18, 2007 RE: APPROVAL OF NORTHEAST PARCEL PHASE 1711 ESA AND RAP/RD/RAWD PLAN  
NORTHEAST PARCEL REMEDIAL ACTION COMPLETION REPORT DATED AUGUST 2008 PREPARED BY ARCADIS  
NO FURTHER REMEDIATION LETTER FOR NORTHEAST PARCEL ISSUED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ON MARCH 3, 2009 AND AS RECORDED WITH THE COOK COUNTY RECORDER OF DEEDS ON MARCH 20, 2009 AS DOCUMENT 0907945111 AND ON APRIL 1, 2009 AS DOCUMENT 0909145154  
NO FURTHER REMEDIATION LETTER FOR NORTHEAST PARCEL INCLUDING PARCEL 1 ISSUED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ON MARCH 23, 2010 AND AS RECORDED WITH THE COOK COUNTY RECORDER OF DEEDS ON MAY 3, 2010 AS DOCUMENT 1012318075  
REVISED RISK ASSESSMENT REPORT- STEEL PRODUCTION AREA DATED NOVEMBER 2005 PREPARED BY

ARCADIS G & M, INC.

STEEL PRODUCTION AREA RAP/RD/RAWD PLAN DATED APRIL 2006 PREPARED BY ARCADIS G & M, INC.  
LETTER FROM ILLINOIS EPA DATED AUGUST 18, 2006 RE: APPROVAL OF STEEL PRODUCTION AREA  
RAP/RD/RAWD PLAN

SPA CARVE-OUT PARCEL REMEDIAL ACTION COMPLETION REPORT DATED FEBRUARY 2009 PREPARED  
BY ARCADIS

LETTER FROM ILLINOIS EPA DATED APRIL 17, 2009 RE: APPROVAL OF SPA CARVE-OUT PARCEL  
REMEDIAL ACTION COMPLETION REPORT

NO FURTHER REMEDIATION LETTER FOR SPA CARVE-OUT PARCEL (PARCEL IIA) ISSUED BY THE  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ON AUGUST 19, 2009 AND AS RECORDED WITH THE  
COOK COUNTY RECORDER OF DEEDS ON AUGUST 26, 2009 AS DOCUMENT 0923831078

MAPS:

- BASIC OXYGEN PLANT (1983)
- BLAST FURNACE LAYOUT 1962
- CALUMET RIVER PROPOSED DREDGING
- LAKE CALUMET IL-IND (1955)
- MARKED UP PLOT OF WSW BY INDUSTRIAL RISK INSURERS (1976)
- NATIONAL SURVEY PLAT OF SURVEY (1966)
- ONE BRIDGE 1948
- WSW AERIAL MAP (1995)
- WSW AERIAL MAP NUMBER 2 (1995)
- WSW SLAG STORAGE 1920-1962
- YARD PLAN: SANITARY SEWERS FROM SHOPS

EXHIBIT B

INDENTURE OF TRUST between  
CITY OF CHICAGO, ILLINOIS and  
AMALGAMATED BANK OF CHICAGO, as Trustee

Dated as of December 1, 2010

\$45,000,000 City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating  
Services of Chicago Project)

## **TABLE OF CONTENTS**

### **Page**

ARTICLE I DEFINITIONS AND INTERPRETATION.....	4
Section 1.01 Definitions.....	4
Section 1.02 Article and Section Headings.....	12
Section 1.03 Interpretation; Chicago Time.....	12
ARTICLE II AUTHORIZATION AND ISSUANCE OF BONDS.....	12
Section 2.01 Authorization and Issuance of Bonds.....	12
Section 2.02 Terms of Bonds.....	13
Section 2.03 Form of Series 2010 Bond.....	16
Section 2.04 Execution; Limited Obligations.....	16
Section 2.05 Conditions Precedent to Delivery and Authentication of Series 2010 Bonds.....	17
Section 2.06 Notice of Redemption.....	18
Section 2.07 Redemption Payments; Effect of Call for Redemption.....	19
Section 2.08 Partial Redemption.....	19
Section 2.09 DTC Book-Entry.....	19
Section 2.10 Additional Bonds.....	21
ARTICLE III GENERAL PROVISIONS.....	23

Section 3.01 Authorization for Indenture; Indenture to Constitute Contract.....	23
Section 3.02 Payment of Principal, Premium and Interest.....	23
Section 3.03 Performance of Covenants; Issuer Warranties.....	23
Section 3.04 Instruments of Further Assurance.....	24
Section 3.05 Recordation and Maintenance of Lien.....	24
Section 3.06 Registration of Bonds; Trustee Appointed Bond Registrar; Persons Treated as Owners.....	24
Section 3.07 Cancellation.....	25
Section 3.08 Npnpresentment of Bonds.....	25
Section 3.09 Rights Under Certain Agreements.....	26
Section 3.10 Legal Existence of Issuer.....	26
Section 3.11 Tax-Exempt Status of Series 2010 Bonds.....	26
Section 3.12 Diminution of, or Encumbrance on, Trust Estate.....	26
Section 3.13 Books, Records and Accounts.....	26
Section 3.14 Mutilated, Lost, Stolen or Destroyed Bonds.....	27
Section 3.15 Issuer Fees and Expenses.....	27
ARTICLE IV REVENUES AND FUNDS.....	27
Section 4.01 Application of Original Proceeds.....	27
Section 4.02 Creation of Bond Fund.....	28
Section 4.03 Payments into Bond Fund.....	28
Section 4.04 Use of Moneys in Bond Fund.....	29
Section 4.05 Creation of Project Fund; Disbursements.....	31
Section 4.06 Completion of Project.....	32
Section 4.07 Creation and Use of Debt Service Reserve Fund.....	32
Section 4.08 Investment of Moneys.....	34
Section 4.09 Moneys Held in Trust.....	35
Section 4.10 Repayment to Borrower from Indenture Funds.....	35
Section 4.11 Tax Covenants.....	35
Section 4.12 Rebate Fund.....	35
ARTICLE V DISCHARGE OF INDENTURE.....	35
Section 5.01 Discharge.....	35
ARTICLE VI EVENTS OF DEFAULT AND REMEDIES.....	36
Section 6.01 Events of Default.....	36
Section 6.02 Acceleration.....	37
Section 6.03 Other Remedies; Rights of Bond Owners.....	37
Section 6.04 Right of Bond Owners to Direct Proceeding.....	38
Section 6.05 Appointment of Receiver.....	38
Section 6.06 Waiver of Certain Laws.....	38
Section 6.07 Application of Moneys.....	38
Section 6.08 Remedies Vested in Trustee.....	40
Section 6.09 Rights and Remedies of Bond Owners.....	40
Section 6.10 Termination of Proceeding.....	40
Section 6.11 Waivers of Events of Default.....	41
Section 6.12 Notice of Default; Opportunity to Cure Defaults.....	41
ARTICLE VII THE TRUSTEE.....	41
Section 7.01 Acceptance of Trusts.....	41

Section 7.02 Annual Fees, Charges and Expenses of Trustee.....	44
Section 7.03 Notice to Bond Owners of Default.....	45
Section 7.04 Intervention by Trustee.....	45
Section 7.05 Successor Trustee by Merger or Otherwise.....	45
Section 7.06 Resignation by Trustee.....	45
Section 7.07 Removal of Trustee.....	46
Section 7.08 Appointment of Successor Trustee.....	46
Section 7.09 Successor Trustee.....	46
Section 7.10 Appointment of Separate or Co-Trustee.....	47
Section 7.11 Qualifications of Successors to the Trustee or Institutional Co-Trustees.....	47
Section 7.12 Required Reporting to Issuer.....	48
CHI2_2261869.18	
ii	
ARTICLE VIII SUPPLEMENTAL INDENTURES.....	50
Section 8.01 Supplemental Indentures Not Requiring Consent of Bond Owners.....	50
Section 8.02 Supplemental Indentures Requiring Consent of Bond Owners.....	50
Section 8.03 Limitation Upon Amendments and Supplements.....	51
Section 8.04 Consent of Borrower Required.....	51
ARTICLE IX AMENDMENT OF CERTAIN LOAN DOCUMENTS.....	52
Section 9.01 Amendments of Lqan Agreement and Tax Agreement Not Requiring Consent of Bond Owners.....	52
Section 9.02 Amendments of Loan Agreement and Tax Agreement Requiring Consent of Bond Owners.....	52
Section 9.03 Limitation Upon Amendments of Loan Agreement.....	52
Section 9.04 Amendments to Collateral Assignments and Terminalling Agreement Assignments.....	53
ARTICLE X MISCELLANEOUS.....	53
Section 10.01 Consents of Bond Owners.....	53
Section 10.02 Limitation of Rights.....	53
Section 10.03 Severability.....	53
Section 10.04 Notices.....	54
Section 10.05 Payments or Performance Due on Other than Business Days.....	55
Section 10.06 Execution of Counterparts.....	55
Section 10.07 Applicable Law.....	55
Section 10.08 Disqualified Bonds.....	55
Section 10.09 Provisions for Payment of Expenses.....	55

## EXHIBITS

EXHIBIT A FORM OF BOND

EXHIBIT B REQUISITION CERTIFICATE

EXHIBIT C FORM OF ESCROW AGREEMENT

iii

CHI2\_2261869.18

## INDENTURE OF TRUST

**THIS INDENTURE OF TRUST, dated as of December 1, 2010, between the City of Chicago, Illinois, a municipal corporation and home rule unit of local government organized and existing under the laws of the State of Illinois (the "Issuer"), and Amalgamated Bank of Chicago, an Illinois banking corporation**

**duly organized and existing under the laws of the United States, as trustee (the "Trustee"),**  
**WITNESSETH:**

WHEREAS, the Issuer, as a home rule unit of local government and pursuant to the Constitution of the State of Illinois, and an ordinance adopted by the City Council of the Issuer on May 12, 2010, is authorized to issue its recovery zone revenue bonds for the purpose of providing financing and refinancing for the acquisition and construction of buildings, improvements and equipment suitable for use as a qualified business within a recovery zone and located within the City of Chicago, Illinois;

WHEREAS, pursuant to an ordinance adopted by the City Council of the City on November 18, 2009, the City has declared that the entire City constitutes a "recovery zone" within the meaning of Section 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended;

WHEREAS, Asphalt Operating Services of Chicago, LLC, an Illinois limited liability company (the "Borrower"), wishes to finance: (i) all or a portion of the costs of the Project (as defined below), (ii) a deposit into the Debt Service Reserve Fund (as hereinafter defined), (iii) capitalized interest on the Series 2010 Bonds and (iv) all or a portion of the costs of issuance of the Series 2010 Bonds;

WHEREAS, the Borrower has requested the Issuer provide financing for the costs of the Project by the issuance of recovery zone facility revenue bonds;

WHEREAS, the Issuer and the Borrower have entered into that certain Loan Agreement, dated as of December 1, 2010 (the "Agreement"), specifying the terms and conditions of such financing, the loaning of the proceeds of its \$45,000,000 aggregate principal amount Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) (the "Series 2010 Bonds") to the Borrower for such purpose and the repayment by the Borrower of such loan;

WHEREAS, the Series 2010 Bonds will be secured by a pledge of, and have a lien upon, the revenues and receipts derived pursuant to the Agreement;

WHEREAS, the Series 2010 Bonds are initially being issued in minimum authorized denominations of \$1,000,000 and increments of \$5,000 in excess thereof due to the lack of an investment grade rating on the Series 2010 Bonds;

WHEREAS, the execution and delivery of the Agreement and this Indenture, and the issuance of the Series 2010 Bonds, were authorized by an ordinance of the Issuer, duly adopted and approved by the City Council of the Issuer on May 12, 2010;

CHI2\_2261869.18

WHEREAS, it has been determined that the amount necessary to (i) finance all or a portion of the Costs of the Project, (ii) fund the capitalized interest to accrue on the Series 2010 Bonds during construction and renovation of the Project, (iii) fund the initial deposit to the Debt Service Reserve Fund (as defined herein), and (iv) pay a portion of the Costs of Issuance will require the issuance, sale and delivery of the Issuer's Series 2010 Bonds in the aggregate principal amount of \$45,000,000 as hereinafter provided;

WHEREAS, the Trustee has agreed to accept the trusts herein created upon the terms herein set forth; and

WHEREAS, all things necessary to make the Series 2010 Bonds, when issued as provided in this Indenture, the valid, binding and legal special, limited obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment of the amounts pledged to the payment of the principal of, premium, if any, and interest on the Series 2010 Bonds have been done and performed, and the creation, execution and delivery of this Indenture and the execution and issuance of the Series 2010 Bonds, subject to the terms hereof, in all respects have been duly authorized;

NOW, THEREFORE, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Series 2010 Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all of the covenants and obligations expressed or implied herein and in the Series 2010 Bonds, does hereby irrevocably grant, alienate, bargain, sell, convey, transfer, assign and pledge unto the Trustee (to the

extent of its legal capacity to hold the same for the purposes hereof), and the successors in trust and assigns of the Trustee, forever:

**GRANTING CLAUSE FIRST**

All right, title and interest of the Issuer in, to and under the Agreement (except its Unassigned Rights), and all extensions and renewals of the term thereof, if any, and to do any and all other things which the Issuer is or may become entitled to do under the Agreement; provided, however, that the assignment made pursuant to this clause shall not impair or diminish any obligation of the Issuer under the Agreement or alter the rights, duties and obligations of the Trustee under the remaining terms of this Indenture;

**GRANTING CLAUSE SECOND**

All amounts payable to the Issuer under or with respect to the Agreement (except amounts payable to the Issuer with respect to its Unassigned Rights) including all Revenue pledged to the Issuer pursuant to the Agreement;

**GRANTING CLAUSE THIRD**

All right, title and interest of the Issuer, if any, in, to and under the Mortgage and the Collateral Assignments; provided, however, that the assignment made pursuant to this clause shall not impair or diminish any obligation of the Issuer under the Mortgage (as hereinafter

2

CHI2 2261869.18

defined) or alter the rights, duties and obligations of the Trustee under the remaining terms of this Indenture;

**GRANTING CLAUSE FOURTH**

All right, title and interest of the Issuer in and to all moneys and securities from time to time held by the Trustee under (i) the terms of this Indenture (except amounts held in the Rebate Fund and amounts held for particular Bondholders pursuant to Section 3.08 or 4.09 hereof); and (ii) the terms of the Agreement (including amounts held by the Trustee in the Operating Reserve Account established pursuant to Section 4.7 of the Agreement); and

**GRANTING CLAUSE FIFTH**

Any and all property, rights and interests of every kind or description which, from time to time hereafter, may be sold, transferred, conveyed, assigned, pledged, mortgaged or delivered to the Trustee as additional security hereunder (except amounts held in the Rebate Fund and amounts held for particular Bondholders pursuant to Section 3.08 or 4.09 hereof);

TO HAVE AND TO HOLD all and singular the Trust Estate (as hereinafter defined), whether now owned or hereafter acquired, irrevocably unto the Trustee and its successors in trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth for the equal and ratable benefit, security and protection of all present and future Owners of the Series 2010 Bonds issued under and secured by this Indenture, without privilege, priority or distinction as to lien or otherwise of any Bond over any other Bond, except as expressly provided herein;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Bonds and the interest and premium, if any, due or to become due thereon at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required under Article IV hereof, or shall provide, as permitted by Article V hereof, for the payment thereof, and for the payment of certain excess investment earnings to the United States of America as required under Article IV hereof, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease and terminate; otherwise this Indenture is to be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered, and all said property, rights and interests, including, without limitation, the amounts hereby assigned, are to be dealt with and disposed of under, upon and subject to



the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and that the Issuer has agreed and covenanted, and hereby does agree and covenant, with the Trustee and the Owners, from time to time, of the Bonds, or any part thereof, as follows:

CHI2\_2261869.18

**3**

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATION**

Section 1.01 Definitions. Each of the following terms shall have the meaning assigned to it in this Section 1.01 whenever it is used in this Indenture, unless the context in which it is used clearly requires otherwise (certain terms used, and not defined, herein are defined in the Agreement):

"Additional Bonds" means bonds that may be issued pursuant to Section 2.10 of this Indenture.

"Affiliate" has the meaning set forth in the Loan Agreement.

"Agreement" shall mean the Loan Agreement, dated as of December 1, 2010, between the Issuer and the Borrower, as amended and supplemented.

"Amortized Value" when used with respect to: (i) an investment purchased at par, shall mean the purchase price of such investment; and (ii) an investment purchased at a premium above or discount below par, shall mean, as of any subsequent date of valuation, the value obtained by dividing the total premium or discount by (A) the number of interest payment dates remaining to maturity on any such investment after such purchase or (B) if such investment will mature in less than one year from the date of purchase, by the number of days remaining to maturity on any such investment after such purchase, and by multiplying that result by (X) the number of interest payment dates having passed since the date of purchase or (Y) if such investment will mature in less than one year from the date of purchase, by the number of days having passed since the date of purchase, and (a) in the case of an investment purchased at a premium, by deducting the product thus obtained from the purchase price, and (b) in the case of an investment purchased at a discount, by adding the product thus obtained to the purchase price.

"Asphalt Terminalling Agreements" or "Terminalling Agreements" means: (i) the Asphalt Terminalling Agreement dated November 12, 2009 between BP Products North America Inc., and the Borrower as amended; (ii) the Asphalt Terminalling Agreement dated October 8, 2010 between Associated Asphalt Distribution, LLC and the Borrower as amended; and (iii) the Asphalt Terminalling Agreement dated June 10, 2010 between Suit-Kote Corporation and the Borrower as amended.

"Authorized Denomination" shall mean with respect to the Series 2010 Bonds (i) initially the denomination of \$1,000,000 or any integral multiple thereof with increments of \$5,000 in excess thereof and (ii) the denomination of \$5,000 and integral multiples of \$5,000 in excess thereof from and after such time as the conditions set forth in Section 2.02(e) of this Indenture have been complied with for the exchange of Bonds in minimum denominations of \$5,000, and with respect to Additional Bonds shall have the meaning set forth in the Supplemental Indenture pursuant to which such Bonds are issued.

"Beneficial Owner" or "beneficial owner" is defined in Section 2.09 of this Indenture.

CHI2\_2261869.18

**4**

"Bond Counsel" or "Co-Bond Counsel" shall mean, with respect to the original issuance of the Series 2010 Bonds, Foley & Lardner LLP and Gonzalez, Saggio and Harlan, L.L.C., and thereafter, any firm or firms of attorneys of nationally recognized expertise with respect to the tax-exempt obligations of political subdivisions, selected by the Borrower and acceptable to the Issuer and the Trustee.

"Bond Fund" shall mean the Fund by that name established by Section 4.02 of this Indenture.

"Bond Ordinance" means (a) when used with reference to the Series 2010 Bonds, the ordinance adopted by the Issuer on May 12, 2010, providing for the issuance of the Series 2010 Bonds and approving the Agreement, this Indenture and related matters, (b) when used with reference to an issue of Additional Bonds, the ordinance providing for the issuance of Series 2010 Bonds, to the extent applicable, and the ordinance providing for the

issuance of the Additional Bonds and approving any amendment or supplement to the Agreement, any Supplemental Indenture and related matters; and (c) when used with reference to an issue of Additional Bonds when Additional Bonds are Outstanding, the ordinance providing for the issuance of the Series 2010 Bonds and the ordinance providing for the issuance of the then-outstanding and the then-to-be-issued Additional Bonds; in each case as amended or supplemented from time to time.

"Bond Owner," "Bondowner," "Owner," "owner," "Bondholder," "bondholder," "holder" or "owner of the Bonds" shall mean, when used with respect to a Bond, the Person in whose name such Bond shall be registered. "Bond Registrar" shall mean the Trustee.

"Bond Year" shall mean the initial period beginning on the date of issuance of the Series 2010 Bonds and ending on November 30, 2011, and thereafter each one-year period beginning on each December 1 and ending on the following November 30, or, if earlier, the day on which all Outstanding Bonds are retired.

"Bonds" shall mean the Series 2010 Bonds and any Additional Bonds issued pursuant to this Indenture.

"Borrower" shall mean Asphalt Operating Services of Chicago, LLC, an Illinois limited liability company, and any successor thereto permitted by Section 8.6 of the Agreement.

"Budget" has the meaning set forth in Section 8.7(c) of the Loan Agreement.

"Business Day" or "business day" shall mean any day which is not (a) a Saturday, a Sunday or in the City of Chicago, Illinois (or in the city in which the designated corporate trust office of the Trustee is located), a day on which commercial banking institutions are authorized or required by law or executive order to close or (b) a day on which the New York Stock Exchange is closed.

"Capitalized Interest Account" shall mean the Account by that name of the Bond Fund established by Section 4.02 of this Indenture.

5

CHI2\_2261869.18

"Closing Date" means December 17, 2010, the date of issuance of the Series 2010 Bonds.

"Code" shall mean the Internal Revenue Code of 1986, as amended to date. Each reference to a Section of the Code shall include a reference to the Regulations applicable to such Section.

"Collateral Assignments" means: (i) the Collateral Assignment dated the Closing Date, pursuant to which the Borrower has assigned its rights under certain Design-Build Construction Agreement dated October 15, 2010 as amended between Borrower and ECF, Inc. ("ECF") in favor of the Trustee; (ii) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor [Civil] between ECF and Carlson Constructors Corp. dated October 15, 2010 as amended, in favor of the Trustee; (iii) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor [Mechanical] between ECF and Carlson Constructors Corp. dated October 15, 2010 as amended, in favor of the Trustee; (iv) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor between ECF and CBI Services, Inc. dated October, 2010 as amended, in favor of the Trustee; (v) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor between ECF and RailWorks Track Services, Inc. dated November 1, 2010 as amended; (vi) the Collateral Assignment dated the Closing Date pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor between ECF and Raffin Construction Co. dated November 22, 2010 as amended, in favor of the Trustee, and each of the Terminalling Agreement Assignments; and (vii) the Collateral Assignment of Management Agreement dated the Closing Date in favor of the Trustee.

"Completion Date" has the meaning set forth in the Loan Agreement.

"Cost of Issuance" shall mean (a) payment of all reasonable costs incurred by the Borrower in connection with the issuance of the Series 2010 Bonds including, but not limited to, legal and accounting fees and expenses,

printing expenses, financial consultants' fees, financing charges (including underwriting and placement fees and discounts), printing and engraving costs, costs incurred in connection with public approvals, preparation of the financing statements, preparation of any disclosure document and any other documents necessary for the issuance of the Series 2010 Bonds and (b) payment of the fees and expenses of the Trustee, the Issuer, any Bond Registrar and the reasonable expenses of their counsel properly incurred under or in connection with the Indenture and the transactions contemplated thereby.

"Debt Service Coverage Ratio", shall mean as of the date of determination the ratio of (x) actual Revenues minus Operating Expenses for the preceding 12 month period, to (y) actual principal (including mandatory sinking fund redemption payments) and interest due on the Bonds for the preceding 12 month period.

CHI2 2261869.18

6

"Debt Service Reserve Fund" shall mean the Fund by that name established by Section 4.07 of this Indenture.

"Debt Service Reserve Fund Instrument" shall mean an irrevocable letter of credit issued by a domestic or foreign bank, or other financial institution whose unsecured long-term debt obligations are rated "A" or better by Moody's or S&P, in a face amount equal to all or any portion of the Debt Service Reserve Fund Requirement.

"Debt Service Reserve Fund Requirement" shall mean the sum of (a) the Series 2010 Debt Service Reserve Fund Requirement and (b) the debt service reserve fund requirement established in connection with the issuance of Additional Bonds as set forth in the Supplemental Indenture pursuant to which such Additional Bonds are issued which shall not be less than the least of (i) 10% of the principal amount of the Additional Bonds; (ii) maximum annual debt service on the Additional Bonds and (iii) 125% of average annual debt service on the Additional Bonds.

"Determination of Taxability" shall mean, with respect to the Series 2010 Bonds, the receipt by the Trustee of evidence of a final judgment or order of a court of competent jurisdiction, or a final ruling, technical advice or decision of the Internal Revenue Service to the effect that the interest on the Bonds (other than interest on any Bond for any period during which such Bond is held by a "substantial user" of the Project or a "related person," as such terms are used in the Code) is includable for Federal income tax purposes in the gross income of the Bondholders or Beneficial Owners thereof; provided, however, that in no event shall a Determination of Taxability be based upon the inclusion of interest in any minimum tax or indirect tax. No such judgment or order or final ruling, technical advice or decision, will be considered final for this purpose, however, unless the Borrower has been given written notice and, if it is so desired, has been afforded the opportunity to contest the same, at its own expense, either directly or in the name of any Bondholder or Beneficial Owner, and until conclusion of any appellate review, if sought. With respect to any series of Additional Bonds, the term Determination of Taxability shall have the meaning given to such term in the applicable Bond Ordinance or Supplemental Indenture.

"Event of Default" shall mean, as used with respect to this Indenture, any event specified in Section 6.01 of this Indenture.

"Fitch" shall mean Fitch Ratings and any successor thereto.

"Government Obligations" shall mean (a) direct obligations of, or obligations the timely payment of the principal of and interest on which are fully and unconditionally guaranteed by, the United States of America and (b) obligations issued by any agency controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal and interest on which is fully guaranteed as to full and timely payment as a full faith and credit obligation of the United States of America.

"Income Tax Reserve Account" shall mean the Account by that name established by Section 4.6 of the Agreement.

CHI2 2261869.18

7

"Indenture" shall mean this Indenture of Trust, including all amendments and restatements hereof and

supplements hereto.

"Interest Payment Date" shall mean June 1 and December 1 of each year, commencing June 1, 2011, except to the extent provision is made otherwise in the applicable Supplemental Indenture or Bond Ordinance.

"Issuer" shall mean the City of Chicago, Illinois, a municipal corporation and home rule unit of government organized and existing under the laws of the State of Illinois.

"Loan" shall mean the loan made by the Issuer to the Borrower from the proceeds of the Series 2010 Bonds pursuant to the Agreement.

"Moody's" shall mean Moody's Investors Service, Inc., and any successor thereto.

"Mortgage" shall mean that certain Mortgage and Security Agreement dated the Closing Date from the Borrower in favor of the Trustee.

"Operating Expenses" shall mean budgeted and customary operating expenses (other than depreciation, amortization, interest expense and taxes) of the Borrower in relation to the Project for the relevant period, determined in accordance with generally accepted accounting principles consistently applied as regularly described in the Borrower's financial statements for such period.

"Operating Reserve Account" shall mean the Account by that name established by Section 4.7 of the Agreement.

"Outstanding," "Bonds outstanding" or "Bonds then outstanding," at the time in question, shall mean all Bonds which have been executed and delivered by the Issuer and authenticated by the Trustee under this Indenture, except:

- (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;
- (b) Bonds paid or deemed to be paid pursuant to Article V hereof; and
- (c) Bonds in lieu of or in exchange for which other Bonds shall have been executed and delivered by the Issuer and authenticated by the Trustee pursuant to Section 2.08, 3.06(b), or 3.14 hereof.

"Participant" shall mean a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

"Person" shall mean an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

CHI2 2261869.18

## 8

"Premium" or "premium" shall mean (a) when used with respect to a Series 2010 Bond, any amount in addition to the principal of and interest on such Series 2010 Bond that is required to be paid in the event of the exercise of an option or obligation to pay the principal of such Series 2010 Bond prior to maturity as permitted or required by this Indenture and (b) when used with respect to the Loan, any amount in addition to the principal of and interest on the Loan that is required to be paid pursuant to an option or obligation to pay the principal of the Loan prior to maturity as permitted by the Agreement.

"Prepayment" or "prepayment" shall mean, when used with respect to the Loan, the payment of all or a portion of the principal of the Loan prior to maturity, except for a payment made in advance of the scheduled due date thereof that is not to be applied against the outstanding principal balance of the Loan until such due date.

"Project" shall mean the design, construction and equipping of a liquid asphalt throughput facility that will blend, store and dispense liquid asphalt including 5 storage tanks, an office building and lab, maintenance and boiler building, and a truck scale building totaling approximately 12,300 square feet, stream blenders, a barge unloading station, truck and rail loading positions and other ancillary structures and related site infrastructure which will be located on approximately 53 acres at 2835 East 106th Street in Chicago, Illinois.

"Project Fund" shall mean the Fund by that name established by Section 4.05 of this Indenture.

"Property" or "Properties" shall mean any and all rights, titles and interests in and to any and all property of the Borrower, whether owned or leased, real or personal, or tangible (including cash) or intangible, wherever situated and whether now owned or leased or hereafter acquired or leased by the Borrower.

"Qualified Investments" shall mean any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein, and subject in all events to the provisions of the Tax Agreement:

(a) Government Obligations;

(b) Federal Home Loan Mortgage Corporation (FHLMC) and Farm Credit Banks (Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) participation certificates and senior debt obligations which bear interest at a fixed rate and are fully amortizing, Federal National Mortgage Association's (FNMA) mortgage backed securities and senior debt obligations which bear interest at a fixed rate and are fully amortizing, and Student Loan Marketing Association (Sallie Mae) letter of credit backed issues and senior debt obligations;

(c) Federal funds, certificates of deposit, demand deposits, money market deposits, time deposits and bankers' acceptances (having original maturities of not more than 365 days) of any bank the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company)

9

CHI2\_2261869.18

have been rated, at the time of purchase, at least "A" or "A-1" or its equivalent by any Rating Agency;

(d) commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, at least "A-1" or its equivalent by any Rating Agency;

(e) repurchase agreements with any institution; the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) are rated, at the time of purchase, at least "A" or its equivalent by any Rating Agency;

(f) obligations of any state of the United States of America or any political subdivision or other instrumentality of any such state and such obligations are rated, at the time of purchase, at least "A" or its equivalent by any Rating Agency;

(g) tax-exempt money market funds which are "qualified regulated investment companies" within the meaning of IRS Notice 87-22, and which meet the other requirements of IRS Notice 87-22 and any subsequent regulations necessary to exempt investments in such funds from the definition of "investment property" under Section 148 of the Code whose assets are solely invested in obligations rated, at the time of purchase, in either of the two highest rating categories by any Rating Agency;

(h) money market funds the assets of which are obligations of or guaranteed by the United States and which funds are rated, at the time of purchase, "Am" or "AM-G" or its equivalent by any Rating Agency;

(i) mutual funds investing in any combination of securities or obligations described in clauses (a) through (h) above; and

(j) any other obligations approved in writing by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

"Rating Agency" or "Rating Agencies" shall mean S&P, Moody's and Fitch.

"Rebate Fund" shall mean the Fund by that name established by Section 4.12 of this Indenture.

"Record Date" shall mean, for any Interest Payment Date, the close of business on the fifteenth day of the calendar month next preceding such Interest Payment Date.

"Registration Books" shall mean the registration records of the Issuer, maintained by the Trustee, as registrar for the Series 2010 Bonds.

"Regulations" shall mean the temporary and permanent Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code, as applicable to the Series 2010 Bonds.

CHI2\_2261869.18

10

"Representation Letter" shall mean the Blanket Letter of Representations, between the Issuer and The Depository Trust Company, New York, New York, including all amendments and restatements thereof and

supplements thereto.

"Revenue Account" shall mean the Account by that name established in the Bond Fund by Section 4.02 of this Indenture.

"Revenues" means (a) all revenues, rentals, third-party payments, receipts, contributions or other income of the Borrower and the Project, including the rights to receive such revenues, all as calculated in accordance with sound accounting practices, including, without limitation, proceeds derived from insurance, condemnation awards, accounts, contract rights and other rights and assets, whether now or hereafter owned, held or possessed by the Borrower and including all investment income; and (b) all grants (including, but not limited to, grants from State and local agencies), and contributions (including income and profits therefrom) to the extent not restricted to any specific purpose or purposes which would not permit their use for any of the payments required under the Loan Agreement and (c) capital contributions and capital infusions, including from any Affiliate.

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Securities Depository" means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

"Securities Depository Nominee" means the Securities Depository or the nominee of such Securities Depository in whose name the Bonds shall be registered on the registration books of the Issuer while the Bonds are in a Book-Entry System.

"Series 2010 Bonds" shall mean the \$45,000,000 City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) executed and delivered pursuant hereto. If the Series 2010 Bonds are held in a book-entry only system, any reference to the Series 2010 Bonds shall, if it is appropriate in the context in which the term is used, be a reference to the beneficial ownership interests in the Series 2010 Bonds.

"Series 2010 Debt Service Reserve Fund Requirement" shall mean \$4,500,000.

"State" shall mean the State of Illinois.

"Supplemental Indenture" means any indenture supplemental to this Indenture entered into between the Issuer and the Trustee in accordance with Article VIII hereof.

"Tax Agreement" shall mean the Tax Compliance Agreement, dated as of December 17, 2010, among the Issuer, the Trustee and the Borrower, including all amendments and restatements thereof and supplements thereto.

"Terminalling Agreement Assignments" means: (i) the Collateral Assignment dated the Closing Date pursuant to which the Borrower has assigned its rights under that certain

11

CHI2 2261869.18

Asphalt Terminalling Agreement dated November 12, 2009 between BP Products North America Inc. and the Borrower as amended and that certain Guaranty Agreement dated November 18, 2010 by BP Corporation North America Inc. for the benefit of the Borrower, in favor of the Trustee; (ii) the Collateral Assignment dated the Closing Date pursuant to which the Borrower has assigned its rights under that certain Asphalt Terminalling Agreement dated October 8, 2010 as amended between Associated Asphalt Distribution, LLC and the Borrower and that certain Guaranty dated October 8, 2010 by Associated Asphalt Partners, LLC for the benefit of the Borrower, in favor of the Trustee; and (iii) the Collateral Assignment dated the Closing Date pursuant to which the Borrower has assigned its rights under that certain Asphalt Terminalling Agreement dated June 10, 2010 as amended between Suit-Kote Corporation and the Borrower, in favor of the Trustee.

"Trustee" shall mean Amalgamated Bank of Chicago, or any successor trustee or cotrustee serving as such under this Indenture. All references in this Indenture to the "designated corporate trust office" of the Trustee shall mean the office of the Trustee located at the address set forth in Section 10.04 hereof or in a notice of change thereof in accordance with Section 10.04 hereof.

"Trust Estate" shall mean the property conveyed to the Trustee pursuant to the Granting Clauses of this Indenture.

"Unassigned Rights" shall mean the rights of the Issuer under Sections 4.3, 8.4, and 10.4 of the Agreement, the Issuer's rights to consent to amendments to the Agreement (other than an amendment to Exhibit A to the Agreement for which the Issuer has no consent rights), to receive notices thereunder and to inspect the Project.

"Underwriter" shall mean William Blair & Company LLC and Estrada Hinojosa & Company, Inc.

Section 1.02 Article and Section Headings. The headings or titles of the several Articles and Sections of this Indenture, and the Table of Contents appended hereto, are solely for convenience of reference and shall not affect the meaning or construction of the provisions hereof.

Section 1.03 Interpretation; Chicago Time. The singular form of any word used herein shall include plural, and vice versa, if applicable. The use of a word of any gender shall include all genders, if applicable. Any reference to a particular Article or Section shall be to such Article or Section of this Indenture unless the context shall otherwise require. Any reference to any time of day on any date shall be to prevailing time in Chicago, Illinois on such date unless otherwise specified herein.

## **ARTICLE II AUTHORIZATION AND ISSUANCE OF BONDS**

Section 2.01 Authorization and Issuance of Bonds. The Series 2010 Bonds are hereby authorized to be issued and designated as City of Chicago, Illinois Recovery Zone Facility

12

CHI2\_2261869.18

Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project). The Series 2010 Bonds shall be issued in the aggregate principal amount of \$45,000,000. The Series 2010 Bonds shall mature, subject to prior redemption or acceleration, on the date set forth in Section 2.02. The Series 2010 Bonds shall only be originally issued to the Securities Depository and held in a book-entry system, as further described in Section 2.09 hereof. No Bonds may be issued pursuant to this Indenture in addition to those authorized by this Section 2.01, except Bonds issued pursuant to Section 2.08 hereof, Bonds issued upon transfer or exchange pursuant to Section 3.06 hereof, and replacement Bonds issued pursuant to Section 3.14 hereof. The Issuer may issue, sell and deliver one or more series of Additional Bonds for the purposes, upon satisfaction of the conditions and in the manner provided in Section 2.10 hereof. Any Additional Bonds shall mature on the date specified in the applicable Supplemental Indenture or Bond Ordinance.

### Section 2.02 Terms of Bonds.

(a) The Series 2010 Bonds shall be dated the date of delivery. The Series 2010 Bonds shall bear interest at the rates per annum set forth below from their date until payment of principal has been made or provided for, payable each June 1 and December 1, commencing June 1, 2011, except that Series 2010 Bonds which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent interest payment date to which interest has been paid, or if no interest has been paid, from the date of the Series 2010 Bonds. The Series 2010 Bonds shall mature on December 1, 2018 and shall bear interest per annum at the rate of 6.125%.

(b) Redemption Provisions. The Series 2010 Bonds shall be subject to redemption by the Issuer prior to maturity as follows:

(i) The Series 2010 Bonds are subject to optional redemption, in whole or in part (provided that no Bond may be redeemed in part if the principal amount outstanding following such partial redemption is not an Authorized Denomination) on or after December 1, 2015, at the direction of the Borrower upon not less than 45 days prior written notice to the Issuer and the Trustee, on the dates and at the redemption prices (expressed as a percentage of the principal amount of the Series 2010 Bonds to be redeemed) set forth below, plus accrued interest to the date of redemption.

(ii) The Series 2010 Bonds are subject to mandatory sinking fund redemption at a redemption price equal to the aggregate principal amount of the Series 2010 Bonds to be redeemed without premium (provided that no Series 2010 Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on December 1 of the years and in the principal amounts as set

forth below:

**Redemption Dates (Inclusive)**

**Price (%)**

December 1, 2015 to November 30, 2016 December 1, 2016 to November 30, 2017 December 1, 2017, and thereafter

102 101 100

13

CHI2 2261869.18

**Year**

**Principal Amount**

2012 2013 2014 2015 2016 2017 2018

\$ 5,000,000

\$ 5,100,000

\$ 5,450,000

\$ 5,800,000

\$ 6,150,000

\$ 6,600,000

\$ 10,900,000

The foregoing notwithstanding, the Issuer, acting at the direction of the Borrower, shall be entitled to satisfy, in whole or in part, the above mandatory sinking fund requirements by the delivery of Series 2010 Bonds to the Trustee for cancellation.

(iii) The Series 2010 Bonds are subject to extraordinary mandatory redemption in whole or in part (provided that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on any date selected by the Borrower, at a redemption price equal to the aggregate principal amount of the Series 2010 Bonds to be redeemed plus accrued interest thereon to the redemption date, without premium, upon the occurrence of certain events described in Section 11.1 of the Agreement if the Borrower elects to prepay a like amount under the Agreement.

(iv) The Series 2010 Bonds are subject to special mandatory redemption in whole or in part (provided that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on any date selected by the Borrower for which timely notice of redemption can be given by the Trustee following the Completion Date, at a redemption price equal to the aggregate principal amount of the Series 2010 Bonds to be redeemed plus accrued interest to the redemption date, without premium, to the extent of any moneys then remaining on deposit in the Project Fund.

(v) The Bonds are subject to mandatory redemption in whole on the earliest redemption date for which timely notice of redemption can be given by the Trustee after the occurrence of a Determination of Taxability at a redemption price equal to 105% of the aggregate principal amount thereof plus accrued interest thereon to the redemption date. The foregoing amount shall constitute the total amount required to be paid as a result of the occurrence of a Determination of Taxability.

The foregoing redemption rights and obligations are in all respects subject to the requirements and procedures of this Indenture, including particularly, but without limitation, Sections 2.06, 2.07 and 2.08 hereof.

(c) Interest. Each Series 2010 Bond shall initially bear interest from its dated date and thereafter shall bear interest from the Interest Payment Date next preceding the date of authentication, unless (i) authenticated prior to the first Interest Payment Date, in which event

14

CHI2 2261869.18

such Series 2010 Bond shall bear interest from its dated date, (ii) authenticated on an Interest Payment Date, in which event such Series 2010 Bond shall bear interest from the date of authentication or (iii) authenticated after a Record Date and before the following Interest Payment Date, in which event such Series 2010 Bonds shall



bear interest from the following Interest Payment Date. If, as shown by the records of the Trustee, interest on a Series 2010 Bond is in default, any Series 2010 Bond issued in exchange for such Series 2010 Bond surrendered for registration of transfer or exchange shall bear interest from the date to which interest has been paid in full on such Series 2010 Bond, or, if no interest has been paid on such Series 2010 Bond, from its dated date. Interest on the Series 2010 Bonds shall be computed on the basis of 360-day year comprised of twelve 30-day months.

(d) Payment Terms. Principal of, and premium, if any, on, each Bond shall be payable by the Trustee to the Bondholders upon presentation and surrender of such Bond as the same become due at the designated corporate trust office of the Trustee. Interest on the Bonds shall be paid by the Trustee by check or draft drawn upon the Trustee and mailed by first class mail on the respective Interest Payment Dates to the Bondholders at their addresses shown on the Registration Books of the Trustee as of the close of business on the Record Date with respect to such Interest Payment Date, or to such other addresses as are furnished to the Trustee (in form satisfactory to the Trustee) by such Bondholders prior to such Record Date; provided that payment of interest shall be made by the Trustee by wire transfer to the Owner of \$1,000,000 or more in aggregate principal amount of Bonds upon such Owner providing the Trustee with written wire transfer instructions before the applicable Record Date. Such interest shall be paid notwithstanding the cancellation of any Bonds upon any exchange or registration of transfer thereof subsequent to the Record Date and prior to such Interest Payment Date, except that, if and to the extent there shall be a default in the payment of the interest due on such Interest Payment Date, such defaulted interest shall be paid to the Bondholders in whose names such Bonds (or any Bond or Bonds issued upon registration of transfer or exchange thereof) are registered at the close of business on the Business Day next preceding the date of payment of such defaulted interest. Payment of principal or purchase price of, premium, if any, and interest on the Bonds shall be made in such lawful money of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts.

(e) Form; Numbering. Each Series 2010 Bond is issuable in the form of a registered bond without coupons in any Authorized Denomination which until the conditions described in the next sentence are satisfied shall be denominations of \$ 1,000,000 or any integral multiple of \$5,000 in excess thereof. At such time as the Borrower shall have defeased the Series 2010 Bonds in full in accordance with the provisions of Section 5.01 of this Indenture, the Borrower may notify the Trustee that it is electing to convert the Series 2010 Bonds to Authorized Denominations of \$5,000 or any integral multiple of \$5,000 in excess thereof, and the Series 2010 Bonds may be so converted and exchanged; provided, however that prior to any such exchange and conversion the Issuer and the Trustee shall have received an opinion of counsel satisfactory to the Issuer and the Trustee to the effect that either (i) the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission are not applicable to any remarketing of the Series 2010 Bonds upon such conversion and exchange or (ii) that the Borrower has entered into a Continuing Disclosure Agreement which complies with the requirements of Rule 15c2-12 as in effect as of the date of the exchange. The Series 2010 Bonds shall be numbered from R-1 upwards in order of issuance or in such other manner as the Trustee

15

CHI2\_2261869.18

shall designate, and shall bear appropriate "CUSIP" identification numbers (if then generally in use).

Section 2.03 Form of Series 2010 Bond. The Series 2010 Bonds, the certificate of authentication, the provision for registration and the form of assignment shall be in substantially the form set forth in Exhibit A hereto, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby (including specifically, and without limitation, pursuant to the provisions of Article VIII hereof), and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistently herewith, be determined by the officers executing such Series 2010 Bonds, as evidenced by their execution of the Series 2010 Bonds.

Section 2.04 Execution; Limited Obligations. The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of its Mayor (or the person duly authorized to hold such office), and attested, under a manual or facsimile impression of the seal of the Issuer, with the manual or facsimile signature of its City Clerk. All authorized facsimile signatures shall have the same force and effect as manual signatures. A facsimile impression of the Issuer's seal shall have the same force and effect as a manual impression. In case any officer of the Issuer whose signature or a facsimile thereof appears on a Bond shall cease to be such officer before the delivery of such Bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in the office until delivery.

The Bonds, together with interest thereon and premium with respect thereto, are special, limited obligations of the Issuer secured by and are and shall always be payable solely from the revenues and income derived from the Agreement (except to the extent paid out of moneys attributable to the proceeds derived from the sale of the Bonds or income from the temporary investment of such funds or other funds held hereunder), are and shall always be a valid claim of the owner thereof only against the revenues and income derived from such sources which revenues and income shall be used for no other purpose than to pay the principal installments of premium, if any, and interest on the Bonds, except as may be expressly authorized otherwise in this Indenture and the Agreement. The Bonds and the obligation to pay interest thereon and premiums with respect thereto do not now and shall never constitute an indebtedness or an obligation of the Issuer, the State of Illinois or any political subdivision thereof, within the purview of any constitutional limitation or provision, or a charge against the general credit or taxing powers, if any, of any of them, but shall be secured as aforesaid, and shall be payable solely from the revenues and income derived from the Agreement. No owner of the Bonds shall have the right to compel any exercise of the taxing power of the Issuer, the State or any other political subdivision thereof to pay the Bonds or the interest or premium, if any, thereon.

No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the Bonds or for any claim based thereon or any obligation, covenant or agreement in this Indenture or the Agreement against any past, present or future member, officer, agent or employee or official of the Issuer or any incorporator, member, officer, agent, employee, director or trustee or independent contractor of the Issuer or any person executing the Bonds, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity,

## 16

CHI2 2261869.18

statute or constitution or by the enforcement Of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture or the Agreement and the issuance of the Bonds.

Section 2.05 Conditions Precedent to Delivery and Authentication of Series 2010 Bonds. The Issuer shall execute and deliver the Series 2010 Bonds to the Trustee, and the Trustee shall, upon receipt by the Trustee of the purchase price for the Series 2010 Bonds, authenticate the Series 2010 Bonds and deliver them to the initial purchasers thereof. Prior to and as a condition precedent to the authentication and delivery of the Series 2010 Bonds there shall be filed with and delivered to the Trustee, and the Trustee shall be fully protected in relying on:

- (i) a copy, duly certified by an authorized representative of the Issuer, of the ordinance adopted by the Issuer authorizing the execution and delivery of this Indenture and the issuance of the Series 2010 Bonds;
- (ii) original executed counterparts of this Indenture, the Agreement, the Mortgage, the Collateral Assignments and the Tax Agreement;
- (iii) a written order of the Issuer, directed to the Trustee, instructing the Trustee to authenticate the Series 2010 Bonds and to make them available for delivery to the initial purchasers thereof upon payment to the Trustee for the account of the Issuer of the sum specified in such written order;
- (iv) opinions of Bond Counsel substantially to the effect that (A) the Series 2010 Bonds constitute legal, valid

and binding special, limited obligations of the Issuer, enforceable in accordance with their terms, subject to bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting the rights of creditors and to the exercise of judicial discretion in accordance with general principles of equity and (B) the interest on the Series 2010 Bonds is excluded from gross income for federal income tax purposes under existing statutes, regulations, published rulings and judicial decisions;

(v) a certificate of the Issuer stating that it has complied with all requirements imposed by this Indenture, the Ordinance and with all other applicable laws and regulations relating to the issuance of bonds by the Issuer, if any;

(vi) opinions of counsel to the Borrower and the Issuer in form and substance satisfactory to the Trustee, Bond Counsel and the Underwriter and in substantially the form attached to the Bond Purchase Agreement executed in connection with the Series 2010 Bonds; and

(vii) an opinion of counsel to the Trustee in form and substance satisfactory to Bond Counsel, the Issuer and the Underwriter.

No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond shall have been duly executed by the Trustee. Such executed certificate of the Trustee upon any such Bond shall

17

CHI2\_2261869.18

be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The certificate of authentication on any Bond shall be deemed to have been executed by the Trustee if signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificates of authentication on all Bonds issued hereunder.

Section 2.06 Notice of Redemption. Not less than 30 nor more than 45 days prior to any redemption date, the Trustee shall cause notice of the call for redemption, identifying each Bond or portion thereof to be redeemed, given in the name of the Issuer, to be sent by first class mail, postage prepaid, to the Borrower and the Owner of each Bond to be redeemed at the address of such Owner shown on the Registration Books; provided, however, that neither the failure to give any such notice nor any defect in any notice so given with respect to any Bond shall affect the sufficiency or the validity of any proceedings for the redemption of the other Bonds; and provided, further, that if such notice by mail shall not have been given with respect to a Bond delivered pursuant to Section 3.01 hereof and if such Bond shall be deemed to have been selected for redemption pursuant to Section 2.08 hereof, such notice may be given by the Trustee by telephone or facsimile (receipt confirmed by telephone), confirmed in writing, as promptly as practicable to the Owner of such Bond, but failure to duly give such notice by telephone or facsimile or any defect therein shall not affect the validity of proceedings for the redemption of other Bonds.

Each official notice of redemption shall state (i) the redemption date, (ii) the redemption price, (iii) if less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (iv) a statement that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after such date and (v) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the designated corporate trust office of the Trustee.

In addition to the official notice of redemption, if the Bonds are not then held under the book-entry only system, further notice shall be given by the Trustee in the name of the Issuer as set out below; provided, however, that neither the failure to give any such notice nor any defect in any notice so given shall affect the sufficiency or validity of any proceedings for the redemption of the Bonds. Each further notice of redemption given hereunder shall contain the information required for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed, (ii) the date of issue of the Bonds as originally issued, (iii) the rate of interest borne by each Bond being redeemed, (iv) the maturity date of each Bond being redeemed and (v) any other descriptive

information needed to identify accurately the Bonds being redeemed.

Each further notice of redemption shall be sent at least 35 days before the redemption date by certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of the type comprising the Bonds (such depository now being The Depository Trust Company of New York, New York) and to one or more national information services, chosen in the discretion of the Trustee, that disseminate notice of redemption of obligations such as the Bonds.

18

CHI2 2261869.18

Section 2.07 Redemption Payments; Effect of Call for Redemption. On the date fixed for redemption of any Bond, funds for the payment thereof shall be on deposit in the Bond Fund representing moneys deposited by the Borrower with the Trustee, and the Trustee hereby is authorized and directed to apply such funds to the payment of each Bond or portion thereof called for redemption, together with accrued interest thereon to the redemption date and any required premium. On the date so designated for redemption, notice having been given in the manner and under the conditions hereinabove provided, any Bond or portion thereof so called for redemption shall become and be due and payable at the redemption price provided for herein.

Section 2.08 Partial Redemption. If fewer than all of the Bonds shall be called for redemption, the portion of Bonds to be redeemed shall be selected by lot among each Series and maturity called for redemption, to the maximum extent feasible (with such adjustments as may be required to be made by the Trustee). For this purpose, each \$5,000 increment of principal amount represented by any Bond shall be considered a separate Bond for purposes of selecting the Bonds to be redeemed; provided, however, that no Bond may be redeemed in part if the principal amount to be Outstanding following such partial redemption is not an Authorized Denomination. If it is determined that one or more, but not all, of the \$5,000 increments of principal amount represented by any Bond is to be called for redemption, then, upon notice of intention to redeem such \$5,000 increments of principal amount of such Bond, the Owner of such Bond, upon surrender of such Bond to the Trustee for payment to such Owner of the redemption price or the principal amount of such Bond called for redemption, shall be entitled to receive a new Bond or Bonds of the same series and maturity and in the aggregate principal amount of the unredeemed balance of the principal amount of such Bond. New Bonds representing the unredeemed balance of the principal amount of such Bonds shall be issued to the Owner thereof without charge therefor.

