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THIS INSTRUMENT WAS PREPARED  
BY AND AFTER RECORDING RETURN  
TO: Arieh Flemenbaum  
Illinois Housing Development  
Authority  
111 E. Wacker Dr., #1000  
Chicago, Illinois 60601  
Permanent Tax Index  
Identification Nos.:  
See Attached Exhibit A

Property Address:  
2315 S State Street  
Chicago, IL 60616

HTF - 11510



Doc# 2001719083 Fee \$88.00

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

EDWARD M. HOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/17/2020 02:18 PM PG: 1 OF 22

## REGULATORY AND LAND USE RESTRICTION AGREEMENT (TRUST FUND LOAN)

41044537 (28)

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (Trust Fund Loan) (this "Agreement"), made and entered into as of this 16<sup>th</sup> day of January, 2020, by and between **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 ("Borrower"), and the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** (the "Authority"), 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"), having its principal office at 111 East Wacker Drive, Suite 1000, Chicago, Illinois 60601;

### WITNESSETH:

**WHEREAS**, the Authority is the program administrator of the Illinois Affordable Housing Program, as that program is authorized by the Illinois Affordable Housing Act, 310 ILCS 65/1 *et seq.*, as amended from time to time (the "Trust Fund Act"), and the rules promulgated under the Trust Fund Act (the "Trust Fund Rules"); and

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

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

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“Improvements”). The Leasehold Estate and the improvements to be rehabilitated and constructed on it are collectively referred to in this Agreement as the “Development”; and

**WHEREAS, ICKES MASTER DEVELOPER JV LLC**, a Delaware limited liability company is the sole member of Borrower (the “Member”); **THE COMMUNITY BUILDERS, INC.**, doing business as TCB Illinois NFP, Inc., a Massachusetts nonprofit corporation is the managing member of the Member (“Managing Member”); **TCB DEVELOPMENT SERVICES LLC**, an Illinois limited liability corporation is the assignor of the Leasehold Estate to Borrower and has a financial interest in Borrower (“TCB Development”); and

**WHEREAS, Southbridge I-4 Housing LLC**, an Illinois limited liability company (“Master Tenant”), will lease the Affordable Units (as defined below), including the Trust Fund Units (described below) from Borrower pursuant to a master lease dated the same date hereof and executed between the Master Tenant and Borrower (the “Master Lease”); for the purposes of this Agreement, the Affordable Units are fifty-one (51) of the Units at the Development, which are restricted under one or more of the Restrictive Agreements (defined below); and

**WHEREAS**, the Authority has agreed to make a Loan to Borrower from the Trust Fund Program in an amount not to exceed Four Million Seven Hundred Sixty-Two Thousand Two Hundred Thirty-Four and No/100 Dollars (\$4,762,234.00) (the “Loan”), to be used with other monies, if any, for the acquisition, construction and permanent financing of the Development; and

**WHEREAS**, contemporaneously with the execution and delivery of this Agreement, Borrower has executed and delivered to the Authority its mortgage note (together with any renewals, modifications, extensions, amendments and replacements, the “Note”) of even date herewith, as evidence of its indebtedness to the Authority in the principal sum of Loan; and

**WHEREAS**, the Loan is evidenced, secured and governed by, among other things: (a) the Note; (b) that certain Junior Leasehold Mortgage, Security Agreement and Assignment of Rents and Leases (Trust Fund Loan) (the “Mortgage”) dated as of the date hereof executed by Borrower, as mortgagor, and delivered to the Authority, as mortgagee; (c) that certain Guaranty of Completion dated as of the date hereof (the “Guaranty”) executed by the Guarantor (as defined in the Guaranty) for the benefit of the Authority; (d) that certain Environmental Indemnity (the “Environmental Indemnity”) dated as of the date hereof executed by Borrower and others as indemnitors, and delivered to the Authority, as indemnitee; (e) that certain Loan Agreement dated as of the date hereof between the Authority and Borrower (the “Loan Agreement”); (f) Assignment of Contracts, Licenses and Permits of even date herewith, executed by Borrower, as assignor, in favor of IHDA, as assignee (the “Assignment of CLP”), (g) the Assignment of the Master Lease of even date herewith, executed by Borrower, as assignor, consented to by Master Tenant, in favor of IHDA, as assignee (the “Master Lease Assignment”), (h) Subordination, Non-Disturbance and Attornment Agreement of an even date herewith, executed by Borrower, Master Tenant, IHDA, CHA, the City of Chicago, New Hope Community Capital, Inc. and TCB Development (the “SNDA”), (i) an Assignment and Subordination of Rents of an even date herewith, executed by Borrower and IHDA (the “Rent Assignment”), (j) Collateral Assignment of Member Interest of an

