

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**PREDEVELOPMENT LOAN AGREEMENT
ROLLING HILLS/SOUTHSIDE
PHASE I**

This Predevelopment Loan Agreement is effective as of _____, 2011, between City of Durham, North Carolina, (the "City") and Southside Revitalization Phase 1 LP (the "Owner"), a limited partnership.

PREAMBLE

A. The City competitively selected McCormack Baron Salazar, Inc., (the "Developer") for a neighborhood revitalization project for the former Rolling Hills site to develop a rental housing project on 6 acres of the 20 acre site.

B. The Developer has assembled a development team of third-party contractors and professionals for the development efforts, each phase or sub-phase of which requires distinct predevelopment activities, including architectural and engineering planning, development of a financing strategy and applications for allocation of low-income housing tax credits and other financing.

C. The Developer has formed the Owner in order to carry out the first rental phase of the Rolling Hills/Southside revitalization ("Phase I"). On June 30, 2011, the Owner received a reservation of low-income housing tax credits (the "Credit Award") from the North Carolina Housing Finance Agency ("NCHFA") in support of Phase I, based upon certain commitments to the level of affordability and other required elements of Phase I as reflected in Owner's application to NCHFA (the "Credit Application") and in the Credit Award (the "Phase I Commitments").

D. Finding that such financing is not otherwise available, wholly or in part, from public or private lenders upon equivalent terms and conditions, the City desires to provide to the Owner a predevelopment loan in the amount of up to \$998,300.00 to fund costs incurred by the Owner for certain predevelopment activities relating to Phase I, to be repaid by the Owner at the time the Phase 1 site is deeded from the City to the Owner, and at the closing for the Construction/Permanent Loan between the City and the Owner (the "Closing").

AGREEMENT

In consideration of the promises and their mutual covenants herein contained, the parties intending to be legally bound agree as follows:

1. Loan. Attached hereto as **Exhibit A** is the Predevelopment Budget approved by the City and the Owner for Phase I, in the total budgeted amount of \$1,508,488.00 (the "Predevelopment Budget"). The City agrees to make a loan to the Owner in a principal amount of up to \$998,300.00 to cover the costs incurred by the Owner prior to Closing for activities identified in the Predevelopment Budget (the "Predevelopment Loan"). The Predevelopment Loan shall not bear interest, except in the Event of Default, as defined in the Predevelopment Note.

2. Reimbursements. The Owner shall submit to the City, no more often than monthly, a payment request for the reimbursement of Predevelopment Loan funds for expenditures incurred for activities identified in the Predevelopment Budget, or the portion thereof permitted to be funded hereunder or a request for payment for services or activities completed by a third party that has been invoiced and not yet paid. Each payment request shall identify, by line item, (a) the total costs to date incurred by the Owner, (b) the amounts, if any, of previous reimbursements/payments of Predevelopment Loan funds to the Owner for such item, and (c) the portion, if any, of such costs for which reimbursement/payment is requested under the payment request. Each payment request shall be accompanied by such documentation as is reasonably satisfactory to the City, including separate billing statements or invoices from each third-party service provider to which payment has been or will be made. The City shall reimburse or process a payment for Predevelopment Loan proceeds to the Owner within 30 days of the City's receipt of the payment request, except only to the extent of any portion thereof as to which the City shall provide written notice to the Owner of its reasonable objection thereto within ten days after the date of submission of the payment request to the City. By execution of this Agreement, the City hereby represents and warrants that it has the necessary funds available to make timely reimbursements to the Owner in immediately available funds as set forth herein.

3. Phase I Commitments.

(a) Purpose to Allow Timely Closing. The Owner expressly acknowledges that the Predevelopment Loan is being advanced solely to facilitate activities required to allow for the Closing to occur for Phase I in a timely manner, and that such Closing will only occur in a manner consistent with the Phase I Commitments as made to NCHFA, including, without limitation, the commitment to make 80 of Phase I's rental units affordable to households at or below 60% (the "Affordable Units") of the Area Median Income (as further detailed in the Credit Award, whose terms are incorporated by reference as if fully set forth herein). In no event shall the Developer or the Owner have the right to proceed with the Closing on substantively different terms without the express approval of the City.

