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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/25/2013 12:05 PM Pg: 1 of 40

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(Space Above For Recording Use)

Project Name: Pangea South Shore Portfolio
Project Location: Chicago, Cook County, Illinois
FHA Project Number: 071-11311

REGULATORY AGREEMENT FOR MULTIFAMILY HOUSING PROJECTS

Prepared by:
Harrison C. Smith, Esq.
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Suite 400
Washington, D.C. 20036
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After recording return to:
U.S. Department of Housing and Urban Development
Chicago Multifamily Hub
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, Illinois 60604-3507
Attention: Chief Counsel

NAME OF BORROWER: PP SS, LLC, an Illinois limited liability company

NAME OF SECRETARY: SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Legal Description: See Exhibit A attached

Document and instrument number of previously recorded documents: N/A

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(Exp. 04/30/2014)

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INSTRUMENT PREPARED BY:

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Washington, D.C. 20036

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**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REGULATORY AGREEMENT FOR MULTIFAMILY PROJECTS**

**UNDER SECTIONS 207, 220, 221(d)(3), 221(d)(4), 223(a)(7), 223(f) and 231 OF THE
NATIONAL HOUSING ACT, AS AMENDED**

Replaces HUD- 92465, 92466, FHA 1730, and 1733

Project Name: Pangea South Shore Portfolio

HUD Project No.: 071-11311

Elderly Non-Elderly

HAP Contract No.: N/A

Project Location: 7419 S. Phillips Ave.; 7549-59 S. Yates Ave.; 7102 S. Luella Ave.; 1400 S. Yates Ave.; 6901 S. Merrill Ave.; 7120 S. East End; 7317 S. Chappel Ave.; 7031 S. Chappel Ave.; 6743 S. Oglesby Ave.; 7028 S. Clyde Ave; 7003 S. Harper Ave.; 7440 S. Phillips Ave.; 1742-56 E. 72nd; 1742-56 E. 72nd (all in Chicago, IL)

Lender: Wells Fargo Bank, National Association

Processed under: MAP JAP

Original Principal Amount of Multifamily Note: \$10,880,000.00

Originally endorsed for insurance under Section 223(f). Date of Note: as of June 1, 2013.

Borrower: Profit-Motivated Limited Dividend Public Body Non-Profit

Previous editions are obsolete;
Replaces form HUD-92466 (11/02)

Regulatory Agreement

HUD-92466M (Rev. 04/11)

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(Borrower shall check the space which matches the box checked on HUD-92264 and is attached to the Firm Commitment for Insurance. Failure to check the appropriate space shall not affect the enforceability or application of this Agreement.)

This Agreement is entered into as of the 1st day of June, 2013 between PP SS, LLC, a limited liability company organized and existing under the laws of Illinois, whose address is c/o Pangea Real Estate, 640 N. LaSalle, Suite 638, Chicago, IL 60654, Attn: Patrick Borchard, CFO, its successors, heirs, and assigns (jointly and severally) (Borrower) and the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (HUD). In consideration of, and in exchange for an action by HUD, HUD and Borrower agree to the terms of this Agreement. The HUD action may be one of the following: HUD's endorsement for insurance of the Note, HUD's consent to the transfer of the Mortgaged Property, HUD's sale and conveyance of the Mortgaged Property, or HUD's consent to other actions related to Borrower or to the Mortgaged Property.

Further, Borrower and HUD execute this Agreement in order to comply with the requirements of the National Housing Act, as amended, and the regulations adopted by HUD pursuant thereto. This Agreement shall continue during such period of time as HUD shall be the owner, holder or insurer of the Note. Upon satisfaction of such Note, this Agreement shall automatically terminate. However, Borrower shall be responsible for any Violations of this Agreement which occurred prior to termination.

Violation of this Agreement may subject Borrower and other signatories hereto to adverse actions. Refer to Article VII below.

AGREEMENTS: Borrower and HUD covenant and agree as follows:

I. DEFINITIONS

1. **DEFINITIONS.** Any capitalized term or word used herein but not defined shall have the meaning given to such term in the Security Instrument between Borrower and Lender or the Note. The following terms, when used in this Agreement (including when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

- a. **"Affiliate"** is defined in 24 C.F.R. 200.215, or any successor regulation.
- b. **"Borrower"** means all entities identified as "Borrower" in the first paragraph of the Security Instrument, together with any successors, heirs, and assigns (jointly and severally). "Borrower" shall include any entity taking title to the Mortgaged Property whether or not such entity assumes the Note. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Security Instrument and shall also be deemed to be the mortgagor as defined by Program Obligations.

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- c. **"Business Day"** is defined in Section 46.
- d. **"Declaration of Default"** is defined in Section 38.
- e. **"Displaced Persons or Families"** means a person, family or families, displaced from (i) an urban renewal area, (ii) as a result of government action, or (iii) as a result of a major disaster determined by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
- f. **"Distribution"** means any disbursement, conveyance or transfer of any portion of the Mortgaged Property, including the segregation of cash or assets for subsequent withdrawal as Surplus Cash, other than in payment of Reasonable Operating Expenses, or any other disbursement, conveyance, or transfer provided for in this Agreement.
- g. **"Elderly Person"** means any person, married or single, who is 62 years of age or older.
- h. **"Fixtures"** means all property or goods that become so related or attached to the Land or the Improvements that an interest arises in them under real property law, whether acquired now or in the future, excluding all tenant owned goods and property, and including but not limited to: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.
- i. **"Goods and Services"** is defined in Section 24.
- j. **"HUD"** means the United States Department of Housing and Urban Development acting by and through the Secretary in his capacity as insurer or holder of the Loan under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the Loan or the Mortgaged Property.
- k. **"Impositions"** and **"Imposition Deposits"** are defined in the Security Instrument.

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l. **"Improvements"** means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

m. **"Indebtedness"** means the principal, interest on, and all other amounts due at any time under the Note or the Security Instrument, including prepayment premiums, late charges, default interest, and advances to protect the security as provided in the Security Instrument.

n. **"Land"** means the estate in realty described in Exhibit A.

o. **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including but not limited to proprietary leases, non-residential leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals. (Ground leases that create a leasehold interest in the Land and where the Borrower's leasehold is security for the Loan are not included in this definition.)

p. **"Lender"** means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the Obligee, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be deemed to be the Mortgagee as defined by Program Obligations.

q. **"Limited Dividend Borrower"** means a limited dividend/distribution corporation or other limited dividend/distribution entity that is restricted as to rate of return and other aspects of its operation.

r. **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following:

(1) the Land;

(2) the Improvements;

(3) the Fixtures;

(4) the Personalty;

(5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all

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rights-of-way, streets, alleys and roads that may have been or may in the future be vacated;

(6) all insurance policies covering the Mortgaged Property, and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, whether or not Borrower obtained such insurance policies pursuant to Lender's requirement;

(7) all awards, payments and other compensation made or to be made by any Governmental Authority with respect to the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(9) all proceeds (cash or non-cash), liquidated claims or other consideration from the conversion, voluntary or involuntary, of any of the Mortgaged Property and the right to collect such proceeds, liquidated claims or other consideration;

(10) all Rents and Leases;

(11) all earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(12) all Imposition Deposits;

(13) all refunds or rebates of Impositions by any Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which the Security Instrument is dated);

(14) all forfeited tenant security deposits under any Lease;

