

UNOFFICIAL COPY

Recording Requested By and When
Recorded Send to:
Illinois Housing Development Authority
111 East Wacker Drive
Suite 1000
Chicago, IL 60601
ATTN: Richard Ess

Property Identification No.: 17-28-218-028;
17-28-218-029;
17-28-218-030

Property Address:
2310 South State Street
Chicago, IL 60614



Doc# 2001719063 Fee \$88.00

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

EDWARD M. HOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/17/2020 01:39 PM PG: 1 OF 38

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

AND

SOUTHBRIDGE 4 MASTER OWNER LLC,
an Illinois limited liability company,

and

SOUTHBRIDGE 1-4 HOUSING LLC,
an Illinois limited liability company,

together, as Borrower

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Fiscal Agent

TAX REGULATORY AGREEMENT

Dated as of January 1, 2020

This instrument prepared by:

Bruce P. Weisenthal
Schiff Hardin LLP
233 South Wacker Drive
Suite 7100
Chicago, Illinois 60606

SC
P
S
SC
INT
38
12
17

UNOFFICIAL COPY

TABLE OF CONTENTS

	Page
Section 1. Definitions.....	1
Section 2. Rules of Construction	3
Section 3. Project Restrictions	3
Section 4. Rental Restrictions Regarding Affordable Units	5
Section 5. Transfer Restrictions: Covenants to Run With the Land; Duration of Tax Regulatory Agreement.....	7
Section 6. Reliance.....	8
Section 7. Access to Development and to Books and Records.....	8
Section 8. Term.....	8
Section 9. Enforcement.....	9
Section 10. Governing Law	10
Section 11. Amendments	10
Section 12. Notices	10
Section 13. Severability	12
Section 14. Multiple Counterparts	12
Section 15. Limitation of Liability.....	12
Section 16. Change in Use	13
Section 17. Monitoring Requirements; Annual Certification to IRS.....	13
Section 18. Fiscal Agent	13
EXHIBIT A LEGAL DESCRIPTION OF PROJECT	A-1
EXHIBIT B INCOME COMPUTATION AND CERTIFICATION.....	B-1
EXHIBIT C CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE.....	C-1
EXHIBIT D REQUIRED LEASE OR RESIDENCY AGREEMENT PROVISIONS FOR PROJECT.....	D-1

UNOFFICIAL COPY

TAX REGULATORY AGREEMENT

THIS TAX REGULATORY AGREEMENT (this "Tax Regulatory Agreement"), entered into as of January 1, 2020, by and among the ILLINOIS HOUSING DEVELOPMENT AUTHORITY, a body politic and corporate, organized and existing under the laws of the State of Illinois (the "Issuer"), SOUTHBRIDGE 4 MASTER OWNER LLC, an Illinois limited liability company (the "Master Owner"), SOUTHBRIDGE 1-4 HOUSING LLC, an Illinois limited liability company (the "Master Tenant" and, together with the Master Owner, the "Borrower"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as fiscal agent (the "Fiscal Agent") under a Funding Loan Agreement, dated as of January 1, 2020 (the "Funding Loan Agreement"), among Citibank, N.A., the Issuer and the Borrower.

WITNESSETH:

WHEREAS, the Issuer, pursuant to the Funding Loan Agreement, is issuing its (i) Multifamily Housing Revenue Note, 2020 Series A (Southbridge Phase 1A – 4% Transaction) in the original principal amount of \$8,100,000 (the "Series A Governmental Lender Note"), (ii) Multifamily Housing Revenue Note, 2020 Series B (Southbridge Phase 1A – 4% Transaction) in the original principal amount of \$8,300,000 (the "Series B Governmental Lender Note") and (iii) Multifamily Housing Revenue Note, 2020 Series C (Southbridge Phase 1A – 4% Transaction) in the original principal amount of \$9,405,321 (the "Series C Governmental Lender Note" and, collectively with the Series A Governmental Lender Note and the Series B Governmental Lender Note, the "Governmental Lender Notes"), each dated as of the Closing Date, for the purpose of lending the proceeds thereof to the Master Owner pursuant to a Borrower Loan Agreement, dated as of January 1, 2020, between the Issuer and the Master Owner, to finance the acquisition, construction and equipping of a 103-unit multifamily rental housing development located at 2310 South State Street, Chicago, Illinois 60616, known as Southbridge Phase 1A (the "Project"), further described on Exhibit A; and

WHEREAS, concurrently with the issuance of the Governmental Lender Notes, the Master Owner will enter into a lease (the "Master Lease") with respect to a portion of the Project consisting of the low-income units with Master Tenant, which Master Lease will be effective on or about the date that the property is placed in service for federal income tax purposes]; and

WHEREAS, in order to assure the Issuer and the owners of the Notes (the "Noteholders") that interest on the Notes will be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986 (the "Code"), and to further the public purposes of the Issuer, certain restrictions on the use and occupancy of the Project under the Code must be established;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Issuer and the Fiscal Agent agree as follows:

SECTION 1. Definitions. In addition to terms defined elsewhere in this Tax Regulatory Agreement, unless otherwise expressly provided herein or unless the context clearly requires

UNOFFICIAL COPY

otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Tax Regulatory Agreement:

“Actually Outstanding” shall mean, with respect to the Notes, those Notes the principal and interest on which has not yet been fully paid, whether or not such Notes are deemed to be outstanding under the Funding Loan Agreement.

“Adjusted Family Income” shall mean the adjusted gross income of all persons who reside in a single residential rental unit, calculated in the manner prescribed in Section 142(d)(2)(B) of the Code, and determined in accordance with Exhibit B attached hereto.

“Affordable Units” shall mean those units in the Project set aside for occupancy by Lower-Income Tenants.

“Area” shall mean the Metropolitan Statistical Area in which the Project is located, as determined from time to time by HUD.

“Available Units” shall mean residential units in the Project that are actually occupied and residential units in the Project that are unoccupied and have been leased at least once after becoming available for occupancy, provided that (i) a residential unit that is unoccupied on the later of (a) the date the Project is acquired or (b) the date of issuance of the Notes, is not an Available Unit and does not become an Available Unit until it has been leased for the first time after such date, and (ii) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been leased for the first time after the renovations are completed.