If the owner of any Bond of a denomination greater than \$5,000 shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the \$5,000 increments of principal amount called for redemption (and to that extent only).

Section 2.09 DTC Book-Entry. The Bonds shall be initially issued in the name of "Cede & Co.," as nominee for The Depository Trust Company ("DTC"), as registered owner of the Bonds, and held in the custody of DTC. A single certificate for Bonds of each maturity of each series will be issued and delivered to DTC. The actual purchasers of the Bonds (the "Beneficial Owners") will not receive physical delivery of Bond certificates except as provided herein. Beneficial Owners are expected to receive a written confirmation of their purchase providing details of each Bond acquired. For so long as DTC shall continue to serve as securities depository for the Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Bonds is to receive, hold or deliver any Bond certificate.

Bond certificates are required to be delivered to and registered in the name of the Beneficial Owner under the following circumstances:

CHI2\_2261869.18

19

(a) DTC determines to discontinue providing its service with respect to the Bonds. Such a determination may be made at any time by giving reasonable notice to the Issuer and the Trustee and discharging its

responsibilities with respect thereto under any applicable law; or

(b) the Issuer, at the request of the Borrower, determines to discontinue the system of book-entry transfers through DTC (or a successor securities depository) with respect to the Bonds.

The Issuer, the Borrower and the Trustee will recognize DTC or its nominee as the Bondowner for all purposes, including notices and voting.

The Issuer and the Trustee may conclusively rely on (A) a certificate of DTC as to the identity of the participants in the book-entry system and (B) a certificate of such participants as to the identity of, and the respective principal amounts of Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Bonds, beneficial ownership thereof is determined by a book entry at DTC, the requirements in this Indenture of holding, delivering, paying or transferring Bonds shall be deemed modified to require the appropriate person to meet the requirements of DTC as to registering or transferring the book entry to produce the same effect.

The Trustee and the Issuer, at the direction and expense of the Borrower, may from time to time appoint a successor securities depository and enter into an agreement with such successor securities depository, to establish procedures with respect to the Bonds not inconsistent with the provisions of this Indenture. Any successor securities depository shall be a "clearing agency" registered under Section 17A of the Securities Exchange Act of 1934, as amended.

Neither the Issuer, the Borrower nor the Trustee (except and only to the extent it is also a participant in the book-entry system) will have any responsibility or obligation to DTC, any participant in the book-entry system or the Beneficial Owners with respect to (i) the accuracy of any records maintained by DTC or any participant, (ii) the payment by DTC or any participant of any amount due to any Beneficial Owner with respect to the principal or purchase price or, or the premium or interest on, any Bond, (iii) the delivery of any notice by DTC or any participant, (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Bonds or (v) any other action taken by DTC or any participant.

Notwithstanding anything in this Indenture to the contrary, the Issuer and the Trustee hereby agree as follows with respect to the Bonds, if and to the extent any Bond is registered in the name of "Cede & Co." as nominee of DTC: (i) the Trustee shall give DTC all special notices required by the Representation Letter at the times, in the forms and by the means required by the Representation Letter, (ii) the Trustee shall make payments to Cede & Co. at the times and by the means specified in the Representation Letter, (iii) Cede & Co. shall not be required to surrender Bonds which have been partially paid or prepaid to the extent permitted by the Representation Letter and (iv) the Trustee shall set a special record date (and shall notify the registered owners of the Bonds thereof in writing) prior to soliciting any Bondholder consent or vote, such notice to be given not less than 15 calendar days prior to such record date (any Bond transferred by a registered owner subsequent to the establishment of the special record date and

CHI2\_2261869.18

## 20

prior to obtaining such consent or vote shall have attached to it a copy of the notice to Bondholders by the Trustee).

If at any time DTC ceases to hold the Bonds, all references herein to DTC shall be of not further force or effect. Section 2.10 Additional Bonds. At the request of the Borrower and with the consent of the Issuer, the Issuer may issue Additional Bonds from time to time for the purpose of making additions to or further equipping or completing the Project. Additional Bonds shall have an equal and parity claim with the Series 2010 Bonds and any Additional Bonds theretofore or thereafter issued and outstanding as to the assignment to the Trustee of the Trust Estate.

(a) Before the Trustee may authenticate and deliver any Additional Bonds, the Trustee must receive the following items:

(i) Original executed counterparts of any amendments or supplements to the Agreement and the Supplemental Indenture entered into in connection with the issuance of the Additional Bonds, as are necessary or advisable, in

the opinion of Bond Counsel, to provide that the Additional Bonds will be issued in compliance with the provisions of this Indenture.

(ii) An amendment to the Mortgage, duly executed and delivered, to the extent necessary to ensure that any real property additions or improvements to the Project are secured by the Mortgage.

(iii) A copy of the written request from the Borrower to the Issuer for issuance of the Additional Bonds.

(iv) A certificate from the Borrower certifying that the proceeds from the Additional Bonds will only be used to (A) finance (1) construction, renovation and equipping of facilities necessary to complete the Project, the additional construction, improving, renovation or equipping of the Project (or any other facilities, the acquisition, construction, renovation or equipping of which was previously financed by the issuance of Additional Bonds), (2) any capitalized interest on the Additional Bonds, (3) the initial deposit into the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement for the Additional Bonds and (4) all or a portion of the costs of issuance of the Additional Bonds, or (B) refund Bonds then outstanding.

(v) A copy of the Bond Ordinance authorizing the issuance of such Additional Bonds certified by an officer of the Issuer.

(vi) A request and authorization to the Trustee on behalf of the Issuer, signed by the Issuer, to authenticate and deliver the Additional Bonds to, or on the order of, the underwriter of such Bonds upon payment to the Trustee of the amount specified therein (including without limitation, any accrued interest), which amount shall be deposited as provided in the applicable Bond Ordinance or Supplemental Indenture.

CHI2 2261869.18

21

(vii) A certificate from the Borrower certifying that the Debt Service Reserve Fund Requirement, as adjusted in connection with the issuance of Additional Bonds, will be satisfied.

(viii) A written report of an Independent Consultant to the effect that, based on reasonable assumptions concerning the Borrower's current business plan, the Borrower's operations and Revenues to be available to the Borrower, the Borrower is expected after the issuance of the Additional Bonds to generate or receive sufficient Revenues to operate and maintain all of the Borrower's facilities and to permit the Borrower to satisfy all of its then outstanding financial obligations, including, without limitation, its obligations under the Agreement.

(ix) A written report of an Independent Consultant to the effect that (i) for the Borrower's most recent completed fiscal year for which audited financial statements have been prepared preceding the issuance of the Additional Bonds, the Debt Service Coverage Ratio was at least 1.10; and (ii) based on reasonable assumptions concerning the Borrower's pro forma business plan, for each fiscal year of the Borrower following the issuance of the Additional Bonds, the Debt Service Coverage Ratio will be at least 1.10; provided that for purposes of computing the Debt Service Coverage Ratio for this clause (ix) only, Revenues shall include only the income generated based on the minimum Requirement for all Customers (each as defined in the Asphalt Terminalling Agreements).

(x) A written certificate from the Borrower certifying that (i) the Borrower has at least one year of operating history with respect to the Project, and (ii) no event of default has occurred under the Agreement.

(xi) An opinion of Bond Counsel to the effect that: (i) the documents submitted to the Trustee in connection with the request then being made comply with the requirements of this Indenture; (ii) the issuance of the Additional Bonds has been duly authorized; and (iii) all conditions precedent to the delivery of the Additional Bonds have been fulfilled.

(xii) An opinion of Bond Counsel to the effect that: (i) when executed for and in the name and on behalf of the Issuer and when authenticated and delivered by the Trustee, the Additional Bonds will be valid and legal limited obligations of the Issuer enforceable in accordance with their terms and will be secured hereunder equally and on a parity with all other Bonds at the time outstanding hereunder as to the pledge or assignment to the Trustee of the Issuer's right, title and interest in the Trust Estate to provide for payment of principal of, premium, if any, and interest on the Bonds; and (ii) the issuance of the Additional Bonds will not adversely

affect the exclusion from gross income from federal income taxation of interest on any Series 2010 Bonds outstanding immediately prior to that issuance.

(xiii) A written opinion of counsel to the Borrower, reasonably satisfactory to the Trustee, to the effect that any amendments or supplements to the Agreement have been duly executed and delivered by the Borrower, and that the Agreement, as it may be

22

CHI2 2261869.18

amended or supplemented, constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its respective terms, subject to exceptions reasonably satisfactory to the Trustee including bankruptcy, insolvency and similar laws and the application of equitable principles.

(b) When (i) the documents listed above have been received by the Trustee, and (ii) the Additional Bonds have been executed and authenticated, the Trustee shall deliver the Additional Bonds to or on the order of the underwriter of such Bonds, but only upon payment to the Trustee of the specified amount (including without limitation, any accrued interest) set forth in the request and authorization to which reference is made in paragraph (a)(v) of this Section 2,10.

### **ARTICLE III GENERAL PROVISIONS**

Section 3.01 Authorization for Indenture; Indenture to Constitute Contract. This Indenture is entered into pursuant to the Bond Ordinance. In consideration of the purchase of the Bonds by the Bond Owners, the provisions of this Indenture shall be part of the contract of the Issuer with the Owners of the Bonds, and shall be deemed to be and shall constitute a contract among the Issuer, the Trustee and the Bond Owners. The provisions hereof are covenants and agreements with such Bond Owners, which the Issuer hereby determines to be necessary and desirable for the security and payment of the Bonds.

Section 3.02 Payment of Principal, Premium and Interest. The Issuer covenants that it will duly and punctually pay or cause to be paid the principal of, premium, if any, and interest on the Bonds issued under this Indenture at the place, on the dates and in the manner provided herein and therein according to the true intent and meaning hereof and thereof, but solely from the Trust Estate established under this Indenture.

Section 3.03 Performance of Covenants; Issuer Warranties. The Issuer covenants that it will faithfully comply with the stipulations and provisions required to be performed by it and contained in this Indenture, or in any of its proceedings pertaining hereto; provided, however, that except for the covenant of the Issuer set forth in Section 3.02 hereof relating to payment of the Bonds, the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or by the Trustee, or shall have received the instrument to be executed and at the option of the Issuer shall have received from the party requesting such execution assurance satisfactory to the Issuer that the Issuer shall be reimbursed by the Borrower for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. The Issuer warrants that it is duly authorized under the laws of the State, to issue the Bonds authorized hereby and to execute this Indenture and to assign its rights under or with respect to the Agreement and all amounts payable thereunder or with respect thereto, which hereby are assigned in the manner and to the extent herein set forth; that all actions on its part for the issuance of the Bonds and the execution and delivery of this Indenture have been duly and effectively taken; and that the Bonds are and will be valid and binding special, limited obligations of the Issuer enforceable in accordance with the terms thereof and hereof, except as

23

CHI2 2261869.18

enforcement thereof and hereof may be limited by bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting the rights of creditors and by the application of general principles of equity, if such remedies are pursued. Anything in this Indenture to the contrary notwithstanding, it is hereby understood and agreed that none of the covenants of the Issuer contained in this Indenture are intended to or shall create a general obligation of the Issuer.

Section 3.04 Instruments of Further Assurance. The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee or the Borrower reasonably may require for the better and more effectual assignment to the Trustee of all payments, revenues and other amounts payable under or with respect to the Agreement (except the Issuer's Unassigned Rights) and any other income and other moneys assigned hereby to the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer further covenants that it will not create or suffer to be created any lien, encumbrance or charge upon its interest in the Revenues and other amounts payable under or with respect to the Trust Estate, except the lien and charge granted hereby.

Section 3.05 Recordation and Maintenance of Lien. Upon being indemnified to its satisfaction by the Borrower, the Issuer, to the extent permitted by law, shall cooperate in any filing of the Agreement, the Tax Agreement, this Indenture, the Mortgage and any financing statements and all supplements thereto, and such other instruments (including, but not limited to, continuation statements) as may be required from time to time by the Issuer or the Borrower to be recorded or filed, in the judgment of the Borrower, in such manner and in such places as from time to time may be required by law in order fully to preserve and protect the security of the Owners of the Bonds, and the rights of the Trustee hereunder and will sign such continuation statements and other documents presented to it as requested by the Borrower.

Section 3.06 Registration of Bonds; Trustee Appointed Bond Registrar; Persons Treated as Owners.

(a) Registration. The Trustee is hereby appointed as registrar of the Bonds and as such shall maintain the Registration Books as provided by this Indenture. The Registration Books shall reflect the information required to be provided by Bond Owners in connection with the transfer of Bonds. At reasonable times and under reasonable regulations established by the Trustee, the Registration Books may be inspected and copied by the Borrower, the Issuer, or the Owners (or designated representatives thereof) of at least 25% in aggregate principal amount of Bonds then Outstanding.

(b) Transfer and Exchange. The ownership of a Bond may be transferred (in the amount of any Authorized Denomination; provided, that any portion thereof retained is itself in an Authorized Denomination) only upon surrender thereof at the designated corporate trust office of the Trustee, accompanied by an assignment, duly executed by the Owner of such Bond or its duly authorized attorney-in-fact, in such form as shall be satisfactory to the Trustee along with the address and social security number or federal employer identification number of such transferee (or, if registration is to be made in the name of multiple individuals, of all such transferees) and, if such transferee is a trust, the name and address of the trustee(s) and the date

24

CHI2 2261869.18

of the trust of the proposed transferee. Upon the due presentation of any Bond for transfer and on request of the Trustee, the Issuer shall execute in the name of the transferee, and the Trustee shall authenticate and deliver, a new fully registered Bond or Bonds, in any Authorized Denomination, in an aggregate principal amount equal to the unmatured and unredeemed principal amount of such transferred fully registered Bond of the same series, and bearing interest at the same rate and maturing on the same date, as such transferred Bond.

Bonds may be exchanged at the designated corporate trust office of the Trustee for a like aggregate principal amount of Bonds of Authorized Denominations and of the same maturity, series and interest rate. All Bonds surrendered to the Trustee for transfer or exchange pursuant to this Section shall be cancelled by the Trustee and shall not be redelivered. Neither the Issuer nor the Trustee shall be required to make any such transfer or exchange of any Bond during the three Business Days immediately preceding the selection of the Bonds for redemption or, with respect to a Bond, after such Bond or any portion thereof has been selected for redemption. The Trustee shall attach to each Bond issued in transfer or exchange for a Bond (or a portion of a Bond) called for redemption a copy of the notice thereof.

(c) Charges. In all cases of the transfer of a Bond, the Trustee shall register at the earliest practicable time, on the Registration Books, such Bond in accordance with the provisions of this Indenture. The Issuer or the



Trustee may make a charge to the Bond Owner for every such transfer and every exchange of a Bond sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and may demand that such charge be paid before any new Bond is delivered.

(d) Ownership. As to any Bond, the person in whose name the ownership of such Bond shall be registered on the Registration Books shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of, premium, if any, and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof or its legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the premium, if any, and interest thereon, to the extent of the sum or sums so paid.

Section 3.07 Cancellation. All Bonds which have been paid at maturity or redeemed prior to maturity shall not be reissued but shall be cancelled by the Trustee. All Bonds which are cancelled by the Trustee shall be disposed of by the Trustee, and a certificate of the disposition thereof shall be furnished promptly to the Issuer; provided, however, that if the Issuer shall so direct the Trustee, the Trustee shall forward the cancelled Bonds to the Issuer by registered mail or by hand delivery (and if so requested by the Issuer, then to the Issuer with written notice).

Section 3.08 Nonpresentment of Bonds. If any check or draft representing payment of interest, principal or premium on any Bond is returned to the Trustee or is not presented for payment by the payee thereof, or any Bond is not presented for payment of principal or premium at the maturity or redemption date and moneys sufficient to pay such principal, premium and interest owed on such Bond shall have been made available to the Trustee for the benefit of the Owner of the applicable Bond, all liability of the Issuer to the Owner of such Bond for such interest or such principal and premium shall forthwith cease, terminate and be completely

25

CHI2 2261869.18

discharged, and thereupon it shall be the duty of the Trustee to hold such moneys and/or Government Obligations, without investing or reinvesting the same and without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on such Owner's part under this Indenture or on, or with respect to, such Bond, and thereafter such Bond shall no longer be considered to be Outstanding. The Trustee's obligation to hold such moneys and/or Government Obligations shall continue for a period equal to three years following the date on which such payment was due, whether at maturity, or at the date fixed for redemption thereof, or otherwise, at which time the Trustee, upon payment of all fees and expenses due and owing to it and receipt of indemnity satisfactory to it, shall surrender such funds so held to the Borrower upon its written direction. Following such surrender, any claim for payment under this Indenture by the Owner of any Bond of whatever nature shall be made only upon the Borrower. The provisions of this Section shall be subject to all applicable escheat and unclaimed property laws.

Section 3.09 Rights Under Certain Agreements. This Indenture, the Agreement, the Mortgage, the Collateral Assignments, the Terminalling Agreement Assignments, and the documents executed by the Borrower in connection therewith (including, but not limited to, the Tax Agreement), duly executed counterparts or originals of which have been filed with the Trustee, set forth the covenants and the obligations of the Issuer, the Borrower and the Trustee. Reference is hereby made to such documents for detailed statements of the covenants and obligations set forth therein. The Issuer agrees that the Trustee, for and on behalf of the Bond Owners, in the Trustee's name or, to the extent permitted by law, in the name of the Issuer, may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Agreement and such documents.

Section 3.10 Legal Existence of Issuer. The Issuer covenants that it will at all times maintain its legal existence and will duly procure any necessary renewals and extensions thereof; will use its best efforts to maintain, preserve and renew all the rights, powers, privileges and franchises owned by it; and will comply with all valid acts, rules, regulations and orders of any legislative, executive, judicial or administrative body applicable to the

Issuer in connection with the Bonds.

Section 3.11 Tax-Exempt Status of Series 2010 Bonds. The Issuer and the Trustee each covenant to commit or suffer no act within its control that would, to its actual knowledge, alter the status or character of the Series 2010 Bonds, or the interest to be paid on the Series 2010 Bonds, for purposes of federal income taxation. The provisions of this Section shall apply to the Trustee only to the extent that the Trustee is acting hereunder in its sole discretion.

Section 3.12 Diminution of, or Encumbrance on. Trust Estate. The Issuer covenants not to sell, transfer, assign, pledge, release, encumber or otherwise diminish or dispose of, directly or indirectly, by merger or otherwise, or cause or suffer the same to occur, or create or allow to be created or to exist any lien upon, all or any part of its interests in the Trust Estate, except as expressly permitted by this Indenture.

Section 3.13 Books, Records and Accounts. The Trustee agrees to keep proper books for the registration of, and transfer of ownership of, each Bond, and proper books, records and accounts in which complete and correct entries shall be made of all transactions relating to the

26

CHI2 2261869.18

receipt, disbursement, investment, allocation and application of the proceeds received from the sale of the Bonds, the revenues received from the Agreement, the funds and accounts created pursuant to this Indenture and all other moneys held by the Trustee hereunder. The Trustee shall, during regular business hours and upon reasonable prior notice, make such books, records and accounts available for inspection by the Issuer, the Borrower and the Bond Owners.

Section 3.14 Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond is mutilated, lost, stolen or destroyed, the Trustee, upon written request, shall authenticate a new Bond, dated as provided in Article II hereof, of the same series, maturity and denomination and bearing interest at the same rate as the Bond mutilated, lost, stolen or destroyed; provided, however, that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and, in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity covering the Trustee and the Issuer satisfactory to the Trustee and the Issuer, and thereafter such purported lost, stolen or destroyed Bond shall not be deemed to be Outstanding hereunder other than for purposes of payment from the proceeds of the indemnity so provided. If any such Bond shall have matured, instead of issuing a duplicate Bond the Issuer may pay the same. The Trustee and the Issuer may charge the Owner of such Bond with their reasonable fees and expenses in connection with the issuance of any such duplicate Bond.

Every substituted Bond issued pursuant to this Section shall be entitled to the benefit and security of this Indenture to the extent provided herein. If the Bond alleged to have been lost, stolen or destroyed shall be at any time enforceable by anyone, the Issuer shall pay any amounts owed with respect to such Bond solely from the indemnity required above.

All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, lost, stolen or destroyed Bonds, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or of investment or other securities without their surrender.

Section 3.15 Issuer Fees and Expenses. The Issuer shall be entitled to payment and reimbursement by the Borrower for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably made or incurred by the Issuer in connection with such services and in connection with entering into this Indenture, including any such fees and expenses incurred in connection with any action taken hereunder.

#### **ARTICLE IV**

#### **REVENUES AND FUNDS**

Section 4.01 Application of Original Proceeds. The proceeds received by the Issuer from the sale of the Series

2010 Bonds together with funds received by the Trustee from the Borrower to pay a portion of the cost of issuance expenses, after payment of an Underwriters' discount in the amount of \$450,000, shall be immediately applied to make the Loan to the Borrower and shall be deposited as follows:

27

CHI2 2261869.18

- (a) the sum of \$2,633,750 representing capitalized interest on the Series 2010 Bonds through and including December 1, 2011, shall be deposited with the Trustee in the Capitalized Interest Account of the Bond Fund;
- (b) the sum of \$450,000, representing cost of issuance expenses for the Bonds, shall be deposited with the Trustee in the Cost of Issuance Account of the Project Fund and disbursed on the Closing Date to pay Costs of Issuance;
- (c) the sum of \$4,500,000.00 shall be deposited with the Trustee in the Debt Service Reserve Fund; and
- (d) the balance of the proceeds (\$36,966,250) of the Bonds shall be deposited with the Trustee in the Project Fund.

Borrower's equity in the amount of \$244,653 which has been deposited with the Trustee in the Cost of Issuance Account shall be disbursed by the Trustee to pay Costs of Issuance upon receipt of the written consent of the Borrower.

Section 4.02 Creation of Bond Fund. There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the "City of Chicago, Illinois Recovery Zone Facility Revenue Bonds (Asphalt Operating Services of Chicago Project)~Bond Fund" (the "Bond Fund"). Within the Bond Fund there are hereby created by the Issuer and ordered established with the Trustee the following trust accounts:

- (a) Capitalized Interest Account,
- (b) Revenue Account,
- (c) Principal and Interest Payment Account,
- (d) Insurance/Tax Account,
- (e) Operating Expense Account,
- (f) Income Tax Reserve Account, and
- (g) Operating Reserve Account.

Section 4.03 Payments into Bond Fund. There shall be deposited into the Capitalized Interest Account of the Bond Fund the amount specified in Section 4.01(a) hereof. There shall be deposited into the Revenue Account of the Bond Fund when received (i) all Revenues of the Borrower pursuant to Section 4.2 of the Loan Agreement, (ii) all moneys required to be so deposited in connection with any redemption of Bonds, (iii) any amounts directed to be transferred into the Revenue Account of the Bond Fund pursuant to any provision of this Indenture, the Agreement or the Tax Agreement, (iv) any amounts available to be transferred from the Debt Service Reserve Fund upon the deposit therein of a Debt Service Reserve Fund Instrument satisfying the Debt Service Reserve Fund Requirement, and (v) all other moneys

CHI2 2261869.18

28

when received by the Trustee which are required to be deposited into the Bond Fund or which are accompanied by directions that such moneys are to be paid into the Bond Fund.

Section 4.04 Use of Moneys in Bond Fund. The Trustee shall maintain the Capitalized Interest Account in the Bond Fund, together with the earnings thereon. Funds shall be transferred from the Capitalized Interest Account and used to pay interest on the Bonds on each Interest Payment Date until such time as no moneys remain in the Capitalized Interest Account. Amounts on deposit in the Capitalized Interest Account shall be used to pay interest on the Bonds before any amounts in the Revenue Account are transferred by the Trustee into the Principal and Interest Payment Account and used for such purpose.

The Trustee shall deposit all Revenues in the Revenue Account in the Bond Fund upon receipt from the Borrower. The Trustee shall maintain the Revenue Account in the Bond Fund, together with the earnings thereon. Beginning at such time as the Borrower begins to receive Revenues from the Project and until the

payment or defeasance of all Outstanding Bonds, the Trustee shall transfer or disburse amounts from the Revenue Account on the 20th day of each month or the following Business Day in the following amounts and order of priority:

(a) After the use of any amounts remaining in the Capitalized Interest Account, the Trustee shall transfer to the Principal and Interest Payment Account, until the principal of, premium, if any, and interest on the Series 2010 Bonds shall have been paid or provision for the payment thereof shall have been made in accordance with the Indenture, (A) an amount equal to one-sixth of the interest which will become due on the Series 2010 Bonds on the next succeeding Interest Payment Date, and (B) an amount equal to one-twelfth of the principal which will become due on the Series 2010 Bonds on the next succeeding principal payment date, whether at maturity or upon sinking fund redemption (taking into account any amount on deposit (or to be deposited) in the Bond Fund which will be used for such payment of principal); provided that if on the 20th day of the month immediately preceding a principal payment date or interest payment date such deposit would not be sufficient (taking into account amounts already on deposit in the Principal and Interest Payment Account) to provide for the payment of principal of and interest due on the Series 2010 Bonds, the Trustee shall deposit such greater amount as may be necessary to provide for the payment of principal and interest due on the Series 2010 Bonds on the immediately succeeding payment date. The Trustee shall apply monies in the Principal and Interest Payment Account to the payment of principal of and premium, if any, and interest on the Series 2010 Bonds on each Interest Payment Date, on any redemption date and on any other date when principal, premium or interest on the Series 2010 Bonds is due.

(b) In the event funds on deposit in the Debt Service Reserve Fund are less than the Debt Service Reserve Fund Requirement, the Trustee shall transfer to the Debt Service Reserve Fund an amount equal to one-sixth of the shortfall between the amount on deposit in the Debt Service Reserve Fund and the Debt Service Reserve Fund Requirement in order to bring the balance of the Debt Service Reserve Fund up to the Debt Service Reserve Fund Requirement by the next succeeding Interest Payment Date. The Trustee shall apply monies in the Debt Service Reserve Fund in accordance with Section 4.07.

(c) The Trustee shall transfer to the Insurance/Tax Account of the Bond Fund the sum of (A) one-twelfth (or such greater amount as necessary to pay when due) the sum of any

29

CHI2\_2261869.18

real estate taxes and all assessments to be due in the current Bond Year as reflected in the Budget for that year plus (B) one-twelfth (or such greater amount as necessary to pay when due) the amount necessary to maintain all required insurance coverage during the current Bond Year as reflected in the Budget for that year. The Trustee shall distribute monies on deposit in the Insurance/Tax Account to the Borrower to pay, or to reimburse the Borrower for the payment of, real estate taxes (if any) and insurance premiums in regard to the Project upon written request of the Borrower. Any deficiency shall be paid by the Borrower upon notice and demand from the Trustee.

(d) The Trustee shall transfer to the Operating Expense Account of the Bond Fund on or before the 20th day of each month or the next Business Day the monthly budgeted amount for Operating Expenses as set forth in the most recent Budget on file with the Trustee and shall immediately transfer such amount to the Borrower for payment of Operating Expenses. On January 1 and July 1 of each year upon receipt of the certificate required to be delivered to the Trustee by Section 8.7(c) of the Loan Agreement, the Trustee shall adjust (reduce) the amount of the next monthly transfer to the Operating Expense Account by the amount the budgeted Operating Expenses exceeded the actual Operating Expenses (the "Budget Excess") as set forth in the certificate unless the Borrower provides an updated Budget which reflects the Budget Excess is required for Operating Expenses.

(e) The Trustee shall transfer to the Income Tax Reserve Account of the Bond Fund 35% of the remaining Revenues received for the month and to the Operating Reserve Account 65% of the remaining Revenues received for that month. The Trustee shall apply monies in the Income Tax Reserve Account (i) on or before each January 15, April 15, June 15 and September 15 of each year to pay estimated income taxes owed by the

members of the Borrower as directed by the Borrower, (ii) prior to any withdrawal from the Operating Reserve Account or the Debt Service Reserve Fund to the payment of principal of and premium, if any, and interest on the Series 2010 Bonds on any redemption date and on any other date when principal, premium or interest on the Series 2010 Bonds is due in the event of any deficiency of amounts on deposit in the Principal and Interest Payment Account for such purpose, or (iii) for such other purposes in accordance with the Loan Agreement. At such time as no Bonds are outstanding, the balance of the Income Tax Reserve Account shall be disbursed by the Trustee to the Borrower.

(f) As described in paragraph (e) above, the Trustee shall transfer 65% of the remaining Revenues received for the month to the Operating Reserve Account of the Bond Fund until the amount on deposit in such Account equals \$500,000. The Trustee shall apply monies in the Operating Reserve Account (i) to pay amounts requisitioned by the Borrower pursuant to the Loan Agreement to pay expenses relating to the operation of the Project in any month in which the amounts in the Operating Expense Account are insufficient and (ii) prior to any withdrawal from the Debt Service Reserve Fund, to replenish the Principal and Interest Payment Account of the Bond Fund in the event of any deficiency of amounts required to pay on a timely basis, principal of and interest on the Bonds. The Trustee shall provide written notice to the Bondholders and the Underwriter of any requisition received from the Borrower for the use of monies in the Operating Reserve Account pursuant to Section 4.7 of the Loan Agreement. In the event that any such requisition for funds in the Operating Reserve Account would have the effect of reducing the total amount in the Operating Reserve Account to less than \$250,000, the Trustee shall not apply funds to fulfill such requisition without the written consent of the majority of the

30

CHI2 2261869.18

Beneficial Owners of all of the Bonds then outstanding. The Trustee shall seek such Bondholder consent within two (2) business days after receipt of the relevant requisition request and, if any Beneficial Owner of any of the Bonds then outstanding does not respond to the request for consent within ten (10) business days, then such Bondholder shall be deemed to have consented. At such time as no Bonds are outstanding, the balance of the Operating Reserve Account shall be disbursed by the Trustee to the Borrower.

(g) On each June 1 and December 1 after making the transfers described above, the Trustee shall next confirm that the amount on deposit in the Debt Service Reserve Fund is equal to the Debt Service Reserve Fund Requirement. After confirming that the Debt Service Reserve Fund Requirement has been met, the Trustee shall transfer the balance of any Revenues received for the month to the Borrower provided that the Debt Service Coverage Ratio shall be not less than 1.10 to 1.0 as set forth in a Certificate of the Borrower executed by the Chief Financial officer of the Borrower and delivered to the Trustee on or prior to each June 1 and December 1. To the extent that the amount available in the Revenue Account is insufficient during any month to transfer the amounts for such month required pursuant to (a) - (e) above, except for any amounts required to be transferred to the Principal and Interest Payment Account pursuant to (a) above which are instead transferred to the Principal and Interest Payment Account from the Debt Service Reserve Fund pursuant to Section 4.07, such amounts shall be added to the amounts to be transferred to such account or fund for the succeeding months until the full amount required is transferred and shall have the same priority in regard to Revenues for subsequent months as such amount had in the month due.

Section 4.05 Creation of Project Fund; Disbursements. There is hereby created and established with the Trustee a trust fund in the name of the Issuer to be designated the "City of Chicago, Illinois Recovery Zone Facility Revenue Bonds (Asphalt Operating Services of Chicago Project) - Project Fund" (the "Project Fund"). Within the Project Fund there are hereby created by the Issuer and ordered established with the Trustee the following trust accounts: (i) Project Account and (ii) Cost of Issuance Account. A portion of the proceeds received by the Issuer upon the sale of the Bonds shall be deposited in the Cost of Issuance Account in accordance with Section 4.01(b) hereof and in the Project Account in accordance with Section 4.01(d) hereof. The Issuer hereby authorizes and directs the Trustee to use the moneys (i) in the Project Account for payment of the Costs of the

Project in accordance with Section 3.3 of the Agreement and the provisions of the Tax Agreement and (ii) from the Costs of Issuance Account to pay Costs of Issuance upon receipt of the written consent of the Borrower in accordance with the Tax Agreement. All disbursements from the Project Fund shall be evidenced by a completed Requisition Certificate in the form of Exhibit B hereto. In addition, amounts disbursed from the Project Fund for the design, construction and equipping of the Project shall be disbursed, pursuant to an Escrow Agreement in the form of Exhibit C hereto, to a title insurance company (or its escrow agent) which will issue the applicable owner's and loan title insurance policy, pursuant to the terms of a customary money lender's escrow requiring the recordation of the applicable Mortgage and the issuance of a mortgagee loan title insurance policy satisfying the Mortgage and Title Requirements.

If an Event of Default occurs under this Indenture, and the Trustee declares the principal of all Bonds and the interest accrued thereon to be due and payable, no moneys may be paid out

31

CHI2 2261869.18

of the Project Fund by the Trustee during the continuance of such an Event of Default, except into the Principal and Interest Payment Account of the Bond Fund as and when necessary for the purposes of paying the Bonds as due as a result of such Event of Default; provided, however, that if such an Event of Default shall be waived and such declaration shall be rescinded by the Trustee or the holders and owners of the Bonds pursuant to the terms of this Indenture, the full amount of any such moneys in the Project Fund may again be disbursed by the Trustee in accordance with the provisions of the Agreement. The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Project has been completed and a certificate of payment of all costs filed as provided in Section 4.06 hereof, the Trustee shall file an accounting thereof with the Issuer and the Borrower.

Section 4.06 Completion of Project. The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate of the Borrower Representative required by the provisions of Section 3.4 of the Agreement. Any balance remaining in the Project Fund after the Completion Date (other than any amount retained by the Trustee for costs not then due and payable or the liability for which the Borrower is contesting or disputing) shall be transferred to the Principal and Interest Payment Account of the Bond Fund and applied to the redemption of the Bonds pursuant to Section 2.02(b)(v) hereof. As part of its records, the Trustee shall keep a record of the amount and dates of any disbursements from the Project Fund.

Section 4.07 Creation and Use of Debt Service Reserve Fund. There is hereby created and established with the Trustee a trust fund in the name of the Issuer to be designated the "City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, (Asphalt Operating Services of Chicago Project) - Debt Service Reserve Fund" (the "Debt Service Reserve Fund"). There shall be deposited in the Debt Service Reserve Fund the amount specified in Section 4.01(c) hereof and any payments received from the Borrower pursuant to Section 4.4 of the Agreement. Without further direction, the Trustee shall withdraw and use moneys in the Debt Service Reserve Fund solely for the purpose of (i) replenishing the Principal and Interest Payment Account of the Bond Fund in the event of any deficiency of amounts required to pay, on a timely basis, principal of and interest on the Bonds, after taking into account any transfers from the Operating Reserve Account and Income Tax Reserve Account or (ii) for transfer to the Principal and Interest Payment Account of the Bond Fund in the event that all of the Outstanding Bonds are to be paid at stated maturity, upon redemption, upon defeasance as provided in Article V hereof or upon the declaration of an accelerated maturity date as provided in Section 6.02 hereof. Within six months of any draw on the Debt Service Reserve Fund in accordance with subsection (i) above, the Borrower shall deposit in the Debt Service Reserve Fund cash or Qualified Investments in the amount necessary to fund the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement. There shall be maintained in the Debt Service Reserve Fund moneys and/or Qualified Investments and/or Debt Service Reserve Fund Instruments in an amount equal to the Debt Service Reserve Fund Requirement.

On each June 1 and December 1 ("Valuation Dates"), beginning June 1, 2011, the Trustee shall determine the value of the Debt Service Reserve Fund based on asset market values assigned by its automated trust accounting system. If, on any such Valuation Date, the value of the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement due to a decline in the market value of the Qualified Investments therein, the Borrower shall within six

32

CHI2 2261869.18

months thereof, deposit in the Debt Service Reserve Fund an amount sufficient to cure such deficiency. Beginning June 1, 2011, the Trustee shall semi-annually, on each June 1 and December 1, withdraw any amount in the Debt Service Reserve Fund in excess of the Debt Service Reserve Fund Requirement and apply such amount, first, to satisfy any deposits then required to be made to the Rebate Fund and, second, for deposit to the Revenue Account of the Bond Fund.

Qualified Investments in the Debt Service Reserve Fund may have a remaining maturity of no more than one year from the date of deposit therein, unless such Investments may be sold or liquidated and the proceeds withdrawn from the Debt Service Reserve Fund without penalty or premium on any Interest Payment Date. The Borrower shall have the option, exercisable at any time and from time to time, to fund all or part of the Debt Service Reserve Fund Requirement by delivering to the Trustee for deposit in the Debt Service Reserve Fund one or more Debt Service Reserve Fund Instruments. Any Debt Service Reserve Fund Instrument shall (a) permit the Trustee to draw amounts thereunder for deposit in the Debt Service Reserve Fund which, together with any moneys and investments on deposit in the Debt Service Reserve Fund or other Debt Service Reserve Fund Instruments to fund the Debt Service Reserve Fund, are not less than the Debt Service Reserve Fund Requirement and which may be applied to any purpose for which moneys in the Debt Service Reserve Fund may be applied, and (b) contain no restrictions on the ability of the Trustee to receive payment thereunder other than a certification by the Trustee that the funds drawn thereunder are to be used for the purposes of the Debt Service Reserve Fund. Any such Debt Service Reserve Fund Instrument shall provide that the Trustee shall receive payment thereunder prior to any expiration or termination thereof and whenever moneys are required for the purposes for which Debt Service Reserve Fund moneys may be applied. Thirty (30) days prior to the expiration date of a Debt Service Reserve Fund Instrument on deposit in the Debt Service Reserve Fund, the Borrower shall (a) replace such Debt Service Reserve Fund Instrument with a letter of credit or a surety bond policy (i) satisfying the requirements described herein and in the definition of Debt Service Reserve Fund Instrument and (ii) in a face amount which, taking into account any moneys, investments or other Debt Service Reserve Fund Instruments then on deposit in the Debt Service Reserve Fund, equals the Debt Service Reserve Fund Requirement, (b) deposit in the Debt Service Reserve Fund cash or Qualified Investments in the amount necessary to fund the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement or (c) fund the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement through a combination of (a) and (b). The Trustee shall promptly make a drawing on such Debt Service Reserve Fund Instrument (a) whenever moneys are required for the purposes for which Debt Service Reserve Fund moneys may be applied; (b) whenever the rating of the bank or financial institution providing such Debt Service Reserve Fund Instrument falls below "A" by either Moody's or S&P and (c) prior to any expiration or termination thereof (but no earlier than 29 days prior to such expiration unless pursuant to (a)); provided, however, that no such drawing need be made if other moneys (including other Debt Service Reserve Fund Instruments) are available in the Debt Service Reserve Fund in the amount of the Debt Service Reserve Fund Requirement. If the Trustee makes a draw on such Debt Service Reserve Fund Instrument or if the amount of such Debt Service Reserve Fund Instrument (plus other Qualified Investments in the fund) is less than the Debt Service Reserve Fund Requirement, the Trustee shall notify the Borrower of the amount of the deficiency, and the

33

CHI2\_2261869.18

Borrower shall remedy such deficiency by increasing the amount of such Debt Service Reserve Fund Instrument and/or by depositing moneys or Qualified Investments in the Debt Service Reserve Fund to the extent of such deficiency. If the Borrower elects to deposit a Debt Service Reserve Fund Instrument in the Debt Service Reserve Fund in lieu of moneys or investments on deposit therein, the Trustee shall transfer to the Revenue Account of the Bond Fund from the Debt Service Reserve Fund moneys originally deposited by the Borrower therein in an amount equal to, or investments held therein having an Amortized Value equal to, the face amount of the Debt Service Reserve Fund Instrument then being deposited; provided, however, the Trustee shall have received an opinion of Bond Counsel (which opinion, including the scope, form, substance and other aspects thereof are acceptable to the Trustee) to the effect that the foregoing (and subsequent transfers of such moneys or investments from the Revenue Fund) will not adversely affect the validity of any of the Bonds or any exemption for the purposes of federal income taxation to which interest on any of the Series 2010 Bonds is otherwise entitled. If no opinion of Bond Counsel is received, the Borrower shall not be entitled to deposit a Debt Service Reserve Fund Instrument in the Debt Service Reserve Fund.

**Section 4.08 Investment of Moneys.** Subject to the restrictions hereinafter set forth in this Section and in the Tax Agreement, moneys held in the Bond Fund, the Debt Service Reserve Fund and the Project Fund shall be invested and reinvested by the Trustee, upon written directions of the Borrower, in Qualified Investments maturing no later than the date on which it is estimated that such moneys will be required to be paid out hereunder. Qualified Investments acquired under an investment agreement may be deemed to mature on the dates for payment under such investment agreement. Qualified Investments that are registerable securities shall be registered in the name of the Trustee. For the purpose of determining the amount in any Fund or Account other than the Rebate Fund, all Qualified Investments credited to such Fund or Account shall be valued at market value. All investment instructions hereunder shall be provided in writing to the Trustee no later than one Business Day prior to the making of the investment directed therein. The Trustee may make any and all such investments through its own investment department, or through any of its affiliates or subsidiaries. The Trustee shall be entitled to rely on all written investment instructions provided by the Borrower hereunder. The Trustee shall not be responsible or liable for the performance of any such investments or for keeping the moneys held by it hereunder fully invested at all times. Absent the provision of investment instructions hereunder, the Trustee shall invest such funds in the Goldman Sachs Financial Square Treasury Obligation Fund or a money market mutual fund registered under the Investment Company Act of 1940 (including those of an affiliate of the Trustee or for which the Trustee or any of its affiliates provides management advisory or other services) which invests in (i) short-term securities issued or guaranteed by the United States Government, its agencies or instrumentalities and/or (ii) repurchase agreements relating to such securities. The Trustee is hereby authorized to execute purchases and sales of Qualified Investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. Any obligations acquired by the Trustee as a result of such investment or reinvestment shall be held by or under the control of the Trustee (except for such investments held in book-entry form) and shall be deemed to constitute a part of the Fund or Account from which the moneys used for its purchase were taken. Except as expressly provided herein, all investment income shall be retained in the Fund or Account to which the investment from which such income is derived is credited.

CHI2\_2261869.18

### **34**

**Section 4.09 Moneys Held in Trust.** All moneys required to be deposited with or paid to the Trustee for the account of any Fund or Account (other than the Rebate Fund) under any provisions of this Indenture shall be held by the Trustee in trust, and, except for moneys deposited with or paid to the Trustee for redemption of Bonds, notice of the redemption for which has been duly given shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the security interest created hereby.

**Section 4.10 Repayment to Borrower from Indenture Funds.** Any amounts remaining in any Fund or Account created under this Indenture, after payment or provision for payment in full of the Bonds in accordance with Article V hereof, the fees, charges and expenses of the Issuer, the Trustee and any co-trustee appointed



hereunder, and all other amounts required to be paid hereunder or under the Agreement, and after and to the extent that the Borrower shall determine that the payment of such remaining amounts may be made without violation of the provisions of the Tax Agreement, shall be paid to the Borrower, upon the earlier of: (i) the date when no Bonds are Outstanding; or (ii) expiration of, or the sooner termination of, the terms of this Indenture.

**Section 4.11 Tax Covenants.** The Issuer and the Trustee covenant with the Owners of the Bonds that, notwithstanding any other provision of this Indenture or any other instrument, and subject to the Borrower's direction of the investment of funds pursuant to Section 4.08 hereof, they will not make any investment or other use of the proceeds of the Bonds or any other moneys held under this Indenture which would cause the Bonds to be "arbitrage bonds" under Section 148 of the Code or "federally guaranteed" obligations under Section 149 (b) of the Code, and they further covenant that they will comply with all applicable requirements of Sections 103, Section 1400U-3 and Sections 141 through 150 of the Code. The foregoing covenants shall extend throughout the term of the Bonds to all Funds and Accounts created under this Indenture and all moneys on deposit to the credit of any such Fund or Account, and to any other amounts which are proceeds of the Bonds or which have been replaced with proceeds of the Bonds for purposes of Section 103, Section 1400U-3 and Sections 141 through 150 of the Code.

**Section 4.12 Rebate Fund.** There is hereby created and established with the Trustee a trust fund in the name of the Issuer to be designated "City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) - Rebate Fund (the "Rebate Fund")." There shall be deposited in the Rebate Fund all amounts required to be so deposited therein pursuant to the Tax Agreement. Amounts held in the Rebate Fund shall be used and applied pursuant to the Tax Agreement and for no other purpose.

## **ARTICLE V DISCHARGE OF INDENTURE**

**Section 5.01 Discharge.** If the Issuer shall pay or cause to be paid, or there shall be otherwise paid, or provision shall be made for the payment of, the principal, premium, if any, and interest due or to become due on the Bonds at the times and in the manner stipulated therein, and if the Issuer shall not then be in default under any of the other covenants and promises in such Bonds and this Indenture to be kept, performed and observed by it or on its part, and if the Issuer shall pay or cause to be paid to the Trustee all sums of money due or to become due

35

CHI2\_2261869.18

according to the provisions hereof or of the Bonds and of the Agreement, then, except for the rights of the Trustee under Section 7.02 hereof, these presents and the interests in the Trust Estate and rights hereby granted shall cease, determine and be void, and the Trustee shall take such actions, at the request of the Issuer or the Borrower, as may be necessary to evidence the cancellation and discharge of the lien of this Indenture. A Bond shall be deemed to be paid within the meaning of this Article V and for all purposes of this Indenture when (i) payment of the principal of and the applicable redemption premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), shall have been provided to the Trustee by irrevocably depositing with the Trustee, in trust, and the Trustee shall have irrevocably set aside exclusively for such payment, any combination of (A) moneys sufficient to make such payment and/or (B) Government Obligations not subject to redemption or prepayment and maturing as to principal and interest in such amounts and at such times as will, in the opinion of an independent certified public accountant delivered to the Trustee, provide sufficient moneys, without reinvestment of any matured amounts, to make such payment without reinvestment (and there shall be no such reinvestment), (ii) the Trustee shall have been given irrevocable written instructions to call all outstanding Bonds for redemption on a date certain, if such Bonds are to be called for redemption prior to maturity (and, if any optional call provisions relating to such Bonds would permit their call prior to the date stated in the notice, the notice shall describe such provisions or, if the Issuer has waived its right to exercise them, shall so state), (iii) the Trustee shall have received a written opinion of Bond Counsel to the effect that such deposit (and the payment of the Bonds therefrom) will not adversely affect the exclusion from gross income of interest on the

Bonds for federal income tax purposes and (iv) all necessary and proper fees, compensation and expenses of the Trustee pertaining to the Bonds shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

Notwithstanding the release and discharge of the lien of this Indenture as provided above, those provisions of this Indenture relating to the maturity of the Bonds, interest payments and dates thereof, purchase of Bonds, redemption, exchange and transfer of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of moneys in trust and the duties of the Trustee in connection with all of the foregoing shall remain in effect and shall be binding upon the Trustee, the Issuer and the Bondholders until such time as the owners of all Bonds have been paid in full.

#### **ARTICLE VI EVENTS OF DEFAULT AND REMEDIES**

Section 6.01 Events of Default. Each of the following events (unless such event has been cured or waived) is hereby defined as, and declared to constitute, an "Event of Default" under this Indenture:

(i) default in the due and punctual payment of the principal, premium, if any, or interest on, any Outstanding Bond, whether at the stated maturity thereof, upon any proceedings for redemption, or upon the maturity thereof by declaration of acceleration;

CHI2\_2261869.18

36

(ii) default by the Issuer in its performance or observance of any of the other covenants, agreements or conditions contained in this Indenture, and the continuation thereof for the period after notice and cure specified in Section 6.12 hereof;

(iii) an event of default under the Agreement, and the continuation thereof for the period after notice and cure specified in Section 6.12 hereof; and

(iv) the withdrawal of any amount from the Debt Service Reserve Fund to pay principal of and interest on the Bonds and the failure to replenish the Debt Service Reserve Fund in full within six months of the date of the draw as provided in Section 4.07 hereof.

Section 6.02 Acceleration. Upon the occurrence of an Event of Default, the Trustee may, and shall if requested to do so by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, accelerate the maturity of the Bonds, whereupon the principal of and all accrued interest on the Bonds shall become immediately due and payable, without premium and no interest shall accrue on the Bonds from and after the date of such acceleration.

Section 6.03 Other Remedies; Rights of Bond Owners. Upon the occurrence of any Event of Default, the Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal premium, if any, and interest on the Bonds then Outstanding, and the performance by the Issuer and the Borrower of their respective obligations hereunder and under the Agreement and the Mortgage, including, without limitation, the following:

(i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bond Owners, and require the Issuer to carry out its obligations under this Indenture, the Agreement and the Mortgage;

(ii) bring suit upon the Bonds;

(iii) by action, suit or proceeding at law or in equity require the Issuer to account for any moneys received by the Issuer as if it were the trustee of an express trust for the Bond Owners;

(iv) by action, suit or proceeding at law or in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bond Owners; and

(v) exercise its rights and remedies under the Collateral Assignments and the Terminalling Agreement Assignments.

Any judgment against the Issuer shall be enforceable only against the Trust Estate. There shall not be authorized any deficiency judgment against any assets of, or the general credit of, the Issuer. Subject to the prior rights of the Bond Owners, the Issuer shall be entitled to reimbursement for any of its expenses in connection with such proceeding from any available funds in the Trust Estate.

CHI2 2261869.18

37

If an Event of Default shall have occurred and, if requested to do so by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, and if indemnified as provided in Section 7.01(1) hereof, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by this Section or by Section 6.02 hereof as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bond Owners. No remedy conferred upon or reserved to the Trustee or the Bond Owners by the terms of this Indenture is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or the Bond Owners hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every such right and power may be exercised from time to time as often as may be deemed expedient. No waiver of any default or Event of Default hereunder, whether by the Trustee or the Bond Owners, shall extend to or shall affect any subsequent default or Event of Default or shall impair any right or remedy consequent thereon.

Section 6.04 Right of Bond Owners to Direct Proceeding. Anything in this Indenture to the contrary notwithstanding, upon the occurrence of an Event of Default, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or for any other proceedings hereunder, and may countermand any direction given, pursuant to Section 6.02 and 6.03 hereof, by less than a majority in aggregate principal amount of the Owners of the Bonds; provided, however, that direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 6.05 Appointment of Receiver. Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to request the appointment of a receiver or receivers of the Trust Estate and of the revenues, issues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 6.06 Waiver of Certain Laws. Upon the occurrence of an Event of Default, to the extent that such rights may then lawfully be waived, neither the Issuer, nor anyone claiming through or under it, shall claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture. The Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws.

