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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*2001719076\*

Doc# 2001719076 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/17/2020 02:06 PM PG: 1 OF 56

The property identified as: **PIN:** 17-28-218-028-0000

**Address:**

**Street:** 2302-22 S. State

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60616

**Lender:** Illinois Housing Development Authority

**Borrower:** Southbridge 4 Master Owner, LLC

**Loan / Mortgage Amount:** \$8,100,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

41044527 (22)

S  
P  
S  
EC  
INT

**Certificate number:** 77FC3A9A-1CDB-4DE1-8FF3-F9D6F4170D6B

**Execution date:** 1/16/2020

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

Property Identification Nos.:  
See Attached Exhibit A

Property Address:  
2310 S. State St.  
Chicago, IL 60616

**FHA Project No. 071-98079**  
**IHDA Loan No. 11510**  
**LEASEHOLD MORTGAGE, SECURITY AGREEMENT**  
**AND ASSIGNMENT OF RENTS AND LEASES**  
**(RISK SHARE LOAN)**

**THIS LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES (RISK SHARE LOAN)** (this "Mortgage") is made as of this 16<sup>th</sup> day of January 2020, by **SOUTHBRIDGE 4 MASTER OWNER LLC**, an Illinois limited liability company with its principal offices located at 135 South LaSalle St., Ste. 3550, Chicago, Illinois 60603 ("Mortgagor"), in favor of the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** ("Mortgagee"), 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 111 East Wacker Drive, Suite 1000, Chicago, Illinois 60601.

**WITNESSETH:**

**WHEREAS**, Mortgagor holds a leasehold estate in certain real estate generally located at 2310 S State Street, Chicago, Illinois 60616 and commonly known as Southbridge Phase IA, legally described on **Exhibit A** attached to and made a part of this Mortgage, and all easements and similar rights and privileges appurtenant to and in favor of such real estate (the leasehold estate in the real estate, easements, rights and privileges are collectively referred to in this Mortgage as the "Real Estate"), free and clear of any and all liens, encumbrances and charges of any kind, except only the matters set forth in the title policy (the "Title Policy") issued to and approved by Mortgagee ("Permitted Exceptions"); the Mortgagor's leasehold estate in Real Estate and fee interest in the improvements to be rehabilitated and/or constructed on said Real Estate are referred to in this Mortgage 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 nonprofit corporation is the managing member of the Member ("Managing Member"); **TCB DEVELOPMENT SERVICES, LLC**, an Illinois limited liability company, is the initial ground lessee of the Leasehold Estate to Borrower and has a financial interest in the Development ("TCB Development"); and

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**WHEREAS**, Mortgagor will ultimately lease the Leasehold Estate from Chicago Housing Authority pursuant to a ground lease dated the same date hereof and executed between TCB Development, as the initial tenant, and Chicago Housing Authority, as landlord (the "Ground Lease"), which Ground Lease will be assigned by TCB Development to Mortgagor; and

**WHEREAS**, **SOUTHBRIDGE 1-4 HOUSING LLC**, an Illinois limited liability company ("Master Tenant"), will lease apportion of the Development from Mortgagor pursuant to a master lease dated the same date hereof and executed between the Master Tenant and Mortgagor (the "Master Lease"), and such fifty-one units (the "Affordable Units") are also subject to the terms and conditions of various Restrictive Agreements, including the Regulatory Agreement and that certain Low Income Housing Tax Credit Extended Use Agreement; and

**WHEREAS**, Mortgagee and Mortgagor have entered into that certain Loan Agreement dated as of the date hereof pursuant to which Mortgagee has agreed to make a mortgage loan to Mortgagor (the "Loan") in the amount not to exceed \$8,100,000.00 for the purpose of the permanent financing of the Development to provide affordable housing for low and very low income households, as set forth in the Regulatory Agreement (as defined below) along with certain market-rate rental housing that is not subject to rent or income restrictions; and

**WHEREAS**, the Loan is to be insured by the United States Department of Housing and Urban Development ("Mortgage Insurance"), acting through the Federal Housing Commissioner ("HUD") under the Section 504(c) Risk Sharing Program established by Mortgagee and conducted pursuant to the terms of that certain Risk Sharing Agreement dated June 10, 1994, between Mortgagee and HUD (the "Risk Sharing Program"), and is subject to the regulations governing the Risk Sharing Program codified at 24 CFR Part 266, as amended and supplemented from time to time (the "Regulations"); and

**WHEREAS**, at the Final Closing Date (as defined in the Loan Agreement), Mortgagor will have executed and delivered to Mortgagee its Mortgage Note (Risk Share Loan) (together with any renewals, modifications, extensions, amendments and replacements, the "Note") dated as of the Final Closing Date therewith, as evidence of its indebtedness to Mortgagee on the Final Closing Date in the principal sum not to exceed Eight Million One Hundred Thousand and No/Dollars (\$8,100,000.00), or so much of that sum as Mortgagee may hereafter advance upon the Loan to Mortgagor, with interest at the rates and payable at the times and in the manner as specified in the Note; and

**WHEREAS**, the Loan is evidenced, secured and governed by, among other things: (a) the Loan Agreement ("Loan Agreement") (b) the Note, (c) this Mortgage, (d) the Regulatory Agreement (Risk Share Loan) of even date herewith executed by Mortgagor and Mortgagee (the "Regulatory Agreement") (e) the Environmental Indemnity (the "Environmental Indemnity"), (f) the Assignment of Contracts, Licenses and Permits (the "Assignment of Contracts"), (g) the Assignment of the Master Lease of even date herewith, executed by Borrower, as assignor, consented to by Master Tenant, in favor of Mortgagee (the "Master Lease Assignment"), (h) the Subordination, Non-disturbance and Attornment Agreement of even date herewith executed among the Borrower, Master Tenant, Mortgagee IHDA, CHA, the City of Chicago, New Hope

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Community Capital, Inc. and TCB Development (the "SNDA"), (i) the Collateral Assignment of the HAP Contract executed by Mortgagor in favor of Mortgagee (the "HAP Assignment"), (j) the Limited Guaranty of Payment of even date herewith, executed by the guarantors as contained therein (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 Housing MM LLC and IHDA ("MT Managing Member Assignment"), (n) Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement of an even date herewith, executed by Master Tenant, Southbridge 1 Housing MM LLC and IHDA ("MT Equity Assignment"), and (n) the Assignment of the Declaration of Covenants, Conditions, Restriction, Easement and Rights for Southbridge Phase IA (the "Assignment of Declaration"). This Agreement, the Note, the Mortgage, the Guaranty, the Environmental Indemnity, the Assignment of CLP, HAP Assignment, Assignment of Master Lease, SNDA, Rent Assignment, Member Assignment, MT Managing Member Assignment, MT Equity Assignment, the Loan Agreement and all other documents executed by Borrower that evidence, secure or govern the Loan are sometimes collectively referred to in this Agreement as the "Loan Documents"; This Mortgage, the Loan Agreement, the Note, the Regulatory Agreement, the Environmental Indemnity, the Assignment of Contracts, the Master Lease Assignment, the SNDA, the HAP Assignment, the Guaranty, the Rent Assignment, Member Assignment, MT Managing Member Assignment, Borrower Equity Assignment, MT Equity Assignment, the Assignment of Declaration, and all other documents executed by Mortgagor that evidence, govern or secure the Loan are sometimes collectively referred to in this Mortgage as the "Loan Documents" and the Loan Documents are incorporated in this Mortgage by this reference.

**NOW, THEREFORE**, to secure, commencing on the Final Closing Date, the payment of (i) the Loan, interest on it and other sums in strict accordance with the terms, provisions and limitations of this Mortgage and the Note, and Mortgagor's performance of the agreements contained on this Mortgage and the other Loan Documents; (ii) any other indebtedness of Mortgagor to Mortgagee now or hereafter owing, howsoever incurred, evidenced or otherwise secured pursuant to the Loan Documents, (iii) any future advances of any indebtedness evidenced or to be evidenced by the Note and (iv) any renewals and extensions of any of the indebtedness secured by this Mortgage (collectively sometimes referred to in this Mortgage as the "Secured Indebtedness"), Mortgagor MORTGAGES AND WARRANTS to Mortgagee, its successors and assigns, the Development.

**TOGETHER WITH** (i) all improvements, buildings, structures, alterations, easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Development, or that hereafter shall in any way belong, relate or appertain to it, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits of, and all the estate, rights, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to them;

(ii) all options to purchase the Real Estate and/or the Development, or any portion thereof

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or interest therein, and any greater estate in the Real Estate or the Development, as well as all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the Ground Lease (as defined below) creating the leasehold estate or otherwise relating to the Real Estate and/or the Development;

(iii) the leasehold estate granted under that certain Ground Lease dated January \_\_\_\_, 2020, by and between TCB Development, as the initial tenant and Chicago Housing Authority as the initial landlord (hereinafter, in such capacity, together with its successors and assigns, including, in connection with any Insolvency Proceeding (as defined below) any trustee, debtor-in-possession, or other estate representative acting on its behalf and any subsequent assignee or successor thereof, "Ground Lessor"), as assigned to Mortgagor in that certain Assignment and Assumption and Amendment of Ground Lease dated January \_\_\_\_, 2020 (collectively, the "Ground Lease"); including, without limitation, (i) all Lessee Bankruptcy Rights (as defined in **Paragraph 49** below) and (ii) all Lease Damage Claims (as defined **Paragraph 49** below), this Mortgage constituting an irrevocable and unconditional assignment of the Lease Damage Claims which shall be effective as of the Final Closing Date and shall continue until the Secured Indebtedness has been satisfied in full;

(iv) all rents from the Development, to be applied against Secured Indebtedness;

(v) all rights, title and interest of Mortgagor in and to any and all leases of units and other space, if any, in the Development, including, but not limited to the Master Lease (the "Leases") and all security for, all monies payable under, and guaranties of them;

(vi) any monies on deposit with Mortgagee as Tax and Insurance Deposits (as defined in **Paragraph 5.F** hereof) and all proceeds paid for damage done to the collateral described under this Mortgage or to the Development;

(vii) all right, title and interest of Mortgagor in any deposits, deposit accounts and reserve accounts held by Mortgagee, including, but not limited to the Replacement Reserves Account, the Residual Receipts Account, the Operating Reserves Account (all as defined in the Loan Agreement) or the Development Funds (as defined in the Regulatory Agreement);

(viii) all improvements, tenements, easements, fixtures, and appurtenances now or hereafter belonging to it, and all rents, issues and profits of the Development for so long and during all such times as Mortgagor may be entitled to them (which are pledged primarily and on a parity with the Development and not secondarily), including, without limiting the foregoing:

(a) if and to the extent owned by Mortgagor: all fixtures, fittings, furnishings, appliances, apparatus, equipment, articles of personal property and machinery, including, without limitation, and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, carpeting, coolers, cooking apparatus and appurtenances, curtains, dehumidifiers, dishwashers, disposal, doors, drapes, dryers, ducts, dynamos, electric fixtures, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, gas fixtures, hardware, heaters, humidifiers, iceboxes, incinerators, laundry equipment, light fixtures, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, ranges, screens, security

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systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements of or articles in substitution for them, whether or not they are or shall be attached to the Real Estate or the Development in any manner. and appurtenances, and all building material, supplies and equipment now or owned by Mortgagor or hereafter delivered to the Development, wherever located, and intended to be installed in it; all other fixtures and personal property of whatever kind and nature at present contained in or hereafter placed in any building standing on the Development; such other goods, equipment, chattels and personal property as are usually furnished by landlords in letting other premises of the character of the Development and placed in or located upon the Development; and all renewals or replacements, or articles in substitution thereof; and all proceeds and profits of the Development and all of the estate, right, title and interest of Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Development, or intended to be used in connection with the operation of the Development; (b) all of the right, title and interest of Mortgagor in and to any fixtures or personal property subject to a lease agreement, conditional sale agreement, chattel mortgage, or security agreement, and all deposits made thereon or therefor, together with the benefit of any payments now or hereafter made thereon; (c) all leases and use agreements of machinery, equipment and other personal property of Mortgagor in the categories hereinabove set forth, under which Mortgagor is the lessee of, or entitled to use, such items; (d) all rents, income, profits, revenues, royalties, security deposits, bonuses, rights, accounts, accounts receivable, contract rights, general intangibles and benefits and guarantees under any and all leases or tenancies now existing or hereafter created with respect to the Development, or any part of them, with the right to receive and apply the same to indebtedness due Mortgagee; Mortgagee may demand, sue for and recover such payments, but shall not be required to do so; (e) all documents, books, records, papers and accounts of Mortgagor relating to all or any part of the Development; (f) all judgments, awards of damages and settlements hereafter made as a result of, or in place of, any taking of the Development, or any part of it or interest in them, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Development or the improvements to them or any part of it or interest in them, including any award for change of grade of streets; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; (h) any monies on deposit for the payment of real estate taxes or special assessments against the Development or for the payment of premiums on policies of fire and other hazard insurance covering the Development, and all proceeds paid for damage done to the Development; and (i) all the right, title and interest of Mortgagor in and to beds of the streets, roads, avenues, lanes, alleys, passages and ways, and any easements, rights, liberties, hereditaments and appurtenances whatsoever belonging to or running with, on, over, below or adjoining the Development; the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified), and all rights conveyed and mortgaged by this Mortgage are intended to be conveyed and mortgaged as a unit and are understood, agreed and declared to form a part and parcel of the Development and to be appropriated to the use of the Development, and shall be deemed to be the Development and conveyed and mortgaged by this Mortgage. As to the above personal property which the Illinois Uniform Commercial Code ("Code") classifies as fixtures, this instrument shall constitute a fixture filing, creating a security interest in such goods, as collateral, in Mortgagee as a secured party from

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Mortgagor as Debtor, all in accordance with the Code as more particularly set forth in this Mortgage.

(ix) all proceeds of the items set forth in **subparagraphs (i-viii)** immediately above, subject to the provisions set forth in this Mortgage, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Development, or any portion of it, under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Development or proceeds of any sale, option or contract to sell the Development or any portion of it. Mortgagor authorizes, directs and empowers Mortgagee, at Mortgagee's option, on behalf of Mortgagor or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances for them, and, after deducting all costs and expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Secured Indebtedness, notwithstanding the fact that it may not then be due and payable or is otherwise adequately secured.

**TO HAVE AND TO HOLD** the Development, with the aforementioned buildings, improvements, fixtures, appurtenances, apparatus, equipment and personal property, and with all the rights and privileges in connection with them, to Mortgagee, its successors and assigns forever, for the uses set forth in this Mortgage, free from all rights and benefits under the homestead exemption and valuation laws of any state, which rights and benefits Mortgagor releases and waives to the extent not prohibited by applicable law.

**PROVIDED, NEVERTHELESS**, that if (i) the Mortgagee has not made a Disbursement of the Loan proceeds on the date on which the Construction Loan is repaid in full (as such terms are defined in the Loan Agreement), or (ii) Mortgagor pays in full when due the Secured Indebtedness and duly, completely and timely performs and observes all of the terms, provisions and agreements in this Mortgage and the Note to be performed and observed by the Mortgagor, then this Mortgage and the estate, right and interest of Mortgagee in the Development shall cease and become void and of no effect and Mortgagee shall execute and deliver to Mortgagor a release of this Mortgage in recordable form.

## MORTGAGOR FURTHER AGREES AS FOLLOWS:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated into and made a part of this Mortgage.