“CHA Right of First Refusal Agreement” shall mean the Right of First Refusal Agreement with respect to the Project between the Borrower and the Chicago Housing Authority.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and any final, temporary or proposed regulations applicable thereto or promulgated thereunder.

“HUD” shall mean the United States Department of Housing and Urban Development.

“Lower-Income Tenants” shall mean and include individuals or families with Adjusted Family Income that does not exceed fifty percent (50%) of Median Income, adjusted for family size; provided that Adjusted Family Income shall be determined in a manner consistent with determinations of lower income families and area median gross income made under the Section 8 Program.

“Median Income” shall mean the median gross income for the Area, as determined from time to time by HUD. For purposes of determining whether Adjusted Family Income qualifies a tenant for treatment as a Lower-Income Tenant, the Median Income shall be adjusted for family size.

“Qualified Project Period” shall mean the period beginning on the first day on which at least ten percent (10%) of the residential units in the Project are first occupied, and ending on the latest of (i) the date which is fifteen (15) years after the date on which at least fifty percent (50%)

UNOFFICIAL COPY

of the residential units in the Project are first occupied; (ii) the first day on which no Notes are Actually Outstanding; and (iii) the date on which any assistance provided with respect to the Project under the Section 8 Program terminates.

“Related Person” shall mean a person whose relationship to such other person is such that (i) the relationship between such persons would result in a disallowance of losses under Sections 267 or 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein).

“Right of First Refusal Agreement” means that certain Purchase Option and Right of First Refusal Agreement with respect to the Project between the Borrower and the Investor.

“Section 8 Program” shall mean the program of assistance under Section 8 of the United States Housing Act of 1937, as amended, and the regulations promulgated thereunder.

“Student” shall mean an individual who during each of five (5) calendar months during the calendar year in which occupancy of a residential unit begins is a full-time student at an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or an individual pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

SECTION 2. Rules of Construction. Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, the words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Tax Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Tax Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Tax Regulatory Agreement or any provision hereof or in ascertaining intent, if any question of intent shall arise.

Terms and phrases used in this Tax Regulatory Agreement and not defined herein shall have the meanings assigned to those terms in the Funding Loan Agreement.

SECTION 3. Project Restrictions. The Borrower represents, warrants and agrees that, until the expiration of the Qualified Project Period:

- (a) At no time will either the Borrower or any Related Person occupy a unit in the Project other than units occupied or to be occupied by agents, employees or representatives of the Borrower reasonably required for the proper maintenance or management of the Project;

UNOFFICIAL COPY

- (b) The Project consists of one six-story building (i) containing a mix of 19 studio units, 54 one-bedroom units and 30 two-bedroom units that are to be used on other than a transient basis and any facilities that are functionally related and subordinate to such units within the meaning of Sections 142(a)(7) and 142(d) of the Code, and (ii) each unit of which is to be rented or available for rental (except as permitted to be occupied by Borrower agents, employees or representatives in (a) above) on a continuous basis to members of the general public in accordance with the requirements of Sections 142(a)(7) and 142(d) of the Code;
- (c) Each dwelling unit in the Project shall consist of separate and complete facilities for living, sleeping, eating, cooking and sanitation for a person, persons or family;
- (d) Affordable Units will be substantially similar to all other units in the Project, and Lower-Income Tenants will enjoy equal access to all common facilities included in the Project;
- (e) The Project and the Affordable Units shall, at all times, be suitable for occupancy and in compliance with all applicable laws including, without limitation, health, safety and building codes;
- (f) Except as provided in Subsection (i) below, the Borrower certifies that none of the Proceeds will be used to acquire any property unless such property was or will be first used by the Borrower.
- (i) Subsection (f) hereof does not apply to any building included in the Project (and the equipment thereof) if the Rehabilitation Expenditures (as such term is defined in Subsection (f)(ii) below) incurred by the Borrower with respect to the Project (and the equipment thereof) equal or exceed in the aggregate 15% of the cost of acquiring such building and equipment that is financed with the proceeds. The Borrower covenants that the Rehabilitation Expenditures for the building (and the equipment thereof) acquired with proceeds of the Notes will satisfy the conditions of the preceding sentence.
- (ii) For purposes hereof, the term "Rehabilitation Expenditures" means any amount properly chargeable to capital account that is incurred by the Borrower in connection with the rehabilitation of a building, in the case of an integrated operation contained in a building prior to its acquisition, such term includes costs of rehabilitating existing equipment in such building or replacing such equipment with equipment having substantially the same function. The term "Rehabilitation Expenditures" does not include (i) any expenditure described in Section 47(c)(2)(B) of the Code, and (ii) any amount incurred more than two (2) years after the later of (A) the date on which the building is acquired by the Borrower, or (B) the date on which the Notes are issued.

UNOFFICIAL COPY

SECTION 4. Rental Restrictions Regarding Affordable Units. The Issuer and the Borrower hereby declare their understanding and intent that the Project be a “qualified residential rental project” as described in Sections 142(a)(7) and 142(d) of the Code and agree that:

- (a) Each Available Unit in the Project will be rented or available for rental to the general public on a continuous basis during the Qualified Project Period and that during such Qualified Project Period:
 - (i) The Borrower will rent the Affordable Units to Lower-Income Tenants such that, at all times during the Qualified Project Period, at least 20% of the Available Units in the Project will be occupied by Lower-Income Tenants, and the Issuer elects to apply the requirements of Section 142(d)(1)(A) of the Code to determine the status of the Project as a “qualified residential rental project” within the meaning of Section 142(d) of the Code. For the purposes of this paragraph, a vacant unit which was most recently occupied by a Lower-Income Tenant is treated as rented and occupied by a Lower-Income Tenant until reoccupied, other than for a temporary period of not more than 60 days, at which time the character of such unit shall be redetermined.
 - (ii) The Borrower shall submit to the Secretary of the United States Department of the Treasury (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether the Project continues to meet the requirements of Section 142(d) of the Code, and the Borrower acknowledges that failure to do so will subject the Borrower to penalties under Section 6652(j) of the Code.
 - (iii) On or before the fifteenth day of February, May, August and November of each year during the Qualified Project Period and within thirty (30) days after any change (but only if material to the Borrower’s continuing compliance with this Tax Regulatory Agreement) in occupancy of an Affordable Unit by a Lower-Income Tenant, respectively, the Borrower shall prepare and submit to the Issuer and the Fiscal Agent, as applicable, a Certificate of Continuing Compliance in substantially the form attached hereto as Exhibit C, the aforesaid quarterly reporting to commence with the Certificate of Continuing Compliance due on the fifteenth day of the first quarter after the Qualified Project Period commences.
- (b) The Borrower shall lease or enter into residency agreements for the occupancy of Affordable Units in the Project to Lower-Income Tenants only pursuant to written leases or residency agreements, and each such lease or residency agreement shall be for a term of at least one year (or the remainder of the tenant’s life, if less) in compliance with the requirements of the Code and shall contain a clause or addendum in substantially the form of Exhibit D attached hereto. The Borrower shall, upon initial occupancy and annually thereafter, obtain from each Lower-Income Tenant occupying an Affordable Unit an Income Computation and Certification substantially in the form of Exhibit B hereto and shall obtain and