(b) City Funding Not to Exceed Proportion of Affordable Units. The Owner further acknowledges that the City intends for the proceeds of this Predevelopment Loan to benefit the Affordable Units, and not the market rate or unrestricted units (the "Market Rate Units"). In furtherance of such purpose, at or before Closing, the Owner will be required to document in writing from a third party that it has obtained non-City funds sufficient to cover not less than the proportionate costs of the

Market Rate Units in Phase I. The City acknowledges that the requirements of the preceding sentence shall be satisfied if the Owner secures the additional sources of funds anticipated in the Credit Application. In no case shall the Owner request to draw down City money from proceeds of this Predevelopment Loan such that the ratio of City money expended as compared to the balance of the Predevelopment Budget exceeds sixty-seven percent (67%). The Owner represents to the City that it has funds available to it to expend (or has previously expended) in the amount of the Predevelopment Budget not eligible for funding by the City pursuant to this Agreement.

4. Repayment. The entire principal amount of the Predevelopment Loan shall mature and be due and payable upon the Closing for Phase I; provided, however, that if the Closing does not occur on or before September 30, 2012, then the Owner shall deliver its Project Documents (as defined in the Assignment of Project Documents in the attached **Exhibit C**) to the City in lieu of repayment of the Predevelopment Loan, or as may otherwise be specified in the Master Development Agreement anticipated to be executed between the City and the Developer (and acknowledged in writing by the Owner). The obligation of the Owner to repay the Predevelopment Loan shall be evidenced by a Predevelopment Note in the form attached hereto as **Exhibit B**, and incorporated herein by this reference. In no event shall the Predevelopment Loan mature and become payable later than September 30, 2012. At Closing for Phase I, the parties acknowledge that, subject to mutually acceptable documentation, the City and the Owner will mutually agree for the Owner to either repay the Predevelopment Loan to the City or deem the amount outstanding under the Predevelopment Loan to be the first advance on the anticipated construction/permanent loan from the City to the Owner.

5. Non-Recourse. Neither Developer or Owner nor any of their shareholders, partners, officers, directors, agents or employees shall have any personal liability for repayment of the Predevelopment Loan or Predevelopment Note, and recourse on the Predevelopment Note shall be limited to the Project Documents as set forth in the Assignment of Project Documents (**Exhibit C**), and any other collateral given by Developer or Owner to secure the payment of the indebtedness evidenced thereby.

6. Representations and Warranties.

(a) The Owner is duly organized, validly existing and in good standing as a limited partnership under the laws of the State of Missouri, and is registered to do business in the State of North Carolina.

(b) The Owner has full power and authority to enter into the transactions provided for in this Agreement and has been duly authorized to do so by all necessary and appropriate action. When executed and delivered by the Owner, this Agreement and the Predevelopment Note will constitute the legal, valid and binding obligations of the Owner, enforceable in accordance with their terms.

7. Additional Provisions. City will not be obligated to make any advance of Predevelopment Loan funds if the Owner fails to perform or breaches any of the covenants, conditions or agreements contained in this Agreement or the

Predevelopment Note, and does not cure such failure to perform or breach within 30 (thirty) days after written notice.

8. Miscellaneous. This Agreement is governed by the laws of the State of North Carolina. No modification or waiver of any of the terms of this Agreement, nor any consent to any departure by the Owner therefrom, will be effective unless made in a writing signed by City, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. This Agreement and the Predevelopment Note (and any additional agreements incorporated herein) constitute the entire agreement between City and the Owner concerning the Predevelopment Loan, and shall replace all prior understandings, statements, negotiations and written materials relating thereto. The Recitals provisions of this Agreement are incorporated herein by this reference.

9. Contracts. The Owner shall make available for review by the City copies of all contracts for work intended to fulfill the Predevelopment Budget, or any portion thereof. The Owner agrees that all its interest in drawings, tracings, specifications and other documents prepared by the Owner, its individual members or subcontractors and used in the predevelopment work and construction of Phase I shall be collaterally assigned to the City pursuant to the Assignment of Rolling Hills/Southside property, and the Consent to Assignment of Project Documents, as such forms are attached hereto as **Exhibit C.**

10. Independent Contractor. Nothing contained in any agreement between the City and the Owner, nor any act of the City or the Owner, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship, except as provided under the terms of this Agreement.

[remainder of page left blank intentionally]
[signature page(s) follow]

WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF DURHAM

By: _____
Thomas J. Bonfield, City Manager

ATTEST:

CITY OF DURHAM

City Clerk

SOUTHSIDE REVITALIZATION PHASE 1 LP

By: MBA Development Corp., its general partner

By: _____

Name: _____

Title: _____

ATTEST:

Secretary

(affix corporate seal here)

NORTH CAROLINA

DURHAM COUNTY

I, a Notary Public in and for the aforesaid County and State certify that _____ personally appeared this day, and acknowledged that she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by Thomas J. Bonfield, its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 2011.

