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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/17/2020 04:44 PM PG: 1 OF 25

**THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:**
Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attn: Arieh Flemenbaum

Property Address:
2350 South State Street, Chicago, IL 60616
Property Identification No(s).:
See Attached Exhibit A
41044528 (7DF44)

LOW INCOME HOUSING TAX CREDIT EXTENDED USE AGREEMENT (PHASE 1B)

Project Summary

Project Owners: Southbridge 9 Master Owner, LLC and
Southbridge 1-9 Housing LLC
Project Owner's Address: 135 South LaSalle Street, Suite 3550, Chicago, IL 60603
Project Name: Southbridge Phase 1B
Project Address: 2350 South State Street, Chicago, IL 60616
IHDA Project Application No.: 11551
Project Unit Count: 39/43 (Number of Low Income Units/ Total Number of Units in the Project)
Minimum Low Income Set-Aside Election: At least 40% of the units in the Project must be occupied
by Tenants at or below 60% of Area Median Gross
Income and Rent-Restricted in accordance with such
income level.
Minimum Applicable Fraction for Project: At least 90.69%

THIS LOW INCOME HOUSING TAX CREDIT EXTENDED USE AGREEMENT
(this "Agreement") is entered into on the January 16, 2020 by and among **ILLINOIS HOUSING
DEVELOPMENT AUTHORITY** (the "Authority"), a body politic and corporate established
pursuant to the Illinois Housing Development Act, ILCS 3805/1 *et seq.*, as amended from time to
time (the "Act") with its principal offices located at 111 East Wacker Drive, Suite 1000, Chicago,
Illinois 60601, and **SOUTHBRIDGE 9 MASTER OWNER LLC** (the "Master Owner"), an
Illinois limited liability company with its principal offices located at 135 South LaSalle St., Ste.
3550, Chicago, Illinois 60603, and **SOUTHBRIDGE 1-9 HOUSING LLC** (the "Master Tenant";
together with Master Owner, collectively, the "Owner"), an Illinois limited liability company with
its principal offices located at 135 South LaSalle St., Ste. 3550, Chicago, Illinois 60603.

RECITALS

(1) Pursuant to the ground lease between Chicago Housing Authority, an
Illinois municipal corporation ("CHA") and TCB Development Services LLC, an Illinois limited
liability company ("TCB Development") and assigned by TCB Development to Master Owner as

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amended by CHA ("Ground Lease"), the Master Owner is the ground leasehold interest holder of certain real property upon which a residential development will be erected, with the common address set forth above in the Project Summary and legally described on Exhibit A as attached hereto and incorporated herein (the "Development"); concurrently with the execution of this Agreement, the Master Owner will enter into that certain Master Lease ("Master Lease") with the Master Tenant, with respect to a portion of the Development, which portion will be a qualified low-income housing development, consisting of all the Low Income Units (as defined below) covered by this Agreement (the "Project"), and which Master Lease will be dated the date hereof and the term for which will commence no later than thirty (30) days prior to the date that the Units are placed in service for federal income tax purposes; as the tenant under the Master Lease, the Master Tenant will maintain and operate the Low Income Units.

(2) The Authority has been designated by Section 7.24g of the Act as the housing credit agency for the State of Illinois for the allocation of low-income housing tax credit authority ("Tax Credit Authority") pursuant to Section 42 of the Code (as hereinafter defined).

(3) The Owner has applied to the Authority for an allocation of Tax Credits in connection with the Project, and has represented to the Authority in its Application (as hereinafter defined) that it will lease at least the minimum percentage of Units (as hereinafter defined) and residential floor space in the Project to Qualifying Tenants (as hereinafter defined) such that the Minimum Applicable Fraction for the Project shall be as set forth above in the Project Summary.

(4) As a condition precedent to the allocation of Tax Credit Authority, the Owner must enter into an extended low income housing commitment, as provided in Section 42 of the Code, to be recorded in the Office of the Recorder of Deeds in the county in which the Project is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use, occupancy and transfer of the Project.

(5) The Owner under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project land for the Compliance Period and Extended Use Period (as hereinafter defined), are binding upon all subsequent owners and operators of the Project (and all subsequent owner, landlord and tenants under the Master Lease) during such Compliance Period and Extended Use Period, and are not merely personal covenants of the Owner, such that this Agreement shall be, and shall satisfy all requirements applicable to, an extended low income housing commitment for purposes of Section 42 of the Code.

In consideration of the mutual promises set forth below, and other good and valuable consideration, the Owner and the Authority agree as follows:

A. Definitions.

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Unless the context otherwise requires, capitalized terms used in this Agreement shall have the following meanings:

“Agreement” means this Low Income Housing Tax Credit Extended Use Agreement between the Authority and the Owner.

“Applicable Fraction” means the smaller of the Unit Fraction (as hereinafter defined) or the Floor Space Fraction (as hereinafter defined), all calculated in accordance with Section 42(c)(1) of the Code.

“Application” means the application the Owner submitted to the Authority in connection with the reservation, carryover allocation or allocation of Tax Credit Authority.