UNOFFICIAL COPY

maintain on file from each such Lower-Income Tenant evidence reasonably sufficient to verify the Lower-Income Tenant's income and assets, including as may be necessary (i) a copy of such Lower-Income Tenant's most recently filed Federal income tax return, (ii) a verification from the Lower-Income Tenant's employer, if any, of the Lower-Income Tenant's wages and other compensation, and (iii) verification of other sources of income, if any.

- (c) A residential unit will not satisfy the income tests if all the occupants are Students unless each of those Students is (1) a single parent and children; (2) a Student receiving assistance under title IV of the Social Security Act (Temporary Assistance for Needy Families); (3) a Student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws; (4) a Student who was previously under the care and placement responsibility of a foster care program (under part B or E of title IV of the Social Security Act) or (5) a Student who is married and files a joint return. The single parents may not be dependents of another individual and the children may not be dependents of another individual other than of their parents.
- (d) For purposes of this Tax Regulatory Agreement, each Affordable Unit in the Project leased to or occupied by Lower-Income Tenants shall be treated as continuing to be leased to or occupied by Lower-Income Tenants, notwithstanding that the Adjusted Family Income of such Lower-Income Tenants, as of any subsequent determination date, may exceed the applicable limitation; provided however that such Affordable Unit shall no longer be considered leased to or occupied by Lower-Income Tenants if the Adjusted Family Income of such tenants exceeds one hundred forty percent (140%) of the applicable limitation and after such determination, but before the next determination, any residential unit of comparable or smaller size in the Project is occupied by new residents who are not Lower-Income Tenants. In addition, each Affordable Unit in the Project that is leased to or occupied by Lower-Income Tenants shall continue to be considered leased to or occupied by Lower-Income Tenants after such Affordable Unit is vacated by such Lower-Income Tenants until such time as such residential unit is reoccupied, other than for a temporary period not in excess of thirty-one (31) days, at which time a redetermination of whether the Affordable Unit is occupied by Lower-Income Tenants shall be made.
- (e) The Borrower hereby agrees that the Issuer shall not be liable for any losses, damages, costs, expenses or claims whatsoever arising from receipt or review by them (or by any person or entity acting on their behalf) of any certificates or reports as to compliance with the requirements of this Tax Regulatory Agreement. The Borrower further agrees that the Issuer (or any person or entity acting on its behalf) shall not be obligated to review any such report or certificate, or to take any action as a result thereof, but without prejudice to the right of the Issuer and the Noteholder to exercise their rights and remedies hereunder if any such report or certificate discloses noncompliance with the requirements hereof, or if such non-compliance is otherwise discovered. If the Borrower becomes aware of non-compliance with

UNOFFICIAL COPY

the requirements hereof, the Borrower shall promptly give written notice thereof to the Issuer and the Fiscal Agent.

- (f) The parties to this Tax Regulatory Agreement shall treat as confidential any of the foregoing information relating to a specific Lower-Income Tenant or Affordable Unit provided by the Borrower in compliance with this Tax Regulatory Agreement, all applicable state and federal statutes and regulations, and shall implement adequate systems and procedures for maintaining the confidentiality of such information (but may release general statistical and other information about the Project, so long as the privacy rights and interests of the individual residents are protected). The Issuer and the Borrower shall not use any of the information obtained and/or furnished pursuant to Subparagraph (g) for any purpose described in the federal Fair Credit Reporting Act (15 U.S.C. §1681a(d)(1)) and Section 603(a)(1) of Public Law No. 91-508 or in any manner that would cause a lender or borrower to be considered a "consumer reporting agency" under the federal Fair Credit Reporting Act (15 U.S.C. §1681a(f) and 603(f) of Public Law No. 91-508).
- (g) The Borrower shall prepare and submit such additional reports as the Issuer may deem necessary to ensure compliance with the requirements of this Tax Regulatory Agreement.
- (h) The Borrower shall maintain as part of its records (i) copies of all leases and residency agreements of Affordable Units; (ii) all initial and annual income certifications by Lower-Income Tenants of Affordable Units and (iii) such additional records as the Issuer may deem necessary to ensure compliance with the requirements of this Tax Regulatory Agreement.

SECTION 5. Transfer Restrictions: Covenants to Run With the Land; Duration of Tax Regulatory Agreement.

- (a) The Borrower covenants and agrees that, other than with respect to any transfer under the CHA Right of First Refusal Agreement or the Right of First Refusal Agreement or by foreclosure of any mortgage securing any Subordinate Debt (as defined in the Borrower Loan Agreement) or transfer by deed in lieu of such foreclosure, the Borrower will cause or require as a condition precedent to any conveyance, transfer, assignment or any other disposition of the Project, prior to the expiration of the Qualified Project Period (a "Transfer") that the transferee of that portion assume in writing, in a form acceptable to the Issuer, all duties and obligations of the Borrower under this Tax Regulatory Agreement, including this Section 5 in the event of a subsequent Transfer before the expiration of the Qualified Project Period. The Borrower shall deliver such written assumption agreement to the Issuer before the Transfer. Any conveyance, transfer or assignment by the Borrower of the Project not complying with this Section shall be null, void and without effect. Notwithstanding the foregoing, other than an assignment by Master Owner of its interest in and rights under the Master Lease to secure the Borrower Loan or any Subordinate Debt, there shall be no Transfer by

UNOFFICIAL COPY

the Master Owner without the prior written consent of the Issuer, which consent shall not be unreasonably withheld or delayed.