(15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

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- (16) all deposits and/or escrows held by or on behalf of Lender under Collateral Agreements; and
- (17) all awards, payments, settlements or other compensation resulting from litigation involving the Project.
- s. **"Non-Profit Borrower"** means a Borrower that is treated under the Firm Commitment issued by HUD to Lender as a corporation or association organized for purposes other than profit or gain for itself or persons identified therewith, pursuant to 501(c)(3) or other applicable provisions of the Internal Revenue Code. The entity may not make Distributions to any individual member or shareholder. The definition of "Non-Profit Borrower" does not include a non-profit borrower who is treated under the Firm Commitment as a for profit borrower.
- t. **"Note"** means the Note executed by Borrower described in the Security Instrument, including all schedules, riders, allonges and addenda, as such Note may be amended from time to time.
- u. **"Notice"** is defined in Section 43.
- v. **"Personalty"** means all equipment, inventory, and general intangibles. The definition of "Personalty" includes furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) that are owned, leased or used by Borrower now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all certifications, approvals and governmental permits relating to any activities on the Land. Generally, intangibles shall also include all cash and cash escrow funds related to the Project, such as but not limited to: Reserve for Replacement accounts, bank accounts, Residual Receipt accounts, and investments.
- w. **"Principal"** is defined in 24 C.F.R. 200.215, or any successor regulation.
- x. **"Project"** and **"Project Assets"** mean the Mortgaged Property.
- y. **"Program Obligations"** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon

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completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site).

z. **"Property Jurisdiction"** is (are) the jurisdiction(s) in which the Land is located.

aa. **"Public Body Borrower"** means a federal instrumentality, a state or political subdivision thereof, or an instrumentality of a state or a political subdivision thereof, that certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to Section 8 of such Act) and that is acceptable to HUD.

bb. **"Reasonable Operating Expenses"** means expenses that arise from the operation, maintenance and routine repair of the Project and that primarily benefit the Project (as opposed to Borrower) or as otherwise permitted by Program Obligations.

cc. **"Rents"** means all rents (whether from residential or non-residential space), revenues, issues, profits (including carrying charges, maintenance fees, and other cooperative revenues, and fees received from leasing space on the Mortgaged Property), other income of the Land or the Improvements, gross receipts, receivables, parking fees, laundry and vending machine income and fees and charges for food and other services provided at the Mortgaged Property, whether now due, past due, or to become due, Residual Receipts, and escrow accounts, however and whenever funded and wherever held.

dd. **"Reserve for Replacement"** is defined in Section 10.

ee. **"Residual Receipts"** is a term that applies to certain funds held by Non-Profit, Public Body and Limited Dividend Borrowers whose Notes are insured or held by HUD pursuant to Section 220, Section 221(d)(3) and 231 of the National Housing Act, as amended. Residual Receipts are calculated by determining an amount of Surplus Cash (defined below).

After the calculation of Surplus Cash, as described below, Borrower may make any Distributions permitted by this Agreement. "Residual Receipts" shall be the restrictive cash held by Section 220, Section 221(d)(3) and 231 Non-Profit, Public Body, and

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Limited Dividend Borrowers remaining after any allowable Distributions. The use of these Residual Receipts is restricted under this Agreement.

ff. **"Security Instrument"** means the Multifamily (Mortgage, Deed of Trust, or other designation as appropriate by Property Jurisdiction), Assignment of Leases and Rents and Security Agreement (HUD-94000M), and any other security for the Indebtedness between Borrower and Lender, and shall be deemed to be the "mortgage" as defined by Program Obligations.

gg. **"Surplus Cash"** means any cash plus amounts receivable under Section 8 project-based subsidy payments (earned in the applicable fiscal period) remaining after:

(1) The payment of: (i) all sums immediately due or currently required to be paid under the terms of the Note, the Security Instrument and this Agreement on the first day of the month following the end of the fiscal period; including without limitation, all amounts required to be deposited in the Reserve for Replacement or other reserves as may be required by HUD; and (ii) all other obligations of the Project (accounts payable and accrued, unescrowed expenses) unless funds for payment are set aside or deferment of payment has been approved by HUD, and

(2) The segregation and recording of: (i) an amount equal to the aggregate of all special funds required to be maintained by Borrower; (ii) the greater of Borrower's total liability or the amount held by Borrower for tenant security deposits; and (iii) all accounts and accrued items payable within thirty (30) days after the end of the fiscal period.

hh. **"State"** includes the several states comprising the United States of America, and Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Marianas, American Samoa, and the U.S. Virgin Islands.

ii. **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, that are levied, assessed or imposed by any public authority or quasi-public authority, and that, if not paid, could become a lien on the Land or the Improvements.

jj. **"Undocumented Expense"** is defined in Section 16.

kk. **"Violation"** is defined in Section 37.

ll. **"Waste"** means a failure to keep the Mortgaged Property in decent, safe and sanitary condition and in good repair. During any period in which HUD insures the Loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender's and HUD's express written consent, Borrower:

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- (1) physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value;
- (2) fails to maintain and repair the Mortgaged Property in accordance with Program Obligations;
- (3) fails to pay before delinquency any Taxes secured by a lien having priority over the Security Instrument;
- (4) materially fails to comply with covenants in the Note, the Security Instrument or this Regulatory Agreement respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or
- (5) retains possession of Rents to which Lender or its assigns have the right of possession under the terms of the Loan Documents;

II. CONSTRUCTION; REFINANCING

2. CONSTRUCTION FUNDS. Borrower shall keep funds of the Mortgaged Property to be used for repairs or for construction or substantial rehabilitation separate and apart from operating funds of the Mortgaged Property. Funds for construction or substantial rehabilitation are identified in the Building Loan Agreement and/or Construction Contract.

3. UNPAID OR OUTSTANDING OBLIGATIONS. Borrower certifies, upon final or initial/final endorsement of the Note by HUD, Borrower shall have no unpaid obligations in connection with the purchase of the Mortgaged Property, the construction or repair of the Mortgaged Property, or with respect to the Security Instrument, except such unpaid obligations as have the written approval of HUD as to terms, form and amount; and, except for those obligations approved by HUD in writing, the Land shall be paid for in full and is free from any liens or purchase money obligations, or if the Land is subject to a leasehold interest, it must be subject to a HUD approved lease, and it shall be free from any lien. As of the date hereof, Borrower has no knowledge of any liens or encumbrances against the Mortgaged Property that are not reflected as exceptions to coverage in the lender's title policy insuring the Security Instrument accepted by HUD or that are not shown on the UCC search. All contractual obligations of Borrower or on behalf of Borrower with any party shall be fully disclosed to HUD.

4. LENDER'S CERTIFICATE. Borrower shall be bound by the terms of the Lender's Certificate or the Request for Endorsement of Credit Instrument & Certificate of Lender, Borrower & General Contractor, as applicable (a copy of which has been provided to Borrower), insofar as the applicable document establishes or reflects obligations of

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Borrower. Borrower agrees that the fees and expenses enumerated in the applicable document have been fully paid or payment has been provided for as set forth in the applicable document and that all funds deposited with Lender shall be used for the purposes set forth in the applicable document insofar as Borrower has rights and obligations in respect thereto.

5. CONSTRUCTION COMMENCEMENT/REPAIRS. Borrower certifies that it has not commenced construction or substantial rehabilitation of the Mortgaged Property prior to HUD's initial endorsement of the Note, except that this Section 5 is not applicable if HUD has given prior written approval to an early start of construction, or if this Project is an Insurance Upon Completion or involves a loan refinancing or if such work has been disclosed to and approved in writing by HUD. In cases of purchase and/or refinance involving an existing building, Borrower shall not commence any critical repairs without the prior written approval of HUD.

