

# UNOFFICIAL COPY

**THIS INSTRUMENT WAS PREPARED  
BY AND AFTER RECORDING  
RETURN TO:**

Illinois Housing Development  
Authority  
111 E. Wacker Drive, 10<sup>th</sup> Floor  
Chicago, Illinois 60601  
Attention: Arieh Flemenbaum



Doc# 2001719088 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/17/2020 02:20 PM PG: 1 OF 11

**Permanent Tax Index**

**Identification No.:**

See Attached Exhibit A

**Property Address:**

See Attached Exhibit A

## SUBORDINATION AGREEMENT

41044527 (33)

**THIS SUBORDINATION AGREEMENT** (this "Agreement") is made as of \_ January 16, 2020, between **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, a body politic and corporate of the State of Illinois ("IHDA" or "Senior Lender"), and **THE CITY OF CHICAGO, ILLINOIS**, an Illinois municipal corporation (the "Subordinated Lender");

### RECITALS

A. Pursuant to the terms and conditions of that certain construction Loan Agreement by and between Senior Lender and SOUTHBRIDGE 4 MASTER OWNER LLC, an Illinois limited liability company ("Borrower") of even date herewith (the "Senior Loan Agreement"), the Senior Lender has agreed to make available to Borrower 2 loans: (1) a perm loan from the Risk Sharing program in the maximum stated principal amount of Eight Million One Hundred Thousand and No/100 Dollars (\$8,100,000.00) (the "RS Loan"); and (2) a construction to perm loan from the Trust Fund program in the maximum stated principal amount of Four Million Seven Hundred Sixty-Two Thousand Two Hundred Thirty-Four and No/100 Dollars (\$4,762,234.00); (the "TF Loan"; together with the RS Loan, collectively, the "Senior Loans"). The Senior Loans are each secured by a Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents of even date herewith granted by Borrower to Senior Lender (collectively, the "Senior Mortgages") encumbering that certain multifamily housing project to be located in Chicago, Illinois on the leasehold legally described in Exhibit A attached hereto (the "Real Estate", the Real Estate and the improvements constructed or to be constructed thereon, commonly known as Southbridge Phase IA are referred to in this Agreement as the "Development"). The Borrower's obligation to repay the Senior Loans are evidenced by that those certain Mortgage Notes, each of even date herewith, made by Borrower to the order of Senior Lender in the stated principal amount of Eight Million One Hundred Thousand and No/100 Dollars (\$8,100,000.00 and Four Million Seven Hundred

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Sixty-Two Thousand Two Hundred Thirty-Four and No/100 Dollars (\$4,762,234.00); respectively (together, the "Notes") (each as amended or replaced from time to time, the "Senior Notes"), and is further evidenced, secured and governed by certain other loan documents (the "Other Senior Loan Documents"). The Senior Loan Agreements, Senior Notes, Senior Mortgages and the Other Senior Loan Documents are collectively referred to in this Agreement as the "Senior Loan Documents."

B. Subordinated Lender is the owner and holder of that certain Promissory Note (the "Subordinated Note") dated as of even date herewith, in the original principal amount of Two Million Three Hundred Forty Thousand Four Hundred Thirty-five and No/100 Dollars (\$2,340,435.00) made by Borrower payable to the order of Subordinated Lender. The Subordinated Note is (i) secured by a certain Junior Mortgage, Security Agreement and Financing Statement (the "Subordinated Mortgage") made by the Borrower in favor of Subordinated Lender dated as of even date herewith encumbering the Development and (ii) evidenced, secured and governed by certain other loan documents (the "Other Subordinated Loan Documents"). The Subordinated Note, Subordinated Mortgage and the Other Subordinated Loan Documents are collectively referred to in this Agreement as the "Subordinated Loan Documents".

C. All obligations of the Borrower to the Senior Lender now existing or hereafter arising, due or to become due, under the Senior Notes and the Senior Loan Documents are referred to in this Agreement as the "Senior Liabilities"; all obligations of the Borrower to the Subordinated Lender now existing or hereafter arising, due or to become due, under the Subordinated Loan Documents are referred to in this Agreement as the "Subordinated Liabilities."