Section 6.07 Application of Moneys. All moneys relating to the Bonds (other than amounts held in the Rebate Fund) received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall (after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees and expenses, liabilities and advances of the Issuer and the Trustee) be deposited in the Principal and Interest Payment Account of the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

38

CHI2 2261869.18

(i) Unless the principal of all the Bonds Outstanding shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST - To the payment to the Persons entitled thereto of all installments of interest then due on the Outstanding Bonds and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND - To the payment to the Persons entitled thereto of the unpaid principal of, and premium, if any, on,

the Outstanding Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are already held pursuant to the provisions of this Indenture) in the order of their due dates, and, if the amount available shall not be sufficient to pay in full the principal of each Bond due on any particular date, together with such premium, then to the payment ratably, according to the amount of principal and premium due on such date, to the Persons entitled thereto, without any discrimination or privilege.

(ii) If the principal of all the Outstanding Bonds shall have become due or shall have been declared due and payable by acceleration, all such moneys shall be applied first to the payment of the principal, premium, if any, and interest then due on such Bonds, without preference or priority of principal and premium over interest or of interest over principal and premium, or of any installment of principal or interest over any other installment of principal or interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal, premium, if any, and interest, to the Persons entitled thereto, without any discrimination or privilege.

(iii) If the principal of all the Outstanding Bonds shall have been declared due and payable by acceleration, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then the moneys shall be applied in accordance with the provisions of subsection (i) above; provided, however, that in the event that the principal of all the Bonds shall later become due or be declared due and payable by acceleration, the moneys shall be applied in accordance with the provisions of subsection (ii) above.

Whenever the Trustee shall apply such funds it shall fix the date of application, which shall be the earliest date possible for the Trustee to carry out its duties hereunder. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

Notwithstanding the preceding, if, as permitted by Section 2.10 hereof, one or more Series of Bonds shall be outstanding and shall be secured as to repayment by security which does not secure one or more other series of Bonds, proceeds of such security shall be applied only to the payment of amounts relating to the series of Bonds secured by such security.

CHI2 2261869.18

39

**Section 6.08 Remedies Vested in Trustee.** All rights of action (including the right to file proofs of claim) under this Indenture and under the Bonds or any Bond may be enforced by the Trustee without the possession of any Bond or the production thereof in any trial or proceedings related thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiff or defendant the Owner of any Bond.

**Section 6.09 Rights and Remedies of Bond Owners.** No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless:

- (i) an Event of Default has occurred of which the Trustee has been notified as provided in Section 7.01(h) hereof, or of which by said Section 7.01(h) the Trustee is deemed to have notice;
- (ii) the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in the name or names of such Owners, and shall have offered to the Trustee indemnity as provided in Section 7.01(1) hereof; and
- (iii) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, within 60 days;

and such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder. No one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by such Owners' action, and all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and (except as herein otherwise

provided) for the equal and ratable benefit of the Owners on all Bonds then Outstanding. Nothing in this Indenture, however, shall affect or impair the right of any Bond Owner to enforce the payment of the principal of, premium, if any, and interest on any Bond owned by such Bond Owner at and after the maturity thereof, or the obligation of the Issuer to pay the principal of, premium, if any, and interest on any Bond to the Owner thereof at the time and place, from the source, and in the manner expressed in such Bond. Nothing contained herein shall be construed as permitting or affording any Bond Owner a right or cause of action against the Trustee or in respect of the Bonds where a default has been waived under Section 6.11 hereof or cured under Section 6.12 hereof.

Section 6.10 Termination of Proceeding. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been

40

CHI2\_2261869.18

determined adversely to the Trustee, then and in every such case the Issuer, the Trustee and the Bond Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 6.11 Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default hereunder and its consequences, and shall do so upon the written request of the registered owners of a majority of the aggregate principal amount of the Bonds then Outstanding; provided, however, that the Trustee may not waive an Event of Default described in subparagraph (i) of Section 6.01 hereof without the written consent of the registered owners of all Bonds then Outstanding.

Section 6.12 Notice of Default; Opportunity to Cure Defaults. Anything herein to the contrary notwithstanding, no default under Section 6.01 (ii) or under Section 6.01 (iii) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given to the Issuer and the Borrower by the Trustee or by the Owners of not less than 25% in aggregate principal amount of all Bonds Outstanding, and the Issuer and the Borrower shall have had 30 days after receipt of such notice at their option to correct said default or to cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within the applicable period; provided, however, that if said default (other than an Event of Default by the Borrower under Section 4.2 of the Loan Agreement which must be cured within 10 days of receipt of such notice) be such that it is correctible but cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer and the Borrower, or either of them, within the applicable period and diligently pursued until the default is corrected; but in any event such default is cured within 150 days unless a longer cure period is consented to by the owners of a majority in principal amount of the Bonds outstanding. With regard to any default concerning which notice is given under the provisions of this Section, the Issuer, to the full extent permitted by law, hereby grants the Borrower full authority to perform and observe for the account of the Issuer any covenant or obligation alleged in said notice not to have been performed or observed in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts, with power of substitution. The Trustee hereby consents to such grant of authority.

## **ARTICLE VII THE TRUSTEE**

Section 7.01 Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise,

41

CHI2\_2261869.18

as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The Trustee may execute any of the trusts hereof, exercise any powers hereunder and perform any of its duties hereunder by or through attorneys, agents, receivers or employees, but shall be answerable for the conduct of the same in accordance with the standard specified above. The Trustee shall be entitled to the advice of counsel (which may be an employee or affiliate of the Trustee) concerning all matters of trust hereof and its duties hereunder, and in all cases may pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trust hereof. The Trustee may act upon the opinion or advice of any attorneys approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non action exercised in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (other than the certificate of authentication thereon), the legality, sufficiency or validity of this Indenture, the Agreement, the Mortgage, the Collateral Assignments, the Tax Agreement, the Bonds or any document or instrument relating hereto or thereto; the recording or filing of any instrument required by this Indenture to secure the Bonds; insuring the Project or collecting any insurance proceeds; the validity of the execution by the Issuer of this Indenture or of any supplement hereto or amendment hereof or of any instrument of further assurance; or the validity, priority, perfection or sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or otherwise as to the maintenance of the security hereof (except for the filing of Uniform Commercial Code continuation statements which shall be at the expense of the Borrower).

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may in good faith buy, sell, own and hold any of the Bonds (or beneficial interests therein) and may join in any action which any Bond Owner may be entitled to take with like effect as if the Trustee was not a party to this Indenture. The Trustee may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower; provided, however, that if the Trustee determines that any such relationship is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Trustee. To the extent permitted by law, the Trustee may also purchase Bonds (or beneficial interests therein) with like effect as if it were not the Trustee.

(e) The Trustee shall be protected in acting upon, and may conclusively rely upon, any notice, certificate, opinion, request or other paper or document reasonably believed by it to be genuine and correct, and reasonably believed by it to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and any Bond issued in replacement therefor.

(f) As to the existence or nonexistence of any fact, or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by a duly authorized representative of the Issuer or the Borrower as sufficient evidence of

42

CHI2 2261869.18

the facts therein contained; and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection (h) it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient. The Trustee may, at its discretion, secure such further evidence (including, but not limited to, legal opinions) deemed necessary or advisable by it, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the officer of the Issuer charged with the maintenance of its books and records over the seal of the Issuer to the effect that an ordinance in the form therein set forth has been adopted and is in full force and effect.

- (g) The right of the Trustee to perform any discretionary act enumerated in this Indenture shall not be construed as a duty. The Trustee shall not be answerable for other than its negligence or willful misconduct in the performance of its powers and duties under this Indenture.
- (h) The Trustee shall not be required to take notice or be deemed to have notice of any default or Event of Default hereunder, or in any other document or instrument executed in connection with the execution and delivery of the Bonds, except an Event of Default under Section 6.01(i) or 6.01(iv) hereof, unless the Trustee shall be specifically notified in writing of such default or Event of Default by the Issuer, the Borrower or the Owners of at least 25% in aggregate principal amount of the Bonds then Outstanding. All notices or other instruments required by this Indenture to be delivered to the Trustee shall be delivered at the designated corporate trust office of the Trustee, and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.
- (i) At any and all reasonable times, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect fully all books, papers and records of the Issuer pertaining to this Indenture, the Agreement, the Tax Agreement and the Bonds, and to take such photocopies and memoranda therefrom and in regard thereto as may be desired.
- (j) The Trustee shall not be required to give any bond or surety in respect of the execution of the trust created hereby or the powers granted hereunder.
- (k) Notwithstanding anything contained elsewhere in this Indenture to the contrary, the Trustee shall have the right, but not the obligation, to demand, in respect of the withdrawal of any cash, the release of any property, or the taking of any action whatsoever within the purview of this Indenture, any showing, certificate, opinion, appraisal or other information, or corporate action or evidence thereof, in addition to that required by the terms hereof as a condition of such action by the Trustee, as deemed desirable for the purposes of establishing the right of the Issuer or the Borrower to the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee.
- (l) Before taking any action referred to in Article VI or Section 7.04 hereof, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses which it may incur and to protect it against all liability, except liability which is

CHI2 2261869.18

#### 43

- adjudicated to have resulted from its negligence or willful misconduct, by reason of any action so taken.
- (m) All moneys received by the Trustee shall, until used, applied or invested as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds, except to the extent required by law or this Indenture. The Trustee shall be under no liability for interest on any moneys received by it hereunder.
- (n) Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture which occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder.
- (o) No provision of this Indenture shall be deemed to require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers, if the Trustee shall have reasonable grounds for believing that repayment of such funds, or, in the alternative, adequate indemnity against such risk or liability, is not reasonably assured to it.
- (p) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.
- (q) The Trustee is holding the Income Tax Reserve Account and the Operating Reserve Account required to be established under Article IV of the Agreement. The Trustee shall maintain such accounts and disburse the moneys held therein pursuant to the Agreement. The Trustee shall invest the moneys in the Income Tax Reserve Account and the Operating Reserve Account in accordance with the terms of this Indenture.

Section 7.02 Annual Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to reasonable compensation for all services rendered by it under this Indenture. In addition, the Trustee shall be entitled to reimbursement for its charges and expenses (including reasonable counsel fees and expenses) incurred in connection with such services. Such compensation and reimbursement shall be paid by the Borrower pursuant to Section 4.3 of the Agreement; provided, however, that to the extent not so paid after reasonable notice to the Borrower, the Trustee may make disbursements from the Revenue Account of the Bond Fund to pay such amounts. The Trustee's right to receive compensation and reimbursement of expenses under this Section and under the applicable provisions of the Agreement shall be secured by a lien on the Trust Estate, which lien shall be subordinate to the lien in favor of the Bondholders for payment of the principal of, premium, if any, and interest on the Bonds, except that, upon an Event of Default, but only upon an Event of Default, the Trustee shall have a prior lien upon the Trust Estate (excluding that portion of the Trust Estate consisting of proceeds of funds held for the payment of principal of, premium, if any, and interest on Bonds not yet delivered or surrendered in accordance with the provisions of this Indenture, and excluding that portion of the Trust Estate consisting of funds already due and owing Bondholders and held for the benefit of the Bondholders pursuant to any other provisions of this Indenture, as to which such lien shall be

44

CH12 2261869.18

subordinate to the lien created hereby for the benefit of the Bond Owners) for its reasonable extraordinary fees, charges and expenses incurred in enforcing the provisions of this Indenture or any other agreement referred to herein. The Issuer shall require the Borrower, pursuant to the Agreement, to indemnify and hold harmless the Trustee against any liabilities which the Trustee may incur in the exercise and performance of its powers and duties hereunder and under any other agreement referred to herein which are not due to the Trustee's negligence or willful misconduct, and for any reasonable fees and expenses of the Trustee to the extent funds are not available under this Indenture for the payment thereof. The rights of the Trustee under this Section shall survive the payment in full of the Bonds and the discharge of this Indenture and the resignation or removal of such party.

Section 7.03 Notice to Bond Owners of Default. If a default occurs of which the Trustee is required by Section 7.01(h) hereof to take notice or of which notice of default is given as provided in Section 7.01(h) hereof or of which the Trustee has actual notice, then the Trustee shall promptly give written notice thereof by certified mail, postage prepaid, or overnight delivery to each Owner of Bonds then Outstanding. The Trustee shall promptly give written notice to the Issuer and the Borrower by certified mail of any such notice of default sent to any Owner of Bonds as provided hereunder.

Section 7.04 Intervention by Trustee. In any judicial proceeding to which the Issuer or the Borrower is a party, and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Owners of the Outstanding Bonds, the Trustee may intervene on behalf of the Owners of the Bonds and shall do so if requested in writing by the Owners of at least 25% in aggregate principal amount of the Bonds then Outstanding, and when provided with sufficient indemnity pursuant to Section 7.01(1) hereof.

Section 7.05 Successor Trustee by Merger or Otherwise. Any corporation or association into which the Trustee may be converted or merged, with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall (if it is qualified to be Trustee hereunder) be and become the Trustee hereunder vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges, responsibilities, obligations and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that such successor Trustee meets the requirements of Section 7.11(a) hereof.

Section 7.06 Resignation by Trustee. The Trustee may resign from the trusts hereby created by giving written notice to the Issuer, the Borrower and the Owners of the Bonds then Outstanding, and shall so resign whenever



it ceases to be qualified to act as Trustee hereunder. Such notice shall be sent by certified mail, postage prepaid, or overnight delivery to the Bond Owners. Such resignation shall take effect only upon the appointment of a successor Trustee. If no successor Trustee is appointed pursuant to Section 7.08 hereof within 30 days after the delivery of such notice, a temporary Trustee may be appointed by the Issuer. If no successor Trustee or temporary Trustee is appointed within 60 days after delivery of such notice, the

CHI2 2261869.18

#### 45

resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee. Section 7.07 Removal of Trustee. So long as there has been no Event of Default or no event has occurred that with the passage of time or the giving of notice or both will become an Event of Default, the Trustee may be removed at any time by an instrument or substantially concurrent instruments in writing delivered to the Trustee and the Bond Owners and signed by the Issuer and the Borrower. Each of the Issuer and the Borrower, as applicable, agree that their signature shall not unreasonably be withheld. Such instruments shall be sent by certified mail, postage prepaid, or overnight delivery to the Bond Owners. If an Event of Default has occurred and is continuing hereunder the Trustee also may be removed by an instrument or substantially concurrent instruments in writing delivered to the Trustee and the Issuer, and signed by the owners of a majority in aggregate principal amount of the Bonds then outstanding. Any such removal shall take effect only upon the appointment of a successor Trustee.

Section 7.08 Appointment of Successor Trustee. In case the Trustee shall resign, be removed, be dissolved, be in the course of dissolution or liquidation or otherwise become incapable of acting or not be qualified to act hereunder, or in case the Trustee shall be taken under the control of any public officer or officers or a receiver appointed by a court, a successor may be appointed by the Issuer, upon the direction of the Borrower, (and with notice to the Bond Owners); provided that: (i) the Borrower shall not have this right of direction if an Event of Default has occurred and is then continuing; or (ii) if the Borrower has otherwise failed to provide direction to the Issuer within 30 days after delivery of the notice required pursuant to Section 7.06, the successor shall be appointed by the Issuer with the written consent of the owners of a majority in aggregate principal amount of the Bonds then outstanding (by an instrument or concurrent instruments in writing signed by such registered owners, or by their attorneys in fact, duly authorized). All required notices shall be sent by certified mail, postage prepaid, to the Bond Owners.

Section 7.09 Successor Trustee. Every successor Trustee (including any temporary trustee appointed by the Issuer pursuant to Section 7.06 hereof) appointed hereunder shall execute, acknowledge and deliver to its predecessor, the Borrower and the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with the title to the Trust Estate and all of the trust powers, discretions, immunities, privileges, responsibilities, obligations and all other matters of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder, to its successor Trustee. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Trustee in each

#### 46

CHI2 2261869.18

recording office where this Indenture shall have been filed and/or recorded. No appointment of a successor

Trustee hereunder shall become effective unless such successor meets the requirements of Section 7.11(a) hereof.

Section 7.10 Appointment of Separate or Co-Trustee. It is the intent of the parties to this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the rights of banking corporations or associations to transact business as a trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture, and in particular in the case of the enforcement of this Indenture on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee, or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate trustee or co-trustee. The following provisions of this Section are adapted to these ends. If the Trustee appoints an additional individual or institution as a separate trustee or cotrustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, duty, obligation, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee with respect thereto shall be exercisable by, vested in and conveyed to such separate trustee or co-trustee, but only to the extent necessary to enable such separate trustee or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary for the exercise thereby by such separate trustee or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Issuer be required by the separate trustee or co-trustee so appointed by the Trustee for more fully vesting in and confirming to them such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. If any separate trustee or co-trustee, or a successor to either, shall die, become incapable of acting or not be qualified to act, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate trustee or co-trustee.

Section 7.11 Qualifications of Successors to the Trustee or Institutional Co-Trustees.

(a) Each successor to the Trustee and each other institutional co-trustee appointed hereunder shall at all times be a bank or trust company qualified to serve as the Trustee under the laws of the State, which (i) is organized as a corporation and doing business under the laws of the United States or any state thereof, (ii) is authorized under such laws to exercise corporate trust powers, (iii) is subject to supervision or examination by federal or state authority, (iv) has combined capital and surplus (as set forth in its most recent published report of condition) of at least \$50,000,000, (v) shall not have become incapable of acting or have been adjudged a bankrupt or an insolvent nor have had a receiver appointed for itself or for any of its property, nor have had a public officer take charge or control of it or its property or affairs for the purpose of rehabilitation, conservation or liquidation, (vi) shall have a rating at least "Baa3" or "P-3" by Moody's (or Moody's shall have provided written evidence that such successor or co-trustee is

47

CHI2\_2261869.18

otherwise acceptable to Moody's) if the Bonds are then rated by Moody's and at least "BBB-" or "A-3" by S&P (or S&P shall have provided written evidence that such successor or co-trustee is otherwise acceptable to S&P) if the Bonds are then rated by S&P, (vii) has obtained all federal, state and local governmental, public, and regulatory authority approvals, consents, notices, authorizations, registrations, licenses, exemptions, and filings that are required to have been obtained or made with respect to the authorization, execution, delivery, and performance by, or the enforcement of the provisions of the Indenture and all such approvals, consents, notices, authorizations, registrations, licenses, exemptions and filings are in full force and effect and all conditions of such approvals, consents, notices, authorizations, registrations, licenses, exemptions, and filings have been fully complied with, (viii) if any successor trustee or institutional co-trustee does not have an office in or other presence in the State of Illinois, such party is not (A) required to qualify or obtain any certificate of authority to

do business in the State of Illinois or (B) subject to any requirement to make any or pay any fees or taxes required of foreign entities doing business in the State of Illinois, in either case solely as a result of executing, delivering, or performing the Indenture and (ix) has an operations group of at least four experienced trust officers, with primary responsibility for municipal bond issues and administers at least 25 municipal bond indentures aggregating at least \$25,000,000 under its administration.

(b) Should any successor to the Trustee or any institutional co-trustee appointed hereunder at any time cease to be eligible, pursuant to this Section, to act as successor or cotrustee (as the case may be), it shall promptly notify the Owners of all Outstanding Bonds, the Issuer, the Borrower and the Trustee of such fact; such notice shall be sent by certified mail, postage prepaid, to the Bond Owners. Any such notice shall set forth all the relevant facts known to such successor or co-trustee.

Section 7.12 Required Reporting to Issuer.

(a) The Trustee shall keep, or cause to be kept, proper books of record and account in which complete and accurate entries shall be made of all funds and accounts established by or pursuant to this Indenture, which shall at all reasonable times and upon reasonable notice be subject to inspection by the Issuer or the owners (or a designated representative thereof) of not less than ten percent (10%) in aggregate principal amount of the Bonds then outstanding.

(b) Within five (5) days after each date on which principal of, premium, if any, or interest on any of the Bonds is due, the Trustee shall furnish to the Issuer and the Borrower a written certificate setting forth the following:

(i) the designated name of the Bonds;

(ii) the date on which such interest on any of the Bonds is due, the rate or rates of interest borne by such Bonds and the amount of such interest due;

(iii) the date on which such interest on any of the Bonds is paid and the amount of such interest paid;

CHI2\_2261869.18

48

(iv) the date on which such principal of and premium, if any, on any of the Bonds is due (whether at maturity, upon call for redemption or acceleration) and the amount of such principal and premium, if any, due;

(v) the date on which such principal of and premium, if any, on any of the Bonds is paid and the amount of such principal and premium, if any, paid; and

(vi) the name of the Trustee.

(c) Not later than 30 days after the end of each March 1, June 1, September 1 and December 1, commencing on March 1, 2011, the Trustee will prepare and file with the Issuer and disseminate through the Electronic Municipal Market Access ("EMMA") system established by the Municipal Securities Rulemaking Board a statement setting forth, with respect to the current Bond Year, (i) amounts withdrawn from and deposited in each fund and account relating to the Bonds hereunder, (ii) the balance on deposit in each such fund or account relating to the Bonds at the end of each period for which such statement is prepared, (iii) a brief description of all obligations held as investments in each such fund or account relating to the Bonds, (iv) the amount applied to the redemption of the Bonds, a description of the Bonds or portions of Bonds so redeemed, and an accounting of the Bonds of each maturity outstanding and (v) any other information that the Issuer may reasonably request or that the Trustee may from time to time deem appropriate. A copy of such statement shall also be provided to the Borrower and the Underwriter. It is agreed and understood that the Trustee shall comply with the foregoing provisions of this subsection (c) by delivering its customary monthly statements to the Borrower and to the Issuer upon request.

(d) In addition, the Trustee shall report the occurrence of any of the following events with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access System ("EMMA") within 10 business days of the occurrence of such event:

1. Principal and interest payment delinquencies;

2. Non-payment related defaults;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting tax status of the Bonds;
6. Modifications to the rights of security holders, if material;
7. Bond calls;

49

CHI2 2261869.18

8. Defeasances;

9. Release, substitution or sale of property securing repayment of the Bonds, if material;

10. Bankruptcy insolvency, receivership or similar event of the Borrower;

11. The consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to such actions, other than pursuant to its terms, if material; or

12. the appointment of a successor or additional trustee or the change of the name of a trustee, if material.

The Trustee further agrees to promptly file with EMMA each of the reports, financial statements and other items received by the Trustee from the Borrower pursuant to Section 8.7 and Section 8.8 of the Loan Agreement other than the statement of the through-put received pursuant to each individual Terminalling Agreement delivered pursuant to Section 8.7(d) of the Loan Agreement.

#### **ARTICLE VIII SUPPLEMENTAL INDENTURES**

Section 8.01 Supplemental Indentures Not Requiring Consent of Bond Owners. Subject to the terms and provisions of Sections 8.03 and 8.04 of this Indenture, the Issuer and the Trustee may, without the consent of, but with notice to, any of the Bond Owners, enter into an indenture or indentures supplemental to this Indenture, not inconsistent with the terms and provisions hereof, for any one or more of the following purposes (i) to cure any ambiguity, formal defect or omission in this Indenture, (ii) to grant to or confer upon the Trustee, for the benefit of the Bond Owners, any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bond Owners or the Trustee, (iii) to subject to this Indenture additional revenues, properties or collateral, (iv) to modify, amend or supplement this Indenture, or any indenture supplemental hereto, in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States, and if the Issuer so determines, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by the Trust Indenture Act of 1939, as amended, or any similar federal statute, and (v) to add to the covenants and agreements of the Issuer contained in this Indenture other covenants and agreements thereafter to be observed for the protection of the Bond Owners or to surrender or limit any right, power or authority, herein reserved to or conferred upon the Issuer.

Section 8.02 Supplemental Indentures Requiring Consent of Bond Owners. Exclusive of supplemental indentures covered by Section 8.01 hereof, this Indenture may be amended or

50

CHI2 2261869.18

supplemented only as provided in this Section. Subject to the terms and provisions contained in Sections 8.03 and 8.04 of this Indenture, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purposes of modifying, altering, amending, adding to or rescinding in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture. If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee

shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by certified mail to the Bond Owners. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Bond Owners. If, within 60 days, or such longer period as shall be prescribed by the Issuer, following the mailing of such notice, the Owners of the requisite percentage in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof; or in any manner to question the propriety of the execution thereof; or to enjoin or restrain the Trustee or the Issuer (subject to Section 8.04) from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section and Section 8.04 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

Section 8.03 Limitation Upon Amendments and Supplements. Nothing contained in Sections 8.01 and 8.02 hereof shall permit, or be construed as permitting, without the consent and approval of the Owners of all of the Bonds then Outstanding (i) an extension of the maturity of the principal of, or the time for payment of any redemption premium or interest on, any Bond, or a reduction in the principal amount of any Bond, or the rate of interest or redemption premium thereon, or a reduction in the amount of, or extension of the time of any payment required by, any Bond, (ii) a privilege or priority of any Bond over any other Bond (except as herein provided), (iii) a reduction in the aggregate principal amount of the Bonds required for consent to such a supplemental indenture, (iv) the deprivation of the Owner of any Bond then Outstanding of the lien created by this Indenture or (v) the amendment of this Section. No amendment or supplement to this Indenture may be entered into without the Trustee and the Issuer first receiving an opinion of Bond Counsel to the effect that such amendment or supplement is authorized under this Indenture and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Bonds.

Section 8.04 Consent of Borrower Required. Anything herein to the contrary notwithstanding, an amendment or supplemental indenture under this Article shall not become effective unless and until the Borrower shall have consented in writing to the execution and delivery thereof.

CHI2\_2261869.18

51

## **ARTICLE IX**

### **AMENDMENT OF CERTAIN LOAN DOCUMENTS**

Section 9.01 Amendments of Loan Agreement and Tax Agreement Not Requiring Consent of Bond Owners. Subject to the terms and provisions of Sections 9.02 and 9.03 of this Indenture, the Issuer and the Borrower may, with the prior written consent of the Trustee, and with notice to the Bond Owners, amend or modify the Agreement and the Tax Agreement, or any provisions thereof, or may consent to the amendment or modification thereof, in any manner not inconsistent with the terms and provisions of this Indenture, for any one or more of the following purposes: (i) to cure any ambiguity or formal defect in the Agreement or the Tax Agreement, (ii) to provide for the issuance of Additional Bonds in accordance with Section 2.10 hereof, (iii) to grant to or confer upon the Issuer or the Trustee, for the benefit of the Bond Owners, any additional rights, remedies, powers or authorities that lawfully may be granted to or conferred upon the Issuer or the Trustee, (iv) to identify more clearly the Project, or any part thereof, and (v) to amend or modify the Agreement or the Tax Agreement, or any part thereof, in any manner specifically required or permitted by the terms thereof, including, without limitation, as may be necessary to maintain the exclusion from gross income for purposes of federal income taxation of the interest on the Bonds.

Section 9.02 Amendments of Loan Agreement and Tax Agreement Requiring Consent of Bond Owners. Exclusive of amendments and modifications covered by Section 9.01 hereof, the Agreement and the Tax Agreement may be amended or modified only as provided in this Section. Subject to the terms and provisions

contained in Section 9.03 of this Indenture, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, with the prior written consent of the Trustee, shall have the right, from time to time, to consent to and approve the amendment or modification of the Agreement and the Tax Agreement as shall be deemed necessary and desirable by the Trustee for the purpose of amending and modifying, in any particular, any of the terms or provisions contained in the Agreement and the Tax Agreement. If at any time the Trustee shall be asked to enter into or to consent to any such amendment or modification, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such modification or amendment to be mailed by certified mail to the Bond Owners. Such notice shall briefly set forth the nature of the proposed amendment or modification and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by the Bond Owners. If, within 60 days, or such longer period as shall be prescribed by the Issuer, following the mailing of such notice, the Owners of the requisite percentage in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such amendment or modification shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof; or in any manner to question the propriety of the execution thereof; or to enjoin or restrain the Trustee or the Issuer from executing or consenting to the same or from taking any action pursuant to the provisions thereof.

Section 9.03 Limitation Upon Amendments of Loan Agreement. Nothing contained in Sections 9.01 and 9.02 of this Indenture shall permit, or be construed as permitting, without the approval and consent of the Owners of all of the Bonds then Outstanding, (i) the extension of the

52

CHI2 2261869.18

time for any loan payment under the Agreement, or a reduction in the amount of any such loan payment under the Agreement or (ii) the payment to any Person other than the Trustee as provided herein of any amount (except amounts due under Sections 4.2, 8.4 and 10.4 of the Agreement with respect to the Issuer) due under the Agreement. No amendment of the Agreement may be entered into without the Trustee and the Issuer first receiving an opinion of Bond Counsel to the effect that such amendment is authorized under this Indenture and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Bonds.

Section 9.04 Amendments to Collateral Assignments and Terminalling Agreement Assignments.

Notwithstanding any provision in the Collateral Assignments or the Terminalling Agreement Assignments to the contrary, the Trustee shall not consent to any amendment of such Assignments without receiving the prior written consent of the Beneficial Owners owning a majority of the outstanding principal amount of the Bonds.

## **ARTICLE X MISCELLANEOUS**

Section 10.01 Consents of Bond Owners. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by a Bond Owner may be in any number of concurrent writings of similar tenor, and may be signed or executed by such Bond Owner in person or by such Bond Owner's agent appointed in writing. The fact and date of the execution by any person of any such consent, request, direction, approval, objection or other instrument, or of the writing appointing any such agent, and of the ownership of a Bond, may be proved in any jurisdiction by the certificate of any officer who by law has the power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution, and if made in such manner shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument.

Section 10.02 Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended, or shall be construed, to give to any person other than the parties hereto, the Borrower and the Owners of the Bonds any legal or equitable right, remedy or claim under or with respect to this Indenture or any covenants, conditions and provisions herein

contained. This Indenture and all of the covenants, conditions and provisions hereof are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Borrower and the Owners of the Bonds as herein provided.

Section 10.03 Severability. If any provisions of this Indenture shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

CHI2 2261869.18

### **53**

Section 10.04 Notices. Except as otherwise provided in this Indenture, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, or when sent by facsimile (receipt confirmed by telephone), addressed as follows:

(a) If to the Issuer: City of Chicago, Illinois

Department of Community Development 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602

Attention: Commissioner

With a copy to: City of Chicago, Illinois

Department of Law 121 N. LaSalle Street, Room 600 Chicago, Illinois 60602

Attention: Finance and Economic Development Division

and

City of Chicago, Illinois Department of Finance 33 North LaSalle Street, Room 600, Chicago, Illinois 60602

Attention: City Comptroller

(b) If to the Trustee: Amalgamated Bank of Chicago

One West Monroe Street

Chicago, Illinois 60603

Attention: Corporate Trust Services

(c) If to the Borrower: Asphalt Operating Services of Chicago, LLC

1603 South 9th Street . St. Louis, Missouri 63104 Attention: Al Meitl

With a copy to: Maurides Foley & Tabangay L.L.C.

2N. LaSalle St., Suite 1800 Chicago, IL 60602 Attention Adrian Tabangay

(d) A duplicate copy of each notice given hereunder by either party hereto shall be given to the Trustee and the Borrower. Any person or entity listed above may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

CHI2 2261869.18

### **54**

Section 10.05 Payments or Performance Due on Other than Business Days. Except as specifically provided herein, if the last day for making any payment or taking any action, including, without limitation, exercising any remedy, under this Indenture falls on a day other than a Business Day, such payment may be made, or such action may be taken, on the next succeeding Business Day, and, if so made or taken, shall have the same effect as if made or taken on the date required by this Indenture. The amount of any payment due under this Indenture shall not be affected because payment is made on a date other than the date specified in this Indenture pursuant to this Section.

Section 10.06 Execution of Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.07 Applicable Law. This Indenture shall be governed by and construed in accordance with the internal laws of the State.

Section 10.08 Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred with any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Borrower, or by any person directly or indirectly

controlling or controlled by, or under direct or indirect common control with, the Borrower shall be disregarded and deemed not to be Outstanding for purposes of any such determination (unless the Borrower owns all of the Bonds, in which event such Bonds shall be deemed to be Outstanding for purposes of any such determination). Section 10.09 Provisions for Payment of Expenses. The Issuer shall not be obligated to execute any documents or take any other action under or pursuant to this Indenture, the Agreement or any other document in connection with the Bonds unless and until provision for the payment of expenses of the Issuer shall have been made. Provisions for expenses shall be deemed to have been made upon arrangements reasonably satisfactory to the Issuer for the provision of expenses being agreed upon by the Issuer and the party requesting such execution.

CHI2 2261869.18

55

IN WITNESS WHEREOF, the parties hereto have caused this Indenture of Trust to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.  
CITY OF CHICAGO, ILLINOIS

A-1

/ Gene K.

By  
Title: Chief Financial Officer  
Attest

City Clerk  
AMALGAMATED BANK OF CHICAGO, as Trustee

By: ■ ~ > Title: ViO? fttS>|&W^

Attest:

C By;- C ^/hd#

• --Title: <\*SWiK- //tc/^o^W

[Signature Page to Indenture of Trust]

## EXHIBIT A

### FORM OF BOND

No. R-1

**UNITED STATES OF AMERICA STATE OF ILLINOIS**

**CITY OF CHICAGO, ILLINOIS RECOVERY ZONE FACILITY REVENUE BOND, SERIES 2010  
(ASPHALT OPERATING SERVICES OF CHICAGO PROJECT)**

DATED DATE MATURITY DATE INTEREST RATE CUSIP December 17,2010 December 1,2018  
6.125% 167683AY7

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: FORTY-FIVE MILLION DOLLARS

City of Chicago, Illinois (the "Issuer"), a municipal corporation and home rule unit of local government organized and existing under the Constitution and laws of the State of Illinois (the "State"), hereby promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above on the Maturity Date specified above (or earlier as hereinafter provided), and to pay interest on the Principal Amount hereof from the Dated Date specified above at the rates per annum and on the dates set forth herein; provided, however, that such principal and interest are payable solely from the sources and in the manner hereinafter described, and as authorized and provided in the Ordinance of the Issuer authorizing this Bond.  
**THIS BOND AND THE OBLIGATION TO PAY INTEREST HEREON AND REDEMPTION PREMIUMS**



WITH RESPECT THERETO, IF ANY, ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER SECURED AS AFORESAID AND PAYABLE SOLELY OUT OF THE REVENUES AND INCOME DERIVED FROM THE LOAN AGREEMENT (AS HEREINAFTER DEFINED), PROCEEDS FROM THE SALE OF THE BONDS AND INCOME FROM THE TEMPORARY INVESTMENT HEREOF AS PROVIDED IN THE INDENTURE AND LOAN AGREEMENT. THIS BOND AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUMS WITH RESPECT THERETO, IF ANY, SHALL BE DEEMED NOT TO CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION, OF THE ISSUER, THE STATE OF ILLINOIS (THE "STATE"), OR OF ANY OTHER POLITICAL SUBDIVISION THEREOF WITHIN THE PURVIEW OF ANY CONSTITUTIONAL LIMITATION OR PROVISION OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS, IF ANY, OF ANY OF THEM. NO OWNER OF THIS BOND SHALL HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER, IF ANY, OF THE ISSUER, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY ANY PRINCIPAL INSTALLMENT OF, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THIS BOND.

A-1

CHI2 2261869.18

The principal of, premium, if any, and interest on this Bond are payable in lawful money of the United States of America. The principal and premium, if any, payable upon maturity or earlier redemption of this Bond are payable when due upon the presentation and surrender hereof at the designated corporate trust office of Amalgamated Bank of Chicago, in the City of Chicago, Illinois, as trustee (the "Trustee"), or at the designated corporate trust office of any successor thereto. Each payment of interest on this Bond shall be payable to the Registered Owner hereof as shown on the registration books kept by the Trustee as bond registrar (the "Bond Registrar"), at the close of business on the fifteenth day of the calendar month next preceding the date on which such interest becomes due and payable (herein, a "Record Date"). Interest on this Bond shall be payable to the Registered Owner hereof by check or draft mailed by first class mail on the respective Interest Payment Dates (as hereinafter defined) to the address of such Registered Owner as shown on the books kept by the Trustee as Bond Registrar at the close of business on the relevant Record Date, or to such other address as is furnished in writing to the Trustee (in form satisfactory to the Trustee) by such Owner prior to such Record Date. Registered Owners of \$1,000,000 or more in aggregate principal amount of Bonds shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Trustee before the Record Date.

This Bond is authorized and issued under and pursuant to authority conferred by an ordinance adopted by the Issuer, and the Indenture of Trust, dated as of December 1, 2010 (the "Indenture"), between the Issuer and the Trustee. Certain terms used and not defined in this Bond are defined in the Indenture. This Bond is one of the Issuer's duly authorized Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) which series has been issued in the aggregate principal amount of \$45,000,000 to provide funds to make a loan (the "Loan") to Asphalt Operating Services of Chicago, LLC, an Illinois limited liability company (the "Borrower"), for the purpose of financing (i) all or a portion of the costs of the design, construction and equipping of a liquid asphalt through-put facility to be located at 2835 East 106th Street in Chicago, Illinois (the "Project"), (ii) a deposit into the Debt Service Reserve Fund (as defined in the Indenture), (iii) capitalized interest on the Series 2010 Bonds and (iv) all or a portion of the costs of issuance of the Series 2010 Bonds.

The Bonds are all issued under and entitled to the benefit and security of the Indenture. Pursuant to the Indenture, the Issuer has pledged and assigned to the Trustee the Trust Estate as security for its obligation to pay the principal of, premium, if any, and interest on the Bonds. Reference is made to the Indenture for a description of the Trust Estate and for the provisions thereof with respect to the nature and extent of the security granted by the Issuer to the Trustee thereunder, the rights, duties and obligations of the Issuer and the Trustee, the rights of the registered owners of the Bonds, and the terms on which the Bonds are issued and secured, to

all of which provisions, and to all other provisions of the Indenture, the Registered Owner hereof by the acceptance of this Bond assents.

The Issuer has established a book-entry only system of registration for the Bonds. Except as specifically provided otherwise in the Indenture, a securities depository or its nominee will be the Registered Owner and will hold this Bond on behalf of the beneficial owners hereof. By acceptance of a confirmation of purchase, delivery or transfer, the beneficial owners of this Bond shall be deemed to have agreed to this arrangement. The aforesaid securities depository or its nominee, as Registered Owner of this Bond, shall be treated as the owner hereof for all purposes.

A-2

CHI2 2261869.18

Interest on the Bonds shall be paid on each June 1 and December 1 specified above (each, an "Interest Payment Date"), commencing on June 1, 2011, and shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

(a) The Bonds shall be subject to redemption by the Issuer prior to maturity as follows:

(i) The Bonds are subject to optional redemption, in whole or in part (provided that no Bond may be redeemed in part if the principal amount outstanding following such partial redemption is not an Authorized Denomination) on or after December 1, 2015 at the direction of the Borrower upon not less than 45 days prior written notice to the Trustee and the Issuer on the dates and at the redemption prices (expressed as a percentage of the principal amount of the Bonds to be redeemed) as set forth below, plus accrued interest to the redemption date, to the extent of optional prepayments of the Loan in accordance with Section 11.2 of the Loan Agreement as follows:

Redemption Dates (Inclusive) Price (%)

December 1, 2015 to November 30, 2016 102 December 1, 2016 to November 30, 2017 101 December 1, 2017, and thereafter 100

(ii) The Bonds are subject to mandatory sinking fund redemption at a redemption price equal to the aggregate principal amount of the Bonds to be redeemed without premium (provided that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on December 1 of the years and in the principal amounts as set forth below:

Principal

Year Amount

2012 \$ 5,000,000  
2013 \$ 5,100,000  
2014 \$ 5,450,000  
2015 \$ 5,800,000  
2016 \$ 6,150,000  
2017 \$ 6,600,000  
2018 \$10,900,000

The foregoing notwithstanding, the Issuer, acting at the direction of the Borrower, shall be entitled to satisfy, in whole or in part, the above mandatory sinking fund requirements by the delivery of Bonds to the Trustee for cancellation.

(iii) The Bonds are subject to extraordinary mandatory redemption in whole or in part (provided that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on

CHI2 2261869.18

A-3

any date selected by the Borrower, at a redemption price equal to the aggregate principal amount of the Bonds to be redeemed plus accrued interest thereon to the redemption date, without premium, upon the occurrence of certain events described in Section 11.1 of the Agreement if the Borrower elects to prepay a like amount under

the Agreement.

(iv) The Bonds are subject to special mandatory redemption in whole or in part (provided that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on any date selected by the Borrower for which timely notice of redemption can be given by the Trustee following the Completion Date at a redemption price equal to the aggregate principal amount of the Bonds to be redeemed plus accrued interest thereon to the redemption date, without premium, to the extent of any moneys then remaining on deposit in the Project Fund.

(v) The Bonds are subject to mandatory redemption in whole on the earliest redemption date for which timely notice of redemption can be given by the Trustee after the occurrence of a Determination of Taxability at a redemption price equal to 105% of the aggregate principal amount thereof plus accrued interest thereon to the redemption date. The foregoing amount shall constitute the total amount required to be paid as a result of the occurrence of a Determination of Taxability.

Except during such period of time as the Bonds are held under the book-entry only system, the ownership of this Bond may be transferred (in an amount which is an Authorized Denomination; provided that the portion thereof retained is itself an Authorized Denomination) only upon presentation and surrender of this Bond at the designated corporate trust office of the Trustee as Bond Registrar, together with an assignment duly executed by the Registered Owner hereof or its duly authorized attorney-in-fact in such form as shall be satisfactory to the Trustee, and subject to the provisions made therefor in the Indenture. Bonds may be exchanged at the designated corporate trust office of the Trustee for a like aggregate principal amount of Bonds of Authorized Denominations. The Trustee shall not be required to make any such transfer or exchange of any Bond during the three Business Days immediately preceding the selection of Bonds for redemption or, with respect to a Bond, after such Bond or any portion thereof has been selected for redemption.

Authorized Denomination shall mean (i) initially the denomination of \$1,000,000 or any integral multiple thereof with increments of \$5,000 in excess thereof and (ii) the denomination of \$5,000 and integral multiples of \$5,000 in excess thereof from and after such time as the conditions set forth in Section 2.02(e) of the Indenture have been complied with for the exchange of Bonds in minimum denominations of \$5,000 upon defeasance of the Bonds.

Not less than 30 nor more than 45 days prior to any redemption date, the Trustee shall cause notice of the call for redemption, identifying each Bond or portion thereof to be redeemed, given in the name of the Issuer, to be sent by first class mail, postage prepaid, to the registered owner of each Bond to be redeemed at the address of such registered owner shown on the books kept by the Trustee as Bond Registrar. Failure to give such notice or any defect therein with respect to a Bond shall not affect the validity of any proceedings for the redemption of the other Bonds. By the date fixed for any such redemption, due provision shall be made with the Trustee

A-4

CHI2 2261869.18

for the payment of the principal of, premium, if any, and interest on the Bonds to be redeemed on the date of redemption. If notice of redemption is given and if due provision for payment of the redemption price is made, all as provided in the Indenture, the Bonds or portions thereof which are to be redeemed shall not bear interest after the date fixed for redemption, and shall not be entitled to any benefit or security under the Indenture, except for the right of the registered owner to receive the principal thereof, and premium, if any, and accrued interest thereon, out of the funds provided for such payment.

Provisions may be made for the payment of amounts represented by the Bonds as provided in the Indenture, in which event all liability of the Issuer to the owners of the applicable Bonds for the payment of such Bonds shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds (but only for the period specified and as provided in the Indenture), without liability for interest thereon, for the benefit of the owners of such Bonds, who shall thereafter be restricted exclusively to such funds for any claims of whatever nature under the Indenture or on, or with respect to, said Bonds.

It is hereby certified and covenanted that this Bond has been duly and validly authorized, issued and delivered;

that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization, issuance and delivery of this Bond have been performed, existed and done in accordance with law; that the Bonds are special, limited obligations of the Issuer; and that the principal of, premium, if any, and interest on the Bonds are payable from and secured by the properties, revenues and receipts that constitute a part of the Trust Estate.

The Bonds are secured by the Indenture, whereunder the Trustee undertakes to enforce the rights of the owners of the Bonds and to perform other duties to the extent and under the conditions stated in the Indenture. In case an Event of Default shall occur, the principal of and interest on the Bonds then outstanding may, and, under certain circumstances, shall, be declared to be due and payable immediately upon the conditions and in the manner provided in the Indenture; and no interest shall accrue on this Bond from and after the date of such acceleration. Under the circumstances provided in the Indenture, the Trustee may in its discretion, and upon written request of the registered owners of a majority in aggregate principal amount of the Bonds then outstanding shall, waive any Event of Default and its consequences; provided, however, that an Event of Default arising from a default in the payment of the principal of, premium, if any, or interest on the Bonds may not be so waived by the Trustee without the written consent of the registered owners of all of the Bonds then outstanding. The registered owners of the Bonds shall have no right to institute any action, suit or proceeding at law or in equity to enforce the Indenture, except as provided in the Indenture; provided, however, that nothing in the Indenture shall affect or impair the right of the registered owner of any Bond to enforce the payment of the principal of, premium, if any, and interest on such Bond from the source and in the manner herein expressed.

The Issuer has reserved the right to amend the Indenture, with the consent of the Borrower, as provided therein. Under some (but not all) circumstances amendments thereto must also be approved by owners of the Bonds constituting either a majority or 100% of the owners of the outstanding Bonds.

A-5

CHI2\_2261869.18

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee as Bond Registrar.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor or and attested with the manual or facsimile signature of its City Clerk all as of the date first above written.

CITY OF CHICAGO, ILLINOIS

[SEAL]

By\_

Title: Mayor

Attest:

By\_

City Clerk

CHI2 2261869.18

A-6

## **[FORM OF CERTIFICATE OF AUTHENTICATION]**

### **CERTIFICATE OF AUTHENTICATION**

This Bond is hereby authenticated as required by Section 2.05 of the within-referenced Indenture of Trust. Amalgamated Bank of Chicago, as Trustee

By: \_

Authorized Signatory

Date of Authentication:

CHI2 2261869.18

A-7

## **I FORM OF REGISTRATION INFORMATION!**

### **REGISTRATION INFORMATION**

Under the terms of the Indenture, the Trustee will register a Bond in the name of a transferee only if the owner of such Bond (or its duly authorized representative) provides as much of the information requested below as is applicable to such owner prior to submitting this Bond for transfer.

Name: \_

Address: \_

Social Security or Employer Identification Number: \_

If a Trust, Name and Address of Trustee(s) and Date of Trust: \_

CHI2 2261869.18

A-8

## **[FORM OF ASSIGNMENT]**

### **ASSIGNMENT**

For value received, the undersigned hereby sells, assigns and transfers unto \_ the within Bond, and does hereby irrevocably constitute and appoint \_ attorney to transfer such Bond on the books kept for registration and transfer of the within Bond, with full power of substitution in the premises.

NOTE: The signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without enlargement or alteration or any change whatsoever.

Signature guaranteed by:

NOTE: The signature to this Assignment must be guaranteed by a financial institution that is a member of the Securities Transfer Agents Medallion Program ("STAMP"), the Stock Exchange Medallion Program ("SEMP") or the New York Stock Exchange, Inc. Medallion Signature Program ("MSP").

CHI2\_2261869.18

A-9

## **EXHIBIT B**

### **REQUISITION CERTIFICATE**

TO: AMALGAMATED BANK OF CHICAGO, AS TRUSTEE ("TRUSTEE")

FROM: ASPHALT OPERATING SERVICES OF CHICAGO, LLC

AS BORROWER ("BORROWER")

SUBJECT: CITY OF CHICAGO, ILLINOIS -

RECOVERY ZONE FACILITY REVENUE BONDS, SERIES 2010 (ASPHALT OPERATING SERVICES OF CHICAGO PROJECT) ("PROJECT")

This represents Requisition Certificate No. \_ in the total amount of

\$ \_ for payment to \_ of those costs of the

Project detailed in the schedule attached. Such payment shall be made by [check] [wire transfer].

All capitalized terms used herein and not defined shall have the same meanings as are set forth in the Loan Agreement, dated as of December 1, 2010 (the "Loan Agreement"), between the Borrower and the City of Chicago, Illinois (the "Issuer") and in the Indenture of Trust, dated as of December 1, 2010 (the "Indenture"), between the Issuer and the Trustee.

The undersigned does hereby certify that:

1. The expenditures for which moneys are requested hereby represent proper Costs of the Project and have not been included in a previous Requisition Certificate.
2. The moneys requested hereby are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for funds actually advanced for Costs of the Project. The moneys requested do not include retention or other moneys not yet due or earned under any contract.
3. All the funds being requisitioned are being used in compliance with the Internal Revenue Code of 1986, as

amended, and the permanent and temporary regulations promulgated or proposed thereunder, and the Tax Agreement, and all of such funds are to be used for the Project.

4. The payment due is a proper charge against the Project Fund, has not been the basis for any previous withdrawal from the Project Fund and the moneys requested do not include retention or other moneys not yet due or earned under any contract.

5. The Borrower is not in default under the Loan Agreement, to the Borrower's knowledge no event of default exists under the Indenture, and, to the Borrower's knowledge, no condition, event or act which, with notice or the lapse of time, or both, would constitute or give rise to such event of default. Nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Loan Agreement.

B-1

CHI2 2261869.18

6. All the funds being requisitioned are being used in compliance with the Tax Agreement and the Code, and the regulations promulgated thereunder, and that all of such funds are to be used for the Project described in the Loan Agreement.

7. Delivered to the Trustee concurrently with this Requisition Certificate are the following items:

(a) A current dated sworn Owner's Statement disclosing the various contracts entered into by or on behalf of the Owner/Borrower and setting forth the names and addresses of the contractors, service or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments, and balances due;

(b) A current dated sworn General Contractor's Statement disclosing the various contracts entered into by the Construction Manager and setting forth the names and addresses of all subcontractors and material suppliers, service or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments, and balances due;

(c) A Certification by ECF Inc., the Construction Manager, and Piping & Equipment Company, Inc., the Construction Monitor, certifying that work has been completed and materials are in place as indicated by the current construction draw request approved by the Owner/Borrower; and

(d) A report or a certification by Piping & Equipment Company, Inc., the Construction Monitor certifying that work has been completed and materials are in place as indicated by the current construction draw request approved by the Owner/Borrower.

8. Chicago Title and Trust Company (the "Escrowee") has been (or will be) provided statements, waivers, affidavits, supporting waivers, and releases of lien from such persons and in such form as may be reasonably required by Escrowee and Underwriter for the purpose of providing the title insurance coverage.

Executed this \_ day of \_, 20\_.

ASPHALT OPERATING SERVICES OF CHICAGO, LLC

By:.. Its:

CHI2 2261869.18

B-2

## **SCHEDULE TO REQUISITION CERTIFICATE NO.**

Payee Name and Address (if Check) or Wire Instructions

(if wire transfer) Amount Description of Costs

CHI2\_2261869.18

**B-3**

## **EXHIBIT C**

CONSTRUCTION LOAN ESCROW AND DISBURSING AGREEMENT

**Escrow Trust No.: \_ Commitment and/or Policy No.: 1401 \_ D2**

ARTICLE 1: General Information

**A. Owner/Borrower Attorney for Owner/Borrower**

Name: ASPHALT OPERATING SERVICES OF Name: MAURJDES FOLEY & TABANGAY L LC CHICAGO, LLC

Address: 1609 S. 9<sup>TH</sup> Street Address: 2 North LaSalle Street, Suite 1800

St. Louis, MO 63104 Chicago, IL 60602

Contact : Mr. Alan J. Meitl Contact: Adrian Tabangay, Esq.

