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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/17/2020 04:55 PM PG: 1 OF 38

This document was prepared by and after recording, return to: Arieh Flemenbaum
Illinois Housing Development Authority
111 E. Wacker Dr., Ste. 1000
Chicago, Illinois 60601

Property Identification Nos.:
See Attached Exhibit A

Property Address:
2350 S. State Street
Chicago, IL 60616

41044528 (16 OF 44)

FHA Project No. 071-98080
RS - 11551

REGULATORY AGREEMENT (RISK SHARE LOAN -PHASE 1B)

THIS REGULATORY AGREEMENT (Risk Share Loan - PHASE 1B) (this "Agreement") is made and entered into as of January 16, 2020, by and between **SOUTHBRIDGE 9 MASTER OWNER LLC**, an Illinois limited liability company with its principal offices located at 135 South LaSalle St., Ste. 3550, Chicago, Illinois 60603 ("Borrower") and the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** ("IHDA"), a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 *et seq.*, as amended from time to time (the "Act"), whose principal office is located at 111 East Wacker Drive, Suite 1000, Chicago, Illinois 60601.

RECITALS:

WHEREAS, pursuant to the ground lease between Chicago Housing Authority, an Illinois municipal corporation ("CHA") and TCB Development (as defined below), as assigned by TCB Development to Borrower as amended by CHA (the "Ground Lease"), Borrower is (a) the leasehold interest holder of certain real estate located in Chicago, Illinois, as described on **Exhibit A** attached to and made a part of this Agreement, and all easements and similar rights and privileges appurtenant to and in favor of such real estate (the leasehold interest in the real estate, easements, rights and privileges are collectively referred to in this Agreement as the "Leasehold Estate"), and (b) the fee owner of the improvements on the Leasehold Estate (collectively, the "Improvements"). The Leasehold Estate and the improvements to be rehabilitated and constructed on it are collectively referred to in this Agreement as the "Development"; and

WHEREAS, ICKES MASTER DEVELOPER JV LLC, a Delaware limited liability company is the sole member of Borrower (the "Member"); **THE COMMUNITY BUILDERS, INC.**, doing business as TCB Illinois NFP, Inc., a Massachusetts not-for-profit corporation is the

**CERTAIN OF THE PROVISIONS HEREOF MAY CONTINUE IN EFFECT
NOTWITHSTANDING THE PAYMENT IN FULL OF THE LOAN
PRIOR TO THE MATURITY DATE.**

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managing member of the Member (“Managing Member”); **TCB DEVELOPMENT SERVICES LLC**; an Illinois limited liability company, is the assignor of the leasehold estate assigned to Borrower through the Ground Lease and has a financial interest in the Development (“TCB Development”); and

WHEREAS, SOUTHBRIDGE 1-9 HOUSING LLC, an Illinois limited liability company (“Master Tenant”), will lease forty-three (43) units at the Development that are restricted by this Agreement, the IHDA Extended Use Agreement and other regulatory agreements (the “Affordable Units” and each such Unit may be referred to as an “Affordable Unit”) from Borrower pursuant to a master lease dated the same date hereof and executed between the Master Tenant and Borrower (the “Master Lease”); and

WHEREAS, Borrower desires to borrow an amount not to exceed Six Million Six Hundred Thousand and No Dollars (\$6,600,000.00) from IHDA (the “Loan”) to be used with other monies, if any, for the permanent financing of the Development; and

WHEREAS, the Loan is evidenced, secured and governed by, among other things: (a) the Loan Agreement (Risk Share Loan) – Phase 1B of even date herewith between Borrower and IHDA governing the disbursement of the Loan proceeds (the “Loan Agreement”), (b) the Mortgage Note (Risk Share Loan) – Phase 1B, which will be executed and dated as of the Final Closing Date, which Mortgage Note may also be amended on the Final Closing Date in accordance with Section 2(b) of the Loan Agreement (the “Note”), (c) the Leasehold Mortgage, Security Agreement and Assignment of Rents and Leases (Risk Share Loan) – Phase 1B of even date herewith executed by Borrower in favor of IHDA, giving IHDA a second mortgage lien on the Development until the Final Closing Date, and a first mortgage lien on the Development as of the Final Closing Date (the “Mortgage”), (d) this Agreement, (e) the Environmental Indemnity (Phase IA) of even date herewith executed by Borrower, Member and Managing Member as indemnitor, and delivered to IHDA, as indemnitee (the “Environmental Indemnity”), (f) the Assignment of Contracts, Licenses and Permits of even date herewith, executed by Borrower, as assignor, in favor of IHDA, as assignee (the “Assignment of CLP”), (g) the Assignment of the Master Lease of even date herewith, executed by Borrower, as assignor, consented to by Master Tenant, in favor of IHDA, as assignee (the “Master Lease Assignment”), (h) the Subordination, Non-Disturbance and Attornment Agreement regarding the Master Lease of even date herewith executed among Borrower, the Master Tenant, IHDA, Chicago Housing Authority, the City of Chicago, New Hope Community Capital, Inc. and TCB Developer (“SNDA”), (i) the Collateral Assignment of the HAP Contract of even date herewith between Borrower and CHA for the benefit of IHDA (the “Assignment of HAP Contract”), (j) the Limited Guaranty of Payment - Phase 1B executed by Member and Managing Member of even date herewith (the “Guaranty”), (k) an Assignment and Subordination of Rents of an even date herewith, executed by Borrower and IHDA (the “Rent Assignment”), (l) Collateral Assignment of Member Interest of an even date herewith, executed by Borrower, Member and IHDA (“Member Assignment”), (m) Collateral Assignment of Managing Member Interest of an even date herewith, executed by Master Tenant, Southbridge 1-

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9 Housing MM LLC and IHDA (“MT Managing Member Assignment”). The Mortgage, the Loan Agreement, the Note, this Agreement, the Environmental Indemnity, the Assignment of CLP, the Guaranty, the Master Lease Assignment, the SNDA, the Assignment of HAP Contract, the Rent Assignment, Member Assignment, MT Managing Member Assignment, and all other documents executed by Borrower that evidence, govern or secure the Loan are sometimes collectively referred to in this Agreement as the “Loan Documents;” the Loan Documents are incorporated in this Agreement by this reference; and

WHEREAS, the proceeds of the Loan, will not be available to Borrower until the Final Closing Date as described in the Loan Agreement;

WHEREAS, the Loan, as of the Final Closing Date, is to be insured by HUD under the Section 542(c) Risk Sharing Program, and is subject to the Regulations;

WHEREAS, as an inducement to IHDA to make the Loan, Borrower has agreed to enter into this Agreement and consents to be regulated and restricted by IHDA as provided in this Agreement, the Act, the Rules and the Regulations.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth in this Agreement, the parties hereto agree as follows:

1. **Recitals**. The foregoing recitals are made a part of this Agreement.
2. **Definitions**. The following terms used in this Agreement shall have the following definitions:
 - a. “Administrative Expenses” shall mean expenses of managing and administering the Development, including, but not limited, to, expenses for office services and supplies; postage and telephone; legal, accounting, advertising, and auditing services; management fees; the management agent’s fidelity bond fees; and salaries and payroll expenses for any management agent’s on-site employees. Administrative Expenses shall not include any expenses not directly related to the Development; these excluded expenses include, but are not limited to, costs of (i) accounting work and attorneys’ fees and other legal expenses in connection with acquiring the Development or any property made a part of it, (ii) defending or prosecuting litigation by or against IHDA or for services relating to bankruptcy or similar debtor protection laws and (iii) forming, syndicating, registering and maintaining any person or entity, (iv) any fees paid to Borrower (or any party in the ownership or management of Borrower) for managing the Development, (v) repayment of loans or advances made by Borrower or its members to the Development and (vi) any other expenses not approved by IHDA as Administrative Expenses.