“Area Median Gross Income” means the median gross income of the area in which the Project is located as determined by the Secretary (as hereinafter defined) for purposes of Section 42 of the Code, including adjustments for family size.

“Assumption Agreement” means that certain agreement defined in Section F of this Agreement.

“Authority” means the Illinois Housing Development Authority and its successor.

“Code” means the Internal Revenue Code of 1986, as amended, and where appropriate, Regulations and revenue rulings promulgated pursuant thereto.

“Compliance Period” (notwithstanding Section 42(i)(1) of the Code) means the period of 15 consecutive taxable years beginning with the first taxable year of the Credit Period, unless otherwise indicated herein or unless terminated earlier in accordance with Section D hereof.

“Credit Period” means, with respect to any building in the Development and/or Project, the period of ten taxable years beginning with the taxable year in which such building is placed in service or (at the election of the Owner) the following taxable year.

“Extended Use Period” means the period beginning with the first day of the Compliance Period and ending on the date which is 15 years after the end of the Compliance Period, unless otherwise indicated herein or unless terminated earlier in accordance with Section D hereof.

“Extremely Low Income” means, with respect to any tenant in the Project, an income level not exceeding 30% of Area Median Gross Income, as applicable to the Project, or, in context, such alternative income level as may be set forth herein.

“Floor Space Fraction” means the fraction, the numerator of which is the total floor space of the Low Income Units in a building in the Project and the denominator of which is the total floor space of the Units in such building in the Project.

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“Gross Rent” means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. If the Tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by the Secretary.

“Income” means the income of a tenant in the Project determined in a manner consistent with the requirements of Section 142(d)(2)(B) of the Code.

“Low Income” means, with respect to any tenant in the Project, an income level not exceeding 50% or 60% of Area Median Gross Income, as applicable to the Project pursuant to the Minimum Low Income Set-Aside Election set forth above in the Project Summary, or, in context, such alternative income level as may be set forth herein.

“Low Income Unit” means a Unit in the Project that is occupied by (or, pursuant to the Code, treated as occupied by) a Qualifying Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code, in particular, Section 42(i)(3).

“Minimum Applicable Fraction” means the proportion of the Project, measured by calculation of the Applicable Fraction in accordance with Section 42 of the Code, which is required to be occupied by Qualified Tenants, as set forth above in the Project Summary.

“Minimum Low Income Set-Aside Election” means the minimum number of Units in the Project required to be Low Income Units for purposes of determining the income level for Qualifying Tenants, which Minimum Low Income Set-Aside Election for this Project is 20% or 40% of the Units, as set forth above in the Project Summary.

“Occupancy Restrictions” means those restrictions set forth in Section C(1) of this Agreement.

“Project” means the residential rental housing identified above in the Project Summary, as further described in the Recitals as the “Project”.

“Qualified Low Income Housing Project” means a residential rental project meeting the requirements of Section 42 of the Code.

“Qualifying Tenants” means individuals or families whose income is less than or equal to the percentage of Area Median Gross Income (including adjustments for family size), as applicable to the Project pursuant to the Minimum Low Income Set-Aside Election set forth above in the Project Summary, as determined in accordance with Section 42. Individuals or families meeting this requirement shall be referred to herein as “Qualifying Tenants”. For so long as a tenant, which had been determined to be a Qualifying Tenant, occupies the particular Unit, the tenant will remain a Qualifying Tenant if the tenant's income, upon the most recent income certification, does not exceed 140% of the applicable Low Income limit.

“Regulations” means those regulations promulgated pursuant to the Code.

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“Rent-Restricted” means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code, as modified herein, if applicable.

“Secretary” means the Secretary of the Treasury of the United States.

“Section 42” means Section 42 of the Code, including, where appropriate, Regulations and revenue rulings promulgated pursuant thereto.

“Service” means the United States Internal Revenue Service and any successor thereto.

“Supportive Housing” means housing that helps people live stable, successful lives through a combination of affordable, permanent housing and supportive services, appropriate to the needs and preferences of residents, either onsite or closely integrated with the housing. Supportive housing serves individuals and families who are homeless, at risk of homelessness, and/or have disabilities, and who require access to supportive services in order to maintain housing.

“Tax Credits” means the low income housing tax credits for which owners of a Qualified Low Income Housing Project may qualify pursuant to Section 42 of the Code.

“Tax Credit Authority” means the maximum amount of Tax Credits which, pursuant to an allocation by the Authority under Section 42(h)(1) of the Code or by virtue of the qualification under Section 42 (h)(4) of the Code, may be received by the owner of a Qualified Low Income Housing Project in any one year.

“Term” shall have the meaning set forth in Section D of this Agreement.

“Unit” means any residential rental unit in the Project consisting of an accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy units used on a nontransient basis may be treated as Units.

“Unit Fraction” means the fraction, the numerator of which is the total number of Low Income Units in a building in the Project and the denominator of which is the total number of Units in such building in the Project.