Telephone No.: 314-241-8500 Telephone No.: 312-332-6500 (x336)

Fax No.: 314-241-1331 Fax No.: 312-332-5666

**B. Lender Attorney for Lender**

Name: AMALGAMATED BANK OF CHICAGO, AS Name: TRUSTEE

Address: One West Monroe Street, Chicago, Illinois Address: 60603

Contact: Corporate Trust Services Contact:

Telephone No.: 312-822-8545 Telephone No.:

Fax No.: 312-267-8782 Fax No.:

**C. Escrow Trustee**

Name: CHICAGO TITLE AND TRUST COMPANY a corporation of Illinois (hereinafter known as CT&T Co.) Address: 171 N. CLARK STREET Chicago, IL 60601

Contact Person: Christine Renner Telephone No.: (312)223-5813 Fax No.: (312) 223-2272

**fD. Title Insurer:**

Name: CHICAGO TITLE INSURANCE COMPANY (hereinafter known as CTIC) Address: 171 N. CLARK STREET Chicago, IL 60601 Contact Person: V. Gina Gianelli Telephone No.: (312) 223-2754 Fax No.: (312) 223-2272

**E. Construction Manager**

Name: ECF Inc. Contact Person : Mr. Alan J. Meitl

Address: 1609 S. 9<sup>th</sup> Street Telephone No.: 314-241-8500

St. Louis, MO 63104

Fax No.: 314-241-1331

F. Project Name: ASPHALT OPERATING SERVICES OF CHICAGO, LLC

Project Location: 2800 E. 106<sup>th</sup> Street Chicago, Cook County, Illinois 60617

**G. Cash Deposits**

Amount of Deposits, if any, to be made by Owner/Borrower: \$61,248,932.00

**H. Billing Instructions**

Title and Construction Escrow charges are to be billed to:

Name: MAURJDES FOLEY &

TABANGAY L.L.C.

Address: 2 N. LaSalle Street #1800,

Chicago, IL 60602

1

Attention: Adrian Tabangay, Esq.

**ARTICLE 2: Recitals**

A. Owner/Borrower has executed/will execute a mortgage encumbering the premises described as follows:

See Exhibit "A" attached hereto and made a part hereof/Same as those described in CTIC Commitment/Policy No. 1401 \_ D2 for the purpose of financing, in whole or in part, the construction of or the rehabilitation of improvements thereon (the Project).

For the benefit of the Lender, CTIC has been requested to issue its ALTA Commitment and/or Policy insuring the lien of the mortgage from the consequences of mechanics' liens on an interim basis as construction of the Project progresses; and for the benefit of Lender and Owner/Borrower, CT&T Co. has been requested to provide a disbursing service as a means to pay for construction and related development costs.

At the request of Owner/Borrower, Lender will make periodic cash deposits into this Trust to be disbursed by Escrow Trustee in accordance with the provisions of this Agreement as hereinafter set forth. Said deposits will not be requested more frequently than once per calendar month.

Owner/Borrower may also deposit or cause to be deposited funds not constituting mortgage proceeds into this Trust which said funds shall also be disbursed by Escrow Trustee pursuant to provisions of this Agreement.

Owner/Borrower represents and warrants to CT&T Co. that at the date of this Agreement, funds available for construction payment are ample to complete the Project.

B. The parties hereto agree that Escrow Trustee will disburse Trust deposits made for construction payment to

Construction Manager, contractors and subcontractors. In the event that the Construction Manager and any other payee (including any contractor and/or subcontractor) jointly authorize the Escrow Trustee to pay any funds due one to the other, the Escrow Trustee may comply with such

authorization. However, it is the intention of the parties named herein and signatory hereto that no person not a party signatory to this escrow shall have the right to look to the Escrow Trustee for any disbursement hereunder under a third party beneficiary theory or otherwise, and that the Escrow Trustee owes no duty to any such third party to make any disbursement.

**ARTICLE 3: Requirements**

A. Prior to the first disbursement of funds hereunder by Escrow Trustee, the following requirements shall have been satisfied, to wit:

(1) The Escrow Trustee shall furnish or shall be prepared to furnish to the Lender, as insured, a 2006 ALTA Loan Policy with a mechanics lien exception if no construction contracts have been let prior to the first draw, or a 2006 ALTA Loan Policy, together with CTIC's Interim Mechanics' Lien Endorsement (Revised 2010) if construction contracts have been let, and such other endorsements as set forth hereinafter, (the Policy). If such policy has issued to Lender prior to Escrow Trustee's first disbursement of funds hereunder, then Escrow Trustee shall furnish or be prepared to furnish CTIC Date Down Endorsement 7 and Interim Mechanics Lien Endorsement (Rev. 2010) covering the requested disbursement.

(2) Other endorsements, if any:

(3) Owner/Borrower shall furnish Lender and Escrow Trustee a Sworn Owner's Statement disclosing the various contracts entered into by the Owner/Borrower relating to the construction of the Project and setting forth the names of the contractors, their addresses, the kind of service, work or materials to be furnished, the amounts of such contracts, the amounts paid to date, if any, the amounts of current payments, if any, and the balances to become due, if any.

(4) The Owner/Borrower shall furnish or cause to be furnished to Lender and Escrow Trustee sworn statements to Owner by the Construction

Manager and/or by the contractors, as applicable, setting forth the names and addresses of such persons furnishing labor, service or materials (i.e., subtrades and material suppliers), the amounts of such contracts, amounts paid to date, if any, amounts of current payments, if any, and balances to become due, if any.

**2**

LENDER SHALL FURNISH Escrow Trustee the following, to wit:

(a) An approval of the conditions of the title as disclosed by the said commitment.

(b) An approval for loan disbursement purposes of the Owner's Statement and the sworn statement of the Construction Manager and/or the applicable contractor, as applicable.

B. Prior to each disbursement of funds by Escrow Trustee hereunder, the Owner/Borrower shall furnish or cause to be furnished to Escrow Trustee the following:

(1) A current dated Sworn Owner's Statement as described hereinbefore in this Article 3 at A(3);

(2) A current dated Sworn Statement to Owner by the Construction Manager and/or the contractor, as applicable, as described hereinbefore in this Article 3 at A(4), covering its current construction draw request.

(3) Sufficient funds to cover the current disbursement request.

(4) Written approval by Owner/Borrower of the payment by Escrow Trustee of the current construction draw(s). In the event that nonconstruction costs are to be paid by Escrow Trustee with Trust funds, then Owner/Borrower shall provide written directions to Escrow Trustee, approved in writing by the Construction Manager, setting forth the names and addresses of the payees, the amounts of the respective payments, and the purpose of the payments, i.e., legal fees, real estate taxes, etc.

(5) Statements, waivers, affidavits, supporting waivers, and releases of lien from such persons and in such form as may be required by CTIC for the purpose of providing the title insurance coverage specified in this Agreement covering the current disbursement.

C. At the time of each loan disbursement by Escrow Trustee, subsequent to the issuance of Policy, Escrow Trustee shall furnish, or be prepared to furnish to Lender, CTIC Date Down Endorsement 7 and Interim Mechanics' Lien Endorsement (Rev.2010) covering the current disbursement.

■ D. At the time of each disbursement of non-loan funds, Escrow Trustee or CTIC shall search the title of the subject premises for any mechanics' liens and inform Owner/Borrower of the results of such searches. With respect to any disbursement of non-loan funds, Escrow Trustee will use the same care and diligence in the collection and examination of sworn statements, waivers, affidavits, supporting waivers and releases of liens, for the above purpose, as it would use were Escrow Trustee required by this Agreement to furnish mechanics' lien title insurance coverage to a construction lender, and no greater.

#### ARTICLE 4: General Conditions

A. At any time prior to the commencement of disbursement of funds hereunder, Escrow Trustee shall have the right to notify Lender that CTIC declines any risk offered for insurance under the commitment for title insurance aforesaid. Whereupon Escrow Trustee shall return to the parties any documents and/or funds in Escrow Trustee's possession relating to the Loan.

Where, after the first disbursement of funds by Escrow Trustee, a further title search by CTIC reveals a subsequently arising title matter which gives rise to a title exception over which CTIC is unwilling to insure, Escrow Trustee will notify the Lender and may discontinue disbursement until the exception has been disposed of to the satisfaction of the Lender.

B. If at any time during the course of construction the total of the unpaid disclosed cost of construction, as indicated by the construction column totals on the current dated Sworn Owner's Statement furnished Escrow Trustee pursuant to this Article 3 B(1), exceeds the amount of undisbursed mortgage proceeds as calculated by subtracting the total amount of liability taken on the endorsements provided for at Article 3C from the face amount of the mortgage, the Escrow Trustee need not make further disbursements under the terms of this Agreement until the Owner/Borrower has deposited in this Escrow Trust the sum necessary to make the available funds equal to the unpaid disclosed cost of construction. Also, if Escrow Trustee discovers a misstatement in an affidavit furnished by the Construction Manager, contractor or Owner/Borrower, or any inconsistency or contradiction between or among any figure in the Owner/Borrower's Statement, or the Construction Manager or contractor's statement or any subcontractor's statement, Escrow Trustee may stop disbursement until the misstatement has been corrected. Escrow Trustee may, at its option,

**3**

verify information submitted by the Owner/Borrower and the contractors or may require the Owner/Borrower to furnish or cause to be furnished verification of contractor amounts by subcontractors or material suppliers. Escrow Trustee has no liability hereunder to the Owner/Borrower relating to protection against mechanic's lien claims.

C. Prior to the final disbursement of the funds hereunder by Escrow Trustee, it is a requirement of this Agreement that CTIC be prepared to furnish a Standard ALTA Loan Policy covering the date of final disbursement, subject to the usual terms and conditions contained in that form of policy and also subject to exceptions as approved heretofore by Lender, together with the above listed endorsements, if any.

All required documentation must be submitted to Escrow Trustee and approved by CTIC prior to the final disbursement of Trust deposits by Escrow Trustee.

D. The functions and duties assumed by Escrow Trustee include only those described in this Agreement and Escrow Trustee is not obligated to act except in accordance with the terms and conditions of this Agreement. Escrow Trustee does not insure that the building will be completed, nor does it insure that the building, when completed, will be in accordance with plans and specifications, nor that sufficient funds will be available for completion, nor does it make the certifications of the Inspector/Architect its own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement.

Escrow Trustee has no liability for loss caused by an error in the certification furnished it hereunder as to work in place.

Escrow Trustee shall not be responsible for any loss of documents while such documents are not in its custody. Documents deposited in the United States Mail shall not be construed as being in custody of Escrow Trustee.

In the event of default as declared by the Lender and/or foreclosure of the mortgage by the Lender, Escrow Trustee shall have the right to discontinue further disbursements under this Agreement.

E. N.B.: Title and construction escrow charges will be billed at the time the first draw request is submitted. Payment is to be made before the second draw request is processed. In the event title and escrow charges are not paid as required, CT&T Co. may terminate this Agreement upon thirty (30) days' written notice to Borrower and Lender. Title and construction escrow charges have been billed based upon the assumption that the Project will



be completed within two years from the date of this escrow.

F. Owner/Borrower or Lender may direct Escrow Trustee to invest trust deposits; provided, however, that such direction shall be in writing, contain the consent of all other parties to this Escrow Trust, and be accompanied by the taxpayer's identification number and such investment forms as may be required. Escrow Trustee will, upon request, furnish information concerning procedures and fee schedules for investment.

Except as to deposits of funds for which Escrow Trustee has received express written direction concerning investment or other handling, the parties hereto agree that the Escrow Trustee shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and, further, that Escrow Trustee may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under Section 2-8 of the Illinois Corporate Fiduciary Act (205 ILCS 620/ 2-8), and may use any part or all such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Provided, however nothing herein shall diminish Escrow Trustee's obligation to apply the full amount of the deposits in accordance with the terms of this Agreement.

In the event the Escrow Trustee is requested to invest deposits hereunder, Chicago Title and Trust Company is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of this escrow trust.

G. The undersigned agree that this Agreement is not intended by any of the undersigned to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than Escrow Trustee, Lender, and Owner/Borrower as a third party beneficiary or otherwise under any theory of law.

H. In consideration of Escrow Trustee entering into this agreement, the furnishing of the interim mechanics lien endorsement to the Lender as required by the terms of this Escrow, and any mechanics lien coverage that may be afforded to subsequent purchasers and lenders on account of the construction of the Project or hold harmless agreements issued for mechanics lien coverage on account of the construction of Project, Owner/Borrower for itself and for its successors and/or assigns, does hereby indemnify and save Escrow Trustee and Chicago Title

4

Insurance Company harmless from any and all losses, costs, damages, expenses and liabilities which Escrow Trustee and/or Chicago Title Insurance Company may incur on account of mechanics lien claims or proceedings to enforce the same arising out of the construction of the Project, but specifically excluding from such indemnification obligations any such losses, costs, damages, expenses and liabilities which Escrow Trustee and/or Chicago Title Insurance Company may incur on account of the willful misconduct and/or any negligence of Escrow Trustee and/or Chicago Title Insurance Company. The Owner/ Borrower acknowledges that the service provided under this agreement was requested by the Lender, and that the owner's benefit is the availability of the mechanics lien coverage which maybe provided to the Lender or to subsequent purchasers or lenders.

[SIGNATURE PAGE TO FOLLOW]

5

In Witness Whereof, the undersigned have executed this Agreement this day of

Owner/Borrower: ASPHALT OPERATING SERVICE OF CHICAGO, LLC

A.D. 2010.

By:

Lender: AMALGAMATED BANK OF CHICAGO. AS TRUSTEE

By:

Escrow Trustee: CHICAGO TITLE AND TRUST COMPANY

By:

(Authorized Signatory)

The undersigned has received and reviewed the foregoing Agreement and acknowledges that ECF, Inc. is neither a party to the said Agreement, nor does that Agreement confer any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than Escrow Trustee, Lender, and Owner/Borrower under a third party beneficiary theory or otherwise under any theory of law. It is understood by the parties hereto and by the General Contractor, who executed this agreement to evidence such understanding and not as a party hereto, that Escrow Trustee is authorized to furnish to those persons information it may deem appropriate with regard to the terms at which disbursements might be made to them and what conditions remain unsatisfied when it is not in the position to disburse.

For the Construction Manager

6

EXHIBIT "A" (LEGAL DESCRIPTION)

PART OF THE WEST 1/2 OF SECTION 18, TOWNSHIP 37 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 18, THENCE NORTH 89°30'51" EAST (THIS AND ALL SUBSEQUENT BEARINGS BASED ON THE ILLINOIS COORDINATE SYSTEM OF 1983, EAST, ZONE), 447.54 FEET ALONG THE NORTH LINE OF SAID SECTION 18 TO THE NORTHERLY EXTENSION OF THE EAST LINE OF THE SECOND PARCEL OF LAND DESCRIBED TO THE CALUMET WESTERN RAILWAY COMPANY IN DOCUMENT 9575635 IN THE OFFICE OF THE RECORDER OF COOK COUNTY, ILLINOIS, AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTH 89°30'51" EAST, 883.35 FEET ALONG SAID NORTH LINE TO THE EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 18; THENCE SOUTH 00°01'09" EAST, 335.06 FEET ALONG SAID LINE; THENCE SOUTH 89°30'51" WEST, 765.38 FEET; THENCE SOUTH 01°01'22" EAST, 599.98 FEET; THENCE NORTH 88°57'40" EAST, 754.96 FEET TO SAID EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER; THENCE SOUTH 00°01'09" EAST, 1099.23 FEET TO A LINE 100.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH DEER ING SLIP; THENCE NORTH 89°40'15" EAST, 330.82 FEET TO THE WESTERLY CHANNEL LINE OF THE CALUMET RIVER AS ESTABLISHED BY DOCUMENT 16818160 IN SAID OFFICE OF THE RECORDER (SAID LINE ALSO BEING THE WESTERLY LINE OF THE CALUMET RIVER AS ESTABLISHED BY THE UNITED STATES GOVERNMENT SURVEY RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, MAY 17, 1889, AS DOCUMENT 1102284, IN BOOK 39 OF PLATS AT PAGES 1 TO 9, INCLUSIVE); THENCE SOUTH 00°55' 19" WEST, 352.33 FEET ALONG SAID WESTERLY CHANNEL LINE; THENCE SOUTH 88°39'59 WEST, 1374.94 FEET TO A RAILROAD SPIKE; THENCE SOUTH 26°33'56" WEST, 136.73 FEET TO A 5/8" REBAR WITH CAP STAMPED "DLZ 184-002815"; THENCE SOUTH 05°01'34" WEST, 357.18 FEET TO A 5/8"

REBAR WITH CAP STAMPED "DLZ 184-002815" ON THE EAST LINE OF THE FIRST PARCEL OF LAND DESCRIBED TO THE CALUMET WESTERN RAILWAY COMPANY IN SAID DOCUMENT 9575635; THENCE NORTH 01°04'06" WEST, 1604.17 FEET ALONG SAID EAST LINE; THENCE NORTHERLY 361.82 FEET ALONG SAID EAST LINE BEING A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 1384.70 FEET AND A CHORD BEARING NORTH 06°25'03" EAST, 360.79 FEET; THENCE NORTH 13°54'11" EAST, 377.40 FEET PARTLY ALONG THE EAST LINE OF SAID FIRST PARCEL AND ALONG THE EASTERLY LINE OF A PARCEL OF LAND DESCRIBED TO THE CALUMET WESTERN RAILWAY COMPANY IN DOCUMENT 12017354 IN SAID OFFICE OF THE RECORDER; THENCE NORTH 13°53'25" EAST, 143.97 FEET TO THE EASTERLY LINE OF SAID SECOND PARCEL OF LAND DESCRIBED IN DOCUMENT 9575635; THENCE NORTH 13°54'27" EAST, 210.86 FEET ALONG SAID EASTERLY LINE; THENCE NORTHERLY 219.08 FEET ALONG SAID EASTERLY LINE BEING A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1213.10 FEET AND A CHORD BEARING NORTH 19°04'53" EAST, 218.78 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

7

## EXHIBIT C

CITY OF CHICAGO Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project)

### **BOND PURCHASE AGREEMENT**

December 10, 2010 '

City of Chicago Asphalt Operating Services of Chicago, LLC

121 North LaSalle Street c/o Mr. Alan J. Meitl

Chicago, Illinois 60602 1603 South 9th Street

St. Louis, Missouri 63104

Ladies and Gentlemen:

The undersigned, William Blair & Company L.L.C. on behalf of itself and Estrada Hinojosa & Company, Inc. (the "Original Purchasers"), offer to enter into the following agreement (this "Bond Purchase Agreement") with the City of Chicago (the "City") and Asphalt Operating Services of Chicago, LLC (the "Borrower"), which upon acceptance by the City of this offer, and approval of this Bond Purchase Agreement by the Borrower will be binding upon each of the City, the Borrower and the Original Purchasers. This offer is made subject to your mutual acceptance on or before 3:00 P.M., Chicago time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Original Purchasers upon notice delivered to the City and the Borrower at the addresses set forth above at any time prior to the acceptance hereof by the City and the Borrower.

The Original Purchasers are authorized, and hereby represent and warrant that they are authorized to execute this Agreement and have full authority to take such action they may deem advisable with respect to all matters pertaining to this Agreement. Each Original Purchaser hereby severally represents to the City that it is registered and in good standing under the Securities Exchange Act of 1934, as amended, as a municipal securities dealer.

Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Indenture (as hereinafter defined), Loan Agreement (as hereinafter defined) and the Limited Offering Memorandum (as hereinafter defined).

This offer is also subject to the following provisions:

#### 1. Definitions

For purposes of this Bond Purchase Agreement, the following terms have the meanings specified in this section, unless another meaning is plainly intended:

(A) "Asphalt Terminalling Agreements" mean the Asphalt Terminalling Agreement dated November 12, 2009 between the Borrower and BP Products North America Inc., as amended and the Asphalt Terminalling Agreement dated June 10, 2010 between the Borrower and Suit-Kote Corporation, as amended and the Asphalt Terminalling Agreement

12959275v.8

dated October 8, 2010 between the Borrower and Associated Asphalt Distribution, LLC, as amended.

(B) "Bond Ordinance" means the Ordinance of the City adopted by the City Council of the City (the "City Council") on May 12, 2010 providing for the issuance of the Bonds and approving the Indenture, the Loan Agreement and related matters.

(C) "Bonds" means the \$45,000,000 City of Chicago Recovery Zone Facility Revenue Bonds, Series 2010

(Asphalt Operating Services of Chicago Project) executed and delivered pursuant to the Indenture.

(D) "Borrower" means Asphalt Operating Services of Chicago LLC, an Illinois limited liability company.

(E) "Borrower Agreements" means the Loan Agreement, the Mortgage and Security Agreement, the Tax Agreement, this Bond Purchase Agreement, the Preliminary Limited Offering, the Limited Offering Memorandum; Project Certificate; the Construction Loan Escrow and Disbursing Agreement, the Asphalt Terminalling Agreements, and the Collateral Assignments, and Terminalling Agreement Assignments executed and delivered by the Borrower in connection with the issuance and sale of the Bonds.

(F) "Borrower Information" means the descriptions and information in the Limited Offering Memorandum under the captions "INTRODUCTORY STATEMENT"; "SOURCES AND USES OF FUNDS"; "FINANCIAL PROJECTIONS AND EXPECTED DEBT SERVICE COVERAGE"; "SECURITY FOR THE SERIES 2010 BONDS"; "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE"; "SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT"; "SUMMARY OF CERTAIN PROVISIONS OF THE MORTGAGE AND SECURITY AGREEMENT"; "THE BORROWER"; "THE PROJECT"; "SUMMARY OF CERTAIN PROVISIONS OF THE ASPHALT TERMINALLING AGREEMENTS", "SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL ASSIGNMENTS", "RISK FACTORS"; "NO LITIGATION -No Proceedings Against the Borrower"; "CONTINUING DISCLOSURE"; and "AUTHORIZATION".

(G) "Business Day" means any day which is not (i) a Saturday, a Sunday or in the City of Chicago, Illinois (or in the city in which the principal corporate trust office of the Trustee is located), a day on which commercial banking institutions are authorized or required by law or executive order to close or (ii) a day on which the New York Stock Exchange is closed.

(H) "City" means the City of Chicago, Illinois.

(I) "City Agreements" means the Bond Ordinance, the Indenture, the Loan Agreement, the Tax Agreement, this Bond Purchase Agreement, the Limited Offering Memorandum and all other agreements and certificates executed and delivered by the City in connection with the issuance and sale of the Bonds.

**-2-**

12959275v.8

(J) "City Information" means the descriptions and information contained in the Limited Offering Memorandum under the captions, "THE CITY"; "NO LITIGATION-No Proceedings Against The City"; "NO RATING"; and "MISCELLANEOUS".

(K) "Closing" means the Closing as defined in Section 2(B) herein held on the Closing Date.

(L) "Closing Date" means December 17, 2010, or such earlier or later date as the City, the Borrower and the Original Purchasers shall mutually agree upon and refers to the date on which the City causes the Trustee to deliver the Bonds to the Original Purchasers and the Bonds are paid for by the Original Purchasers pursuant to this Bond Purchase Agreement.

(M) "Code" means the Internal Revenue Code of 1986,- as amended.

(N) "Collateral Assignments" means (i) the Collateral Assignment dated December 17, 2010 pursuant to which the Borrower has assigned its rights under certain Design-Build Construction Agreement dated October 15, 2010 as amended between Borrower and ECF, Inc. ("ECF") in favor of the Trustee; (ii) the Collateral Assignment dated December 2, 2010 pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor [Civil] between ECF and Carlson Constructors Corp. dated October 15, 2010 as amended, and under that certain Standard Form of Agreement between Design-Builder and Contractor [Mechanical] between ECF and Carlson Constructors Corp. dated October 15, 2010 as amended, in favor of the Trustee; (iii) the Collateral Assignment dated December 17, 2010 pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor between ECF and CBI Services, Inc. dated December 17, 2010 as amended, in favor of the Trustee; (iv) the Collateral Assignment dated November 12, 2010 pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor between ECF and Rail Works Track Services, Inc. dated November 1, 2010 as amended, in favor of the Trustee; (v) the Collateral Assignment

dated November 19, 2010 pursuant to which ECF has assigned its rights under that certain Standard Form of Agreement between Design-Builder and Contractor between ECF and Raffin Construction Co. dated October 19, 2010 as amended, in favor of the Trustee; and (vi) The Management Agreement dated December 17, 2010 in favor of the Trustee, and each of the Terminalling Agreement Assignments..

(O) "Construction Loan Escrow and Disbursing Agreement" means the Construction Loan Escrow and Disbursing Agreement dated as of December 17, 2010 among the Borrower, the Trustee, as lender, and Chicago Title and Trust Company, as escrowee.

(P) "Governmental Body" means any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(Q) "Guaranty Agreements" means the Guaranty Agreement of BP Corporation North America Inc. dated November 18, 2010 guarantying the payment obligations arising under the BP Asphalt Terminalling Agreement, and the Guaranty Agreement of

**-3-**

12959275v.8

Associated Asphalt Partners, LLC dated October 8, 2010 guarantying the payment obligations arising under the Associated Asphalt Distribution Terminalling Agreement.

(R) "Indenture" means the Indenture of Trust dated as of December 1, 2010 between the City and the Trustee pursuant to which the Bonds will be issued.

(S) "Limited Offering Memorandum" means the Limited Offering Memorandum of the City (including each Appendix thereto) relating to the Bonds dated December 10, 2010.

(T) "Loan Agreement" means the Loan Agreement dated as of December 1, 2010, between the City and the Borrower.

(U) "Mortgage and Security Agreement" means the Mortgage and Security Agreement dated as of December 1, 2010 from the Borrower to the Trustee.

(V) "Original Purchasers" means William Blair & Company L.L.C. and Estrada Hinojosa & Company, Inc.

(W) "Payment and Performance Bond" means the four (4) separate payment and performance bonds to be provided by Carlson Constructors Corporation, CBI Services Inc., Raffin Construction Company and Railworks Track Services, Inc. with respect to their portions of the work for the Project as described in the Limited Offering Memorandum.

(X) "Permitted Encumbrances" shall have the meaning set forth in the Loan Agreement.

(Y) "Plans" means the plans and specifications pursuant to which the Project will be constructed.

(Z) "Preliminary Limited Offering Memorandum" means the Preliminary Limited Offering Memorandum of the City (including any Appendix thereto) relating to the Bonds dated November 11, 2010.

(AA) "Project" means the design, construction and equipping of a liquid asphalt through-put facility including an office building and lab, maintenance and boiler building and a truck scale building totaling approximately 12,300 square feet, 5 storage tanks, stream blenders, a barge unloading station, truck and rail loading positions and other ancillary structures and related site improvements to be located on approximately 63 acres located at 106<sup>th</sup> Street and Torrence Avenue in Chicago, Illinois.

(BB) "Revenues" means (a) all revenues, rentals, fees, third-party payments, receipts, contributions or other income of the Borrower and the Project, including the rights to receive such revenues, all as calculated in accordance with sound accounting practices, including, without limitation, proceeds derived from insurance, condemnation awards, accounts, contract rights and other rights and assets, whether now or hereafter owned, held or possessed by the Borrower; and (b) all grants (including, but not limited to, grants from state and local agencies, contributions (including income and profits, therefrom) to the extent not restricted to

**-4-**

12959275V.8

any specific purpose or purposes which would not permit their use for any of the payments required hereunder

and (c) capital contributions and capital infusions, including from any Affiliate.

(CC) "State" means the State of Illinois

(DD) "Sophisticated Investor" means a "Qualified Institutional Buyer" as defined in Rule 144A of the Securities Act of 1933 who has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and assuming the risks of its investment in the Bonds.

(EE) "Tax Agreement" means the Tax Compliance Agreement, dated as of December 17, 2010, among the City, the Trustee and the Borrower, including all amendments and restatements thereof and supplements thereto.

(FF) "Terminalling Agreement Assignments" means (i) the Collateral Assignment dated December 17, 2010 pursuant to which the Borrower has assigned its rights under that certain Asphalt Terminalling Agreement dated November 12, 2009 between BP Products North America Inc. and the Borrower as amended and that certain Guaranty Agreement dated November 18, 2010 by BP Corporation North America Inc. for the benefit of the Borrower, in favor of the Trustee; (ii) the Collateral Assignment dated December 17, 2010 pursuant to which the Borrower has assigned its rights under that certain Asphalt Terminalling Agreement dated October 8, 2010 as amended between Associated Asphalt Distribution, LLC and the Borrower and that certain Guaranty dated October 8, 2010 by Associated Asphalt Partners, LLC for the benefit of the Borrower, in favor of the Trustee; and (iii) the Collateral Assignment dated December 17, 2010 pursuant to which the Borrower has assigned its rights under that certain Asphalt Terminalling Agreement dated June 10, 2010 as amended between Suit-Kote Corporation and the Borrower, in favor of the Trustee.

(GG) "Trustee" means Amalgamated Bank of Chicago, Chicago, Illinois, or any successor trustee or co-trustee serving as such under the Indenture.

## 2. Purchase and Sale of the Bonds.

(A) Sale of Bonds. Upon the terms and conditions and upon the basis of the representations, warranties and agreements herein, the Original Purchasers hereby agree to purchase from the City for a limited offering, and the City hereby agrees to sell to the Original Purchasers for such purpose, all, but not less than all, of the Bonds for a purchase price of \$44,550,000, which reflects an underwriters' discount of \$450,000. The Bonds shall be due on December 1, 2018, and shall bear interest at the rate of 6.125%. The Bonds shall be issued pursuant to the Bond Ordinance and the Indenture. The Bonds shall be dated and shall be subject to such other terms and conditions, all as described in the Limited Offering Memorandum, the Bond Ordinance and the Indenture.

(B) Closing. The purchase and sale of the Bonds shall take place on or before 12:00 p.m. CST on the Closing Date at the offices of Foley & Lardner, Chicago, Illinois. At the Closing, as defined below, it shall be a condition to the City's obligation to sell and deliver the

**-5 -**

12959275v.8

Bonds that the Original Purchasers will accept the delivery of the Bonds duly executed by the City, together with other documents herein mentioned, and will make payment therefor as provided herein by immediately available funds payable to the order of the Trustee for the account of the City.

The payment for the Bonds and delivery of the Bonds, as herein described, is herein called the "Closing."

## 3. Pre-Closing Deliveries.

(A) Prior to the Closing Date, the City and the Borrower shall have delivered or caused to be delivered to the Original Purchasers an executed copy of the Limited Offering Memorandum, executed on behalf of the Borrower by an authorized officer.

(B) Prior to the Closing Date, the City shall have delivered or caused to be delivered to the Original Purchasers a certified copy of the Bond Ordinance and such other ordinances or resolutions of the City which shall include the authorization of the execution, delivery and performance of the Bonds and the City Agreements, among other things, together with such reasonable number of copies of each of the foregoing as the Original Purchasers shall request.

(C) Each of the City and the Borrower hereby authorizes any and all of the material described above in Subsections (A) and (B) of this Section 3, the information contained in the Limited Offering Memorandum (and

the Preliminary Limited Offering Memorandum) and the Bond Ordinance and all other instruments, documents and agreements delivered pursuant to Section 8 of this Bond Purchase Agreement or in connection with the transactions contemplated hereby, for use in connection with the offering and sale of the Bonds. Each of the City and the Borrower hereby ratifies, approves, and consents to the use and distribution by the Original Purchasers, prior to or after the date hereof, of the Limited Offering Memorandum (and the Preliminary Limited Offering Memorandum) in connection with the offering of the Bonds. Each of the City and the Borrower hereby agrees to furnish such information, execute such instruments and take such other action to reasonably cooperate with the Original Purchasers if the Original Purchasers deem it reasonably necessary in order to qualify the Bonds for offering and sale under the "Blue Sky" or other securities laws and regulations of such states and other jurisdictions of the United States as the Original Purchasers may reasonably designate; provided, however, that the City shall not be required to execute a special or general consent to service of process or qualify as a foreign corporation in connection with any such qualification in any jurisdiction.

#### 4. Representations and Warranties of the City.

The City represents and warrants to and agrees with the Original Purchasers that:

(A) City. The City is a home rule unit and a municipal corporation duly organized, validly, existing and in good standing under the laws and the Constitution of the State of Illinois. The City is authorized and empowered by the Bond Ordinance, which remains in full force and effect, and such other ordinances or resolutions of the City as have been duly adopted

-6-

12959275v.8

by the City, to enter into the transactions contemplated by this Bond Purchase Agreement, the Bond Ordinance, the Limited Offering Memorandum, and the other City Agreements. The adoption of the Bond Ordinance and the execution, delivery and performance by the City of the City Agreements and the issuance of the Bonds are within the legal right, power and authority of the City, have been duly and validly authorized by all necessary proceedings of the City, and such execution, delivery and performance by the City as of the date of this Bond Purchase Agreement and as of the Closing Date do not and will not contravene, or constitute a breach of or default (with due notice or the passage of time or both) under, any provision of law, ordinance or regulation applicable to the City, or any provision of the municipal code or other rules and procedures of the City, or any judgment, order, decree, agreement or instrument binding on it or, except as described in the Limited Offering Memorandum, result in the creation of any lien or other encumbrance on any asset of the City. The Bond Ordinance constitutes, and the City Agreements, when executed and delivered by the City and any other parties thereto, will constitute valid and binding agreements of the City enforceable against the City in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization, or other similar laws affecting creditors' rights generally and by the availability of equitable remedies, and the Bonds, when issued and delivered by the City in accordance with this Bond Purchase Agreement and the Bond Ordinance will have been duly authorized and issued and will constitute valid and binding obligations of the City enforceable against the City in accordance with their terms, except to the extent limited by bankruptcy, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and by the availability of equitable remedies. When delivered to and paid for by the Original Purchasers at the Closing in accordance with the provisions of this Bond Purchase Agreement, the Bonds will conform in all material respects to the description thereof contained in the Limited Offering Memorandum.

(B) Use of Proceeds. The City will not take or omit to take any action which will in any way cause or result in the proceeds from the sale of the Bonds being applied other than as provided in the Bond Ordinance and the Indenture and as described in the Limited Offering Memorandum. Such proceeds will not be used by the City in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of the Code, or any successor thereto, and the applicable regulations promulgated or proposed thereunder.

(C) Governmental Authorization. All authorizations, consents and approvals of any Governmental Body required in connection with the execution and delivery by the City of, or in connection with the performance by

the City of its obligations under, the Bonds, the Bond Ordinance or the City Agreements, have been obtained and are in full force and effect, or will be obtained prior to Closing and will be in full force and effect as of the Closing Date.

(D) Preliminary Limited Offering Memorandum and Limited Offering Memorandum. The Preliminary Limited Offering Memorandum did not, as of its date, and the Limited Offering Memorandum did not, as of its date, and will not as of the date of the Closing, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading in any material respect; provided, however, that the City makes no representation or warranty as to the statements and information contained in the Official Statement other than the City Information, except to the extent that information under such captions was based upon information supplied by, or solely within the knowledge of, the

**-7-**

12959275v.8

City. The City hereby consents to the use of the Limited Offering Memorandum in connection with the solicitation of purchases of the Bonds by the Original Purchasers and confirms that it has consented to the use of the Preliminary Limited Offering Memorandum for such purpose prior to the availability of the Limited Offering Memorandum.

(E) No Liens or Encumbrances. Other than as specifically set forth in the Limited Offering Memorandum, there are no existing liens, claims, charges or encumbrances on or rights to any funds, revenues or interests pledged pursuant to the Bond Ordinance which are senior to, or on a parity with, the claims of the holders of the Bonds. Other than as specifically disclosed in the Limited Offering Memorandum, the City has not entered into any contract or arrangement of any kind, and there is no existing, pending, threatened, or anticipated event or circumstance that might give rise to any lien, claim, charge or encumbrance on or right to the assets, properties, funds, or interests pledged pursuant to the Bond Ordinance which would be prior to, or on a parity with, the claims of the holders of the Bonds. The City is lawfully entitled to receive, pledge and assign all amounts or revenues which have been pledged or assigned as security for the payment of the principal of and interest on the Bonds.

(F) No Litigation. Except as described in the Limited Offering Memorandum, as of the date of this Bond Purchase Agreement and as of the Closing Date (i) there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or any governmental agency or public board or body, pending against the City or, to the knowledge of the City, threatened against the City, to restrain or enjoin, or threatening or seeking to restrain or enjoin, the issuance, sale or delivery of the Bonds or the delivery by the City of any of the City Agreements, or the collection of Revenues, or in any way contesting or affecting the validity of the Bonds, or any of the City Agreements, or in any way questioning or affecting (w) the proceedings under which the Bonds are to be issued, (x) the validity or enforceability of any provision of the Bonds, the Bond Ordinance or this Bond Purchase Agreement, (y) the authority of the City to perform its obligations hereunder or with respect to the Bonds, or to consummate any of the transactions set forth in the City Agreements as contemplated hereby or by the Bond Ordinance or the Limited Offering Memorandum, (z) the legal existence of the City, or officers to their offices, and (ii) there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or any governmental agency or public board or body, pending against the City or, to the knowledge of the City, threatened against the City, involving any of the property or assets within the City which may result in any material adverse change in the Revenues, or the proposed construction or operation of the Project by the Borrower pursuant to the Loan Agreement.

(G) Certificates. Any certificate signed by an authorized officer of the City and delivered to the Original Purchasers and/or the Trustee shall be deemed a representation and covenant by the City to the Original Purchasers and/or the Trustee as to the statements made therein as of the date so delivered.

(H) The Bond Ordinance. The Bond Ordinance is in full force and effect, and has not been amended, modified, revoked or repealed.

- 8 -

12959275v.8

5. Representations and Warranties of the Borrower.

The Borrower represents and warrants to and agrees with the Original Purchasers and the City that:

(A) Organization and Power. The Borrower is duly organized and validly existing limited liability company and is in good standing under the laws of the State of Illinois, and has all power and authority and all governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted and to enter into and perform its obligations under the Borrower Agreements to which it is or is to be a party.

(B) Authorization of Borrower Agreements, Etc. The Borrower Agreements, when executed and delivered by the Borrower and any other parties thereto, will constitute the legal, valid and binding agreements of the Borrower enforceable against it in accordance with their respective terms; provided that the enforceability of the Borrower Agreements may be limited by bankruptcy, reorganization, insolvency and similar laws affecting the enforcement of creditors' rights and remedies generally, as applied in the event of bankruptcy, reorganization or insolvency of the Borrower and to equitable remedies. The Borrower has duly authorized all necessary action to be taken by it for the execution and delivery of the Borrower Agreements to which it is or is to be a party, and any and all other agreements and documents as may be required to be executed or delivered by it in order to effectuate the transactions contemplated herein and therein.

(C) No Material Change. Other than as disclosed in the Limited Offering Memorandum, (i) the Borrower has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business and (ii) there has been no material adverse change in the business, financial position, prospects or results of operations of the Borrower, which would affect the ability of the Borrower to perform its obligations pursuant to Borrower Agreements.

(D) Noncontravention. The execution, delivery and performance by the Borrower of its obligations under the Borrower Agreements do not and will not contravene, or constitute a default under, any provision of its organizational documents or, to our knowledge, applicable law or regulation or of any agreement, judgment, "injunction, order, decree or other instrument binding upon the Borrower, and will not result in the creation of any lien or other encumbrance upon any asset of the Borrower except as set forth in the Limited Offering Memorandum.

(E) Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any Governmental Body or corporate entity in connection with the execution or delivery by the Borrower of the Borrower Agreements, or, if any such action is required, the same has been duly taken, is in full force and effect and constitutes valid and sufficient consent or approval therefor, except for those which are customarily obtained during construction of the Project. The Borrower has no reason to believe any such consent or approval will not be obtained in due course.

-9-

12959275V.8

(F) Title to Project. The Borrower has, or will have as of the Closing, good and marketable leasehold title to the real property constituting the Project.

(G) Permitted Encumbrances. On the date of Closing, Permitted Encumbrances will not interfere with or impair the operation of, or materially adversely affect the value of, the Project.

(H) Zoning and Land Use. The Borrower is not in violation of any zoning or land use laws relating to the Project, the violation of which would have a material adverse effect on the Project or on the right of the Borrower to use such Project or the operations there conducted.

(I) No Litigation. Except as described in the Limited Offering Memorandum, as of the date of this Bond Purchase Agreement and as of the Closing Date, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or any governmental agency or public board or body, pending against the Borrower or, to our knowledge, threatened against the Borrower (i) contesting or in any way relating to (a) the construction and development of the Project, (b) the generation of Revenues or the transactions contemplated



by the issuance of the Bonds or as otherwise described in the Limited Offering Memorandum, (ii) which in any way contests the existence or power of the Borrower, or (iv) the validity or enforceability of the Bonds, the Borrower Agreements or the Limited Offering Memorandum or which if adversely determined could have a material adverse effect on the Borrower, or the Project.

(J) Preliminary Limited Offering Memorandum and Limited Offering Memorandum. The Borrower has duly authorized all necessary action to be taken by it for approval of the Borrower Information. The Preliminary Limited Offering Memorandum did not, as of its date, and the Limited Offering Memorandum did not, as of its date, and will not as of the date of the Closing, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading. The Borrower hereby consents to the use of the Limited Offering Memorandum in connection with the solicitation of purchases of the Bonds by the Original Purchasers and confirms that it has consented to the use of the Preliminary Limited Offering Memorandum for such purpose prior to the availability of the Limited Offering Memorandum.

(K) Use of Proceeds. The Borrower will not take or omit to take any action which will in any way cause or result in the proceeds of the sale of the Bonds being applied in a manner other than as provided in the Bond Ordinance, the Indenture and the Loan Agreement and as described in the Limited Offering Memorandum. Such proceeds will not be used by the Borrower in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of the Code, or any successor thereto, and the applicable regulations promulgated or proposed thereunder.

(L) No Default. No default or event of default on the part of the Borrower has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default on the part

**-10-**

12959275v.8

of the Borrower, or any other material agreement or material instrument to which the Borrower is a party or by which the Borrower is or may be bound.

(M) Approvals. The Borrower has received, or reasonably anticipates that it will receive, and is in good standing with respect to any applicable certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to operate and continue to operate the Project and otherwise to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it. Except for federal or state securities or "blue sky" laws or requirements or registration relating to the marketing of the Bonds about which the Borrower takes no position, the Borrower has obtained any applicable certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to construct the Project, except for final engineering to be completed as part of the Project, and those the nature of which cannot be given until construction of the Project is sufficiently underway. The Borrower has no reason to believe that any additional approvals, licenses or permits necessary for the construction, equipping, occupancy and use of the Project will not be obtained in due course.

(N) Certificates. Any certificate signed by an authorized representative of the Borrower and delivered to the City or the Original Purchasers shall be deemed a representation and warranty by the Borrower to the City and the Original Purchasers as to the statements made by Borrower therein as of the date so delivered.

(O) Environmental Representation. To the best of the Borrower's knowledge, and except as otherwise disclosed in the documents and information set forth on Schedule 2.7 of the Mortgage and Security Agreement, and other than those toxic or hazardous substances used in accordance with federal, state and local laws, regulations and requirements, no toxic or hazardous substances, including without limitation, asbestos, and the group of organic compounds known as polychlorinated biphenyls, have been generated, treated, stored or disposed of, or otherwise deposited in or located on the real property on which the Project shall be constructed and no activity has been undertaken at the real property on which the Project shall be constructed which could:

- (i) cause the Project or any part thereof to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring such property within the ambit of, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"), or any other similar state law or local ordinance;
- (ii) cause a release or threatened release of hazardous materials, wastes or substances from the site or any part thereof within the meaning of, or otherwise bring such property or any part thereof within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C, Sections 9601-9657 ("CERCLA"), or any similar state law or ordinance or any other environmental law;
- (iii) cause the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the

- 11 -

12959275v.8

Federal Water Pollution Control Act, 33 U.S.C, Section 1251 et seq., or the Clean Air Act, 41 U.S.C, Section 7401 et seq., or any similar state law or local ordinance; or

- (iv) support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements.

(P) ERISA. The Borrower has not incurred any accumulated material funding deficiency within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA") nor has it incurred any material liability to the Pension Benefit Guaranty Corporation established under ERISA (or any successor thereto) in connection with any employee pension benefit plan established or maintained by it, and there have been no "reportable events" or "prohibited transactions" with respect to any such plan, as those terms are defined in Section 4043 of ERISA and Section 4975 of the Code, respectively;

(Q) Security Interests. The security interests created by the Borrower in favor of the Trustee under the Indenture, the Loan Agreement and the Mortgage and Security Agreement, as applicable, will at all times constitute valid first priority, perfected security interests in the collateral described therein, subject only to Permitted Encumbrances. All filings or recordings required in order to perfect the security interests created by the Borrower under the Indenture, the Loan Agreement and the Mortgage and Security Agreement, as applicable, that can be perfected by filing only will be made on or prior to the Closing

(R) Form of Bond and Indenture. The Borrower approves the form and terms of the Bonds and the Indenture and agrees that the issuance of such Bonds satisfies the terms and conditions of the Loan Agreement relating to the City's obligation to issue the Bonds.

#### 6. Representations and Warranties and Agreements of the Original Purchasers.

(A) Limited Offering. The Original Purchasers agree to make a limited offering of the Bonds to no more than 35 Sophisticated Investors, at a price or prices (or yield or yields) not in excess of the offering price or prices (or not lower than the yield or yields) set forth on the cover page of the Limited Offering Memorandum. The Original Purchasers agree to obtain investor letters for each buyer of the Bonds as provided under the Limited Offering Memorandum. The Original Purchasers represent, warrant and covenant to the City and the Borrower that the Bonds will be offered in accordance with all applicable federal, state and local laws. The Original Purchasers further represent, warrant and covenant that they have been duly authorized to execute this Bond Purchase Agreement, and that when executed by the Original Purchasers and the other parties thereto, this Bond Purchase Agreement will be a valid and binding obligation of the Original Purchasers. The respective obligations of the City and the Borrower hereunder are subject to the performance by the Original Purchasers of their obligations hereunder.

(B) Limited Offering Memorandum. The descriptions and information contained in the Limited Offering Memorandum under the captions "DEBT SERVICE SCHEDULE"; "UNDERWRITING" and "LIMITED OFFERING" are, and as of the date of the Closing will be, true and correct in all material respects and such descriptions and information in

-12-

12959275v.8

the Limited Offering Memorandum, as of its date and as of the Closing Date will not contain an untrue, incorrect or misleading statement of a material fact; and such descriptions and information in the Limited Offering Memorandum do not, as of its date and as of the Closing Date will not omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

7. Termination of this Bond Purchase Agreement.

The Original Purchasers shall have the right to cancel its obligation to purchase the Bonds, if, between the date hereof and the date of Closing, (i) legislation shall be enacted, or actively considered for enactment, by the Congress or recommended by the President of the United States to the Congress for passage, or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration, a decision by a court of the United States or the United States Tax Court shall be rendered, or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other agency or department of the United States shall be made or proposed to be made which has the purpose or effect, directly or indirectly, of imposing federal income taxes upon interest on the Bonds; (ii) any other action or event shall have transpired which has the purpose or effect, directly or indirectly, of materially adversely affecting the federal income tax consequences of any of the transactions contemplated in connection herewith or contemplated by the Limited Offering Memorandum, or, in the reasonable opinion of the Original Purchasers, such action or event pertaining to the federal income tax consequences referenced above materially adversely affects the market for the Bonds or the sale, at the contemplated offering price or prices (or yield or yields), by the Original Purchasers of the Bonds; (iii) legislation shall be enacted, or actively considered for enactment by the Congress, with an effective date on or prior to the date of Closing, or a decision by a court of the United States shall be rendered, or a ruling or regulation by the Securities and Exchange Commission or other governmental agency having jurisdiction over the subject matter shall be made, the effect of which is that (A) the Bonds are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or (B) the Indenture is not exempt from the registration, qualification or other requirements of the Trust Indenture Act of 1939, as amended and as then in effect; (iv) a stop order, ruling or regulation by the Securities and Exchange Commission shall be issued or made, the effect of which is that the issuance, offering or sale of the Bonds, as contemplated herein and in the Limited Offering Memorandum, is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect; (v) there shall occur any event which in the reasonable judgment of the Original Purchasers either (A) makes untrue, incorrect or misleading in any material respect any statement or information contained in the Limited Offering Memorandum or (B) is not reflected in the Limited Offering Memorandum but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect and, in either such event, the City or the Borrower refuse to permit the Limited Offering Memorandum to be supplemented to correct or supply such statement or information, or the effect of the Limited Offering Memorandum as so corrected or supplemented is such as, in the reasonable judgment of the Original Purchasers, would materially adversely affect the market for the Bonds or the sale, at the contemplated offering price or prices

-13-

12959275v.8

(or yield or yields), by the Original Purchasers of the Bonds; (vi) there shall occur any outbreak or continuation of hostilities or any regional, national or international calamity or crisis, acts of terrorism or a financial crisis and the effect is such as, in the reasonable judgment of the Original Purchasers, would materially adversely affect the market for or the marketability of the Bonds or obligations of the general character of the Bonds; (vii) a general suspension of trading on the New York Stock Exchange is in force; (viii) a general banking moratorium is declared by federal or state authorities; (ix) the Limited Offering Memorandum is not executed,

approved and delivered in accordance with Section 3 above; (x) in the reasonable judgment of the Original Purchasers, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be adversely affected because: (A) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, or (B) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters; (xi) a war involving the United States of America shall have been declared, or any conflict involving the armed forces of any country shall have escalated, or any other international, national or regional emergency or acts of terrorism relating to or affecting the effective operation of government or the financial community shall have occurred, which, in the reasonable judgment of the Original Purchasers, materially adversely affects the market for the Bonds or of obligations of the general character of the Bonds; (xii) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Bonds or in any way protesting or affecting any authority for or the validity of the Bonds, the Bond Ordinance, the existence or powers of the City, or any event described or contemplated by the Limited Offering Memorandum; (xiii) there shall have occurred a default with respect to the debt obligations of, or the institution of proceedings under any federal bankruptcy laws by or against, any state of the United States or any City or political subdivision of any state, the effect of which, in the reasonable judgment of the Original Purchasers, would materially adversely affect the ability of the Original Purchasers to market the Bonds.