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b. "Calendar Year" shall mean each calendar year that falls in whole or in part during the term of the Loan. Borrower agrees that its fiscal year shall be a Calendar Year.

c. "Construction Budget" shall mean the detailed final project budget submitted to and approved by IHDA prior to the closing of the Loan, specifying all Costs of the Development.

d. "Costs of the Development" shall mean the costs and expenses of the Development approved by IHDA, and as more particularly described in the Construction Budget, including, but not limited to, acquisition costs, construction costs, job overhead, a developer's fee, architectural, engineering, legal and accounting costs, organizational expenses, the fees payable to IHDA, interest paid during construction and the cost of landscaping and other items, all as set forth in the Loan Documents and as provided in the Act, whether or not such costs have been paid in cash or in a form other than cash.

e. "Default" shall mean the occurrence of any default under any Loan Document, including this Agreement, following any applicable grace or cure periods, if any.

f. "Development" shall mean the Leasehold Estate and all of the Improvements to be constructed on the Leasehold Estate, which consists of an aggregate of one hundred three (103) Units, with at least forty-three (43) Affordable Units.

g. "Development Bank Account" shall mean that account, established in the name of Borrower in a bank or savings and loan institution in the State of Illinois whose deposits are either insured by the Federal Deposit Insurance Corporation or invested in investments permitted by **Paragraph 5.j** hereof, into which all Development Funds received by Borrower or its agents are to be deposited.

h. "Development Funds" shall mean all cash, rent subsidies, gross Development income, bank accounts, certificates of deposit, trust funds, reserves, escrows, accounts receivable, and other similar assets of the Development, (including rent insurance proceeds, fire or other insurance proceeds, condemnation proceeds, and loan proceeds, but excluding security deposits that, pursuant to contract or law, Borrower is, or may be, required to return to a Tenant, and any contributions or advances from members of the Borrower.

i. "Distribution" shall mean any withdrawal or taking of Surplus Cash and/or Residual Receipts, including (i) segregation of amounts of Surplus Cash and/or Residual Receipts for subsequent withdrawal, for payment to or on behalf of the Borrower pursuant to IHDA's written authorization, (ii) except as set forth in the definition of Surplus Cash, any other transfer of Development property to or on behalf of the Borrower and (iii) except

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as set forth in the definition of Surplus Cash, any other payment from Development funds of any obligation of Borrower or its members, including, by way of example, any amount of the asset management fee not paid pursuant to the definition of Surplus Cash and tax credit adjusters which are payable from Surplus Cash. Any Distribution is contingent upon the Borrower submitting a certification, the form of which is set forth in **Exhibit C** attached hereto.

j. “Final Closing Date” shall mean the date, after HUD has given its endorsement to the Note, on which IHDA disburses the proceeds of the Loan and IHDA issues its final closing memorandum (which IHDA agrees to use commercially reasonable efforts to issue within five (5) business days after receipt of the HUD endorsement to the Note); the Final Closing Date will be no later than the first to occur of: (i) the date the Construction Loan (as defined in the Loan Agreement) is paid off, but only if the proceeds of the Loan are used towards that purpose or (ii) March 1, 2023, subject to one 6 month and one 4 month extension.

k. “HUD” means the United States Department of Housing and Urban Development and any of its subdivisions.

l. “Income Restricted Tenant” shall mean a Tenant who is eligible to occupy an Affordable Unit reserved for individuals or families meeting the income restrictions set forth in **Paragraph 4.c.**

m. “Initial Closing Date” shall mean the date that IHDA: (i) determines, in its sole discretion, that Borrower has satisfied all of the requirements set forth in the Loan Documents for the initial closing of the Loan; (ii) receives the executed Loan Documents from Borrower; and (iii) issues its internal, initial closing memorandum, for which Lender shall use commercially-reasonable efforts to issue within five (5) business days following the satisfaction of items (i) and (ii); the Initial Closing Date shall be no later than February 28, 2020.

n. “Investor Member” shall mean GS Southbridge 4% Investor Opportunity Fund, LP, a Delaware limited partnership, and its permitted successors and assigns.

o. “Maintenance Expenses” shall mean the expenses of maintaining the Development, including, but not limited to, security services, grounds maintenance services and supplies, elevator maintenance and repairs, painting and decorating, equipment repairs and minor or routine repairs to Units. Maintenance Expenses shall not include the costs of correcting construction or design defects or similar defects or any other expenses not approved by IHDA as Maintenance Expenses.

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p. “Operating Expenses” shall mean the costs of operating the Development, including, but not limited to, non-capital expenses for water and sewer, electricity, gas and other utilities not paid for directly by Tenants; janitorial services and supplies; exterminating; trash removal; elevator operation; real estate taxes; assessments; and insurance premiums. Operating Expenses shall not include capital expenditures; expenses of readying the Development for initial occupancy; repayment of indebtedness incurred by Borrower if such indebtedness has not been approved by IHDA; reimbursements to Borrower for capital contributions; fidelity bond fees; or other loans, advances and expenses not approved by IHDA as Operating Expenses.

q. “Project Equity” shall mean the amount of Borrower’s equity in the Development as of the Final Closing Date, as determined by Lender, based on the amount of funds provided by the Borrower (including amounts paid by Master Tenant as Rent to Borrower under Section 2.5(a)(i) of the Master Lease) for the acquisition and construction of the Development, which shall be equal to the difference between the Total Development Cost, as approved by IHDA, and the sum of the amount of the Loan plus the amounts of the Junior Loans. The calculation of Project Equity will be as set forth in the Final Cost Certification to be provided to IHDA at the Final Closing Date pursuant to the Loan Documents, and memorialized in the Equity Agreement.

r. “Regulations” shall mean the regulations promulgated under Section 542(c) of the Housing and Community Development Act of 1992, as set forth at 24 CFR part 266, as in effect on the date of this Agreement.

s. “Replacement Reserve Account” shall mean that certain account established pursuant to the Loan Agreement, the funds in which are to be used to pay costs of replacing structural elements and mechanical equipment of the Development and such other expenses of the Development as IHDA, in its sole discretion, may approve.

t. “Residual Receipts” shall mean any Surplus Cash remaining as of the end of a Calendar Year after the deduction of (i) the amount of any repayment of those Junior Loans evidenced by a note to be repaid from Surplus Cash (any additional subordinated loans shall not be made without Lender’s written consent, in its sole discretion), and (ii) all Distributions.

u. “Risk Sharing Agreement” shall mean the Risk Sharing Agreement dated June 10, 1994, between IHDA and HUD.

v. “Risk Sharing Program” shall mean IHDA’s Section 542(c) Risk Sharing multifamily mortgage loan program, under which the United States Department of Housing and Urban Development insures multifamily mortgage loans and shares the risk of default

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under such mortgage loans with IHDA, as established and conducted pursuant to the terms of the Risk Sharing Agreement.

w. “Rules” shall mean the rules, regulations, policies and procedures of IHDA promulgated under the Act, as they may be amended and supplemented from time to time, as applicable.

x. “Surplus Cash” shall mean that part of the gross operating income (including rent insurance proceeds, but not including fire or other insurance proceeds, condemnation proceeds, loan proceeds and any contributions or advances from members or members of Borrower) of the Development, determined on an accrual basis (a security deposit shall not be deemed part of the gross operating income unless and until it unequivocally becomes the property of Borrower, free of any claim of any person claiming as or through the Tenant who had deposited such security) remaining as of the end of each Calendar Year after payment of, or the reservation of funds for the payment of, the following (but only to the extent payable from such gross operating income):

i. Operating Expenses, Maintenance Expenses and Administrative Expenses;

ii. All other costs, whether or not capitalized, pertaining to the operation of the Development during such Calendar Year, including, but not limited to, reasonable costs of renting, managing, repairing, maintaining and improving the Development;

iii. All losses on any investment of funds deposited in any reserve account;

iv. All sums required to be deposited during such Calendar Year in the Replacement Reserve Account or in any other reserve account of the Development (other than the Residual Receipts Account), whether or not in fact deposited;

v. All sums, whether or not currently required to be paid during such Calendar Year, under the terms of the Loan Documents;

vi. All sums due under any permitted secondary financing [that are permitted to be paid from gross operating income], including, but not limited to the Junior Loans (as defined in the Loan Agreement);

vii. Intentionally deleted.

viii. Intentionally deleted.