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even date herewith, executed by Borrower, Member and IHDA (“Member Assignment”), (k) 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”), and (l) this Agreement. This Agreement, the Note, the Mortgage, the Guaranty, the Environmental Indemnity, the Assignment of CLP, Assignment of Master Lease, SNDA, Rent Assignment, Member Assignment, MT Managing Member 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”; and

**WHEREAS**, as an inducement to the Authority to make the Loan, Borrower has agreed to enter into this Agreement and consents to be regulated and restricted by the Authority as provided in it, and as provided for in the Act, the Trust Fund Act, the Trust Fund Rules and the rules, regulations, policies and procedures of the Authority promulgated under the Act, all as they may be amended and supplemented from time to time, as applicable.

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Incorporation**. The foregoing recitals are incorporated in this Agreement by this reference.

2. **Act and Rules**. Borrower agrees that at all times its acts regarding the Development shall be in conformance with the applicable provisions of the Act, the Trust Fund Act, the Trust Fund Rules and the rules, regulations, policies and procedures of the Authority promulgated under the Act, all as they may be amended and supplemented from time to time.

3. **Representations and Agreements**. Borrower further represents and agrees that:

a. **Four (4)** of the Units shall be occupied by Trust Fund Tenants (as defined in **Paragraph 9** hereof) whose income, at the time of initial occupancy, does not exceed the income limits for Low Income Tenants (as defined in **Paragraph 9** hereof), another **Six (6)** of the Units shall be occupied by Trust Fund Tenants whose income, at the time of initial occupancy, does not exceed the income limits for Very Low Income Tenants (as defined in **Paragraph 9** hereof);

b. In the advertising, marketing, and rental of Units and the selection of Tenants, Borrower and Master Tenant (in connection with the Affordable Units) agrees to abide by the terms and conditions of the Tenant Selection Plan executed by Borrower, and approved by the Authority, as it may be amended from time to time with the prior written consent of the Authority;

c. In the management and operation of the Development, Borrower and Master Tenant (in connection with the Affordable Units) agrees to abide by the terms and conditions of the Affirmative Fair Housing Marketing Plan; the Management Plan; and the

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Management Agreement; all as approved by the Authority, as such documents may be amended from time to time with the prior written approval of the Authority. Borrower shall be responsible for ensuring the management agent's compliance with applicable provisions of the Act, Trust Fund Act, the Trust Fund Rules and all applicable ordinances, regulations and statutes and the rules, procedures and requirements of the Authority. At the Authority's direction, Borrower shall terminate the Management Agreement with the management agent and select another management agent satisfactory to the Authority;

d. On forms approved by the Authority, Borrower and Master Tenant (in connection with the Affordable Units) shall obtain from each prospective Trust Fund Tenant prior to his or her admission to the Development and periodically thereafter as required by the Authority, a certification of income (the "Certification"). Borrower shall submit (and cause the Master Tenant to submit, as applicable) such Certifications to the Authority in the manner prescribed by the Authority;

e. In the manner prescribed by the Authority, Borrower and Master Tenant (in connection with the Affordable Units) shall obtain written evidence substantiating the information given on such Certifications and shall retain such evidence in its files at the Development for three (3) years after the year to which such evidence pertains. Within thirty (30) days after the end of each calendar year, Borrower shall certify to the Authority that, at the time of such certification and during the preceding calendar year, Borrower was in compliance with the requirements of this **Paragraph 3**, or, if Borrower is not or has not been in compliance with such requirements, Borrower shall give notice to the Authority of its failure to comply and the corrective action Borrower is taking or has taken;

f. Borrower shall (and cause Master Tenant to) annually submit a schedule of rents with utility allowances for the Development for the Authority's approval, and shall not change the rent schedule and utility allowances for the Development without the Authority's approval.