- (b) The Borrower shall cause this Tax Regulatory Agreement and all amendments and supplements hereto to be recorded in the conveyance and real property records of Cook County, Illinois, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording. Subject to the CHA Right of First Refusal Agreement and the Right of First Refusal Agreement, the covenants contained herein shall run with the land and shall bind the Borrower and its successors and assigns and all subsequent owners of any part of the Project or any interest therein, and the benefits shall inure to the Issuer and the Noteholder and their respective successors and assigns, during the Qualified Project Period. Unless the covenants contained herein have been released by the Issuer in writing, they shall survive and be effective for the term of this Tax Regulatory Agreement regardless of whether any obligations owed to the Issuer or the Noteholder or to any assignees of the Issuer or the Noteholder have been fully paid and/or performed.

SECTION 6. Reliance. In performing their duties and obligations hereunder, the Issuer and the Fiscal Agent may conclusively rely upon statements and certificates of the Borrower or Lower-Income Tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Issuer and the Fiscal Agent may consult with counsel of their selection, respectively, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Fiscal Agent hereunder in good faith and in conformity with the opinion of such counsel.

SECTION 7. Access to Development and to Books and Records. The Borrower will, upon reasonable request, permit the Issuer and the Fiscal Agent to have access to, and to inspect and copy, the Borrower's books and records with respect to the Project and the incomes of Qualifying Tenants and to have access to the Project during normal business hours. Such rights may be exercised by a representative, employee or agent of, or counsel to, the party making the request.

SECTION 8. Term. The terms and provisions of this Tax Regulatory Agreement shall become effective upon its execution and delivery. Except as otherwise provided in this Section, this Tax Regulatory Agreement shall remain in full force and effect until the end of the Qualified Project Period. It is expressly agreed and understood that the provisions hereof are intended to survive the payment of the Notes. The foregoing notwithstanding, this Tax Regulatory Agreement and all restrictions hereunder may terminate: (A) if there is delivered to the Issuer, the Fiscal Agent and the Borrower an opinion of nationally recognized bond or tax counsel acceptable to the Issuer to the effect that failure to comply with this Tax Regulatory Agreement will not cause interest on the Notes to become includable in the gross income of the holders thereof for Federal income tax purposes, or (B) in the event of an involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, condemnation or similar event, or a change in a federal law or an action of a federal agency after the date of issuance of the Notes that prevents the Issuer from enforcing the terms of this Tax Regulatory Agreement, but only if, within

UNOFFICIAL COPY

a reasonable period, either the Notes are repaid or amounts received as a consequence of such event are used to provide a residential rental project that meets the terms of this Tax Regulatory Agreement. Notwithstanding the foregoing, such requirements shall continue to apply to the Project subsequent to a foreclosure, transfer of title by deed in lieu of foreclosure or similar event if, at any time subsequent to such event, the obligor on the purpose investment (as defined in Section 1.148-1(b) of the Treasury Regulations) or a Related Person obtains an ownership interest in the Project or any part thereof for Federal tax purposes.

SECTION 9. Enforcement.

- (a) In addition to the information provided for in Section 4(i) hereof, the Borrower shall submit any other information, documents or certifications reasonably requested by the Issuer or the Fiscal Agent that the Issuer or the Fiscal Agent deem reasonably necessary to substantiate continuing compliance with the provisions of this Tax Regulatory Agreement and Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.
- (b) The Issuer and the Borrower each covenant that it will not take or permit to be taken any action within its control that it knows would adversely affect the exclusion of interest on the Notes from the gross income of the owners thereof for purposes of federal income taxation pursuant to Section 103 of the Code. Moreover, the Issuer and the Borrower covenant to take any lawful action within their control and the Fiscal Agent covenants to take any lawful action it is directed to take by the Borrower, the Issuer or nationally recognized bond counsel (including amendment of this Agreement as may be necessary, in the opinion of Tax Counsel (as defined in the Funding Loan Agreement)) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Section 142(d) of the Code and affecting the Project.
- (c) The Borrower covenants and agrees to inform the Issuer and the Fiscal Agent by written notice of any violation of its obligations hereunder within five days of first discovering any such violation. If any such violation is not corrected to the satisfaction of the Issuer and the Fiscal Agent within the period of time specified by either the Issuer or the Fiscal Agent, which shall be (A) 45 days after the effective date of any notice to or from the Borrower, or (B) such longer period as is specified in an opinion of Tax Counsel, and as in such opinion will not result in the loss of exclusion of interest on the Notes, without further notice, the Issuer or the Fiscal Agent shall declare a default under this Tax Regulatory Agreement effective on the date of such declaration of default, and the Issuer or the Fiscal Agent shall apply to any court, state or federal, for specific performance of this Tax Regulatory Agreement or an injunction against any violation of this Tax Regulatory Agreement, or any other remedies at law or in equity or any such other actions as shall be necessary or desirable so as to correct noncompliance with this Tax Regulatory Agreement.

UNOFFICIAL COPY

- (d) The Borrower and the Issuer each acknowledges that the primary purpose for requiring compliance with the restrictions provided in this Tax Regulatory Agreement is to preserve the exclusion of interest on the Notes from gross income for purposes of federal income taxation, and that the Issuer and the Fiscal Agent, on behalf of the owners of the Notes, who are declared to be third-party beneficiaries of this Tax Regulatory Agreement, shall be entitled for any breach of the provisions hereof, to all remedies both at law and in equity in the event of any default hereunder, which in the opinion of the Issuer and nationally recognized bond counsel adversely affected the exclusion of interest on the Notes from gross income for purposes of federal income taxation.
- (e) In the enforcement of this Tax Regulatory Agreement, the Issuer and the Fiscal Agent may rely on any certificate delivered by or on behalf of the Borrower or any tenant with respect to the Project.
- (f) Nothing in this Section shall preclude the Issuer, Fiscal Agent or the owners of the Notes from exercising any remedies they might otherwise have, by contract, statute or otherwise, upon the occurrence of any violation hereunder, which in the opinion of the Issuer and Tax Counsel would adversely affect the exclusion of interest on the Notes from gross income for purposes of federal income taxation.