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ix. any sums required under the Loan Agreement to fund and/or replenish the Operating Reserve Account; and

x. Intentionally deleted.

all as reflected on audited financial statements for the Development (including the income statements and balance sheets) for each such Calendar Year. The actual amount of Surplus Cash shall be determined by IHDA, in its sole discretion.

y. "Tax and Insurance Reserve Account" shall mean that certain reserve account established pursuant to the Loan Agreement concurrently with the Loan Disbursement, the funds in which are to be used to pay real estate taxes on the Development and premiums for policies of insurance, including, without limitation, liability, fire, property damage and extended coverage, that Borrower is required to maintain on the Development.

z. "Tenant" shall mean a person, family or unrelated persons leasing a Unit.

aa. "Unit" or "Units" shall mean a dwelling unit or units in the Development. A Unit may be an Affordable Unit, or a Market-Rate Unit (as hereafter defined).

3. Act and Regulations. Borrower agrees that at all times its acts regarding the Development shall be in conformance with the Act, the Rules and the regulations, policies and procedures of IHDA, and any applicable amendments to it; the Housing and Community Development Act of 1992, as amended; and the Regulations, all as may be amended and supplemented from time to time. Borrower agrees that if there is a conflict between the Regulations and (i) the Rules, (ii) the Loan Documents or (iii) any requirements of the Risk Sharing Program, the Regulations shall control.

4. Additional Borrower Covenants. Borrower further agrees that:

a. It shall make all payments due under the Note, the Mortgage and the other Loan Documents;

b. It shall be a "single asset owner," as provided in 24 CFR Part 266; the only interest in real estate to which Borrower shall hold legal title shall be the Development, and Borrower shall not be the fee or leasehold owner of any other real estate, and shall not hold the beneficial interest in any land trust;

c. At least thirty-nine (39) Units shall be occupied by tenants whose family income is sixty percent (60%) or less of the median income of the metropolitan statistical area of Chicago, with adjustments for household size, as such adjusted income and median

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income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (“Median Income”). At least four (4) Units shall be occupied by tenants whose family income is eighty percent (80%) or less of the Median Income. Additionally, Borrower covenants that throughout the term of this Agreement, the Borrower will use reasonable efforts to obtain and must accept any locally, state or federally-administered operating subsidy or project based rental assistance, including, but not limited to Section 8 project based vouchers, should such subsidy or assistance be made available on any of the Units, including, but not limited to the thirty-four (34) units that will be subject to a Rental Assistance Demonstration Use Agreement (the “RAD Units”). For purposes of this Agreement, the “Market Rate Units” are the sixty (60) Units in the Development that are not Affordable Units.

d. Subject to any requirements of the Section 8 Housing Assistance Payment Contract (HAP Contract), which shall control while the Section 8 HAP Contract is in effect for the RAD Units, Borrower shall (and cause Master Tenant to) establish and annually submit a schedule of rents with utility allowances for the Affordable Units in the Development for IHDA’s approval, such schedule (and the rental charges for the Affordable Units) shall be subject to the income restrictions set forth in **Paragraph 4.c** hereof; rents paid by the Tenant for each Affordable Unit shall not exceed thirty percent (30%) of the maximum income for each such Affordable Unit; Borrower shall not change the rent schedule (or the rental charges) and utility allowances for the Affordable Units without IHDA’s approval;

e. In the advertising, marketing and rental of the Affordable Units (and the Market-Rate Units, as applicable) and in the selection of Tenants for such Units, Borrower and Master Tenant (in connection with the Affordable Units) shall abide by the terms and conditions of (i) the Affirmative Fair Housing Marketing Plan of Borrower previously approved by IHDA, and by this reference made a part of this Agreement; (ii) the Tenant Selection Plan of Borrower previously approved by IHDA and by this reference made a part of this Agreement; and (iii) all other equal opportunity and fair housing requirements of applicable federal, state and local law;

f. In the management and operation of the Development, Borrower and Master Tenant (in connection with the Affordable Units) each agrees to abide by the terms and conditions of (i) the Management Plan of Borrower or its agent previously approved by IHDA, and by this reference made a part this Agreement; (ii) the Management Agreement under which the Development is to be managed, previously approved by IHDA; and (iii) the Affirmative Fair Housing Marketing Plan of Borrower or its agent previously approved by IHDA;

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g. On forms approved by IHDA, Borrower shall (and cause Master Tenant to) obtain from each prospective Tenant prior to admission to an Affordable Unit, a certification of income (the "Certification"), and at intervals required by IHDA, a recertification of income (the "Recertification") on forms approved by IHDA, and Borrower shall submit (and cause Master Tenant to submit, as applicable) such Certifications and Recertifications in the manner prescribed by IHDA;

h. In a manner prescribed by IHDA, Borrower shall (and cause Master Tenant to) obtain written evidence substantiating the information given on the Certifications and Recertifications and shall retain that evidence in its files for three (3) Calendar Years after the year to which such evidence of income pertains. Within thirty (30) days following the end of each Calendar Year, Borrower (and cause Master Tenant to) shall certify to IHDA that, at the time of such certification and during the preceding Calendar Year, Borrower (and/or Master Tenant, in connection with the Affordable Units, as applicable) was in compliance with the requirements of this **Paragraph 4**, or, if Borrower is not or has not been in compliance with such requirements, Borrower shall (and cause Master Tenant to) identify the details of how it (or Master Tenant, as applicable) failed to comply and the corrective action it (or Master Tenant, as applicable) is taking or has taken;

i. Borrower shall (and cause Master Tenant to) require all Tenants of an Affordable Unit to execute a lease in the form prescribed or approved by IHDA, provided, however, that any form of lease required by HUD due to the Section 8 HAP Contract shall be deemed acceptable (the "Lease");

j. Borrower shall (and cause Master Tenant) not permit the use of the Units for any purpose except residential use, or permit non-residential use of the Development greater or substantially different than that originally approved by IHDA;

k. Borrower shall and cause Master Tenant to timely perform their respective obligations under that certain Rental Assistance Demonstration Use Agreement among Borrower, Master Tenant, CHA and HUD (the "RAD Use Agreement"), Master Tenant and IHDA (the "Conduit Regulatory Agreement"), Low Income Housing Tax Credit Extended Use Agreement among Borrower, Master Tenant and IHDA (the "IHDA Extended Use Agreement"), the Regulatory Agreement among Borrower, Master Tenant and the City of Chicago (the "HOME Regulatory Agreement"), the Regulatory Agreement among Borrower, Master Tenant and the City of Chicago (the "TIF Regulatory Agreement"), the Illinois Affordable Housing Tax Credit Regulatory Agreement among Borrower, IHDA and the TCB Development Services (the "DTC Regulatory Agreement"), and any other regulatory agreement or other document provided by or on behalf of Borrower (or Master Tenant) which restricts the Units (collectively the "Other Regulatory Agreements"; together with the RAD Use Agreement, Conduit Regulatory Agreement, the Extended Use Agreement, the HOME Regulatory Agreement, the TIF Regulatory