g. Borrower shall require all Tenants of Trust Fund Units to execute a written lease (the "Lease") in a form approved by the Authority;

h. Borrower shall (and cause Master Tenant to) obtain all federal, state and local governmental approvals required by law for its acquisition, construction, ownership and operation of the Development;

i. Borrower shall (and cause Master Tenant to) not evict any Tenant from the Development without good cause;

j. Borrower shall (and cause Master Tenant to) design and construct the Development in conformity (i) with applicable federal, state and local statutes, regulations, ordinances, standards and codes (except as otherwise approved by the Authority) and (ii) with all applicable rules, contracts, agreements, procedures, guides and other requirements of the Authority provided to Borrower in writing;

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**k.** Borrower shall and shall cause Master Tenant to timely perform their respective obligations under that certain Rental Assistance Demonstration Use Agreement among Borrower, Master Tenant, Chicago Housing Authority and HUD (the "RAD Use Agreement"), Tax Regulatory Agreement among Borrower, Master Tenant and IHDA (the "Tax LURA"), IHDA Regulatory Agreement among Borrower, Master Tenant and IHDA (the "Conduit Regulatory Agreement"), Low Income Housing Tax Credit Extended Use Agreement among Borrower, Master Tenant and IHDA (the "IHDA Extended Use Agreement"), the Regulatory Agreement among Borrower, Master Tenant and IHDA concerning its Trust Fund program units (the "Trust Fund Regulatory Agreement"), the Regulatory Agreement among Borrower, Master Tenant and the City of Chicago (the "HOME Regulatory Agreement"), the Regulatory Agreement among Borrower, Master Tenant and the City of Chicago (the "TIF Regulatory Agreement"), the Illinois Affordable Housing Tax Credit Regulatory Agreement among Borrower, IHDA and the TCB Development Services (the "DTC Regulatory Agreement"), and any other regulatory agreement or other document between and Borrower which restricts the Units (collectively the "Other Regulatory Agreements"; together with the RAD Use Agreement, Tax LURA, Conduit Regulatory Agreement, the Extended Use Agreement, , the Trust Fund Regulatory Agreement, the HOME Regulatory Agreement, the TIF Regulatory Agreement, the DTC Regulatory Agreement, collectively the "Restrictive Agreements"). No consent or approval given by IHDA under or in connection with the Restrictive Agreements shall be deemed to constitute any consent or approval of IHDA under this Agreement or under any other Loan Document. In the event of any conflict between this Agreement and the provisions of the Restrictive Agreements, the more restrictive provisions shall control and prevail; except that so long as the RAD Use Agreement is in effect, the provisions of the RAD Use Agreement shall control and prevail;

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

**m.** Borrower shall cause Master Tenant to comply and fulfill all of the duties, obligations, requirements, representations, covenants and all other agreements in connection with the leasing, management and operation of the Trust Fund Units as found in this Agreement and those in Paragraphs 2, 3, 4, 5 (but only as they apply to the Trust Fund Units), 6, 7, 9, 12 through 18 and 21 ("Trust Fund Unit Covenants"). As an example and for clarification purposes only, Borrower shall require and collect from Master Tenant

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the Certifications and Recertification for the Trust Fund Units, and submit them to IHDA as required under **Paragraph 3.d** above.

**4. Acts Requiring Authority Approval.** Except as permitted pursuant to the other Loan Documents, Borrower shall not, without the prior written approval of the Authority, which may be given or withheld in the Authority's sole discretion:

**a.** Convey, transfer or encumber the Development or any part of it, or permit the conveyance, transfer or encumbrance of the Development or any part of it;

**b.** Convey, assign or transfer any right to manage, or receive the rents and profits from, the Development;

**c.** Initially rent any Unit for a period of less than one (1) year, and after such initial period, rent any Unit for less than six (6) months or more than two (2) years;

**d.** Lease or sublease any non-residential facility in the Development or amend or modify any such lease or sublease, which, to the best of Borrower's knowledge, would result in a conflict of interest between any of the parties to such contracts and the Authority, its board members, officers, employees, agents or members of their respective immediate families;

**e.** Require, as a condition of the occupancy or leasing of any Unit in the Development, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not to exceed one (1) month's rent to guarantee the performance by the Tenant of the covenants of the Lease. Any funds collected by Borrower as security deposits shall be kept separate and apart from all other funds of the Development; or

**f.** Prepay the Loan in whole or in part.

**5. Borrower Duties.** In addition to, but not by way of limitation of, the other duties of Borrower set forth in this Agreement, Borrower shall comply with the following:

**a. Maintenance.** Borrower shall maintain the Development and the grounds and equipment appurtenant to it in a decent, safe and sanitary condition, and in a rentable and tenantable state of repair, and in compliance with all applicable federal, state and local statutes, regulations, ordinances, standards and codes.