2. **Indebtedness, Covenants and Future Advances.**

A. **Payment of Indebtedness and Performance of Covenants.** Mortgagor shall (a) pay when due the Secured Indebtedness and (b) duly, completely and punctually perform and observe all of the terms, provisions, conditions, and agreements on Mortgagor's part to be performed or observed as provided in the Note, this Mortgage and all of the other Loan Documents. The maturity date and interest rate of the loan are stated in the Note, with the maturity date scheduled to be May 1, 2063 (subject to one 6 month and one 4 extension, but no later than January 1, 2064) and the interest rate stated in the Note at 4.42%.

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B. Obligatory Advances. It is specifically understood and agreed that all funds furnished by Mortgagee and used in performance of the obligations of Mortgagor under this Mortgage shall be deemed advanced by Mortgagee under an obligation to do so regardless of (i) the identity of the persons or entities to whom such funds are furnished and (ii) whether certain conditions must be satisfied before Mortgagee is actually obligated to do so. Funds advanced by Mortgagee in the exercise of its judgment that they are needed to complete the Development or to protect Mortgagee's security are to be deemed obligatory advances under this Mortgage and are to be added to the total indebtedness evidenced by the Note and secured by the Mortgage.

C. Adjustment of Loan Amount. If HUD, in its sole discretion, elects at any time to reduce the amount of Mortgage Insurance applicable to the Loan, Mortgagor shall pay to Mortgagee, within five (5) days after written notice from Mortgagee, the amount of the outstanding principal balance of the Loan, if any, in excess of the amount insured by Mortgage Insurance (the "Adjustment Amount"). If such reduction occurs at a time when the proceeds of the Loan have not been fully disbursed, the amount of any pending advance shall be adjusted so that the sum of such pending advance and all advances previously made shall not exceed the amount of Mortgage Insurance as adjusted or reduced by HUD.

### 3. Additional Agreements of Mortgagor.

A. Purpose of Loan; Single Asset Mortgagor. Mortgagor understands and agrees that Mortgagee is making the Loan to Mortgagor for the purpose of permanently financing the Development. The Development is to be used to provide at least one hundred three (103) units, of which fifty-one (51) are income restricted units under various regulatory agreements (collectively, the "Affordable Units"), and of such Affordable Units, at least twenty-one (21) are income restricted units under the Regulatory Agreement (the "Risk Share Units"), all in accordance with the provisions of the Act and Mortgagee's statutory purpose, as set forth in the Act, and the Development shall continue to be used for such purposes for the term of the Loan. The Development shall continue to be used for such purposes for the term of the Loan. Mortgagor shall not permit any other non-residential use of the Development except as approved by Mortgagee in writing. Mortgagor further agrees that it shall be a single asset mortgagor; the only interest in real estate to which the Mortgagor shall hold legal title shall be the Development, and Mortgagor shall not be the fee owner of any other real estate, and shall not hold the beneficial interest in any land trust.

B. Maintenance, Repair and Management of Development. Mortgagor shall (a) promptly repair, restore, replace or rebuild any portion of the Development that may become damaged or be destroyed; (b) after construction of the Development, keep the Development and all portions of it in good condition and repair (ordinary wear and tear excepted), free from waste; (c) cause to be paid all operating costs of the Development; (d) promptly complete the construction of the Development in accordance with the terms and conditions of the Loan Agreement; (e) comply in all material respects with all federal, state and local laws affecting the Development; (f) refrain from any action and promptly correct any condition that could increase the risk of fire or other hazard to the Development or any portion of it; (g) comply with all restrictions and covenants



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of record with respect to the Development and its use, and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Development or its use and occupancy; (h) cause the Development to be managed in a competent and professional manner by a management agent approved by Mortgagee; and (i) pay, when due, as provided in this Mortgage, any indebtedness that may be secured by a lien or charge on the Development, including the Permitted Exceptions and any other liens approved by Mortgagee as permitted exceptions, and exhibit to the Mortgagee satisfactory evidence of full payment of it within five (5) business days after such payment. Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (A) alterations of the Development, or the Plans and Specifications (as defined in the Loan Agreement), except as required or permitted to be made by and pursuant to the terms of the Loan Agreement; (B) change in the intended use or occupancy of the Development, including, without limitation, any change that could increase any risk of fire or other hazard; (C) unlawful use of, or nuisance to exist upon, the Development; (D) grant of any easements, licenses, covenants, restrictions, conditions or declarations of use against the Development, other than (i) to permit a mixed-use, mixed-income RAD conversion multifamily housing development containing an aggregate of 103 residential units, which includes 34 residential units that will be subject to a Rental Assistance Demonstration Use Agreement (the "RAD Units"), (ii) the Permitted Exceptions, and (iii) to permit the creation, maintenance and operation of up to seven (7) separate condominium units, five of which will collectively include the Affordable Units, on will include the Market Rate Units, and one will include commercial space, and their appurtenant common elements and respective parking facilities under a Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for Southbridge 1-4 Condominium by the Mortgagor, which must be recorded prior to or as of the Final Closing Date (the "Condominium Declaration"); or (E) action or omission that will result in the waste or diminution in value of the Development, or any portion of it, or that will impair Mortgagee's security under this Mortgage. Mortgagor shall not seek or cause any zoning reclassification with respect to the Development without Mortgagee's prior written consent, which consent may be withheld for any reason in Mortgagee's sole discretion.

C. Act and Regulations. Mortgagor agrees that at all times its acts regarding the Development shall be in conformance with the Act, the rules promulgated under the Act (the "Rules") and the regulations, policies and procedures of Mortgagee, and any applicable amendments to them; and the Housing and Community Development Act of 1992 as amended, and the Regulations. Mortgagor 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.

D. Representations, Warranties, and Agreements. Mortgagor agrees, warrants and represents to Mortgagee as follows:

(i) Mortgagor now has and hereafter shall maintain the standing, capacity, right, power and lawful authority to own its interests in the Development, to carry on the business of and operate the Development, to enter into, execute and deliver the Loan Documents to Mortgagee, to encumber the Development to Mortgagee as provided in this Mortgage and

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in the Loan Documents and to perform all of Mortgagor's obligations and consummate all of the transactions described in or contemplated by the Loan Documents.

(ii) The execution and delivery of, and performance by Mortgagor under, this Mortgage and the other Loan Documents does not and will not constitute a violation of any federal, state or local laws and does not and will not conflict with or result in a default, breach or acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which Mortgagor, or any part of the Development, is a party, or by which Mortgagor or any of the Development is bound, or any law or regulatory provision affecting Mortgagor or any part of the Development.

(iii) The various data and information relating to the Development and its operation and business, Member, Managing Member and Mortgagor, including, without limitation, the Construction Budget (as defined in the Loan Agreement), financial statements, books and records and operating statements, previously and from time to time hereafter delivered by or for Mortgagor to Mortgagee pursuant to the Loan Agreement or otherwise, are and shall be correct, complete and accurate in all material respects as of the date so delivered.

(iv) Mortgagor, Member, Managing Member and Master Tenant have timely filed, and at all times hereafter shall continue to timely file, all federal, state and other governmental tax and similar returns that they are required by any and all laws to file with respect to Mortgagor, Member, Managing Member, Master Tenant and the Development and its operation and business; all taxes and other sums that are shown to be due and payable under such returns as of the date this Mortgage have been fully paid, and, for such future returns, shall be fully paid when due and payable.

(v) Except as disclosed to Mortgagee in writing there are no suits, actions or proceedings at law or in equity or before any governmental instrumentality or agency now pending or, to the best of Mortgagor's knowledge after due and diligent inquiry, threatened in writing against Mortgagor, Member, Managing Member or Master Tenant, any of their respective assets, or the Development, that if determined adversely would materially impact the performance of the Mortgagor's, Member's, Managing Member's or Master Tenant's obligations under the Loan Documents.

(vi) Mortgagor now possesses and holds, and at all times hereafter shall maintain, adequate properties, interests in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Development as presently conducted on or as represented to Mortgagee by Mortgagor in the Letter, and none of the foregoing contains or shall contain any term or condition materially burdensome or materially different than those possessed or held by other parties conducting or operating a similar business.

(vii) No default or breach has occurred and at all times hereafter no default or breach will occur under any agreement, instrument or document for borrowed money by which either Mortgagor or the Development are or will be bound or obligated, that has not

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or will not be cured within the time specified for its cure.

(viii) The Development, will be constructed, as applicable, in accordance with the Plans and Specifications as approved by the Mortgagee, and is in full compliance with all zoning requirements (including as legally non-conforming) of the locality in which it is constructed (or will be once the construction is completed).

(ix) The location, existence and use of all of the Development is, and shall remain in, compliance with all applicable federal, state and local laws, and the Development is, and shall be, in compliance with all other laws, rules, ordinances and regulations, including, but not limited to, building, zoning (including legally non-conforming if applicable), health, safety, OSHA, fire and environmental laws and all covenants and restrictions of record affecting the Development in all material respects; in addition, the Development is not in a flood risk or flood plain area or in a federally designated flood hazard area.

(x) Except as disclosed by Mortgagor to Mortgagee in writing, all Leases at all times hereafter shall be genuine and in all respects what they purport to be, free of set-offs by tenants or defaults by the landlord, and will be are valid and enforceable in accordance with their terms. Except as previously disclosed to and approved in writing by Mortgagee, no payments under the Leases will be permitted to be made more than thirty (30) days in advance of the due date. The landlord and, to the best knowledge of Mortgagor after due and diligent inquiry, each tenant will have the capacity to contract under the Leases. The Leases will be described on the rent roll delivered by Mortgagor to Mortgagee and certified by Mortgagor as of the Final Closing Date and on each anniversary thereof thereafter (the "Rent Roll"). The Ground Lease, Master Lease, Leases for the rental units together with the lease for the approved commercial space will be the only agreements permitting the occupancy of any portion of the Development.

(xi) The Loan, the interest payable under the Note and interest rate on the Note, together with any and all fees, charges and other payments under this Mortgage, the Note and all other of the Loan Documents, are not in violation of any applicable statutes, case law, rules, regulations, ordinances or other governmental requirements, including, without limitation, applicable usury laws.

(xii) The Development shall be managed and operated at all times by Mortgagor or a management company approved in writing by Mortgagee. Mortgagor shall have no right to terminate any contract with any management company without first obtaining the prior written approval of Mortgagee, except as provided in the management agreement approved by Mortgagee.

(xiii) Mortgagor shall (A) take all actions within its control to keep in place the Mortgage Insurance provided by HUD under the Risk Sharing Program, (B) pay the mortgage insurance premiums for the Development in a timely manner, as provided in the Note and the Regulatory Agreement, and (C) deliver to Mortgagee such certifications and information as may be required under the Regulations.

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(xiv) Mortgagor, Member and Managing Member shall indemnify and hold Mortgagee harmless, to the full extent allowed by law, from and against any and all damages, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with (A) any claims for brokerage commissions or finders fees arising out of Mortgagor's conduct or alleged conduct or (B) any suit or proceeding, threatened, filed or pending, in or to which Mortgagee is or may become or may have to become a party by reason of or arising out of or on account of or in connection with the Secured Indebtedness, the Development or any of the Loan Documents; however, Mortgagor, Member and Managing Member shall not be required to either indemnify or hold Mortgagee harmless for any damages, losses, costs or expenses of Mortgagee resulting solely from the gross negligence or willful misconduct of Mortgagee. Upon demand by Mortgagee, Mortgagor, Member and Managing Member shall also defend Mortgagee in a matter set forth above with counsel either selected by Mortgagee or proposed by Mortgagor and approved in writing by Mortgagee.

(xv) Any and all improvements, fixtures, equipment and facilities comprising the Development will be, following construction of the Development, in good operating condition and repair and Mortgagor shall at all times thereafter maintain them, in good operating condition and repair, excluding ordinary wear and tear, and in accordance with the Loan Documents.

(xvi) Mortgagor will provide or cause to be provided such information concerning the Development, the financial condition of the Development, Mortgagor, Member, Managing Member and Master Tenant, as Mortgagee or HUD may request in writing from time to time, including, but not limited to, the information set forth in the Loan Agreement.

(xvii) Without limiting the effect of any of the foregoing, the covenants, representations, and warranties set forth in this Mortgage shall be continuing and shall remain true and correct until the lien of this Mortgage is released.

#### 4. Liens.

A. Prohibition. Subject to the provisions of **Paragraph 9** hereof, Mortgagor shall not, without the prior written consent of the Mortgagee, create or suffer or permit any encumbrances on the Development, excepting only (a) liens securing the Secured Indebtedness, (b) the lien of real estate taxes and assessments not due and payable, (c) the Permitted Exceptions, and (d) the Condominium Declaration.

B. Contest of Mechanic's Lien Claims. Notwithstanding the foregoing prohibition against liens, Mortgagor, or any party obligated to Mortgagor to do so, may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien and defer its payment and discharge of any such mechanic's lien during the pendency of such contest, so long as: (i) such contest has the effect of preventing the sale or forfeiture of the Development or any part of or interest in it, to satisfy such mechanic's lien; (ii) within ten (10) days after Mortgagor has notice of the filing of such mechanic's lien, Mortgagor has notified Mortgagee in writing of

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Mortgagor's intention to contest, or to cause another party to contest, it; and (iii) Mortgagor has obtained a title insurance endorsement over such mechanic's lien insuring Mortgagee against loss or damage in connection with it.

## 5. Taxes, Liens, Insurance--Coverage, Premiums and Deposits.

A. Payment. Mortgagor shall (i) pay or cause to be paid when due, and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Development or any part of or any interest in it, or any obligation or instrument secured by this Mortgage; and all installments of such fees, charges, taxes and assessments (collectively, "Taxes"), whether or not assessed against Mortgagor. Mortgagor shall furnish to Mortgagee paid receipts evidencing payment in full of such Taxes without demand or further request on or before the date they are due; and (ii) discharge any claim or lien relating to such Taxes upon the Development. Nothing in this section shall require Mortgagor to pay any income, franchise, or excise tax imposed upon the Mortgagee, excepting any such tax which may be levied against such income expressly as and for a specific substitute, in whole or in part, for Taxes, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest under this Mortgage.

B. Contest. Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any Taxes, provided that:

(i) such contest shall have the effect of preventing the collection of the Taxes so contested and the sale or forfeiture of the Development, or any part of or interest in it, to satisfy such taxes;

(ii) Mortgagor has notified Mortgagee in writing of its intention to contest such Taxes, or to cause them to be contested, before any Tax has been increased by any interest, penalties or costs; and

(iii) Mortgagor has deposited, or caused to be deposited, with either (a) the title insurance company that has issued the Title Policy (the "Title Company"), or (b) Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money, bond, letter of credit or other security that, when added to the monies or other security, if any, deposited with the Title Company or Mortgagee, is sufficient, in Mortgagee's judgment, to pay in full such contested Taxes and all penalties and interest that might become due on them; Mortgagor shall keep on deposit an amount sufficient, in Mortgagee's judgment, to pay in full such contested Taxes, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's judgment, such increase is advisable.

If Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as provided in this **Paragraph 5.B**, Mortgagee may, at its option and without prior notice to Mortgagor, apply the monies so deposited and liquidate any securities deposited with Mortgagee or the Title Company in payment of, or on account of, such Taxes, or

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any portion of them then unpaid, including all penalties and interest. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest on them, Mortgagor shall immediately, upon demand by Mortgagee, either (i) deposit with Mortgagee a sum that, when added to other funds then on deposit for the same purpose, is sufficient to make such payment in full; or (ii) if Mortgagee has applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Mortgagee. Provided that no Default (as defined in **Paragraph 11** hereof) occurs or then exists, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such Taxes, apply or cause to be applied the money so deposited in full payment of such Taxes or that part of them then unpaid, together with all penalties and interest. If any of the funds deposited with Mortgagee or the Title Company remain after full and complete resolution of such contest and the payment of such Taxes, penalties and interest, and any costs of Mortgagee or the Title Company incurred in connection with such Taxes, such remaining funds shall be returned to Mortgagor if no Default occurs or then exists.