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Agreement, the DTC Regulatory Agreement, collectively the “Restrictive Agreements”). No consent or approval given by IHDA under or in connection with the Restrictive Agreements shall be deemed to constitute any consent or approval of IHDA under this Agreement or under any other Loan Document. In the event of any conflict between this Agreement and the provisions of the Restrictive Agreements, the more restrictive provisions shall control and prevail; except that so long as the RAD Use Agreement is in effect, the provisions of the RAD Use Agreement shall control and prevail;

l. Borrower shall not evict (and require Master Tenant not to evict) any Tenant from an Affordable Unit in the Development without good cause;

m. Borrower shall obtain all governmental approvals required by federal, state and local laws for its acquisition, rehabilitation, ownership and operation of the Development; Borrower shall cause Master Tenant to obtain all governmental approvals required by federal, state and local laws for its acquisition, rehabilitation, ownership and operation of the Affordable Units;

n. Borrower shall (and cause Master Tenant to) perform shall timely perform its obligations under that certain (i) Master Lease between Borrower and Master Tenant, (ii) Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for Southbridge 1-4 Condominium by Borrower (the “Condominium Declaration”) -(together with the Master Lease and Right of First Refusal, collectively, the “Leasing Agreements”); No consent or approval given by IHDA under or in connection with the such Leasing Agreements shall be deemed to constitute any consent or approval of IHDA under this Agreement or under any other Loan Document. In the event of any conflict between this Agreement and the provisions of the Leasing Agreements, the provisions of this Agreement shall control and prevail; and

o. Borrower shall cause Master Tenant to comply and fulfill all of the duties, obligations, requirements, representations, covenants and all other agreements in this Agreement in connection with the leasing, management and operation of the Affordable Units as found in **Paragraphs 3, 4(c through o), 5 (but only as they apply to the Affordable Units), 7 (but only as they apply to the Affordable Units), 8, 9, 14 and 16 (a, through d, and g through k)** below, in connection with the Affordable Units leased under Master Lease (“Affordable Unit Covenants”). As an example and for clarification purposes only, Borrower shall require and collect from Master Tenant the Certifications and Recertification for the Affordable Units, and submit them to IHDA as required under **Paragraphs 4.g** above.

5. Acts Requiring IHDA Approval. Borrower shall not, without the prior written approval of IHDA:

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- a. Assign, transfer, dispose of (other than obsolete or damaged property, so long as equivalent replacements are obtained) or encumber any real or personal property of the Development (or any part of it), including rents, or pay out any Development Funds, except for reasonable Operating Expenses, Administrative Expenses and Maintenance Expenses and as otherwise expressly permitted in the Loan Documents;
- b. Remodel, add to, reconstruct or demolish any part of the Development or subtract from any real or personal property of the Development, except in connection with the construction described in the Loan Documents and as contemplated by the plans and specifications approved by IHDA;
- c. Engage in any other business or activity, including the operation of any other housing development, or incur any liability or obligation not in connection with the Development;
- d. Subject to requirements under Section 8 HAP Contract, if applicable, initially rent any Affordable Unit for a period of other than one (1) year, and after such initial one (1) year period, rent any Affordable Unit for less than six (6) months or more than one (1) year;
- e. Permit a Tenant of an Affordable Unit to rent more than one (1) Unit at any given time;
- f. Subject to Section 8 HAP Contract, change the rental charge of the Affordable Units or any other service charges to the Tenants of the Affordable Units set or approved by IHDA;
- g. Lease, sublease or license any non-residential facility in the Development, or amend or modify any such lease or sublease, in a manner that would result in a conflict of interest between any of the parties to such contracts and IHDA, its members, officers, employees, agents or members of their respective immediate families;
- h. Require, as a condition of the occupancy or leasing of any Affordable Unit, any consideration or deposit other than the pre-payment of the first month's rent plus a security deposit in an amount not in excess of one (1) month's rent to guarantee the performance of the covenants of the Lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the Development in one or more trust accounts with one or more federally insured depositories located in Illinois, approved in writing by IHDA; the aggregate amount in such trust accounts shall at all times equal or exceed the aggregate of all outstanding obligations of Borrower under the Leases regarding security deposits. If interest is earned on such trust account, it shall be transferred, as

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earned, into the Development Bank Account, as set forth in **Paragraph 11**, below, unless otherwise required by federal, state or local law;

i. Incur any liability, direct or contingent, other than for the Costs of Development, current Operating Expenses, Administrative Expenses and Maintenance Expenses, other than the permitted loans (as described in the Loan Agreement, including, but not limited to the Loan and Junior Loans), and except as otherwise approved by IHDA in writing; all liability for capital expenditures shall require IHDA's written approval; provided, however, Borrower may seek IHDA's written approval promptly after completion of any emergency repairs necessary to protect tenants;

j. (i) Invest or deposit any funds from the Development in any property, real, personal or mixed, except obligations of, or fully guaranteed or secured as to principal by, the United States of America, any agency of its agencies or the State of Illinois, or (ii) deposit such funds in a depository not approved in writing by IHDA;

k. Enter into any contract or contracts for supervisory or managerial, including, but not limited to property management services for the Development, other than contracts approved by IHDA;

l. Pay any compensation, including wages or salaries, or incur any obligations, to management staff or any officers, directors, stockholders, trustees, members, beneficiaries under a trust or to any of their nominees, except reasonable compensation pursuant to the approved annual operating budget or contracts first approved by IHDA; or

m. Convey, assign or transfer any right to manage or receive the rents and profits from the Development, except as otherwise expressly permitted in the Loan Documents.

6. Distributions.

a. Borrower shall not make, receive or retain any Distribution except as permitted in this Agreement, and then only on the following conditions:

i. Any Distribution shall be made only after (x) IHDA receives and approves the audited financial statements of the Development for Calendar Year to which the Distribution relates; and (y) Borrower receives IHDA's written approval of the amount and nature of the Distribution in accordance with IHDA's guidelines, policies and the Rules, including, but not limited to Borrower submitting a certification regarding Surplus Cash and the funds available for Distribution, in the form set forth in **Exhibit C** attached hereto;

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ii. Any Distribution shall be limited in any one (1) Calendar Year to Surplus Cash, as calculated by IHDA, or assets having a fair market value, or some combination of both, that does not in the aggregate exceed 10.0% of Borrower's Project Equity ("Limited Distribution"), subject to the Act and Rules. The Limited Distribution for any Calendar Year that is less than a full calendar year shall be prorated and limited on a per diem basis;

iii. The right to Limited Distributions shall cumulate from the Final Closing Date. To the extent that Borrower does not receive all or a portion of a Limited Distribution in any Calendar Year, it may be paid out of Surplus Cash or Residual Receipts, if any, available in subsequent years, but subject to all of the conditions and requirements relating to a Limited Distribution with respect to the most recent Calendar Year; and

iv. No Distribution shall be made until after the Disbursement of the Loan proceeds is made and until the Development's annual operating budget for the Calendar Year next following the one with respect to which the Limited Distribution amount has been calculated has been approved by IHDA. No Distribution shall be made to Borrower while there is a Default. No Distribution shall be made unless there has been compliance with all requirements for proper maintenance and operation of the Development, whether pursuant to notices of deficiencies from IHDA or otherwise.

b. So long as all of the preconditions to a Distribution identified in **Paragraph 6.a.iv** above have been fulfilled, then, at the time Borrower may or is entitled to receive a Limited Distribution, Borrower may, with the approval of IHDA, make a Distribution to repay advances (in excess of amounts otherwise required under the terms of the Loan Documents) that Borrower or its members have made (other than Project Equity) to the Development's funds, with interest on such advances at the rate of not more than nine percent (9%) per annum, compounded annually until repaid. Such payments shall be made only from Surplus Cash or Residual Receipts, and can be made from Surplus Cash or Residual Receipts even though they are in excess of the Limited Distribution. For so long as the Mortgage constitutes a lien on the Development, the right to repay advances set forth in this **Paragraph 6.b.** shall not be available to the maker of any other loan to Borrower for the Development or such lender's designee should either such maker or its designee become the Borrower of the Development by foreclosure, deed in lieu of foreclosure or otherwise.