B. Representations, Warranties and Covenants of the Owner.

The Owner hereby makes the following representations and warranties as to itself, and not as to any other party, to induce the Authority to enter into this Agreement:

(1) The Owner (i) is duly organized and validly existing under the laws of the state in which it was formed, and is qualified to transact business under the laws of the State of

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Illinois; (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated by this Agreement); and (iii) has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

(2) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated, any provision of law, rule or regulation, or any order of any court or other agency or governmental body; (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound; and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(3) The Master Owner has, as of the date of execution, recordation and delivery of this Agreement, good and marketable leasehold interest in the Development legally described in Exhibit A, and the Master Tenant has, as of the date of execution, recordation and delivery of this Agreement, good and marketable leasehold interest in the Project as legally described in Exhibit A; and both such interests are free and clear of any lien or encumbrance, except those created by any loan documents relating to the Project, those which are created pursuant to this Agreement and those which are otherwise permitted encumbrances.

(4) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement), or would materially adversely affect its financial condition.

(5) The Project constitutes or will constitute a Qualified Low Income Housing Project, as defined in Section 42, within and throughout the time period required under this Agreement and Section 42.

(6) Each Low Income Unit in the Project contains, or will contain, complete facilities for living, sleeping, eating, cooking and sanitation, which are to be used on other than a transient basis as provided in Section 42(i)(3) of the Code (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless).

(7) During the term of this Agreement, all Low Income Units shall be leased and rented or made available to members of the general public who qualify as Qualifying Tenants (or otherwise qualify for occupancy of the Low Income Units).

(8) Upon completion of the rehabilitation or construction of the Project, and during the remainder of the term of this Agreement, the Owner represents, warrants and agrees that each Low Income Unit will be and will remain suitable for occupancy taking into account local, health, safety and building codes.

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(9) Upon completion of the rehabilitation or construction of the Project, the Owner will not demolish any part of the Project, or substantially subtract from any real or personal property of the Project or permit the use of any residential rental Low Income Unit for any purpose other than rental housing during the term of this Agreement, unless required by law.

(10) The Owner represents, warrants and agrees that if the Project, or any part of it, is damaged or destroyed or is condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.

(11) The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory to, 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 herein set forth and supersede any other requirements in conflict herewith; provided, however, that the Authority consents to the execution and prior recordation of the following agreements: (a) the Rental Assistance Demonstration (“RAD”) Use Agreement by Owner, CHA and Master Tenant for the benefit of the U.S. Department of Housing and Urban Development (the “RAD Use Agreement”), (b) the Right of First Refusal Agreement among the Owner, the CHA, Master Tenant and Southbridge 1 Housing MM LLC, an Illinois limited liability company (the “CHA ROFR”), and (c) the CHA Control Agreement (the “Control Agreement”).

(12) The Owner agrees, warrants and covenants to comply with all applicable laws, ordinances, statutes, codes, orders, rules, regulations and decrees of any governmental authority, including, without limitation, the following: Section 42, Regulations and rulings pursuant to Section 42 and the Code generally, the Act and Rules promulgated under the Act, as amended from time to time; the Civil Rights Act of 1964 (42 U.S.C. 2000(d)); Executive Order 11063, as amended by Executive Order 12259; Executive Order 11246; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); Fair Housing Act, as amended (42 U.S.C. 3601 et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 12432 and 12138, as amended; the Copeland “Anti-Kickback” Act (18 U.S.C. 874 et seq.); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4201 et seq.); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. 4321 et seq.); (“NEPA”); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822 et seq.); and such governmental requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

C. Occupancy Restrictions.

The occupancy restrictions described in this Section C apply throughout the Term (as defined in Section D below).

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(1) At least the percentage of Units and percentage of floor space in the Project (and in each building in the Project, as applicable) needed to support the Minimum Applicable Fraction, as set forth above in the Project Summary, shall be both Rent-Restricted and occupied (or treated as occupied as provided herein) by Qualifying Tenants, as determined in accordance with Section 42 and the Regulations. The Owner shall make the determination of whether an individual or family is a Qualifying Tenant at least annually on the basis of the current income of such Qualifying Tenant(s). Any Unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Qualifying Tenant, provided that should such Qualifying Tenant's income subsequently exceed one hundred forty percent (140%) of the applicable income limit, such tenant shall no longer be a Qualifying Tenant if, after such determination of income, but prior to the next determination, any residential Unit of comparable or smaller size in the building is rented to a tenant who is not a Qualifying Tenant. If a tenant ceases to be a Qualifying Tenant, the Owner shall take such steps as may be necessary to ensure that the Project meets the Minimum Applicable Fraction. A Low Income Unit that has been vacated will continue to be treated as a Low Income Unit, provided that reasonable attempts are made to rent the Unit. In no case will a Unit be treated as a Low Income Unit if all the tenants of the Unit are students (as determined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint income tax return; provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code.

(2) The Owner shall require each individual or family that is intended to be a Qualifying Tenant (i) to sign and deliver an income certification form prior to occupancy of a Low Income Unit in the Project; (ii) to sign and deliver such income certification form at least annually so long as such individual or family remains a tenant in the Project; and (iii) to provide appropriate documentation to support each such certification in accordance with the Regulations and in accordance with the requirements of the Authority, as such may be modified from time to time. The Owner shall be responsible for assuring that each tenant's income certifications and documentation satisfy the Regulations and the requirements of the Authority. The Owner shall retain the income certification forms and supporting documentation for all Qualifying Tenants for a period of five years, or such other period as may be specified in Section 42 and/or the Regulations.