**b. Management.** Borrower shall provide for the management of the Development in a manner satisfactory to the Authority.

**c. Audit.** The Development and the equipment, buildings, plans, specifications, offices, apparatus, devices, books, contracts, records, documents and other papers relating to it, and the books and records relating to Borrower, shall at all times be

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maintained in reasonable condition for proper audit, and shall be subject to examination, inspection and copying by the Authority or its agent or representative upon reasonable prior notice during normal business hours, as the Authority reasonably requires.

d. Financial and Expense Reports. Within ninety (90) days following the end of the Borrower's fiscal year, in a manner prescribed by the Authority in writing, Borrower shall furnish the Authority with a complete annual financial report for the Development based upon an examination of the books and records of the Development, prepared at Borrower's expense in accordance with the written requirements of the Authority, and certified to Borrower by an Illinois licensed certified public accountant.

e. Furnishing Information. At the request of the Authority, Borrower shall furnish such reports, projections, certifications, budgets, operating reports, tax returns and analyses as required pursuant to the statutes, rules and regulations of the Authority and the Trust Fund Act, as amended from time to time, or by other applicable federal or state statutes or requirements, and from time to time shall give specific answers to written questions in connection with Borrower's income, assets, liabilities, contracts and operation, all relating to the Development, and the administration, operation, maintenance, occupancy, financial soundness and physical condition of the Development.

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

## 6. Non-Discrimination in Housing.

a. Borrower shall not, in the selection of Tenants, in the provision of services, or in any other manner unlawfully discriminate against any person on the grounds of race, color, creed, religion, sex, age, unfavorable military discharge, ancestry, handicap, national origin, marital status, familial status or because the prospective Tenant is receiving governmental rental assistance.

b. Borrower shall comply with all of the provisions of Paragraph 3805/13 of the Act, Paragraph 65/10(a) of the Trust Fund Act and all other provisions of federal, state and local law relating to non-discrimination.

7. Violation of Agreement by Borrower. Upon violation of any of the provisions of this Agreement by Borrower (and/or Master Tenant in connection with the Trust Fund Units), the Authority shall give notice of such violation to Borrower (and Master Tenant in connection with the Trust Fund Units) as provided in **Exhibit B** attached to and made a part hereof. If such violation is not corrected to the satisfaction of the Authority within thirty (30) days after such

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notice, the Authority may declare a default under this Agreement; however if such condition is not reasonably curable within thirty (30) days despite Borrower's (and/or Master Tenant's) reasonable efforts to cure it, Borrower and/or Master Tenant shall have one hundred twenty (120) additional days to cure such default, so long as (i) that cure is commenced within such thirty (30) day period, (ii) Borrower (and/or Master Tenant) continues to diligently pursue such cure in good faith and (iii) the Authority's security for the Loan is not, in the sole judgment of the Authority, impaired as a result of the existence of such failure; after the expiration of such one hundred fifty (150) day period, the Authority may declare a default under this Agreement, effective on the date of notice of such declaration of default to Borrower, and upon such default, and so long as such default is continuing, the Authority may do the following:

a. Declare the whole of the indebtedness under the Note immediately due and payable and then proceed to exercise the rights and remedies set forth in any Loan Document.

b. Subject to the rights of the Senior Lenders (as defined in the Loan Agreement), take possession of the Development, bring any action necessary to enforce any rights of Borrower growing out of the operation of the Development and operate the Development in accordance with the terms of this Agreement until such time as the Authority, in its sole discretion, determines that Borrower is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Note;

c. Subject to the rights of the Senior Lenders (as defined in the Loan Agreement), collect all rents and charges in connection with the operation of the Development and use such collections to pay Borrower's obligations under this Agreement, the Note, the Mortgage, or any other Loan Document and such other obligations of Borrower in connection with the Development and the necessary expenses of preserving and operating it;

d. Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. Because the injury to the Authority arising from a default under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, Borrower acknowledges and agrees that the Authority's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure the Authority's public purpose; or

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

The Authority's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of the Authority's other remedies. No waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or



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subsequent breach. The failure or delay of the Authority in exercising any of its rights under this Agreement in any one or more instances, or the exercise of less than all of its rights in any one or more instances, shall not be deemed or construed as a waiver of any such rights.