SECTION 10. Governing Law. This Tax Regulatory Agreement shall be governed by the internal laws of the State of Illinois except to the extent that laws of the United States of America may prevail.

SECTION 11. Amendments. This Tax Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto, and only upon receipt of an opinion of nationally recognized bond or tax counsel acceptable to the Issuer that such amendment or revision will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Notes.

SECTION 12. Notices. Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

If to the Issuer:

Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attention: Multifamily Housing Department

with a copy to:

Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601

UNOFFICIAL COPY

Attention: General Counsel

If to the Fiscal Agent:

The Bank of New York Mellon Trust Company, N.A.
2 North LaSalle St., Suite 700
Chicago, Illinois 60602
Attention: Corporate Trust Department

If to the 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 copy to:

The Community Builders, Inc.
185 Dartmouth Street
Boston, MA 02116
Attention: General Counsel

and:

Applegate & Thorne-Thomson, P.C.
425 South Financial Place, Suite 1900
Chicago, Illinois 60605
Attention: Paul Davis

and

GS SOUTHBRIDGE 4% INVESTOR OPPORTUNITY FUND LP
Urban Investment Group
c/o Goldman Sachs Group
200 West Street
New York, New York 10282
Attention: Urban Investment Group Portfolio Manager
Email: gs-uirg-portfolio-manager@gs.com

and:

UNOFFICIAL COPY

GS SOUTHBRIDGE [4][9]% INVESTOR OPPORTUNITY FUND LP
 Urban Investment Group
 c/o Goldman Sachs Group
 200 West Street
 New York, NY 10282
 Attention: Scott Maxfield
 Email: scott.maxfield@gs.com

and:

Michael Dalton
 2001 Ross Avenue, 32nd Floor
 Dallas, Texas 75201
 Attention: Urban Investment Group LIHTC Portfolio Manager
 Email: michael.dalton@gs.com

and

gs-uig-docs@gs.com

with a copy to:

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

SECTION 13. Severability. If any provision of this Tax Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

SECTION 14. Multiple Counterparts. This Tax Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

SECTION 15. Limitation of Liability. It is understood and agreed by the Borrower that no covenant of the Issuer give rise to a pecuniary liability of the Issuer or a charge against its general credit. It is further understood and agreed that no covenant or agreement of any member of the Borrower or the Issuer or any director, officer, agent, employee or representative of the Borrower or the Issuer in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution hereof, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

UNOFFICIAL COPY

SECTION 16. Change in Use. The Borrower understands and acknowledges that Section 150(b)(2) of the Code provides that if the requirements for a “qualified residential rental project” are not met under Section 142(d) of the Code with respect to the Project, no deduction shall be allowed for interest paid on the Notes that accrues during the period beginning on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date the Project meets the requirements.

SECTION 17. Monitoring Requirements; Annual Certification to IRS. The Issuer may, from time to time, engage the service of a third party monitoring agent for purposes of monitoring the Borrower’s performance under this Tax Regulatory Agreement. In such event, such monitoring agent shall have authority to act in all matters relating to the Borrower’s obligations under this Tax Regulatory Agreement. In the event the Issuer engages the service of a monitoring agent, all fees and expenses of such monitoring agent shall be paid by the Borrower. Further, such monitoring agent shall not be held liable for any action taken or omitted under this Tax Regulatory Agreement so long as it shall have acted in good faith and without gross negligence. The Borrower shall file each year with the Internal Revenue Service a Form 8703 (Annual Certification of a Residential Rental Project) to provide annual information to the Internal Revenue Service that it will use to determine whether the Project continues to be a “qualified residential rental project” under Section 142(d) of the Code.

SECTION 18. Fiscal Agent.

- (a) The Fiscal Agent is executing and delivering this Tax Regulatory Agreement solely for the purposes of acknowledging the matters set forth herein, and being bound to undertake only those duties and responsibilities specifically set forth with respect to the Fiscal Agent. With respect to matters set forth in the remaining Sections of this Tax Regulatory Agreement, the Fiscal Agent has made no investigation, makes no representation and undertakes no duties or responsibilities. No implied duties or responsibilities may be read into this Tax Regulatory Agreement against the Fiscal Agent, and the Fiscal Agent shall be entitled to the protections, privileges, exculpation and indemnities contemplated under the Funding Loan Agreement. After the date on which no Notes remain outstanding as provided in the Funding Loan Agreement, the Fiscal Agent shall have no duties or responsibilities under this Tax Regulatory Agreement, and all references herein to the Fiscal Agent shall be deemed references to the Issuer.
- (b) In determining whether any default or lack of compliance by the Borrower exists under this Tax Regulatory Agreement, the Fiscal Agent shall not be required to conduct any investigation into or review the operations or records of the Borrower and, absent actual knowledge of any default or noncompliance, may assume compliance by the Borrower with this Tax Regulatory Agreement unless otherwise specifically notified in writing.
- (c) The permissive right of the Fiscal Agent to take actions permitted by this Tax Regulatory Agreement shall not be construed as an obligation or duty to do so.

UNOFFICIAL COPY

- (d) The Fiscal Agent shall be under no duty to confirm or verify any financial or other statements, reports or certificates furnished pursuant to any provisions hereof, and shall be under no other duty in respect of same except to retain the same in its files and permit the inspection of same at reasonable times by the Issuer.
- (e) The Fiscal Agent has the right to appoint agents to carry out any of its duties and obligations hereunder, and shall, upon request, certify in writing to the other parties hereto any such agency appointment.
- (f) Notwithstanding anything to the contrary contained here, the duties of the Fiscal Agent under this Agreement shall terminate upon payment in full of the Notes at maturity or upon redemption, or upon the legal defeasance of the Notes.