C. Change in Tax Laws. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Development, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by such law. If any law, statute, rule, regulation, order or court decree has the effect of (i) imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor or (ii) changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Development, or the manner of collection of taxes, so as to affect this Mortgage, the Secured Indebtedness, Mortgagee or any of the other Loan Documents; then, and in any such event, Mortgagor, upon demand by Mortgagee, shall either pay such taxes or reimburse Mortgagee for them on demand. However, if Mortgagee determines, in Mortgagee's reasonable judgment, that such payment or reimbursement by Mortgagor is unlawful, the Secured Indebtedness shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor.

D. Insurance Coverage. Mortgagor shall insure the Development against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, including, without limitation, comprehensive public liability, hazard, builder's risk, rent loss, business interruption, steam boiler, machinery and flood insurance (if applicable); Mortgagor shall continuously maintain such insurance policies, to the extent such insurance policies are, in Mortgagee's judgment, reasonably applicable to the character of the Development. Mortgagee may, at any time upon written notice to Mortgagor, require that Mortgagor procure substitutes for any and all of such insurance policies, such other or additional insurance policies, in such amounts, and carried in such companies, as are reasonably acceptable to Mortgagee. If Mortgagor fails to procure such acceptable substitutes within five (5) business days after Mortgagee's written demand, Mortgagee may procure substitutes itself, and all fees, costs and expenses incurred by Mortgagee in connection such procurement shall be paid, upon demand, by Mortgagor, together with interest on such payments at the Default Rate (as defined in the Note).

E. Insurance Policies. All insurance policies shall conform to the standards set forth in this Mortgage and the Loan Agreement and shall be in such form and amounts, and written

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by such insurance companies, as are satisfactory to Mortgagee. All insurance policies insuring against casualty, rent loss and business interruption and other appropriate policies shall include non-contributing mortgage endorsements in favor of and with loss payable to Mortgagee, as its interest may appear as the holder of this Mortgage, as well as standard waiver of subrogation endorsements. All of such insurance policies shall provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee and shall provide that all claims shall be paid to Mortgagee. Mortgagor shall deliver all insurance policies (or certified copies of them), premiums prepaid for a minimum term of one (1) year from their date, to Mortgagee and, in case of insurance policies about to expire, Mortgagor shall deliver renewal or replacement policies not less than thirty (30) days prior to their date of expiration, exclusive of any grace period provided in the policy or by law. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form, or contributing in the event of loss, with the previously mentioned insurance policies.

F. Deposits for Taxes and Insurance Premiums. To assure the payment of Taxes and premiums for insurance policies as and when they become due and payable:

(i) On or before the Final Closing Date, Mortgagor shall deposit with Mortgagee the sum of (i) \$128,414.00 for payment of real estate taxes on the Development (the "Initial Tax Deposit") and (ii) \$53,550 for payment of insurance policies, which Mortgagee shall deposit in the Tax and Insurance Reserve Account for the Development (as defined in the Loan Agreement). Commencing on the first day of the first month after the Final Closing Date, Mortgagor shall deposit with Mortgagee on the first business day of each and every month for deposit into the Tax and Insurance Reserve Account, monthly payments (the "Tax and Insurance Deposit") in an amount sufficient such that (x) as of the first (1<sup>st</sup>) day of the month before each installment of real estate taxes is due, there shall be on deposit in the Tax and Insurance Reserve Account for real estate taxes an amount equal to one half (1/2) of one hundred five percent (105%) of the real estate tax bill for the Development for the previous calendar year, or such other amount as Mortgagee shall determine, in its reasonable discretion; (y) monthly payments in an amount sufficient such that as of the first (1<sup>st</sup>) day of the month before the PILOT is due, there shall be on deposit in the real estate tax subaccount of the Tax and Insurance Reserve Account an amount sufficient to pay the PILOT (such monthly payments are collectively the "Real Estate Tax Escrow Deposits") and (z) monthly payments (the "Insurance Escrow Deposit") in an amount sufficient such that as of the first (1<sup>st</sup>) day of the month before the insurance bill is due, there shall be on deposit in the insurance subaccount of the Tax and Insurance Reserve Account for insurance an amount equal to one hundred five percent (105%) of the insurance bill for the Development for the previous calendar year, or such other amount as Mortgagee shall determine, in its reasonable discretion. Mortgagor shall promptly, upon the demand of Mortgagee, make additional Tax and Insurance Deposits as Mortgagee may from time to time require due to (a) failure of Mortgagee to require, or failure of Mortgagor to make, Tax and Insurance Deposits in previous months, (b) underestimation of the amounts of Taxes, insurance premiums or both of them, (c) the particular due dates and amounts of Taxes, insurance premiums or both of them, (d) application of the Tax and Insurance Deposits pursuant to this Mortgage, or (e) the real estate tax subaccount of the Tax and Insurance Reserve Account contains less than the required minimum balance in the amount

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of the Initial Tax Deposit. Tax and Insurance Deposits may be commingled with other funds of Mortgagee within Mortgagee's Reserve Account pursuant to the terms of the Loan Agreement.

(ii) Mortgagee, upon the presentation to Mortgagee of (a) the bills for the Taxes, will pay them out of the Tax and Insurance Reserve Account, provided that the Tax and Insurance Deposits are sufficient to pay such amounts, and (b) the bills for the insurance premiums, will pay them out of the Tax and Insurance Reserve Account, provided that the Tax and Insurance Deposits are sufficient to pay such amounts. Alternatively, upon presentation to the Mortgagee of receipted bills for the Taxes or Insurance, or an invoice from the CHA for the PILOT, Mortgagee will reimburse Mortgagor for such payments made by Mortgagor or in the case of the PILOT will release funds to Mortgagor for the payment to be made to the CHA for the RAD Units that qualify for the PILOT. If the amount of the Tax and Insurance Deposits on hand is not sufficient to pay or reimburse all of the Taxes, PILOT or Insurance when they become due, then Mortgagor shall pay to Mortgagee, on demand, the amount necessary to make up the deficiency.

(iii) Upon the occurrence and continuance of a Default, Mortgagee may, at its option, without being required so to do, apply any funds in the Tax and Insurance Reserve Account on hand to any of the Secured Indebtedness, in such order and manner as Mortgagee may elect. All funds in the Tax and Insurance Reserve Account are pledged as additional security for the Secured Indebtedness (and for such purpose, Mortgagor grants to Mortgagee a security interest in them), and shall be held by Mortgagee, and shall not be subject to the direction or control of Mortgagor.

(iv) Notwithstanding anything contained in this Mortgage to the contrary, Mortgagee, or its successors and assigns, shall not be liable for any failure to apply the Tax and Insurance Deposits unless Mortgagor, while no Default exists, has requested Mortgagee in writing to apply such Tax and Insurance Deposits on hand to the payment of the Taxes, accompanied by the bills for such Taxes.

(v) The provisions of this Mortgage are solely for the benefit of Mortgagee, and its successors and assigns and the holders of the indebtedness for the payment of which this Mortgage is pledged as security. No provision of this Mortgage shall be construed as creating in any party other than Mortgagor, Mortgagee, its successors and assigns, and such holders any rights in and to funds in the Tax and Insurance Reserve Account or any rights to have funds in the Tax and Insurance Reserve Account applied to payment of the Taxes and insurance premiums. Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

G. Application of Proceeds of Insurance. In the case of loss or damage by fire or other casualty, Mortgagor is authorized to settle and adjust any claim under insurance policies that insure against such risks, subject to the approval of Mortgagee. If at the time of loss or damage there exists a Default, or a default that, with the passage of any applicable cure or grace period, would become a Default, Mortgagee is authorized to settle and adjust any claim under insurance policies that insure against such risks. Mortgagee is authorized to collect and issue a receipt for



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any such insurance money. Such insurance proceeds shall be held by Mortgagee and may be used in Mortgagee's sole and absolute discretion to pay the outstanding balance of the Loan or to pay directly or reimburse Mortgagor for the cost of the rebuilding of buildings or improvements on the Development, at Mortgagee's sole discretion; provided, however, Mortgagee shall not exercise its discretion to apply insurance proceeds to the payment of the outstanding principal balance of the Loan if all of the following conditions are met: (i) no Default (or any event which, with the giving of notice or the passage of time, or both, would constitute a Default) has occurred and is continuing; (ii) Mortgagee determines, in its reasonable discretion, that there will be sufficient funds to complete the rebuilding (and complete construction of the Project in accordance with the Loan Agreement and the Plans and Specifications, as defined therein, if such construction has not been completed at such time); (iii) Mortgagee determines, in its discretion, that the net operating income generated by the Development after completion of the restoration, repair or rebuilding of the Development will be sufficient to meet all operating costs and other expenses, Reserve Accounts, deposits to reserves and loan repayment obligations relating to the Development; (iv) Mortgagee determines, in its discretion, that the Restoration will be completed before the earlier of (A) after the Final Closing Date, one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (v) upon Mortgagee's request, Mortgagor provides Mortgagee evidence of the availability, during and after the restoration, repair or rebuilding of the Development, of the insurance required to be maintained pursuant to this Mortgage. If such proceeds are used to rebuild the buildings or improvements, whether or not such insurance proceeds are adequate for such purpose or allowed for such purpose, the Development shall be restored, repaired or rebuilt by Mortgagor so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the estimated or actual cost of completion exceeds the amount of the insurance proceeds available, Mortgagor shall, within ten (10) days following written demand of Mortgagee, deposit with Mortgagee in cash the amount of such estimated excess cost. If the cost of rebuilding, repairing or restoring the Development can reasonably be expected to exceed the sum of Fifty Thousand and No/100 Dollars (\$50,000.00), then Mortgagor shall obtain the written consent of Mortgagee to the plans and specifications of such work before such work is begun. In any case where the insurance proceeds are made available for restoration, repairing and rebuilding, such proceeds shall be disbursed in the manner and under the conditions that Mortgagee may require, provided Mortgagee is furnished with (i) satisfactory evidence of the estimated cost of completion of such work and (ii) architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed in connection with such work are free and clear of mechanics' lien or other lien claims, other than those contested in accordance with this Mortgage. No payment made prior to the final completion of the work performed shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. Any surplus that may remain out of the insurance proceeds after payment of costs of rebuilding, repairing or restoring the Development shall, at the option of Mortgagee, be applied toward the Secured Indebtedness or be paid to any party entitled to it, without interest. Any additional monies advanced by Mortgagee to Mortgagor for the repairing, rebuilding or restoring of the Development shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

## 6. Condemnation and Eminent Domain.

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Mortgagor shall give Mortgagee immediate notice of the actual or written threatened commencement of any condemnation or eminent domain proceedings ("Proceedings") affecting all or any part of the Development and shall deliver to Mortgagee copies of any and all papers served in connection with any such Proceedings. Mortgagor further agrees to make, execute and deliver to Mortgagee, at any time upon request, free, clear and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards (individually, "Award") and other compensation previously and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such Proceeding. If any portion of or interest in the Development is taken by condemnation or eminent domain, either temporarily or permanently, and the remaining portion of the Development is not, in the judgment of Mortgagee, a complete economic unit having substantially equivalent value to the Development as it existed prior to the taking (proportionately adjusted for the taking), then, at the option of Mortgagee, the entire Secured Indebtedness shall immediately become due and payable. If, in Mortgagee's judgment, any temporary or partial taking of the Development, or any interest in it, leaves the Development as a complete economic unit having substantially equivalent value to the Development as it existed prior to the taking, then the Award shall be applied in the same order and manner as insurance proceeds.

7. **Prepayment.** Commencing on the Final Closing Date and continuing until the tenth (10<sup>th</sup>) anniversary of the Commencement of Amortization Date (as defined in the Note; the "Lockout Date"), the Loan shall not be prepayable in whole or in part, except for any prepayment as a result of casualty or condemnation proceeds or due to the Adjustment Amount. After such Lockout Date, the Loan shall be prepayable in whole only (except for any partial repayment as a result of casualty/condemnation proceeds not used for rebuilding or due to the Adjustment Amount). In the event of any prepayment, Mortgagor shall provide written notice to the Mortgagee at least forty-five (45) days in advance of the proposed prepayment date and must make such prepayment with interest through the last day of the month. Further, in the event of any prepayment, Mortgagor shall comply with Section 8.1 of the Act and the Rules.

## 8. **Mortgagee's Performance of Mortgagor's Obligations**

If a Default occurs and continues to exist after the applicable cure period has expired, Mortgagee, either before or after acceleration of the Secured Indebtedness or the foreclosure of the lien of this Mortgage, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act required of Mortgagor under this Mortgage in any form and manner deemed reasonably expedient to Mortgagee. Mortgagee may, but shall not be required to, rent, operate, and manage the Development and pay operating costs and expenses, including management fees, of every kind and nature in connection with the Development, so that the Development is operational and usable for its intended purposes. All such monies paid by Mortgagee, and all expenses paid or incurred by Mortgagee, including reasonable attorneys' fees to the extent permitted by applicable law, and other monies advanced by Mortgagee to protect the Development and the lien of this Mortgage, or to complete the construction, furnishing and equipping of, to rent, operate or manage the Development, to pay any such operating costs and expenses or to keep the Development operational and usable for its intended purposes, shall be set

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much additional Secured Indebtedness, whether or not the Secured Indebtedness, as a result of such payments, exceeds the face amount of the Note. All such payments shall become immediately due and payable on demand, and shall bear interest at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default, nor shall the provisions of this **Paragraph 8** or any exercise by Mortgagee of its rights under this **Paragraph 8** prevent any default from constituting a Default. Mortgagee, in making any payment authorized by this **Paragraph 8 (a)** relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of the construction, furnishing or equipping of the Development or the rental, operation, management or payment of operating costs and expenses of the Development, may do so in such amounts and to such persons as Mortgagee may deem appropriate, subject to the terms and conditions of the Loan Agreement. Nothing contained in this Mortgage shall be construed to require Mortgagee to advance or expend monies for any purpose mentioned in this **Paragraph 8**.