(3) The amount of Tax Credit Authority allocated or assigned to the Project is based upon the requirement that the Applicable Fraction for buildings in the Project will be at least the Minimum Applicable Fraction set forth above in the Project Summary, and as specified, building-by-building. The Owner's failure to ensure that each building in the Project complies with such requirement will cause the Authority (i) to report such fact to the Service, which may result in the reduction and recapture by the Service of Tax Credits; and (ii) to take other appropriate enforcement action.

(4) The Owner covenants that, throughout the Extended Use Period, the Owner will not evict or terminate the tenancy, other than for good cause, of the tenant of any Low Income Unit, and that each such Low Income Unit shall remain Rent Restricted in accordance with the requirements of Section C(1).

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(5) The Compliance Period shall be a period of fifteen (15) consecutive taxable years and the Extended Use Period shall be a period of **fifteen** (15) consecutive taxable years.

(6) All of the Units in the Project will be constructed and maintained with at least five (5) universal design features in addition to the applicable minimum accessibility requirements for the Project and an additional five (5) such features will be constructed and maintained in of the Units in the Project.

(7) At least twenty-one (21) or more of the Units in the Project must be Rent Restricted and occupied by Qualifying Tenants at or below thirty percent (30%) of Area Median Gross Income.

(8) As set forth in the Statewide Referral Network Agreement and the Referral and Support Plan for the Project, which has been approved by the Authority, the Owner will accept referrals through the Statewide Referral Network for at least eight (8) of the Units for Extremely Low Income Qualifying Tenants.

(9) An Illinois based entity is the general contractor and property manager and architect and sponsor.

(10) An entity certified under the Illinois Business Enterprise Program for Minorities, Females and Persons with Disabilities, is the general contractor or property manager or architect or sponsor.

(11) A "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall own, including all financial benefits, a one-hundred percent (100%) interest in the general partner or non-investor membership of the Master Tenant through the entire Extended Use Period, including all financial benefits.

(12) At least Thirty-four (**34**) of the Units in the Project shall receive rental assistance through, but not limited to, a contract for Rental Assistance Demonstration assistance.

(13) The Project is targeted to the Veteran population and is evidenced by a commitment of U.S. Department of Veteran's Affairs Supportive Housing (VASH) Vouchers, project based rental assistance restricting units to veterans or other rental assistance targeted to the veteran population and approved by the Authority in our sole discretion.

(14) The Project will be constructed to meet or exceed the minimum accessibility requirements of the Illinois Accessibility Code. At least eleven (11) of the Units in the Project will be constructed to exceed the most restrictive of the applicable minimum accessibility requirements among the Illinois Accessibility Code, Section 504 of the Rehabilitation Act of 1973, as amended, and the Uniform Federal Accessibility Standards, Federal Fair Housing Act and the American with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), as applicable, for persons with mobility impairments (as defined in ICC/ANSI 117.1.2003 Section 1002). An additional twelve

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(12) of the Units in the Project will be constructed to meet or exceed minimum adaptable dwelling unit requirements of Section 400.360 of the Illinois Accessibility Code, in accordance with the Application and any supporting documentation submitted with the Application. An additional three (3) of the Units in the Project will be constructed to meet or exceed minimum accessibility requirements of the Illinois Accessibility Code, the Uniform Accessibility Code, Section 504 of the Rehabilitation Act of 1973, as amended, and the Uniform Federal Accessibility Standards, as applicable, for persons with sensory impairments in accordance with the Application (and as defined in ICC/ANSI 117.1.2003 Section 1002) and any supporting documentation submitted with the Application. Requirements of the Americans with Disabilities Act of 1990 must also be met.

D. Term of Restrictions.

(1) **Term.** This Agreement shall become effective with respect to a building in the Project on the first day of the Compliance Period for such building and shall terminate on the last day of the Extended Use Period, unless this Agreement is earlier terminated pursuant to Sections D(2), D(3) or D(4) below, subject to Section (D)(5) (the "Term").

(2) **Involuntary Non-Compliance.** This Agreement and the Occupancy Restrictions shall cease to apply with respect to a building (or portion thereof) in the event and to the extent of involuntary noncompliance caused by unforeseen events such as fire or other casualty loss, seizure, requisition, condemnation or a change in federal law or an action of a federal agency after the date of final allocation of Tax Credit Authority to the Project that prevents the Authority from enforcing the requirements of this Agreement; provided that if insurance proceeds, condemnation awards or other amounts received as a result of any such loss, destruction or other event are used to restore the building, the Occupancy Restrictions shall continue to apply.