8. Conditions of Closing.

The Original Purchasers' obligation to purchase, to accept delivery of and pay for the Bonds under this Bond Purchase Agreement is subject to the performance by the City and the Borrower of their respective obligations hereunder at and prior to the Closing Date, to the accuracy in all material respects of the representations and warranties of the City and the Borrower contained herein as of the Closing Date, and to the following conditions, including the delivery of such documents as are enumerated herein in form and substance satisfactory to the Original Purchasers and its counsel as of the Closing Date:

(A) Bond Ordinance in Effect and City in Compliance Therewith. At the time of the Closing (i) the Bond Ordinance shall be in full force and effect, and shall not have been amended, modified or supplemented since the date hereof, except as may have been agreed to in writing by the Original Purchasers, and the City shall have duly adopted and there shall be in full force and effect such additional resolutions, ordinances or agreements as shall be, in the opinion of Co-Bond Counsel, necessary in connection with the transactions contemplated hereby and (ii) the City shall perform or have performed all of its obligations required under or specified in

-14-

I2959275V.8

this Bond Purchase Agreement with regard to the Bonds or the Bond Ordinance to be performed at, simultaneously with or prior to the Closing.

(B) Opinion of Co-Bond Counsel. The Original Purchasers shall have received an unqualified approving legal opinion dated the Closing Date as to the Bonds, addressed to the Original Purchasers, the Borrower, the City and the Trustee, from Foley & Lardner, LLP and Gonzales, Saggio and Harlan, LLC, Co-Bond Counsel, satisfactory in form and substance to the Original Purchasers, and substantially in the form attached hereto as Exhibit "A".

(C) Opinion of Original Purchasers' Counsel. The Original Purchasers shall have received a favorable opinion dated the Closing Date, addressed to the Original Purchasers, from Golden & Associates P.C, satisfactory in form and substance to the Original Purchasers, and substantially in the form attached hereto as Exhibit "B".

(D) Opinion of Counsel to the City. The Original Purchasers shall have received a favorable opinion dated the Closing Date, addressed to the Original Purchasers, Bond Counsel, the Borrower and the Trustee, from its

Corporation Counsel satisfactory in form and substance to the Original Purchasers, and substantially in the form attached hereto as Exhibit "C".

(E) Opinion of Counsel to the Borrower. The Original Purchasers shall have received a favorable opinion dated the Closing Date, addressed to the Original Purchasers, the City, the Trustee and Bond Counsel from Maurides Foley & Tabangay LLC, Chicago, Illinois, counsel to the Borrower, satisfactory in form and substance to the Original Purchasers, and substantially in the form attached hereto as Exhibit "D".

(F) Performance; No Default. Each of the City and the Borrower shall have performed and complied with all agreements and conditions herein required to be performed or complied with by each of them prior to or on the Closing Date, and at the time of the Closing no event of default or default shall have occurred and be continuing with respect to the City Agreements, the Borrower Agreements or the Bonds.

(G) City and Borrower Agreements. At the Closing Date, (i) all of the City Agreements and the Borrower Agreements shall be in full force and effect, shall have been duly executed and copies delivered to the Original Purchasers by, and shall constitute valid and binding agreements of, the parties thereto, shall not have been amended, modified or supplemented except as may have been agreed to in writing by the Original Purchasers and there shall be no defaults or events of default thereunder and (ii) the proceeds of the sale of the Bonds shall be applied or deposited with the Trustee for application as described in the Bond Ordinance and the Limited Offering Memorandum.

(H) Closing Certificate of the City. The City shall have delivered to the Original Purchasers a certificate dated the Closing Date, addressed to the Original Purchasers and the Trustee signed by an Authorized Officer of the City in form and substance reasonably satisfactory to the Original Purchasers.

- 15 -

12959275v.8

(I) Officer's Certificate of the Borrower. The Borrower shall have delivered to the Original Purchasers a certificate dated the Closing Date, addressed to the Original Purchasers signed by an authorized officer of the Borrower, in form and substance satisfactory to the Original Purchasers.

(J) The Bonds. The Bonds shall have been duly authorized, executed, authenticated, delivered, and the proceeds from the sale thereof applied, in accordance with the provisions of the Bond Ordinance.

(K) Trustee's Certificate. The Original Purchasers shall have received a certificate dated the Closing Date of an authorized officer of the Trustee, in form and substance satisfactory to the Original Purchasers.

(L) Form 8038. The Original Purchasers shall have received a copy of the completed Form 8038 of the Internal Revenue Service executed by the City.

(M) Miscellaneous Certificates. The Original Purchasers shall have received any and all certificates required to be furnished by the provisions of any of the City Agreements or the Borrower Agreements to be obtained or furnished by the City and/or the Borrower at or prior to Closing.

(N) Specimen Bonds. The Original Purchasers shall have received specimen Bonds.

(O) Certified Copies of Bond Ordinance. The Original Purchasers shall have received certified copies of the Bond Ordinance. The Bond Ordinance shall include authorization for execution and delivery of this Bond Purchase Agreement.

(P) Good Standing Certificate. The Original Purchasers shall have received good standing certificates for the Borrower from the Secretary of State of Illinois.

(Q) Title Insurance. The Original Purchasers shall have received copies of an Owner's title insurance policy or policies (or commitment(s) therefor) issued by a title insurance company showing title to the real property on which the Project shall be constructed in the name of the Borrower, and a loan policy naming the Trustee as the named insured. Such policies (or commitments) shall be in such form, provide coverage in such amount and include such endorsements as shall be acceptable to the Original Purchasers.

(R) Deed. The Original Purchasers shall have received an executed copy of the Trustee's Deed executed by Chicago Title Land Trust Company, as Trustee under Trust Agreement dated November 27, 1989, also known

as Trust No. 109903-07 conveying title to the real property on which the Project shall be constructed to Borrower.

(S) Land Survey. The Original Purchasers shall have received from the Borrower the land survey for the real property on which the Project shall be constructed.

(T) Project Cost Certificate. The Original Purchasers shall have received a certificate from the Borrower's engineer, construction contractor or architect dated the Closing

- 16-

12959275v.8

Date in form and substance satisfactory to the Original Purchasers stating that the costs reflected in the Limited Offering Memorandum will be sufficient to complete the Project, as proposed, and such other matters as the Original Purchasers shall reasonably require.

(U) Insurance Policies. The Borrower shall have delivered to the City adequate evidence of insurance as required pursuant to the terms of the Loan Agreement.

(V) Permits. The Borrower shall have received a copy of any permits or licenses which the Borrower is presently required to maintain in order to acquire, construct or equip the Project, including the approvals from the District.

(W) Financing Statements. The Original Purchasers shall have received copies of all UCC financing statements relating to the Indenture, the Loan Agreement and the Mortgage and Security Agreement.

(X) Mortgage. The Original Purchasers shall have received evidence of recording of the Mortgage and Security Agreement

(Y) Payment and Performance Bonds. The Original Purchasers shall have received executed copies of the Payment and Performance Bonds.

(Z) Construction Manager Contract. The Original Purchasers shall have received an executed copy of the Standard Form of Agreement between Owner and Construction (Manager dated December 17, 2010, between the Borrower, Trustee, and Piping and Equipment Co., Inc.

(AA) Construction Contract. The Original Purchasers shall have received executed copies of (i) The Design-Build Construction Agreement dated October 15, 2010 between Asphalt Operating Services of Chicago, LLC and ECF, Inc., as amended; (ii) The Standard Form of Agreement Between Design-Builder and Contractor [Civil] between ECF, Inc. and Carlson Constructors Corp. dated October 15, 2010, as amended; (iii) The Standard Form of Agreement Between Design-Builder and Contractor [Mechanical] between ECF, Inc. and Carlson Constructors Corp. dated October 15, 2010, as amended; (iv) The Standard Form of Agreement Between Design-Builder and Contractor between ECF, Inc. and CBI Services, Inc. dated December 17, 2010, as amended; (v) The Standard Form of Agreement Between Design-Builder and Contractor between ECF, Inc. and Railworks Track Services, Inc. dated November 1, 2010, as amended; and (vi) The Standard Form of Agreement Between Design-Builder and Contractor between ECF, Inc. and Raffin Construction Co. dated October 19, 2010, as amended.

(BB) Additional Opinions, Certificates, etc. The Original Purchasers shall have received such additional legal opinions, certificates, proceedings, instruments and other documents as the Original Purchasers, the City or their respective counsel may deem reasonably necessary or desirable.

All of the opinions, letters, certificates, instruments and other documents mentioned in this Bond Purchase Agreement shall be deemed to be in compliance with the provisions of this Bond Purchase Agreement only if in the reasonable judgment of the Original Purchasers, they are satisfactory in form and substance. Payment for the Bonds and acceptance of the Bonds by

- 17-

12959275v.8

the Original Purchasers shall constitute acknowledgment by the Original Purchasers of the City's full performance hereunder.

If there shall be a failure to satisfy the conditions of the Original Purchasers' obligations contained in this Bond

Purchase Agreement or if the Original Purchasers' obligations to purchase the Bonds shall be terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement shall terminate, and the Original Purchasers, the City and the Borrower shall not have any further obligations hereunder, except for the obligations set forth in Section 10 hereof which shall remain in full force and effect.

9. Changes Affecting the Limited Offering Memorandum.

At any time prior to the Closing, each of the City and the Borrower agrees to supplement or amend the Limited Offering Memorandum whenever requested by the Original Purchasers when, in the reasonable judgment of the Original Purchasers, the City and the Borrower, such supplement or amendment is required. No amendment or supplement to the Limited Offering Memorandum shall be made without the approval of the Original Purchasers. After the Closing and so long as the Original Purchasers or any participating dealer shall be offering Bonds, but not later than 90 days after the date of this Bond Purchase Agreement if any event shall occur as a result of which it is necessary to amend or supplement the Limited Offering Memorandum in order to make the statements therein, in light of the circumstances under which they are made, not misleading, the City or the Borrower will so advise the Original Purchasers. In any such case, the City and the Borrower shall reasonably cooperate in the preparation, execution and delivery of either amendments to the Limited Offering Memorandum or supplemental information so that the statements in the Limited Offering Memorandum, as so amended or supplemented will not, in light of the circumstances under which such statements were made, be misleading. The cost of providing such amendments or supplements shall be paid by the Borrower.

10. Payment of Expenses.

If the Bonds are sold to and purchased by the Original Purchasers as contemplated hereunder and the sales proceeds thereof are lent by the City to the Borrower as contemplated under the Loan Agreement, then the Original Purchasers shall be under no obligation to pay any expenses incident to the issuance of the Bonds, and all reasonable fees, costs and expenses associated with the issuance of the Bonds, including without limitation, the reasonable fees and disbursements of legal counsel, professional fees, printing and the costs associated with the CUSIP number for the Bonds shall be disbursed and paid by the Trustee from the proceeds of the Bonds or from Borrower funds, subject to any limitations of the Indenture and the Code.

11. Notices.

Except as otherwise provided in this Bond Purchase Agreement, whenever notice is required to be given pursuant to the provisions of this Bond Purchase Agreement, such notice shall be in writing and shall be mailed by first class mail postage prepaid at the applicable addresses set forth above, and in the case of the Original Purchasers, to their respective addresses set forth in the Limited Offering Memorandum.

-18-

12959275v.8

12. Law Governing.

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

13. Headings.

The headings of the paragraphs and subparagraphs of this Bond Purchase Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Bond Purchase Agreement.

14. Counterparts.

This Bond Purchase Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

15. Parties and Interests.

This Bond Purchase Agreement is made solely for the benefit of the City, the Original Purchasers and the Borrower, including the successors and assigns of the Original Purchasers, and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof.

16. Indemnification.

(a) The Borrower agrees to indemnify, defend and hold harmless (a) the Original Purchasers, each director,

trustee, member, officer, agent or employee and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Original Purchasers, pursuant to the Original Purchasers' regulations or Bylaws, or who controls the Original Purchasers within the meaning of Section 20 of the Exchange Act or Section 15 of the Securities Act, by contract or otherwise, and (b) the City, each director, trustee, member, officer, agent or employee and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the City (collectively called the "Section 16(b) Indemnified Parties"), from and against any and all losses, claims, damages, liabilities or expenses to the extent caused by or arising out of any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact (unless such allegation is (i) made by the Original Purchasers or the City, as the case may be, and (ii) such allegation is proven or otherwise determined to be false) contained in any of the Borrower Information, or caused by any omission or alleged omission to state in the Borrower Information a material fact required to be stated in the Borrower Information or necessary to make the statements in the Borrower Information, in the light of the circumstances under which they were made, not misleading.

In case any claim shall be made or any action shall be brought against one or more of the Section 16(b) Indemnified Parties desiring to seek indemnification pursuant to this Section 16(b), the Section 16(b) Indemnified Parties seeking indemnity shall promptly notify the Borrower in writing, and the Borrower shall promptly assume the defense thereof, including the

-19-

12959275v.8

employment of counsel chosen by the Borrower and approved by the Original Purchasers and the City, which approval will not be unreasonably withheld, and the payment of all expenses and disbursements of such counsel related to such defense. If any of the Section 16(b) Indemnified Parties is advised by counsel that there may be legal defenses available to it which are adverse to or in conflict with those available to the Borrower or any other Section 16(b) Indemnified Party, or that the defense of such Section 16(b) Indemnified Party should be handled by separate counsel, the Borrower shall not have the right to assume the defense of such Section 16(b) Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained by such Section 16(b) Indemnified Party in assuming its own defense, and provided also that if the Borrower shall have failed to assume the defense of such action or to retain counsel satisfactory to the Original Purchasers and the City within a reasonable time after notice of the commencement of such action, the fees and expenses of counsel retained by the Section 16(b) Indemnified Parties shall be paid by the Borrower. Notwithstanding, and in addition to, any of the foregoing, and subject to the approval of the Borrower, which approval will not be unreasonably withheld, any one or more of the Section 16(b) Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Section 16(b) Indemnified Party or Parties unless the employment of such counsel has been specifically authorized, in writing, by the Borrower, or unless such retention is specifically authorized herein. The Borrower shall not be liable for any settlement of any proceeding effected without its written consent, but, if settled with such written consent or if there shall be a final judgment for the plaintiff, the Borrower agree to indemnify the Section 16(b) Indemnified Parties from and against any loss, damage, cost, expense or liability by reason of such settlement or judgment.

(b) The Original Purchasers jointly and severally agree to indemnify and hold harmless (i) the Borrower and each person who controls the Borrower within the meaning of the Securities Act or the Securities Exchange Act of 1934, as amended and (ii) the City and its officers, employees, attorneys and agents against any and all loss, liability, claim, damage and expense with respect to (A) untrue statements or omissions, or alleged untrue statements or omissions, made in the Limited Offering Memorandum (or any amendment or supplement thereto) under the heading "UNDERWRITING"; or (B) any material misstatements or omissions made by any agent, employee or officer of the Original Purchasers or anyone authorized by the Original Purchasers to sell the Bonds made in connection with any offer to sell a Bond if such misstatements or omissions arise from



providing any information concerning the Bonds to purchasers or potential purchasers of a Bond other than a complete Limited Offering Memorandum; or (C) any and all liabilities, losses, damages, costs expenses (including reasonable attorney's fees), suits, claims, demands and judgments of any kind, character and nature caused by or directly or indirectly arising out of Original Purchasers' failure to perform its obligations under this Agreement.

The Original Purchasers jointly and severally agree to reimburse the Borrower and the City for any expenses (including reasonable fees and expenses of counsel) incurred as a result of producing documents, presenting testimony or evidence or preparing to present testimony or evidence (based upon the time expended by the Borrower and the City at their then current time charges), in connection with any court or administrative proceeding (including any investigation which may be preliminary thereto) arising out of the Original Purchasers' indemnity obligations in this Section 16 relating to the offer, issuance or sale of the Bonds.

- 20 -

12959275v.8

(c) In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in this Section 16 is due in accordance with its terms but is for any reason held by a court to be unavailable to the Original Purchasers, the City or the Borrower or unenforceable on grounds of policy or otherwise, the Borrower and the Original Purchasers shall contribute to the aggregate losses, claims, damages, fines and liabilities (including any investigation, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claims asserted, but after deducting any contribution received by the Borrower or the Original Purchasers from persons other than the Borrower or the Original Purchasers who may be liable for contribution, such parties hereby agreeing to seek contribution from such persons) to which the Borrower and the Original Purchasers may be subject in such proportion so that the Original Purchasers is responsible for that portion represented by the percentage that the underwriting fee bears to the offering price appearing on the cover page of the Limited Offering Memorandum, and the Borrower is responsible for the balance; provided, however, in no case shall the Original Purchasers be responsible for any amount in excess of the amount of said underwriting fee received to such date and provided, further, that no person found guilty of fraudulent misrepresentation, error or omission shall be entitled to contribution (or costs of defense) from any person who was not found guilty of fraudulent misrepresentation, error or omission. For purposes of this Subsection 16(c), each partner, member, associate and employee of the Original Purchasers or the Borrower and each person who controls the Original Purchasers or the Borrower shall have the same rights to contribution as the Original Purchasers or the Borrower subject to the provisions in the preceding sentence relating to fraudulent misrepresentations. Any party entitled to contribution will promptly after receipt of notice of commencement of any action, threatened action, suit or proceeding against such party or parties under this Subsection 16(c), notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any other obligation it or they may have otherwise under this Subsection 16(c). Any notice given pursuant to Subsections 16(a) or (b) hereof shall be deemed to include notice under this Subsection 16(c).

#### 17. Further Financial Reports.

. The Borrower agrees to provide the financial reports and information described in the Loan Agreement which it has covenanted to provide to the Trustee, to the Original Purchasers and any Bondholder upon written request.

#### 18. Amendment or Assignment.

This Bond Purchase Agreement may not be amended except through the written consent of all of the parties hereto and is not assignable.

#### 19. Survival of Representations, Warranties, Agreements and Obligations.

Each respective representation, warranty and agreement of the City, the Borrower and the Original Purchasers shall remain operative and in full force and effect, regardless of any investigations made by or on behalf of the

Original Purchasers, the Borrower; and the City and shall survive the Closing. This Section 19, the obligations of the City under Sections 9 and 16

-21-  
12959275V.8  
hereof and the obligations of the Borrower under Sections 9, 10, 16 and 17 hereof shall survive any termination of this Bond Purchase Agreement pursuant to its terms!

20. Severability.

If any provision of this Bond Purchase Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all cases because it conflicts with any other provision or provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections in this Bond Purchase Agreement shall not affect the validity of the remaining portions of this Bond Purchase Agreement, or any part hereof.

21. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be regarded as the original and all of which shall constitute one and the same document.

22. Business Relationships with City Elected Officials.

Each Original Purchaser understands and agrees that it is required to and will comply with the provisions of Chapter 2-56 and 2-156 of the Municipal Code of Chicago (the "Municipal Code"). Pursuant to Section 2-156-030(b) of the Municipal Code, 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, 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) of the Municipal Code by any elected official with respect to this Agreement shall be grounds for termination of this Agreement. The term "business relationship" shall be defined as set forth in Section 2-156-080 of the Municipal Code.

23. No Pecuniary Liability of the City.

No provision, covenant or agreement contained herein, and no obligation herein imposed upon the City, or the breach thereof, shall constitute an indebtedness of the City within the meaning of any constitutional provision or any statutory limitation, or shall constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers. No provision, covenant, agreement or obligation contained herein or in the Bonds shall be deemed to be a provision, covenant, agreement or obligation of any present or future member of the City Council, officer, employee or agent of the City in his or her individual capacity, and neither the members of the City Council of the City nor any officer thereof executing this Bond Purchase Agreement or the Bonds shall be liable personally hereon or be subject to any personal liability or accountability by reason of the execution and delivery hereof or execution and delivery of the Bonds. No member of the City Council, officer, employee or agent of the City shall incur any

-22-  
12959275v.8  
personal liability with respect to any other action taken by him or her pursuant to this Bond Purchase Agreement or the Bonds or any of the transactions contemplated hereby provided he or she does not act in bad faith.

[SIGNATURES FOLLOW]

12959275v.8

-23-  
Very truly yours,

WILLIAM BLAIR & COMPANY L.L.C.

Accepted and agreed to by the undersigned as of the date first above written.  
ASPHALT OPERATING SERVICES OF CHICAGO, LLC an Illinois limited liability company

CITY OF CHICAGO,

By:\_\_\_\_\_  
Its: Chief Financial Officer  
Concurred:

By:\_\_\_\_\_  
Chairman, Committee on Finance of the City Council, Edward M. Burke  
Very truly yours,  
WILLIAM BLAIR & COMPANY L.L.C.

By:\_\_\_\_\_  
Its:\_\_\_\_\_  
Accepted and agreed to by the undersigned as of the date first above written.  
ASPHALT OPERATING SERVICES OF CHICAGO, LLC an Illinois limited liability company  
By:-  
Its:\_\_\_\_\_  
CITY OF CHICAGO,

Chairman, Committee on Finance of the City Council, Edward M. Burke

**-24-**

I2959275v.6

#### EXHIBIT D LIMITED OFFERING MEMORANDUM

#### **SUPPLEMENT TO LIMITED OFFERING MEMORANDUM Dated December 10, 2010**

#### **Relating to the**

\$45,000,000 CITY OF CHICAGO Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project)

**(the "Series 2010 Bonds")**

#### **OFFICIAL NOTICE**

THE FOLLOWING INFORMATION SUPPLEMENTS THE ABOVE-REFERENCED LIMITED OFFERING MEMORANDUM (THE "ORIGINAL LIMITED OFFERING MEMORANDUM") FOR THE SERIES 2010 BONDS. THE ORIGINAL LIMITED OFFERING MEMORANDUM IS SUPPLEMENTED, MODIFIED AND AMENDED BY THIS SUPPLEMENT ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS SUPPLEMENT. THIS SUPPLEMENT DOES NOT REPLACE THE ORIGINAL LIMITED OFFERING MEMORANDUM BUT MUST BE READ WITH THE ORIGINAL LIMITED OFFERING MEMORANDUM AND TOGETHER THE SUPPLEMENT AND THE ORIGINAL LIMITED OFFERING MEMORANDUM SHALL CONSTITUTE THE LIMITED OFFERING MEMORANDUM FOR THE SERIES 2010 BONDS. TERMS USED BUT NOT OTHERWISE DEFINED IN THIS SUPPLEMENT SHALL HAVE THEIR RESPECTIVE MEANINGS AS USED IN THE ORIGINAL LIMITED OFFERING MEMORANDUM.

#### **SUMMARY**

On Wednesday, December 15, 2010, the United States Justice Department sued BP Exploration & Production, Inc. ("BP Exploration") and eight other companies over the Gulf of Mexico oil spill of April 20, 2010. The lawsuit was filed after the date of the Original Limited Offering Memorandum. As such, the Original Limited Offering Memorandum is being supplemented to add the additional Risk Factor listed below.

#### **RISK FACTORS**

*The following new section is added as an additional Risk Factor.*

## Justice Department Lawsuit

On Wednesday, December 15, 2010, the United States Justice Department sued BP Exploration & Production, Inc. ("BP Exploration") and eight other companies over the Gulf of Mexico oil spill of April 20, 2010. BP Exploration is not involved in the Project. BP Exploration is owned by BP Pic, which also owns BP Corporation North America Inc. ("BPNA").

BPNA, an Indiana corporation, has entered into a Guaranty Agreement dated November 18, 2010, in favor of the Borrower with respect to BP Asphalt Terminalling Agreement.

The impact, if any, of the federal lawsuit on the financial condition of BP Pic and BPNA is not known at this time.

Dated: December 17, 2010

## NEW ISSUE BOOK-ENTRY ONLY NOT RATED

In the opinion of Foley & Lardner LLP, and Gonzalez, Saggio and Harlan, L.L.C., Co- Bond Counsel, based upon an analysis of existing laws, regulations, rulings and court decisions and, assuming among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2010 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, except for interest on the Series 2010 Bonds for any period during which the Series 2010 Bonds are held by a person who is a "substantial user" of the facilities financed with the Series 2010 Bonds or a "related person" within the meaning of Section 147(a) of the Code. In the opinion of Co- Bond Counsel, interest on the Series 2010 Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes and interest on the Series 2010 Bonds is not included in adjusted current earnings in determining federal alternative minimum taxable income of corporations. Interest on the Series 2010 Bonds is not exempt from present State of Illinois income taxes. Co- Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. See the heading "TAX MATTERS."

## \$45,000,000 CITY OF CHICAGO Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project)

6.125%

Dated: Date of Issuance Price 100% Due: December 1, 2018

This Limited Offering Memorandum is being furnished solely for consideration by prospective sophisticated purchasers of the City of Chicago Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) (the "Series 2010 Bonds"), with substantial financial resources and the experience and financial expertise to understand and evaluate the high degree of risk inherent in this investment. The purchase of the Series 2010 Bonds is an investment subject to a high degree of risk, including the risk of nonpayment of principal and interest. See "RISK FACTORS" herein.

The Series 2010 Bonds are issuable only as fully registered bonds without coupons and, when issued, will be registered in the name of Cede & Co., as nominee of the Depository Trust Company, New York, New York ("DTC"). Individual purchases will initially be made in book-entry form only, in principal amounts of \$1,000,000 or integral multiples of \$5,000 in excess thereof. Beneficial Owners of the Series 2010 Bonds will not receive physical certificates representing their interest in the Series 2010 Bonds purchased, except as otherwise set forth in the Indenture. Principal of, premium, if any, and interest (payable on June 1 and December 1 of each year, commencing June 1, 2011) on the Series 2010 Bonds are payable by Amalgamated Bank of Chicago, as Trustee, to DTC, which will remit such principal, premium, if any, and interest to DTC's Participants, who in turn will be responsible for remitting such payments to the Beneficial Owners of the Series 2010 Bonds, as described herein.

The proceeds derived from the sale of the Series 2010 Bonds will be loaned by the City of Chicago (the "City") to Asphalt Operating Services of Chicago, LLC (the "Borrower" or "AOSC"), an Illinois limited liability company, pursuant to the terms of a Loan Agreement dated as of December 1, 2010, between the City and the Borrower, in order to finance (i) the design, construction and equipping of a liquid asphalt terminal, (ii) a Debt Service Reserve Fund, (iii) capitalized interest on the Series 2010 Bonds and (iv) the costs of issuing the Series 2010 Bonds. See "SOURCES AND USES OF FUNDS."

The Series 2010 Bonds are secured by (i) a pledge of certain rights of the City under and pursuant to the Loan Agreement and all amounts payable to the City under the Loan Agreement (except amounts payable with respect to Unassigned Rights), (ii) a pledge of the amounts in all trust accounts created under the Indenture of Trust dated as of December 1, 2010, between the City and the Trustee (other than the Rebate Fund), (iii) a mortgage and first lien on the Project and security interest in certain pledged revenues of the Borrower, and (iv) collateral assignments of the Asphalt Terminalling Agreements and certain other contracts of the Borrower. The Borrower's primary source of revenue are three (3) separate Asphalt Terminalling Agreements (the "Asphalt Terminalling Agreements"). See "SUMMARY OF CERTAIN PROVISIONS OF THE ASPHALT TERMINALLING AGREEMENTS", and "SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL ASSIGNMENTS", and "SECURITY FOR THE SERIES 2010 BONDS."

THE SERIES 2010 BONDS, TOGETHER WITH INTEREST THEREON AND PREMIUM, IF ANY, WITH RESPECT THERETO, ARE SPECIAL, LIMITED OBLIGATIONS OF THE CITY SECURED BY AND PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE LOAN AGREEMENT. THE SERIES 2010 BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND PREMIUM WITH RESPECT THERETO DO NOT CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE PURVIEW OF ANY CONSTITUTIONAL LIMITATION OR PROVISION, OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS, IF ANY, OF ANY OF THEM. BUT SHALL BE SECURED, AND SHALL BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE LOAN AGREEMENT. NO OWNER OF THE SERIES 2010 BONDS SHALL HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OR ANY OTHER POLITICAL SUBDIVISION THEREOF TO PAY THE SERIES 2010 BONDS OR THE INTEREST OR PREMIUM, IF ANY, THEREON. THE CITY MAKES NO REPRESENTATION (EXPRESSLY OR IMPLIED) WITH RESPECT TO AND HAS NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONCERNING THE BORROWER, THE PROJECT OR THEIR RESPECTIVE BUSINESS OR OPERATIONS.

The Series 2010 Bonds are subject to redemption prior to maturity as set forth herein.

77k; Series 2010 Bonds are offered when, as, and if issued by the City subject to the approval of Foley & Lardner LLP, Chicago, Illinois, and Gonzalez, Saggio and Harlan, L.L.C., Chicago, Illinois as Co-Bond Counsel. Certain legal matters will be passed upon for the Borrower by Maurides Foley A Tabangay L.L.C., Chicago, Illinois, for the City by its Corporation Counsel, and for the Underwriters by Golden A Associates PC, Chicago, Illinois. It is expected that the Series 2010 Bonds will be available for delivery to DTC in New York, New York, on or about December 17, 2010.

## William Blair & Company Estrada Hinojosa & Company, Inc.

The date of this Limited Offering Memorandum is December 10, 2010.

12863764v. 15

LIMITED OFFERING MEMORANDUM

This Limited Offering Memorandum is being furnished by the City of Chicago (the "City") and Asphalt Operating Services of Chicago, LLC (the "Borrower") to a limited number (35 or less) of Qualified Institutional Buyers as defined in Rule 144A of the Securities Act of 1933 solely for the purpose of each investor's consideration of the purchase of the Series 2010 Bonds described herein, and is not to be used for any other purpose or made available to anyone not directly concerned with the decision regarding such purchase. This Limited Offering Memorandum does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2010 Bonds by any person, in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale. Interested investors are being provided the opportunity to ask such questions and examine such documents and records as they may desire, and are advised to contact the Underwriters to secure further information concerning the Series 2010 Bonds.

No dealer, broker, salesman or other person has been authorized to give any information or to make any representation other than as contained in this Limited Offering Memorandum in connection with the offering described herein, and, if given or made, such information or representation must not be relied upon as having been authorized. Certain information contained herein has been obtained from the City, the Borrower and other sources which are believed by the Underwriters to be reliable. In accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of this transaction, the Underwriters have reviewed the information in this Limited Offering Memorandum, but do not guarantee the accuracy or completeness of such information. Neither the delivery of this Limited Offering Memorandum nor the sale of any of the Series 2010 Bonds shall imply that the information herein is correct as of any time subsequent to the date hereof.

This Limited Offering Memorandum should be considered in its entirety and no one factor should be considered more or less important than any other by reason of its position in this Limited Offering Memorandum. Where statutes, reports, agreements or other documents are referred to herein, reference should be made to such statutes, reports, agreements or other documents for more complete information regarding the rights and obligations of parties thereto, facts and opinions contained therein and the subject matter thereof.

The Series 2010 Bonds have not been registered under the Securities Act of 1933, as amended, in reliance upon exemptions contained in such Act. The registration or qualification of the Series 2010 Bonds in accordance with the applicable provisions of securities laws of the states in which the Series 2010 Bonds have been registered or qualified and the exemption from registration or qualification in other states cannot be regarded as a recommendation thereof. Neither these states nor any of their agencies have passed upon the merits of the Series 2010 Bonds or the accuracy or completeness of this Limited Offering Memorandum. Any representation to the contrary may be a criminal offense.

THE SERIES 2010 BONDS HAVE RISK CHARACTERISTICS WHICH REQUIRE CAREFUL ANALYSIS AND CONSIDERATION BEFORE A DECISION TO PURCHASE IS MADE. THE SERIES 2010 BONDS SHOULD BE PURCHASED BY INVESTORS WHO HAVE ADEQUATE EXPERIENCE TO EVALUATE THE MERITS AND RISKS OF THE SERIES 2010 BONDS. PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS LIMITED OFFERING MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATION FROM THE UNDERWRITERS, THEIR AFFILIATES, OFFICERS AND EMPLOYEES OR ANY PROFESSIONAL ASSOCIATED WITH THIS OFFERING AS INVESTMENT OR LEGAL ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN COUNSEL, ACCOUNTANTS AND OTHER ADVISORS AS TO FINANCIAL, LEGAL AND RELATED MATTERS CONCERNING THE INVESTMENT DESCRIBED HEREIN.

12863764v. 15

CITY OF CHICAGO

Mayor Richard M. Daley City Treasurer Stephanie D. Neely City Clerk Miguel del Valle Chairman Committee on Finance

Edward M. Burke Chief Financial Officer Gene R. Saffold City Comptroller

Steven J. Lux Budget Director Eugene L. Munin Corporation Counsel Mara S. Georges Co-Bond Counsel Foley & Lardner LLP Gonzalez, Saggio and Harlan, L.L.C.

TABLE OF CONTENTS

INTRODUCTORY STATEMENT.....1

General Description of the Series 2010 Bonds.....2

Redemption.....2

Optional Redemption.....2

Mandatory Sinking Fund Redemption.....3

Extraordinary Redemption.....	3
Special Mandatory Redemption.....	3
Determination of Taxability.....	4
Partial Redemption.....	4
Procedure for and Notice of Redemption.....	4
Redemption Payments; Effect of Call for Redemption.....	5
Partial Redemption.....	5
Change In Denominations.....	5
Book-Entry-Only System.....	6
SOURCES AND USES OF FUNDS.....	8
DEBT SERVICE SCHEDULE.....	9
FINANCIAL PROJECTIONS AND EXPECTED DEBT SERVICE COVERAGE.....	9
SECURITY FOR THE SERIES 2010 BONDS.....	12
General.....	12
Limited Obligations.....	12
Debt Service Reserve Fund.....	12
Operating Reserve Account.....	13
SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.....	13
Funds and	
Accounts.....	13
Bond	
Fund.....	14
Project Fund.....	16
Debt Service Reserve Fund.....	17
Rebate Fund.....	18
Investment of Moneys.....	18
Supplemental Indentures of Trust.....	19
Amendments of Loan Agreement and Tax Agreement.....	20
Amendments to Collateral Assignments and Terminalling Agreements.....	21
Events of Default.....	21
Acceleration.....	22
Other Remedies; Rights of Bond Owners.....	22
Right of Bond Owners to Direct Proceeding.....	23
Appointment of Receiver.....	23
Waiver of Certain Laws.....	23
Application of Moneys.....	23
Remedies Vested in Trustee.....	24
Rights and Remedies of Bond Owners.....	24
Termination of Proceeding.....	25
Waivers of Events of Default.....	25
Notice of Default; Opportunity to Cure Defaults.....	25
Escrow Agreement.....	26
SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT.....	26
Disbursements from the Project Fund.....	26
Borrower Required to Pay Costs in Event Project Fund Insufficient.....	27
Payment Obligations of the Borrower, Pledge of Revenues and Payment of the Loan.....	27
Administrative Expenses.....	27
Debt Service Reserve Fund.....	28
Rebate Fund.....	28

Income Tax Reserve Account.....	28
Operating Reserve Account.....	28
Priority of Funds and Accounts.....	29
Obligations of Borrower Unconditional, Certain Payments Assigned.....	29
Operation of Project.....	29
Modification of Project.....	30
Removal of Equipment.....	30
Transfer of Project.....	31
Additional and Permitted Indebtedness.....	31
Insurance.....	31
Insurance Awards.....	31
Condemnation and Title Defects.....	31
Business Operations; Debt Service Coverage Ratio; Other Borrower Covenants.....	31
Tax-Exempt Status of Bonds.....	31
Borrower to Maintain Existence; Consolidation or Merger; Single Purpose Entity.....	31
Recording and Maintenance of Liens.....	31
Default and Remedies.....	31
Option to Prepay Upon Occurrence of Certain Events.....	31
Option to Prepay in Connection with Optional Redemption of Bonds.....	31
SUMMARY OF CERTAIN PROVISIONS OF THE MORTGAGE AND SECURITY AGREEMENT.....	31
SUMMARY OF CERTAIN PROVISIONS OF THE ASPHALT TERMINALLING AGREEMENTS.....	31
The Terminal/.....	31
Term.....	31
Services.....	31
Volume.....	31
Expenses.....	31
Construction of Facilities.....	31
Timeline.....	31
Non-Performance.....	31
Option to Purchase by BP Upon Borrower's Default.....	31
Guaranty Agreement.....	31
SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL ASSIGNMENTS.....	31
Collateral Assignments of the Asphalt Terminalling Agreements.....	31
Additional Collateral Assignments of the Construction Documents.....	31
THE BORROWER.....	31
Bartlett Terminal.....	31
Heritage.....	31
Financial Information.....	31
Management Agreement.....	31
THE PROJECT.....	31
Background:.....	31
Operations:.....	31
Terminal Location:.....	31
Office/Shop Assets:.....	31
Tank Storage:.....	31
Barge Operations:.....	31
Piping and Blenders:.....	31
Rail Operations:.....	31
12863764v. 15	
Truck Operations:.....	31
Major Contractors.....	31
Civil and Mechanical Work: Carlson Constructors Corporation.....	31

Storage Tanks: CBI Services, Inc.....	31
Tank Foundations: Raffin Construction Company.....	31
Rail: Railworks Track Services, Inc.....	31
Design-Builder.....	31
The Payment and Performance Bonds.....	31
Payment of Project's Construction Costs.....	31
Construction Monitor.....	31
THE CITY.....	31
RISK FACTORS.....	31
Reliance on the Asphalt Terminalling Agreements.....	31
Termination of the Asphalt Terminalling Agreements.....	31
Damage or Destruction of the Project.....	31
Environmental and Regulatory Risk.....	31
Construction of the Project.....	31
Potential Effects of Bankruptcy.....	31
Covenant To Maintain Tax-exempt Status of the Series 2010 Bonds.....	31
Enforcement of Remedies.....	31
Lack of Rating and Market for the Series 2010 Bonds.....	31
TAX MATTERS.....	31
NO LITIGATION.....	31
No Proceedings Against the Borrower.....	31
No Proceedings Against the City.....	31
UNDERWRITING.....	31
LEGAL OPINIONS.....	31
CONTINUING DISCLOSURE.....	31
LIMITED OFFERING.....	31
NO RATING.....	31
MISCELLANEOUS.....	31
AUTHORIZATION.....	31
APPENDIX A INDENTURE	
APPENDIX B LOAN AGREEMENT	
APPENDIX C MORTGAGE AND SECURITY AGREEMENT	
APPENDIX D FORM OF OPINION OF BOND COUNSEL	
APPENDIX E FORM OF INVESTOR REPRESENTATION LETTER	

iii

12863764y. 15

## **\$45,000,000 CITY OF CHICAGO Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project)**

### **INTRODUCTORY STATEMENT**

This Limited Offering Memorandum, which includes the cover page and Appendices attached hereto, is provided to furnish information in connection with the issuance and sale by the City of Chicago (the "City") of \$45,000,000 aggregate principal amount Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) (the "Series 2010 Bonds"). The Series 2010 Bonds will be special, limited obligations of the City as described under the caption "SECURITY FOR TFLE SERIES 2010 BONDS-Limited Obligations." Capitalized terms used but not defined in this Limited Offering Memorandum shall have the meanings given such terms in the Indenture and Loan Agreement. See "APPENDIX A-Indenture" and "APPENDIX B-Loan Agreement."

The Series 2010 Bonds will be issued under an Indenture of Trust dated as of December 1, 2010 (the "Indenture") between the City and Amalgamated Bank of Chicago, as trustee (the "Trustee"). The proceeds of the Series 2010 Bonds will be loaned to Asphalt Operating Services of Chicago, LLC, an Illinois limited liability company (the "Borrower"), pursuant to a Loan Agreement dated as of December 1, 2010 (the "Loan Agreement") between the City and the Borrower so as to enable the Borrower to finance the design, construction and equipping of a liquid asphalt through-put facility (that will blend, store and dispense liquid asphalt including five (5) storage tanks, an office building and lab, a maintenance and



boiler building, and a truck scale building totaling approximately 12,300 square feet, stream blenders, a barge unloading station, truck and rail loading positions and other ancillary structures and related site infrastructure which will be located on approximately 53 acres at 2835 East 106th Street in Chicago, Illinois ( the "Project"). Proceeds of the Series 2010 Bonds will also be used to establish a debt service reserve fund, pay capitalized interest on the Series 2010 Bonds and pay costs of issuance of the Series 2010 Bonds.

As set forth in Section 2.10 of the Indenture, at the request of the Borrower and with the consent of the Issuer, the Issuer may issue Additional Bonds (as defined in the Indenture) from time to time for the purpose of making additions to or further equipping or completing the Project. Additional Bonds shall have an equal and parity claim with the Series 2010 Bonds and any Additional Bonds theretofore or thereafter issued and outstanding as to the assignment to the Trustee of the Trust Estate.

Under the Loan Agreement, the Borrower has agreed to make payments (the "Loan Payments") sufficient to pay the principal of, premium, if any, and interest on the Series 2010 Bonds when due and will pledge the Revenues (defined below) to the City to secure the Borrower's obligations under the Loan Agreement. "Revenues" means (a) all revenues, rentals, third-party payments, receipts, contributions or other income of the Borrower and the Project, including the rights to receive such revenues, all as calculated in accordance with sound accounting practices, including, without limitation, proceeds derived from insurance, condemnation awards, accounts, contract rights and other rights and assets, whether now or hereafter owned, held or possessed by the Borrower, and including all investment income; (b) all grants (including, but not limited to, grants from State and local agencies), and contributions (including income and profits therefrom) to the extent not restricted to any specific purpose or purposes inconsistent which would not permit their use for any of the payments required under the Loan Agreement; and (c) capital contributions and capital infusions from the Borrower, including from any Affiliate.

The Project will be located on the old Wisconsin Steel property at the southeast corner of 106th Street and Torrence Avenue, in Chicago, Illinois. Although the original Wisconsin Steel site is vast.

12863764v. 15

approximately 53 acres will be divided out for the Project. The site was chosen to take advantage of ease of access to lake barge, railroad, and heavy truck traffic. The Borrower has been chosen to design, build, own and operate a new liquid asphalt storage facility at this location. See "THE PROJECT."

Liquid asphalt is the residual heavy oil that is used primarily as the binder for asphalt roads. It is also used in the manufacture of shingles, roofing tar and industrial coatings. The new facility will be designed to unload via lake barge up to 42,000 barrels per day of liquid asphalt, store, blend and ship up to 32 rail cars per day and up to 200 trucks per day of product. The facility will operate 24 hours a day, 7 days a week and 365 days during the calendar year, with 30-40 full time employees. It will be contracted for use by BP Products North America Inc. (hereinafter "BP"), Associated Asphalt Inc. and Suit-Kote Corporation.

Payments made to the Borrower pursuant to the Asphalt Terminalling Agreements (as defined herein) will be the primary source of revenues for the repayment of the Series 2010 Bonds. See "SECURITY FOR THE SERIES 2010 BONDS-General" and "SUMMARY OF THE ASPHALT TERMINALLING AGREEMENTS, and SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL ASSIGNMENTS".

No assurance can be given that the projections, or the assumptions upon which they are based, will be proven accurate. The projections are forward-looking statements and predictions and are not guarantees of result or performance. The projections are based on beliefs and assumptions, which in turn are based on currently available information. These beliefs and assumptions could prove inaccurate. Accordingly, actual outcomes could differ materially from those contained in projections.

Copies of the Asphalt Terminalling Agreements and any other document or agreement referred to herein may be obtained upon request from William Blair & Company, L.L.C. at 222 West Adams Street, Chicago, Illinois 60606, Attention: Municipal Bond Department, Telephone: 312-364-8386 who along with Estrada Hinojosa & Company, Inc. are the "Underwriters".

### **General Description of the Series 2010 Bonds**

The Series 2010 Bonds will be dated the date of issuance, will be issued in the aggregate principal amount and will bear interest at the rate and mature on the date set forth on the cover page hereof, subject to redemption as described below.

The Series 2010 Bonds will be initially issuable as fully registered bonds without coupons in denominations of \$1,000,000 and increments of \$5,000 in excess thereof unless converted to denominations of \$5,000 upon defeasance of the Bonds as described below under the caption "Change in Denominations". Interest on the Series 2010 Bonds is payable

semiannually on June 1 and December 1 of each year, commencing on June 1, 2011, to the persons who are the registered owners of the Series 2010 Bonds at the close of business on the Record Date, which is the fifteenth day of the month preceding the Interest Payment Date. The principal of and interest on the Series 2010 Bonds shall be payable in lawful money of the United States of America.

Interest on the Series 2010 Bonds will be computed on the basis of a year consisting of 360 days, being 12 months of 30 days each.

### **Redemption**

Optional Redemption. The Series 2010 Bonds are subject to optional redemption, in whole or in part (provided that no Bond may be redeemed in part if the principal amount outstanding following such partial redemption is not an Authorized Denomination) on or after December 1, 2015, at the direction of the Borrower upon not less than 45 days prior written notice to the Issuer and the Trustee, on the dates

12863764v. 15

### **2**

and at the redemption prices (expressed as a percentage of the principal amount of the Series 2010 Bonds to be redeemed) set forth below, plus accrued interest to the date of redemption.

### **Redemption Dates (Inclusive)**

#### **Price (%)**

December 1, 2015 to November 30, 2016 December 1, 2016 to November 30, 2017 December 1, 2017, and thereafter  
102 101 100

Mandatory Sinking Fund Redemption. The Series 2010 Bonds are subject to mandatory sinking fund redemption at a redemption price equal to the aggregate principal amount of the Series 2010 Bonds to be redeemed without premium (provided that no Series 2010 Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on December 1 of the years and in the principal amounts as set forth below:

The foregoing notwithstanding, the City, acting at the direction of the Borrower, shall be entitled to satisfy, in whole or in part, the above mandatory sinking fund requirements by the delivery of Series 2010 Bonds, as the case may be, to the Trustee for cancellation.

Extraordinary Redemption. The Series 2010 Bonds are subject to extraordinary mandatory redemption in whole or in part (provided that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on any date selected by the Borrower, at a redemption price equal to the aggregate principal amount of the Series 2010 Bonds plus accrued interest thereon to the redemption date, without premium, upon the occurrence of certain casualty and condemnation events described in Section 11.1 of the Loan Agreement (relating to the damage or destruction of the Project or the temporary use of all or substantially all of the Project due to it having been taken under the power of eminent domain by any governmental authority, or the legal curtailment of the use or occupancy of the Project by the Borrower which prevents the Borrower from carrying on its normal operations at the Project for a period of three or more consecutive months) if the Borrower elects to prepay a like amount under the Loan Agreement. See "SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT-Option to Prepay Upon Occurrence of Certain Events"

Special Mandatory Redemption. The Series 2010 Bonds are subject to special mandatory redemption in whole or in part (provided that no Series 2010 Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on any date selected by the Borrower for which timely notice of redemption can be given by the Trustee following the Completion Date (as defined in the Loan Agreement), at a redemption price equal to the aggregate principal amount of the Series 2010 Bonds to be redeemed plus accrued interest to the

#### **Year**

2012 2013 2014 2015 2016 2017 2018

### **Principal Amount**

\$5,000,000 5,100,000 5,450,000 5,800,000 6,150,000 6,600,000  
10,900,000 (maturity)

herein.

12863764v. 15

### **3**

redemption date, without premium, to the extent of any moneys then remaining on deposit in the Project Fund.

**Determination of Taxability.** The Series 2010 Bonds are subject to mandatory redemption in whole on the earliest redemption date for which timely notice of redemption can be given by the Trustee after the occurrence of a Determination of Taxability at a redemption price equal to 105% of the aggregate principal amount thereof plus accrued interest thereon to the redemption date. The foregoing amount shall constitute the total amount required to be paid as a result of the occurrence of a Determination of Taxability ( as defined in the Indenture ).

**Partial Redemption.** If fewer than all of the Series 2010 Bonds shall be called for redemption, the portion of Series 2010 Bonds to be redeemed shall be selected by lot among each maturity called for redemption, to the maximum extent feasible (with such adjustments as may be required to be made by the Trustee).

#### **Procedure for and Notice of Redemption**

Not less than 30 nor more than 45 days prior to any redemption date, the Trustee shall cause notice of the call for redemption, identifying each Series 2010 Bond or portion thereof to be redeemed, given in the name of the City, to be sent by first class mail, postage prepaid, to the Borrower and the Owner of each Series 2010 Bond to be redeemed at the address of such Owner shown on the Registration Books; provided, however, that neither the failure to give any such notice nor any defect in any notice so given with respect to any Series 2010 Bond shall affect the sufficiency or the validity of any proceedings for the redemption of the other Series 2010 Bonds; and provided, further, that if such notice by mail shall not have been given and if such Series 2010 Bond is held in a book entry system and shall be deemed to have been selected for partial redemption, such notice may be given by the Trustee by telephone or facsimile (receipt confirmed by telephone), confirmed in writing, as promptly as practicable to the Owner of such Series 2010 Bond, but failure to duly give such notice by telephone or facsimile or any defect therein shall not affect the validity of proceedings for the redemption of other Series 2010 Bonds.

Each official notice of redemption shall state (i) the redemption date, (ii) the redemption price, (iii) if less than all outstanding Series 2010 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Series 2010 Bonds to be redeemed, (iv) a statement that on the redemption date the redemption price will become due and payable upon each such Series 2010 Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after such date and (v) the place where such Series 2010 Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the designated corporate trust office of the Trustee.

In addition to the official notice of redemption, if the Series 2010 Bonds are not then held under the book-entry only system, further notice shall be given by the Trustee in the name of the City as set out below; provided, however, that neither the failure to give any such notice nor any defect in any notice so given shall affect the sufficiency or validity of any proceedings for the redemption of the Series 2010 Bonds. Each further notice of redemption given under the Indenture shall contain the information required for an official notice of redemption plus (i) the CUSIP numbers of all Series 2010 Bonds being redeemed, (ii) the date of issue of the Series 2010 Bonds as originally issued, (iii) the rate of interest borne by each Series 2010 Bond being redeemed, (iv) the maturity date of each Series 2010 Bond being redeemed and (v) any other descriptive information needed to identify accurately the Series 2010 Bonds being redeemed.

12863764v. 15

#### **4**

Each further notice of redemption shall be sent at least 35 days before the redemption date by certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of the type comprising the Series 2010 Bonds (such depository now being The Depository Trust Company of New York, New York) and to one or more national information services, chosen in the discretion of the Trustee, that disseminate notice of redemption of obligations such as the Series 2010 Bonds.

#### **Redemption Payments; Effect of Call for Redemption**

On the date fixed for redemption of any Series 2010 Bond, funds for the payment thereof shall be on deposit in the Bond Fund representing moneys deposited by the Borrower with the Trustee, and the Trustee hereby is authorized and directed to apply such funds to the payment of each Series 2010 Bond or portion thereof called for redemption, together with accrued interest thereon to the redemption date and any required premium. On the date so designated for redemption, notice having been given in the manner and under the conditions hereinabove provided, any Series 2010 Bond or portion thereof so called for redemption shall become and be due and payable at the redemption price provided for herein.