The Authority agrees that any cure made or tendered by the Master Tenant and/or Master Tenant's Investor Member shall be accepted or rejected by the Authority on the same basis and within the same time periods as if such cure were made or tendered by the Borrower and if such default is cured by such party, such cure shall be deemed to be a cure by the Borrower.

**8. Termination of Liabilities.** In the event of a sale or other transfer of the Development, all of the duties, obligations, undertakings and liabilities of Borrower or other transferor (the "Transferor") under the terms of this Agreement shall thereafter cease and terminate as to the Transferor, except as to any acts or omissions or obligations to be paid or performed by 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 Agreement, the transferee of the Development (a "New Borrower"), as a condition precedent to its admission as a New Borrower, 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 under this Agreement from and after the date of such sale or transfer. Such assumption shall be in form and substance acceptable to the Authority. Any such New Borrower shall not be obligated with respect to matters or events that occur or arise before its admission as a New Borrower.

**9. Definitions.**

a. "Low Income Tenant" means a single person, family or unrelated persons living together whose adjusted income is less than or equal to eighty percent (80%) of the median income of the metropolitan statistical area of the Chicago metropolitan area, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1957 ("Median Income").

b. "Very Low Income Tenant" means a single person, family or unrelated persons living together whose adjusted income is less than or equal to fifty percent (50%) of the Median Income.

c. "Trust Fund Tenant" means a Low Income Tenant or Very Low Income Tenant.

d. "Market Tenant" means a Tenant that is not a Trust Fund Tenant.

e. "Tenant", means all Trust Fund and Market Tenants.

f. For the purposes of this Agreement, "Trust Fund Unit" means a Unit that is occupied by a Trust Fund Tenant.

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10. **Term of Agreement; Covenants Run with Development.** The covenants and agreements set forth in this Agreement shall encumber the Development and be binding on the Borrower, New Borrower and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it until the Maturity Date (as defined in the Note). If the Note is prepaid prior to the Maturity Date (as defined in the Note) with the approval of the Authority, only the covenants and agreements set forth in **Paragraphs 2, 3, 4(a, b, d, and e), 5(a), 6, 7(d)-(e), 8-10 and 12-20** hereof (collectively, the "Continuing Obligations") shall remain in effect for the period of time commencing on the prepayment and ending on the Maturity Date, regardless of whether the Loan is prepaid voluntarily by Borrower or tendered by any party following an acceleration by the Authority of the Note or enforcement by the Authority of its remedies in connection with the Loan.

Borrower expressly acknowledges that its undertakings and agreements stated in this Agreement are given to induce the Authority to make the Loan and that, even if the Loan has been repaid prior to the Maturity Date, or paid on the Maturity Date, the Borrower's undertaking to perform the Continuing Obligations for the period set forth in the previous paragraph is a condition precedent to the willingness of the Authority to make the Loan.