## 9. Security Agreement.

Mortgagor and Mortgagee agree that this Mortgage shall constitute a security agreement within the meaning of the Code with respect to (i) any and all sums at any time on deposit for the benefit of, or held by, Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage and (ii) any personal property included in the granting clauses of this Mortgage that may not be deemed to be affixed to the Development or that may not constitute a "fixture" within the meaning of Section 9-102(a)(41) of the Code, and all replacements, additions to and proceeds of such property (all of such property, the replacements, substitutions and additions to it and the proceeds of it are sometimes collectively referred to in this Mortgage as the "Collateral"). Mortgagor grants a security interest in and to the Collateral to Mortgagee, and assigns all of its rights, title and interest in it to Mortgagee to secure payment of the Secured Indebtedness. To the extent permitted by applicable law and in accordance with the provisions set forth below, the security interests created by this **Paragraph 9** are specifically intended to cover and include all of the Leases and the rents due under them, including, without limitation, all extensions, amendments, renewals or replacement of them, together with all of the rights, title and interest of Mortgagor, as lessor under the Leases. Such rights, title and interest shall include, without limitation, the present and continuing right to (i) make claim for, (ii) bring actions and proceedings for the enforcement of, and (iii) collect, receive and receipt for any and all of, the rents, income, revenues, issues, profits, monies payable as damages, monies payable in place of the rent, monies payable as the purchase price of the Development or any part of any of the foregoing, and all awards and other claims for money and other sums of money payable or receivable under any of the Leases or with respect to the Development and (iv) the right to do any and all things that Mortgagor or any lessor is or may become entitled to do under the Leases. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Development; the following provisions of this **Paragraph 9** shall be in addition to, and shall not limit the applicability of any other provision of, this Mortgage:

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(a) The terms and provisions contained in this **Paragraph 9** shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code;

(b) Mortgagor (the “Debtor,” as that term is used in the Code) is and will be the true and lawful owner of the Collateral; subject to no liens; charges or encumbrances other than the lien of this Mortgage, the Permitted Exceptions and the Condominium Declaration;

(c) The Collateral is to be used by Mortgagor solely for business purposes;

(d) The Collateral will be kept at the Development, and, except for obsolete Collateral, will not be removed from the Development without the consent of Mortgagee (the “Secured Party” as that term is used in the Code). The Collateral may be affixed to the Real Estate but shall not be affixed to any other real estate;

(e) The only person or entity presently having any security interest in the Development and the Collateral is Mortgagee and the holders of other liens approved as Permitted Exceptions;

(f) No financing statement (other than financing statements (i) showing Mortgagee as the secured party, or (ii) with respect to liens or encumbrances, if any, resulting from the Permitted Exceptions covering any of the Collateral or any proceeds of it) is on file in any public office except pursuant to this Mortgage. Mortgagor shall, at its own cost and expense, (i) upon demand, furnish to Mortgagee such further information, (ii) execute and deliver to Mortgagee such financing statements and other documents, in form satisfactory to Mortgagee and (iii) do all such acts and things, all as Mortgagee may at any time and from time to time request, or as may be necessary or appropriate, in the discretion of Mortgagee, to establish and maintain a perfected security interest in the Collateral as security for the Secured Indebtedness, subject to no other liens or encumbrances except the Permitted Exceptions (and the Condominium Declaration). Mortgagor shall pay the cost of filing or recording such financing statements or other documents and this Mortgage in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable;

(g) Upon the occurrence and continuance of a Default, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral or any part of it, and for that purpose may, so far as Mortgagor can give authority for such actions, with or without judicial process enter (if this can be done without breach of the peace) upon any place where the Collateral or any part of it may be situated and remove it (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale until disposed of, or may propose to retain the Collateral subject to Mortgagor’s right of redemption in satisfaction of Mortgagor’s obligations, as provided in the Code. Mortgagee may (i) render the Collateral unusable without removal, (ii) dispose of the Collateral on the Development or (iii) require Mortgagor to make it available to Mortgagee for its possession at a place to be designated by Mortgagee that is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale

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or any other intended disposition of it is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or its equivalent, postage prepaid, to the address of Mortgagor set forth in Exhibit B hereof at least ten (10) days before the time of the sale or disposition. Mortgagee may buy the Collateral at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type that is the subject of widely distributed standard price quotations, may buy it at any private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Development; and the Development, including the Collateral, may be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the legal expenses and reasonable attorneys' fees incurred by Mortgagee, shall be applied against the Secured Indebtedness in such order or manner as Mortgagee may elect. Mortgagee will account to Mortgagor for any surplus realized on such disposition; and

(b) This Mortgage is intended to be a financing statement within the purview of the Code with respect to both the Collateral and the other property described in this Mortgage that are or may become fixtures relating to the Development. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in this Mortgage. This Mortgage is to be filed for record with the Recorder of Deeds of the county in which the Development is located. Mortgagor is the record owner of the Real Estate.

## **10. Limitations on Sale, Assignments, Transfers, Encumbrances and Control.**

(a) Mortgagor acknowledges and agrees that in determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor in owning and operating property such as the Development, found them acceptable and relied and continues to rely upon them as the means of maintaining the value of the Development, which is Mortgagee's primary security for the Note. Mortgagor is experienced in borrowing money and owning and operating property such as the Development, has been ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including the provisions of this **Paragraph 10**. Mortgagee is entitled to keep its loan portfolio at current interest rates, by, among other things, making new loans at such rates. Mortgagor further recognizes that any further financing placed upon the Development, other than the Construction Loan and the Junior Loans (as defined in the Loan Agreement), (i) could divert funds that would otherwise be used to pay the Secured Indebtedness, (ii) could result in acceleration and foreclosure of such further encumbrance, which would force Mortgagee to take measures and incur expenses to protect its security under this Mortgage, the Loan Documents or otherwise, (iii) would detract from the value of the Development should Mortgagee come into possession of it with the intention of selling it and (iv) would impair Mortgagee's right to accept a deed in lieu of foreclosure, because a foreclosure by Mortgagee would be necessary to clear the title to the Development.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security for the repayment of the Loan, the value of the Development, the payment of the Secured Indebtedness and the performance of Mortgagor's obligations under the Loan Documents; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) keeping the Development free of subordinate financing liens, other than the Permitted Exceptions, Mortgago:

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agrees that if this **Paragraph 10** is deemed a restraint on alienation, it is a reasonable one. Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, consent to, suffer or permit any "Prohibited Transfer" (as hereinafter defined). A "Prohibited Transfer" shall include any sale or other conveyance, transfer, lease or sublease, mortgage, refinancing, assignment, pledge, grant of a security interest, grant of any easement, license, or right-of-way affecting the Development, any hypothecation or any other encumbrance of the Development, any interest in the Development, or any interest in Mortgagor's or Master Tenant's interest in the Development, or any interest in Mortgagor, in each case whether any such Prohibited Transfer is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise, including, but not limited to, the entering into of any contract of sale, installment sale or sale under articles of agreement, the placement or granting of liens or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements that would be, or could create, a lien, the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, on any of the following properties, rights or interests without the prior written consent of Mortgagee. However, Mortgagor may, without the prior written approval of Mortgagee:

- (i) grant easements, licenses or rights-of-way over, under or upon the Development, so long as such easements, licenses or rights-of-way do not materially diminish the value or usefulness of the Development;
- (ii) when and to the extent authorized by law, lease the Development, or a portion of it, to a third party for the purposes of operating it; any such lease shall be subject to all of the terms, provisions and limitations of this Mortgage relating to the Development;
- (iii) sell or exchange any portion of the Real Estate not required for the Development, provided that the proceeds derived by Mortgagor from the sale of any such Real Estate shall be, at the option of Mortgagee, paid over to Mortgagee and applied by Mortgagee to reduce the Secured Indebtedness; and
- (iv) sell, transfer or exchange any of membership interests of Mortgagor, Member, Managing Member, or Master Tenant that are not or does not have a controlling or management interest in any of these entities.

Mortgagee's written approval as required in this **subparagraph 10(a)** shall be granted, conditioned or withheld as Mortgagee alone shall determine. The burden of proof concerning reasonableness or delay shall be on Mortgagor.

(b) In addition to the matters set forth above, any sale, conveyance, assignment, pledge, hypothecation or other transfer of all or any part of:

- (i) any right to manage or receive the rents and profits from the Development;

or

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(ii) any general partnership, managing member, stock ownership interest or other interest in an entity or person comprising Mortgagor under this Mortgage, including, but not limited to the Member, and Managing Member, and any general partnership, managing membership interest, stock ownership interest or other interest in an entity or person comprising Master Tenant under this Mortgage and including, but not limited to all of Master Tenant's controlling and managing members (but excluding Investor Member); except (i) for a sale or transfer of any non-managing, non-controlling interest in such entity, (ii) due to the foreclosure of a security interest in the Member, Managing Member or Master Tenant by a lender, or (iii) the removal of Member or Managing Member for cause in accordance with Mortgagor's Amended and Restated Operating Agreement ("Operating Agreement"), provided Mortgagor sends Mortgagee written notice of such removal; or (iv) the removal of the managing member of the Master Tenant in accordance with the Master Tenant's operating agreement, provided Mortgagor sends Mortgagee written notice of such removal; further provided that Mortgagor shall obtain the prior written consent of Mortgagee to any replacement Member, Managing Member and/or managing member of Master Tenant removed in accordance with the foregoing provision, which consent shall not be unreasonably withheld, provided that the Investor Member or an entity owned or controlled by, or under common control with the Investor Member may act as a temporary replacement Member (or Managing Member, as applicable) during any interim period between removal of the Member (or Managing Member, as applicable) and approval of a permanent replacement Member (or Managing Member, as applicable) by Mortgagee, provided, however, that (x) any such interim period shall not exceed ninety (90) days and (y) that a new guarantor satisfactory to the Mortgagee is provided;

shall be deemed a sale, conveyance, assignment, hypothecation or other transfer for the purposes of the restrictions imposed by the foregoing **subparagraph 10(a)**. Furthermore, Mortgagor shall not, without the prior written consent of Mortgagee, permit the transfer of "control" of the Development to any other person or legal entity. For the purposes of the foregoing sentence, the term "control" shall mean the power to direct or cause the direction of the management and policies of the Development by the voting of securities or by contract.

Notwithstanding anything in this Mortgage to the contrary, Mortgagor shall have the right, subject to Mortgagee's prior written approval, which shall not be unreasonably withheld, to sell the Development and assign this Mortgage and Mortgagor's right, title and interest in the other Loan Documents to another owner-mortgagor of the Development (including the Managing Member), but subject to any restrictions, limitations and/or requirements under the Regulations or other applicable laws, statutes, orders, rules and regulations that govern the Development, as applicable. In the event of a sale or other transfer of the Development, all of the duties, obligations, undertakings and liabilities of Mortgagor or other transferor (the "Transferor") under the terms of this Mortgage shall thereafter cease and terminate as to the Transferor, except as to any acts or omissions or obligations to be paid or performed by the Transferor that occurred or arose prior to such sale or transfer. As a condition precedent to the termination of the liability of the Transferor under this Mortgage, the transferee of the Development (a "New Mortgagor"), as a condition precedent to its admission as a New Mortgagor, shall assume in writing, on the same terms and conditions as apply to the Transferor, all of the duties and obligations of the Transferor arising

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under this Mortgage from and after the date of such sale or transfer. Such assumption shall be in form and substance acceptable to the Mortgagee. Any such New Mortgagor shall not be obligated with respect to matters or events that occur or arise before its admission as a New Mortgagor. The assumption transaction and any documents pertaining to it deemed necessary by Mortgagee shall be in form and substance satisfactory to Mortgagee.

The provisions of this **Paragraph 10** shall not apply to (i) the liens of the Construction Loan nor the liens of the Junior Loans and their respective Restrictive Agreements (as defined in the Loan Agreement) during the term of such loans, (ii) the lien of current taxes and assessments not yet due or payable, (iii) liens or encumbrances specifically permitted by, or contested in accordance with, the terms of this Mortgage, (iv) residential leases of individual units of the Development entered into in the ordinary course of business, if such leases have been entered into in conformity with any applicable regulatory agreement, (v) the Permitted Exceptions, (vi) Tax Regulatory Agreement, (vii) IHDA Regulatory Agreement of even date herewith; (viii) RAD Use Agreement (ix) that certain Low Income Housing Tax Credit Extended Use Agreement executed by and between Mortgagor and Mortgagee in connection with the allocation of low-income housing tax credits to the Development by Mortgagee in its capacity as the State Housing Credit Agency, (x) the Ground Lease, (xi) the Master Lease, (xii) the CHA Right of First Refusal, and (xiii) the Condominium Declaration, are permitted under this Mortgage and said documents shall be deemed Permitted Exceptions hereunder. If Mortgagee consents to a transfer that, without such consent, would be a Prohibited Transfer, as a condition to such consent, the transferee must have obtained the approval of HUD (so-called "230 clearance") and shall assume, in writing, each and every of the Loan Documents and each and every of the obligations under them that are to be performed and observed by Mortgagor. The foregoing assumption shall be accomplished with such documentation as may be reasonably required by Mortgagee and shall, if required by Mortgagee, be in recordable form. Any consent by Mortgagee or any waiver of any condition or Default under this **Paragraph 10** shall not constitute a consent to, or waiver of, any right, remedy or power of Mortgagee upon a subsequent Default. Mortgagor acknowledges that any agreements, liens or encumbrances created in violation of the provisions of this **Paragraph 10** shall, at the option of Mortgagee, constitute a Default, and be voidable, and if Mortgagee exercises its option to void such agreement, lien or encumbrance, it shall be void ab initio and be of no further force or effect; to the extent the provisions of this **Paragraph 10** conflict with or are inconsistent with similar provisions of the Note or any of the other Loan Documents, the provisions of this **Paragraph 10** shall govern and control.

## **10A. Acknowledgment of Secured Indebtedness.**

Mortgagor, within five (5) business days from the receipt of written notice from Mortgagee, shall furnish to Mortgagee a written statement, duly acknowledged, of the amount advanced to it which is secured by this Mortgage, and the amount due to Mortgagee in order to release this Mortgage, and whether any offsets or defenses exist against the Secured Indebtedness.

## **10B. Assignment of Rents and Leases.**

As additional security for the payment of the Note, and for the faithful performance of the terms and conditions of this Mortgage, Mortgagor assigns to Mortgagee all of its right, title and



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interest as landlord in all current and future leases of the Development (the "Leases") and to any rents due and Mortgagor's rights in all security deposits (held by Mortgagor) under the Leases (the "Assignment"); provided that the assignment of the Master Lease will be addressed by the Master Lease Assignment. Notwithstanding anything in this Mortgage to the contrary, so long as there exists no Default, Mortgagor shall have the right to collect all rents, security deposits, income and profits from the Development and to retain, use and enjoy them.

Nothing in this Mortgage or any of the other Loan Documents shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the Leases (except and until Mortgagee exercises its rights to enter onto and take possession of the Development), or to pay any sum of money or damages that the Leases require the landlord to pay. Mortgagor agrees to perform and pay each and all of such covenants and payments.

From and after a Default, Mortgagee, in addition to the remedies set forth in **Paragraph 11** hereof, is vested with full power to use all measures, legal and equitable, it deems necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned under this Mortgage. Such power shall include the right of Mortgagee or its designee to enter upon the Development, or any part of it, with power to eject or dispossess tenants, subject to applicable law, including the RAD Use Agreement and the Low Income Housing Tax Credit Extended Use Agreement, and to rent or lease any portion of the Development on any terms approved by Mortgagee, and take possession of all or any part of the Development together with all personal property, fixtures, documents, books, records, papers and accounts of Mortgagor relating to it, and to exclude Mortgagor, its agents, and servants wholly from it. Mortgagor grants full power and authority to Mortgagee to exercise all rights, privileges and powers granted by this Assignment at any and all times from and after such Default, with full power to use and apply all of the rents and other income granted by this Assignment to the payment of the costs of managing and operating the Development and of any indebtedness or liability of Mortgagor to Mortgagee. Such costs shall include, but are not limited to, the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Development or of making it rentable, reasonable attorneys' fees incurred in connection with the enforcement of this Mortgage, and of principal and interest payments due from Mortgagor to Mortgagee on the Note and the Mortgage, all in such order as Mortgagee may determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it under this **Paragraph 10B** or to perform or carry out any of the obligations of the landlord under any of the Leases, and Mortgagee does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the Leases until Mortgagee forecloses the Mortgage, or acquires title to the Development through deed in lieu of foreclosure, and takes physical possession of the Development. Mortgagor agrees to indemnify Mortgagee and to hold it harmless from any liability, loss or damage, including, without limitation, reasonable attorneys' fees, that Mortgagee may incur under the Leases or by reason of this Assignment and from any and all claims and demands whatsoever that may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, except for those liabilities, losses or damages that occur due to Mortgagee's gross negligence or willful misconduct or in connection with Leases entered into by Mortgagee. Mortgagee shall not be responsible for the control, care, management or repair of the Development, or parts of it, nor shall Mortgagee be liable for the

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performance of any of the terms and conditions of any of the Leases, or for any waste of the Development by any tenant under any of the Leases or by any other person, or for any dangerous or defective condition of the Development or for any negligence in the management, upkeep, repair or control of the Development resulting in loss or injury or death to any lessee, licensee, employee or stranger until such time as Mortgagee forecloses the Mortgage and takes physical possession of the Development. Mortgagee shall be responsible and liable only for its own actions or omissions occurring after such foreclosure and possession.