Notary Public

My Commission Expires

NORTH CAROLINA

DURHAM COUNTY

I, a Notary Public in and for the aforesaid County and State, certify that _____ personally appeared before me this day and stated that he or she is _____ of MBA Development Corp., the general partner of Southside Revitalization Phase1 LP, a limited partnership, and that by authority duly given and as the act of the limited partnership, the foregoing contract or agreement with the City of Durham was signed in its name by MBA Development Corp., as general partner, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the day of _____, 2011.

Notary Public

My Commission Expires

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the _____ day of _____, 2011.

Finance Officer

EXHIBIT A

Southside Revitalization Phase 1 LP

9/1/2011

Use	City of Durham	MBS/Owner	Total
A. Phase 1 Site and Vertical Cost	-	-	-
1. Architectural - Design	324,000	25,000	349,000
2. Cost Estimating	5,000	5,000	10,000
3. Engineering	356,000	30,000	386,000
4. Environmental	41,500	8,500	50,000
5. Water, Sewer, Impact fees	139,000	30,000	169,000
6. Site Plan and Design Review and S+ E Fees	38,000		38,000
7. NCHFA Allocation Fee		100,166	100,166
8. NCHFA Application/Market Study Fee		11,970	11,970
9. Survey/Plats	19,800	8,200	28,000
10. Legal	25,000	150,000	175,000
11. Title Search/Commitment	5,000		5,000
12. Travel and Expenses		131,312	131,312
13. MBS Project Management Overhead		0	0
14. Contingency	45,000	10,000	55,000
TOTAL	998,300	510,148	1,508,448

Source			
MBS/Owner for 3rd Party, Travel and Expenses		510,148	510,148
City of Durham for 3rd party	998,300		998,300
TOTAL	1,008,300	500,148	1,508,448

EXHIBIT B

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

PREDEVELOPMENT NOTE

Rolling Hills/Southside

\$998,300.00

Effective as of _____, 2011

For value received, Southside Revitalization Phase 1 LP (the "Owner") promises to pay to the order of the City of Durham, North Carolina, (the "City"), the principal sum of \$998,300.00, or so much thereof as shall be advanced to or for the account of the Owner pursuant to the terms of a certain Predevelopment Loan Agreement (the "Loan Agreement") of even date herewith between the Owner and the City, which Loan Agreement is incorporated herein by reference. The term of this Note shall commence on the date hereof and continue until the Closing (as such term is defined in the Loan Agreement) for Phase I, but in no event later than September 30, 2012 (the "Payment Date"). This Note shall not bear interest during its term, except for in the case of an Event of Default. No payment shall be due during the term hereof, until the Payment Date, whereupon the outstanding principal balance hereof shall be due and payable, except as otherwise provided for herein.

If Closing, as defined in the Loan Agreement, does not occur for any reason on or before the Payment Date, then the Owner shall deliver its Project Documents (as defined in the Assignment of Project Documents dated if even date herewith) to the City in lieu of repayment of the Predevelopment Loan (or as may otherwise be authorized by Section 4 of the Loan Agreement).

The Owner shall have the right to prepay this Note in whole at any time or in part from time to time during its term. Any such prepayment may be made without premium or penalty. All payments hereunder shall be made at the office of the City of Durham, 101 City Hall Plaza, Durham, NC 27701, Attn. Director of Community Development, or elsewhere as shall be directed in writing by any holder hereof.

In the event that Owner fails to make any payment required to be paid hereunder within 15 days after the same is due, or fails to perform or breaches any of the other covenants, conditions or agreements contained in this Note or in the Loan Agreement

which is not cured within 30 (thirty) days after written notice, which failure continues beyond the expiration of any applicable notice and cure period set forth therein (each an "Event of Default"), the entire unpaid balance of the principal debt, together with any other charges, shall at the election of the City and without further notice become immediately due and payable and no failure on the part of the City to exercise any of its rights hereunder shall be deemed a waiver of any such rights or any default hereunder.

Commencing on an Event of Default and continuing until this Note is paid in full or all defaults are cured, whichever first occurs, interest on this Note shall accrue on the outstanding principal balance at a rate per annum equal to eight (8) per cent.

If this Note is not paid when due and is placed with an attorney for collection, and whether or not a lawsuit is entered hereon, the Owner further agrees to pay the City, in addition to the principal and interest then due, the costs of suit and reasonable attorneys' fees.