7. **Borrower's Duties.** In addition to, but not by way of limiting, the other duties of Borrower set forth in this Agreement or any of the other Loan Documents, Borrower shall comply with the following:

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a. **Maintenance.** Upon completion of the construction of the Development, Borrower shall maintain the Development, including the Units and the grounds and equipment appurtenant to it, in good physical condition and in a decent, safe and sanitary condition, and in a rentable and tenable state of repair, as required by the Loan Documents, subject to ordinary wear and tear.

b. **Management.** Borrower shall provide for the management of the Development in a manner satisfactory to IHDA. Any management contract entered into by or on behalf of Borrower involving the Development shall be in form and substance acceptable to IHDA. The management of the Development may not be subcontracted, and the managing agent may not be replaced without the prior written consent of IHDA.

c. **Costs of Services, Compensation, Wages, Etc.** Payment for services, supplies or materials shall not exceed the amounts ordinarily paid for such services, supplies or materials in the area where the services are rendered or the supplies or materials are furnished.

d. **Audit.** The Development and all equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents and other papers relating to it shall at all times be maintained in reasonable condition for proper inspection and audit, and shall be subject to examination, inspection and copying at any reasonable time, and from time to time, by IHDA or its agents or representatives, and by HUD or the United States General Accounting Office (the "GAO"), or their agents or representatives.

e. **Books and Records.** The books and records of Borrower and of the operations of the Development shall be kept in accordance with generally accepted accounting principles and the requirements of the auditing standards of the GAO issued by the Comptroller of the United States (the "GAO Standards") and such other standards as IHDA may require. Borrower shall allow IHDA, or its representatives or agents, and the GAO and HUD, or their respective representative or agents, to inspect the Development at any reasonable time, and from time to time at any time during normal business hours, shall allow access to the records and books of account related to the operation of the Development, including any supporting or related vouchers or papers, kept by or on behalf of Borrower and their representatives or agents; such access shall include the right to make extracts or copies of them. In addition, upon request of IHDA, which may be made at any time and from time to time, Borrower shall deliver to IHDA true and complete copies of monthly operating statements, occupancy statements and marketing reports of the Development.

f. **Financial Statement.** Commencing with the first Calendar Year ending after the Final Closing Date and within ninety (90) days following the end of each Calendar

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Year thereafter, Borrower shall furnish to IHDA a complete audited financial statement report for the Development based upon an examination of the books and records of Borrower, prepared at Borrower's expense in accordance with the GAO Standards, generally accepted accounting principles and such other standards as IHDA may require, and certified to Borrower by an Illinois licensed certified public accountant, or other person acceptable to IHDA.

g. Operating Budget. Within thirty (30) days prior to the beginning of each Calendar Year, Borrower shall submit to IHDA, for its written approval, a complete annual operating budget for the Development, including rental charges for such Calendar Year, all in accordance with the requirements of IHDA.

h. Furnishing Information. At the request of IHDA, Borrower shall furnish such reports, projections and analyses as required pursuant to the Rules, policies and procedures of IHDA, as amended and supplemented from time to time, and shall give specific answers to questions upon which information is desired from time to time relative to the Development's condition, income, assets, liabilities, contracts and operation.

i. Inspection. Borrower shall allow IHDA, or its representatives or agents, or HUD or its representatives or agents, to inspect the Development at any reasonable time and upon reasonable notice, and from time to time.

j. Compliance with Certain Laws. Borrower shall (and shall require Master Tenant to), comply with the provisions of the Environmental Barriers Act (410 ILCS 25/1 *et seq.*, as amended from time to time), the Illinois Accessibility Code (71 Ill. Adm. Code 400), 47 Ill. Adm. Code 310, Subpart I, as amended from time to time, except as otherwise approved by IHDA, and the Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, as amended, if applicable.

8. Non-Discrimination in Housing.

a. Borrower shall not (and shall not permit Master Tenant), in the selection of Tenants, in the provision of services or in any other matter relating to the construction or operation of the Development discriminate against any person on the grounds of race, color, creed, religion, sex, age, handicap, national origin, ancestry, unfavorable military discharge (as defined in the Illinois Human Rights Act) or familial or marital status, or because the Tenant is receiving governmental assistance.

b. Borrower shall (and cause Master Tenant to) comply with all of the provisions of Paragraph 13 of the Act, Section 266.220 of the Regulations, and all other provisions of applicable federal, state and local law relative to non-discrimination.

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9. Violation of Agreement by Borrower. Upon violation of any of the provisions of this Agreement by Borrower (and/or Master Tenant in connection with the Affordable Units), IHDA may give written notice of such violation to Borrower (and Master Tenant in connection with the Affordable Units) as provided in Exhibit B attached hereto and incorporated herein, and Borrower and/or Master Tenant shall then have thirty (30) days to correct or cure it. If such violation is not corrected to the satisfaction of IHDA within thirty (30) days after such notice, IHDA may declare a default under this Agreement; however if such condition is not reasonably curable within thirty (30) days despite Borrower's and/or Master Tenant's reasonable efforts to cure it, Borrower and/or Master Tenant shall have an aggregate of one hundred twenty (120) additional days to cure such Default, so long as (i) that cure is commenced within such thirty (30) day period, (ii) Borrower and/or Master Tenant continues to diligently pursue such cure in good faith and (iii) IHDA's security for the Loan is not, in the sole judgment of IHDA, impaired as a result of the existence of such failure; after the expiration of such aggregate one hundred fifty (150) day period, IHDA may declare a default under this Agreement, effective on the date of notice of such declaration of default to Borrower, and upon such default, and so long as such default is continuing, IHDA may do the following commencing from the Final Closing Date:

- a. Declare the whole of the indebtedness under the Note immediately due and payable and then proceed with the rights and remedies set forth in the Mortgage or any other of the Loan Documents;
- b. Collect all rents and charges in connection with the operation of the Development and use such collections to pay (i) Borrower's obligations under this Agreement and under the Note, the Mortgage and the other Loan Documents and (ii) the necessary expenses of preserving and operating the Development;
- c. Take possession of the Development, operate it in accordance with the terms of this Agreement and bring any action necessary to enforce any rights of Borrower growing out of its operation until such time as IHDA, in its sole discretion, determines that Borrower is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Note, the Mortgage and the other Loan Documents;
- d. Use and apply any monies deposited by the Borrower with IHDA regardless of the purpose for which the same were deposited, and any other Development accounts (in which IHDA has a security interest), to cure any such Default or to repay any indebtedness under the Loan Agreement or any other Loan Document, or any of Borrower's other financing (with IHDA), which is due and owing to IHDA;
- e. Apply to any court, state or federal, for (i) specific performance of this Agreement, (ii) an injunction against any violation of this Agreement, (iii) the appointment of a receiver to take over and operate the Development or (iv) such other relief as may be

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appropriate. Since the injury to IHDA arising from a default would be irreparable and the amount of damage would be difficult to ascertain, Borrower acknowledges and agrees that IHDA's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure IHDA's public purpose;

f. Exercise such other rights or remedies as may be available to IHDA under this Agreement, at law or in equity.