## 11. Defaults.

An event of default (individually, a "Default") shall be deemed to have occurred and exist if one or more of the following events occurs, and is not cured within any applicable cure or grace period:

A. Mortgagor fails to pay any installment of interest or principal on the Note within ten (10) days of the date such payment is due (including any prepayment by acceleration or otherwise) or Mortgagor fails to pay any other amount due pursuant to this Mortgage or any of the other Loan Documents as and when such amounts become due and payable, including, without limitation, any installment of (i) Mortgagee's servicing fee payable under the Note (as such amount is included in the Interest Rate), (ii) the mortgage insurance premiums payable under the Risk Sharing Program (as such amount is included in the Interest Rate) and (iii) the Adjustment Amount;

B. Any other event of default occurs under any of the Loan Documents (as set forth and defined in such Loan Document) that is not cured as provided in such Loan Document; however, for non-monetary defaults under the Loan Documents, where a grace or cure period is not otherwise provided or prohibited, Mortgagor shall have thirty (30) days after written notice of such default to cure such defaults, or such other period as Mortgagee may permit in writing, in its sole discretion; however, if such default is incapable of being cured within such thirty (30) days, Mortgagor shall have up to one hundred twenty (120) additional days to cure such default, in the sole discretion of Mortgagee, so long as (i) that cure is commenced within such thirty (30) day period, (ii) Mortgagor continues to diligently pursue such cure in good faith and (iii) Mortgagee's security for the Loan is not, in the sole judgment of Mortgagee, impaired as a result of the existence of such default;

C. Mortgagor, Member, Managing Member or Master Tenant fails to comply with, keep or perform any of its respective terms, obligations, agreements, undertakings, covenants, conditions or warranties under the terms of this Mortgage, the Note, the Loan Agreement, the other Loan Documents, or any of them, or any other document or instrument executed and delivered by the Member, the Managing Member, the Master Tenant, or Mortgagor in connection with the Loan and such failure continues after required notice, if any, and the expiration of any applicable grace or cure period. If such failure (i) is a failure to keep or perform any of Mortgagor's, Member's, Managing Member's or Master Tenant's respective non-monetary obligations, agreements, undertakings, covenants or conditions under this Mortgage, (ii) continues for thirty (30) days after written notice of it to Mortgagor, Member, Managing Member or Master Tenant, as the case may be, and (iii) is incapable of being cured within such thirty (30) days, then

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Mortgagor, Member, Managing Member or Master Tenant, as the case may be, shall have one hundred twenty (120) additional days to cure such default so long as Mortgagor, Member, Managing Member or Master Tenant, as the case may be, (i) begins such cure within the thirty (30) day period, (ii) continues to diligently pursue such cure in good faith and (iii) Mortgagee's security for the Loan is not, in the sole judgment of Mortgagee, impaired as a result of the existence of such failure. Upon the expiration of such thirty (30) day or one hundred twenty (120) day period, as applicable, a Default shall exist.

D. Mortgagor fails to comply with (or to bond or indemnify Mortgagee to its satisfaction with regard to) any requirement of any governmental authority having jurisdiction over the Development (including, without limitation, compliance with all applicable zoning (or is legally non-conforming if applicable), building, health, fire, flood, and environmental laws, statutes, orders, rules, regulations and ordinances) within thirty (30) days after Mortgagor has notice of such requirement, or earlier if required by such governmental authority;

E. If any representation, warranty, covenant, or statement made by or on behalf of Mortgagor, Member, Managing Member or Master Tenant, as the case may be, in the Mortgage, in any other Loan Document, or in any other document or instrument furnished in connection with, pertaining to, or evidencing or securing the Loan shall prove, in Mortgagee's reasonable judgment, to be false or misleading in any material adverse respect when made or deemed remade;

F. The occurrence of a Prohibited Transfer;

G. If:

(i) Mortgagor, Member, Managing Member, Master Tenant or CHA, either files a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect; or admits or files an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature; or is adjudicated bankrupt or shall have an order for relief entered in respect of such party by any bankruptcy court; or makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due or consents to the appointment to a custodian, receiver or trustee or liquidator of all or the major part of its property or the Development;

(ii) within sixty (60) days after the filing against any of Mortgagor, Member, Managing Member, Master Tenant or CHA, of any involuntary proceeding under the federal Bankruptcy Code or similar law, state or federal, now or hereafter in effect, such proceedings have not been dismissed; or

(iii) all or a substantial part of the assets of any of Mortgagor, Member, Managing Member, Master Tenant or CHA are attached, seized, subjected to a writ or distress warrant, or are levied upon, and such attachment, seizure, writ, warrant or levy is not vacated within sixty (60) days; or any order appointing a custodian, receiver, trustee or liquidator of any of Mortgagor, Member, Managing Member, Master Tenant or CHA or

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all or a major part of any of their respective property or the Development is not vacated within sixty (60) days; or

(iv) Mortgagee deems itself insecure in its reasonable discretion, in good faith, by reason of the occurrence of an adverse change in the financial condition of any of Mortgagor, Member, Managing Member, Master Tenant, or otherwise, which change, in Mortgagee's reasonable judgment, may affect the ability of any of them to perform their respective obligations under this Mortgage and the other Loan Documents;

H. Mortgagor fails to deposit, within the time period specified, or if no time period is specified, within ten (10) days of receipt of Mortgagee's written request, funds or other security required by Mortgagee as mortgagee under the terms of the Mortgage or pursuant to the Loan Agreement, the Regulatory Agreement or any other of the Loan Documents;

I. Mortgagor (i) commits a breach or defaults under any contract or agreement with a third party in connection with the operation, rehabilitation, or maintenance of the Development, (ii) such breach or default is not cured within the applicable grace or cure period, if any, and (iii) such breach or default, if uncured, materially and adversely affects the value of the Development or Mortgagor's performance of its obligations under the Mortgage, the Note, the other Loan Documents or any of the Leases; however, if (x) the continued operation or safety of the Development, or (y) the priority, enforceability, or validity of the Mortgage or the lien of the Mortgage or any other security granted by Mortgagor to Mortgagee under the Loan Documents or (z) the value of any of the Development is immediately threatened or jeopardized, in Mortgagee's reasonable judgment, by reason of such breach or default, Mortgagor shall not be entitled to such grace or cure period and a Default shall be deemed to have immediately occurred;

J. The dissolution of any of the Mortgagor, Member, Managing Member, or Master Tenant other than an involuntary dissolution by a Secretary of State, which dissolution is corrected promptly within five business days of discovery thereof and such entity is thereby returned to good standing;

K. There exists or comes to exist any pending or threatened in writing litigation, proceedings, or judgments pertaining to, involving, or which would likely have a material adverse effect on, (i) the Development or its construction, operation, or maintenance, (ii) the interest of Member, Managing Member, or of Mortgagor in the Development, or (iii) Mortgagor's ability to pay the Loan or (iv) Mortgagor's, the Member's, Managing Member's, or Master Tenant's ability to perform their respective obligations under the Loan Documents;

L. Any of Mortgagor, Member, Managing Member or Master Tenant fails to execute, within five (5) business days after presentation, all documents that Mortgagee, in its sole discretion, deems necessary to correct any typographical or clerical errors in the Note, any other Loan Document or any other document delivered or to be delivered in connection with the Loan;

M. Failure to comply with the Act, the Rules, the Regulations (all as the same may be amended and supplemented from time to time), or any other rules, policies and procedures and regulations duly promulgated from time to time by Mortgagee, within thirty (30) days after

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Mortgagee gives Mortgagor notice of such failure; provided, however, that if any such failure is not reasonably curable despite Mortgagor's diligent efforts to cure it within such thirty (30) days, Mortgagor shall have one hundred twenty (120) additional days to cure such failure so long as (i) that cure is commenced within such thirty (30) day period, (ii) Mortgagor continues to diligently pursue such cure in good faith and (iii) Mortgagee's security for the Loan is not, in the sole judgment of Mortgagee, impaired as a result of the existence of such failure; provided, however, that in no event shall Mortgagor have more than one hundred twenty (120) days to cure such failure.

N. A default has occurred, beyond any applicable notice and cure provisions, under any other loan or grant made to Mortgagee, or any other party.

O. A default or event of default (however defined or described) under the terms and conditions of Ground Lease if such default is not cured within any grace period applicable thereto; (ii) any termination of the Ground Lease or written request or other action by Mortgagor (or CHA) to terminate the Ground Lease; and/or (iii) the rejection of the Ground Lease under the Bankruptcy Code, as provided in Paragraph 49 below.

P. A default or event of default (however defined or described) under the terms and conditions of Master Lease if such default is not cured within any grace period applicable thereto; (ii) any termination of the Master Lease or written request or other action by Mortgagor (or Master Tenant) to terminate the Master Lease; and/or (iii) the rejection of the Master Lease under the Bankruptcy Code, as provided in SNDA.

Q. A default or event of default (however defined or described) under the terms and conditions of Condominium Declaration if such default is not cured within any grace period applicable thereto; (ii) any termination of the Condominium Declaration or written request or other action by Mortgagor (or any other parties to or any party who has an interest in the Condominium Declaration) to terminate the Condominium Declaration.

The Mortgagee hereby agrees that any cure made or tendered by the Investor Member shall be accepted or rejected by the Mortgagee on the same basis and within the same time periods as if such cure were made or tendered by the Mortgagor and if such default is cured by such party, such cure shall be deemed to be a cure by the Mortgagor.

## 12. Remedies.

If a Default occurs and continues, Mortgagee is authorized and empowered, at its option and without affecting the lien by created by this Mortgage or its priority, or any other right of Mortgagee under this Mortgage, to declare, without further notice, all Secured Indebtedness to be immediately due and payable with interest on it at the Default Rate, whether or not such Default is thereafter remedied by Mortgagor, and Mortgagee may immediately, proceed to foreclose this Mortgage and to exercise any right, power or remedy provided by this Mortgage, the Note or any other Loan Document, or that Mortgagee may have at law or in equity. Mortgagee, in its sole and absolute discretion, may apply funds in any account held by Mortgagee, including, but not limited to the Residual Receipts Account, to the Secured Indebtedness. At any time after the occurrence of a Default, and so long as such Default is continuing, Mortgagee, in its sole discretion, may (i)

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notify any person obligated to Mortgagor under or with respect to any contract for sale or any contract for construction affecting or related to the Development, of the existence of a Default, (ii) require that performance of any such contract be made directly to the Mortgagee at Mortgagor's expense and (iii) advance such sums as are necessary or appropriate to satisfy Mortgagor's obligations under such contract. Mortgagor agrees to cooperate with Mortgagee in all ways reasonably requested by Mortgagee (including the giving of any notices requested by Mortgagee or joining in any notices given by Mortgagee) to accomplish the foregoing provisions of this **Paragraph 12**, and grants to Mortgagee or Mortgagee's designee a security interest in its rights under such contracts for the purpose of securing all of the Secured Indebtedness and Mortgagor's obligations secured by this Mortgage and the other Loan Documents. The granting of a grace or cure period in this Mortgage and the granting of a grace or cure period with respect to the same matters in any other Loan Document shall not be construed to have the effect of extending or replicating the grace or cure period relating to such matters.

### 13. Foreclosure.

Upon the occurrence or existence of a Default, from and after the Final Closing Date, Mortgagee shall have the right to foreclose the lien of this Mortgage in accordance with the laws of the State of Illinois and to exercise any other remedies of Mortgagee that are provided in the Note, this Mortgage or any of the other Loan Documents, or that Mortgagee may have at law, at equity or otherwise. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional Secured Indebtedness in the decree of sale all expenditures and expenses that may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees (to the extent permitted by applicable law), appraisers' fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may reasonably deem necessary either to prosecute such suit or to evidence to bidders at sales that may be had pursuant to such decree the true condition of the title to or the value of the Development. All expenditures and expenses of the nature mentioned in this **Paragraph 13**, and such other expenses and fees as may be incurred in the protection of the Development, the rents and income from it and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Development, including probate and bankruptcy proceedings, or in preparation of, the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise, in dealing specifically with the Development, shall be so much additional Secured Indebtedness and shall be immediately due and payable by Mortgagor with interest on such payments at the Default Rate until paid.

### 14. Additional Rights upon Foreclosure.

If any provision of this Mortgage restricts Mortgagee's rights under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) (the "Foreclosure Law"), as amended from time to time, or this Mortgage otherwise does not grant Mortgagee the full advantage, rights or remedies of the Foreclosure Law, Mortgagee shall be vested with the rights, powers, and remedies of the Foreclosure Law to the full extent permitted by law.

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## 15. Certain Rights of the Holder of the Note.

Upon any sale of the Development, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the Secured Indebtedness for or in settlement or payment of all or any portion of the purchase price of the property purchased, and, in such case, this Mortgage, the Note and documents evidencing expenditures secured by this Mortgage shall be presented to the person conducting the sale in order that the amount of such indebtedness so used or applied may be credited as having been paid.

## 16. Right of Possession.

Upon the occurrence or existence of a Default, and after the expiration of any applicable cure period, Mortgagor shall, immediately upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall, to the extent not prohibited by applicable law, be entitled to take actual possession of the Development or any part of it, personally or by its agent or attorneys, and, in its discretion, may enter upon and take possession of the Development and exclude the Mortgagor or the then owner of the Development and any of their agents or servants wholly from the Development. Whether or not Mortgagee takes and maintains possession of all or any part of the Development, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Development relating to it, Mortgagee may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers granted in this Mortgage:

(a) hold, operate, manage and control all or any part of the Development and conduct the business of the Development, if any, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Development, including, without limitation, actions for recovery of rent, actions in forcible detainer and actions in distress for rent, all without notice to Mortgagor;

(b) notify any or all of the obligors under the Leases that the Leases have been assigned to Mortgagee, and Mortgagee (in its name, in the name of Mortgagor or in both names) may direct such obligors thereafter to make all payments due from them under the Leases directly to Mortgagee;

(c) cancel or terminate any Lease for any cause or on any ground that would entitle Mortgagor to cancel it;

(d) elect to disaffirm any Lease made subsequent to this Mortgage without Mortgagee's prior written consent, as provided in this Mortgage;

(e) extend or modify any then existing Leases and make new Leases of all or any part of the Development, which extensions, modifications and new Leases may provide for terms to expire, or for options to tenants to extend or renew terms to expire, beyond the Maturity Date (as defined in the Note) and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale. It is understood and agreed that any such Leases, and the options or other such

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provisions contained in them, shall be binding upon Mortgagor, all persons or entities whose interests in the Development are subject to the lien of the Mortgage, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(f) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Development as may seem judicious to Mortgagee, to insure and reinsure the Development and all risks incidental to Mortgagee's possession, operation and management of it, and to receive all rents, issues, deposits, profits and avails from it; and

(g) apply the net income, after allowing a reasonable fee for the collection of such income and for the management of the Development, to the payment of Taxes, insurance premiums and other charges applicable to the Development or to reduce the Secured Indebtedness, in such order and manner as Mortgagee shall elect.