6. DRAWINGS AND SPECIFICATIONS. The Mortgaged Property shall be constructed in accordance with the terms of the Construction Contract as approved by HUD, if any, and with the Drawings and Specifications that have been approved by HUD and deemed attached to the Construction Contract.

7. REQUIRED PERMITS. Unless otherwise required in the Construction Contract and Building Loan Agreement, the Borrower has obtained all necessary certificates, permits, licenses, qualifications, authorizations, consents and approvals from all necessary Governmental Authorities to own and operate the Project and to carry out all of the transactions required by the Loan Documents and to comply with all applicable federal statutes and regulations of HUD in effect on the date of the Firm Commitment, except for those, if any, which customarily would be obtained at a later date, at an appropriate stage of construction or completion thereof, and which the undersigned shall obtain in the future. The licenses and permits that are in effect as of the date hereof are sufficient to allow any construction of the improvements to proceed to completion in ordinary course. As the construction of the Project progresses, unless otherwise required by the Construction Contract, the Borrower will procure and submit all necessary building and other permits required by Governmental Authorities. The Mortgaged Property shall not be available for occupancy by any tenant without the prior written approval of HUD and of all other legal authorities having jurisdiction of the Mortgaged Property.

8. ACCOUNTING REQUIREMENTS. Borrower shall submit an accounting to HUD, as required by Program Obligations, for all receipts and disbursements during the period set forth therein. The excess of project income over property disbursements, as determined by HUD, shall be treated as a recovery of construction cost, except as otherwise allowed in Program Obligations.

III. FINANCIAL MANAGEMENT

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9. **PAYMENTS.** Borrower shall make promptly all payments due under the Note, Security Instrument, and this Agreement.

10. **RESERVE FOR REPLACEMENT.** Borrower shall establish and maintain a Reserve for Replacement account for defraying certain costs of replacing major structural elements and mechanical equipment of the Project or for any other purpose.

a. The Reserve for Replacement shall be deposited with Lender or in a safe and responsible depository designated by Lender in accordance with Program Obligations. Such funds shall at all times remain under the control of Lender or Lender's designee and shall be held in accounts insured or guaranteed by a federal agency and in accordance with Program Obligations.

b. Borrower shall deposit at initial or initial/final endorsement of the Note an initial amount of ~~\$600,000.00~~ if applicable, ~~and if not applicable, the amount deposited will be \$0;~~ and Borrower shall deposit a monthly amount of \$7,750.00 concurrently with the beginning of payments towards amortization of the Note unless a different date or amount is established by HUD. At least every ten years, starting from the date of initial or initial/final endorsement of the Note, and more frequently at HUD's sole discretion, Borrower shall submit to HUD a written analysis of its use of the Reserve for Replacement during the prior ten years and the projected use of the Reserve for Replacement in accordance with Program Obligations. The amount of the monthly deposit may be increased or decreased from time to time at the written direction of HUD without a recorded amendment to this Agreement.

c. Borrower shall carry the balance in this account on the financial records as a restricted asset. The Reserve for Replacement shall be invested in accordance with Program Obligations, and any interest earned on the investment shall be deposited in the Reserve for Replacement for use by the Project in accordance with this Section 10.

d. Disbursements from the Reserve for Replacement shall only be made after consent, in writing, of HUD. In the event of a Declaration of Default under the terms of the Security Instrument, pursuant to which the Indebtedness has been accelerated, a written notification by HUD to Borrower of a violation of this Agreement or at such other times as determined solely by HUD, HUD may direct the application of the balance in such account to the amount due on the Indebtedness as accelerated or for such other purposes as may be determined solely by HUD.

e. In the case of a transfer of the Mortgaged Property where the Project is already subject to a Security Instrument insured or held by HUD as of the date hereof, and this Agreement is now being executed by Borrower as of the date hereof, the Reserve for Replacement now to be established shall be equal to the amount due to be in such account under this Agreement, and payments hereunder shall begin with the first

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payment due on the Security Instrument after acquisition, unless some other method of establishing and maintaining the account is approved in writing by HUD.

f. Upon Borrower's full satisfaction of all HUD obligations, Borrower shall receive any monies remaining in the Reserve for Replacement.

11. RESIDUAL RECEIPTS. Section 221(d)(3) and 231 Non-Profit, Public Body, and Limited Dividend Borrowers shall establish and maintain, in addition to the Reserve for Replacement, a Residual Receipts account by depositing with Lender the Residual Receipts within ninety (90) days after the end of the annual fiscal period within which such receipts are realized. Such account shall be held by Lender or by a safe and responsible depository designated by Lender in accordance with Program Obligations, in an interest-bearing account which shall be insured or guaranteed by a federal agency and in accordance with Program Obligations. The Residual Receipts shall be under the control of HUD, and shall be disbursed only on the direction of HUD, which shall have the power and authority to direct that the Residual Receipts, or any part thereof, be used for such purpose as it may determine.

12. PROPERTY AND OPERATION; ENCUMBRANCES.

a. Borrower shall deposit all Rents and other receipts of the Project in connection with the financing of the Project, including equity or capital contributions required under the Firm Commitment or otherwise advanced for the purpose and as part of the Mortgaged Property, in the name of the Project in a federally insured depository or depositories and in accordance with Program Obligations. (Equity or capital contributions shall not include certain syndication proceeds, such as proceeds from Low Income Housing Tax Credit transactions used to repay bridge loans from members/partners of Borrower, all as more fully set forth in Program Obligations.) Such funds shall be withdrawn only in accordance with the provisions of this Agreement for Reasonable Operating Expenses of the Project or for Distribution of Surplus Cash or as reimbursement of advances as permitted by Sections 14 and 15 below; or for permitted deposits authorized by this Agreement or for any other reason authorized under this Agreement. Any person or entity receiving Mortgaged Property other than for payment of Reasonable Operating Expenses, authorized Distributions of Surplus Cash, or for any reason authorized under Section 36 of this Agreement, shall immediately deliver such Mortgaged Property to the Project and failing so to do shall hold such Mortgaged Property in trust.

b. Borrower shall not engage in any business or activity, including the operation of any other project, or incur any liability or obligation not in connection with the Project, nor acquire an Affiliate or contract to enter into any affiliation with any party except as otherwise approved by HUD.

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- c. Borrower shall satisfy or obtain a release of any mechanic's lien, attachment, judgment lien, or any other lien that attaches to the Mortgaged Property or any part thereof.
- d. Penalties, including but not limited to delinquent tax penalties, shall not be paid from the Project.
- e. Borrower shall promptly notify HUD of the appointment of any receiver for the Project, the filing of a petition in bankruptcy or insolvency or for reorganization.
- f. Borrower shall keep the Mortgaged Property insured at all times in accordance with the Security Instrument and Program Obligations, and Borrower shall notify HUD of all payments received from an insurer.
- g. Borrower shall notify HUD of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect condemnation.
- h. Borrower shall notify HUD of any litigation proceeding filed against Borrower or the Project, or any litigation proceeding filed by Borrower.