IHDA's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of IHDA's other remedies. No waiver by IHDA of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. The failure or delay of IHDA in exercising any of its rights under this Agreement in any one or more instances, or the exercise of less than all of its rights in any one or more instances, shall not be deemed or construed as a waiver of any such rights. IHDA agrees that any cure made or tendered by the Master Tenant and/or Master Tenant's Investor Member shall be accepted or rejected by IHDA on the same basis and within the same time periods as if such cure were made or tendered by the Borrower and if such default is cured by such party, such cure shall be deemed to be a cure by the Borrower.

10. Assignment of Rents for Security. Following the Final Closing Date and subject to the provisions of the Mortgage, as security for the payments due for the Replacement Reserve Account and as security for the other obligations under this Agreement, Borrower assigns, pledges and mortgages to IHDA the rights to the rents, profits, income and charges of whatever sort that they may receive or be entitled to receive from the operation of the Development.

11. Development Funds and Development Property.

a. The Development and Development Funds are referred to in this Agreement as "Development Property." Following the Final Closing Date, all Development Funds received by Borrower or its agents shall be deposited in the Development Bank Account. Such deposits shall be invested in accordance with the requirements for deposits and investments as proscribed in the Loan Agreement. Development Funds shall be withdrawn only in accordance with the provisions of this Agreement and shall be disbursed, to the extent available, and applied in the following order of priority;

i. Payment of Operating Expenses, Maintenance Expenses and Administrative Expenses;

ii. Payments into the Tax and Insurance Reserve Account pursuant to the Loan Agreement;

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- iii. Payments of amounts due under the Note, including principal, interest, late charges and other amounts payable under it;
- iv. Payments into any Replacement Reserve Account pursuant to the Loan Agreement;
- v. Payments of amounts due under any permitted subordinate financing;
- vi. Subject to any amounts required to be paid into the Residual Receipts Account pursuant to the Loan Agreement, or by reason of the limitations as found in the Loan Agreement or in **Paragraph 6** hereof, the payment of those items set forth in the definition of Surplus Cash, payments of any deferred developer's fee approved by IHDA and payment of advances to the Development as permitted under **Paragraph 7A.e.** of the Loan Agreement, and other payments to Borrower as a Distribution, all subject to the Limited Distribution restrictions set forth in Section 7A of the Loan Agreement, but otherwise subsections vi. shall be distributed in the order of priority set forth in the Borrower's Amended and Restated Limited Operating Agreement.

The foregoing provisions are intended to establish priorities in payment, except as otherwise designated in writing by IHDA.

b. After the application of Development Funds received by Borrower in accordance with the priorities of **Paragraph 11.a.** above, all Development Funds received by IHDA shall also be applied in accordance with the priorities set forth in **Paragraph 11.a.**

c. If Borrower, its principals or its agents receive Development Funds other than by a permitted Distribution or reimbursement of prior advances approved by IHDA (other than Project Equity in the Development) with interest on them, the individual or entity receiving such funds shall immediately deposit them into the Development Bank Account; if such individual or entity fails so to do in violation of this Agreement, it shall be deemed to be holding such funds in trust for the Development. If Borrower, its principals or its agents receive Development Property in violation of this Agreement, the individual or entity receiving such Development Property shall immediately deliver it to IHDA; if such individual or entity fails so to do in violation of this Agreement, it shall be deemed to be holding such Development Property in trust. Any such Development Funds or Development Property to be held in trust shall be held for the benefit of IHDA separate and apart from any other funds or property of the possessor.

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12. Liability of Borrower – Nonrecourse. Except as otherwise set forth in the Loan Agreement, the Environmental Indemnity and the Guaranty, Borrower's liability created under this Agreement and the Loan Documents shall be non-recourse and neither Borrower, nor the Member, nor the Managing Member nor any of the members, officers, employees or agents of the foregoing, shall have any personal liability for repayment of the Loan. IHDA shall look only to the Development and its reserves and any other funds or letters of credit relating to the Development for repayment of the Loan. The foregoing shall not limit Borrower's, Member's, and Managing Member's liability for damages (excluding any damages solely arising as a direct result of and only to the extent resulting from IHDA's gross negligence or willful misconduct) to IHDA as a result of (i) fraudulent acts, or willful and wanton acts or omissions in violation of the provisions of the Loan Documents; (ii) the fair market value of the personalty or fixtures removed or disposed of from the Development in violation of the terms of the Loan Documents; (iii) the misapplication, in violation of the terms of the Loan Documents, of any funds to the full extent of such misapplied funds and proceeds, including, without limitation, any funds or proceeds received under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain; (iv) any misapplication of any security deposits attributable to any leases of Units, or failure to pay interest on such security deposits as required by law; (v) waste committed on the Development to the extent that funds in the Replacement Reserve Account or otherwise available in any property account held by Borrower, are available to remedy such waste and Borrower has failed to remedy the waste despite the written instructions of IHDA; (vi) the occurrence of a Prohibited Transfer (as defined in the Mortgage), without the prior written consent of IHDA; (vii) a written material misrepresentation was made by Borrower or any party in the ownership structure of Borrower, or any employee or agent of Borrower or any other such entity or individual under the control or direction of the Borrower; (viii) a material error or omission was made in the Ownership Structure Certificate (as defined in the Loan Agreement); (ix) the Borrower has violated the single asset requirement contained herein; (x) the Borrower has delivered a false certification in connection with the certifications provided in the Loan Documents, and (xi) amounts that Borrower is required to pay to IHDA if HUD reduces the amount of the Mortgage Insurance (as described in the Loan Agreement). Any liability incurred pursuant to this Paragraph shall be the personal liability of the Borrower, Member and Managing Member. The provisions of this Paragraph shall have no effect on the liabilities and obligations contained in the Guaranty, the Letter or in the Loan Agreement.

13. Termination of Liabilities. In the event of a sale or other transfer of the Development that is approved by IHDA, all of the duties, obligations, undertakings and liabilities of Borrower and/or such transferor (the "Transferor") under the terms of this Agreement shall thereafter cease and terminate as to the Transferor, except as to any acts or omissions or obligations to be paid or performed by Transferor that occurred prior to such sale or transfer. However, as a condition precedent to the termination of the liability of Transferor under this Agreement, the transferee of the Development (a "New Borrower"), and as a condition precedent to its admission as a New Borrower, shall assume, in writing, on the same terms and conditions as apply under this Agreement to the Transferor, all of the duties and obligations of the Transferor arising under this

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Agreement from and after such sale or transfer. Such assumption shall be in form and content acceptable to IHDA.