Nothing contained in this Mortgage shall be construed as constituting Mortgagee as a mortgagee-in-possession in the absence of the actual taking of possession of the Development.

## **17. Receiver.**

Upon the occurrence or existence of a Default, Mortgagee may apply to any court of competent jurisdiction for the appointment of a receiver for the Development. Such appointment may be made either before or after sale, upon notice, if any, required by applicable law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Development or whether or not it is then occupied as a homestead; Mortgagee or any of its employees or agents may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Development during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there is a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits; such receiver shall also have all other powers that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Development during the whole of such period. The court may, from time to time, authorize the receiver to apply the net income from the Development in payment, in whole or in part, of: (a) the Secured Indebtedness or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment or other lien that may be or become superior to the lien of this Mortgage or of such decree, provided that such application is made prior to the foreclosure sale; or (b) the deficiency, in case of a sale and deficiency.

## **18. Proceeds of Sale.**

The proceeds of any sale of the Development shall be distributed and applied in the



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following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items mentioned in **Paragraph 12** hereof, or incident to any sale under **Paragraph 13** hereof, including, but not limited to, the expenses of sale, the reasonable attorneys' fees of Mortgagee (to the extent not prohibited by applicable law), the actual cost of providing, recording, mailing and posting notice, the cost of any search or other evidence of title procedures in connection with such foreclosure and sale and any transfer tax on any deed or conveyance; second, all other items that, under the terms of this Mortgage, constitute Secured Indebtedness in addition to that evidenced by the Note, with interest on such items as provided in this Mortgage; third, to interest remaining unpaid upon the Note, including interest, if any, at the Default Rate; fourth, to the principal remaining unpaid upon the Note; and fifth, the payment of surplus, if any, to any person or entity that may be lawfully entitled to receive it.

## **19. Insurance During Foreclosure.**

In the event of an insured loss after the right to foreclose has accrued under this Mortgage, the proceeds of any insurance policy, if not applied in rebuilding or restoring the Development, as aforesaid, shall be applied in the same order and manner as sale proceeds set forth in **Paragraph 18** hereof. In the event of foreclosure of this Mortgage, the mortgagee's clause attached to each of the casualty insurance policies may be cancelled and a new loss clause may be attached to each such casualty insurance policy making the loss under such insurance policies payable to the party acquiring the Development pursuant to foreclosure or other sale; Mortgagee is authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale to the extent assignable pursuant to such policies, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the insurance policies, in either case without credit or allowance to Mortgagor for prepaid premiums on them.

## **20. Waiver of Right of Redemption and Other Rights.**

To the fullest extent permitted by law, Mortgagor: (i) agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, (ii) agrees that it will not claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Development, or any part of it, prior to any sale or sales of it to be made pursuant to any provisions contained in this Mortgage, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part of it, or relating to the marshaling of it, upon the foreclosure sale or other enforcement of this Mortgage; and (iii) expressly waives any and all rights of reinstatement or redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Development subsequent to the date of this Mortgage; it is the intent of this Mortgage that any and all such rights of reinstatement or redemption of Mortgagor, and all other persons, are and shall be deemed to be waived to the fullest extent permitted by applicable law. To the fullest extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy

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granted or delegated to Mortgagee in this Mortgage or otherwise, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been made or enacted. Mortgagor expressly waives any right that it may have to direct the order in which any of the Development shall be sold in the event of its sale pursuant to this Mortgage.

## 21. Rights Cumulative.

Each right, power and remedy conferred upon Mortgagee in this Mortgage is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power and remedy set forth in this Mortgage or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing under this Mortgage or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Default or acquiescence in it. Except as otherwise specifically required in this Mortgage, notice of the exercise of any right, remedy or power granted to Mortgagee by this Mortgage is not required to be given.

## 22. Successors and Assigns.

A. Holder of the Note. This Mortgage and each and every agreement and other provision of it shall be binding upon Mortgagor, and its successors and assigns (including, without limitation, each and every record owner from time to time of the Development or any other person having an interest in it), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever Mortgagee is referred to in this Mortgage, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder shall have and enjoy all of the rights, privileges, powers, options and benefits afforded by and under this Mortgage, and may enforce all and every one of its terms and provisions as fully, to the same extent and with the same effect as if such holder were in this Mortgage by name specifically granted such rights, privileges, powers, options and benefits and designated Mortgagee.

B. Covenants Run With Land; Successor Owners. All of the covenants of this Mortgage shall encumber the Mortgagor's leasehold estate in the Real Estate and the estate in the improvements thereon and be binding on any successor in interest to the obligations of the Mortgagor under this Mortgage until this Mortgage is released or foreclosed. If the ownership of the Development or any portion of it becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest to the Mortgagor with reference to this Mortgage and the Secured Indebtedness in the same manner as with Mortgagor without in any way releasing or discharging Mortgagor from its obligations under this Mortgage, unless the Development has been assigned or otherwise transferred with Mortgagee's written consent pursuant to this Mortgage. Mortgagor shall give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Development, but nothing in this **Paragraph 22.B** shall vary or negate the provisions of **Paragraph 10** hereof.

## 23. Effect of Extensions and Amendments.

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A. If the payment of the Secured Indebtedness, or any part of it, is extended, modified or amended, or if any part of the security or guaranties, if any, for it is released, all persons now or at any time hereafter liable for the Secured Indebtedness, or interested in the Development; shall be held to assent to such extension, modification, amendment or release, and their liability, and the lien of the Mortgage, and all of its provisions, shall continue in full force and effect. Mortgagee expressly reserves the right of recourse against all such persons, but only to the extent provided in **Paragraph 45** hereof, notwithstanding any such extension, variation or release. Any person or entity taking a junior mortgage or other lien upon the Development, or any part of or any interest in it, shall take such lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other Loan Document, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Any such rights or actions of Mortgagee shall not negate the prohibition against such secondary financing contained in this Mortgage or affect the obligation of any such junior lien holder not to proceed with any action against either the Mortgagor, or the Development or both.

B. Subject to the requirements of HUD's Rental Assistance Demonstration Program, Mortgagor agrees that if it enters into a loan modification agreement with Mortgagee pursuant to which the interest rate on the Note is reduced, any rents established for units in the Development that are subsidized under Section 8 of the United States Housing Act of 1937 may be reduced in accordance with HUD guidelines to reflect the reduction in the amount of debt service payments resulting from such lower interest rate.

## **24. Leases and Rents, Present Assignment.**

As additional security for the repayment of the Loan and for the faithful performance of the terms and conditions contained in the Loan Documents, Mortgagor bargains, sells, transfers, assigns, conveys, sets over and delivers to Mortgagee all of its rights, title and interest as landlord in and to all Leases now existing, or that may be executed by any landlord at any time in the future, and all guaranties, amendments, extensions and renewals of such Leases; Mortgagor agrees, represents and warrants to Mortgagee as follows:

A. All Leases for Affordable Units (as defined in the Regulatory Agreement) are and shall be subject to the criteria set forth in the Regulatory Agreement. Except with respect to any lease for actual occupancy of any dwelling unit in the Development entered into in the normal course of business and in accordance with any applicable regulatory agreement and as otherwise provided in Section 10 of this Mortgage, Mortgagor shall not enter into, amend, modify, extend, renew, terminate, surrender or cancel any Lease in any respect without the prior written consent of Mortgagee, which approval or consent shall not be unreasonably withheld or delayed.

B. Notwithstanding the present assignment of the rents and Leases and guaranties, if any, so long as no Default has occurred or exists, Mortgagor shall have a license to collect all of the rents arising from the Leases, or their renewals. All rents or other sums secured by Mortgagor pursuant to the Leases and guaranties, if any, after a Default shall be deemed to be

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held and maintained by Mortgagor in trust for the benefit of Mortgagee and shall be covered by **Paragraph 45(v)** hereof.

C. At all times, Mortgagee or its agent shall have the right to verify the validity, amount of or any other matter relating to any or all of the Leases, by mail, telephone, telecopy or otherwise, in the name of Mortgagor, Mortgagee, a nominee of the Mortgagee or any or all of such names.

D. Mortgagor shall inform Mortgagee, in writing, of any assertion of any material claims, offsets or counterclaims by any of the obligors under any of the Leases promptly upon its receipt or upon learning of them.

E. Within ten (10) business days after written demand by Mortgagee from time to time, Mortgagor shall deliver to Mortgagee, in form and substance acceptable to Mortgagee, a detailed certified rent roll, copies of all Leases and such other matters and information relating to it as Mortgagee may request.

## **25. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter.**

Mortgagor shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, conveyances, mortgages, security agreements, financing statements and assurances as Mortgagee reasonably requires for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged or intended to be so mortgaged by this Mortgage, whether now owned by Mortgagor, or hereafter acquired. Without limitation of the foregoing, Mortgagor shall assign to Mortgagee, upon request, by instruments satisfactory to Mortgagee, as further security for the Secured Indebtedness, Mortgagor's interests in all agreements, contracts, licenses and permits affecting the Development; however, no such assignment shall be construed (i) as a consent by Mortgagee to any agreement, contract, license or permit, or (ii) to impose upon Mortgagee any obligations with respect to any such agreement, contract, license or permit. From time to time, Mortgagor shall furnish, within five (5) business days after Mortgagee's request, a written and duly acknowledged statement of the amount due under the Note, this Mortgage and the other of the Loan Documents and whether, to Mortgagor's best knowledge, any alleged offsets or defenses exist against the Secured Indebtedness and whether, to Mortgagor's best knowledge, any Default on the part of Mortgagor (or events which, with the passing of time or the giving of notice, or both, would become a Default) exists under this Mortgage.

## **26. Subrogation.**

If any part of the Secured Indebtedness is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Development or any part of it, then Mortgagee shall be subrogated to the rights of the holder of such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of such lien or encumbrance, regardless of whether they are acquired by assignment or have been released of record by their holder upon repayment. The foregoing right of subrogation is a material

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inducement to Mortgagee to make the Loan, and Mortgagee expects to be benefitted by such right. Nothing in this **Paragraph 26** shall be construed as extending the benefits of any personal guarantee of such prior lien or encumbrance to Mortgagee in excess of the obligations covered by the Guaranty or for different purposes than those covered by the Guaranty.

## **27. Option to Subordinate.**

At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any Award), to any and all Leases of all or any part of the Development upon the execution and recording by Mortgagee, at any time hereafter, in the Office of the Recorder of the County in which the Development is located, of a unilateral declaration to that effect.

## **28. Governing Law.**

This Mortgage, having been negotiated, executed and delivered within the State of Illinois, shall be construed and governed by and according to the laws of that State, without reference to its conflicts of law principles.

## **29. Business Loan.**

Mortgagor represents and agrees that the proceeds of the Loan will be used for the purposes specified in 815 ILCS 205/4, Paragraph 1(c), as amended, and that the principal obligation secured by this Mortgage constitutes a business loan that comes within the purview of that Paragraph.

## **30. Inspection of Development and Records.**

Mortgagor shall keep and maintain, or cause to be kept and maintained (by a managing agent on behalf of Mortgagor), full, complete and correct books, records and accounts showing the assets, liabilities, operations, transactions and financial condition of the Development. The books and records of Mortgagor and of the operations of the Development shall be kept in accordance with the requirements of the auditing standards of the Government Accounting Office ("GAO") issued by the Comptroller of the United States (the "GAO Standards") and Mortgagee. Mortgagor shall allow Mortgagee, or its representatives or agents, and the GAO and HUD, or their respective representatives or agents, to inspect the Development at any reasonable time, and from time to time at any time during normal business hours, 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 Mortgagor and their representatives or agents; such access will include the right to make extracts or copies of them. In addition, upon written request of Mortgagee, which may be made at any time and from time-to-time, Mortgagor shall deliver to Mortgagee true and complete copies of monthly operating statements of the Development. Mortgagee shall be entitled to reimbursement for its costs, reasonably incurred incident to the inspection of the Development, all of which shall be payable after written demand and if not so paid, shall be included within the Secured Indebtedness and bear interest at the Default Rate. Mortgagee, in its sole discretion reasonably exercised, will determine the necessity for and the number of inspectors required, and will determine, which inspector shall be used incident to an inspection. Except when a Default

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exists or has occurred, Mortgagee will give reasonable advance written notice of its intent to perform or have performed such inspections.

### 31. Financial Statements.

A. Mortgagor shall keep or cause to be kept accurate, full and complete books, records and accounts showing the assets, liabilities, operations, transactions and financial condition of the Development. All books, records, accounts and financial statements shall (i) be accurate and complete in all material respects, (ii) present fairly the financial position and results of the operation of the Development and (iii) be prepared in accordance with the requirements of the GAO Standards and Mortgagee.

B. Mortgagor shall furnish, or cause to be furnished, to Mortgagee such financial statements and other records of Mortgagor, Member, Managing Member, Master Tenant and General Contractor as Mortgagee may reasonably require, each certified by the providing party as to their truth, validity and accuracy in all material respects; each such financial statement shall not contain any material omissions that would make such information incomplete. Such financial information shall be prepared according to generally accepted accounting principles, consistently applied. Following the Final Closing Date, Mortgagor also agrees to furnish Mortgagee, within a reasonable time following receipt of a written request, such compliance audits, performance reports, annual audited financial statements and any and all other documents, information and showings requested by Mortgagee or its counsel, in their sole discretion. Such audits, reports and statements must be in form and content acceptable to Mortgagee.

### 32. Time of the Essence.

Time is of the essence of the Note, this Mortgage, all other of the Loan Documents and any other document or instrument evidencing or securing the Secured Indebtedness.

### 33. Captions and Gender.

The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of its provisions. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

### 34. Notices.

All notices under this Mortgage shall be given as provided in Exhibit B attached to and made a part hereof.

### 35. Provisions Severable.

If a court of competent jurisdiction holds any provision of this Mortgage to be illegal.

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unenforceable or invalid, then it is the intent of Mortgagor and Mortgagee that such provision shall be given full force and effect to the fullest possible extent that is legal, valid and enforceable. It is the intent of Mortgagor and Mortgagee that the Mortgagee have a valid and enforceable lien created by this Mortgage securing each and all of the sums described in this Mortgage and that this Mortgage be construed as creating such a valid lien in favor of Mortgagee notwithstanding the unenforceability of one or more of its provisions; the unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions of it unenforceable or invalid.

### 36. Waiver of Defense.

No action for the enforcement of the lien or any provisions of this Mortgage shall be subject to any defense that would not be good and available to the party interposing it in an action at law upon the Note.

### 37. Further Assurances.

Mortgagor shall sign, execute, acknowledge and deliver to Mortgagee upon request such security agreements, assignments for security purposes and other documents in form and substance required by Mortgagee as Mortgagee may, in its reasonable judgment, request from time to time, to perfect, preserve, continue, extend or maintain the assignments contained in this Mortgage or the Loan Documents, the lien and security interests under this Mortgage or the other Loan Documents, and their priority.

### 38. Reimbursement.

If (a) Mortgagee is made a party to, or intervenes in any action or proceeding affecting the Development, title to it or the interest of Mortgagee under this Mortgage, or (b) Mortgagee employs an attorney to collect any or all of the Secured Indebtedness or to foreclose this Mortgage by judicial proceedings or (c) Mortgagee conducts Mortgagee's sale proceedings under this Mortgage, Mortgagee shall be reimbursed by Mortgagor, immediately and without demand, for all costs, charges and reasonable attorneys' fees incurred by Mortgagee, and such costs, charges and fees shall be secured by this Mortgage as a further charge and lien upon the Development and shall bear interest at the Default Rate.