No failure on the part of the City to exercise any of its rights hereunder shall be deemed a waiver of such rights or of any Event of Default. Any notice which the City shall elect or be required to give shall be deemed to be given when (a) mailed by Registered or Certified Mail, Return Receipt Requested, or (b) sent for overnight delivery by a nationally recognized delivery service, addressed to the Owner at the address on the City's records.

Presentment, protest and notice of dishonor are hereby waived to the extent such may legally be waived.

Neither Owner nor any of its shareholders, partners, officers, directors, agents or employees shall have any personal liability for repayment of the Predevelopment Loan or Note, and recourse on the Predevelopment Note shall be limited to the Project Documents as set forth in the Assignment of Project Documents, (**Exhibit C**), and any other collateral given by Owner to secure the payment of the indebtedness evidenced thereby.

This Note shall be governed by and construed in accordance with the laws of the State of North Carolina, without application of any statute relating to conflicts of law.

IN WITNESS WHEREOF, the Owner has caused this instrument to be executed on the day and year first above written.

Owner

Southside Revitalization Phase 1 LP

By: MBA Development Corp., its general partner

By: _____

Name: _____

Title: _____

EXHIBIT C

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

ASSIGNMENT OF PROJECT DOCUMENTS

THIS ASSIGNMENT OF PROJECT DOCUMENTS (the "Assignment") is made as of _____, 2011 by and between Southside Revitalization Phase 1 LP ("Owner") and the City of Durham, North Carolina ("City").

WHEREAS, pursuant to terms more specifically described in a loan agreement between the City and Owner of even date herewith (the "Loan Agreement"), the City intends to lend to Owner up to \$998,300.00 (the "Loan").

WHEREAS, the execution and delivery of this Assignment is a condition precedent to the performance by the City of its obligations under the Loan Agreement;

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Unless expressly defined herein, all capitalized terms used herein shall have the meanings ascribed to such terms in the Loan Agreement or in the Predevelopment Note of even date herewith, as incorporated into the Loan Agreement by reference.

2. Owner hereby grants, transfers and assigns to the City all the right, title and interest of Owner, to the extent assignable, in and to the following documents now or hereafter executed by Owner (the "Project Documents"):

(a) all contracts and subcontracts, together with any and all extensions, modifications, amendments and renewals thereof, which are entered into by Owner (or assumed by Owner from Developer) in connection with the performance of the predevelopment work or the supply of the materials required for the construction of Phase I;

(b) all building permits, governmental permits, licenses and authorizations now or hereafter issued in connection with the construction, development or operation of Phase I;

(c) any agreement relating to the design and monitoring of construction of Phase I between the Owner and the architect or architects selected or to be selected by the Owner ("Architect"), together with any and all extensions, modifications, amendments and renewals thereof (collectively, the "Architect's Agreement"); and

(d) all plans, specifications, bid documents, schedules, drawings, models, surveys, environmental reports and other information and materials related to the design or construction of Phase I collected, produced, prepared or acquired by or for Owner.

3. This Assignment is given for the purpose of securing the payment of all sums, now or at any time due to the City under any of the documents including the Predevelopment Loan Agreement and all Exhibits thereto, ("Loan Documents") and any extensions, modifications, amendments and renewals thereof, and the performance and discharge of the obligations, covenants, conditions and agreements of Owner contained in any of the Loan Documents.

4. Owner agrees as follows:

(a) Owner will faithfully abide by, perform and discharge each and every obligation, covenant, condition and agreement of the Project Documents to be performed by Owner and in accordance with the exercise of prudent business judgment, to enforce performance by the other parties thereto of each and every obligation, covenant, condition and agreement to be performed by each such other party.

(b) During the continuance of an Event of Default, the City shall have the right (but not the obligation), without notice to or demand on Owner, to perform and discharge each and every obligation, covenant, condition and agreement of Owner under the Project Documents and, in exercising any such powers, to pay necessary costs and expenses, employ counsel and incur and pay attorneys' fees and expenses. The City shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Documents or by reason of this Assignment.

(c) During the continuance of an Event of Default, the City may, at its option, without notice and without regard to the adequacy of security for the indebtedness hereby secured, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court at any time hereafter, enforce for its own benefit any one or all of the Project Documents. The exercise of any rights under this Assignment shall not be deemed to cure or waive any default under any of the Loan Documents or waive, modify or affect any notice of default under any of the Loan Documents or invalidate any act done by the City pursuant to or following such notice.

(d) Each of the parties to any of the Project Documents other than Owner, upon written notice from the City of the continuance of an Event of Default, shall be and hereby is authorized by Owner to perform their respective agreements for the benefit of the City in accordance with the terms and conditions thereof without any obligation to determine whether or not such an Event of Default has in fact occurred and continues.