D. The Senior Lender has agreed to make the loans evidenced by the Senior Notes on the condition that Subordinated Lender enter into this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and as an inducement to the Senior Lender to make the loan evidenced by the Senior Notes, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto represent, warrant and agree as follows:

1. **Warranties of Subordinated Lender.** True, correct and complete copies of all documents evidencing and securing the Subordinated Liabilities have previously been delivered to Senior Lender by Borrower and are described in **Recital B** above.
2. **Subordination of Liens.** The Subordinated Lender agrees that the Subordinated Liabilities are and shall be subordinate to the Senior Liabilities and that the liens and security interests created by the Subordinated Loan Documents are and shall be subordinate to the liens and security interests created by the Senior Loan Documents.
3. **Subordination of Payment.** Subject to the express exceptions under this Section 3, until such time as the date on which the Senior Liabilities have been paid in full, the payment of the Subordinated Liabilities shall be postponed and subordinated to the payment of all of the Senior Liabilities, and Subordinated Lender shall not accept any payments or other distributions whatsoever (including without limitation distributions of casualty insurance or condemnation proceeds) on account of its Subordinated Liabilities, nor shall any property or assets of the

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Borrower be applied to the purchase or acquisition or retirement of any Subordinated Liabilities. Notwithstanding the foregoing, so long as no event of default exists, or event which with the passing of time or giving of notice or both would be an event of default under any document evidencing or securing the Senior Liabilities (except any such notice of default which has subsequently been waived in writing by the party giving such notice), then Subordinated Lender shall retain and Borrower may make regularly scheduled payments to Subordinated Lender (but not prepayments) as provided in the Subordinated Loan Documents; however, no such payment to Subordinated Lender shall be permitted so long as Subordinated Lender is then in default in the performance of any of its obligations under this Agreement.

4. **Covenants of Subordinated Lender.** Subordinated Lender shall not, without the prior written consent of the Senior Lender, (a) modify, amend or consent to any modification or amendment of any document evidencing or securing the Subordinated Liabilities; (b) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to the Borrower; (c) seek to appoint a receiver for (i) the Development or any part of it, or (ii) the Borrower, or seek to obtain possession of the Development, or seek any accounting from the Senior Lender in connection with the proceeds of the Development; or (d) take any action affecting any lease of the Development in which the Senior Lender claims a security interest (including without limitation any action to subordinate any such lease to the Subordinated Loan Documents, or any of them).

5. **Bankruptcy of Borrower.** In the event of any dissolution, winding-up, liquidation, readjustment, reorganization or other similar proceedings relating to the Borrower, the Borrower's creditors, or to the Borrower's property (whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment to benefit creditors, or any other marshalling of the assets and liabilities of the Borrower, or any sale of all or substantially all of the assets of the Borrower, or otherwise), the Senior Liabilities shall first be paid in full before Subordinated Lender shall be entitled to receive and to retain any payment or distribution with respect to the Subordinated Liabilities.

6. **Notices of Default.** Subordinated Lender agrees to use its best efforts to give the Senior Lender, contemporaneously with the giving of them to the Borrower, copies of any notices given to the Borrower regarding any default under its Subordinated Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under its Subordinated Loan Documents. Subordinated Lender agrees that the indebtedness evidenced, secured and guaranteed by the Subordinated Loan Documents shall not be accelerated, nor shall any remedies be pursued thereunder unless (a) in the case of default in the payment of a sum of money due under the Subordinated Loan Documents and after expiration of all applicable grace periods, the Senior Lender shall have been given written notice of such failure and the Senior Lender shall have failed to pay or cause to be paid such sum of money within thirty (30) days following such written notice or (b) in the case of any other default under the Subordinated Loan Documents, the Senior Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to the Borrower to cure such default. The Senior Lender agrees to give to the Subordinated Lender, contemporaneously with the giving of them to the Borrower, copies of any notices given to the Borrower regarding any default under the Senior Loan Documents or which notice would, following the passage of time and failure to cure, result