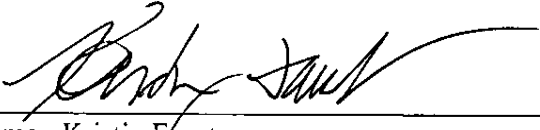
[Signatures appear on following pages.]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Issuer, the Fiscal Agent and the Borrower have caused this Tax Regulatory Agreement to be signed and sealed by their duly authorized representatives, all as of the date first written hereinabove.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: 
Name: Kristin Faust
Title: Executive Director

SOUTHBRIDGE 4 MASTER OWNER LLC

By: Ickes Master Developer JV LLC, its sole member
By: The Community Builders, Inc., its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

SOUTHBRIDGE 1-4 HOUSING LLC

By: Southbridge 1 Housing MM LLC, its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Fiscal Agent

By: _____
Name: Mietka Collins
Title: Authorized Agent

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Issuer, the Fiscal Agent and the Borrower have caused this Tax Regulatory Agreement to be signed and sealed by their duly authorized representatives, all as of the date first written hereinabove.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: _____
Name: Kristen Faust
Title: Executive Director

SOUTHBRIDGE 4 MASTER OWNER LLC

By: Ickes Master Developer JV LLC, its sole member
By: The Community Builders, Inc., its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

SOUTHBRIDGE 1-4 HOUSING LLC

By: Southbridge 1 Housing MM LLC, its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: _____
Name: Mietka Collins
Title: Authorized Agent

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Issuer, the Fiscal Agent and the Borrower have caused this Tax Regulatory Agreement to be signed and sealed by their duly authorized representatives, all as of the date first written hereinabove.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: _____
Name: Kristin Faust
Title: Executive Director

SOUTHBRIDGE 4 MASTER OWNER LLC

By: Ickes Master Developer JV LLC, its sole member

By: The Community Builders, Inc., its managing member


By: _____
Name: William Woodley
Title: Authorized Agent

SOUTHBRIDGE 1-4 HOUSING LLC

By: Southbridge 1 Housing MM LLC, its managing member

By: _____
Name: William Woodley
Title: Authorized Agent

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Fiscal Agent

By: 
Name: Mietka Collins
Title: Authorized Agent

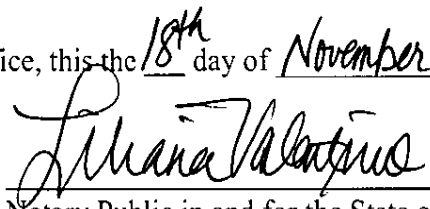
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

BEFORE ME, the undersigned authority, on this day personally appeared Kristin Faust, Executive Director of the Illinois Housing Development Authority, a body politic and corporate duly organized and validly existing under the laws of the State of Illinois (the "Issuer"), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of the Issuer.

GIVEN UNDER MY HAND and seal of office, this the 18th day of November, 2019.



Notary Public in and for the State of Illinois

[SEAL]

My commission expires on:

06/15/21

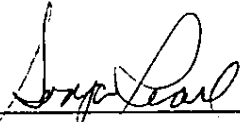


UNOFFICIAL COPY

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 Ickles Master Developer JV LLC, an Illinois 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 seal of office, this the 11 day of December, 2019.

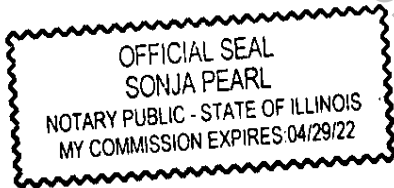


Notary Public in and for the State of Illinois

[SEAL]

My commission expires on:

4.29.22

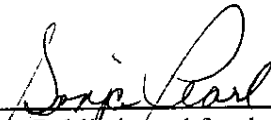


UNOFFICIAL COPY

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 seal of office, this the 11 day of December, 2019.



Notary Public in and for the State of Illinois



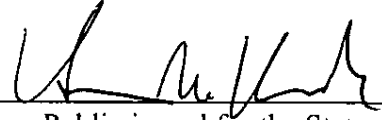
[SEAL]
My commission expires on:
4.29.22

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

BEFORE ME, the undersigned authority, on this day personally appeared Mietka Collins, of The Bank of New York Mellon Trust Company, N.A., a national banking association (the "Fiscal Agent"), known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Vice President of said Fiscal Agent, and acknowledged to me that said individual executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of the Fiscal Agent.

GIVEN UNDER MY HAND and seal of office, this the 25th day of November, 2019.



Notary Public in and for the State of Illinois

[SEAL]

My commission expires on:



Property of Cook County Clerk's Office

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 88 DEGREES 28 MINUTES 04 SECONDS WEST 35.00 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 151.00 FEET; THENCE NORTH 88 DEGREES 28 MINUTES 04 SECONDS EAST 37.00 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 64.15 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1; THENCE NORTH 88 DEGREES 29 MINUTES 48 SECONDS EAST ALONG SAID NORTH LINE, ALSO BEING THE SOUTH LINE OF W. 23RD STREET 114.21 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM ALL BUILDINGS AND IMPROVEMENTS LOCATED, OR TO BE LOCATED AFTER THE DATE OF THE AFORESAID GROUND LEASE, THEREON.

PARCEL 2:

FEE SIMPLE TITLE TO ALL BUILDINGS AND IMPROVEMENTS LOCATED, OR TO BE LOCATED AFTER THE DATE OF THE AFORESAID GROUND LEASE, ON THE LEASEHOLD ESTATE HEREINABOVE DESCRIBED AS PARCEL 1.

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

UNOFFICIAL COPY

EXHIBIT B

INCOME COMPUTATION AND CERTIFICATION¹

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Development (“HUD”) Regulations (24 CFR Part 5). You should make certain that this form is at all times up to date with HUD Regulations. All capitalized terms used herein shall have the meanings set forth in (or incorporated by reference in) the Tax Regulatory Agreement, dated as of [January 1, 2020], among Southbridge 4 Master Owner LLC (“Southbridge 4 Master Owner”), Southbridge 1-4 Housing LLC (“Southbridge 1-4 Master Tenant” and, together with Southbridge 4 Master Owner, the “Borrower”), The Bank of New York Mellon Trust Company, N.A. and the Illinois Housing Development Authority.

Re: Southbridge Phase 1A
Chicago, Illinois

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment project for which application is made. Listed below are the names of all persons who intend to reside in the unit:

1.	2.	3.	4.	5.
Name of Members of the Household	Relationship to Head of Household	Age	Social Security Number	Place of Employment
	HEAD			
	SPOUSE			

6. Total Anticipated Income. The total anticipated income, calculated in accordance with this paragraph 6, of all persons listed above for the 12-month period beginning on the date that I/we plan to move into a unit (i.e., _____) is \$ _____.