### 39. Further Security.

As further security for the Note and this Mortgage, Mortgagor grants Mortgagee a security interest in and to all and any property of Mortgagor of any kind or description, tangible or intangible, now or hereafter delivered, transferred, in transit to, or kept in the possession, control or custody of Mortgagee, or any agent or bailee of Mortgagee, whether expressly as collateral security or for any other property of Mortgagor now or hereafter in the possession, control or custody or assigned to Mortgagee and used or useful in connection with the Development. All of the aforesaid property is referred to collectively in this Mortgage as the "Further Collateral." Upon the occurrence or existence of any Default under this Mortgage, Mortgagee shall have the right to exercise any rights and remedies available to it under the Code and, subject to the rights of prio:

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lienholders, if any, shall have the right to sell any or all of the Further Collateral at public or private sale upon such terms and conditions as Mortgagee deems proper, and to apply the net proceeds of such sale, after deducting all costs, expenses and attorneys' fees incurred at any time in the collection and sale of the Further Collateral, to the payment of sums due under the Note, this Mortgage or both of them.

#### **40. No Partnership; Joint and Several Obligations.**

Nothing contained in this Mortgage, the Note or any other document or instrument evidencing or securing the Secured Indebtedness shall be deemed to create a joint venture or partnership relationship between Mortgagor and Mortgagee; the relationship between Mortgagor and Mortgagee is solely that of creditor and debtor, lender and borrower, and mortgagor and mortgagee, as the case may be. If this Mortgage is signed by more than one entity, the liability of such Mortgagor shall be joint and several in all respects.

#### **41. No Liability.**

Anything contained in this Mortgage to the contrary notwithstanding, it is expressly understood and agreed that the Mortgagee's inspection and approval of the documentation pertaining to this Mortgage and any inspection of the Development made by Mortgagee shall be solely for Mortgagee's benefit, and Mortgagee shall have no liability to Mortgagor or any other person or entity by reason of such inspection. Furthermore, notwithstanding anything contained herein, this Mortgage is only intended as security for the Secured Indebtedness hereby secured, and Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor with respect to any of the Development. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers granted to it in this Mortgage, and Mortgagor expressly waives and releases Mortgagee from any such liability. Without limiting the foregoing, Mortgagee shall not be responsible for any recitals herein or for insuring the Mortgaged Premises, or for the recording, filing or refiling of this Mortgage; nor shall Mortgagee be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of Mortgagor contained herein. Mortgagee shall not have responsibility for the control, care, management or repair of the Development, nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Development resulting in loss or injury or death to any licensee, employee, tenant or stranger.

#### **42. Hazardous Material.**

If any of Mortgagor, Member, Managing Member (for purposes of this **Paragraph 42** only, Mortgagor, Member, Managing Member shall collectively be referred to as the "Parties") shall receive: (a) any written notice of any violation or administrative or judicial complaint or order having been filed or about to be filed against any of the Parties alleging violations of any law requiring any of them to take any action in connection with the release at or in connection with the Development of any toxic materials or hazardous wastes, pollutants or contaminants into the environment, or (b) any written notice from any governmental agency or any other person or entity alleging that any of the Parties may be liable or responsible for costs associated with a response or



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cleanup of a release of toxic materials, hazardous wastes, pollutants or contaminants into the environment or any damages caused by such release, the Party receiving such notice shall provide Mortgagee with a copy of it promptly upon its receipt. Within five (5) days after having learned of the enactment or promulgation of any environmental law that may result in any adverse change in the condition, financial or otherwise, of any of the Parties or the Development, Mortgagor shall provide Mortgagee with notice of such law promptly upon learning of it. Mortgagor (x) shall not use, allow or suffer any part of the Development to be used as a facility for the handling, treatment, storage, or disposal of any Hazardous Materials (as defined in the Environmental Indemnity) or to be used as a landfill, without the prior written consent of Mortgagee (which consent may be granted or denied in Mortgagee's sole and absolute discretion), except for immaterial amounts of Hazardous Materials, not in violation of any Environmental Laws (as defined in the Environmental Indemnity) customarily found in construction sites and otherwise used in the daily operation of the Development, and (y) at its sole cost and expense, shall comply in all respects with the foregoing notices and in all events shall satisfy the requirements of, and maintain the Development in compliance with, all Environmental Laws.

Mortgagor represents and warrants to its knowledge that no portion of the Development has been used for or as a landfill; and that there are no known, nor have there been any, nor shall any of the Parties cause there to be any, Hazardous Materials generated, released, stored, buried or deposited over, beneath, in or on (or used in the construction, rehabilitation or renovation of) the Development from any source whatsoever, except as previously disclosed in writing to Mortgagee, including the Environmental Reports (as defined in the Environmental Indemnity). Mortgagor agrees to indemnify, hold harmless, and defend Mortgagee and all persons claiming by, through or under Mortgagee from any and all claims, loss, damages, response costs, clean-up costs and expenses arising out of or in any way relating to the existence at any time of any Hazardous Materials in, on, under, at or used in the construction, rehabilitation or operation of the Development, including, but not limited to: (i) claims of third parties, (including governmental agencies) for damages, penalties, response costs, clean-up costs or injunctive or other relief; (ii) costs of removal and restoration, including expert's and reasonable attorneys' fees, and costs of reporting the existence of Hazardous Materials to any governmental agency; and (iii) any and all expenses or obligations incurred at, before and after any trial or appeal from such trial, whether or not taxable as costs, including, without limitation, reasonable attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Mortgagor when incurred. The representations, warranties, covenants and agreements contained in this Paragraph 42 and the obligations of Mortgagor to indemnify, hold harmless and defend Mortgagee and all persons claiming by, through or under Mortgagee with respect to the expenses, damages, losses, costs, damages and liabilities set forth in this Paragraph 42, shall survive the repayment of all amounts due under the Note, the cancellation of the Note and the release of this Mortgage, the foreclosure of any liens on the Development by Mortgagee or a third party, or the conveyance of the Development by any power of sale, trustee's sale, deed in lieu of foreclosure or otherwise, and shall not be limited to the amount of any deficiency in any foreclosure or other sale of the Development. Mortgagor agrees that Mortgagee may, in its sole discretion from time to time, retain an environmental expert at the expense of Mortgagor to perform one or more tests to determine the level, if any, of Hazardous Materials in, on or at the Development.

#### 43. Maximum Indebtedness.

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At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures as part of the Secured Indebtedness the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Mortgagee in connection with the Secured Indebtedness, all in accordance with the Note and this Mortgage. In no event shall the total amount of the Secured Indebtedness, including Loan proceeds disbursed plus any additional charges, exceed three hundred percent (300%) of the face amount of the Note. All such advances are intended by the Mortgagor to be a lien on the Development pursuant to this Mortgage from the time this Mortgage is recorded, as provided in the Foreclosure Law.

#### **44. Indemnification of the Mortgagee.**

Mortgagor, Member and Managing Member agree to defend and indemnify and hold harmless Mortgagee from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that Mortgagee may incur or suffer by reason of or in connection with (i) the Real Estate or the Development, (ii) any and all liability, loss or damage which Mortgagee incurs under or by reason of the exercise of its rights under this Mortgage and (iii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor contained herein or with respect to any of the Real Estate or Development; except where such liability, damage or loss is a direct result of Mortgagee's gross negligence or willful misconduct. Mortgagor, Member and Managing Member further agree that Mortgagee, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

#### **45. Nonrecourse.**

Except as otherwise set forth in the Letter, the Loan Agreement, Environmental Indemnity and Guaranty, Mortgagor's liability created under this Mortgage and the Loan Documents shall be non-recourse and neither Mortgagor nor any of the other Borrowing Parties (as defined in the Loan Agreement), nor any of the Investor Member, officers, employees or agents of the foregoing, shall have any personal liability for repayment of the Loan. Mortgagee 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 Mortgagor's nor any of the other Borrowing Parties' liability for damages to Mortgagee (excluding however, any damages arising as the direct result of and only to the extent from Mortgagee's gross negligence or willful misconduct) as a result of (i) fraudulent acts, or willful and wanton acts or omissions in violation of the provisions of this Mortgage and the other 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

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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 Mortgagor, are available to remedy such waste and Mortgagor has failed to remedy the waste despite the written instructions of Mortgagee; (vi) the occurrence of a Prohibited Transfer (as defined herein), without the prior written consent of Mortgagee; (vii) a written material misrepresentation was made by Mortgagor or any party in the ownership structure of Mortgagor, or any employee or agent of Mortgagor or any other such entity or individual under the control or direction of Mortgagor; (viii) a material error or omission was made in the Ownership Structure Certificate (as defined in the Loan Agreement); (ix) the Mortgagor has violated the single asset requirement contained herein (and within the Loan Agreement); (x) the Mortgagor has delivered a false certification in connection with the certifications provided in the Loan Documents; and (xi) Mortgage amounts that Borrower is required to pay to Payee if HUD reduces the amount of the Mortgage Insurance. Any liability incurred pursuant to this Paragraph shall be the personal liability of the Mortgagor and the other Borrowing Parties. The provisions of this Paragraph shall have no effect on the liabilities and obligations contained in the Guaranty.

#### 46. Liens Absolute, Etc.

Mortgagor acknowledges and agrees that the liens and security interests hereby created are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any other holders of any of the Secured Indebtedness hereby secured, and without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance by Mortgagee or any other holder of any of the Secured Indebtedness hereby secured of any other security for or guarantors upon any of the Secured Indebtedness hereby secured or by any failure, neglect or omission on the part of Mortgagee or any other holder of any of the Secured Indebtedness hereby secured to realize upon to protect any of the Secured Indebtedness hereby secured or any collateral security therefore. The lien and security hereof shall not in any manner be impaired or affected by any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the Secured Indebtedness hereby secured, or of any collateral security therefore, or of any guaranty thereof, or of any loan agreement executed in connection therewith. In order to realize hereon and to exercise the rights granted Mortgagee hereby and under applicable law, there shall be no obligation on the part of Mortgagee or any other holder of any of the Secured Indebtedness hereby secured at any time to first resort for payment to the obligor on any note or bond evidencing any of the Secured Indebtedness hereby secured or to any guaranty of any of the Secured Indebtedness hereby secured or any part thereof or to resort to any other collateral security, property, liens or any other rights or remedies whatsoever, and Mortgagee shall have the right to enforce this instrument irrespective of whether or not other proceedings or steps are pending seeking resort to or realization upon or from any of the foregoing.

#### 47. Additional Governing Law.

This Mortgage, to the extent inconsistent with the Act, the Rules and the Regulations (all as the same may be amended and supplemented from time to time), shall be governed by the Act

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the Rules and the Regulations (all as the same may be amended and supplemented from time to time), and the rights and obligations of the parties shall at all times be in conformance with, and governed by, the Act, the Rules and the Regulations (all as the same may be amended and supplemented from time to time).

#### **48. Subordination to Rental Assistance Demonstration Use Agreement.**

As a condition to HUD authorizing the Development to be converted from public housing to Section 8 assistance under the Rental Assistance Demonstration ("RAD") program, Borrower has executed a Rental Assistance Demonstration Use Agreement dated and recorded as of substantially even date herewith (the "RAD Use Agreement") for the benefit of HUD. The parties hereto agree that so long as the RAD Use Agreement and all extensions thereto are in effect:

- (i) this Mortgage shall be in all respects subordinate in priority to the RAD Use Agreement;
- (ii) this subordination extends to and continues in effect with respect to any future amendment, extension, renewal, or any other modification of the RAD Use Agreement or this Mortgage;
- (iii) in the event of a conflict between this Mortgage and the RAD Use Agreement, the RAD Use Agreement controls;
- (iv) the following amendments to this Mortgage shall require the prior written consent of HUD: Any amendment to this Section 51, an increase in the interest rate, an increase of the total indebtedness, an acceleration of the amortization or payment schedule, and any changes that would preclude or impair a reasonable opportunity to cure any defaults by the Owner under this Mortgage;
- (v) this subordination will survive bankruptcy and foreclosure;
- (vi) the invalidity, in whole or in part, of any of the provisions set forth in this Section 51 shall not affect or invalidate any remaining provisions; and
- (vii) this subordination and every covenant in this Paragraph 49 shall be binding upon the parties hereto and their respective successors and assigns. This subordination shall not be modified or amended except by a written instrument executed by all parties hereto and approved in writing by HUD.

#### **49. Ground Lease Provisions.**

Mortgagor also makes the following additional covenants, representations and warranties with respect to the Ground Lease and the estate created thereby, as of the date hereof:

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No Mortgagor default has occurred and is continuing under the Ground Lease and no event has occurred which, with the passage of time and/or service of notice, could constitute an event of default under either Ground Lease, and the Ground Lease is in full force and effect.

All rents, additional rents and all other charges currently due and payable by Mortgagor under the Ground Lease have been fully paid.

Mortgagor is the owner of the entire lessee's interest in the Ground Lease and has the right and authority under the Ground Lease to execute this Mortgage and to encumber Mortgagor's interest therein.

Mortgagor will timely perform and observe all of the terms, covenants and conditions required to be performed and observed by Mortgagor as lessee under the Ground Lease and shall maintain the Ground Lease in full force and effect until payment and performance in full of all Secured Indebtedness.

If Mortgagor shall violate any of the covenants specified in this **Paragraph 49**, Mortgagor grants Mortgagee the right (but not the obligation) to take such action as may be necessary to prevent or cure any default of Mortgagor under the Ground Lease if necessary or appropriate to protect Mortgagee's interest hereunder, and Mortgagee shall have the right to enter all or any portion of the Development at such times and in such manner as Mortgagee deems necessary in order to prevent or to cure any such default.

The curing by Mortgagee of any default by Mortgagor under the Ground Lease shall not remove or waive, as between Mortgagor and Mortgagee, the default which occurred hereunder by virtue of the default by Mortgagor under the Ground Lease. All sums expended by Mortgagee in order to cure any such default shall be paid by Mortgagor to Mortgagee, upon demand, with interest thereon at the Default Rate. All such indebtedness shall be deemed to be secured by this Mortgage. No action or payment taken or made by Mortgagee to prevent or cure a default by Mortgagor under the Ground Lease shall waive or cure the corresponding default under this Mortgage.

Mortgagor shall notify in writing Mortgagee promptly of (i) the occurrence of any default by the Ground Lessor under the Ground Lease of which it has actual knowledge, or the occurrence of any event of which it has actual knowledge which with the passage of time and/or service of notice could constitute a material default by the Ground Lessor under the Ground Lease, (ii) the receipt by Mortgagor of any written notice from the Ground Lessor noting or claiming the occurrence of any default by Mortgagor under the Ground Lease, or the occurrence of any event which with the passage of time and/or service of notice could constitute a default by Mortgagor under the Ground Lease (and shall deliver a copy of any written notice of default to Mortgagee), and (iii) any litigation or arbitration threatened or commenced of which Mortgagor has knowledge of with respect to the Ground Lease. Mortgagor shall promptly cause a copy of each such notice received by Mortgagor to be delivered to Mortgagee no later than five (5) business days after the receipt thereof.

Within ten (10) days following written demand by Mortgagee and subject to the terms of the Ground Lease, Mortgagor shall use reasonable efforts to obtain from the Ground Lessor, and furnish to Mortgagee, the estoppel certificate of the Ground Lessor stating the date through which

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rent has been paid and whether or not there are any lessee defaults under the Ground Lease and specifying the nature for such claimed defaults, if any.