13. SECURITY DEPOSITS. Any funds collected as security deposits shall be kept (a) separate and apart from all other funds of the Project; (b) in interest bearing trust accounts, to the extent required by State or local law; and (c) in an amount which shall at all times equal or exceed the aggregate of all outstanding obligations under said account. Security deposit account interest shall be paid on a pro rata basis to tenants or applied to sums due under their leases upon the termination of their tenancy in the Project. The use of tenant security deposits for Project operations is prohibited unless the tenant has forfeited the deposit.

14. DISTRIBUTIONS. Borrower shall not make or take, or receive and retain, nor allow any Affiliate or Principal to receive or retain any Distribution of assets or any income of any kind of the Project, except from Surplus Cash or in accordance with Program Obligations. Distributions are governed by the following conditions:

- a. No Distribution shall be made or taken from borrowed funds. Distributions shall not be taken prior to the completion of the Project. Distributions shall not be taken after HUD has given Notice to Borrower of a Violation under this Agreement or an Event of Default occurs under the Note or Security Instrument. Distributions shall not be taken when a Project is under a forbearance agreement.

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b. No Distribution shall be made or taken when either (i) necessary services (utilities, trash removal, security, lawn service or any other services that Borrower is required to provide) are not being provided on a regular basis, which failure Borrower should have known about in the exercise of due care; (ii) notices of physical repairs or deficiencies (including, but not limited to, building code violations) by Governmental Authorities and/or by HUD have been issued and remain unresolved to the satisfaction of the issuing public body or (iii) Borrower has been notified by HUD, Lender or a Governmental Authority that physical repairs and/or deficiencies exist and Borrower has not corrected or cured the identified items to HUD's satisfaction. Upon completion of the repairs, HUD may permit a Distribution to be placed in an escrow account until a subsequent inspection has been completed by HUD. If the Project passes a subsequent inspection, HUD may then authorize release of the funds in the escrow account to Borrower. HUD may also permit Distributions when there are minor or contested local code violations on a case-by-case basis.

c. Any Distribution of any funds of the Project not permitted by this Agreement or Program Obligations shall be returned to the appropriate Project account as specified by HUD immediately.

d. All allowable Distributions shall be made or taken only after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction. All such Distributions to Limited Dividend Borrowers in any one fiscal year shall be limited to N/A percent of initial equity, or to such other amounts as may be specified in Program Obligations, and the right to such Distributions shall be cumulative. No Distributions may be taken in the case of Public Body or Nonprofit Borrowers unless permitted by Program Obligations. For all other Borrowers, Distributions, if taken, must be taken out of the appropriate Project account as specified by HUD within the accounting period immediately following the computation of Surplus Cash and, if not taken within the identified period, these funds remain as Mortgaged Property and may only be used as permitted by this Agreement. The computation of Surplus Cash must be prepared at the end of the semiannual or annual fiscal period.

e. Equity or capital contributions shall not be reimbursed from Project accounts without the prior written approval of HUD. Borrower advances for Reasonable Operating Expenses shall not be deemed to fall under this subsection but rather shall be treated under Section 15 below.

15. REIMBURSEMENT OF ADVANCES. Any advances made by any Principal or by any entity on behalf of Borrower, or for Borrower with respect to the Project must be deposited into the Project's operating account as required by Program Obligations. Any Principal or any entity that advances funds on behalf of Borrower or for Borrower for Reasonable Operating Expenses may be reimbursed from Surplus Cash at the end of

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the annual or semiannual period or such other time as may be approved in writing by HUD. Interest may be permitted on such advances with the prior written approval of HUD. Such repayment is not considered a Distribution if otherwise approved by HUD.

16. FINANCIAL ACCOUNTING. Borrower shall keep the books and accounts of the operation of the Mortgaged Property in accordance with Program Obligations. The books and accounts must be complete, accurate and current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. Any Undocumented Expense or Distribution shall be an ineligible Project expense, unless otherwise determined in writing by HUD. An **"Undocumented Expense"** is an expense without sufficient documentation that provides reasonable identification of the basis of the expense. Books, accounts and records shall be open and available for inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or another mutually agreeable location.

17. BOOKS MAINTAINED BY MANAGEMENT AGENTS. The books and records of the Project maintained by management agents and Affiliates shall be maintained in accordance with Program Obligations and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or another mutually agreeable location. Every contract executed on behalf of the Project with any management agent or Affiliate shall include the provision that the books and records of the Project shall be properly maintained and open to inspection during normal business hours by HUD at the Project or another mutually agreeable location. Upon the termination of a contract with management agent and/or Affiliates, the books and records of the Project maintained by the management agent and/or Affiliates shall remain with Borrower.

18. ANNUAL FINANCIAL STATEMENT. Within ninety (90) days, or such period established in writing by HUD, following the end of each fiscal year, Borrower shall furnish HUD and Lender with a complete annual financial report based upon an examination of the books and records of Borrower prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards ("GAAS") and Government Auditing Standards ("GAS") and any additional requirements of HUD unless the report is waived in writing by HUD. If Borrower fails to submit the annual financial report within ninety (90) days of said due date, HUD may thereafter hire a certified public accountant to prepare the report at the expense of Borrower. The report shall include a certification in content and form prescribed by HUD and certified by Borrower. The report shall be prepared and certified by a certified public accountant who is licensed or certified by a regulatory authority of a state or other political subdivision of the United States, which authority makes the certified public accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The certified public accountant must have no business relationship with Borrower except for

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the performance of the audit and tax preparation unless HUD expressly authorizes other relationships. Auditing costs and tax preparation costs may be charged as an authorized expense to the Mortgaged Property only to the extent they are required of Borrower itself by state law, the Internal Revenue Service ("IRS"), the Securities and Exchange Commission, or HUD. Neither IRS audit costs nor costs of tax preparation for Borrower's partners, members, shareholders, or other persons receiving Distributions from Borrower may be charged to the Mortgaged Property as a Project expense. Non-profit Borrowers are to follow audit requirements specified in OMB Circular A-133, as revised.

IV. PROJECT MANAGEMENT

19. PRESERVATION, MANAGEMENT AND MAINTENANCE OF THE MORTGAGED PROPERTY. Borrower (a) shall not commit Waste, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as HUD may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, and (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personality and Fixtures with items of equal or better function and quality, all in accordance with Program Obligations. Obligations (a) through (d) of this Section 19 are absolute and unconditional and are not limited by any conditions precedent and are not contingent on the availability of financial assistance of any kind from HUD or on HUD's performance of any administrative or contractual obligations. The Mortgaged Property must also be maintained in reasonable condition for proper audit and subject to examination by HUD at the Project or another mutually agreeable location. In the event all or any of the Improvements shall be destroyed or damaged by fire, by failure of warranty, or other casualty, the money derived from any settlement, judgment, or insurance on the Mortgaged Property shall be applied in accordance with the terms of the Security Instrument. In the event all or any of the Improvements shall be taken by an exercise of the power of eminent domain, all awards of compensation in connection with condemnation for public use of or a taking of any of the Improvements shall be paid in accordance with the Security Instrument.

20. FLOOD HAZARDS. Borrower shall maintain flood insurance if required by the Security Instrument.

21. MANAGEMENT AGREEMENT. Borrower shall execute a management agreement or other document outlining procedures for managing or operating the Mortgaged Property. Such agreement or document must be consistent with Program Obligations. Borrower and the management agent shall submit and maintain a current management

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certification meeting standards consistent with Program Obligations. A management agreement must contain a provision that it cannot be assigned without the prior written approval of HUD.