(3) **Foreclosure.** This Agreement and the Occupancy Restrictions shall cease to apply in the event of a foreclosure, transfer of title by deed in lieu of foreclosure or similar event, unless (i) at any time subsequent to such event, and during the Term hereof, the Owner or a related person (as defined in the Code) obtains an ownership interest in the Project (and/or the Development) for federal tax purposes; or (ii) the Service determines that such foreclosure, transfer of title by deed-in-lieu of foreclosure or similar event has occurred pursuant to an arrangement between the Owner and any lender(s) or any other party, a purpose of which is to terminate the Occupancy Restrictions.

(4) **Qualified Contract.** This Agreement and the Occupancy Restrictions shall cease to apply if, following the end of the Compliance Period, the Owner has properly requested the Authority's assistance in procuring a "Qualified Contract", as defined in the Code, for the acquisition of a building, and the Authority is unable to present a Qualified Contract. To properly request the Authority's assistance in procuring a Qualified Contract for the acquisition of a building, the Owner must submit a written request to the Authority no earlier than one year prior to the expiration of the Compliance Period, or in any year during the Extended Use Period, if applicable, accompanied by such information and supporting documentation as the Authority may require under procedures, accompanied by such information and supporting documentation as the

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Authority may require under procedures in effect at the time of submission. The Authority will have one year from the date of receipt of the Owner's written request to find a buyer to acquire the Owner's interest in the building. The Authority will attempt to procure a Qualified Contract for the acquisition of any building only once during the Extended Use Period. The Owner agrees that if the Authority obtains a Qualified Contract for the acquisition of a building, the Owner will sell the building in accordance with such Qualified Contract.

(5) **Occupancy Restrictions.** If this Agreement is terminated prior to the end of the Extended Use Period pursuant to subsections (3) or (4) above, during the three-year period following such termination the Owner shall not (i) evict or terminate the tenancy, other than for good cause, of the tenant of any Low Income Unit, which tenant was in occupancy at the date of such termination; or (ii) increase the rent charged to such tenant of any such Low Income Unit, except as permitted with respect to Units that are Rent Restricted accordance with the requirements of Section C(1).

E. Records and Enforcement.

(1) During normal business hours and upon reasonable notice, the Owner shall permit any duly authorized representative of the Authority to inspect all books and records of the Owner with respect to the Project's compliance with the Occupancy Restrictions and the requirements of Section 42.

(2) The Owner and the Authority each acknowledges that the primary purpose for requiring that the Owner comply with the Occupancy Restrictions is to assure that the Owner and the Project are in compliance with Section 42 and the Regulations, AND FOR THAT REASON THE OWNER, IN CONSIDERATION FOR RECEIVING TAX CREDIT AUTHORITY FOR THE PROJECT, AGREES AND CONSENTS THAT THE AUTHORITY AND ANY QUALIFYING TENANT (WHETHER PROSPECTIVE, PRESENT OR FORMER), SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. The Owner further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(3) The Owner agrees that the representations and covenants set forth in this Agreement may be relied upon by the Authority and all persons interested in the compliance of the Project with the provisions of Section 42 and the Regulations. The Owner further agrees that all such representations and covenants represent ongoing and continuing requirements, and that the Owner will give notice to the Authority, in accordance with Section N hereof, in the event of any change in the facts or circumstances upon which any such representations and covenants are based.

(4) The Owner acknowledges that the Authority is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Owner's and the Project's compliance with

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the requirements of Section 42; and (ii) to notify the Service of any noncompliance which is found. The Owner agrees that it will take any and all actions reasonably necessary and required by the Authority (i) to substantiate the Owner's compliance with the Occupancy Restrictions and the requirements of Section 42; and (ii) to allow the Authority to monitor such compliance.

(5) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42, the Act or this Agreement. Any violation of Section 42, the Act or this Agreement may constitute or warrant the filing of IRS Form 8823 with the Service. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of the Authority, to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Service, or the United States Department of Housing and Urban Development, from time to time, pertaining to the Owner's obligations under Section 42 and affecting the Project.

(6) The Owner agrees that the Authority may, at any time during the construction, rehabilitation or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

(7) The Owner agrees that the Authority may at any time order it and/or its managing agent or Project manager to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, Authority rule, or term of an agreement regarding the Project, and that the Authority may file and prosecute a complaint against a managing agent, Project manager, or the Owner for a violation of any applicable law or ordinance.

(8) Upon a determination by the Authority that the Owner has failed to comply with the Occupancy Restrictions or to maintain the Project in good and habitable condition and suitable for occupancy as hereinabove required, the Owner agrees to correct any cited noncompliance or to supply any missing certifications within 90 days of receipt of notice of noncompliance from the Authority; provided that the Authority, in its sole discretion, (i) may extend the correction period for up to six months if it determines that good cause exists for granting such extension; and (ii) may provide such other period for correction, whether shorter or longer, as is (a) permissible under the law; and (b) appropriate, in the Authority's determination, to the circumstances.

(9) The Master Owner agrees to indemnify and hold harmless the Authority, its members, officers, agents and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Authority as a result of any inaccuracy in any of the representations and warranties of the Master Owner or the Master Tenant contained in this Agreement, or as a result of any action by the Master Owner or the Master Tenant, including claims by third parties. Additionally, the Master Tenant agrees to indemnify and hold harmless the Authority, its members, officers, agents and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Authority as a result of

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any inaccuracy in any of the representations and warranties of the Master Tenant contained in this Agreement, or as a result of any action by Master Tenant, including claims by third parties.