Included in the total anticipated income listed above are:

- (a) the full amount, before payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (b) the net income from operation of a business or profession or net income from real or personal property (without deducting expenditures for business expansion or

¹ The form of Income Computation and Certification shall be conformed to any amendments made to 24 CFR Part 5, or any Tax Regulatory provisions promulgated in substitution therefore.

UNOFFICIAL COPY

amortization or capital indebtedness); an allowance for depreciation of capital assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; include any withdrawal of cash or assets from the operation of a business or profession, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the above persons;

(c) interest and dividends (see 7(C) below);

(d) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment;

(e) payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay;

(f) the amount of any public welfare assistance payment; if the welfare assistance payment includes any amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(i) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

(ii) the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities (if the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph 6(f)(ii) shall be the amount resulting from one application of the percentage);

(g) periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and

(h) all regular pay, special pay and allowances of a member of the Armed Forces.

Excluded from such anticipated total income are:

(a) income from employment of children (including foster children) under the age of 18 years;

(b) payments received for the care of foster children or foster adults;

(c) lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses;

UNOFFICIAL COPY

- (d) amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (e) income of a live-in aide;
- (f) the full amount of student financial assistance paid directly to the student or to the educational institution;
- (g) special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (h) amounts received under training programs funded by the Department of Housing and Urban Development ("HUD");
- (i) amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
- (j) amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (k) a resident service stipend in a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the Project, on a part-time basis, that enhances the quality of life in the Project, including, but not limited to, fire patrol, hall monitoring, lawn maintenance and resident initiatives coordination (no resident may receive more than one stipend during the same period of time);
- (l) compensation from state or local employment training programs and training of a family member as resident management staff, which compensation is received under employment training programs (including training programs not affiliated with a local government) with clearly defined goals and objectives, and which compensation is excluded only for the period during which the family member participates in the employment training program;
- (m) reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (n) earnings in excess of \$480 for each full-time student, 18 years or older, but excluding the head of household and spouse;
- (o) adoption assistance payments in excess of \$480 per adopted child;
- (p) deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;

UNOFFICIAL COPY

(q) amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(r) amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(s) temporary, nonrecurring or sporadic income (including gifts); and

(t) amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply.

7. Assets. (A) Do the persons whose income or contributions are included in Item 6 above:

(i) have savings, stocks, bonds, equity in real property or other forms of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles, equity in HUD homeownership programs, and interests in Indian trust land)? _____ Yes _____ No.

(ii) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value? _____ Yes _____ No.

(B) If the answer to (i) or (ii) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000? _____ Yes _____ No.

(C) If the answer to (B) above is yes, state:

(i) the total value of all such assets: \$ _____

(ii) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy of the unit that you propose to rent: \$ _____, and

(iii) the amount of such income, if any, that was included in Item 6 above: \$ _____.

8. Full-Time Students. (a) Are all of the individuals who propose to reside in the unit full-time students? _____ Yes _____ No.

A full-time student is an individual who during each of 5 calendar months during the calendar year in which occupancy of the unit begins is a full-time student at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or an individual pursuing a full-time course of

UNOFFICIAL COPY

institutional on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

A residential unit will not satisfy the income tests if all the occupants are students (as defined above) unless each of those students is (1) a single parent and children; (2) a student receiving assistance under title IV of the Social Security Act (Temporary Assistance for Needy Families); (3) a student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws; (4) a student who was previously under the care and placement responsibility of a foster care program (under part B or E of title IV of the Social Security Act) or (5) a student who is married and files a joint return. The single parents may not be dependents of another individual and the children may not be dependents of another individual other than of their parents.

(b) If the answer to 8(a) is yes, are each of the students (1) a single parent and children; (2) a student receiving assistance under title IV of the Social Security Act (Temporary Assistance for Needy Families); (3) a student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws; (4) a student who was previously under the care and placement responsibility of a foster care program (under part B or E of title IV of the Social Security Act) or (5) a student who is married and files a joint return? _____ Yes _____ No.

(c) If the answer to 8(b) is yes, and if any of the students is a single parent with children, is such single parent not a dependent of another individual and are the children not dependents of another individual other than parent? _____ Yes _____ No

9. Relationship to Project Owner. The unit I/we propose to rent is part of a rental housing project owned by Southbridge 4 Master Owner and leased to Southbridge 1-4 Master Tenant. Neither I nor any other occupant of the unit I/we propose to rent has any ownership interest in the rental housing project in which the unit is located, has any family relationship to any partner (or direct or indirect owner of any partner) in Southbridge 4 Master Owner or Southbridge 1-4 Master Tenant or owns directly or indirectly any interest in Southbridge 4 Master Owner or Southbridge 1-4 Master Tenant. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member; ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. Reliance. This certificate is made with the knowledge that it will be relied upon by the Borrower to determine maximum income for eligibility to occupy the unit and is relevant to the status under federal income tax law of the interest on bonds issued to provide financing for the apartment development for which application is being made. I/We consent to the disclosure of such information to the Illinois Housing Development Authority (the issuer of such bonds), the holders of such bonds, any trustee acting on their behalf and any authorized agent of the Treasury Department or the Internal Revenue Service. I/We declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable, and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

UNOFFICIAL COPY

11. Further Assistance. I/We will assist the Borrower in obtaining any information or documents required to verify the statements made herein, including, but not limited to, either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding two calendar years.

12. Misrepresentation. I/We acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Borrower to lease the unit, and may entitle the Borrower to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

[Signatures Appear on Following Page]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

I/We declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____ in _____, Illinois.

Applicant

Applicant

Applicant

Applicant

[Signature of all persons over the age of 17 years listed in number 2 above required.]