#### **Partial Redemption**

If fewer than all of the Series 2010 Bonds shall be called for redemption, the portion of Series 2010 Bonds to be

redeemed shall be selected by lot among each Series and maturity called for redemption, to the maximum extent feasible (with such adjustments as may be required to be made by the Trustee). For this purpose, each \$5,000 increment of principal amount represented by any Series 2010 Bond shall be considered a separate Series 2010 Bond for purposes of selecting the Series 2010 Bonds to be redeemed; provided, however, that no Series 2010 Bond may be redeemed in part if the principal amount to be Outstanding following such partial redemption is not an Authorized Denomination. If it is determined that one or more, but not all, of the \$5000 increments of principal amount represented by any Series 2010 Bond is to be called for redemption, then, upon notice of intention to redeem such \$5000 increments of principal amount of such Series 2010 Bond, the Owner of such Series 2010 Bond, upon surrender of such Series 2010 Bond to the Trustee for payment to such Owner of the redemption price or the principal amount of such Series 2010 Bond called for redemption, shall be entitled to receive a new Series 2010 Bond or of the same series and maturity and in the aggregate principal amount of the unredeemed balance of the principal amount of such Series 2010 Bond. New bonds representing the unredeemed balance of the principal amount of such Series 2010 Bonds shall be issued to the Owner thereof without charge therefor.

If the owner of any Series 2010 Bond of a denomination greater than \$5,000 shall fail to present such Series 2010 Bond to the Trustee for payment and exchange as aforesaid, such Series 2010 Bond shall, nevertheless, become due and payable on the date, fixed for redemption to the extent of the \$5,000 increments of principal amount called for redemption (and to that extent only).

#### **Change In Denominations**

At such time as the Borrower shall have defeased the Bonds in full in accordance with the provisions of Section 5.01 of this Indenture, the Borrower may notify the Trustee that it is electing to convert the Bonds to Authorized Denominations of \$5,000 or any integral multiple of \$5,000 in excess thereof, and the Bonds may be so converted and exchanged; provided, however that prior to any such exchange and conversion the Issuer and the Trustee shall have received an opinion of counsel satisfactory to the Issuer and the Trustee to the effect that either (i) the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission are not applicable to any remarketing of the Series 2010 Bonds upon such conversion and exchange or (ii) that the Borrower has entered into a Continuing

12863764v. 15

#### **5**

Disclosure Agreement which complies with the requirements of Rule 15c2-12 as in effect as of the date of the exchange.

#### **Book-Entry-Only System**

THE INFORMATION PROVIDED IMMEDIATELY BELOW CONCERNING DTC AND THE BOOK-ENTRY-ONLY SYSTEM, AS IT CURRENTLY EXISTS, IS BASED SOLELY ON INFORMATION PROVIDED BY DTC AND IS NOT GUARANTEED AS TO ACCURACY OR COMPLETENESS BY, AND IS NOT TO BE CONSTRUED AS A REPRESENTATION BY, THE UNDERWRITERS, THE CITY, OR THE BORROWER.

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the Series 2010 Bonds. The Series 2010 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond will be issued in the aggregate principal amount of such issue, and will be deposited with DTC.

**DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and**

**clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) <<http://www.dtcc.com>>.**

Purchases of the Series 2010 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2010 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2010 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2010 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Series 2010 Bonds, except in the event that use of the book-entry system for the Series 2010 Bonds is discontinued.

12863764v. 15

6

To facilitate subsequent transfers, all Series 2010 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2010 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2010 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2010 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Series 2010 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2010 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Series 2010 Bonds documents. For example, Beneficial Owners of the Series 2010 Bonds may wish to ascertain that the nominee holding the Series 2010 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2010 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2010 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2010 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Series 2010 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2010 Bonds at any time by giving reasonable notice to the City and the Trustee Under such circumstances, in the event that a successor depository is not

obtained, Series 2010 Bonds are required to be printed and delivered.

12863764v. 15

**7**

The City, at the request of the Borrower, may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Series 2010 Bonds will be printed and delivered as described in the Indenture.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but the City takes no responsibility for the accuracy thereof.

NEITHER THE CITY, THE UNDERWRITERS, THE TRUSTEE, NOR THE BORROWER WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO ANY DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OR THE PERSONS FOR WHOM THEY ACT WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY SUCH DIRECT PARTICIPANT OR INDIRECT PARTICIPANT; (2) THE PAYMENT BY ANY PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF OR INTEREST OR PREMIUM ON THE SERIES 2010 BONDS; (3) THE DELIVERY BY ANY SUCH DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE INDENTURE TO BE GIVEN TO BONDHOLDERS; (4) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE SERIES 2010 BONDS; OR (5) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER.

The following table sets forth the estimated sources and uses of funds in connection with the issuance of the Series 2010 Bonds:

**Source of Funds**

**SOURCES AND USES OF FUNDS**

Bond Proceeds Developer Equity Interest Earnings

45,000,000 15,000,000

25.130\* 60,025,130

Total Sources

Uses of Funds

Land

Equipment Construction Costs Development Costs/Other Contingency

7,000,000 5,180,833

31,259,155 4,126,700 4,180.092

51,746,780

Total Project Fund

Capitalized Interest Debt Service Reserve Costs of Issuance

2,633,750 4,500,000 1,144,600 60,025,130

Total Uses

\*Based on an investment rate of .05% and an investment period of twelve months.

**8**

12863764v. 15

**DEBT SERVICE SCHEDULE**

Set forth in the following table are the annual debt service requirements for the Series 2010 Bonds.

**Annual Debt Service Requirements**

**Year Ended**

**December 1 Principal Interest Total**

2011 0 \$2,633,750 \$2,633,750

2012 5,000,000 2,756,250 7,756,250

2013 5,100,000 2,450,000 7,550,000

2014 5,450,000 2,137,625 7,587,625

2015 5,800,000 1,803,813 7,603,813

2016 6,150,000 1,448,563 7,598,563

2017 6,600,000 1,071,875 7,671,875

2018 10,900,000 667,625 11,567,625

**FINANCIAL PROJECTIONS AND EXPECTED DEBT SERVICE COVERAGE**

The following tables set forth forecasted profit and loss based on both anticipated thru put levels and minimum thru put levels pursuant to the Asphalt Terminalling Agreements, which require the customers to pay a minimum annual thru put fee regardless of actual thru put volume.

No assurance can be given that the projections, or the assumptions upon which they are based, will be proven accurate.

The projections are forward-looking statements and predictions and are not guarantees of result or performance. The projections are based on beliefs and assumptions, which in turn are based on currently available information. These beliefs and assumptions could prove inaccurate. Accordingly, actual outcomes could differ materially from those contained in projections.

Neither the City nor the Underwriters have independently verified the projections or tested the assumptions upon which the projections are based.

12863764v. 15

9

Volume Income

Labor

Payroll Taxes Benefits

Insurance Employees Other Employee Cost Utilities

Shipping / Postage

Maintenance &amp; Repairs

Supplies &amp; Consumables

Outside Services &amp; Professional Fees

Insurance - Company

Other Expense

Total Expenses

Net Income

Net Debt Service

Debt Service Coverage .

AOS Chicago

Forecasted Profit &amp; Loss Statements - Anticipated Thruput Levels

P re-Opening	Year1	Year 2	Year 3	Year 4	Year5	Year 6	Year 7
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305,000

485,160 57,297 93,403 75,511 36,638 49,554 2,400 45,500 35,327 157,500 124,367 46,667

1,209,323

N/A

**TTL Tons**

1,350,000

**TTL Tons**

1,100,000

**TTL Tons**

1,050,000

TTL Tons

1,100,000

**TTL Tons**

1,100,000

**TTL Tons**

1,750,000

1,455,479 171,892 280,210 226,532 109,914 148,662 7,200 136,500 105,980 472,500 373,100 140,000

1,499,143 177,049

288,616

233,328

113,211

153,122

7,416 140,595

109,159

486,675

384,293

813,700

1,544,118 182,360 297,274 240,328 116,608 157,716 7,638 144,813 112,434 501,275 395,822 838,111

1,590,441 187,831 306,193 247,538 120,106 162,447 7,868 149,157 115,807 516,314 407,696 863,254

1,638,154 193,466 315,378 254,964 123,709 167,321 8,104 153,632 119,281 531,803 419,927 889,152





1,687,299 199,270 324,840 262,613 127,420 172,340 8,347 158,241 122,860 547,757 432,525 915,827  
3,627,969  
4,406,308  
4,538,498  
4,674,653  
4,814,892  
4,959,339  
9,272,031  
8,624,942 8,627,940  
8,631,028  
8,634,209  
8,637,485  
**7,756,250 1.20**  
**7,550,000 1.14**  
**7,587,625 1.14**  
**7,603,813 1.14**  
**7,598,563 1.14**  
**7,671,875 1.13**  
1,737,918 205,248 334,585 270,492 131,243 177,511 8,597 162,988'  
' 126,546 564,190 445,501 943,301  
5,108,119  
8,640,860  
**7,067,625 1.22**  
1 1  
12863764v. 15

## **SECURITY FOR THE SERIES 2010 BONDS**

### **General**

The Series 2010 Bonds will be issued under and secured by the Indenture. Pursuant to the Indenture, the City pledges to the Trustee to secure the Series 2010 Bonds all right, title and interest of the City in (i)the Loan Agreement (except its Unassigned Rights) and the amounts payable by the Borrower under the Loan Agreement, (ii)the Mortgage and Security Agreement and the Collateral Assignments, and (iii) the amounts in the Funds and Accounts created under the Indenture (except the Rebate Fund and amounts held for particular Bondholders pursuant to Section 3.08 or 4.09 of the Indenture). The Borrower will enter into the Mortgage and Security Agreement with the Trustee with respect to the Project. Pursuant to the Mortgage and Security Agreement, the Borrower will grant to the Trustee to secure the Loan a mortgage and first lien (subject to Permitted Encumbrances) on the facility and all improvements thereto. Pursuant to the Loan Agreement, the Borrower has granted to the City a lien on and security interest in the Borrower's Revenues to secure the Loan, which is assigned to the Trustee pursuant to the Indenture. The principal source of Revenues will be the Asphalt Terminalling Agreements. See "SUMMARY OF CERTAIN PROVISIONS OF THE ASPHALT TERMINALLING AGREEMENTS", and "SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL ASSIGNMENTS".

### **Limited Obligations**

The Series 2010 Bonds, together with interest thereon and premium with respect thereto, are special, limited obligations of the City secured by and are and shall always be payable solely from the revenues and income derived from the Loan Agreement (except to the extent paid out of the proceeds of the Series\_2010 Bonds or income from the temporary investment of such funds). The Series 2010 Bonds and the obligation to pay interest thereon and premiums, if any, with respect thereto do not now and shall never constitute an indebtedness or an obligation of the City, the State of Illinois or any political subdivision thereof, within the purview of any constitutional limitation or provision, or a charge against the general credit or taxing powers, if any, of any of them, but shall be secured as aforesaid, and shall be payable solely from the revenues and income derived from the Loan Agreement. No Owner of the Series 2010 Bonds shall have the right to compel any exercise of the taxing power of the City, the State or any other political subdivision thereof to pay the Series 2010 Bonds or the interest or premium, if any, thereon. The City makes no representations (expressly or implied) with respect to and has no responsibility for the accuracy or completeness of any information concerning the Borrower, the Project or their respective business or operations.

### **Debt Service Reserve Fund**

The Indenture creates a Debt Service Reserve Fund to be held by the Trustee and to be used to pay principal (including mandatory sinking fund redemptions) of and interest on the Series 2010 Bonds if payments by the Borrower are in arrears. The Borrower is required to replenish any withdrawals from the Debt Service Reserve Fund within 6 months. On

each June 1 and December 1, beginning June 1 2011, the Trustee shall determine the value of the Debt Service Reserve Fund based on asset market values assigned by its automated trust accounting system. If, on any such valuation date, the value of the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement due to a decline in the market value of the Qualified Investments therein, the Borrower shall within six months thereof, deposit in the Debt Service Reserve Fund an amount sufficient to cure such deficiency. Beginning June 1, 2011, amounts in the Debt Service Reserve fund in excess of the Debt Service Reserve Fund Requirement on any June 1 or December 1 will be transferred first to the Rebate Fund to satisfy any deposits then required to be made and, second to the Revenue Account of the Bond Fund. Qualified Investments in the Debt

12S63764V.15

12

Service Reserve Fund may have a remaining maturity of no more than one year from the date of deposit therein, unless such Investments may be sold or liquidated and the proceeds withdrawn from the Debt Service Reserve Fund without penalty or premium on any Interest Payment Date. The Borrower may at any time substitute for some or all of the funds in the Debt Service Reserve Fund a letter of credit or surety bond (a "Debt Service Reserve Fund Instrument") from a bank, insurance company or other financial institution whose unsecured long term debt obligations are rated in one of the three highest rating categories ( without regard to any refinement or graduation of rating category by numerical modifier or otherwise ) by each rating agency then rating the Series 2010 Bonds. If such instrument will expire prior to final maturity of the Series 2010 Bonds, and it has not been extended or replaced 30 days prior to expiration, then the Trustee is to draw down such instrument in full, unless other funds, Qualified Investments and Debt Service Reserve Fund Instruments in the Debt Service Reserve Fund equal the Debt Service Reserve Fund Requirement. The Debt Service Reserve Fund Requirement for the Series 2010 Bonds is \$4,500,000. For more detailed information concerning the Debt Service Reserve Fund, see "THE INDENTURE-Debt Service Reserve Fund."

#### **Operating Reserve Account**

The Borrower will establish and maintain the Operating Reserve Account as a separate account with the Trustee. The Operating Reserve Account will be funded through Revenues in an amount equal to or in excess of \$500,000 (the "Operating Reserve Requirement"). The Operating Reserve Requirement will not be funded with proceeds of the Series 2010 Bonds.

Moneys in the Operating Reserve Account will be used solely for the following purposes: (i) to pay expenses relating to the operation of the Project in any month in which the amounts in the Operating Expense Account are insufficient, provided however, that if such withdrawal and use would cause the amount remaining in the Operating Reserve Account to be less than \$250,000, the majority of the registered Owners of the Bonds must consent to such withdrawal; and (ii) prior to any withdrawal from the Debt Service Reserve Fund, replenishing the Principal and Interest Payment Account of the Bond Fund in the event of any deficiency of amounts required to pay, on a timely basis, principal of and interest on the Series 2010 Bonds. The Borrower shall maintain the Operating Reserve Account for as long as the Series 2010 Bonds are Outstanding.

#### **SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE**

The following statements are a brief summary of certain provisions of the Indenture that have not been described elsewhere in this Limited Offering Memorandum. The summary does not purport to be complete, and reference is made to the Indenture, included herein as "APPENDIX A-The Indenture," for a full and complete statement of the provisions thereof.

#### **Funds and Accounts**

The Indenture creates the following Funds and Accounts:

- (a) the Bond Fund and within the Bond Fund, the Capitalized Interest Account, the Revenue Account, the Principal and Interest Payment Account, the Insurance/Tax Account, the Operating Expense Account, the Income Tax Reserve Account and the Operating Reserve Account.
- (b) the Project Fund and within the Project Fund, the Project Account and the Cost of Issuance Account;
- (c) the Debt Service Reserve Fund; and

12863764v. 15

13

- (d) the Rebate Fund;

#### **The Trustee shall hold and administer the Funds and Accounts in accordance with the Indenture. Bond Fund**

There shall be deposited into the Capitalized Interest Account of the Bond Fund the amount required to pay the capitalized interest on the Series 2010 Bonds through and including December 1, 2011. The amount deposited into the

Capitalized Interest Account will be used to pay interest on the Bonds on each Interest Payment Date until such time as no moneys remain in the Capitalized Interest Account. Amounts on deposit in the Capitalized Interest Account shall be used to pay interest on the Bonds before any amounts in the Revenue Account are transferred by the Trustee into the Principal and Interest Payment Account and used for such purpose. There shall be deposited into the Revenue Account of the Bond Fund when received (i) all Revenues of the Borrower required to be deposited pursuant to the Loan Agreement, (ii) all moneys required to be so deposited in connection with any redemption of Bonds, (iii) any amounts directed to be transferred into the Revenue Account of the Bond Fund pursuant to any provision of the Indenture, the Loan Agreement or the Tax Agreement, (iv) any amounts available to be transferred from the Debt Service Reserve Fund upon the deposit therein of a Debt Service Reserve Fund Instrument satisfying the Debt Service Reserve Fund Requirement, and (v) (except to the extent provided in the first sentence of this Section above) all other moneys when received by the Trustee which are required to be deposited into the Bond Fund or which are accompanied by directions that such moneys are to be paid into the Bond Fund.

The Trustee shall deposit all Revenues in the Revenue Account in the Bond Fund upon receipt from the Borrower. The Trustee shall maintain the Revenue Account in the Bond Fund, together with the earnings thereon. Beginning at such time as the Borrower begins to receive Revenues from the Project and until the payment or defeasance of all Outstanding Bonds, the Trustee shall transfer or disburse amounts from the Revenue Account on the 20<sup>th</sup> day of each month or the following Business Day in the following amounts and order of priority:

(a) After the use of any amounts remaining in the Capitalized Interest Account, the Trustee shall transfer to the Principal and Interest Payment Account, until the principal of, premium, if any, and interest on the Series 2010 Bonds shall have been paid or provision for the payment thereof shall have been made in accordance with the Indenture, (A) an amount equal to one-sixth of the interest which will become due on the Series 2010 Bonds on the next succeeding Interest Payment Date, and (B) an amount equal to one-twelfth of the principal which will become due on the Series 2010 Bonds on the next succeeding principal payment date, whether at maturity or upon sinking fund redemption (taking into account any amount on deposit (or to be deposited) in the Bond Fund which will be used for such payment of principal); provided that if on the 20th day of the month immediately preceding a principal payment date or interest payment date such deposit would not be sufficient (taking into account amounts already on deposit in the Principal and Interest Payment Account) to provide for the payment of principal of and interest due on the Series 2010 Bonds, the Trustee shall deposit such greater amount as may be necessary to provide for the payment of principal and interest due on the Series 2010 Bonds on the immediately succeeding payment date. The Trustee shall apply monies in the Principal and Interest Payment Account to the payment of principal of and premium, if any, and interest on the Series 2010 Bonds on each Interest Payment Date, on any redemption date and on any other date when principal, premium or interest on the Series 2010 Bonds is due.

(b) In the event funds on deposit in the Debt Service Reserve Fund are less than the Debt Service Reserve Fund Requirement, the Trustee shall transfer to the Debt Service Reserve Fund an amount equal to one-sixth of the shortfall between the amount on deposit in the Debt Service Reserve

12863764v. 15

14

Fund and the Debt Service Reserve Fund Requirement in order to bring the balance of the Debt Service Reserve Fund up to the Debt Service Reserve Fund Requirement by the next succeeding Interest Payment Date. The Trustee shall apply monies in the Debt Service Reserve Fund in accordance with the Indenture.

(c) The Trustee shall transfer to the Insurance/Tax Account of the Bond Fund the sum of (A) one twelfth (or such greater amount as necessary to pay when due) the sum of any real estate taxes and all assessments to be due in the current Bond Year as reflected in the Budget for that year plus (B) one-twelfth (or such greater amount as necessary to pay when due) the amount necessary to maintain all required insurance coverage during the current Bond Year as reflected in the Budget for that year. The Trustee shall distribute monies on deposit in the Insurance/Tax Account to the Borrower to pay, or to reimburse the Borrower for the payment of, real estate taxes (if any) and insurance premiums in regard to the Project upon written request of the Borrower. Any deficiency shall be paid by the Borrower upon notice and demand from the Trustee.

(d) The Trustee shall transfer to the Operating Expense Account of the Bond Fund on or before the 20th day of each month or the next Business Day the monthly budgeted amount for Operating Expenses as set forth in the most recent Budget on file with the Trustee and shall immediately transfer such amount to the Borrower for payment of Operating Expenses. On January 1 and July 1 of each year upon receipt of the certificate required to be delivered to the Trustee by Section 8.7(c) of the Loan Agreement, the Trustee shall adjust (reduce) the amount of the next monthly transfer to the

Operating Expense Account by the amount the budgeted Operating Expenses exceeded the actual Operating Expenses (the "Budget Excess") as set forth in the certificate unless the Borrower provides an updated Budget which reflects the Budget Excess is required for Operating Expenses.

(e) The Trustee shall transfer to the Income Tax Reserve Account of the Bond Fund 35% of the remaining Revenues received for the month and to the Operating Reserve Account 65% of the remaining Revenues received for that month. The Trustee shall apply monies in the Income Tax Reserve Account (i) on or before each January 15, April 15, June 15 and September 15 of each year to pay estimated income taxes owed by the members of the Borrower as directed by the Borrower, (ii) to the payment of principal of and premium, if any, and interest on the Series 2010 Bonds on any redemption date and on any other date when principal, premium or interest on the Series 2010 Bonds is due, or (iii) for such other purposes in accordance with the Loan Agreement. At such time as no Bonds are outstanding, the balance of the Income Tax Reserve Account shall be disbursed by the Trustee to the Borrower.

(f) As described in paragraph (e) above, the Trustee shall transfer 65% of the remaining Revenues received for the month to the Operating Reserve Account of the Bond Fund until the amount on deposit in such Account equals \$500,000. The Trustee shall apply monies in the Operating Reserve Account to pay amounts requisitioned by the Borrower pursuant to the Loan Agreement to pay expenses relating to the operation of the Project in any month in which the amounts in the Operating Expense Account are insufficient and (ii) prior to any withdrawal from the Debt Service Reserve Fund, to replenish the Principal and Interest Payment Account of the Bond Fund in the event of any deficiency of amounts required to pay on a timely basis, principal of and interest on the Bonds. The Trustee shall provide written notice to the Bondholders and the Underwriter of any requisition received from the Borrower for the use of monies in the Operating Reserve Account pursuant to the Loan Agreement. In the event that such requisition for funds in the Operating Reserve Account would have the effect of reducing the total amount in the Operating Reserve Account to less than \$250,000, the Trustee shall not apply funds to fulfill such requisition without the written consent of the majority of the Beneficial Owners of all of the Bonds then outstanding. The Trustee shall seek such Bondholder consent within two (2) business days after receipt of the relevant requisition request and if any Beneficial Owner of any of the Bonds then outstanding does not respond to the request for consent within ten (10) business days, then

12863764v. 15

15

such Bondholder shall be deemed to have consented. At such time as no Bonds are outstanding, the balance of the Operating Reserve Account shall be disbursed by the Trustee to the Borrower.

(g) On each June 1 and December 1 after making the transfers described above, the Trustee shall next confirm that the amount on deposit in the Debt Service Reserve Fund is equal to the Debt Service Reserve Fund Requirement. After confirming that the Debt Service Reserve Fund Requirement has been met, the Trustee shall transfer the balance of any Revenues received for the prior six month period to the Borrower provided that the Debt Service Coverage Ratio shall be not less than 1.10 to 1.0 as set forth in a Certificate of the Borrower executed by the Chief Financial Officer of the Borrower and delivered to the Trustee on or prior to each June 1 and December 1.

To the extent that the amount available in the Revenue Account is insufficient during any month to transfer the amounts for such quarter required pursuant to (a) - (e) above, except for any amounts required to be transferred to the Principal and Interest Payment Account pursuant to (a) above which are instead transferred to the Principal and Interest Payment Account from the Debt Service Reserve Fund pursuant to the Indenture, such amounts shall be added to the amounts to be transferred to such account or fund for the succeeding month until the full amount required is transferred and shall have the same priority in regard to Revenues for subsequent month as such amount had in the month due.

### **Project Fund**

A portion of the proceeds received by the City upon the sale of the Bonds shall be deposited in the Cost of Issuance Account in accordance with the Indenture and in the Project Account in accordance with the Indenture. The City authorizes and directs the Trustee to use the moneys (i) in the Project Account for payment of the Costs of the Project in accordance with the Loan Agreement and the provisions of the Tax Agreement, (ii) from the Cost of Issuance Account to pay Costs of Issuance upon receipt of the written consent of the Borrower in accordance with the Tax Agreement. All disbursements from the Project Fund shall be evidenced by a completed Requisition Certificate in the form of Exhibit B attached to the Indenture. In addition, amounts disbursed from the Project Fund for the design, construction and equipping of the Project shall be disbursed, pursuant to an Escrow Agreement in the form attached to the Indenture, to a title insurance company (or its escrow agent) which will issue the applicable owner's and loan title insurance policy, pursuant to the terms of a customary money lender's escrow requiring the recordation of the Mortgage and Security

Agreement and the issuance of a mortgagee loan title insurance policy satisfying the Mortgage and Title Requirements (as defined in the Loan Agreement).

If an Event of Default occurs under the Indenture, and the Trustee declares the principal of all Bonds and the interest accrued thereon to be due and payable, no moneys may be paid out of the Project Fund by the Trustee during the continuance of such an Event of Default, except into the Principal and Interest Payment Account of the Bond Fund as and when necessary for the purposes of paying the Bonds as due as a result of such Event of Default; provided, however, that if such an Event of Default shall be waived and such declaration shall be rescinded by the Trustee or the holders and owners of the Bonds pursuant to the terms of the Indenture, the full amount of any such moneys in the Project Fund may again be disbursed by the Trustee in accordance with the provisions of the Loan Agreement. The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Project has been completed and a certificate of payment of all costs filed as provided in the Indenture, the Trustee shall file an accounting thereof with the City and the Borrower.

The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate of the Borrower Representative required by the provisions of the Loan Agreement. Any balance remaining in the Project Fund after the Completion Date

12863764v. 15

16

(other than any amount retained by the Trustee for costs not then due and payable or the liability for which the Borrower is contesting or disputing) shall be transferred to the Principal and Interest Payment Account of the Bond Fund and applied to the redemption of the Bonds pursuant to the Indenture. As part of its records, the Trustee shall keep a record of the amount and dates of any disbursements from the Project Fund.

#### **Debt Service Reserve Fund**

There shall be deposited in the Debt Service Reserve Fund proceeds of the Series 2010 Bonds in an amount equal to the Debt Service Reserve Fund Requirement. Without further direction, the Trustee shall withdraw and use moneys in the Debt Service Reserve Fund solely for the purpose of (i) replenishing the Principal and Interest Payment Account of the Bond Fund in the event of any deficiency of amounts required to pay, on a timely basis, principal of and interest on the Bonds after taking into account any transfers from the .Operating Reserve Account and the Income Tax Reserve Account or (ii) for transfer to the Principal and Interest Payment Account of the Bond Fund in the event that all of the Outstanding Bonds are to be paid at stated maturity, upon redemption, upon defeasance as provided in the Indenture or upon the declaration of an accelerated maturity date as provided in the Indenture. Within six months of any draw on the Debt Service Reserve Fund in accordance with subsection (i) above, the Borrower shall deposit in the Debt Service Reserve Fund cash or Qualified Investments in the amount necessary to fund the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement. There shall be maintained in the Debt Service Reserve Fund moneys and/or Qualified Investments and/or Debt Service Reserve Fund Instruments in an amount equal to the Debt Service Reserve Fund Requirement.

On each June 1 and December 1 ("Valuation Dates"), beginning June 1, 201 1, the Trustee shall determine the value of the Debt Service Reserve Fund based on asset market values assigned by its automated trust accounting system. If, on any such Valuation Date, the value of the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement due to a decline in the market value of the Qualified Investments therein, the Borrower shall within six months thereof, deposit in the Debt Service Reserve Fund an amount sufficient to cure such deficiency. Beginning June 1, 2011, the Trustee shall semi-annually, on each June 1, and December 1, withdraw any amount in the Debt Service Reserve Fund in excess of the Debt Service Reserve Fund Requirement and apply such amount, first, to satisfy any deposits then required to be made to the Rebate Fund and, second, for deposit to the Revenue Account of the Bond Fund.

Qualified Investments in the Debt Service Reserve Fund may have a remaining maturity of no more than one year from the date of deposit therein, unless such Investments may be sold or liquidated and the proceeds withdrawn from the Debt Service Reserve Fund without penalty or premium on any Interest Payment Date.

The Borrower shall have the option, exercisable at any time and from time to time, to fund all or part of the Debt Service Reserve Fund Requirement by delivering to the Trustee for deposit in the Debt Service Reserve Fund one or more Debt Service Reserve Fund Instruments. Any Debt Service Reserve Fund Instrument shall (a) permit the Trustee to draw amounts thereunder for deposit in the Debt Service Reserve Fund which, together with any moneys and investments on deposit in the Debt Service Reserve Fund or other Debt Service Reserve Fund Instruments to fund the Debt Service Reserve Fund, are not less than the Debt Service Reserve Fund Requirement and which may be applied to any purpose for

which moneys in the Debt Service Reserve Fund may be applied, and (b) contain no restrictions on the ability of the Trustee to receive payment thereunder other than a certification by the Trustee that the funds drawn thereunder are to be used for the purposes of the Debt Service Reserve Fund. Any such Debt Service Reserve Fund Instrument shall provide that the Trustee shall receive payment thereunder prior to the

12863764V. 15

17

expiration or termination thereof and whenever moneys are required for the purposes for which Debt Service Reserve Fund moneys may be applied. Thirty (30) days prior to the expiration date of a Debt Service Reserve Fund Instrument on deposit in the Debt Service Reserve Fund, the Borrower shall (a) replace such Debt Service Reserve Fund Instrument with a letter of credit or a surety bond policy (i) satisfying the requirements described in the Indenture and in the definition of Debt Service Fund Instrument and (ii) in a face amount which, taking into account any moneys, investments or other Debt Service Reserve Fund Instruments then on deposit in the Debt Service Reserve Fund, equals the Debt Service Reserve Fund Requirement, (b) deposit in the Debt Service Reserve Fund cash or Qualified Investments in the amount necessary to fund the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement or (c) fund the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement through a combination of (a) and (b). The Trustee shall promptly make a drawing on such Debt Service Reserve Fund Instrument (a) whenever moneys are required for the purposes for which Debt Service Reserve Fund moneys may be applied, (b) whenever the rating of the bank or financial institution providing such Debt Service Reserve Fund Instrument falls below "A"\* by either Moody's or S&P, and (c) prior to any expiration or termination thereof (but no earlier than 29 days prior to such expiration unless pursuant to (a); provided, however, that no such drawing need be made if other moneys (including other Debt Service Reserve Fund Instruments) are available in the Debt Service Reserve Fund in the amount of the Debt Service Reserve Fund Requirement. If the Trustee makes a draw on such Debt Service Reserve Fund Instrument or if the amount of such Debt Service Reserve Fund Instrument (plus other Qualified Investments in the Fund) is less than the Debt Service Reserve Fund Requirement, the Trustee shall notify the Borrower of the amount of the deficiency, and the Borrower shall remedy such deficiency by increasing the amount of such Debt Service Reserve Fund Instrument and/or by depositing moneys or Qualified Investments in the Debt Service Reserve Fund to the extent of such deficiency. If the Borrower elects to deposit a Debt Service Reserve Fund Instrument in the Debt Service Reserve Fund in lieu of moneys or investments on deposit therein, the Trustee shall transfer to the Revenue Account of the Bond Fund from the Debt Service Reserve Fund moneys originally deposited by the Borrower therein in an amount equal to, or investments held therein having an Amortized Value equal to, the face amount of the Debt Service Reserve Fund Instrument then being deposited; provided, however, the Trustee shall have received an opinion of Bond Counsel (which opinion, including the scope, form, substance and other aspects thereof are acceptable to the Trustee) to the effect that the foregoing (and subsequent transfers of such money or investments from the Revenue Fund) will not adversely affect the validity of any of the Bonds or any exemption for the purposes of federal income taxation to which interest on any of the Series 2010 Bonds is otherwise entitled. If no opinion of Bond Counsel is received, the Borrower shall not be entitled to deposit a Debt Service Reserve Fund Instrument in the Debt Service Reserve Fund.

#### **Rebate Fund**

There shall be deposited in the Rebate Fund all amounts required to be so deposited therein pursuant to the Tax Agreement. Amounts held in the Rebate Fund shall be used and applied pursuant to the Tax Agreement and for no other purpose.

#### **Investment of Moneys**

Subject to the restrictions hereinafter set forth in the Indenture and in the Tax Agreement, moneys held in the Bond Fund, the Debt Service Reserve Fund and the Project Fund shall be invested and reinvested by the Trustee, upon written directions of the Borrower, in Qualified Investments maturing no later than the date on which it is estimated that such moneys will be required to be paid out under the Indenture. Qualified Investments acquired under an investment agreement may be deemed to mature on the dates for payment under such investment agreement. Qualified Investments that are registerable securities shall be registered in the name of the Trustee. For the purpose of determining the amount in

12863764v. 15

18

any Fund or Account other than the Rebate Fund, all Qualified Investments credited to such Fund or Account shall be valued at market value. All investment instructions under the Indenture shall be provided in writing to the Trustee no later than one Business Day prior to the making of the investment directed therein. The Trustee may make any and all such

investments through its own investment department, or through any of its affiliates or subsidiaries. The Trustee shall be entitled to rely on all written investment instructions provided by the Borrower under the Indenture. The Trustee shall not be responsible or liable for the performance of any such investments or for keeping the moneys held by it under the Indenture fully invested at all times. Absent the provision of investment instructions under the Indenture, the Trustee shall invest such funds in the Goldman Sachs Financial Square Treasury Obligation Fund or a money market mutual fund registered under the Investment Company Act of 1940 (including those of an affiliate of the Trustee or for which the Trustee or any of its affiliates provides management advisor or other services) which invests in (i) short-term securities issued or guaranteed by the United States Government, its agencies or instrumentalities and/or (ii) repurchase agreements relating to such securities. The Trustee is authorized under the Indenture to execute purchases and sales of Qualified Investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. Any obligations acquired by the Trustee as a result of such investment or reinvestment shall be held by or under the control of the Trustee (except for such investments held in book-entry form) and shall be deemed to constitute a part of the Fund or Account from which the moneys used for its purchase were taken. Except as expressly provided in the Indenture, all investment income shall be retained in the Fund or Account to which the investment from which such income is credited.

### **Supplemental Indentures of Trust**

Subject to the terms and provisions of the Indenture, the City and the Trustee may, without the consent of, but with notice to, any of the Bond Owners, enter into an indenture or indentures supplemental to the Indenture, not inconsistent with the terms and provisions hereof, for any one or more of the following purposes (i) to cure any ambiguity, formal defect or omission in the Indenture, (ii) to grant to or confer upon the Trustee, for the benefit of the Bond Owners, any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bond Owners or the Trustee, (iii) to subject to the Indenture additional revenues, properties or collateral, (iv) to modify, amend or supplement the Indenture, or any indenture supplemental hereto, in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States, and if the City so determines, to add to the Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by the Trust Indenture Act of 1939, as amended, or any similar federal statute, and (v) to add to the covenants and agreements of the City contained in the Indenture other covenants and agreements thereafter to be observed for the protection of the Bond Owners or to surrender or limit any right, power or authority, herein reserved to or conferred upon the City.

Exclusive of supplemental indentures referred to above, the Indenture may be amended or supplemented only as provided therein. Subject to the terms and provisions contained in the Indenture, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to approve the execution by the City and the Trustee of such indenture or indentures supplemental thereto as shall be deemed necessary and desirable by the City for the purposes of modifying, altering, amending, adding to or rescinding in any particular, any of the terms or provisions contained in the Indenture or in any supplemental indenture. If at any time the City shall request the Trustee to enter into any supplemental indenture for any of the purposes as described in the Indenture and summarized in this paragraph, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by certified mail to the Bond Owners. Such notice shall briefly set forth the nature of the proposed

12863764v. 15

19

supplemental indenture and shall state that copies thereof are on file at the designated corporate office of the Trustee for inspection by all Bond Owners. If, within 60 days, or such longer period as shall be prescribed by the City, following the mailing of such notice, the Owners of the requisite percentage in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as provided in the Indenture, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof; or in any manner to question the propriety or the execution thereof; or to enjoin or restrain the Trustee or the City (subject to the consent of the Borrower) from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of such supplemental indenture as described in this Section and as permitted and provided under the Indenture, the Indenture shall be and deemed to be modified and amended in accordance therewith.

Nothing contained in the Indenture shall permit, or be construed as permitting, without the consent and approval of the

Owners of all of the Bonds then Outstanding (i) an extension of the maturity of the principal of, or the time for payment of any redemption premium or interest on, any Bond, or a reduction in the principal amount of any Bond, or the rate of interest or redemption premium thereon, or a reduction in the amount of, or extension of the time of any payment required by, any Bond, (ii) a privilege or priority of any Bond over any other Bond (except as provided within the Indenture), (iii) a reduction in the aggregate principal amount of the Bonds required for consent to such a supplemental indenture, (iv) the deprivation of the Owner of any Bond then Outstanding of the lien created by the Indenture or (v) the amendment of items (i) through (iv) above. No amendment or supplement to the Indenture may be entered into without the Trustee and the City first receiving an opinion of Bond Counsel to the effect that such amendment or supplement is authorized under the Indenture, and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Bonds.

Anything in the Indenture to the contrary notwithstanding, an amendment or supplemental indenture under the Indenture shall not become effective unless and until the Borrower shall have consented in writing to the execution and delivery thereof.

#### **Amendments of Loan Agreement and Tax Agreement**

Subject to the terms and provisions of the Indenture, the City and the Borrower may, with the prior written consent of the Trustee, and with notice to the Bond Owners, amend or modify the Loan Agreement and the Tax Agreement, or any provisions thereof, or may consent to the amendment or modification thereof, in any manner not inconsistent with the terms and provisions of the Indenture, for any one or more of the following purposes: (i) to cure any ambiguity or formal defect in the Loan Agreement or the Tax Agreement, (ii) to provide for the issuance of Additional Bonds in accordance with the terms of the Indenture, (iii) to grant to or confer upon the City or the Trustee, for the benefit of the Bond Owners, any additional rights, remedies, powers or authorities that lawfully may be granted to or conferred upon the City or the Trustee, (iv) to identify more clearly the Project, or any part thereof, and (v) to amend or modify the Loan Agreement or the Tax Agreement, or any part thereof, in any manner specifically required or permitted by the terms thereof, including, without limitation, as may be necessary to maintain the exclusion from gross income for purposes of federal income taxation of the interest on the Bonds.

Exclusive of amendments and modifications covered by the Indenture as described in the paragraph immediately above, the Loan Agreement and the Tax Agreement may be amended or modified only as provided by the terms of the Indenture as described in this paragraph. Subject to the terms of the Indenture and as summarized in the immediately succeeding paragraph, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, with the prior written consent of the Trustee, shall have the right, from time to time, to consent to and approve the amendment or

12863764v. 15

#### **20**

modification of the Loan Agreement and the Tax Agreement as shall be deemed necessary and desirable by the Trustee for the purpose of amending and modifying, in any particular, any of the terms or provisions contained in the Loan Agreement and the Tax Agreement. If at any time the Trustee shall be asked to enter into or to consent to any such amendment or modification, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such modification or amendment to be mailed by certified mail to the Bond Owners. Such notice shall briefly set forth the nature of proposed amendment or modification and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by the Bond Owners. If, within 60 days, or such longer period as shall be prescribed by the City, following the mailing of such notice, the Owners of the requisite percentage in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such amendment or modification shall have consented to and approved the execution thereof as provided in the Indenture, or the operation thereof; or in any manner to question the propriety of the execution thereof; or to enjoin or restrain the Trustee or the City from executing or consenting to the same or from taking any action pursuant to the provisions thereof.

Nothing contained in the Indenture shall permit, or be construed as permitting, without the approval and consent of the Owners of all of the Bonds then Outstanding, (i) the extension of the time for any loan payment under the Loan Agreement, or a reduction in the amount of any such loan payment under the Loan Agreement or (ii) the payment to any Person other than the Trustee as provided herein of any amount (except certain amounts due under the Loan Agreement with respect to the City) due under the Loan Agreement. No amendment of the Loan Agreement may be entered into without the Trustee and the City first receiving an opinion of Bond Counsel to the effect that such amendment is authorized under the Indenture, and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Bonds.



### **Amendments to Collateral Assignments and Terminalling Agreements**

Notwithstanding any provision in the Collateral Assignments or the Terminalling Agreement Assignments to the contrary, the Trustee shall not consent to any amendment of such Assignments without receiving the prior written consent of the Beneficial Owners owning a majority of the outstanding principal amount of the Bonds.

### **Events of Default**

Each of the following events (unless such event has been cured or waived) is defined as, and declared to constitute, an "Event of Default" under the Indenture:

- (i) default in the due and punctual payment of the principal, premium, if any, or interest on, any Outstanding Bond, whether at the stated maturity thereof, upon any proceedings for redemption, or upon the maturity thereof by declaration of acceleration;
- (ii) default by the City in its performance or observance of any of the other covenants, agreements or conditions contained in the Indenture, and the continuation thereof for the period after notice and cure specified in the Indenture;
- (iii) an event of default under the Loan Agreement, and the continuation thereof for the period after notice and cure specified in the Indenture; and
- (iv) the withdrawal of any amount from the Debt Service Reserve Fund to pay principal of and interest on the Bonds and the failure to replenish the Debt Service Reserve Fund in full within six months of the date of the draw as provided in the Indenture.

12863764v. 15

21

### **Acceleration**

Upon the occurrence of an Event of Default, the Trustee may, and shall if requested to do so by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, accelerate the maturity of the Bonds, whereupon the principal of and all accrued interest on the Bonds shall become immediately due and payable, without premium and no interest shall accrue on the Bonds from and after the date of such acceleration.

### **Other Remedies; Rights of Bond Owners**

Upon the occurrence of any Event of Default, the Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal premium, if any, and interest on the Bonds then Outstanding, and the performance by the City and the Borrower of their respective obligations under the Indenture and under the Loan Agreement and the Mortgage, including, without limitation, the following:

- (i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bond Owners, and require the City to carry out its obligations under the Indenture, the Agreement and the Mortgage;
- (ii) bring suit upon the Bonds;
- (iii) by action, suit or proceeding at law or in equity require the City to account for any moneys received by the City as if it were the trustee of an express trust for the Bond Owners;
- (iv) by action, suit or proceeding at law or in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bond Owners; and
- (v) exercise its rights and remedies under the Collateral Assignments and the Terminalling Agreement Assignments.

Any judgment against the City shall be enforceable only against the Trust Estate. There shall not be authorized any deficiency judgment against any assets of, or the general credit of, the City. Subject to the prior rights of the Bond Owners, the City shall be entitled to reimbursement for any of its expenses in connection with such proceeding from any available funds in the Trust Estate.

If an Event of Default shall have occurred and, if requested to do so by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, and if indemnified as provided in the Indenture, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bond Owners. No remedy conferred upon or reserved to the Trustee or the Bond Owners by the terms of the Indenture is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or the Bond Owners under the Indenture or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every such right and power may be exercised from time to time as often as may be deemed expedient. No waiver of any default or Event of Default under the Indenture, whether by the Trustee or the Bond Owners, shall extend to or shall affect any subsequent default or Event of

Default or shall impair any right or remedy consequent thereon.

12863764v. 15

## 22

### **Right of Bond Owners to Direct Proceeding**

Anything in the Indenture to the contrary notwithstanding, upon the occurrence of an Event of Default, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture, or for the appointment of a receiver or for any other proceedings under the Indenture, and may countermand any direction given, pursuant to the Indenture, by less than a majority in aggregate principal amount of the Owners of the Bonds; provided, however, that direction shall not be otherwise than in accordance with the provisions of law and of the Indenture.

### **Appointment of Receiver**

Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners under the Indenture, the Trustee shall be entitled, as a matter of right, to request the appointment of a receiver or receivers of the Trust Estate and of the revenues, issues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

### **Waiver of Certain Laws**

Upon the occurrence of an Event of Default, to the extent that such rights may then lawfully be waived, neither the City, nor anyone claiming through or under it, shall claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of the Indenture. The City, for itself and all who may claim through or under it, waives, to the extent that it lawfully may do so, the benefit of all such laws.

### **Application of Moneys**

All moneys relating to the Bonds (other than amounts held in the Rebate Fund) received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture shall (after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees and expenses, liabilities and advances of the City and the Trustee) be deposited in the Principal and Interest Payment Account of the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(i) Unless the principal of all the Bonds Outstanding shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST - To the payment to the Persons entitled thereto of all installments of interest then due on the Outstanding Bonds and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; SECOND - To the payment to the Persons entitled thereto of the unpaid principal of, and premium, if any, on, the Outstanding Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are already held pursuant to the provisions of the Indenture) in the order of their due dates, and, if the amount available shall not be sufficient to pay in full the principal of each Bond due on any particular date, together with such premium, then to the payment ratably, according

12863764v. 15

## 23

to the amount of principal and premium due on such date, to the Persons entitled thereto, without any discrimination or privilege.

(ii) If the principal of all the Outstanding Bonds shall have become due or shall have been declared due and payable by acceleration, all such moneys shall be applied first to the payment of the principal, premium, if any, and interest then due on such Bonds, without preference or priority of principal and premium over interest or of interest over principal and premium, or of any installment of principal or interest over any other installment of principal or interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal, premium, if any, and interest, to the Persons entitled thereto, without any discrimination or privilege.

(iii) If the principal of all the Outstanding Bonds shall have been declared due and payable by acceleration, and if such declaration shall thereafter have been rescinded and annulled under the provisions of the Indenture, then the moneys shall be applied in accordance with the provisions of subsection (i) above; provided, however, that in the event that the principal of all the Bonds shall later become due or be declared due and payable by acceleration, the moneys shall be

applied in accordance with the provisions of subsection (ii) above.

Whenever the Trustee shall apply such funds it shall fix the date of application, which shall be the earliest date possible for the Trustee to carry out its duties under the Indenture. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

Notwithstanding the preceding, if, as permitted by the Indenture, one or more Series of Bonds shall be Outstanding and shall be secured as to repayment by security which does not secure one or more other series of Bonds, proceeds of such security shall be applied only to the payment of amounts relating to the series of Bonds secured by such security.

#### **Remedies Vested in Trustee**

All rights of action (including the right to file proofs of claim) under the Indenture and under the Bonds or any Bond may be enforced by the Trustee without the possession of any Bond or the production thereof in any trial or proceedings related thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiff or defendant the Owner of any Bond.

#### **Rights and Remedies of Bond Owners**

No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust under the Indenture or for the appointment of a receiver or any other remedy under the Indenture, unless:

(i) an Event of Default has occurred of which the Trustee has been notified as provided in the Indenture, or of which by said Indenture the Trustee is deemed to have notice;

(ii) the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers granted under the Indenture or to institute such

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**24**

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action, suit or proceeding in the name or names of such Owners, and shall have offered to the Trustee indemnity as provided in the Indenture; and

(iii) the Trustee shall thereafter fail or refuse to exercise the powers granted under the Indenture, or to institute such action, suit or proceeding in its own name, within 60 days;

and such notification, request and offer of indemnity are declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of the Indenture, and to any action or cause of action for the enforcement of the Indenture, or for the appointment of a receiver or for any other remedy under the Indenture. No one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of the Indenture by such Owners' action, and all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in the Indenture and (except as otherwise provided for in the Indenture) for the equal and ratable benefit of the Owners on all Bonds then Outstanding. Nothing in the Indenture, however, shall affect or impair the right of any Bond Owner to enforce the payment of the principal of, premium, if any, and interest on any Bond owned by such Bond Owner at and after the maturity thereof, or the obligation of the City to pay the principal of, premium, if any, and interest on any Bond to the Owner thereof at the time and place, from the source, and in the manner expressed in such Bond. Nothing contained in the Indenture shall be construed as permitting or affording any Bond Owner a right or cause of action against the Trustee or in respect of the Bonds where a default has been waived under the Indenture or cured under the Indenture.

#### **Termination of Proceeding**

In case the Trustee shall have proceeded to enforce any right under the Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the City, the Trustee and the Bond Owners shall be restored to their former positions and rights under the Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

#### **Waivers of Events of Default**

The Trustee may in its discretion waive any Event of Default under the Indenture and its consequences, and shall do so upon the written request of the registered owners of a majority of the aggregate principal amount of the Bonds then Outstanding; provided, however, that the Trustee may not waive an Event of Default under the Indenture as described above in subparagraph (i) of the Section entitled "Events of Default" without the written consent of the registered owners

of all Bonds then Outstanding.

#### **Notice of Default; Opportunity to Cure Defaults**

Anything in the Indenture to the contrary notwithstanding, no default as described above in subparagraph (ii) or (iii) of the Section entitled "Events of Default" shall constitute an Event of Default under the Indenture until actual notice of such default by registered or certified mail shall be given to the City and the Borrower by the Trustee or by the Owners of not less than 25% in aggregate principal amount of all Bonds Outstanding, and the City and the Borrower shall have had 30 days after receipt of such notice at their option to correct said default or to cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within the applicable period; provided, however, that if said default (other than an Event of Default by the Borrower under Section 4.2 of the Loan Agreement, which must be cured within 10 days of receipt of such notice) be such that it is correctible but cannot be corrected within the applicable period, it shall not constitute an Event of Default

12863764v. 15

#### **25**

if corrective action is instituted by the City and the Borrower, or either of them, within the applicable period and diligently pursued until the default is corrected; but in any event such default is cured within 150 days unless a longer cure period is consented to by the owners of a majority in principal amount of the Bonds outstanding. With regard to any default concerning which notice is given under the Indenture and described under the provisions of this Section, the City, to the full extent permitted by law, grants the Borrower full authority to perform and observe for the account of the City any covenant or obligation alleged in said notice not to have been performed or observed in the name and stead of the City with full power to do any and all things and acts to the same extent that the City could do and perform any such things and acts, with power of substitution. The Trustee consents to such grant of authority.

#### **Escrow Agreement**

The Indenture and the Loan Agreement provide that amounts disbursed from the Project Fund for the design, construction and equipping of the Project will be disbursed pursuant to an Escrow Agreement, in the form attached as Exhibit C to the Indenture, to a title insurance company (or its escrow agent) which will issue the applicable owner's and loan title insurance policy, pursuant to the terms of a customary money lender's escrow requiring the recordation of the applicable Mortgage and Security Agreement and the issuance of a mortgagee loan title insurance policy satisfying the Mortgage and Title Requirements. See "The PROJECT - Construction Monitor" herein.

#### **SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT**

The following statements are a brief summary of certain provisions of the Loan Agreement that have not been described elsewhere in this Limited Offering Memorandum. The summary does not purport to be complete, and reference is made to the Loan Agreement, included herein as "APPENDIX B-The Loan Agreement," for a full and complete statement of the provisions thereof.

#### **Disbursements from the Project Fund**

The Loan Agreement provides that, as the City authorizes and directs in the Indenture, the Trustee will disburse the moneys from the Project Fund for payment or reimbursement of the Costs of the Project, subject in each case to the limitations and restrictions contained in the Tax Agreement. All disbursements from the Project Account of the Project Fund shall be evidenced by a completed Requisition Certificate, in the form of Exhibit B to the Indenture and amounts for the design, construction and equipping of the Project will be disbursed pursuant to an Escrow Agreement in the form of Exhibit C to the Indenture, to a title insurance company (or its escrow agent). See "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE - Escrow Agreement."

All proceeds of the Series 2010 Bonds, including moneys earned pursuant to the terms of the Indenture (other than amounts required to be held in the Rebate Fund which shall be applied in accordance with the Tax Agreement) remaining in the Project Fund on the Completion Date, and after payment of the Costs of the Project, then due and payable, shall be applied (i) by the Trustee for transfer to the Bond Fund for application to the redemption of Series 2010 Bonds in accordance with the Indenture or (ii) for any other use as directed by the Borrower Representative, provided that the Trustee is furnished with an opinion of Bond Counsel to the effect that such use will not adversely affect the exclusion from federal income taxation of interest on any of the Series 2010 Bonds.