.....(10) The Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Authority which arise out of any of the matters relating to this Agreement, the Owner will cooperate fully with the Authority in the defense or other disposition thereof.

(11) In order to compensate the Authority for its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code, the Owner agrees to pay to the Authority an annual compliance monitoring fee in an amount which shall be determined by the Authority from time to time. Such fee must be paid and sent to the Authority lock box at the time that compliance monitoring information is supplied to the Authority, unless the Authority shall direct an alternative means or time for payment.

F. Transfer Restrictions.

The Owner agrees to notify the Authority in writing prior to any sale, transfer or exchange of the entire Project, any portion of the Project, any portion of the Master Lease, or any low income portion of the Development, and to provide to the Authority with the name(s), address(es) and any other information requested by the Authority of any prospective successor owner and operator of the Project or building. The Owner agrees that (i) it will not dispose of (a) any portion of a building in the Project unless the individual or entity that acquires such portion also acquires entire portion of the building in which such portion is located, or (b) any portion of a building in the Development unless the individual or entity that acquires such portion also acquires the entire building in which such portion is located, or (c) any of its interests in the Master Lease, and (ii) the transferee of the Project (or of the Master Lease) shall assume in writing, in a form of Assumption Agreement acceptable to the Authority, this Agreement and all duties and obligations of the Owner under this Agreement, Section 42 and the Regulations. The Owner shall have such Assumption Agreement recorded in the Office of the Recorder of Deeds in the county in which the Project is located and deliver a copy of such recorded Assumption Agreement, certified by the Recorder of Deeds, to the Authority prior to the Transfer. The Owner agrees that the Authority may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement, Section 42 and the Regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any building in the Project. Notwithstanding the requirement of an Assumption Agreement, and regardless of whether any such Assumption Agreement shall be executed, the requirements of this Agreement are, and shall only be interpreted to be, covenants running with the Project, encumbering the Project for the term of this Agreement, and binding upon the Owner's successors in title and all subsequent owners and operators of the Project and subsequent owners, landlords and tenants under the Master Lease.

G. Tenant Selection.

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The Owner shall not, in the selection of Qualifying Tenants, in the provision of services or in any other matter relating to the construction, rehabilitation or operation of the Project, discriminate against any person on the basis of race, creed, religion, color, sex, sexual orientation, age, handicap, marital status, family status, national origin or unfavorable military discharge, or because the tenant is receiving governmental assistance, which includes, but is not limited to, vouchers or certificates of eligibility under Section 8 of the United States Housing Act of 1937.

H. Covenants Run With the Leasehold Estate; Successors Bound.

(1) Upon execution and delivery of this Agreement, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the Office of the Recorder of Deeds of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Except as otherwise agreed to by the Authority in writing, all liens with the exception of the RAD Use Agreement, the CHA ROFR and the Control Agreement, on the leasehold estate upon which the Project is located must be subordinate to this Agreement, and the Owner shall obtain the written consent of any existing superior lienholder of record on the Project to this Agreement and the requirements hereof. The Owner shall ensure that this Agreement is recorded prior to any and all loan documents used in connection with the financing for the Project. Upon recording, the Owner shall immediately transmit to the Authority an executed original of the recorded Agreement showing the date and recording number of record. The Owner agrees that the Authority shall not be required to issue IRS Form(s) 8609 for the building(s) constituting the Project, unless and until the Authority has received the properly recorded, executed original of this Agreement.

(2) The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth herein regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project, encumbering the Project for the term of this Agreement, and binding upon the Owner's successors in title and all subsequent owners and operators of the Project and subsequent owners, landlords and tenants under the Master Lease; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner (and the benefits shall inure to the Authority and any past, present or prospective Qualifying Tenant) and its respective successors and assigns during the term of this Agreement. For the longer of (i) the period during which the Tax Credits are claimed; and (ii) the Term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project (including, but not limited to the Master Lease), or portion of it, shall expressly provide that such conveyance is subject to this Agreement; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project (including, but not limited to the Master Lease), or portion of it, provides that such conveyance is subject to this Agreement.

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I. Notification of Noncompliance.

The Owner agrees to notify the Authority or its designee if there is a determination by the Service that the Project is not a "Qualified Low Income Housing Project." Notification to the Authority shall be made within ten business days of receipt of any such determination.

J. No Conflicting Agreements.

The Owner warrants that it is not bound by and will not execute any other agreement with provisions that bind it to violate the provisions of this Agreement.

K. Interpretation.

Any terms not defined in this Agreement shall have the same meaning as terms defined in Section 42 and the Regulations. In the event of any conflict between this Agreement and Section 42 and/or the Regulations, Section 42 and/or the Regulations shall control. The Authority's interpretation of this Agreement shall be controlling for purposes of determining whether (i) the Compliance Period or the Extended Use Period shall have commenced, (ii) this Agreement shall have been terminated in accordance with Section D hereof, and (iii) the Occupancy and Other Restrictions set forth in Section C hereof, if any, shall have been complied with.