SUBSCRIBED AND SWORN to before me this ___ day of _____, 20__

(NOTARY SEAL)

Notary Public in and for the State of _____

My Commission Expires: _____

FOR COMPLETION BY APARTMENT OWNER ONLY:

1. Calculation of eligible income:

a. Enter amount entered for entire household in 6 above: \$ _____

b. (1) if the amount entered in 7(C)(i) above is greater than \$5,000, enter the total amount entered in 7(C)(ii), subtract from that figure the amount entered in 7(C)(iii) and enter the remaining balance (\$ _____);

(2) multiply the amount entered in 7(C)(i) times the current passbook savings rate as determined by HUD to determine what the total annual earnings on the amount in 7(C)(i) would be if invested in passbook savings (\$ _____), subtract from that figure the amount entered in 7(C)(iii) and enter the remaining balance (\$ _); and

(3) enter at right the greater of the amount calculated under (1) or (2) above: \$ _____

UNOFFICIAL COPY

c. TOTAL ELIGIBLE INCOME (Line 1.a plus line 1.b(3)): \$ _____

2. The amount entered in 1.c is:

_____ Less than 50% of Median Gross Income for Area.²

_____ More than 50% of Median Gross Income for the Area.³

3. Number of apartment unit assigned: _____

Bedroom Size: _____ Rent: \$ _____

4. The last tenants of this apartment unit for a period of at least 30 consecutive days [had/did not have] aggregate anticipated annual income, as certified in the above manner upon their initial occupancy of the apartment unit, of less than 50% of Median Gross Income for the Area.

5. Method used to verify applicant(s) income:

_____ Employer income verification.

_____ Copies of tax returns.

_____ Other (_____)

² "Median Gross Income for the Area" means the median income for the area where the Project is located as determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, median income determined under the method used by the Secretary prior to the termination. "Median Gross Income for the Area" shall be adjusted for family size. "Median Gross Income for the Area" shall not be reduced for any calendar year to which Section 3009 of the Housing and Economic Recovery Act of 2010 applies.

³ See Footnote 2.

UNOFFICIAL COPY

SOUTHBRIDGE 4 MASTER OWNER LLC

By: Ickes Master Developer JV LLC, its sole member

By: The Community Builders, Inc., its managing member

By: _____

Name: William Woodley

Title: Authorized Agent

SOUTHBRIDGE 1-4 HOUSING LLC

By: Southbridge 1 Housing MM LLC, its managing member

By: _____

Name: William Woodley

Title: Authorized Agent

Property of Cook County Clerk's Office

UNOFFICIAL COPY

INCOME VERIFICATION (for employed persons)

The undersigned employee has applied for a rental unit located in a project financed by the Illinois Housing Development Authority. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages	_____
Overtime	_____
Bonuses	_____
Commissions	_____
Total current income	_____

I hereby certify that the statements above are true and complete to the best of my knowledge.

_____	_____	_____
Signature	Date	Title

I hereby grant you permission to disclose my income to Southbridge 4 Master Owner LLC, an Illinois limited liability company, and Southbridge 1-4 Housing LLC, an Illinois limited liability company, in order that it may determine my income eligibility for rental of an apartment located in its project which has been financed by the Illinois Housing Development Authority.

_____	_____
Signature	Date

Please send to:

UNOFFICIAL COPY

INCOME VERIFICATION (for self-employed persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding two calendar years and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Signature

Date

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned, Authorized Borrower Representatives of Southbridge 4 Master Owner LLC, an Illinois limited liability company (the "Master Owner"), and Southbridge 1-4 Housing, LLC, an Illinois limited liability company (the "Master Tenant" and, together with the Master Owner, the Borrower), hereby certify as follows:

1. Each of the undersigned has read and is thoroughly familiar with the provisions of the Tax Regulatory Agreement, dated as of [January 1, 2020], among the Master Owner, the Master Tenant, The Bank of New York Mellon Trust Company, N.A., and the Illinois Housing Development Authority (the "Tax Regulatory Agreement").

2. Based on Income Computations and Certifications on file with the Borrower, as of the date of this Certificate the following number of completed residential units in the Project (i) are occupied by Qualifying Tenants (as such term is defined in the Tax Regulatory Agreement), or (ii) were previously occupied by Qualifying Tenants and have been vacant and not reoccupied except for a temporary period of no more than 31 days:

Occupied by Qualifying Tenants: _____ No. of Units

Previously occupied by Qualifying Tenants
(vacant and not reoccupied except for a
temporary period of no more than 31 days) _____ No. of Units

3. The total number of completed residential units in the Project is _____

4. No default has occurred and is continuing under the Tax Regulatory Agreement.

SOUTHBRIDGE 4 MASTER OWNER LLC

By: Ickes Master Developer JV LLC, its sole member

By: The Community Builders, Inc., its managing member

By: _____

Name: William Woodley

Title: Authorized Agent

SOUTHBRIDGE 1-4 HOUSING LLC

By: Southbridge 1 Housing MM LLC, its managing member

By: _____

Name: William Woodley

Title: Authorized Agent

UNOFFICIAL COPY

EXHIBIT D

REQUIRED LEASE OR RESIDENCY AGREEMENT PROVISIONS FOR PROJECT

Section ____ . TENANT TO FURNISH INFORMATION ABOUT INCOME.

- A. Information to be Furnished. Tenant agrees to provide to Landlord an annual certificate regarding Tenant's income. The certificate shall be provided each year and shall be on a form provided by Landlord. Tenant also agrees, at the request of the Landlord, to provide to Landlord copies of Tenant's federal income tax returns and any other information or certificates requested by Landlord. Landlord agrees to request the income tax returns and information only for the purpose of complying with the rules and regulations of the Department of Treasury or the Internal Revenue Service relating to tax-exempt financing of qualified residential rental housing projects.
- B. Landlord May Disclose Financial Information. Tenant agrees that the certificates, income tax returns and other information provided by Tenant may be disclosed by Landlord to the Department of Treasury, the Internal Revenue Service or any other person as may be required to satisfy Landlord's obligations relating to the tax-exempt financing for the [leased] [occupied] premises.
- C. Failure to Provide Information is Default by Tenant. Tenant agrees that any failure to provide information which Tenant is required to provide under Section A above shall be a default by Tenant of its agreements under the [Lease] [Residency Agreement]. Tenant also agrees that if any of the certificates, tax returns or information provided by Tenant are untrue, Tenant shall be in default under this [Lease] [Residency Agreement]. In the event of any such default, Landlord shall have the right to exercise any right or remedy described in Section of this [Lease] [Residency Agreement].

CH2\21852958.10