22. ACCEPTABILITY OF MANAGEMENT OF THE MORTGAGED PROPERTY.

Borrower shall provide management of the Mortgaged Property in a manner deemed to be acceptable by HUD. At HUD's discretion, HUD may require replacement of the management.

23. TERMINATION OF CONTRACTS. Any management contract entered into by Borrower pertaining to the Mortgaged Property shall contain a provision that the contract shall be subject to termination without penalty and without cause upon written request by HUD and shall contain a provision that gives no more than a thirty day notice of termination. Upon such request, Borrower shall immediately arrange to terminate the contract, and Borrower shall also make arrangements satisfactory to HUD for continuing acceptable management of the Mortgaged Property effective as of the termination date of the contract.

24. CONTRACTS FOR GOODS AND SERVICES. Consistent with Program Obligations, Borrower shall obtain contracts for goods, materials, supplies, and services (**Goods and Services**) at costs, amounts, and terms that do not exceed reasonable and necessary levels and those customarily paid in the vicinity of the Land for Goods and Services received. The purchase price of Goods and Services shall be based on quality, durability and scope of work and shall be made upon the most advantageous terms for the Project operation. Reasonable Operating Expenses do not include amounts paid for betterments as defined in the Property Jurisdiction or Improvements unless determined by HUD to be prudent and appropriate. Borrower shall keep copies of all written contracts or other instruments that affect the Mortgaged Property, all or any of which may be subject to inspection and examination by HUD at the Project or another mutually agreeable location.

25. RESPONSIVENESS TO INQUIRIES. At the request of HUD, Borrower shall promptly furnish operating budgets and occupancy, accounting and other reports (including credit reports) and give specific answers to questions relative to income, assets, liabilities, contracts, operation, and conditions of the Mortgaged Property and the status of the Security Instrument.

26. TENANT ORGANIZATIONS. If the Project is subject to 24 CFR 245 Subpart B or any successor regulation covering the rights of tenants to organize, Borrower shall comply with this Section 26. Borrower shall not (a) impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize, or (b) unreasonably withhold the use of any community room or

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other available space appropriate for meetings that is part of the Mortgaged Property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development. Borrower may charge for the use of the Mortgaged Property any fees or costs approved by HUD as may normally be imposed for the use of such facilities or may waive any such fees or costs.

V. ADMISSIONS AND OCCUPANCY

27. RESIDENTIAL UNITS AND SERVICES. If the Project is subject to regulation of rent by HUD, Borrower shall make residential units and services of the Project available to eligible tenants at charges not exceeding those established in accordance with a rental schedule approved in writing by HUD.

28. LEASE TERMS FOR RESIDENTIAL UNITS. Residential units shall not be rented for a period of less than thirty (30) days or for more than 3 years and shall not be used for transient or hotel purposes. Rental for transient or hotel purposes shall mean: (a) rental for a period of less than thirty (30) days or (b) any rental, if the occupants of the residential units are provided customary hotel services such as room service for food and beverages, maid service, furnishings or laundering of linens, and bellhop service. Residential units in projects with Security Instruments initially endorsed for insurance pursuant to Section 231 of the National Housing Act, as amended, may be rented for a period of more than 3 years.

29. COMMERCIAL (NON-RESIDENTIAL) LEASES. No portion of the Mortgaged Property shall be leased for any commercial purpose or use without receiving HUD's prior written approval as to terms, form and amount, except that for lease renewals or extensions or amendments involving no change in terms or use, rent increases are permitted without HUD approval. Borrower must deliver an executed copy of the commercial Lease to HUD.

30. SUBLEASES. All Leases of residential units by Borrower to tenants must also prohibit assignment of the leasehold interest by the tenant without the prior written approval of Borrower. All Leases of residential units by Borrower to tenants must prohibit tenants from entering into any subleases that do not run for at least thirty (30) days and must require that all subleases be approved in advance in writing by Borrower. Leases of residential units must prohibit the tenant from granting the right to occupy the premises for a period of less than thirty (30) days or from furnishing hotel services, as defined in Section 28. Assignment and subleasing of units by other than the tenant thereof without the prior written approval of Borrower shall be prohibited in

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the Lease. Upon discovery of any unapproved assignment, sublease or occupancy, Borrower shall, to the extent permitted by law, immediately demand cancellation and/or vacation of the premises, as appropriate, and notify HUD thereof.

31. TENANT SELECTION/OCCUPANCY.

a. If the Security Instrument is originally a HUD-held purchase money mortgage, or is originally endorsed for insurance under any Section of the National Housing Act, as amended, other than Section 231 units specially designed for use and occupancy of Elderly Persons exclusively, Borrower shall not, in selecting tenants, discriminate against any person or persons by reason of the fact that there are children in the family, unless in accordance with the Fair Housing Act and otherwise approved in writing by HUD.

b. If the Security Instrument is originally endorsed for insurance under Section 221, Borrower shall, in selecting tenants, give to displaced persons or families an absolute preference or priority of occupancy that shall be accomplished as follows: (1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by HUD, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants; (2) thereafter, and on a continuing basis, such preferred applicants shall be given preference over non-preferred applicants in their placement on a waiting list to be maintained by Borrower; and (3) through such further provisions agreed to in writing by the parties to this Agreement.

c. At least 75% of the units in a Project insured under Section 231 shall be designed for the use and occupancy of Elderly Persons unless prior written approval is given by HUD for a lesser number of units.

d. All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of Borrower to obtain occupancy by Elderly Persons.

32. RENTS. If the Project is subject to regulation of rent by HUD, HUD will at any time entertain a written request for a rent increase that is properly supported by substantiating evidence and HUD will, within a reasonable time: (a) approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance costs over which Borrower has no effective control; or (b) deny the increase and state the reasons for its decision.

33. CHARGES FOR SERVICES AND FACILITIES. If the Project is subject to regulation of rent by HUD, Borrower shall only charge to and receive from any tenant

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such amounts as have the prior written approval of HUD and are mutually agreed upon between Borrower and the tenant for any facilities and/or services not included in the HUD approved rent schedule that may be furnished by, or on behalf of, Borrower to such tenant upon request.

34. PROHIBITION OF CERTAIN FEES. Borrower shall not charge any Project tenant or prospective Project tenant any fees prohibited under Program Obligations; such prohibited fees may include an admission fee, a key fee, or similar payment pursuant to any agreement to furnish residential units or services to persons making such payments.

35. SECURITY DEPOSITS AND OTHER FEES. Borrower shall not require as a condition of occupancy or leasing of any unit in the Project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the lease terms. Borrower may charge certain application processing fees such as credit check or criminal background fees or pet deposits.

VI. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD

36. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD. Borrower shall not without the prior written approval of HUD:

a. Convey, assign, transfer, pledge, hypothecate, encumber, or otherwise dispose of the Mortgaged Property or any interest therein, or permit the conveyance, assignment, or transfer of any interest in Borrower (if the effect of such conveyance, assignment or transfer is the creation or elimination of a Principal) unless permitted by Program Obligations. Borrower need not obtain the prior written approval of HUD: (i) for a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Security Instrument; (ii) for inclusion of the Mortgaged Property in a bankruptcy estate by operation of law under the United States Bankruptcy Code; (iii) for acquisition of an interest by inheritance or by Court decree; or (iv) for actions permitted under subsection 36(g).

b. Enter into any contract, agreement or arrangement to borrow funds or finance any purchase or incur any liability, direct or contingent other than for Reasonable Operating Expenses.

c. Pay out any funds of the Mortgaged Property: (i) except from permissible withdrawals of Surplus Cash, and (ii) except for Reasonable Operating Expenses and necessary repairs.