L. Amendment.

This Agreement may only be amended with the prior written approval of the Authority to reflect changes in the Act, Section 42 and/or the Regulations and any revenue ruling promulgated thereunder, and any such amendment shall be recorded in the Office of the Recorder of Deeds in the county in which the Project is located. The Owner expressly agrees to enter into all amendments to this Agreement that, in the opinion of counsel to the Authority, are reasonably necessary or desirable for maintaining the compliance of the Project under Section 42 and the Regulations.

M. Severability.

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

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N. Notices.

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) registered or certified United States mail, postage prepaid, return receipt requested; or (c) overnight courier.

Authority: Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attn: Legal Department

And

Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attn: Asset Management Department

Owner: Southbridge 9 Master Owner LLC
c/o The Community Builders, Inc.
135 South LaSalle Street, Suite 3350
Chicago, IL 60602
Attention: Midwest Region Development Director

with a courtesy copy to:

The Community Builders, Inc.
185 Dartmouth Street
Boston, MA 02116
Attention: General Counsel

and:

Applegate & Thorne-Thomsen, P.C.
425 South Financial Place, Suite 1900
Chicago, Illinois 60605
Attention: Paul Davis

and:

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GS SOUTHBRIDGE 9% INVESTOR OPPORTUNITY FUND LP
 Urban Investment Group
 c/o Goldman Sachs Group
 200 West Street
 New York, New York 10282
 Attention: Urban Investment Group LIHTC Portfolio Manager

and:

Sidley Austin LLP
 One South Dearborn Street
 Chicago, IL 60603
 Attention: Philip C. Spahn
 Telephone No.: (312) 853-7015
 Email: pspahn@sidley.com

Such addresses may be changed by notice to the other parties given in the same manner as herein provided. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective upon proper deposit with the United States Postal Service. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective upon deposit with the overnight courier.

O. Governing Law.

This agreement shall be governed by the internal laws of the State of Illinois and, where applicable, the laws of the United States of America.

P. Project Decertification.

Notwithstanding anything in this Agreement to the contrary, if the Owner fails to comply fully with Section 42, the covenants and agreements contained herein and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Service or the Authority, from time to time, pertaining to the obligations of the Owner, the Authority may, in addition to all of the remedies described above or provided by law or in equity, request the Service to decertify the Project for Tax Credits and to immediately commence recapture of the Tax Credits previously allocated to the Project. In such circumstances, if it shall be permissible under Section 42, the Authority may treat the Tax Credit Authority associated with the Project as "returned credit" under Section 42 and the Regulations.

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Q. Survival of Obligations.

The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Tax Credits, and shall not be deemed to terminate or merge with the awarding of such allocation.

R. Counterparts.

This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement but all such counterparts shall constitute one and the same instrument.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.)

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the day and year set forth above.

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY *AP*

By: Debra Olson

Name: Debra Olson

Its: Assistant Executive Director

OWNER:

SOUTHBRIDGE 9 MASTER OWNER LLC

an Illinois limited liability company

By: Ickes Master Developer JV LLC
its sole member

By: The Community Builders, Inc.
its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

SOUTHBRIDGE 1-9 HOUSING LLC

By: **SOUTHBRIDGE 1 HOUSING MM LLC**
its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the day and year set forth above.

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: _____

Name: _____

Its: _____

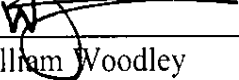
OWNER:

SOUTHBRIDGE 9 MASTER OWNER LLC

an Illinois limited liability company

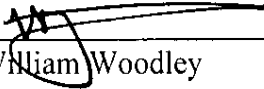
By: Ickes Master Developer JV LLC
its sole member

By: The Community Builders, Inc.
its managing member

By:  _____
Name: William Woodley
Title: Authorized Agent

SOUTHBRIDGE 1-9 HOUSING LLC

By: **SOUTHBRIDGE 1 HOUSING MM LLC**
its managing member

By:  _____
Name: William Woodley
Title: Authorized Agent


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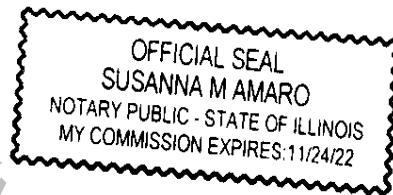
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)-

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that **Debra Olson**, personally known to me to be the Assistant Executive Director of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument in his/her capacity as the Assistant Executive Director of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** as his/her free and voluntary act and deed and as the free and voluntary act and deed of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, for the uses and purposes therein set forth.

Given under my hand and official seal this 5th day of December, 2019.