11. **Liability of Borrower – Nonrecourse.** Except as otherwise set forth in the Environmental Indemnity and the Guaranty, Borrower's liability created under this Agreement and the Loan Documents shall be non-recourse and none of the Borrower, the Member, Managing Member, Guarantor, nor any of the partners, officers, employees, directors, members or agents of the foregoing shall have any personal liability for repayment of the Loan. The Lender shall look only to the Development and its reserves and any other funds or letters of credit relating to the Development for repayment of the Loan. The foregoing shall not limit Borrower's, the Member's, Managing Member's, or Guarantor's respective liability for damages as a result of (i) fraudulent acts, or willful and wanton acts or omissions in violation of the provisions of this Agreement and the other Loan Documents; (ii) the fair market value of the personalty or fixtures removed or disposed of by Borrower from the Development in violation of the terms of the Loan Documents; (iii) the misapplication in violation of the terms of the Loan Documents, of any funds to the full extent of such misapplied funds and proceeds, including, without limitation, any funds or proceeds received under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain; (iv) any misapplication of any security deposits attributable to any leases of Units, or failure to pay interest on such security deposits as required by law; (v) waste committed on the Development to the extent that funds in the Replacement Reserve Account or otherwise available in any property account held by Borrower, are available to remedy such waste and Borrower has failed to remedy the waste despite the written instructions of the Lender; (vi) the occurrence of a Prohibited Transfer (as defined in the Mortgage), without the prior written consent of the Lender; (vii) a written material misrepresentation relating to the Loan was made by Borrower or by any party in the ownership structure of Borrower, or any employee or agent of Borrower or any other such entity or individual under the control or direction of Borrower; (viii) a material error or omission was made in the Ownership Structure Certificate (as defined in the Loan Agreement); (ix) the Borrower has violated the single asset requirement contained in the Loan Agreement; (x) the Borrower has delivered a false certification pursuant to the Loan Documents. Any liability incurred pursuant to this Paragraph shall be the personal liability of the

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Borrower, the Member, Managing Member, Guarantor. The provisions of this Paragraph shall have no effect on obligations pursuant to the Guaranty; or (xi) failure to comply with all Fair Housing and accessibility laws and regulations. Any liability incurred pursuant to this Paragraph shall be the personal liability of the Borrower, the Member, Managing Member, Guarantor. The provisions of this Paragraph shall have no effect on the liabilities and obligations contained in the Guaranty.

**12. Amendment of Agreement.** This Agreement shall not be altered or amended without the prior written approval of all of the parties hereto.

**13. Execution of Conflicting Documents.** Borrower warrants that it has not executed, and it agrees that it shall not execute, any other agreement with provisions contradictory, or in opposition, to the provisions of this Agreement, and that, in any event, the requirements of this Agreement are and shall be paramount and controlling as to the rights and obligations set forth in such other agreement and supersede any other requirements in conflict with this Agreement; with the exception of, and the Authority consents to the execution and prior recordation of the following agreements: (a) the Rental Assistance Demonstration Use Agreement by Borrower and CHA for the benefit of the U.S. Department of Housing and Urban Development (the "Use Agreement"), (b) the Right of First Refusal Agreement by CHA and Borrower (the "Right of First Refusal"), (c) Ground Lease by CHA, as the initial landlord, with TCB Development as the initial tenant, as assigned by TCB Development to Borrower, and (d) all other encumbrances shown as senior to this Agreement on the title policy obtained by Lender insuring the Mortgage as of the Final Closing Date. To the extent this Agreement conflicts with any provisions or requirements set forth in the Mortgage or the Note, the document selected by IHDA shall prevail and control. Notwithstanding anything to the contrary in this **Paragraph 13**, to the extent that this Agreement conflicts with the requirements of Section 42 of the Internal Revenue Code of 1986, or the requirements of the RAD Use Agreement, the requirements of Section 42 or the RAD Use Agreement shall control. To the extent this Agreement conflicts with any provisions or requirements set forth in the Mortgage or the Note, the provisions of the Mortgage or the Note, as the case may be, shall prevail and control.

**14. Partial Invalidity.** If any term, covenant, condition or provision of this Agreement, or its application to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**15. Successors.** Subject to the provisions of **Paragraph 8** hereof, this Agreement shall bind, and the benefits shall inure to, the parties to this Agreement, their legal representatives, successors in office or interest and assigns; however, Borrower may not assign this Agreement, or any of its obligations under this Agreement, without the prior written approval of the Authority.

**16. Indemnification of the Authority.** Except for matters arising solely from the gross negligence or willful misconduct of the Authority, Borrower, Member, Managing Member and

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Guarantor agree to defend and indemnify and hold harmless the Authority 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 the Authority may incur or suffer by reason of or in connection with the real estate, Leasehold Estate or the Development. Borrower, Member, Managing Member and Guarantor further agree that the Authority, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

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

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

19. **Notices.** Notices under this Agreement shall be given as provided in **Exhibit B** hereof.