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in the occurrence of a "default" or "event of default" under the Senior Loan Documents. The Senior Lender agrees that the indebtedness evidenced, secured and guaranteed by the Senior Loan Documents shall not be accelerated, nor shall any remedies be pursued there under unless (a) in the case of default in the payment of a sum of money due under the Senior Loan Documents and after expiration of all applicable grace periods, the Subordinated Lender shall have been given written notice of such failure and the Subordinated Lender shall have failed to pay or cause to be paid such sum of money within thirty (30) days following such written notice; or (b) in the case of any other default under the Senior Loan Documents, the Subordinated Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to Borrower to cure such default.

7. **Consent to Plats of Subdivision.** If the Borrower requests that the Senior Lender and all other mortgagees or trustees under trust deeds of record execute any plats of subdivision or similar documents in connection with the construction, development, operation or maintenance of the Development, and if Senior Lender executes them, Subordinated Lender agrees to execute such documents and instruments as its interests appear.

8. **Acquisition of Fee Title by Senior Lender.** The Subordinated Lender agrees that an acquisition of fee title to the Development by Senior Lender, its nominee, or any other person or entity through a foreclosure of the Senior Mortgage (where such foreclosure does not extinguish the security interests created by the Subordinated Loan Documents) or through a deed in lieu of foreclosure is not a "sale or disposition" and will not constitute an event of default under its Subordinated Loan Documents.

9. **Subrogation.** Until such time as the Senior Liabilities have been paid in full, Subordinated Lender waives and releases any and all rights of subrogation which it has against the Development and which subrogation would result in Subordinated Lender obtaining a priority equal or superior to the priority of the Senior Loan Documents for any funds which Subordinated Lender may advance either to cure defaults under security instruments or pay liens encumbering the Development or otherwise protect the lien of the Subordinated Loan Documents or any of them.

10. **Permitted Actions by Senior Lender.** The Senior Lender may, from time to time, in its sole discretion and with notice to Subordinated Lender, take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Senior Liabilities; (b) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Liabilities; and (c) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of the property securing any of the Senior Liabilities, or release, compromise, alter or modify any obligation of any nature of any obligor with respect to any such property.

11. **Assignment.** The Senior Lender may, from time to time, upon not less than ten (10) days prior written notice to Subordinated Lender, assign or transfer any or all of the Senior Liabilities or any interest in them; if approved by Subordinated Lender in writing, then notwithstanding any such assignment or transfer or, if approved by Subordinated Lender in writing, any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purpose of this Agreement, and, if approved by Subordinated Lender in

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writing, every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest in them shall, to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the benefits and burdens of this Agreement to the same extent as if such assignee or transferee were the Senior Lender; however, unless the Senior Lender otherwise consents in writing, the Senior Lender shall have the unimpaired right prior and superior to that of any such assignee or transferee, to enforce this Agreement for the benefit of the Senior Lender as to those of the Senior Liabilities which the Senior Lender has not assigned or transferred.

12. **Successors and Assigns.** This Agreement shall be binding upon Subordinated Lender and its respective successors and assigns, whether immediate or remote.

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

14. **No Waiver by Senior Lender.** The Senior Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act by the Borrower or Subordinated Lender, or any non-compliance of the Borrower or Subordinated Lender with any agreement or obligation, regardless of any knowledge of such agreement or obligation the Senior Lender may have or with which the Senior Lender may be charged; and no action of the Senior Lender permitted under this Agreement shall in any way affect or impair the rights of the Senior Lender and the obligations of Subordinated Lender under this Agreement. No delay on the part of the Senior Lender in the exercise of rights or remedies shall operate as a waiver of such rights, and no single or partial exercise by Senior Lender of any right or remedy shall preclude other or further exercise of such right or remedy or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon the Senior Lender except as expressly set forth in a writing duly signed and delivered on behalf of the Senior Lender.