Each payment for Costs of the Project shall be made only upon receipt by the Trustee of a requisition in substantially the form set forth in Exhibit B to the Indenture, signed by the Borrower Representative ( as defined in the Loan Agreement).

12863764v. 15

### **Borrower Required to Pay Costs in Event Project Fund Insufficient**

In the event the moneys in the Project Fund available for payment of the Costs of the Project are not sufficient to make such payment in full, the Borrower agrees to pay directly, or to deposit moneys in the Project Fund for the payment of, such costs of completing the Project as may be in excess of the moneys available therefor in the Project Fund. The City does not make any warranty or representation, either expressed or implied, that the moneys which will be deposited into the Project Fund, and which under the provisions of the Loan Agreement will be available for payment of the Costs of the Project, will be sufficient to pay all of the costs which will be incurred in connection therewith. The Borrower agrees that if, after exhaustion of the moneys in the Project Fund, the Borrower should pay, or deposit moneys in the Project Fund for the payment of, any portion of the Costs of the Project pursuant to the provisions of the Loan Agreement, then the Borrower shall not be entitled to any reimbursement therefor from the City, the Trustee or the holders and owners of the Bonds, nor shall it be entitled to any diminution of the amounts to be paid by the Borrower or held by the Trustee out of Revenues deposited by the Borrower under the Loan Agreement. Title to all portions of the Project acquired, constructed or equipped at the Borrower's cost shall immediately vest in the Borrower and be subject to the liens of the Loan Agreement and the Mortgage. The Borrower agrees to execute, deliver and record or file (or cause to be executed, delivered, recorded and filed) such instruments as the City or the Trustee may request in order to create or protect their liens in and to such portions of the Project.

### **Payment Obligations of the Borrower, Pledge of Revenues and Payment of the Loan**

As security for the payment of its obligations under the Loan Agreement, the Borrower pledges and grants a security interest in the Revenues to the City. The City agrees to make the Loan to the Borrower in accordance with the provisions of the Loan Agreement in order to finance the Costs of the Project, including without limitation, any costs of issuance of the Series 2010 Bonds. As consideration for the issuance of the Series 2010 Bonds and the making of the Loan to the Borrower by the City in accordance with the provisions of the Loan Agreement, the Borrower agrees to deposit all Revenues in Borrower's possession to be deposited directly with the Trustee, as assignee and pledgee of and for the account of the City for deposit in the Revenue Account of the Bond Fund in accordance with the Indenture. Such deposit shall be made on the 20<sup>th</sup> day, or the next business day, of each month. All such deposits shall be made with the Trustee at its designated corporate trust office in lawful money (immediately available) of the United States of America.

### **Administrative Expenses**

Upon passage and approval of the Bond Ordinance, the Borrower shall pay to the City an application fee in the amount of \$1,500. The City's administrative fee for the Project is \$346,500 or 0.77% of the original principal amount of the Bonds, which shall be paid from Series 2010 Bond proceeds or from funds contributed by the Borrower on the date of issuance of the Series 2010 Bonds. The Borrower shall pay the City's legal reserve fee of 0.10% of the original principal amount of the Series 2010 Bonds on the date of issuance of the Series 2010 Bonds. Such fee, which may be paid from proceeds of the Series 2010 Bond or from funds contributed by the Borrower, shall be used by the City to pay legal costs or other expenses in connection with the Project, the Series 2010 Bonds or other bond issues of the City- The Borrower will also pay the following within 30 days after receipt of a bill therefor (provided that payments required pursuant to subsection (a) shall be made prior to or contemporaneously with the issuance of the Series 2010 Bonds):

(a) The reasonable fees and expenses of the City in connection with and as provided in the Loan Agreement and the Series 2010 Bonds, such fees and expenses to be paid directly to the City or as otherwise directed in writing by the City;

1286376-4v. 15

### **27**

(b) The fees and expenses of the Trustee and all other fiduciaries and agents serving under the Indenture (including any expenses in connection with any redemption of the Series 2010 Bonds), and (ii) all fees and expenses, including counsel fees, of the Trustee for any extraordinary services rendered by it under the Indenture. All such fees and expenses are to be paid directly to the Trustee or other fiduciary or agent for its own account as and when such fees and expenses become due and payable; and

(c) If the Borrower should fail to make any of the payments required by the Loan Agreement, then the item or installment which the Borrower has failed to pay shall continue as an obligation of the Borrower until the same shall have been fully paid, with interest thereon at the rate of 2% per annum above the prime rate in effect as determined by the Trustee, to the extent permitted by law, until paid in full.

### **Debt Service Reserve Fund**

The Borrower shall be obligated to maintain in the Debt Service Reserve Fund moneys and/or Qualified Investments and/or Debt Service Reserve Fund Instruments in an aggregate amount equal to the Debt Service Reserve Fund

Requirement. The Borrower agrees that, pursuant to the Indenture, the Trustee shall make any required deposits to the Debt Service Reserve Fund from the Revenues of the Borrower to cure any deficiencies in accordance with the requirements of the Indenture.

**Rebate Fund**

As provided in the Tax Agreement, the Borrower shall be obligated to make all payments required for deposit in the Rebate Fund. /

**Income Tax Reserve Account**

Upon the issuance of the Series 2010 Bonds, the Borrower shall establish and maintain a separate account with the Trustee to be designated the "City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) - Income Tax Reserve Account. The Income Tax Reserve Account shall be funded from Revenues of the Borrower as set forth in the Indenture. The Income Tax Reserve Account shall not be funded with proceeds of the Series 2010 Bonds. The Borrower agrees to withdraw and use moneys in the Income Tax Reserve Account solely for the following purposes: (i) to distribute to its members funds to be used to pay estimated income taxes due by the members for the current period; and (ii) prior to any withdrawal from the Debt Service Reserve Fund or the Operating Reserve Account replenishing the Principal and Interest Payment Account of the Bond Fund in the event of any deficiencies of amounts therein required to pay, on a timely basis, principal of and interest on the Series 2010 Bonds. The Borrower shall maintain the Income Tax Reserve Account so long as the Series 2010 Bonds or any Additional Bonds are Outstanding.

**Operating Reserve Account**

Upon the issuance of the Series 2010 Bonds, the Borrower shall establish and maintain a separate account with the Trustee to be designated the "City of Chicago, Illinois Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project) - Operating Reserve Account. The Operating Reserve Account shall be funded from Revenues of the Borrower in an amount equal to \$500,000 ( the "Operating Reserve Fund Requirement" ) as set forth in the Indenture. The Operating Reserve Requirement shall not be funded with proceeds of the Series 2010 Bonds. The Borrower agrees to withdraw and use moneys in the Operating Reserve Account in accordance with the Indenture solely for the following purposes: (i) to pay expenses relating to the operation of the Project in any month in which the amounts in the Operating Expense Account are insufficient and (ii) prior to any withdrawal

12863764v. 15

28

from the Debt Service Reserve Fund, replenishing the Principal and Interest Payment Account of the Bond Fund in the event of any deficiency of amounts required to pay, on a timely basis, principal of and interest on the Series 2010 Bonds. The Borrower shall maintain the Operating Reserve Account for as long as the Series 2010 Bonds or any Additional Bonds are Outstanding.

**Priority of Funds and Accounts**

To the extent the Revenue of the Borrower is not sufficient to make all of the deposits required under the Loan Agreement and the Indenture, the Borrower's Revenue shall be deposited in priority as described in the Indenture.

**Obligations of Borrower Unconditional, Certain Payments Assigned**

The obligations of the Borrower to make the payments required under the Loan Agreement and to perform and observe the other agreements contained in the Loan Agreement shall be absolute and unconditional, and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach of the City or the Trustee of any obligation to the Borrower or otherwise with respect to the Project, whether under the Loan Agreement, under any of the other Borrower Agreements, under the Indenture or otherwise, or out of any indebtedness or liability at any time owing to the Borrower by the City or the Trustee.

Until such time as all of the Series 2010 Bonds shall have been fully paid or redeemed, the Borrower (i) will not suspend or discontinue any payments provided for in the Loan Agreement, (ii) will perform and observe all other agreements contained in the Loan Agreement and (iii) will not terminate the Loan Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or temporary use of any or all of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof, or any failure of the City or the Trustee to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, the Loan Agreement or any of the other Borrower Agreements. Nothing contained

in the Loan Agreement shall be construed to release the City from the timely performance of any of the agreements on its part contained in the Loan Agreement or contained in any of the other Issuer Agreements, or to release the Trustee from the performance of any of the agreements on its part contained in the Indenture or the Tax Agreement, and in the event the City or the Trustee should fail to perform any such agreement on its part, the Borrower may institute such action against the City or the Trustee as the Borrower may deem necessary to compel performance as long as such action does not abrogate the obligations of the Borrower contained in the first sentence of the paragraph immediately preceding this one. The Borrower may, however, at the Borrower's own cost and expense and in the Borrower's own name or in the name of the City, prosecute or defend any action or proceeding or take any action involving third persons which the Borrower deems reasonably necessary in order to secure or protect the Borrower's right of possession, occupancy and use of the Project under the Loan Agreement, and in such event the City agrees to cooperate fully with the Borrower and to take all lawful action necessary to effect the substitution of the Borrower for the City in any such action or proceeding if the Borrower shall so request.

### **Operation of Project**

Unless the Project is sold or disposed of pursuant to the provisions of the Loan Agreement, the Borrower agrees that during the term of the Loan Agreement, the Project shall be operated and maintained, in substantial compliance with all governmental laws, building codes, ordinances, and

12863764v. 15

29

regulations and zoning laws as shall be applicable. The Borrower agrees that during the term of the Loan Agreement it will at its own expense (a) keep the Project in as reasonably safe condition as the operations at the Project permit and (b) except to the extent the Borrower has determined that any portion of the Project is obsolete or not useful in its operations, keep the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof. The Borrower shall keep, or cause to be kept, the Project continuously insured in accordance with the Loan Agreement. The Borrower agrees that the City and the Trustee shall have no duties or responsibilities whatsoever with respect to the operation or maintenance of the Project or the performance of the Project for its designed purposes. '

### **Modification of Project**

The Borrower may, also at its own expense, make from time to time any additions, modifications or improvements to the Project it may deem desirable for its purposes that do not substantially reduce their value; provided that all such additions, modifications and improvements made by the Borrower which are affixed to the Project shall become a part of the Project. The Borrower will not permit any liens, security interests or other encumbrances other than Permitted Encumbrances to be established or to remain against the Project for labor or materials furnished in connection with the Project or any additions, modifications, improvements, repairs, renewals or replacements made by it to the Project; provided that if the Borrower first notifies the Trustee of its intention to do so, and if the Borrower posts a bond, cash, letter of credit or title indemnity with the Trustee in form satisfactory to the Trustee, the Borrower may in good faith contest any mechanics' or other liens filed or established against the Project and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Project or any part thereof will be subject to loss or forfeiture, in which event the Borrower shall promptly pay and cause to be satisfied and discharged all such unpaid items, provided that in the case of mechanic's liens or other liens individually in the amount of \$50,000 or less or in the aggregate of \$150,000 or less such security shall not be required. The City and the Trustee will, at the expense of the Borrower, cooperate fully with the Borrower in any such contest. In the event that the Borrower shall fail to pay any of the foregoing items required by the Loan Agreement to be paid by the Borrower (after final, nonappealable judgment is entered thereon), the City or the Trustee may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by the City or the Trustee shall become an additional obligation of the Borrower under the Loan Agreement to the one making the advance, which amount the Borrower agrees to pay on demand together with interest thereon at a rate equal to the lesser of (i) 3% per annum above the highest rate of interest borne by any of the Series 2010 Bonds and (ii) the maximum rate permitted by law.

### **Removal of Equipment**

Subject to the Loan Agreement, in any instance where the Borrower determines any Equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Borrower may remove such Equipment and shall sell, trade in, exchange or otherwise dispose of it (as a whole or in part), provided that the Borrower shall either:

(i) Substitute (by direct payment of the costs thereof) and install anywhere in the Project from which the Equipment was

removed, other machinery, equipment, furnishings or other personal property having equal or greater value and utility (but not necessarily having the same function) in the operation of the Project (provided such removal and substitution shall not impair the Borrower's ability to operate the Project in an efficient manner);

12863764v. 15

**30**

(ii) Not make any such substitution and installation, provided (except as set forth in the next paragraph) (A) that in the case of the sale of any such Equipment to anyone, other than itself or in the case of the scrapping thereof, the Borrower shall pay to the Trustee for deposit into the Revenue Account of the Bond Fund the net proceeds from such sale or the scrap value thereof, as the case may be, (B) that in the case of the trade-in of such Equipment for other machinery, equipment, furnishings or other personal property not to be installed in the Project, the Borrower shall pay to the Trustee for deposit into the Revenue Account of the Bond Fund the amount of the credit received by it in such trade-in and (C) that in the case of any other disposition thereof the Borrower shall pay to the Trustee for deposit into the Revenue Account of the Bond Fund an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting principles; or

(iii) In the event removal of Equipment, in the reasonable judgment of the Trustee, materially reduces the value of the Project, the Trustee may require the Borrower at the Borrower's option (A) to pay sufficient moneys (as provided in the next paragraph of this Section) to the Trustee for deposit into the Revenue Account of the Bond Fund to offset such reduction, or (B) to replace the Equipment or (C) to place substitute Equipment within the Project.

The removal of any portion of the Equipment pursuant to the provisions of the Loan Agreement shall not entitle the Borrower to any postponement, abatement, or diminution of the deposits and other payments required to be made under the Loan Agreement. The Borrower will promptly report in writing to the Trustee, when aggregate removals pursuant to these provisions during a Fiscal Year of the Borrower are \$100,000 or more, each subsequent removal, substitution, sale or other disposition under the clauses (i) and (ii) above. If the aggregate amount of all sales, trade ins or other dispositions previously reported during the then current Fiscal Year of the Borrower, valued in accordance with clause (ii) above equals \$100,000 or more, the Borrower will pay to the Trustee all amounts in excess of \$100,000 during such Fiscal Year required by clauses (i) and (ii) above, to be paid into the Revenue Account of the Bond Fund promptly after any sale, trade in or other disposition requiring such payment.

**Transfer of Project**

(a) While the Series 2010 Bonds are Outstanding, the Borrower covenants and agrees under the Loan Agreement not to sell, transfer or otherwise dispose of the Project, or any part thereof to another entity other than an Affiliate unless it obtains the prior written consent of the Bondholders who own a majority of the Series 2010 Bonds then Outstanding, other than: (i) sales or other dispositions of Equipment in accordance with the caption "Removal of Equipment" above; (ii) transfers in conjunction with actions described under the caption "Borrower to Maintain Existence; Consolidation of Merger; Single Purpose Entity" below; or (iii) sales or dispositions of any insubstantial portion of the Project (determined in the reasonable judgment of the Borrower) that does not materially adversely affect the ability of the Borrower to provide the same range and level of services and facilities at the Project as was provided prior to such sale or disposition; provided that prior to such sale, transfer or other disposition, the Borrower provides to the City and the Trustee an opinion of Bond Counsel to the effect that the transfer is permitted under the Indenture, the Loan Agreement and the Mortgage, and will not adversely affect the exclusion from gross income for purposes of federal income taxation of the interest on the Series 2010 Bonds.

(b) Notwithstanding anything contained in the Loan Agreement to the contrary, while the Series 2010 Bonds are Outstanding, the Borrower may sell, transfer or otherwise dispose of the Project, or any part thereof to another entity other than an Affiliate without obtaining the prior written consent of any portion of the Bondholders if in conjunction therewith, the Borrower also creates an escrow using non-callable U.S. Treasury securities in an amount sufficient to pay all principal and interest on the Series 2010 Bonds then Outstanding in accordance with the Indenture.

12863764v. 15

**31**

The Borrower shall, within 15 days after execution thereof by all parties thereto, furnish to the City and the Trustee a true and complete copy of the agreements or other documents effecting any such sale, transfer or other disposition.

**Additional and Permitted Indebtedness**

The Borrower covenants that it will not incur, assume, guarantee or otherwise become liable in respect of any Additional Indebtedness (which is defined as Indebtedness other than Additional Bonds or Permitted Indebtedness incurred by the



Borrower subsequent to the issuance of the Series 2010 Bonds). The Borrower may incur Permitted Indebtedness provided that, prior to the incurrence thereof, the Borrower shall have delivered to the Trustee a certificate to the effect that any such Permitted Indebtedness: (i) has no claim on the Trust Estate or the Property or has a claim on the Trust Estate or the Property that is subordinate and junior to the claim of the Series 2010 Bonds and any Additional Bonds, (ii) has been incurred for a lawful purpose of the Borrower in connection with the operation of the Project and (iii) has a maturity of no more than ten years and does not cause the Borrower to have a Debt Service Coverage Ratio that is less than 1.10 when aggregated with any other Permitted Indebtedness incurred and outstanding in accordance with the Loan Agreement. For purposes of Permitted Indebtedness, the Debt Service Coverage Ratio shall mean the ratio of: (x) actual Revenues minus Operating Expenses for the prior fiscal year to (y) the maximum amount of principal and interest coming due on the Bonds and the Permitted Indebtedness to be issued in any Bond Year except there shall be excluded principal coming due on the Bonds in the year of the final maturity of the Series 2010 Bonds.

### **Insurance**

The Borrower shall maintain with respect to the Project, a loan title insurance policy conforming to the Mortgage and Title Requirements. Throughout the term of the Loan Agreement, the Borrower shall maintain or cause to be maintained the following insurance coverages (or prior to the Completion Date, those of the following customarily carried in connection with the construction of facilities of similar size and character as the Project) and pay or cause to be paid, as the same becomes due and payable, all premiums with respect thereto:

- (i) Insurance against loss or damage to the Project and all improvements therein (including, during any period of time when the Borrower is making alterations, repairs or improvements to the Project, improvements and betterments coverage), all subject to standard form exclusions, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State, in an amount equal to the full replacement value of the Project.
- (ii) Commercial general liability and automobile liability insurance against claims arising in, on or about the Properties, including in, on or about the sidewalks or premises adjacent to the Properties, providing coverage limits not less than the coverage limits customarily carried by owners or operators of facilities of similar size and character within the State..
- (iii) Fidelity insurance or bonds on those of its officers and employees who handle funds of the Borrower, both in such amounts and to such extent as are customarily carried by organizations similar to the Borrower and operating properties similar in size and character to the facilities of the Borrower.
- (iv) Business interruption insurance covering all risks as to which insurance is required pursuant to the first paragraph of this Section "Insurance" above, in an amount equal to not less than the amounts required to be deposited pursuant to the Indenture for a period of not less than 12 months. If any such loss or damage has occurred, the Borrower shall continue to be obligated with respect to the amounts

12863764v. 15

### **32**

required to be deposited pursuant to the Indenture, and any such proceeds of such insurance shall be applied against all or part of such payment obligations of the Borrower.

- (v) Such other forms of insurance as the Borrower is required by law to provide with respect to the Project, including, without limitation, any legally required worker's compensation insurance and disability benefits insurance.

- (vi) All insurance required to be maintained by the Borrower per the Asphalt Terminalling Agreements.

All the insurance coverage listed above may be subject to deductible clauses in such amounts as are customary for facilities of similar size and character within the State and as permitted by the Asphalt Terminalling Agreements. At least once every three years, beginning December 1, 2011, the Borrower shall employ (or cause to be employed), at its expense, an Insurance Consultant to review the insurance coverage required by the Loan Agreement and to render to the City, the Borrower and the Trustee a report as to the adequacy of such coverage and as to its recommendations, if any, for adjustments thereto. The insurance coverage provided above may be reduced or otherwise adjusted by the Borrower without the consent of the Trustee or the City, provided that all coverages after such reduction or other adjustment are certified by the Insurance Consultant to be adequate and customary for facilities of like size and type, taking into account the availability of such insurance, the terms upon which such insurance is available, and the costs of such available insurance.

The insurance coverage provided above shall be increased or otherwise adjusted by the Borrower if as a result of such review the Insurance Consultant finds that the existing coverage is inadequate, taking into account the availability of such insurance, the terms upon which such insurance is available, and the cost of such available insurance. The insurance

coverage required above, and modification thereof permitted or required by the Loan Agreement, shall at all times be adequate and customary for facilities of like size and type, and the Insurance Consultant shall so certify in the report required by the Loan Agreement.

All policies maintained or caused to be maintained by the Borrower pursuant to the Loan Agreement shall be taken out and maintained in generally recognized, responsible insurance companies, which may include "captive" insurance companies or governmental insurance pools, selected by the Borrower. The insurance policies required by clauses (i) and (iv) above shall name the Trustee, the City and the Borrower as insureds as their respective interests may appear (provided that with respect to insurance maintained pursuant to clauses (i) and (iv) above, the Trustee shall also be named as a mortgagee under the terms of a standard Illinois mortgagee loss payable endorsement), and the Trustee shall also be insured as an additional insured on the policy required by clause (iii) above, and, provided further that all hazard insurance proceeds shall be paid directly to the Trustee. Such policies or certificates of insurance shall (a) provide that the insurer will give at least 30 days' written notice by email to the City and the Trustee of any cancellation prior to expiration of such policy, and (b) be satisfactory in all other respects to the City.

The Borrower shall deliver to the Trustee (a) upon the commencement of the term of the Loan Agreement, the originals or certified copies thereof of all insurance policies (or certificates thereof) which the Borrower is then required to maintain pursuant to the Loan Agreement, together with evidence as to the payment of all premiums then due thereon, (b) at least 30 days prior to the expiration of any such policies evidence as to the removal thereof, if then required by the Loan Agreement, and the payment of all premiums then due with respect thereto, and (c) promptly upon request by the City or the Trustee, but in any case within 90 days after the end of each Fiscal Year, a certificate of a Borrower Representative setting forth the particulars as to all insurance policies maintained by the Borrower pursuant to the Loan

12863764v. 15

### **33**

Agreement and certifying that such insurance policies are in full force and effect, that such policies comply with the provisions of the Loan Agreement and that all premiums then due thereon have been paid.

#### **Insurance Awards**

Unless the Borrower shall have exercised its option to prepay the Loan in full pursuant to the Loan Agreement, if the Project, or any portion thereof, is destroyed or damaged by fire or other casualty to such extent that the claim for loss under any insurance policies resulting from such event of destruction or damage is less than \$1,000,000, the net proceeds of insurance resulting from such claims for losses shall be paid to the Borrower and shall be held or used by the Borrower for such purposes as the Borrower, in its discretion, may deem appropriate. The Borrower shall not be reason of the payment of net proceeds for such destruction or damage be entitled to any reimbursement from the City, the Trustee or the Bondowners or any postponement, abatement or diminution of the deposits and other payments required to be made under the Loan Agreement.

Unless the Borrower shall have exercised its option to prepay the Loan in full pursuant to the Loan Agreement, if the Project, or any portion thereof, is destroyed or damaged (in whole or in part) by fire or other casualty to such extent that the claim for loss under any insurance policies resulting from such event of destruction or damage is \$1,000,000 or more, the Borrower shall promptly give written notice thereof to the Trustee and the City. All net proceeds of insurance resulting from such claims for losses of \$1,000,000 or more shall, at the option of the Borrower, either be used to redeem Bonds as provided in the following paragraphs or be held by the Trustee in a separate trust account, whereupon in the event Borrower does not elect to redeem Outstanding Bonds, (a) the Borrower will promptly repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Borrower and as will not impair the Borrower's ability to operate the Project in an efficient manner, and (b) the Trustee, upon receipt of an architect's certificate that such payment is required for such purpose, will apply so much as may be necessary of the net proceeds of such insurance to payment of the costs of such repair, rebuilding or restoration as the work progresses. All property acquired in such repair, rebuilding or restoration shall become part of the Project and shall become subject to the Mortgage. Any balance of such net proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be transferred to the Principal and Interest Payment Account of the Bond Fund and applied to the payment of principal of the Bonds on the next payment date or dates thereof. In the event such net proceeds are not sufficient to pay in full the costs of such repair, rebuilding or restoration, the Borrower will nonetheless complete the work thereof and will pay any costs thereof in excess of the amount of said net proceeds. The Borrower shall not by reason of the payment of such excess costs be entitled to any reimbursement from the City, the Trustee or the Bondowners

or any postponement, abatement or diminution of the Deposits and other payments required to be made under the Loan Agreement.

All net proceeds of insurance resulting from claims for losses specified in the first sentences of the two preceding paragraphs may be used to redeem Bonds; provided (i) all of the Bonds are to be redeemed in accordance with the Indenture upon exercise of the option to prepay the Loan in full provided for in the Loan Agreement or (ii) in the event that less than all of the Bonds are to be redeemed, the Borrower shall furnish to the Trustee an independent architect's certificate stating (A) that the property forming a part of the Project damaged or destroyed is not essential to the Borrower's use or occupancy of the Project, or (B) that the Project has been restored to a condition substantially equivalent to their condition prior to the damage or destruction or (C) that improvements have been acquired which are suitable for operation similar to the damaged or destroyed portion of the Project.

12863764v. 15

### 34

#### **Condemnation and Title Defects**

Unless the Borrower shall have exercised its option to prepay the Loan in full pursuant to the Loan Agreement, in the event that title to, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain or because of a title defect, the Borrower shall be obligated to continue to make the Deposits and other payments required to be made under the Loan Agreement. In the event that the net proceeds from any award made in such eminent domain proceedings or from any title insurance policies purchased pursuant to the Loan Agreement is less than \$1,000,000, all of such net proceeds shall be paid to the Borrower and shall be held or used by the Borrower for such purposes as the Borrower, in its discretion, may deem appropriate. In the event that the net proceeds from any award made in such eminent domain proceedings or from any title insurance policies purchased pursuant to the Loan Agreement is \$1,000,000 or more, all of such net proceeds shall be paid to and held by the Trustee in a separate trust account for the equal benefit of the Bondowners, to be applied to one or more of the following purposes as shall be directed in writing by the Borrower:

(a) The restoration of the Project to substantially the same condition as it existed prior to such condemnation or without such title defect (to the extent practicable) and otherwise, to a condition sufficient to permit use in substantially the same manner as before such condemnation.

(b) The acquisition, by construction or otherwise, of other improvements suitable for operation similar to the Project.

(c) The redemption of the Bonds; provided that such condemnation award or title insurance proceeds may be applied for such redemption only if (i) all of the Bonds are to be redeemed in accordance with the Indenture upon exercise of the option to prepay the Loan in full provided for in the Loan Agreement or (ii) in the event that less than all of the Bonds are to be redeemed, the Borrower shall furnish to the City and the Trustee an independent architect's certificate stating (A) that the property forming a part of the Project taken by such condemnation proceedings or loss due to a defect in title is not essential to the Borrower's use or occupancy of the Project, or (B) that the Project has been restored to a condition substantially equivalent to their condition prior to the taking by such condemnation proceedings or without such title defect, or (C) that improvements have been acquired which are suitable for the Borrower's operations at the Project as contemplated by the foregoing subparagraph (b) of this Section.

In the event the Borrower elects either of the options set forth in the foregoing subparagraph (a) or (b) of this Section, the Trustee, upon receipt of an architect's certificate supervising such repair, rebuilding or restoration that payment is required for such purpose, will apply so much as may be necessary of the net proceeds of such condemnation award or title insurance proceeds to payment of the costs of such restoration, acquisition or construction, as the work progresses.

In the event the Borrower elects either of the options set forth in the foregoing subparagraph (a) or (b) of this Section, and the net proceeds received from eminent domain or title insurance proceeds are insufficient to pay in full the cost of restoring, acquiring or constructing improvements of substantially the same condition as the Project prior to the taking or without such title defect, the Borrower will nonetheless complete the work thereof and will pay any costs thereof in excess of such net proceeds.. The Borrower shall not by reason of the payment of such excess be entitled to any reimbursement from the City, the Trustee or the Bondowners or any postponement, abatement or diminution of the Deposits and other payments required to be made under the Loan Agreement.

Unless the Borrower has exercised its option to prepay the Loan in full pursuant to the Loan Agreement, within 90 days of a final order in any eminent domain proceeding granting condemnation or from the date of taking pursuant to a title defect, whichever is later, the Borrower shall direct the City and

12863764v. 15

### 35

the Trustee in writing which of the ways as described in this Section the Borrower elects to have the net proceeds of the condemnation award or insurance proceeds applied. Any balance of the net proceeds of the award in such eminent domain proceedings or insurance proceeds remaining after payment of all the costs of such restoration, acquisition or construction shall be applied to pay or redeem Bonds. The balance to be used to pay or redeem Bonds shall be transferred to the Principal and Interest Payment Account of the Bond Fund and applied to the payment of the principal of the Bonds on the next payment date or dates thereof.

The City shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof. In no event will the Borrower voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of the City and the Trustee except for any condemnation proceedings involving portions of the Project having a value of \$50,000 or less.

All property acquired pursuant to and as described in this Section of the Loan Agreement shall become part of the Project and shall become subject to the Mortgage.

#### **Business Operations; Debt Service Coverage Ratio; Other Borrower Covenants**

So long as any Bonds are Outstanding, the Borrower covenants and agrees under the Loan Agreement to manage the Project so that the Borrower shall receive Revenues in each Fiscal Year in an amount sufficient to pay (a) all of the Borrower's expenses during such Fiscal Year for the operation, maintenance and repair of the Project, (b) all payments required pursuant to the Loan Agreement, and (c) all material other obligations of the Borrower payable during such Fiscal Year.

The Borrower also covenants in the Loan Agreement that in the event the Debt Service Coverage Ratio on all Bonds Outstanding for any six-month period is less than 1.10 to 1.0 as set forth in the certificate delivered to the Trustee on or prior to June 1 and December 1 of each year pursuant to the Indenture, the Borrower will, at the direction of a majority of the Bondholders and at its own expense, retain a professional consulting, accounting, investment banking or commercial banking firm acceptable to the Trustee (the "Consultant") to make recommendations with respect to the rates, fees and charges of the Borrower and the Borrower's methods of operation and other factors affecting its financial condition in order to increase such Debt Service Coverage Ratio to at least 1.10 to 1.0. If the Debt Service Coverage Ratio remains below 1.10 to 1.0 for the most recent six month period after the delivery of the Consultant's report, the Borrower shall implement such recommendations which are in the reasonable control of the Borrower unless it receives the written consent of the Owners of a majority in aggregate principal amount of the Bonds outstanding.

In addition to the above, the Borrower also makes certain representations and covenants under the Loan Agreement, including, but not limited to, its corporate existence as a limited liability corporation in good standing under the laws of the State of Illinois; payment of taxes, governmental charges and utility charges with respect to the Project; access to the Project by the City and the Trustee; not merging or consolidating with any other entity and not transferring or conveying all or substantially all of its property, assets and licenses without the prior written consent of the Bondholders; providing annual audited financial statements to the Trustee, the Underwriter and any Bondholder owning \$1,000,000 or more of Bonds, and the City, upon request; providing quarterly unaudited financial reports to the Trustee, the Underwriter and any Bondholder owning \$1,000,000 or more of Bonds; providing an annual certificate to the City and to the Trustee as to its compliance with the provisions of the Loan Agreement; designing, constructing and equipping the Project in accordance with the Loan Agreement and the Tax Agreement; providing quarterly statements of the through-put received pursuant to each individual

36

12863764v. 15

Asphalt Terminalling Agreement, and such other data, and information as may reasonably be requested by the Trustee from time to time, to the Trustee, the Underwriter and any Bondholder owning \$1,000,000 or more of Bonds; and the full force and effect of the Terminalling Documents.

#### **Tax-Exempt Status of Bonds**

The City covenants that it will not knowingly take any action or knowingly permit any action on its part to be taken which would cause the interest on the Series 2010 Bonds to be included in the gross income of the Owners of the Series 2010 Bonds for purposes of federal income taxation and covenants to cooperate with the Borrower and the Trustee in any reasonable manner required to enable the Borrower and the Trustee to meet their respective obligations under the Loan Agreement and the Indenture.

The Borrower covenants that it will not take any action, omit to take any action or permit the taking or omission of any

action within its control (including, without limitation, making or permitting any use of the proceeds of the Series 2010 Bonds) if taking or omitting to take such action would cause the interest on the Series 2010 Bonds to be included in the gross income of the recipients thereof for federal income tax purposes. Toward that end, the Borrower covenants that it will comply with all provisions of the Tax Agreement. This provision of the Loan Agreement shall control in case of conflict or ambiguity with any other provision of the Loan Agreement.

The Borrower covenants that it shall observe and perform each of its obligations and undertakings under the Borrower Agreements, and cooperate with the City and the Trustee in any reasonable manner required to enable the City and the Trustee to meet their respective obligations under the Loan Agreement and the Indenture.

The Borrower further covenants and agrees, as long as the Series 2010 Bonds are Outstanding, that it will not take, or fail to take, any action which would constitute a default by the Borrower under the Indenture or the Borrower Agreements or would or could cause the City or the Trustee to be in default thereunder.

The Borrower agrees to be bound by the covenants and other provisions of the Indenture applicable to it, receipt of an executed copy of which it acknowledges under the Loan Agreement.

#### **Borrower to Maintain Existence; Consolidation or Merger; Single Purpose Entity**

Except as otherwise permitted in the Loan Agreement, as described in the Section above entitled "Transfer of Project," the Borrower agrees that throughout the term of the Loan Agreement, it shall maintain its existence and shall not merge or consolidate with any other entity and shall not transfer or convey all or substantially all of its property, assets or licenses to another entity other than an Affiliate in each case, without the prior written consent of the Bondholders who own a majority of the Series 2010 Bonds Outstanding.

The Borrower warrants (i) that it is and throughout the term of the Loan Agreement it will continue to be qualified to do business in the State, and (ii) that if it elects to consolidate with, merge into or transfer all or substantially all of its assets to another entity in accordance with this Section of the Loan Agreement and such other entity is not organized under the laws of the State, the Borrower, as a condition of such consolidation, merger or transfer of assets, shall cause such other entity to qualify to do business as a foreign corporation in the State and to remain so qualified continuously during the term of the Loan Agreement.

12863764v. 15

#### **37**

The Borrower will operate as a single-purpose entity and as such, agrees and represents that it will not engage in any business or activity other than the ownership, operation, and maintenance of the Project, and activities incidental thereto.

#### **Recording and Maintenance of Liens**

The Borrower will, at its own expense, take all necessary action to maintain and preserve the liens and security interest of the Loan Agreement, the Mortgage and the Indenture so long as any principal installment of, premium, if any, or interest on the Series 2010 Bonds remains unpaid.

The City shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected by the Loan Agreement. The City will execute such instruments as may be necessary in connection with such filing or recording.

#### **Default and Remedies**

The following shall be "events of default" under the Loan Agreement, and the terms "event of default" and "default" shall mean, whenever they are used in the Loan Agreement, any of the following events:

- (a) Failure by the Borrower to pay or cause to be paid pursuant to the Loan Agreement any payment required to be paid or prepaid under the Loan Agreement when and as the same becomes due and payable.
- (b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Loan Agreement, other than as referred to in subsection (a) above, or any representation made by the Borrower in the Loan Agreement shall be materially false or inaccurate.
- (c) The occurrence of an Act of Bankruptcy, as defined in the Loan Agreement.
- (d) An "event of default," within the meaning of the Mortgage shall have occurred thereunder.
- (e) Default shall occur in the payment of the principal of, premium, if any, or interest on any Additional Indebtedness or Permitted Indebtedness if the unpaid amount in default, together with the unpaid amount in default under all other Additional Indebtedness or Permitted Indebtedness equals or exceeds \$500,000 and is not being contested in good faith.
- (f) In any Bond Year, the Debt Service Coverage Ratio is below 1.0 to 1.0. Whenever any event of default referred above shall have happened, then:
- (a) If the Series 2010 Bonds are accelerated pursuant to the Indenture, the principal of the Loan, together with all interest

accrued thereon, shall become immediately due and payable upon delivery of the notice required by the Indenture.

(b) The City and the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the payments due under the Loan Agreement and thereafter to become

12863764v. 15

38

due during the term of the Loan Agreement, or enforce performance and observance of any obligation, agreement or covenant of the Borrower under the Loan Agreement or the Mortgage.

(c) The Trustee on behalf of the City may take any action permitted under the Indenture.

(d) The City retains the right to enforce any or all of the Unassigned Rights, and may take independent action to so enforce such Unassigned Rights.

Any amounts collected pursuant to action taken as provided above shall be applied in accordance with the Indenture.

#### **Option to Prepay Upon Occurrence of Certain Events**

The Borrower shall have the option to prepay the Loan in whole or in part (without premium) in order to effect redemption of all or a portion of the Series 2010 Bonds pursuant to the Indenture, and to cancel or terminate the Loan Agreement, if any of the following shall have occurred:

(a) The Project or any portion thereof shall have been damaged or destroyed to such an extent that, in the judgment of the Borrower, (A) it cannot be reasonably restored within a period of three consecutive months following such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project for a period of three or more consecutive months following such damage or destruction or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same.

(b) Title in and to, or the temporary use of, all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority, or person acting under governmental authority (including such a taking as, in the judgment of the Borrower, results in the Borrower being prevented thereby from carrying on its normal operations at the Project for a period of three or more consecutive months); provided that the Borrower has satisfied the requirements of subparagraph (c) of the first paragraph of the Section entitled "Condemnation and Title Defects" above; or

(c) Legal curtailment of the Borrower's use or occupancy of all or substantially all of the Project for any reason (other than that set forth in subparagraph (b) above), which curtailment shall, in the judgment of the Borrower, prevent the Borrower from carrying on its normal operations at the Project for a period of three or more consecutive months.

To exercise the option granted in the Loan Agreement and described in this Section, the Borrower (after it becomes aware of such event) (i) shall, within 90 days following the event giving rise to the Borrower's desire to exercise such option, deliver to the City and the Trustee a certificate, executed by the Borrower Representative stating (A) the event giving rise to the exercise of such option, (B) that the Borrower has elected to cause the Trustee to redeem Series 2010 Bonds in accordance with the provisions of the Indenture and (C) the date upon which such redemption is to occur, which date shall be at least 45 days after the date such notice is delivered and (ii) shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption.

#### **Option to Prepay in Connection with Optional Redemption of Bonds**

The Borrower shall have, and is hereby granted under the Loan Agreement, the option to prepay the Loan in whole or in part, and to direct the Trustee to redeem Series 2010 Bonds in whole or in part pursuant to Section 2.02(b)(i) of the Indenture on any date selected by the Borrower on which the Series

39

12863764v. 15

1

2010 Bonds are subject to redemption. At such time as the Loan is subject to prepayment, the prepayment price shall be equal to that amount which is required to pay the principal of, premium, if any, and accrued interest to the redemption date of the portion of the then Outstanding Series 2010 Bonds to be redeemed. To exercise this option granted in the Loan Agreement, the Borrower shall, not less than 45 days next preceding the date on which redemption is to occur, give written notice to the Trustee of its intention to prepay the Loan in whole or in part, and if in part shall specify therein the principal amount and maturities of Series 2010 Bonds to be redeemed on such date with the moneys received from such prepayment. Upon the exercise of any such option, the Borrower shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption of the Series 2010 Bonds.

#### **SUMMARY OF CERTAIN PROVISIONS OF THE MORTGAGE AND SECURITY**

## AGREEMENT

Upon issuance of the Series 2010 Bonds, the Borrower will execute and deliver the Mortgage and Security Agreement to the Trustee for the benefit of the Bondholders. The Mortgage and Security Agreement secures the Borrower's obligations under the Loan Agreement and related bond documents and will create a first lien encumbering the Project. In the event the Borrower defaults under the Loan Agreement or the related bond documents, pursuant to the Mortgage and Security Agreement, the Trustee may declare all amounts due under the Loan Agreement, and all other indebtedness secured by the Mortgage and Security Agreement to be due and payable, and thereafter, the Trustee may, among other things, foreclose the lien and take title to the real estate and other Project assets to satisfy the Borrower's outstanding obligations. A copy of the Mortgage and Security Agreement is included as APPENDIX C to this Limited Offering Memorandum.

## SUMMARY OF CERTAIN PROVISIONS OF THE ASPHALT TERMINALLING AGREEMENTS

As stated earlier in this Limited Offering Memorandum, payments made to the Borrower under the following three separate Asphalt Terminalling Agreements will be the primary source of revenues for the repayment of the Series 2010 Bonds by the Borrower: (1) the Asphalt Terminalling Agreement dated November 12, 2009 with BP, as amended by a certain letter agreement dated February 10, 2010 and a certain Second Amendment dated September 27, 2010 (collectively, the "BP Asphalt Terminalling Agreement") (2) the Asphalt Terminalling Agreement dated October 8, 2010 with Associated Asphalt Distribution, LLC ("Associated"), as amended by a certain First Amendment to Asphalt Terminalling Agreement dated October 8, 2010 and a certain Second Amendment to Asphalt Terminalling Agreement dated October 14, 2010 (collectively, the "Associated Asphalt Terminalling Agreement"), and (3) the Asphalt Terminalling Agreement dated June 10, 2010 with Suit-Kote Corporation ("Suit-Kote"), as amended by a certain First Amendment to Asphalt Terminalling Agreement dated October 8, 2010 (collectively, the "Suit-Kote Asphalt Terminalling Agreement"). The following statements are a brief summary of certain provisions of the three Asphalt Terminalling Agreements that have not been described elsewhere in this Limited Offering Memorandum. The summary does not purport to be complete, and reference is made to each of the respective Asphalt Terminalling Agreements, copies of which are available upon request by contacting William Blair & Company, L.L.C., 222 West Adams Street, Chicago, Illinois 60606, Attention: Municipal Bond Department, Telephone: (312) 364-8386.

### The Terminal

The Terminal shall consist of the Facilities, as defined in the Asphalt Terminalling Agreements, all real property upon which the Facilities are located, all berthing facilities and associated docks, all fixtures and equipment related to the Terminal and all means of ingress and egress to and from the Terminal.

12863764v. 15

## 40

### Term

The initial term of the BP Asphalt Terminalling Agreement is nine (9) years, commencing on the first day that the Terminal is fully operational. After this initial term, BP shall have two consecutive options of six (6) and five (5) years, respectively, to extend the Term of the BP Asphalt Terminalling Agreement. The initial term of the Associated Asphalt Terminalling Agreement and Suit-Kote Asphalt Terminalling Agreement is seven (7) years, commencing on the first day that the Terminal is fully operational. After this initial term, both Associated and Suit-Kote shall have two consecutive options of six (6) and five (5) years, respectively, to extend the Term of their respective Asphalt Terminalling Agreements.

### Services

The Borrower shall provide to the customers the services and assistance generally as noted:

To maintain, repair and operate Terminal and Facilities to fully perform all of the Borrower's obligations and duties under the Asphalt Terminalling Agreements including:

- (1) ' The storage of Product, as defined in the Asphalt Terminalling Agreements.
- (2) The unloading of Product into storage tanks from loaded tank trucks.
- (3) The unloading of Product into storage tanks from rail cars.
- (4) The unloading of Product into storage tanks from marine vessels.
- (5) The loading of Product from loading racks from the storage tanks into tank trucks.
- (6) The loading of Product onto rail tank cars.
- (7) The loading of Product onto marine vessels.
- (8) The operation and maintenance of a state certified and computerized scale.
- (9) Certain testing services, as required under the Asphalt Terminalling Agreements; and

(10) Certain clerical, accounting, back office and administrative services, as required under the Asphalt Terminalling Agreements.

(11) In general, furnish and perform all labor, supervision and materials reasonably necessary for the Borrower's full and efficient performance of its services under the Asphalt Terminalling Agreements.

#### **Volume**

The volume and type of product that the customers will ship to, store and ship from the Facilities will be no less than 1,000,000 tons per year. Regardless of actual volume, the customers will pay a minimum annual throughput fee equivalent to 1,000,000 tons per year and this amount will not be decreased during the term of the Asphalt Terminalling Agreements.

12863764v. 15

41

#### **Expenses**

Except for certain expenses, the Borrower will be responsible for payment of all expenses relating to the design, construction and operation of the Facilities including without limitation the cost of maintenance and repairs and replacements of all portions of the Facilities; all real property taxes and installments of special assessments; casualty and liability insurance expenses; all costs for water, light, power, telephone, communication, trash removal services, parking lot and road maintenance; and all of the utilities supplied to the Facilities, including additional hook-up and meter installation charges and all other costs and expenses relating to the Premises and services to be provided to customers thereon. Costs associated with heating the physical operations of the terminal (tankage) shall be a direct pass through to customers. In the event any expenses (such as real estate taxes and, if not separately metered, utilities) include any part of the Borrower's real property not comprising the Facilities, such expenses shall be equitably allocated to the Facilities. Annual contract rate adjustments for selected expense categories shall be subject to increase or decrease annually (but in no event shall a decrease reduce a charge or rate below the dollar amount specified in the customer's Asphalt Terminalling Agreement which shall serve as a floor for any adjustment), at an agreed upon escalator. Real property tax and special assessment cost adjustments shall be applied based upon increases or decrease from a base level of real property taxes and special assessments.

#### **Construction of Facilities**

The Borrower will design and construct at its sole cost and expense the improvements comprising the Facilities. i'

#### **Timeline**

The anticipated date of delivery of the operational Facilities for use by the customers is anticipated to be:

Rail: May 15, 2011 Marine: May 15, 2011 Truck: July 15, 2011

#### **Non-Performance**

Except for certain specific limited circumstances set forth in the Asphalt Terminalling Agreements, in the event of default by either the Borrower or the customers in performance of any of its obligations under the Asphalt Terminalling Agreements, and its failure to remedy the default, (i) if respect to payment, within 15 days after receipt of notice thereof from the other, or (ii) if otherwise, within 45 days (90 days under the Associated and Suit-Kote Asphalt Terminalling Agreements) after receipt of notice thereof from the other, unless such non-payment default cannot be remedied within 45 days (90 days under the Associated and Suit-Kote Asphalt Terminalling Agreements), in which case as long as the defaulting party has initiated appropriate corrective action and is diligently pursuing such action, the defaulting party will have such additional time as is reasonably necessary to remedy the default, but in no event more than 90 days (180 days under the Associated and Suit-Kote Asphalt Terminalling Agreements) following receipt of the notice of the default (provided that, if any lender or its permitted assignee who has fully assumed the Borrower's obligations under the Asphalt Terminalling Agreements under a collateral assignment of the Asphalt Terminalling Agreements pursuant to such Asphalt Terminalling Agreement, requests a further extension, then such 90 day period (180 day period under the

12863764v. 15

42

Associated and Suit-Kote Asphalt Terminalling Agreements) shall be increased to 180 days (270 days under the Associated and Suit-Kote Asphalt Terminalling Agreements)), the other may, in addition to any other rights or remedies it may have under the Asphalt Terminalling Agreements, in equity, or in law, terminate the Asphalt Terminalling Agreements immediately upon written notice to the defaulting party.

Any of the following events shall also constitute a default under the BP Asphalt Terminalling Agreement: initiation by either the Borrower or the customers of any bankruptcy, insolvency, receivership or other similar proceedings, or its incurrence of any materially adverse judgment in, or its failure to have dismissed within 60 days, any bankruptcy, insolvency, receivership, or other similar proceedings initiated against it.



Notwithstanding the foregoing, and except for a customer's obligations to compensate the Borrower for thru-put as provided in the Asphalt Terminalling Agreements and except as otherwise provided under the Asphalt Terminalling Agreements, the Borrower and/or the customers shall be excused from performance of their respective obligations under the Asphalt Terminalling Agreements, if and to the extent that such performance is delayed or prevented by any circumstance reasonably beyond its control, such as fire, explosion, act of God, strike, or any act or omission of any governmental authority (including any failure to obtain necessary and appropriate zoning, and all permits necessary or advisable to complete the terminal construction not caused by the Borrower's failure to diligently comply with governmental requirements and except as otherwise agreed under the Asphalt Terminalling Agreements with respect to modifications to the Facility) or any interruption of services pursuant preventive maintenance as provided under the Asphalt Terminalling Agreements. The non-performing party shall give the other notice, as soon as reasonably practicable, of the occurrence or expected occurrence of any excusing circumstance affecting it, and shall exercise reasonable efforts to mitigate or eliminate such occurrence or circumstance. In the event that the Borrower's performance is excused as set forth in this paragraph, then with respect to the BP Asphalt Terminalling Agreement, the parties shall negotiate in good faith a proportionate reduction in the minimum thru put and corresponding fee for such period of non-performance.

#### **Option to Purchase by BP Upon Borrower's Default**

Should any default by the Borrower under any agreement with its lender or lenders cause the Borrower or the Borrower's lender or lenders to seek to assign the Borrower's right, title or interest under the BP Asphalt Terminalling Agreement to the Borrower's lender or lenders, BP shall have the option prior to any assignment to the Borrower's lender or lenders to enter into an agreement with the Borrower and its lender or lenders to purchase the Terminal, Facilities (and the real property on which they are located) and all equipment, personal property and fixtures owned by the Borrower and located at the Terminal and the Borrower's interest under the BP Asphalt Terminalling Agreement. The closing of the purchase shall be governed by the closing provisions attached as "Exhibit O" to the BP Asphalt Terminalling Agreement.

#### **Guaranty Agreement**

BP Corporation North America Inc. ("BPNA"), an Indiana corporation, has entered into a Guaranty Agreement dated November 18, 2010, in favor of the Borrower unconditionally, absolutely and (subject to express provisions with respect to termination) irrevocably guarantying punctual payment when due, whether upon demand, at stated maturity, upon acceleration or otherwise, of certain of BP's payment obligations arising under and subject to the terms of the BP Asphalt Terminalling Agreement. The total liability of BPNA under the Guaranty Agreement, regardless of any amendment or modification to the BP Asphalt Terminalling Agreement, is limited to the lesser of (a) all amounts owed by BP to the Borrower under the BP Asphalt Terminalling Agreement or (b) \$20,000,000 plus interest, reasonable

12863764v. 15

#### **43**

attorneys' fees, and/or reasonable costs of collection, if any, required by the BP Asphalt Terminalling Agreement to be paid by BP in the collection of guaranteed obligations. BPNA's obligations and liability under the Guaranty Agreement shall be limited to payment obligations only, and BPNA shall have no obligation to perform under the BP Asphalt Terminalling Agreement, including, without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity. In no event shall BPNA be liable for consequential damages.

Associated Asphalt Partners, LLC. ("AAP"), a Virginia limited liability company, has entered into a Guaranty Agreement dated October 8, 2010, in favor of the Borrower unconditionally, absolutely and (subject to express provisions with respect to termination) irrevocably guarantying punctual payment when due, whether upon demand, at stated maturity, upon acceleration or otherwise, of certain of Associated Asphalt Distribution LLC's payment obligations arising under and subject to the terms of the Associated Asphalt Distribution LLC's Terminalling Agreement.

The summary of the Guaranty Agreements do not purport to be complete, and reference is made to the actual Guaranty Agreement, copies of which are available upon request by contacting William Blair & Company, L.L.C., 222 West Adams Street, Chicago, Illinois 60606, Attention: Municipal Bond Department, Telephone: (312) 364-8386.