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- d. Except from permissible withdrawals of Surplus Cash, pay any compensation, including wages or salaries, or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, member, manager (in the case of a Borrower formed as a Limited Liability Company or Limited Liability Corporation), or Principal of Borrower, or to any nominee thereof.
- e. Enter into or change any contract, agreement or arrangement for supervisory or managerial services or Leases for operation of the Project in whole or in part except as permitted under Program Obligations.
- f. Convey, assign, or transfer any right to receive the Rents of the Mortgaged Property, except as provided in the Security Instrument.
- g. Remodel, add to, subtract from, construct, reconstruct or demolish any part of the Mortgaged Property, except as required by HUD under Section 19(c) and except that Borrower may, without the prior written approval of HUD, dispose of obsolete or deteriorated Fixtures or Personality if the same are replaced with like items of the same or greater quality or value and make minor alterations that do not impair the security.
- h. Permit the use of the Mortgaged Property for any other purpose except the use for which it was originally intended, or permit commercial use greater than that originally approved by HUD.
- i. Amend the organizational documents of Borrower in a way that materially modifies the terms of the organization, including, but not limited to: any amendment that activates the requirement that a HUD previous participation certification be obtained from any additional partner or member; any amendment that would authorize any officer, partner or member other than the officer(s), general partner(s) or the managing member(s) of the corporation, partnership or company or pre-approved successor officer(s), general partner(s) or managing member(s) to bind the corporation, partnership or company for any matters concerning the Project which requires HUD's consent or approval; a change in the officer(s), general partner(s) or managing member(s) or pre-approved successor officer(s), general partner(s) or managing member(s) of the corporation, partnership or company and any proposed changes to the HUD-required provisions included in the organizational documents. Copies of all fully executed amendments to the organizational documents must be provided to HUD within ten (10) days of the effective date of the amendment. If the amendments to the organizational documents are recorded or filed, copies of the recorded or filed documents must be provided to HUD within ten (10) days of receipt by Borrower.

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- j. Reimburse any party from Mortgaged Property for payment of expenses or costs of the Project or for any purpose except for Reasonable Operating Expenses and in a manner consistent with Section 15.
- k. Receive any fee or payment of any kind from any managing agent, employee of the Project or of the managing agent, or other provider of Goods or Services of the Project, except for warranty claims from providers of Goods and Services.
- l. Initiate or acquiesce in a change in the zoning classification of the Mortgaged Property that results in any change in permitted use that was in effect at the time of initial/final endorsement.
- m. Establish any condominium or cooperative regime with respect to the Mortgaged Property.
- n. Materially change any unit configurations or change the number of units in the Mortgaged Property.

VII. ENFORCEMENT

37. VIOLATION OF AGREEMENT. The occurrence of any one or more of the following shall constitute a "Violation" under this Agreement:

- a. Any failure by Borrower to comply with any of the provisions of this Agreement;
- b. Any fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, members, managers or managing agent in connection with (1) any financial statement, rent roll or other report or information provided to HUD during the term of this Agreement or (2) any request for HUD's consent to any proposed action, including a request for disbursement of funds from any restricted account for which HUD's prior written approval is required; and/or
- c. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair HUD's interest in the Mortgaged Property.

38. DECLARATION OF DEFAULT.

- a. At any time during the existence of a Violation, HUD may give written Notice of the Violation to Borrower, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate

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written Notice to HUD, be designated by Borrower as its legal business address. If, after receiving written Notice of a Violation, that Violation is not corrected to the satisfaction of HUD either within thirty (30) days after the date Notice is mailed, or within such shorter or longer time set forth in said Notice, HUD may declare a default under this Agreement without further Notice. Alternatively, in order to protect the health and safety of the tenants, HUD may declare a default at any time during the existence of a Violation without providing prior written Notice of the Violation.

b. Upon any **Declaration of Default** HUD may:

i. If HUD holds the Note, declare the whole of said Indebtedness immediately due and payable and then proceed with the foreclosure of the Security Instrument;

ii. If said Note is not held by HUD, notify the holder of the Note of such default and request the holder to declare a default under the Note and Security Instrument, and the holder, after receiving such Notice and demand, may declare the whole Indebtedness due and payable and thereupon proceed with foreclosure of the Security Instrument or assignment of the Note and Security Instrument to HUD as provided in Program Obligations. Upon assignment of the Note and Security Instrument to HUD, HUD may then proceed with the foreclosure of the Security Instrument;

iii. Collect all Rents and charges in connection with the operation of the Project and use such collections to pay Borrower's obligations under this Agreement and under the Note and Security Instrument and the necessary expenses of preserving and operating the Mortgaged Property;

iv. Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of Borrower growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, and sanitary condition and good repair;

v. Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any Violations of this Agreement, for the appointment of a receiver to take over and operate the Project in accordance with this terms of the Agreement, or for such other relief as may be appropriate, as the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain; and,

vi. Collect reasonable attorney fees related to enforcing Borrower's compliance with this Agreement.

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c. Any forbearance by HUD in exercising any right or remedy under this Agreement or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any right or remedy.

39. MEASURE OF DAMAGES. The damage to HUD as a result of Borrower's breach of duties and obligations under this Agreement shall be, in the case of failure to maintain the Mortgaged Property as required by this Agreement, the cost of the repairs required to return the Project to decent, safe and sanitary condition and good repair. This contractual provision shall not abrogate or limit any other remedy or measure of damages available to HUD under any civil, criminal or common law.

VIII. MISCELLANEOUS**40. COMPLIANCE WITH LAWS.**

a. Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants and agreements (including the Security Instrument) recorded against the Mortgaged Property; and Program Obligations including lead-based paint maintenance requirements of 24 CFR Part 35, subpart G, and any successor regulations; including but not limited to those of the foregoing pertaining to: health and safety; construction of improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; Leases; and maintenance and disposition of tenant security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 40. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property, including those that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by the Security Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to HUD that no portion of the Mortgaged Property has been or shall be purchased with the proceeds of any illegal activity.

b. HUD shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by Borrower with these requirements, including any remedies available hereunder.

41. BINDING EFFECT. This Agreement shall bind, and the benefits shall inure to, Borrower, its heirs, legal representative, executors, administrators, successors in office or interest, and assigns, and to HUD and HUD's successors, so long as the Contract of

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Insurance continues in effect, and during such further time as HUD shall be the Lender, holder, coinsurer, or reinsurer of the Security Instrument, or obligated to reinsure the Security Instrument.

42. PARAMOUNT RIGHTS AND OBLIGATIONS. Borrower warrants that it has not, and shall not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

43. SEVERABILITY. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

44. RULES OF CONSTRUCTION. The captions and headings of the Sections of this Regulatory Agreement are for convenience only and shall be disregarded in construing this Regulatory Agreement. Any reference in this Regulatory Agreement to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Regulatory Agreement or to a Section of this Regulatory Agreement. All Exhibits attached to or referred to in this Regulatory Agreement are incorporated by reference into this Regulatory Agreement. Use of the singular in this Regulatory Agreement includes the plural and use of the plural includes the singular. As used in this Regulatory Agreement, the term, "including" means "including, but not limited to."