Mortgagor shall promptly execute, acknowledge and deliver to Mortgagee such instruments as may be reasonably required to permit Mortgagee to cure any default under the Ground Lease or permit Mortgagee to take such other action required to enable Mortgagee to cure or remedy the matter in default and preserve the security interest of Mortgagee under the Ground Lease. While a default exists beyond all applicable notice and cure periods under the Ground Lease, Mortgagor hereby irrevocably appoints Mortgagee as its true and lawful attorney-in-fact in Mortgagee's name or otherwise to do any and all acts and to execute any and all documents which are necessary to preserve any rights of Mortgagor to or under the Ground Lease, including, without limitation, the right to effectuate any extension or renewal of the Ground Lease, or to preserve any rights of Mortgagor whatsoever in respect of any part of the Ground Lease (and the above powers granted to Mortgagee are coupled with an interest and shall be irrevocable). No action or payment taken or made by Mortgagee to prevent or cure a default by Mortgagor under the Ground Lease shall waive or cure the corresponding Default under this Mortgage, when, and to the extent determined necessary or appropriate by Mortgagee and without Mortgagee being deemed or construed to be a mortgagee in possession.

Whether or not a Default has occurred, the appointment of Mortgagee as Mortgagor's attorney-in-fact to exercise shall include, without limitation, the power by Mortgagee to exercise any of Mortgagor's rights in any bankruptcy proceeding, including, but not limited to making an election under 365(h) of Title 11 of the United States Code entitled "Bankruptcy", as now or hereafter in effect or any successor statute thereto ("Bankruptcy Code"), to prepare and file any objection to any proposed sale of the fee estate in the Real Estate by Ground Lessor pursuant to Section 363 of the Bankruptcy Code, to prepare and file any objection to any disclosure statement or plan, or similar document, filed in any insolvency proceeding, and to take any other action with respect to the Real Estate or the Ground Lease in any insolvency proceeding of Ground Lessor.

If Ground Lessor rejects or disaffirms, or seeks or purports to reject or disaffirm, the Ground Lease pursuant to the Bankruptcy Code or any other debt relief law, then Mortgagor shall not exercise an election 365(h) under the Bankruptcy Code (the "365(h) Election") without the express prior written consent of Mortgagee. To the extent permitted by Law, Mortgagor shall not suffer, permit, or consent to the termination (and/or any rejection or disaffirmance) of the Ground Lease without Mortgagee's express prior written consent, and Mortgagor shall remain in possession of the leasehold estate demised under the Ground Lease and shall perform all acts reasonably necessary for Mortgagor to remain in such possession for the unexpired term of the Ground Lease (including all renewals), whether the then existing terms and provisions of the Ground Lease require such acts or otherwise. All the terms and provisions of this Mortgage and the lien created by this Mortgage shall remain in full force and effect and shall extend automatically to all of Mortgagor's rights and remedies arising at any time under, or pursuant to, Section 365(h) of the Bankruptcy Code, including all of Mortgagor's rights to remain in possession of the Property. Mortgagor acknowledges and agrees that because the Ground Lease is a primary element of Mortgagee's security for the Secured Indebtedness secured hereunder, it is not anticipated that Mortgagee would consent to termination of any Ground Lease. Accordingly, if Mortgagor makes any 365(h) Election in violation of this Mortgage, then such 365(h) Election shall be void and of no force or effect.

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To the extent permitted by Law, Mortgagor hereby assigns to Mortgagee the 365(h) Election with respect to the Ground Lease until the Secured Indebtedness secured hereunder has been indefeasibly paid and satisfied in full. Mortgagor acknowledges and agrees that the foregoing assignment of the 365(h) Election and related rights is one of the rights that Mortgagee may use at any time to protect and preserve Mortgagee's other rights and interests under this Mortgage. Mortgagor further acknowledges that exercise of the 365(h) Election by Mortgagor in favor of terminating the Ground Lease would constitute waste prohibited by this Mortgage. Mortgagor acknowledges and agrees that the 365(h) Election is in the nature of a remedy available to Mortgagor under the Ground Lease, and is not a property interest that Mortgagor can separate from the Ground Lease as to which it arises. Therefore, Mortgagor agrees and acknowledges that exercise of the 365(h) Election in favor of preserving the right to possession under the Ground Lease shall not be deemed to constitute Mortgagee's taking or sale of the Land and other Premises (or any element thereof) and shall not entitle Mortgagor to any credit against the Secured Indebtedness secured hereunder or otherwise impair Mortgagee's remedies. Without limiting the generality of the foregoing, Mortgagor acknowledges and agrees that, in the event that the 365(h) Election is exercised in favor of Mortgagor remaining in possession, then Mortgagor's resulting right to possession and use of the Real Estate (and the rents, issues and profits therefrom), as adjusted by the effect of Section 365 of the Bankruptcy Code, shall then be subject to the lien and encumbrance of this Mortgage; provided, however, Mortgagor acknowledges and agrees that such right to possession and use of the Real Estate as so adjusted is not equivalent to Mortgagor's leasehold estate under the Ground Lease as of the date hereof. Accordingly, and without limiting the provisions of this Mortgage, Mortgagor acknowledges and agrees that the rejection of the Ground Lease under the Bankruptcy Code shall constitute a Default under this Mortgage if such rejection shall reasonably result in material impairment to the value of the Real Estate and shall entitle Mortgagee to exercise all rights and remedies provided for in this Mortgage or the other Loan Documents in the event of the occurrence of a Default.

Mortgagor acknowledges that if the 365(h) Election is exercised in favor of Mortgagor's remaining in possession under the Ground Lease, then Mortgagor's resulting occupancy rights, as adjusted by the effect of Section 365 of the Bankruptcy Code, shall then be part of the Real Estate and shall be subject to the lien of this Mortgage.

Mortgagor assigns to Mortgagee, as additional security for the Secured Indebtedness, Mortgagor's right to reject the Ground Lease under Section 365 of the United States Bankruptcy Code after the occurrence of an event of bankruptcy under the Bankruptcy Code, subject to Section 62(b).

Unless Mortgagee shall otherwise consent in writing, so long as any of the Secured Indebtedness remain unpaid, neither the fee title to the Real Estate nor any other estate, title or interest in the Real Estate shall merge with the leasehold estate under the Ground Lease but shall always be kept separate and distinct therefrom, notwithstanding the union or such estates either in the lessor or the lessee under the Ground Lease or in a third party, by purchase or otherwise.

Mortgagor shall not subordinate the Ground Lease or the leasehold created by the Ground Lease to any mortgage or other encumbrance of, or lien on, any interest in the real property subject

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to the Ground Lease without the prior written consent of Mortgagee; except for Permitted Exceptions. Any such subordination without such consent shall, at Mortgagee's option be void.

Mortgagor shall timely exercise any option or right to renew or extend the term of each Ground Lease prior to the date of termination of any such option or right, shall give immediate written notice thereof to Mortgagee, and shall execute, deliver and record any documents requested by Mortgagee to evidence the lien of this Mortgage on such extended or renewed lease term. If Mortgagor fails to exercise any such option or right as required herein, Mortgagee may exercise the option or right as Mortgagor's agent and attorney-in fact pursuant to this Mortgage, or in Mortgagee's own name or in the name of and on behalf of a nominee.

Mortgagor hereby assigns to Mortgagee a security interest in all prepaid rents and security deposits and all other security which the Ground Lessor under the Ground Lease holds for the performance of Mortgagor's obligations thereunder.

Mortgagor shall not, without Mortgagee's prior written consent, surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or supplement, modify or amend, the Ground Lease or any rights relating to the Ground Lease or any other portion of the Real Estate, or waive any right, title or interest relating thereto. Any acquisition of the lessor's interest in the Ground Lease by Mortgagor or any affiliate of Mortgagor will be accomplished by Mortgagor in such a manner so as to avoid a merger of the interests of lessor and lessee in the applicable Ground Lease. If Mortgagor (or any of its successors or assigns) shall acquire fee title to the Real Estate, this Mortgage shall automatically be a lien on the fee title.

No release or forbearance of any of Mortgagor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Mortgagor from any of its obligations under this Mortgage, including its obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease, to be kept, performed and complied with by the lessee under the Ground Lease.

As additional security for the payment of the Loan, and for the faithful performance of the terms and conditions under Loan Documents and this Mortgage, Mortgagor does hereby assign, transfer, set over, and deliver to Mortgagee, for collateral purposes only, all of Mortgagor's rights, title and interest in, to and under the Ground Lease. Notwithstanding anything in this Mortgage to the contrary, so long as there exists no Default, Mortgagor shall have the right to possess and enjoy the Real Estate and the Development pursuant to the Ground Lease, subject to the terms and conditions contained in this Mortgage and the other Loan Documents.

Without Mortgagee's express prior written consent, Mortgagor shall not agree with Ground Lessor to disburse any proceeds of any casualty or condemnation contrary to the provisions of this Mortgage and the other Loan Documents.

Mortgagor shall furnish Mortgagee within ten (10) days of the written request therefor: (i) proof of payment of all items which are required to be paid by Mortgagor pursuant to the Ground Lease and (ii) any and all information with respect to the Ground Lease that Mortgagee may reasonably request concerning Mortgagor's and/or Ground Lessor's performance under, an



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compliance with, the terms and conditions thereof.

Mortgagor, upon learning of any Insolvency Proceeding with respect to Ground Lessor, shall immediately notify Mortgagee of such Insolvency Proceeding, including using good faith efforts to provide all relevant information pertaining thereto, including jurisdiction, case number, and relevant case information. Mortgagor, upon learning of any actions by Ground Lessor to sell, encumber, or otherwise effect the Real Estate, or terminate, reject, disaffirm or assign the Ground Lease, shall promptly notify Mortgagee, including using good faith efforts to provide Mortgagee with copies of any and all notices and pleadings filed in connection with the foregoing.

As used herein, the following additional terms shall be defined as follows:

**“Bankruptcy Code”** shall mean Title 11 of the United States Code entitled “Bankruptcy”, as now or hereafter in effect or any successor statute thereto.

**“Insolvency Proceeding”** shall mean: (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to Mortgagor or Ground Lessor, as applicable; (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to Mortgagor or Ground Lessor, as applicable; (c) any liquidation, dissolution, reorganization or winding up of Mortgagor or Ground Lessor, as applicable, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of Mortgagor or Ground Lessor, as applicable.

**“Lease Damage Claims”** shall mean all of Mortgagor’s claims and rights to payment of damages, offsets, and other rights and remedies that may arise from: (a) Ground Lessor’s failure to perform under the Ground Lease; (b) rejection or disaffirmance of the Ground Lease under any Debtor Relief Law or in connection with any Insolvency Proceeding; (c) violation or breach by Ground Lessor under the Ground Lease; or (d) Ground Lessor’s sale of Real Estate pursuant to Section 363 of the Bankruptcy Code or similar provisions of any other debtor relief law, and all damages and other sums payable with respect to or pursuant to any of the foregoing.

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**“Lessee Bankruptcy Rights”** shall mean all of Mortgagor’s rights, remedies, powers, and privileges arising at any time under, in, or in connection with or related to any Insolvency Proceeding affecting Ground Lessor, including Mortgagor’s right: (a) to object to Ground Lessor’s sale of the Real Estate under any debtor relief law, including Bankruptcy Code Section 363 and (b) to make the 365(h) Election; and any other comparable right under any other Debtor Relief Laws and all claims, suits, actions, proceedings, rights, remedies, and privileges related thereto or arising therefrom, including Mortgagor’s right to claim any offset against rent and other charges and the right to file and prosecute any proofs of claim, complaints, motions, applications, objections, notices, and any other document in any case relating to Ground Lessor under any Debtor Relief Laws, any and all adequate protection or other value received by or to which Mortgagor is entitled to in connection with any sale of the Real Estate in connection with any Insolvency Proceeding.

**“365(h) Election”** shall mean the right of Mortgagor to treat the Ground Lease as terminated pursuant to Section 365(h)(1)(A)(i) of the Bankruptcy Code or retain Mortgagor’s rights under the Ground Lease pursuant to Section 365(h)(1)(A)(ii) of the Bankruptcy Code and all such other rights, powers, and privileges granted to a lessee pursuant to Section 365(h) of the Bankruptcy Code, together with all such other similar rights, powers, and privileges granted to a lessee under any other debtor relief law.

**50. Waiver of Trial by Jury.**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN MORTGAGOR AND MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO PROVIDE THE FINANCING EVIDENCED AND SECURED BY THIS MORTGAGE.

[SIGNATURE PAGE FOLLOWS]

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HUD Project No. 071-980-71

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered by its authorized representative.

**MORTGAGOR:**

**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 TCP Illinois NFP, Inc.  
a Massachusetts nonprofit corporation  
its managing member

By: W  
Name: William Woodley  
Title: Authorized Agent

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FHA Project No. 071-98011

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 nonprofit 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 4 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 4 Master Owner LLC, for the uses and purposes therein set forth.

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



[Signature]  
Notary Public

My commission expires on:  
April 29, 2022

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## EXHIBIT A

### LEGAL DESCRIPTION FOR SOUTHBRIDGE PHASE 1A

#### 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 2001719057 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 4 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 2001719058 WHICH LEASE DEMISES THE FOLLOWING DESCRIBED PROPERTY FOR A TERM OF 99 YEARS ENDING JANUARY 15, 2119:

THAT PART OF LOTS 1 THROUGH 12 (BOTH INCLUSIVE), THAT PART OF LOTS 40 THROUGH 46 (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 28, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 01 DEGREES 31 MINUTES 56 SECONDS EAST, ALONG AN ASSUMED BEARING, BEING THE EAST LINE OF SAID LOTS 1 THROUGH 12, ALSO BEING THE WEST LINE OF STATE STREET, 289.70 FEET; THENCE SOUTH 88 DEGREES 29 MINUTES 48 SECONDS WEST 116.21 FEET; THENCE NORTH 01 DEGREES 31 MINUTES 56 SECONDS WEST 74.55 FEET; THENCE SOUTH 88 DEGREES 28 MINUTES 04 SECONDS WEST 35.00 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 151.00 FEET; THENCE NORTH 88 DEGREES 28 MINUTES 04 SECONDS EAST 37.00 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 64.15 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1; THENCE NORTH 88 DEGREES 29 MINUTES 48 SECONDS EAST ALONG SAID NORTH LINE, ALSO BEING THE SOUTH LINE OF W. 23RD STREET 114.21 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.

#### 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.

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SAID PARCEL CONTAINS 38,823 SQUARE FEET OR 0.891 ACRES, MORE OR LESS.

Common Addresses: 2302-2322 S. State Street, Chicago IL 60616  
Residential Address: 2310 S. State Street, Chicago IL 60616  
Retail Addresses: 2302 S. State Street, Chicago IL 60616;  
2306 S. State Street, Chicago IL 60616;  
2318 S. State Street, Chicago IL 60616;  
2322 S. State Street, Chicago IL 60616

## PROPERTY PINS

Property Pins: 17-28-218-028 (affects part of the land and other property);  
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)

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IHA Project No. 071-98079

## 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 the Mortgagee:**

Illinois Housing Development Authority  
111 East Wacker Drive  
Chicago, Illinois 60601  
Attention: Assistant to the Executive Director for Multifamily Programs

**with a copy to:**

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

**If to Mortgagor:**

Southbridge 4 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  
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

**UNOFFICIAL COPY**

EHA Project No. 071-98079

Telephone No.: (312) 853-7015

Email: [pspahn@sidley.com](mailto:pspahn@sidley.com)

and: Southbridge 1-4 Housing LLC  
c/o The Community Builders, Inc.  
135 South LaSalle Street, Suite 3350  
Chicago, IL 60603  
Attention: Midwest Region Development Director

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