#### **SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL ASSIGNMENTS**

As additional security for the Borrower's obligations under the Loan Agreement, the Borrower has executed and delivered to the Trustee separate Collateral Assignments of the Asphalt Terminalling Agreements, the design-build contract, the construction contracts and the engineering contract, pursuant to which the Borrower has assigned its rights, title and interest in each to the Trustee for the benefit of the Bondholders, as follows:

#### **Collateral Assignments of the Asphalt Terminalling Agreements**

Pursuant to a Collateral Assignment Agreement dated December 17, 2010, the Borrower has assigned all of its right, title and interest in the Associated Asphalt Terminalling Agreement and in the Guaranty Agreement with Associated Asphalt Partners, LLC dated October 8, 2010 (the "Associated Guaranty ") to the Trustee as collateral for the purpose of securing the payment of all amounts owed or to be owed by Borrower to the Trustee and the performance of all of Borrower's obligations under the Loan Agreement. The foregoing assignment constitutes an absolute and present assignment of the Asphalt Terminalling Agreement and Associated Guaranty, subject, however, to the condition that the Trustee not take any action to exercise the rights of the Borrower under the Associated Asphalt Terminalling Agreement or the Associated Guaranty unless and until there shall exist a default by the Borrower under the Loan Agreement.

Pursuant to a Collateral Assignment Agreement dated December 17, 2010, the Borrower has assigned all of its right, title and interest in the Suit-Kote Asphalt Terminalling Agreement to the Trustee as collateral for the purpose of securing the payment of all amounts owed or to be owed by Borrower to the Trustee and the performance of all of Borrower's obligations under the Loan Agreement. The foregoing assignment constitutes an absolute and present assignment of the Suit-Kote Asphalt Terminalling Agreement subject, however, to the condition that the Trustee not take any action to exercise the rights of the Borrower under the Suit-Kote Asphalt Terminalling Agreement unless and until there shall exist a default by the Borrower under the Loan Agreement.

Pursuant to a Collateral Assignment dated December 17, 2010, the Borrower has all of its right, title and interest in the BP Asphalt Terminalling Agreement and the Guaranty from BP Corporation North

12863764v. 15

#### **44**

America Inc. dated November 18, 2010 (the "BP Guaranty") to the Trustee as collateral for the purpose of securing the payment of all amounts owed or to be owed by the Borrower to the Trustee and the performance of all of Borrower's obligations pursuant to the Loan Agreement. The foregoing assignment constitutes an absolute and present assignment of the BP Asphalt Terminalling Agreement and the BP Guaranty subject, however, to the condition that the Trustee not take any action to exercise the rights of Borrower under the BP Terminalling Agreement or the BP Guaranty unless and until there shall exist a default by the Borrower under the Loan Agreement.

#### **Additional Collateral Assignments of the Construction Documents**

The following construction related contracts have also been collaterally assigned to the Trustee as additional security for the Borrower's obligations under the Loan Agreement:

1. The Design-Build Construction Agreement dated October 15, 2010 between Asphalt Operating Services of Chicago, LLC and ECF, Inc. (by the Borrower);
2. The Standard Form of Agreement between Design-Builder and Contractor [Civil] between ECF, Inc. and Carlson Constructors Corp. dated October 15, 2010 (by ECF, Inc.);
3. The Standard Form of Agreement between Design-Builder and Contractor [Mechanical] between ECF, Inc. and Carlson Constructors Corp. dated October 15, 2010 (by ECF, Inc.);
4. The Standard Form of Agreement between Design-Builder and Contractor between ECF, Inc. and CBI Services, Inc. dated October, 2010 (by ECF, Inc.);
5. The Standard Form of Agreement between Design-Builder and Contractor between ECF, Inc. and Rail Works Track Services, Inc. dated November 1, 2010 (by ECF, Inc.);
6. The Standard Form of Agreement between Design-Builder and Contractor between ECF, Inc. and Raffin Construction Co. dated November 22, 2010 (by ECF, Inc.); and
7. The Management Agreement between ECF, Inc. and AOS Calumet Management, Inc. dated October 15, 2010 in favor of the Trustee (by ECF, Inc.).

The aforementioned assignments constitute the absolute and present assignment by the Borrower or ECF Inc., as applicable, of the contracts referenced in this section subject, however, to the condition that the City ( nor the Trustee ) not take any action to exercise the rights of Borrower or ECF Inc., as applicable, until there shall exist a default by the Borrower under the Loan Agreement.

The SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL ASSIGNMENTS does not purport to be complete, and reference is made to the actual Collateral Assignments, copies of which are available upon request by contacting William Blair & Company, L.L.C., 222 West Adams Street, Chicago, Illinois 60606, Attention: Municipal Bond Department, Telephone: (312) 364-8386.

#### **THE BORROWER**

The Borrower is a limited liability company established under the laws of the State of Illinois. The Borrower has been

formed to provide terminalling services, including but not limited to project design, construction, throughput, production and technical services, to asphalt producers in the Midwest.

12863764v. 15

#### **45**

Asphalt producers with downstream marketing operations, but who do not have or wish to operate their own storage facilities, often outsource these services to independent terminalling companies like the Borrower.

The Borrower currently is a two member limited liability company consisting of MCAL LLC, an Illinois limited liability company, the sole member of which is the Alan J. Meitl Living Trust under trust agreement dated April 12, 2001, and Heritage Illinois Asphalt LLC. See "Heritage" below. MCAL LLC is the manager of the Borrower.

Alan J. Meitl has over 20 years of successful terminal construction and operations experience. Mr. Meitl's experience includes ownership, operation and management of an existing terminalling project contracted in Bartlett, Illinois. See "Bartlett Terminal" below.

#### **Bartlett Terminal**

The Bartlett Terminal is a 600,000 barrel throughput facility in Bartlett, Illinois. This facility is owned by Asphalt Operating Services, LLC. This entity is in turn owned 50% by AOS Bartlett LLC, which is controlled by Alan J. Meitl, and 50% by an unrelated entity. This facility is for the exclusive use of a single customer and is designed as an outlet and retail location for the delivery of asphalt cement ("AC"). The customer handles all sales and product logistics. Borrower provides storage and blending operations for the product. No other customer is allowed access to the facility assets. While the existing operations do not include emulsions or polymer modification, the capability exists if this request is received in the future. All inbound shipments are scheduled and contracted by the customer. All outbound trucks are for the customer's customers. The Borrower has access to the customer's inventory management system and is required to provide inventory reporting on a daily basis. Inventory control will be at the sole discretion of the customer.

The Bartlett Terminal has been a successful operation for five years and has exceeded its operating and income goals each year. It recently won the 2007 International Liquids Terminalling Association Platinum Safety Award.

Bartlett Terminal details:

- 16 acres
- Five 120,000 bbl storage tanks
- Four two stream blenders
- 24 rail car unloading spots
- Four on-scale truck loading positions
- Operations building
- 24/7 seasonal operations
- 13 - 15 full and part time employees
- 191,500 tons guaranteed annual thru-put
- 1 1-Year Contract, with options

#### **Heritage**

Heritage Illinois Asphalt LLC is an Indiana limited liability company controlled by The Heritage Group. For more than 80 years, The Heritage Group has managed a diverse set of prominent companies involved in the highway construction, environmental services and oil refining and marketing industries. This vast experience, combined with a team management style, allows for the diversity of a large conglomerate and the personal services of a smaller, customer focused organization.

12863764v. 15

#### **46**

The Heritage Group is a growth-oriented company with operations in North America, Europe and Asia. The focus is on innovation, quality and service to help build long-term relationships with customers and vendors based on trust and confidence. At the core of this focus is Heritage Research Group, the research and development arm that provides new products, processes and training to better serve customers.

The Heritage Group has been in the asphalt terminal business since 1957 and currently operates 15 asphalt terminals in the Midwestern United States. These terminal businesses include the purchase, production and sale of a wide range of asphalt products. The Heritage Group asphalt companies play a critical role in the asphalt industry by continuously working to assist federal, state, local and private authorities in designing and building high quality, economical pavements.

#### **Financial Information**

Additional information on the Borrower is available upon request by contacting William Blair & Company, L.L.C., 222 West Adams Street, Chicago, Illinois 60606, Attention: Municipal Bond Department, Telephone: (312) 364-8386.

### **Management Agreement**

The Borrower has entered into a Management Agreement with AOS Calumet Management, Inc., an Illinois corporation (the "Manager") pursuant to which the Manager is responsible for managing, supervising, operating and maintaining on behalf of the Borrower the Project terminal, subject to the terms, provisions and restrictions set forth in said Management Agreement. The Manager shall exert commercially reasonable efforts to the proper and efficient management, supervision, operation and maintenance of the Project terminal, in accordance with the highest standards of the industry, and in accordance with the Management Agreement, the Asphalt Terminalling Agreements, any agreements, rules or regulations governing or relating to the usage of any rail facilities that may provide rail service to the terminal, and all applicable state, local or federal statutes, laws, ordinances, regulations, requirements or performance standards, as any of the aforementioned may be amended from time to time. The term of the Management Agreement is perpetual commencing on the date that the Facilities are ready to unload Product subject to termination upon 30 days' notice by the Borrower. The Borrower shall pay Manager an annual fee of \$300,000.00 for the performance of its duties and obligations under the Management Agreement plus an incentive management fee as follows: \$0.30 per ton of Product shipped from the terminal during each calendar year in excess of 1,000,000 tons, not to exceed \$100,000.00 per calendar year (prorated for any partial calendar year), provided that the Borrower has been in material compliance with the Asphalt Terminalling Agreements and/or that no notice of breach has been sent pursuant to the Asphalt Terminalling Agreements during such calendar year.

### **THE PROJECT**

#### **Background:**

The genesis of the Project is related to the planned decommissioning of liquid asphalt rail and truck loading operations at BP's refinery located in Whiting, Indiana. In support of maintaining truck and rail loading capabilities, a third party was sought to design, build and operate an asphalt terminal. The Borrower identified a site on the Calumet River in Chicago that met the identified requirements. Due in large part to Bartlett Terminal's excellent record and the suitability of the Calumet River site, BP chose the Borrower as its preferred vendor to design, construct and operate the new asphalt terminal.

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**47**

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#### **Operations:**

The Project will serve as a distribution point for the AC operations of three (3) customers. The Project will include its own dedicated slip barge for barge docking and unloading. Once AC is sent via barge it will be offloaded into storage tanks, where it will be blended and dispensed onto trucks and railcars that will distribute the AC to the customers and their distributors.

#### **Terminal Location:**

The Project will be located on the old Wisconsin Steel property at the southeast corner of 106<sup>th</sup> Street and Torrence Avenue in Chicago, Illinois. Although the original Wisconsin Steel site is vast, approximately 53 acres will be used for the Project. The site was chosen to take advantage of ease of access to lake barge, railroad, and heavy truck traffic. The Calumet River forms the east boundary of the site. The river is maintained to a depth of 29 feet by the Army Corp of Engineers to allow lake barge and ship access to the Lake Calumet industrial area. The Project will be built just north of the northern slip and will have exclusive rights to it. The slip is large enough to dock two, lake barges without use of the Calumet River proper.

On the western boundary of the property, Chicago Rail Link maintains several rail lines with rail yards close by. The lengths of the rail lines allow the Borrower to construct multiple spurs with connection to the main line at both the northern and southern edge of the property. Chicago Rail Link is a short line railroad with access to all major rail networks; allowing competitive bidding of rail traffic to and from the terminal.

Both 106<sup>th</sup> Street and Torrence Avenue are part of the heavy truck route connecting southern Chicago to northern Indiana's and Michigan's Heavy Truck Routes. This will help the Borrower in the competition for the Indiana and Michigan markets.

The entrance to the Project will be from 106<sup>th</sup> Street at an existing light just east of the existing rail crossing. The distance between the main terminal assets and 106<sup>th</sup> Street allow for both extra room to queue trucks during high volume periods and the room to stack railcars on-site before and after loading.

**Office/Shop Assets:**

The main office for the Project terminal will be approximately 9600 square feet and encompass space for the Borrower's office workers, the Terminal Management System (TMS), locker rooms for the operators, an asphalt lab, and a shop/storage area. The shop/storage area will take up approximately 3200 square feet of the building. There will be a separate entrance and parking lot for office workers and visitors so that they can come and go without passing through the secure gate to the main terminal. The terminal is designed for 24/7/365 operation.

In addition to the main office, there will be an approximately 2400 square feet maintenance building. It will house a steam generator, a motor control center and another maintenance/storage area. A lean-to roof off the boiler building will cover the two 8MM BTU/Hr hot oil heaters for the terminal.

Several small huts, or kiosks, will be spread throughout the terminal for truck driver/operator shelters and to house the blender control panels. The truck driver kiosk will be located at the west end of the truck rack and house the truck blender control panel and TMS data entry panels. From the kiosk, the drivers will clear their load and pick up their bill of lading.

12863764v. 15

48

There will be two rail loading rack kiosks, one for every two rail loading spots, that each house a blending control panel and TMS data entry panel. There will also be a barge offload kiosk to give the operator shelter while monitoring the barge offload process.

**Tank Storage:**

Initially, five API-650 asphalt storage tanks will be built at the site. By splitting the storage into two grades, hard and soft asphalt, many different performance grade asphalts can be blended for the market on-site.

The two northernmost tanks will each be 90' in diameter and 48' tall. This will allow storage of 100,000 barrels of the soft grade asphalt on-site. In practice, one tank would be designated as the shipping tank while the other is being filled and tested. The other three tanks will each be 130' in diameter and 48' tall; allowing storage of 330,000 barrels of the hard asphalt on-site. The two northernmost of these tanks will also be connected to the blenders so that one can be designated the shipping tank while the other is being filled and tested. The third tank will allow for off loading of barge shipments so to meet periods of increased throughput volume.

Each tank will insulated with 4" of fiberglass on the walls and 4" of mineral wool on the roof. All insulation will be covered with box-ribbed aluminum sheeting for protection. Tank level radars and temperature probes for each tank will be connected to the TMS for accurate inventory control.

All tanks will be inside a 3' high diked containment area. The dike height and area allows for the construction of six more 130' diameter x 48' tall tanks and a polymer production/ storage area while maintaining NFPA 30 containment requirements.

**Barge Operations:**

An existing barge slip, off the Calumet River, with existing seawall will allow river and lake barges of AC to dock just south of the Project. The slip allows off river docking for up to two lake barges.

The terminal will be equipped with barge hose crane, an 8" diameter x 40' long barge hose, and a 12" barge offload line connected to every tank in the terminal. As mentioned above, a barge offload kiosk will provide shelter as the operator monitors the lengthy barge offload process.

As the terminal expands, a second barge offload spot can be added without modification of the existing terminal. Room will be left on the pipe racks for a second 12" barge offload line to all tanks so that two barges can be offloaded simultaneously.

**Piping and Blenders:**

The main flow direction for product at the Project will be barge-in, truck and rail-out. There are also two truck offload spots and twelve rail offload spots for product returns and alternate suppliers. Trucks are offloaded through a shared 6" PD Pump and railcars are offloaded through two dedicated 6" PD pumps and the shared truck/rail offload pump. In addition to the 12" barge-offload line mentioned above, a separate 8" transfer line will allow for simultaneous tank to tank transfers while a barge is offloaded.

Initially, there will be six 2-stream asphalt blenders on-site; four will be dedicated to the truck loading racks and two will be dedicated to the rail loading racks. Each blender will consist of two PD

12863764v. 15

49

pumps driven by variable frequency drives (VFDs), two coriolis mass flow meters, two actuated valves to maintain

product separation, and a static mixer to ensure a homogenous blend. Control of the blending process will be accomplished through the use of the VFDs to control the speed of the pumps while using coriolis mass flow meters as feedback. The Borrower has achieved excellent results using this blending process at its Bartlett terminal. Since AC needs to be heated above 245 degrees Fahrenheit before it can be pumped for transport, two 8MM BTU/Hr hot oil heaters will be connected to all product tanks through headers and all piping through tracing. One heater is sufficient for normal operations; the second will be utilized when heating a cold tank and as an emergency backup. A separate steam generator will be installed to heat incoming railcars at the twelve spot offload spur through steam and condensate return piping.

All tank vents and loading spots will be connected by piping to one of the two 1200 CFM odor control systems located in the terminal. As the terminal expands, a third odor control system will be added.

All product and condensate piping will be traced with 1/2" SS tubing and insulated with 2" of fiberglass insulation covered by stucco embossed aluminum covering. All hot oil and steam piping will be insulated with 2" of fiberglass insulation covered by stucco embossed aluminum covering.

### **Rail Operations:**

The terminal rail system design consists of one rail offload spur, up to four rail loading spurs, and an on-site run around/ temporary railcar storage spur. Initially, only four rail spurs will be constructed; the rail offload spur, two rail loading spurs, and a run around/ temporary railcar storage spur. The terminal is designed so that trucks entering and leaving the terminal will not need to cross the rail system.

As mentioned above, the rail offload spur consists of twelve rail offload spots with three 6" PD pumps and a steam generator to heat the railcars on arrival.

Rail loading will consist of two 4-railcar loading pods each connected to its own dedicated blender. Railcars will be loaded at 900 GPM through blenders each consisting of an 8" PD pump and 4" coriolis meter for the hard asphalt, a 6" PD pump and a 3" coriolis meter for the soft asphalt, two 4" actuated valves for product separation, a 6" static mixer, and a 4" loading arm. Only one railcar in each pod can be loaded at a time. Using this method, 32 railcars can be loaded in a full 24 hour day.

The two double-sided loading racks will be in a single line between the two rail loading spurs with four railcar loading spots on each spur. Gangways will connect loading platforms and a raised rail loading kiosk will be mounted at the center of each 4 railcar loading pod for installation of the blender control and terminal management equipment. Each double sided rail loading rack, and the two railcars being loaded, will be covered with a 40'x 44' canopy to ensure loading in inclement weather.

The rail loading area is situated such that eight railcars can be spotted while eight more are located on-site to the south of the loading racks. When the initial eight railcars are loaded, a rail tender can push the railcars north to spot the next eight railcars while the loaded railcars are temporarily stored just north of the loading racks. In this way, sixteen railcars can be loaded without moving railcars off-site. Twelve more railcars can be stored on the run around/ railcar storage spur as required.

As the terminal expands, the rail loading capacity can double with the installation of two more rail loading spurs and a duplicate double sided rail loading rack complete with two more blenders each dedicated to a 4-railcar loading pod.

50

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### **Truck Operations:**

Four on-scale truck loading bays with two double sided loading racks will initially be constructed. Plans call for the addition of two more on-scale loading racks as the terminal expands. Each tanker will be loaded at 600 GPM through a dedicated blender consisting of a 6" PD pump and 3" coriolis meter for the hard asphalt, a 6" PD pump and a 3" coriolis meter for the soft asphalt, two 4" actuated valves for product separation, a 6" static mixer, and a 4" loading arm. Two bays will be limited to standard tankers with 80' long scales and a standard double-sided loading rack. The other double sided loading rack will be designed to support both standard tanker trucks and extra heavy (i.e. Michigan) trucks with 100' long scales to encompass the extra length and multiple loading points of these tankers.

A 160 square foot truck loading kiosk is located at the front of the truck loading rack and will serve as truck loading blender operator's station as well as the TMS data entry point for each bay. The truck drivers will check in before loading and pick up their BOL at the truck loading kiosk.

The entire truck loading area will be covered by a canopy to ensure operations in inclement weather. Initially the canopy

will be 70' long by 85' wide. The canopy will be designed to expand to 110' wide when the extra two loading bays are added.

#### **Major Contractors**

The major portions of the construction of the Project will be divided among and handled by three (3) separate contractors, who will deal with four (4) separate scopes of work: civil, mechanical, storage tanks, and rail.

#### **Civil and Mechanical Work: Carlson Constructors Corporation**

Both the civil scope of work and the mechanical scope of work will be performed by Carlson Constructors Corporation ("Carlson").

The civil scope of work shall include the new construction of three buildings, utility connections, bituminous and concrete pavement and sidewalk, storm water collection and treatment facilities, erosion and sediment control, one traffic signal, fencing and gates, site lighting, soil improvements including dynamic compaction, dock improvements and landings.

The mechanical scope of work shall include new asphalt process piping, hot oil heating piping, steam and condensate piping, and odor control piping serving barge, rail, truck, and tank storage stations. This work includes but is not limited to associated non motor actuated valves, fittings, and concrete and structural steel supports, as indicated on the contract documents. The project also includes the proper storage and installation of all owner provided equipment.

Carlson, based in Joliet, Illinois, is recognized as a leading general building and infrastructure contractor, design builder and construction manager servicing the Midwestern United States. Carlson has a broad range of public and private industry customers including developers, fortune 500 corporations, educational and religious institutions, municipal bodies, USACE and NAVFAC. Carlson services these clients through a national network of teaming partners and design firms. Carlson's past performance as a prime contractor includes diverse, large scale infrastructure, environmental remediation and wetland restoration, industrial manufacturing and distribution facilities, shopping centers and big box retail stores, municipal complexes and K-12 educational facilities, public safety and fire services, assisted/ skilled care and medical office complexes as well as multi-family and single family housing. Carlson's entire team is skilled and experienced in all phases of construction and development projects from initial programming

12863764v. 15

51

and due diligence through construction completion, project closeout and warranty management. Carlson has executed many successful large and small projects. This has resulted in a strong and diverse foundation along with a reputation for construction excellence and long term relationships with repeat clientele.

#### **Storage Tanks: CBI Services, Inc.**

CBI Services, Inc. ("CB&I") shall perform construction of the Project's storage tanks. CB&I's scope of work for the Project shall include erection of three (3) 130'-diameter x 48'-high and two (2) 90'-diameter x 48' high steel storage tanks on foundations constructed by others.

CB&I designs, engineers and constructs some of the world's largest energy infrastructure projects, providing a full spectrum of EPC solutions and proven process technologies. Drawing upon more than a century of experience and the expertise of approximately 16,000 employees worldwide, CB&I safely and reliably executes more than 600 projects a year through its three business sectors: (i) CB&I Steel Plate Structures designs, fabricates and constructs storage tanks and containment vessels and their associated systems for the oil & gas, water & wastewater, mining and nuclear industries; (ii) CB&I Lummus builds upstream and downstream oil & gas projects, LNG liquefaction and regasification terminals, and a wide range of other energy related projects; and (iii) Lummus Technology capitalizes on more than 1,500 patents and patent applications to provide process technologies, catalysts and specialty equipment for petrochemical facilities, oil refineries, and gas processing plants.

#### **Tank Foundations: Raffin Construction Company**

Raffin Construction Company ("Raffin") will be the contractor for the Storage Tank foundations. Raffin has been providing concrete services for over 75 years and is particularly experienced in tank foundations. Raffin is based in Chicago, approximately two miles from the Project.

#### **Rail: Railworks Track Services, Inc.**

The rail scope of work shall include construction of six (6) new rail spurs to serve the new facility with connections to the adjacent Chicago Rail Link track. The contractor for the rail will be Railworks Track Services, Inc. ("Railworks").

Railworks is a full-service railroad, light rail and transit track contractor at work in the United States and Canada.

Railworks and its operating subsidiaries provide integrated construction services for a range of customers from major

transit authorities to commercial and industrial companies. Railworks was founded in 1998. This contract will be administered through Railworks field office in Minooka, Illinois.

**Design-Builder**

ECF, Inc. ("ECF") will be the design-builder and the construction manager for the Project. ECF, Inc. is a full service mechanical contractor that specializes in asphalt terminal design and construction. ECF's services are specifically designed to meet the needs of the entire asphalt terminal construction process. In addition to a design and engineering staff, ECF employs approximately 60 field personnel with various skills including pipe welding, pipe tracing, pipe insulation, and painting. ECF has worked throughout the country and is not limited geographically. The company has completed more than 250 projects in the last 16 years, from small expansions to complete green field design/build terminal construction. Customers range from major US refiners to local road builders.

Working for ECF will be McDonough Associates, Inc. ("MAI") which handled the design, engineering and permitting for the Project. MAI has more than 40 years of experience in construction

12863764v. 15

**52**

engineering/management, and has overseen construction of nearly \$3 billion in roadway surface alone. MAI's projects include: federal, state, and toll highway construction, water and wastewater treatment plant construction and renovation, vertical construction, transit and rail station construction and rehabilitation, municipal infrastructure improvements, aviation landside and airside facilities, recreational and park facilities, and structural improvements.

**The Payment and Performance Bonds**

Each of the major contractors will procure payment and performance bonds for their respective scopes of work and to cover the contract amounts relating to the work.

**Contractor**

**Bonding Company**

**A.IVI. Best Rating**

Carlson

Developers Surety and Indemnity "A-" Company

CB&I

J.P. Morgan

'Aal" (Moody's)

Raffin

Hanover Insurance Group

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Railworks

Travelers Casualty and Surety "A+" Group

**Payment of Project's Construction Costs**

All disbursements from the Project Fund shall be evidenced by a completed Requisition Certificate in the form of Exhibit B attached to the Indenture signed by the Borrower's Representative. Amounts disbursed from the Project Fund for the design, construction and equipping of the Project shall be disbursed, pursuant to an Escrow Agreement in the form attached to the Indenture, with a title insurance company (or its escrow agent) which will issue the applicable owner's and loan title insurance policy, pursuant to the terms of a customary money lender's escrow requiring the recordation of the Mortgage and Security Agreement and the issuance of a mortgagee loan title insurance policy satisfying the Mortgage and Title Requirements. Each and every Requisition Certificate shall be supported by, among other things, (i) a current dated sworn statement from the Borrower disclosing the various contracts entered into by the Borrower and setting forth the names and addresses of the contractors, service or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments, and balances due, (ii) current dated sworn general contractor's statement(s) disclosing the various contracts entered into by the applicable general contractor(s) and setting forth the names and addresses of all subcontractors and material suppliers, service or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments, and balances due, and (iii) a report by or a Certification by the Construction Manager certifying that work has been completed and materials are in place as indicated by the current construction draw request approved by the Borrower, and statements, waivers, affidavits, supporting waivers, and releases of lien from such persons and in such form as may be reasonably required by escrow agent and the title insurance company for the purpose of providing the title insurance coverage.

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53

### **Construction Monitor**

Piping & Equipment Company, Inc. ("P&E") will provide consulting and advisory services on behalf of the Bondholders with respect to all draws on the Project Account of the Project Fund. Prior to any draw P&E will certify that the work has been completed and materials are in place as indicated by the current construction draw request.

John Wadsworth, President and owner of P&E serves as the lead consultant. Mr. Wadsworth has extensive experience in the design, construction and operations of petroleum products terminals. P&E provides design, construction and mechanical maintenance services to mid-stream and down-stream petroleum businesses and power plants. Previously, he served in many engineering and operations roles within Koch Industries including Operations Vice President of Koch's refined products and pipelines businesses globally. During his career at Koch he also served as Vice President of Operations of Koch Materials Company with direct responsibility for 97 asphalt storage terminals in the US, Canada and Mexico.

Mr. Wadsworth, individually, is under contract with AOS Management Bartlett to provide management consulting services related to the AOS Bartlett Terminal.

P&E project managers Robert Hoyle and Dale Padding will be directly involved in the project. They also have significant experience. Robert Hoyle served as Vice President - Operations for Koch refined products businesses and had direct responsibility for the construction of 16 greenfield petroleum products terminals and the rehabilitation and expansion of 105 additional terminals acquired by Koch. Dale Padding's prior experience includes Vice President - Engineering for Koch with responsibility for a large staff of project engineers who in turn were responsible for design and construction of pipeline control and terminals.

### **THE CITY**

The City is a municipality and home rule unit of government under the Constitution and laws of the State of Illinois.

### **RISK FACTORS**

Investment in the Series 2010 Bonds involves risks which may not be appropriate for certain investors. The following is a discussion of certain risk factors which should be considered, in addition to other matters set forth in this Limited Offering Memorandum, in evaluating the Series 2010 Bonds which are not rated by a recognized rating agency. This discussion does not purport to be comprehensive or definitive.

#### **Reliance on the Asphalt Terminalling Agreements**

The Borrower receives almost all of its revenues from the Asphalt Terminalling Agreements. There is no meaningful revenue from any other source. This lack of diversity in the revenue stream presents concentration risk until such time, if ever, new sources of revenue are developed.

#### **Termination of the Asphalt Terminalling Agreements**

The Borrower receives almost all of its revenues from the Asphalt Terminalling Agreements. The Asphalt Terminalling Agreements have events of default set forth therein (See "SUMMARY OF CERTAIN PROVISIONS OF THE ASPHALT TERMINALLING AGREEMENTS", and "SUMMARY

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54

OF CERTAIN PROVISIONS OF THE COLLATERAL ASSIGNMENTS"). If one or more of the Asphalt Terminalling Agreements is terminated pursuant to an event of default, then there will be insufficient revenues to pay principal of and interest on the Series 2010 Bonds.

Should revenues be insufficient to pay the principal of and interest on the Series 2010 Bonds, the Trustee may seek, to foreclose the mortgage on the Project created by the Mortgage and Security Agreement. The buildings constituting the Project are not general purpose buildings and would not be suited for most types of commercial use. The site upon which the Project is located is currently zoned for industrial uses. No assurance can be given that the value of the Project at the time of such foreclosure would be sufficient to meet all remaining principal and interest payments on the Series 2010 Bonds. In addition, the time necessary to institute and complete foreclosure proceedings could substantially delay receipt of funds from a foreclosure.

#### **Damage or Destruction of the Project**

The Loan Agreement requires that the Project be insured against certain risks. There can be no assurance that the amount of insurance required to be obtained with respect to the Project will be adequate or that the cause of any damage or destruction to the Project will be as a result of a risk which is insured. Further, there can be no assurance of the ongoing creditworthiness of the insurance companies from which the Borrower obtains insurance policies.

### **Environmental and Regulatory Risk**

The facilities constituting the Project are subject to various federal, State and local laws and regulations governing health and the environment. In general, these laws and regulations could result in liability to the owner of the Project (and to any mortgagee holding a mortgage lien on the Project, particularly following any foreclosure proceeding) for remediating adverse environmental conditions on or relating to the Project, whether arising from preexisting conditions or conditions arising as a result of the activities conducted in connection with the ownership and operation of the Project.

Costs incurred by the Borrower with respect to environmental remediation or liability could adversely impact its financial condition and its ability to own and operate the Project. If excessive costs are incurred by the Borrower in connection with remediating environmental problems or from liability to third parties, such costs could make it impractical to continue or such costs could make it more difficult to successfully sell the Project.

The parcels (except for the slip and a parcel also known as Parcel IIIA which is located south of the slip) constituting the Project have been previously remediated. Each site has received an Environmental No Further Remediation ("NFR") Letter from the Illinois State Environmental Protection Agency (the "Agency"). These letters signify that, for purposes of both State and federal environmental laws, no further remediation is legally required. Copies of the NFR letters are available from the Underwriters.

The former property owner (Navistar) is responsible under both a Consent Order with the State of Illinois and by contract to perform the remediation activities necessary to obtain No Further Remediation Letters (NFR letters) on the slip and Parcel IIIA, and to bear any expenses associated with obtaining such NFR letters. Navistar's consultant in this endeavor has completed the necessary sampling activities required by IEPA, and has performed a Risk Assessment for the slip. Navistar's consultants are in the process of preparing the slip Phase II Risk Assessment and NFR application for submittal to IEPA in 2010. With respect to Parcel IIIA, additional remediation will be necessary to obtain a NFR letter from

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IEPA. As noted, Navistar is responsible for any expenses associated with obtaining a NFR letter for Parcel IIIA. Dredging of the slip will not be necessary to operate the terminal.

### **Construction of the Project**

.Certain facilities constituting components of the Project will have to be newly constructed. The construction contracts are fixed price in nature. As is the case with all new construction, unforeseen conditions may be encountered which increase costs or cause delay. In the event of unforeseen conditions or delay, the overall costs of completing the Project may exceed available funds.

### **Potential Effects of Bankruptcy**

If the Borrower were to file a petition for relief under the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended, or other similar laws that protect creditors, the filing could operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against the property of the debtor. If the bankruptcy court so ordered, the debtor's property and revenues could be used for the benefit of the debtor despite the claims of its creditors (including the owners of the Series 2010 Bonds).

In a bankruptcy proceeding, the debtor could file a plan for the adjustment of its debts which modifies the rights of creditors generally or the rights of any class of creditors, secured or unsecured (including the owners of the Series 2010 Bonds). The plan, when confirmed by the court, binds all creditors who had notice or knowledge of the plan and discharges all claims against the debtor provided for in the plan. No plan may be confirmed unless, among other conditions, the plan is in the best interest of creditors, is feasible and has been accepted by each class of claims impaired thereunder. Each class of claims has accepted the plan if at least two thirds in dollar amount and more than one half in number of the allowed claims of the class that are voted with respect to the plan are cast in its favor. Even if the plan is not so accepted, it may be confirmed if the court finds that the plan is fair and equitable with respect to each class of non accepting creditors impaired thereunder and does not discriminate unfairly.

### **Covenant To Maintain Tax-exempt Status of the Series 2010 Bonds**

The excludability from gross income for federal income taxation purposes of the interest on the Series 2010 Bonds is based on the continuing compliance by the Borrower and the City with certain covenants contained in the Indenture, the Loan Agreement and the Tax Compliance Agreement, dated as of the date of delivery of the Series 2010 Bonds (the "Tax Agreement"), by and among the City, the Borrower and the Trustee. These covenants relate generally to restrictions on the use of the facilities financed with proceeds of the Series 2010 Bonds, arbitrage limitations, and rebate of certain excess

investment earnings, if any, to the federal government. Failure to comply with such covenants could cause interest on the Series 2010 Bonds to become subject to federal income taxation retroactive to the date of issuance of the Series 2010 Bonds.

#### **Enforcement of Remedies**

The remedies available to the Trustee or the owners of the Series 2010 Bonds upon an Event of Default under the Indenture, the Loan Agreement or the Mortgage and Security Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, the remedies provided in the Indenture, the Loan Agreement and the Mortgage and Security Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2010 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid

12863764v. 15

56

exercise of the sovereign powers of the State and the constitutional powers of the United States of America, bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

#### **Lack of Rating and Market for the Series 2010 Bonds**

The Series 2010 Bonds have not received any credit rating by any recognized rating agency, nor has any been applied for. The absence of any such rating could adversely affect the ability of holders to sell the Series 2010 Bonds and the price at which the Series 2010 Bonds can be sold. It is not anticipated, and no assurance can be given, that a secondary market for the Series 2010 Bonds will develop following the completion of the offering of the Series 2010 Bonds. Holders of the Series 2010 Bonds may be required to retain the Series 2010 Bonds indefinitely.

Neither the City nor the Underwriters is obligated to repurchase the Series 2010 Bonds at the request of any holder thereof.

#### **TAX MATTERS**

In the opinion of Foley & Lardner LLP and Gonzalez, Saggio and Harlan, L.L.C., Co-Bond Counsel, based upon an analysis of existing laws, regulations, rulings, and court decisions and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2010 Bonds is excluded from gross income for federal income taxes purposes under Section 1400U-3 of the Code, except for interest on the Series 2010 Bonds for any period during which such Series 2010 Bonds are held by a person who is a "substantial user"\* of the facilities financed with the Series 2010 Bonds or a "related person" within the meaning of section 147(a) of the Code, interest on the Series 2010 Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes and interest on the Series 2010 Bonds is not included in adjusted current earnings in determining federal alternative minimum taxable income of corporations. A complete copy of the form of opinion of Co-Bond Counsel is attached hereto as Appendix E.

The Code imposes various restrictions, conditions and requirements relating to the exclusion of gross income for federal income tax purposes on the Series 2010 Bonds in order that interest on the Series 2010 Bonds be and remain excluded from gross income for purposes of federal taxation. Non-compliance may cause interest on the Series 2010 Bonds to be included in federal gross income retroactive to the date of issuance of the Series 2010 Bonds, regardless of the date on which such non-compliance occurs or is ascertained. These requirements include, but are not limited to, provisions which require certain investment earnings to be rebated on a periodic basis to the Treasury Department of the United States. The City and the Borrower have covenanted to comply with such requirements in order to maintain the exclusion from federal gross income of the interest on the Series 2010 Bonds. The opinion of Co-Bond Counsel assumes compliance with these covenants. Co-Bond Counsel has not undertaken to determine (or to inform any person) whether any actions are taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Series 2010 Bonds may adversely affect the value of, or the tax status of interest on, the Series 2010 Bonds.

The opinion of Co-Bond Counsel relies on factual representations made by the City and the Borrower and other persons. These factual representations include but are not limited to certifications by the Borrower regarding reasonable expectations regarding the use and investment of bond proceeds and reasonable expectations regarding the use of the property financed with bond proceeds. Co-Bond Counsel has not verified these representations by independent investigation. Co-Bond Counsel does not purport to be an expert in asset valuation and appraisal, financial analysis, financial projections or similar disciplines. Failure of any of these factual representations to be correct may result in interest on the

12863764v. 15

**57**

Series 2010 Bonds being included in gross income for federal income tax purposes possibly from the date of issuance of the Series 2010 Bonds.

Certain requirements and procedures referred to in the Indenture, the Loan Agreement, the Tax Agreement, and other relevant documents may be changed and certain actions (including, without limitation defeasance of the Series 2010 Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. Co-Bond Counsel expresses no opinion as to any actions taken or omitted upon the advice<sup>^</sup> or approval of bond counsel other than Co-Bond Counsel.

Although Co-Bond Counsel is of the opinion that interest on the Series 2010 Bonds is excluded from gross income for federal income tax purposes, the ownership or disposition of, or the accrual or receipt of interest on, the Series 2010 Bonds may otherwise affect a Holder's federal or state tax liability. The nature and extent of these other tax consequences will depend on the Holder's particular tax status and the Holders' other items of income or deduction. Co-Bond Counsel expresses no opinion regarding any such other tax consequences.

Co-Bond Counsel give no assurance that any future legislation or clarifications or amendments to the Code, if enacted into law, will not cause the interest on the Series 2010 Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent the Holders from realizing the full current benefit of the tax status of interest on the Series 2010 Bonds. Prospective purchasers of the Series 2010 Bonds are encouraged to consult their own tax advisors regarding any pending or proposed federal legislation, as to which Co-Bond Counsel expresses no view.

The opinion of Co-Bond Counsel is based on current legal authorities, covers certain matters not directly addressed by such authorities, and represents Co-Bond Counsel's judgment regarding the proper treatment of the Series 2010 Bonds for federal income tax purposes. It is not binding on the IRS or the courts, and it is not a guarantee of result. Furthermore, Co-Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Borrower and the City or about the effect of changes to the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The Borrower and the City have covenanted, however, to comply with the applicable requirements of the Code.

Co-Bond Counsel is not obligated to defend the Borrower or the City regarding the tax-exempt status of the Series 2010 Bonds in the event of an examination by the IRS. Under current IRS procedures, the Holders and other parties other than the City would have little, if any, right to participate in an IRS examination of the Series 2010 Bonds. Moreover, because obtaining judicial review in connection with an IRS examination of tax-exempt bonds is difficult, obtaining independent review of IRS positions with which the City or the Borrower legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the Series 2010 Bonds for examination, or the course or result of such an examination, or an examination of bonds presenting similar tax issues may affect the market price, or the marketability, of the Series 2010 Bonds, and may cause the Borrower or the City to incur significant expense.

The City has designated the Series 2010 Bonds as "recovery zone facility bonds" pursuant to an Ordinance adopted by the City Council on May 12, 2010.

Except as described above, Co-Bond Counsel will express no opinion regarding the federal income tax consequences resulting from the ownership of, receipt or accrual of interest on, or disposition of Series 2010 Bonds. Prospective purchasers of Series 2010 Bonds should be aware that the ownership of Series 2010 Bonds may result in collateral federal income tax consequences.

12863764v. 15

**58**

**PURCHASE, OWNERSHIP, SALE OR DISPOSITION OF THE SERIES 2010 BONDS AND THE RECEIPT OR ACCRUAL OF THE INTEREST THEREON MAY HAVE ADVERSE FEDERAL TAX CONSEQUENCES FOR CERTAIN INDIVIDUAL AND CORPORATE BONDHOLDERS. PROSPECTIVE BONDHOLDERS SHOULD CONSULT WITH THEIR TAX SPECIALISTS FOR INFORMATION IN THAT REGARD.**

During recent years legislative proposals have been introduced in Congress, and in some cases enacted, that altered certain federal tax consequences resulting from the ownership of obligations that are similar to the Series 2010 Bonds. In some cases these proposals have contained provisions that altered these consequences on a retroactive basis. Such alteration of federal tax consequences may have affected the market value of obligations similar to the Series 2010 Bonds. From time to time, legislative proposals are pending which could have an effect on both the federal tax consequences resulting from ownership of Series 2010 Bonds and their market value. No assurance can be given that legislative proposals will not be introduced or enacted that would or might apply to, or have an adverse effect upon, the Series 2010

Bonds.

Interest on the Series 2010 Bonds is not exempt from Illinois income taxes.

#### **NO LITIGATION**

##### **No Proceedings Against the Borrower**

In connection with the issuance of the Series 2010 Bonds, the Borrower will deliver a certificate which will state that, as of the date of issuance of the Series 2010 Bonds, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court or administrative body pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or its properties, rights or powers, its legal existence or the actions taken or contemplated to be taken by it, or to the knowledge of the Borrower, any meritorious basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Indenture, the Loan Agreement and the Mortgage and Security Agreement, or which, in any way, would adversely affect the validity or enforceability of the Series 2010 Bonds, the Indenture, the Loan Agreement and the Mortgage and Security Agreement or which would in any way question the tax exemption of interest on the Series 2010 Bonds or would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Loan Agreement and Mortgage and Security Agreement.

##### **No Proceedings Against the City**

There is not now pending or, to the knowledge of the City, threatened, any litigation restraining or enjoining the issuance or delivery of the Series 2010 Bonds or questioning or affecting the validity of the Series 2010 Bonds or the proceedings or City under which they are to be issued. There is no litigation pending or, to the City's knowledge, threatened which in any manner questions the right of the City to enter into the Indenture, Loan Agreement or to secure the Series 2010 Bonds in the manner provided in the Indenture.

#### **UNDERWRITING**

The Underwriters have agreed to purchase the Series 2010 Bonds from the City for reoffering, subject to certain conditions, at an aggregate purchase price of \$44,550,000, which reflects an underwriting discount of \$450,000. Under the bond purchase agreement among the City, the Borrower, and the Underwriters (the "Bond Purchase Agreement"), the Underwriters are obligated to purchase all of

12863764v. 15

59

the Series 2010 Bonds if any are purchased. The obligation of the Underwriters to make such purchase is subject to certain conditions set forth in the Bond Purchase Agreement. The Underwriters may change the prices and other terms with respect to the offer and sale of the Series 2010 Bonds from time to time after the Series 2010 Bonds are released for sale, and the Series 2010 Bonds may be offered and sold at prices other than the initial offering price set forth on the cover page of this Limited Offering Memorandum, including sales to dealers.

#### **LEGAL OPINIONS**

Legal matters incident to the authorization and issuance of the Series 2010 Bonds are subject to the opinion of Foley & Lardner LLP, Chicago, Illinois, and Gonzalez, Saggio and Harlan, L.L.C., Chicago, Illinois, Co-Bond Counsel. Copies of the opinion of Co-Bond Counsel will be available at the time of the delivery of the Series 2010 Bonds. A copy of the form of Co-Bond Counsel's opinion is attached hereto as APPENDIX D. Certain legal matters will be passed upon for the City by its Corporation Counsel, for the Borrower by Maurides Foley & Tabangay L.L.C., Chicago, Illinois, and for the Underwriters by Golden & Associates PC, Chicago, Illinois.

#### **CONTINUING DISCLOSURE**

The Series 2010 Bonds are being issued in authorized denominations of \$1,000,000 and integral multiples of \$5,000 in excess thereof and are being offered to less than thirty-five (35) institutional investors. Accordingly, the Series 2010 Bonds will be exempt from the continuing disclosure requirements of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

The Borrower agrees in the Loan Agreement to maintain a standard system of accounting in accordance with generally accepted accounting principles and to furnish to the Trustee, the Underwriters and any Bondholder with \$1,000,000 or more of Series 2010 Bonds, as soon as available, and in any event within 90 days after the close of each Fiscal Year of the Borrower, and, upon request, to the City, a copy of the audited financial statements as of the close of such Fiscal Year. Without limiting the foregoing the Borrower will permit the Trustee (or such Persons as the Trustee may designate) to visit and inspect, at the expense of the Borrower, any of the properties of the Borrower and to discuss the affairs, finances and accounts of the Borrower with its officers, all upon reasonable prior written notice and at such reasonable times and

as often as the Trustee may reasonably require.

The Borrower will furnish to the Trustee, the Underwriters and any Bondholder with \$1,000,000 or more of Series 2010 Bonds, as soon as available, quarterly unaudited financial reports within 60 days after the close of each such quarter including a statement of current fund revenues and expenses in comparative form with the Borrower's operating budget, including a statement of the through-put received pursuant to each individual Asphalt Terminalling Agreement, and such other data and information as may reasonably be requested by the Trustee from time to time.

The Borrower will furnish to the City and to the Trustee, on or before January 31 of each calendar year, a certificate of the Borrower signed by the Borrower Representative stating that the Borrower has made a review of its activities during the preceding year for the purpose of determining whether or not the Borrower has complied with all of the terms, provisions and conditions of the Loan Agreement and, to the best of the Borrower's knowledge, the Borrower has kept, observed, performed and fulfilled in all material respects each and every covenant, provision and condition of the Loan Agreement on its part to be performed and is not in default in any material respect in the performance or observance of any of the terms, covenants, provisions or conditions hereof, or if the Borrower shall be in default, such certificate shall specify all such defaults and the nature thereof.

12863764v. 15

60

### **LIMITED OFFERING**

The Series 2010 Bonds are being offered only to a limited number (35 or less) of Qualified Institutional Buyers as defined in Rule 144A of the Securities Act of 1993. Each prospective purchaser of the Series 2010 Bonds is being furnished a copy of this Limited Offering Memorandum, together with any supplements to this Limited Offering Memorandum. In addition, each prospective purchaser is hereby offered the opportunity, prior to purchasing any Series 2010 Bonds and at any time the Series 2010 Bonds are outstanding, to ask questions of, and receive answers from the Underwriters and the Borrower concerning the terms and conditions of the offering, and to obtain any additional relevant information, to the extent either possesses the same or can acquire it without unreasonable effort or expense. Inquiries concerning additional information should be directed in writing to William Blair & Company, L.L.C., 222 W. Adams St., Chicago, Illinois 60606, Attention: Municipal Bond Department or Estrada Hinojosa & Company, Inc., 70 West Madison Street, Suite 1400, Chicago, Illinois 60602, Attention Municipal Bond Department.

Each purchaser of the Series 2010 Bonds will be required to provide the Investor Representation Letter attached hereto as APPENDIX E.

There can be no guarantee that there will be a secondary market for the Series 2010 Bonds or, if a secondary market exists, that it would continue to exist or that the Series 2010 Bonds could in any event be sold for any particular price.

### **NO RATING**

The City has not made, and does not currently contemplate making, an application to any rating agency for the assignment of a rating to the Series 2010 Bonds.

### **MISCELLANEOUS**

The references, excerpts, and summaries of documents and statutes contained in this Limited Offering Memorandum do not purport to be complete statements of the provisions of such documents and statutes, and reference is made to all such documents and statutes for full and complete statements of their terms and provisions.

The estimates, assumptions, statistical and financial information, and all other information contained in this Limited Offering Memorandum have been compiled from official and other sources believed by the Underwriters to be reliable; however, none of such estimates, assumptions, or information is guaranteed by the City, the Borrower or the Underwriters as to completeness or accuracy.

Any statement made in this Limited Offering Memorandum involving matters of opinion or of estimates, whether or not so expressly stated, is set forth as such and not as a representation of fact; no representation is made that any of the estimates contained herein will be realized. The information and expressions of opinion contained herein are subject to change without notice, and neither the delivery of this Limited Offering Memorandum nor any offer or sale made hereunder shall, under any circumstances, create any implication that there has been no change in the Project or the affairs of the Borrower since the date hereof.

12863764v. 15

61

### **AUTHORIZATION**

The Borrower has authorized the execution and distribution of this Limited Offering Memorandum.

**ASPHALT OPERATING SERVICES OF CHICAGO, LLC,**

an Illinois limited liability company

By: Alan J. Meitl Title: President

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62

**APPENDIX A Indenture**

12863764v. 15

**APPENDIX B Loan Agreement**

**APPENDIX C Mortgage and Security Agreement**

**APPENDIX D Form of Opinion of Co-Bond Counsel**

12863764v. 15

**APPENDIX E**

**Investor Representation Letter**

\_,2010

City of Chicago

121 North LaSalle Street

Chicago, Illinois 60602

William Blair & Company, L.L.C. 222 West Adams Chicago, Illinois 60606

Estrada Hinojosa & Company, Inc. 70 West Madison Street, Suite 1400 Chicago, 111. 60602

Re: City of Chicago, Illinois

\$45,000,000 Recovery Zone Facility Revenue Bonds, Series 2010 (Asphalt Operating Services of Chicago Project)

Ladies and Gentlemen:

In connection with the purchase of a portion of the above-captioned Bonds from William Blair & Company, L.L.C. and Estrada Hinojosa & Company, Inc., (the "Underwriters") issued by the City of Chicago (the "City"), the undersigned (the "Purchaser") hereby agrees that its purchase of a portion of the Bonds shall constitute an affirmation, of the following representations, upon which you may rely:

1. The Purchaser (i) has been furnished with a Limited Offering Memorandum ("LOM"); (ii) has had the opportunity to obtain such information and materials as the Purchaser believes to be necessary to evaluate the merits and risks of its investment in the Bonds; and, (iii) has concluded on the basis of information available that it is able to bear the risks associated with such investment.
2. The Purchaser is a "Qualified Institutional Buyer" as defined in Rule 144A of the Securities Act of 1933 (the "Act") and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and assuming the risks of its investment in the Bonds.
3. The Purchaser agrees that the City has made no representation (expressly or implied) with respect to, has no responsibility for, and has not been relied upon by the Purchaser for, the accuracy or completeness of any information concerning the Borrower, the Project, (as defined in the LOM) or their respective businesses or operations.
4. The Purchaser is purchasing the Bonds for investment for the Purchaser's own account and not with the view to distribute or resale subject to the understanding that disposition of the Bonds will remain at all times within its control.
5. The Purchaser agrees that it will only offer, sell, pledge, transfer or exchange any of the Bonds it purchases (i) in accordance with applicable federal and state securities laws; and, (ii) to a person

12863764v. 15

who the Purchaser reasonably believes is a Qualified Institutional Buyer or an Accredited Investor within the meaning of the Act.

This letter is intended solely for the use and benefit of the addressees; no other person may rely hereon.

Respectfully submitted,

By: \_ Name: Title:

12863764v. 15