45. PRESENT ASSIGNMENT. Borrower irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to the Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts of whatsoever sort that it may receive or be entitled to receive from the operation of the Mortgaged Property, subject to the assignment of Rents in the Security Instrument. Until a default is declared under this Agreement, a revocable license is granted to Borrower to collect and retain such Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts, but upon a Declaration of Default under this Agreement or under the Security Instrument, this revocable license is automatically terminated.

46. NOTICE.

a. All notices, demands and other communications ("**Notice**") under or concerning this Regulatory Agreement shall be in writing. Each Notice shall be addressed to Borrower, with a copy to Lender, at their respective addresses set forth below (and notices to HUD shall be addressed to the appropriate HUD field office responsible for servicing the Mortgaged Property), and shall be deemed given on the earliest to occur of (i) the date

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when the Notice is received by the addressee; (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery, or (iii) the third Business Day after the Notice is deposited in the United State mail with postage prepaid, certified mail, return receipt requested. The Term "**Business Day**" means any day other than a Saturday, a Sunday or any other day on which Lender or HUD is not open for business.

b. Any party to this Agreement may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 46. Each party agrees that it shall not refuse or reject delivery of any Notice given in accordance with this Section 46, that it shall acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section 46 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

BORROWER:**PP SS, LLC**

c/o Pangea Real Estate
640 N. LaSalle St., Suite 638
Chicago, IL 60654
Attn: Patrick Borchard, CFO

LENDER:**WELLS FARGO BANK, NATIONAL ASSOCIATION**

2010 Corporate Ridge, Suite 1000
McLean, Virginia 22102
Attention: Servicing Department

47. [INTENTIONALLY OMITTED]

48. CONFLICTS PROVISION. Borrower shall comply with the requirements set forth in this Agreement as well as any other agreement Borrower enters into with HUD. However, if a conflict exists between this Agreement and any other HUD agreement executed by Borrower, the agreement which imposes the more restrictive requirements on Borrower shall control.

49. THIRD PARTY BENEFICIARY. Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and Lender, as more fully set forth in 24 C.F.R. Part 207, Subpart B.

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SECTION IX. NON RECOURSE

50. NONRECOURSE DEBT. The following individuals/entities as identified in the “**Firm Commitment**” (which means the commitment for insurance of advances or commitment for insurance upon completion issued to Lender by HUD under which the debt evidenced by the Note is to be insured pursuant to a Section of the Act, dated **March 25, 2013, as amended**):

Pangea Real Estate Holdings, LLC, Albert Goldstein, and Steven Joung

do not assume personal liability for payments due under the Note and Security Instrument, or for the payments to the Reserve for Replacements, or for matters not under their control, provided that said individuals/entities shall remain personally liable under this Agreement only with respect to the matters hereinafter stated; namely: (a) for funds or property of the Project coming into its hands which, by the provisions hereof, it is not entitled to retain; (b) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of Section 36(a) of this Agreement without the prior written approval of HUD; and (c) for its own acts and deeds, or acts and deeds of others, which it has authorized in violation of the provisions of this Section 50. The obligations of the individuals/entities referenced above shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, any termination of this Agreement, or any release of record of the Security Instrument.

[SIGNATURES APPEAR ON THE SUCCEEDING PAGES]

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PANGEA REAL ESTATE HOLDINGS, LLC
a Delaware limited liability company

By: Pangea Equity Partners, L.P., a Delaware limited partnership
its Member

By: Pangea Equity GP, LLC, a Delaware limited liability company
its General Partner


By: 
Patrick Borchard, CFO

ACKNOWLEDGMENT

.....
State of Illinois)
County of Cook) ss.

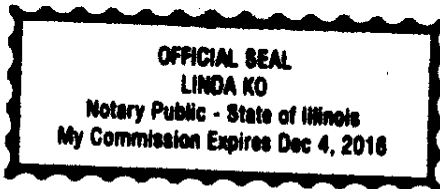
Personally appeared before me as of this 13 day of June, 2013, Patrick Borchard, who, after being duly sworn, says that he is the CFO of Pangea Equity GP, LLC, General Partner of Pangea Equity Partners, L.P., Member of Pangea Real Estate Holdings, LLC, a Delaware limited liability company and that he has authority to execute under oath and has so executed this instrument for and on behalf of such limited liability company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and official seal this 13 day of June, 2013.



Notary Public

My Commission Expires: 12/04/2016



UNOFFICIAL COPY



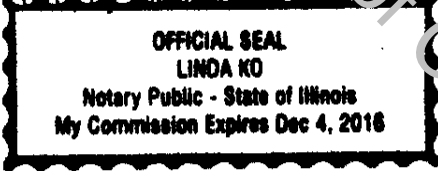
Albert Goldstein, an Individual

ACKNOWLEDGMENT



State of Illinois)
County of Cook) ss.

The foregoing instrument was acknowledged before this 13 day of June, 2013, by Albert Goldstein in his individual capacity.





Notary Public

[Seal]

Property of Cook County Clerk's Office

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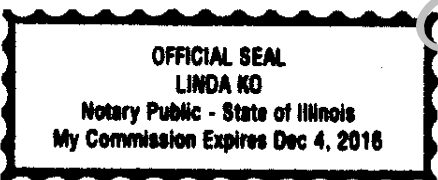
 Steven Joung, an Individual

ACKNOWLEDGMENT



State of Illinois)
) ss.
 County of Cook)

The foregoing instrument was acknowledged before this 13 day of June, 2013, by Steven Joung in his individual capacity.





 Notary Public

[Seal]

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ATTACHED EXHIBITS. The following Exhibits are attached to this Regulatory Agreement:

- Exhibit A Description of the Land (required).
- Rider I Replacement Reserve Funding Schedule (attached and incorporated herein for all purposes)

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first herein above written.

Borrower hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete and that each signatory has read and understands the terms of this Agreement. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

[SIGNATURES APPEAR ON THE SUCCEEDING PAGES]

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SECRETARY OF HOUSING AND
URBAN DEVELOPMENT ACTING BY
AND THROUGH THE FEDERAL
HOUSING COMMISSIONER

By: *[Signature]*
Authorized Agent

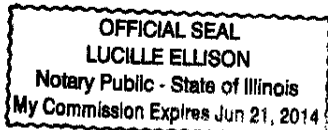
STATE OF ILLINOIS]
] ss:
COUNTY OF COOK]

I, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that on the 20 day of June, 2013, personally appeared before me Mary Anderson, who being duly sworn, did say that he/she is the duly appointed Authorized Agent and acknowledged the same to be his/her free and voluntary act and deed as Authorized Agent for and on behalf of the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ACTING BY AND THROUGH THE FEDERAL HOUSING COMMISSIONER.**

Witness my hand and official seal.

Lucille Ellison
Notary Public

[SEAL]



My commission expires:

June 21, 2014

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Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

NOTICE: THIS DOCUMENT MUST HAVE A LEGAL DESCRIPTION ATTACHED AND BE EXECUTED WITH ALL FORMALITIES REQUIRED FOR RECORDING A DEED TO REAL ESTATE (i.e., NOTARY/ACKNOWLEDGEMENT, SEAL, WITNESS OR OTHER APPROPRIATE FORMALITIES).