5. Owner hereby covenants and represents to the City that: (a) Owner has not previously assigned, sold, pledged, transferred, mortgaged, hypothecated or otherwise encumbered the Project Documents or any of them or its right, title and interest therein; (b) Owner shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in the Project Documents or any of them except that Owner may do so in connection with the financing of Phase I; (c) Owner has not performed any act that might prevent Owner from performing its undertakings hereunder or that might prevent the City from operating under or enforcing any of the terms and conditions hereof or that would limit the City in such operations or enforcement; (d) Owner is not in default under any of the Project Documents, and to the best knowledge of Owner, no other party to the respective Project Documents is in default thereunder; (e) except as provided in the Loan Agreement, no amendments to any material terms of the Project Documents will be made without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned; and (f) upon execution of any of the Project Documents, Owner will deliver a copy of such Project Documents (or the original at the City's request) to the City and will require such of the parties thereto as the City may designate to execute and deliver to the City a consent to this Assignment.

6. All notices, demands or documents that are required or permitted to be given or served hereunder shall be in writing and shall be deemed sufficiently given when delivered or mailed in the manner set forth in the Loan Agreement.

7. Any provision in the Loan Agreement that pertains to this Assignment shall be deemed to be incorporated herein as if such provision were fully set forth in this Assignment. In the event of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail. A provision in this Assignment shall not be deemed to be inconsistent with the Loan Agreement by reason of the fact that no provision in the Loan Agreement covers such provision in this Assignment.

8. This Assignment is made for collateral purposes only (i.e., as concurrent security for the obligations evidenced in the Loan Documents), and the duties and obligations of Owner under this Assignment shall terminate when all sums due the City under the Loan Documents are paid in full and all obligations, covenants, conditions and agreements of Owner contained in the Loan Documents are performed and discharged. This Assignment shall become effective upon an Event of Default as defined in the Loan Documents.

9. This Assignment shall be governed by the laws of the State of North Carolina. To the greatest extent permitted by law, Owner hereby waives any and all rights to require marshaling of assets by the City.

10. It is expressly intended, understood and agreed that this Assignment and the other Loan Documents are made and entered into for the sole protection and benefit of Owner and the City and their respective successors and assigns (but in the case of assigns of Owner, only to the extent of assignments thereof to affiliates of Owner which

are to undertake the development and financing of Phase I, and otherwise only as permitted hereunder); that no other person or persons shall have any right at any time to action hereon or rights to the proceeds of the loan evidenced and secured by the Loan Documents; that such loan proceeds do not constitute a trust fund for the benefit of any third party; that no third party shall under any circumstances be entitled to any equitable lien on any such undisbursed loan proceeds at any time and that the City shall have a lien upon and right to direct application of any such undisbursed loan proceeds as provided in the Loan Documents.

11. The relationship between the City and Owner is solely that of the City and Owner, and nothing contained herein or in any of the Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than the City and Owner.

12. Owner and the City intend and believe that each provision in this Assignment comports with all applicable local, state or federal laws and judicial decisions. However, if any provision or provisions or if any portion of any provision or provisions in this Assignment is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision or public policy, and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Owner and the City that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein and that the rights, obligations and interests of Owner and the City under the remainder of this Assignment shall continue in full force and effect.

IN WITNESS WHEREOF, Owner has duly executed this Assignment on the day and year first above written.

SOUTHSIDE REVITALIZATION PHASE 1
LP:

By: _____
_____, General Partner

NORTH CAROLINA

DURHAM COUNTY

I, a Notary Public in and for the aforesaid County and State, certify that
_____ personally appeared before me this day and stated that
he or she is _____ Secretary of McCormack Baron Salazar, Inc., a corporation, and that by
authority duly given and as the act of the corporation, the foregoing contract or agreement with
the City of Durham was signed in its name by Kevin McCormack, its President, sealed with its
corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the
day of _____, 2011.

Notary Public

My Commission Expires

NORTH CAROLINA

DURHAM COUNTY

I, a Notary Public in and for the aforesaid County and State, certify that
_____ personally appeared before me this day and stated that
he or she is _____ Secretary of Southside Revitalization Phase1 LP, a limited partnership,
and that by authority duly given and as the act of the limited partnership, the foregoing contract
or agreement with the City of Durham was signed in its name by _____, its
General Partner, sealed with its corporate seal, and attested by him/herself as its said Secretary
or Assistant Secretary. This the _____ day of _____, 2011.

Notary Public

My Commission Expires