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

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

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

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

# UNOFFICIAL COPY

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

**SOUTHBRIDGE 4 MASTER OWNER LLC**

an Illinois limited liability company

By: **ICKES MASTER DEVELOPER JV LLC**

a Delaware limited liability company

its sole member

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

d/b/a TCB Illinois NFP, Inc.

a Massachusetts not-for-profit corporation

its managing member

By: 

Name: William Woodley

Title: Authorized Agent

**AUTHORITY:**

**ILLINOIS HOUSING DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

# UNOFFICIAL COPY

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an Illinois limited liability company

By: **ICKES MASTER DEVELOPER JV LLC**

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its sole member

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

d/b/a TCB Illinois NFP, Inc.

a Massachusetts not-for-profit corporation

its managing member

By: \_\_\_\_\_

Name: William Woodley

Title: Authorized Agent

**AUTHORITY:**

**ILLINOIS HOUSING DEVELOPMENT AUTHORITY**

By: Debra Olson

Name: **Debra Olson**

Its: Assistant Executive Director

# UNOFFICIAL COPY

STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF COOK                    )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that William Woodley personally known to me to be an authorized agent of The Community Builders, Inc, a Massachusetts not-for-profit corporation and the managing member of Ickes Master Developer JV LLC, a Delaware limited liability company (the "Sole Member") and the sole member of Southbridge 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 11th day of December, 2019

  
\_\_\_\_\_  
Notary Public

My commission expires on:

\_\_\_\_\_







# UNOFFICIAL COPY

## TRUST FUND UNITS ADDENDUM

This Trust Fund Units Addendum (the "Addendum") is attached to and made a part of the Regulatory Agreement (Trust Fund Loan) dated as of January 16, 2020 by and between Borrower and IHDA (the "Regulatory Agreement"). The Master Tenant is signing this Addendum for purposes of binding itself and agreeing to Trust Fund Unit Covenants in the Regulatory Agreement in connection with the leasing, management and operation of the Trust Fund Units, but not with respect to the remaining Project (i.e., the non-Affordable Units). If the Authority takes legal action to enforce any obligations of Master Tenant with respect to the Affordable Units under the Regulatory Agreement and prevails in its position, Master Tenant shall pay the Authority's reasonable attorneys' fees, costs, disbursements, and other expenses in connection with such legal action.

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

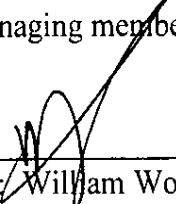
All non-grammatical capitalized terms not defined in this Addendum shall have the meanings assigned to them in the Regulatory Agreement.

Master Tenant also agrees to comply with all provisions of the ACT, Trust Fund Act and Trust Fund Rules with respect to the Trust Fund Units for so long as the Regulatory Agreement is outstanding.

### MASTER TENANT:

#### SOUTHBRIDGE 1-4 HOUSING LLC

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

By:   
 Name: William Woodley  
 Title: Authorized Agent

# UNOFFICIAL COPY

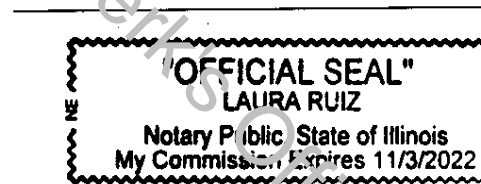
STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF COOK                    )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that William Woodley personally known to me to be an authorized agent of Southbridge 1 Housing MM LLC, an Illinois limited liability company (the "Managing Member") and the managing member of Southbridge 1-4 Housing LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such authorized agent, he signed and delivered the said instrument, as an authorized representative of the Managing Member, as the free and voluntary act of such person, and as the free and voluntary act and deed of the Managing Member and Southbridge 1-4 Housing LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this 14th day of December, 2019

  
\_\_\_\_\_  
Notary Public

My commission expires on:



# UNOFFICIAL COPY

## 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 68 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.

# UNOFFICIAL COPY

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)

Property of Cook County Clerk's Office  
COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

# UNOFFICIAL COPY

## 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 Authority:

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

with a copy to:

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

If to Borrower:

Southbridge 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

# UNOFFICIAL COPY

Urban Investment Group  
c/o Goldman Sachs Group  
200 West Street  
New York, New York 10282  
Attention: Urban Investment Group LIHTC Portfolio Manager

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

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