

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

This Predevelopment Loan Agreement (this "Loan Agreement") is effective as of \_\_\_\_\_, 2011, between City of Durham, North Carolina, (the "City") and McCormack Baron Salazar, Inc., (the "Developer"), a Missouri corporation.

**PREAMBLE**

A. The City competitively selected the Developer as development partner for the neighborhood revitalization project for the Rolling Hills/Southside neighborhood.

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 Southside Revitalization Phase I LP, a Missouri limited partnership (the "Owner") in order to carry out the first rental phase of the Rolling Hills/Southside revitalization ("Phase I"), and 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 and 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. The City desires to provide to the Developer a predevelopment loan in the amount of up to \$1,228,300 to fund costs incurred by the Developer or the Owner for certain predevelopment activities relating to Phase I, to be repaid by the Developer or the Owner at the financial closing of Phase I (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 Developer for Rolling Hills/Southside, in the total budgeted amount of \$1,228,300 (the "Predevelopment Budget"). The City agrees to make a loan to the Developer in a principal amount of up to \$1,228,300 to cover the costs incurred by the Developer prior to Closing for activities identified in the Predevelopment Budget (the "Predevelopment Loan"). The Predevelopment Loan shall not bear interest.

2. Reimbursements. The Developer 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/activities provided 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 Developer, (b) the amounts, if any, of previous reimbursements/payments of Predevelopment Loan funds to the Developer for such item, and (c) the portion, if any, of such costs for which reimbursement/payment is requested under the payment request, and shall be accompanied by 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 Developer 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 Developer 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 Developer in immediately available funds as set forth herein.

3. Phase I Commitments. The Developer 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% of the Area Median Income (as further detailed in the Credit Award). 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. The Developer further acknowledges that the City intends for its assistance to benefit the affordable units in Phase I, and not the market or unrestricted units, and that in furtherance of such purpose at or before Closing the Developer or the Owner will be required to confirm the presence of non-City funds sufficient to cover not less than the proportionate costs of non-affordable units in Phase I. The City acknowledges that the additional sources of funds anticipated in the Credit Application satisfy the requirements of the preceding sentence.

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 Developer 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. The obligation of the Developer 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. Developer may assign some or all of the Project Documents to the Owner, provided that they remain at all times subject to the rights of the City as reflected in the Assignment of Project Documents. At Closing

for Phase I, the parties acknowledge that, subject to mutually acceptable documentation, Developer may cause the Owner to repay the Predevelopment Loan to the City or cause the Owner to assume the outstanding principal amount of the Predevelopment Loan and deem such assumed amount as the first advance on the anticipated construction/permanent loan from the City to the Owner.

5. Non-Recourse. Neither Developer nor any of its 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 to secure the payment of the indebtedness evidenced thereby.

6. Representations and Warranties.

(a) The Developer is duly organized, validly existing and in good standing as a limited partnership under the laws of the State of Missouri

(b) The Developer 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 and when executed and delivered by the Developer, this Agreement and the Predevelopment Note will constitute the legal, valid and binding obligations of the Developer, enforceable in accordance with their terms.

7. Additional Provisions. City will not be obligated to make any advance of Predevelopment Loan funds if the Developer fails to perform or breaches any of the covenants, conditions or agreements contained in this Agreement or the Predevelopment Note, which is not cured 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 Developer 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 Developer 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 Developer shall make available for review by the City copies of all contracts for predevelopment work, or any portion thereof. The Developer agrees that all its interest in drawings, tracings, specifications and other documents prepared by the Developer, 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 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 Developer, nor any act of the City or the Developer, 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]*

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

**DEVELOPER:**

McCormack Baron Salazar, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

City of Durham, North Carolina

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**Predevelopment Budget**

**Southside Revitalization Phase 1 LP**  
**8/15/2011**

<b>Budget Breakdown (City funded)</b>	
<b>A. Phase 1 Site and Vertical Cost</b>	-
1. Architectural - Design	\$349,000
2. Cost Estimating	10,000
3. Engineering	386,000
4. Environmental	41,800
5. Water, Sewer, Impact fees	169,000
6. Site Plan and Design Review and S+ E Fees	38,000
9. Survey/Plats	19,500
10. Legal	155,000
11. Title Search/Commitment	5,000
14. Contingency	55,000
<b>Subtotal</b>	<b>\$1,228,300</b>

**EXHIBIT B**

**PREDEVELOPMENT NOTE**

**Rolling Hills/Southside**

\$1,228,300

Effective as of \_\_\_\_\_, 2011

For value received, McCormack Baron Salazar, Inc., a Missouri corporation (the "Developer") promises to pay to the order of the City of Durham, North Carolina, (the "City"), the principal sum of 1,228,300 or so much thereof as shall be advanced to or for the account of the Developer pursuant to the terms of a certain Predevelopment Loan Agreement (the "Loan Agreement") of even date herewith between the Developer 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. 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 Developer 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.

The Developer 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 Developer 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 which is not cured within 30 (thirty) days after written notice or in the Loan Agreement, 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 the prime rate announced by U.S. Bank National Association (or its successor) as its Prime Rate plus 2%.

If this Note is not paid when due and is placed with an attorney for collection, and whether or not suit is entered hereon, the Developer 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 Developer 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 Developer, 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 Developer 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 Missouri, without application of any statute relating to conflicts of law.

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

DEVELOPER

McCormack Baron Salazar, Inc.

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

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

Title: \_\_\_\_\_

**EXHIBIT C**  
**ASSIGNMENT OF PROJECT DOCUMENTS**

THIS ASSIGNMENT OF PROJECT DOCUMENTS (the "Assignment") is made as of \_\_\_\_\_, 2011 by between McCormack Baron Salazar, Inc., a Missouri corporation ("Developer") and the City of Durham, North Carolina ("City").

WHEREAS, pursuant to terms more specifically described in a loan agreement between the City and Developer of even date herewith (the "Loan Agreement"), the City intends to lend to Developer up to \$1,228,300 (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, Developer 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 Development Agreement, as incorporated into the Loan Agreement by reference.

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

(a) all contracts and subcontracts, together with any and all extensions, modifications, amendments and renewals thereof, which are entered into by Developer or Owner 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 Developer or Owner and the architect or architects selected or to be selected by the Developer or 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 the Developer or Owner.

3. This Assignment is given for the purpose of securing the payment of all sums, now or at any time due the City under any of the Loan Documents and any extensions, modifications, amendments and renewals thereof, and the performance and discharge of the obligations, covenants, conditions and agreements of Developer contained in any of the Loan Documents.

4. Developer agrees as follows:

(a) Developer will faithfully abide by, perform and discharge each and every obligation, covenant, condition and agreement of the Project Documents to be performed by Developer 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 Developer, to perform and discharge each and every obligation, covenant, condition and agreement of Developer 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 Developer, upon written notice from the City of the continuance of an Event of Default, shall be and hereby is authorized by Developer 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. Developer hereby covenants and represents to the City that: (a) Developer 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) Developer shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in the Project Documents or any of them except that Developer may do so in connection with the financing of Phase

l; (c) Developer has not performed any act that might prevent Developer 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) Developer is not in default under any of the Project Documents, and to the best knowledge of Developer, 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, Developer 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 Developer 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 Developer 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, Developer 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 Developer and the City and their respective successors and assigns (but in the case of assigns of Developer, only to the extent of assignments thereof to affiliates of Developer 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 Developer is solely that of the City and Developer, 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 Developer.

12. Developer 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 Developer 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 Developer and the City under the remainder of this Assignment shall continue in full force and effect.

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

DEVELOPER:

McCormack Baron Salazar, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_