14. Term of Agreement/Covenants Running with the Development. The covenants set forth in this Agreement shall be deemed to run with and bind and burden the Development, and shall be deemed to bind any future owners of the Development and any legal, equitable or beneficial interest in it, and shall not be deemed extinguished, satisfied or completed until the Maturity Date (as defined in the Note). If the Note is prepaid prior to the Maturity Date (as defined in the Note) with the approval of the Authority, only the covenants and agreements set forth in **Paragraphs 3, 4(b-o), 5(d-h), 7(a, b, h, i and j), 8, 9(e and f) and 13-18** hereof (collectively, the "Continuing Obligations") shall remain in effect for the period of time commencing on the prepayment and ending on the Maturity Date, regardless of whether the Loan is prepaid voluntarily by Borrower or tendered by any party following an acceleration by the Authority of the Note or enforcement by the Authority of its remedies in connection with the Loan.

Borrower expressly acknowledges that its undertakings and agreements stated in this Agreement are given to induce IHDA to make the Loan and that, even if the Loan have been repaid prior to the Maturity Date (as defined in the Note), or paid on the Maturity Date, the Borrower's agreement to terms described in the next paragraph, are conditions precedent to the willingness of IHDA to make the Loan.

Upon (i) a sale, transfer or other conveyance of the Development (including, without limitation, foreclosure or transfer by deed in lieu), (ii) an assignment, sale, transfer or other conveyance of any membership interest in Borrower, the ownership interest in the Member or the managing membership interest in the Master Tenant, except as otherwise permitted in the Loan Documents, (iii) a prepayment (whether partial or in full, and other than a regularly scheduled payment or for prepayments with casualty/condemnation proceeds) of the amounts due under the Note, the Mortgage and the other Loan Documents, or (iv) subject to any applicable cure periods, a Default under this Agreement or any of the other Loan Documents, beyond any applicable notice and cure period, then any funds remaining in all escrows, including any tax and insurance escrows, replacement reserve accounts, any funds remaining in the Residual Receipts Account and any undistributed Surplus Cash must be first used to pay off any amount due under the Loan at such time, if any, and then under all of Borrower's (or its affiliates') other outstanding financing with IHDA. Any remaining balance shall be remitted to Borrower, at IHDA's sole discretion, except when the Loan is prepaid in full, then such remaining balance will be remitted to Borrower without IHDA's approval or discretion.

15. Indemnification of IHDA. Except for matters solely arising as a direct result of and only to the extent resulting from the gross negligence or willful misconduct of IHDA, Borrower, the Member and Managing Member agree to defend and indemnify and hold harmless IHDA, its members, directors and employees, from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands,

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liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that IHDA may incur or suffer by reason of or in connection with the real estate, the Leasehold Estate, the Improvements or the Development. Borrower, Member and Managing Member further agree that IHDA, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

16. Miscellaneous.

a. Amendment of Agreement. This Agreement shall not be altered or amended except in a writing executed by all of the parties hereto.

b. Execution of Conflicting Documents. Borrower warrants (and will not permit Master Tenant, in connection with the Affordable Units,) that it has not, and will not, execute any other agreement with provisions contradictory, or in opposition, to the provisions of this Agreement, and that, in any event, the requirements of this Agreement are and will be paramount and controlling as to the rights and obligations set forth in it and will supersede any other requirements in conflict with this Agreement; with the exception of, and IHDA consents to the execution and prior recordation of the following agreements: (a) the Rental Assistance Demonstration Use Agreement by Borrower and CHA for the benefit of the U.S. Department of Housing and Urban Development (the "Use Agreement"), (b) the Right of First Refusal Agreement by CHA and Borrower (the "Right of First Refusal"), (c) Ground Lease by CHA, as the initial landlord, with TCB Development as the initial tenant, as assigned by TCB Development to Borrower, and (d) all other encumbrances shown as senior to this Agreement on the title policy obtained by Lender insuring the Mortgage as of the Final Closing Date. To the extent this Agreement conflicts with any provisions or requirements set forth in the Mortgage or the Note, the document selected by IHDA shall prevail and control. Notwithstanding anything to the contrary in this **Paragraph 16**, to the extent that this Agreement conflicts with the requirements of Section 42 of the Internal Revenue Code of 1986, or the requirements of the RAD Use Agreement, the requirements of Section 42 or the RAD Use Agreement shall control.

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

d. Binding Successors. This Agreement shall bind, and the benefits shall inure to, the respective parties to this Agreement, their legal representatives, executors, administrators, successors in office or interest and assigns; however, Borrower shall not assign this Agreement or any of its obligations under it without the prior written approval of IHDA, and IHDA may not assign this Agreement without the written approval of HUD.

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e. **Gender.** The use of the plural in this Agreement shall include the singular; the singular the plural; and the use of any gender shall be deemed to include all genders.

f. **Recording Agreement.** Borrower agrees and assumes the obligation to have this Agreement recorded, prior to the recordation of the Mortgage, in the appropriate land records in the jurisdiction in which the Development is situated. If Borrower fails to do so, IHDA may have it recorded at the expense of Borrower.

g. **Election of IHDA's Remedies.** IHDA's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of IHDA's other remedies.

h. **Waiver by IHDA.** No waiver by IHDA of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.

i. **Captions.** The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of the Agreement.

j. **Third Parties.**

i. The parties do not intend this Agreement to inure to the benefit of any third party, including, but not limited to, contractors, subcontractors, management and marketing agents and creditors of Borrower, Master Tenant or the Development.

ii. Borrower (and Master Tenant each) agrees that IHDA is intended to be a direct beneficiary of all agreements connected with the Development to enable IHDA to carry out its statutory purpose of providing decent, safe and sanitary housing to persons and families of very low or low income in the State of Illinois. Borrower (and Master Tenant, in connection with the Affordable Units) therefore intends that all agreements connected with the Development to which one, any combination of the three or all are a party shall inure to the benefit of IHDA, even if IHDA is not a party to such agreements, but do not intend that such agreements inure to the benefit of any other third party.

k. **Notices.** Notices under this Agreement shall be given as provided in **Exhibit B** attached to and made a part hereof.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same instrument.

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18. **Subordination.** This Agreement is subordinate in each and every respect to any and all rights of any kind created under the RAD Use Agreement and Right of First Refusal.

19. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND IHDA HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN BORROWER AND IHDA ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO IHDA TO PROVIDE THE FINANCING EVIDENCED BY THE LOAN DOCUMENTS AND GOVERNED BY THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

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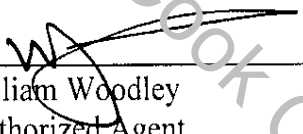
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives.

BORROWER:

SOUTHBRIDGE 9 MASTER OWNER LLC
an Illinois limited liability company

By: **ICKES MASTER DEVELOPER JV LLC**
A Delaware limited liability company
its sole member

By: **THE COMMUNITY BUILDERS, INC.**
d/b/a TCB Illinois NFP, Inc.
a Massachusetts not-for-profit corporation
its managing member

By:  _____
Name: William Woodley
Title: Authorized Agent

IHDA:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY,
a body politic and corporate

By: _____
Name: _____
Title: _____

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FHA Project No. 071-98080

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives.