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**EXHIBIT A
[DESCRIPTION OF THE LAND]****PARCEL 1:**

LOT 9 IN HIGH RIDGE, BEING A SUBDIVISION OF LOTS 41 TO 52 IN FOURTH DIVISION OF SOUTH SHORE SUBDIVISION OF THE NORTH FRACTIONAL 1/2 OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 21-30-116-015

ADDRESS: 7419 S. PHILLIPS AVE.
CHICAGO, ILLINOIS

PARCEL 2:

LOTS 18, 19 AND 20 IN BLOCK 4 IN SOUTH SHORE PARK SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 21-30-300-015

ADDRESS: 7549-59 S. YATES AVE.
CHICAGO, ILLINOIS

PARCEL 3:

LOT 1 (EXCEPT THAT PART TAKEN FOR 71ST STREET) AND THE NORTH 19 1/2 FEET OF LOT 2 IN BLOCK 2 IN COLUMBIA ADDITION TO SOUTH SHORE, A SUBDIVISION OF THE WEST 1/2 OF BLOCKS 1, 4 IN STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 20-25-202-010

ADDRESS: 7102 S. LUELLA AVE.
CHICAGO, ILLINOIS

PARCEL 4:

LOTS 1 AND 2 AND LOT 3 (EXCEPT THE SOUTH 5 FEET THEREOF) IN BLOCK 1 IN LEWIS SUBDIVISION OF THE NORTH 1/2 OF BLOCK 8 IN STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 20-25-228-012

ADDRESS: 7400 S. YATES AVE.
CHICAGO, ILLINOIS

PARCEL 5:

LOTS 21 AND 22 IN FIRST ADDITION TO BRYN MAWR HIGHLAND, A SUBDIVISION IN THE NORTH 3/4 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 20-24-417-001

ADDRESS: 6901 S. MERRILL AVE.
CHICAGO, ILLINOIS

PARCEL 6:

LOTS 9 THROUGH 12 IN SUBDIVISION OF BLOCK 2 IN CONRAD SEIPP'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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PIN: 20-25-101-021
 ADDRESS: 7120 S. EAST END
 CHICAGO, ILLINOIS

PARCEL 7:

LOT SIX IN GURNEY'S SUBDIVISION OF LOT SIX, (EXCEPT THE EAST 33 FEET THEREOF TAKEN FOR STREET) LOT 7 (EXCEPT THE SOUTH 72 FEET OF THE WEST 87.5 FEET) AND THE SOUTH 1/2 IN THE EAST 1/2 OF LOT 8 (EXCEPT THE WEST 25 FEET THEREOF TAKEN FOR STREET AND EXCEPT THE SOUTH 72 FEET THEREOF) IN BLOCK 6 IN STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO PLAT RECORDED OCTOBER 21, 1927, AS DOCUMENT NO.981 6558 IN COOK COUNTY, ILLINOIS

ALSO

THE NORTH 38 FEET OF THE SOUTH 72 FEET OF THE EAST 1/2 OF LOT 8 (EXCEPT THE WEST 25 FEET THEREOF) AND THE NORTH 38 FEET OF THE SOUTH 72 FEET OF THE WEST 87.5 FEET OF LOT 7 IN BLOCK 6 IN STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 20-25-214-008 and 20-25-214-009

ADDRESS: 7317 S. CHAPPEL AVE.
 CHICAGO, ILLINOIS

PARCEL 8:

LOT 18 IN B. J. KELLY'S SUBDIVISION OF BLOCK 2 IN COMMISSIONER'S PARTITION, BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 20-24-422-007

ADDRESS: 7031 S. CHAPPEL AVE.
 CHICAGO, ILLINOIS

PARCEL 9:

THE SOUTH 38.00 FEET OF LOT 8 AND THE NORTH 14.00 FEET OF LOT 9 IN WEST'S RESUBDIVISION OF LOTS 3 TO 24 IN STUART'S SUBDIVISION OF EAST 1/3 OF THAT PART NORTH OF 68TH STREET OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 20-24-406-007

ADDRESS: 6743 S. OGLESBY AVE.
 CHICAGO, ILLINOIS

PARCEL 10:

THE SOUTH 20 FEET OF LOT 6 AND ALL OF LOT 7 AND LOT 8 (EXCEPT THE SOUTH 20 FEET THEREOF) IN B. J. KELLY'S SUBDIVISION OF BLOCK 2 IN COMMISSIONERS PARTITION, A SUBDIVISION OF THE SOUTH HALF OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 20-24-422-018

ADDRESS: 7028 S. CLYDE AVE.

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CHICAGO, ILLINOIS**PARCEL 11:**

LOTS 45 AND 46 IN BLOCK 1 IN PARKSIDE, SAID PARKSIDE, BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS
 PIN: 20-23-424-001

ADDRESS: 7003 S. HARPER AVE.
 CHICAGO, ILLINOIS

PARCEL 12:

THE NORTH 70 FEET OF LOT 38 IN DIVISION 4 IN SOUTH SHORE SUBDIVISION OF NORTH FRACTIONAL 1/2 OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH A RESUBDIVISION OF LOTS 1, 2, 4, 64, 66, 126, 127 AND 128 IN DIVISION 1 OF WESTFALL SUBDIVISION, IN SECTION 30, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 21-30-115-029
 ADDRESS: 7440 S. PHILLIPS AVE.
 CHICAGO, ILLINOIS

PARCEL 13:

LOTS 59, 60, 61 AND 62 (EXCEPT THE EAST 10.04 FEET THEREOF) IN MURRAY WOLBACH'S ADDITION TO SOUTH SHORE IN THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 28, 1916 AS DOCUMENT 5938751, IN COOK COUNTY, ILLINOIS.

PIN: 20-25-104-010
 ADDRESS: 1742-58 E. 72ND
 CHICAGO, ILLINOIS

PARCEL 14:

LOTS 46, 47, 48 AND 49 IN MURRAY WOLBACH'S ADDITION TO SOUTH SHORE IN THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 28, 1916 AS DOCUMENT 5938751, IN COOK COUNTY, ILLINOIS.

PIN: 20-25-103-005
 ADDRESS: 7109-15 S. RIDGELAND AVE.
 CHICAGO, ILLINOIS

A-1

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RIDER I
Replacement Reserve Funding Schedule
[ATTACHED]

Property of Cook County Clerk's Office

A large, thick, black scribble consisting of several vertical, wavy lines that completely obscures the text 'Property of Cook County Clerk's Office' in the center of the page.

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**Pantega South Shore Apartments
Replacement Reserve Funding Schedule**

Escalated Costs

Estimated Repair Replacement Needs years 1-10
Initial deposit of
Annual deposit of

705,200
600,000 \$400,000 from Loan Proceeds, \$200,000 Transfer Balance
93,300 per year 300 per unit

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Beginning of year balance in Reserve for Replacements	600,000	\$706,233	\$729,171	\$771,406	\$834,011	\$834,470	\$813,329	\$868,615	\$911,965	\$943,869
Annual Deposit	93,300	\$93,300	\$93,300	\$93,300	\$93,300	\$97,370	\$93,300	\$93,300	\$93,300	\$93,300
Anticipated Withdrawals (escalated costs)	0	\$84,574	\$85,922	\$46,690	\$109,361	\$130,756	\$54,667	\$67,579	\$79,771	\$65,980
Balance end of year	693,300	\$714,959	\$756,549	\$818,116	\$817,650	\$797,014	\$851,962	\$894,336	\$925,494	\$971,189
Anticipated interest earnings at 2%	12,933	\$14,212	\$14,857	\$15,895	\$16,520	\$16,315	\$16,653	\$17,630	\$18,375	\$19,151
Balance including interest	706,233	\$729,171	\$771,406	\$834,011	\$834,470	\$813,329	\$868,615	\$911,965	\$943,869	\$990,339

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