Notary Public



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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that William Woodley personally known to me to be an authorized agent of The Community Builders, Inc, a Massachusetts not-for-profit corporation and the managing member of Ickes Master Developer JV LLC, an Illinois limited liability company (the "Sole Member") and the sole member of Southbridge 9 Master Owner LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such authorized agent, he signed and delivered the said instrument, as an authorized representative of the Sole Member, as the free and voluntary act of such person, and as the free and voluntary act and deed of the Sole Member and Southbridge 9 Master Owner LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this 11 day of December, 2019



Sonja Pearl
 Notary Public

My commission expires on:
April 29, 2022

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that William Woodley personally known to me to be an authorized agent of Southbridge 1 Housing MM LLC, an Illinois limited liability company (the "Managing Member") and the managing member of Southbridge 1-9 Housing LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such authorized agent, he signed and delivered the said instrument, as an authorized representative of the Managing Member, as the free and voluntary act of such person, and as the free and voluntary act and deed of the Managing Member and Southbridge 1-9 Housing LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this the 11 day of December, 2019.



Sonja Pearl
Notary Public

My commission expires on:
4.29.22

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EXHIBIT A

LEGAL DESCRIPTION FOR SOUTHBRIDGE PHASE 1B

PARCEL 1:

THE LEASEHOLD ESTATE CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE GROUND LEASE, EXECUTED BY CHICAGO HOUSING AUTHORITY, AN ILLINOIS MUNICIPAL CORPORATION, AS LANDLORD, AND TCB DEVELOPMENT SERVICES LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AS TENANT, DATED AS OF JANUARY 16, 2020, WHICH LEASE WAS RECORDED JANUARY 17, 2020, AS DOCUMENT NUMBER 2001718067, ASSIGNED BY THE ASSIGNMENT AND ASSUMPTION AND AMENDMENT OF GROUND LEASE, DATED AS OF JANUARY 16, 2020, BETWEEN SAID TCB DEVELOPMENT SERVICES LLC, AND SOUTHBRIDGE 9 MASTER OWNER LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, WHICH ASSIGNMENT AND ASSUMPTION AND AMENDMENT OF GROUND LEASE WAS RECORDED JANUARY 17, 2020, AS DOCUMENT NUMBER 2001718068, WHICH LEASE DEMISES THE FOLLOWING DESCRIBED PROPERTY FOR A TERM OF 99 YEARS ENDING JANUARY 15, 2119:

THAT PART OF LOTS 13 THROUGH 24 (BOTH INCLUSIVE), THAT PART OF LOTS 27 THROUGH 33 (BOTH INCLUSIVE) AND THAT PART OF THE NORTH-SOUTH 15 FOOT WIDE PUBLIC ALLEY VACATED PER DOCUMENT NUMBER 15805877, RECORDED JANUARY 6, 1954, ALL IN BLOCK 10, IN UHLICH AND MUHLKE'S ADDITION TO CHICAGO, A SUBDIVISION OF THE EAST HALF OF THE NORTH EAST QUARTER (EXCEPT THE SOUTH HALF OF THE SOUTH HALF THEREOF) IN SECTION 23, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1 IN SAID BLOCK 10; THENCE SOUTH 01 DEGREES 31 MINUTES 56 SECONDS EAST, ALONG AN ASSUMED BEARING, BEING THE EAST LINE OF LOTS 1 THROUGH 24 (BOTH INCLUSIVE) IN BLOCK 10, ALSO BEING THE WEST LINE OF STATE STREET, 309.70 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 01 DEGREES 31 MINUTES 56 SECONDS EAST ALONG THE LAST DESCRIBED COURSE 289.70 FEET TO THE SOUTHEAST CORNER OF SAID LOT 24, SAID CORNER ALSO BEING A POINT ON THE NORTH LINE OF VACATED W. 24TH STREET AS VACATED BY SAID DOCUMENT NUMBER 15805877; THENCE SOUTH 88 DEGREES 29 MINUTES 48 SECONDS WEST ALONG THE LAST DESCRIBED LINE 116.21 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 65.80 FEET; THENCE SOUTH 88 DEGREES 28 MINUTES 04 SECONDS WEST 38.50 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 139.00 FEET; THENCE NORTH 88 DEGREES 28 MINUTES 04 SECONDS EAST 38.50 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 84.90 FEET; THENCE NORTH 88 DEGREES 29 MINUTES 48 SECONDS EAST 116.21 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM ALL BUILDINGS AND IMPROVEMENTS LOCATED, OR TO BE LOCATED AFTER THE DATE OF THE AFORESAID GROUND LEASE, THEREON.

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PARCEL 2:

FEE SIMPLE TITLE TO ALL BUILDINGS AND IMPROVEMENTS LOCATED, OR TO BE LOCATED AFTER THE DATE OF THE AFORESAID GROUND LEASE, ON THE LEASEHOLD ESTATE HEREINABOVE DESCRIBED AS PARCEL 1.

ADDRESSING

Common Addresses: 2336-2356 S. State Street, Chicago IL 60616
Residential Address: 2344 S. State Street, Chicago IL 60616
Retail Addresses: 2336 S. State Street, Chicago IL 60616;
2340 S. State Street, Chicago IL 60616
Management Address: 2350 S. State Street, Chicago IL 60616
Community Space Address: 2356 S. State Street, Chicago IL 60616

PROPERTY PINS

Property Pins: 17-28-218-029 (affects part of the land and other property); and
17-28-218-030 (affects part of the land and other property)

Property of Cook County Clerk's Office