BORROWER:

SOUTHBRIDGE 9 MASTER OWNER LLC
an Illinois limited liability company

By: **ICKES MASTER DEVELOPER JV LLC**
A Delaware limited liability company
its sole member

By: **THE COMMUNITY BUILDERS, INC.**
d/b/a TCP Illinois NFP, Inc.
a Massachusetts not-for-profit corporation
its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

IHDA:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY, #1
a body politic and corporate

By: *Debra Olson*
Name: **Debra Olson**
Title: **Assistant Executive Director**

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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, a Delaware 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:
4.29.22

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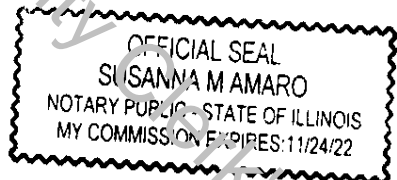
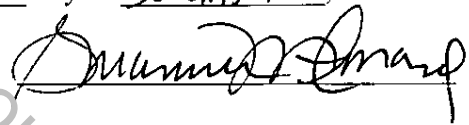
FHA Project No. 071-98080

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 the **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 Assistant Executive Director of the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** as his/her free and voluntary act and deed and as the free and voluntary act and deed of the **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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HUD ADDENDUM

This Addendum (the "Addendum") is attached to and made a part of the Regulatory Agreement dated as of January 16, 2020 by and between Borrower and IHDA (the "Regulatory Agreement"). All non-grammatical capitalized terms not defined in this Addendum shall have the meanings assigned to them in the Regulatory Agreement.

Borrower agrees to comply with all provisions of the Act, and with the Regulations for so long as the Loan is insured by HUD under the Risk Sharing Program.

BORROWER:

SOUTHBRIDGE 9 MASTER OWNER LLC

an Illinois limited liability company

By: **ICKES MASTER DEVELOPER JV LLC**

A Delaware limited liability company
its sole member

By: **THE COMMUNITY BUILDERS, INC.**

d/b/a TCB NFP Illinois, Inc.
a Massachusetts not-for-profit corporation
its managing member

By: _____

Name: William Woodley

Title: Authorized Agent

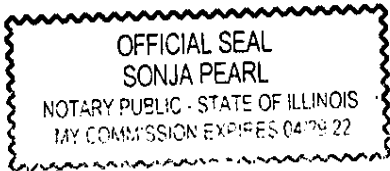
UNOFFICIAL COPY

FHA Project No. 071-98080

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, a Delaware 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:
4.29.22

UNOFFICIAL COPY

FHA Project No. 071-98080

AFFORDABLE UNITS ADDENDUM

This Affordable Units Addendum (the "Addendum") is attached to and made a part of the Regulatory Agreement (Risk Share Loan) – Phase 1B dated as of January 16, 2020 by and between Borrower and IHDA (the "Regulatory Agreement"). The Master Tenant is signing this Addendum for purposes of binding itself and agreeing to the Affordable Unit Covenants in the Regulatory Agreement in connection with the leasing, management and operation of the Affordable Units, but not with respect to the remaining Project (i.e., the non-Affordable Units). Master Tenant may not assign its rights nor its obligations under the Regulatory Agreement without the prior written approval of the Authority. If the Authority takes legal action to enforce any obligations of Master Tenant with respect to the Affordable Units under the Regulatory Agreement and prevails in its position, Master Tenant shall pay the Authority's reasonable attorneys' fees, costs, disbursements, and other expenses in connection with such legal action.

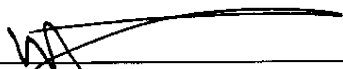
TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF MASTER TENANT AND IHDA HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN MASTER TENANT AND IHDA ARISING OUT OF OR IN ANY WAY RELATED TO THIS REGULATORY AGREEMENT OR THE OTHER LOAN DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO IHDA TO PROVIDE THE FINANCING TO BORROWER AS EVIDENCED BY THE LOAN DOCUMENT AND GOVERNED BY THIS REGULATORY AGREEMENT.

All non-grammatical capitalized terms not defined in this Addendum shall have the meanings assigned to them in the Regulatory Agreement.

Master Tenant also agrees to comply with all provisions of the Regulations, with respect to the Affordable Units, for so long as the Loan is insured by HUD under the Risk Sharing Program and the Regulatory Agreement is outstanding.

**MASTER TENANT:
SOUTHBRIDGE 1-9 HOUSING LLC**

By: **SOUTHBRIDGE 1 HOUSING MM LLC**
an Illinois limited liability company
its managing member

By: 
Name: William Woodley
Title: Authorized Agent

UNOFFICIAL COPY

FHA Project No. 071-98080

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 MUEHLKE'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

UNOFFICIAL COPY

FHA Project No. 071-98080

**EXHIBIT B
NOTICE PROVISIONS**

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

If to IHDA:

Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attention: Managing Director for Multifamily Financing

with a copy to:

Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attention: General Counsel

If to Borrower:

Southbridge 9 Master Owner LLC
c/o The Community Builders, Inc.
135 South LaSalle Street, Suite 3350
Chicago, IL 60603
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-Thomson, P.C.
425 South Financial Place, Suite 1900
Chicago, Illinois 60605
Attention: Paul Davis

and: GS SOUTHBRIDGE 4% INVESTOR OPPORTUNITY FUND LP

UNOFFICIAL COPY

FHA Project No. 071-98080

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

In connection with a courtesy copy, IHDA will exercise reasonable efforts to provide copies of any notices given to Borrower; however, IHDA's failure to furnish copies of such notices shall not limit IHDA's exercise of any of its rights and remedies under any document evidencing, securing or governing the loan from IHDA to the Borrower, or affect the validity of the notice.

Such addresses may be changed by notice to the other party given in the same manner as provided in this Exhibit. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

UNOFFICIAL COPY

FHA Project No. 071-98080

EXHIBIT C

FORM OF CERTIFICATION REGARDING SURPLUS CASH AND ALLOWABLE DISTRIBUTIONS

The Borrower certifies that the Development has distributed Surplus Cash (as defined in the Regulatory Agreement) in accordance with the Regulatory Agreement. Borrower further certifies that the information and calculations set forth below are true and accurate.

SCHEDULE OF SURPLUS CASH AND
ALLOWABLE DISTRIBUTIONS
AS OF DECEMBER 31, 20_

A - Surplus Cash Computations:

Cash - Development Accounts		\$	
Receivables - Tenant	\$		
HUD	\$ _____		\$
Due from Affiliates (Project Only)			\$
Prepaid Expenses: Taxes	\$		
Sundry	\$ _____		\$
Deposit Held in Trust for Tenant's Security Deposit			\$
Accrued Interest Receivable:			
Replacement Reserve	\$		
Tax & Insurance Reserve	\$		
Development Cost Escrow	\$		
Others	\$ _____		\$
Other, Due within 60 Days:			
Insurance Claims	\$		
Transfer to Partnership Accounts	\$		
	\$ _____		\$ _____
			\$ _____
Less: Accounts Payable - Trade		(\$)
Rents Received in Advance		(\$)
Delinquent Mortgage Payments & Escrow Deposit		(\$)
Tenant's Deposits (Including Accrued Interest		(\$)
Accrued Expenses Not Escrowed (Project Only)		(\$)
Due to Affiliate (Project Only)		(\$)
		(\$)
		(\$)
Total Deductions		\$ _____	
Surplus (Deficit) Cash		\$ _____	

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FHA Project No. 071-98080

B - Allowable Distribution Computation:

Project Equity per Final Closing Documents		\$
Allowable Rate of Return		_____ %
Current Year Allowable Distribution		\$
Cumulative Allowable Unpaid		\$
Distribution at Dec. 31, 20____	\$	
Less: Distributions Paid During 20____	(\$_____)	\$_____
TOTAL CUMULATIVE ALLOWABLE AND UNPAID DISTRIBUTION AT DECEMBER 31, 20____		\$_____

SOUTHBRIDGE 4 MASTER OWNER LLC
an Illinois limited liability company

By: **ICKES MASTER DEVELOPER JV LLC**
A Delaware limited liability company
its sole member

By: **THE COMMUNITY BUILDERS, INC**
d/b/a TCB NFP Illinois, Inc.
a Massachusetts not-for-profit corporation
its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

Date: _____