15. **Notices.** Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Senior Lender:

Illinois Housing Development Authority  
111 E. Wacker Drive, Suite 1000  
Chicago, Illinois 60601  
Attention: Legal Department

If to Subordinated Lender:

Department of Housing  
City of Chicago  
121 North LaSalle Street, Room 1000



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Chicago, Illinois 60602  
Attn: Commissioner

With copies to:

Office of Corporation Counsel  
City of Chicago  
121 N. LaSalle Street, Room 600  
Chicago, IL 60602  
Attention: Finance & Economic Development

Such addresses may be changed by notice to the other party given in the same manner as provided in this Agreement. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

16. **Construction and Interpretation of this Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

17. **Termination.** This Agreement shall terminate upon full and final payment of any and all amounts due or arising under the Senior Liabilities, provided that all rights of Subordinated Lender under this Agreement shall automatically terminate at such time as the Subordinated Liabilities have been paid in full.

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

19. **Intentionally omitted.**

20. **Joinder of Borrower.** The Borrower has joined in the execution of this Agreement for the purpose of acknowledging and consenting to the terms and agreements herein contained, but shall have no rights or benefits hereunder as third party beneficiary or otherwise.

[SIGNATURE PAGE FOLLOWS]

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4% TRANSACTION

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representatives of the parties.

**SUBORDINATED LENDER:**

CITY OF CHICAGO, acting by and through its Department of Housing

By: Marisa Novara  
Marisa Novara  
Its Commissioner

STATE OF ILLINOIS)  
) SS  
COUNTY OF COOK)

NOTARY CERTIFICATION

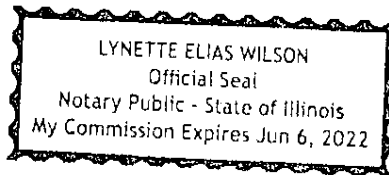
I, the undersigned, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Marisa Novara, Commissioner of the Department of Housing of the City of Chicago, Illinois, an Illinois municipal corporation, on behalf of the corporation (the "City"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered said instrument pursuant to the authority given to her by the City, as her free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 8th day of January, 2020.

Lynette Elias Wilson  
Notary Public

My Commission Expires June 6, 2022

(SEAL)



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SENIOR LENDER:

ILLINOIS HOUSING DEVELOPMENT  
AUTHORITY

AP

By: *Debra Olson*  
Name: Debra Olson  
Title: Assistant Executive Director

STATE OF ILLINOIS )  
) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that **Debra Olson**, personally known to me to be the Assistant Executive Director of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** 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 acknowledged that he/she signed and delivered the said instrument in his/her capacity as Assistant Executive Director of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, as his/her free and voluntary act and deed and as the free and voluntary act and deed of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, for the uses and purposes therein set forth.

Given under my hand and official seal this 13<sup>th</sup> day of December, 2011.



*Tanika King*  
Notary Public

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Acknowledged and Consented to By:

**BORROWER:**

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

By: **ICKES MASTER DEVELOPER JV, LLC**  
an Illinois limited liability company  
its sole member

By: **THE COMMUNITY BUILDERS, INC.,**  
d/b/a TCB NFP Illinois, Inc.  
a Massachusetts not-for-profit corporation  
its Sole Member

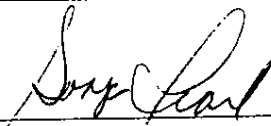
By:   
Name: Will Woodley  
Title: Authorized Agent

STATE OF ILLINOIS                     )  
   ) SS  
COUNTY OF COOK                     )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do certify that Will Woodley, personally known to me to be the Authorized Agent of The Community Builders, Inc., the Sole Member of Ickes Master Developer JV, LLC, (the "Sole Member"), the sole and Sole Member of Southbridge 4 Master Owner LLC, 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, s/he signed and delivered the said instrument, pursuant to authority given by the members of the Sole Member as the free and voluntary act of such person, and as the free and voluntary act and deed of the Sole Member and Southbridge 4 Master Owner LLC, for the uses and purposes therein set forth.

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



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

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## EXHIBIT A

### LEGAL DESCRIPTION FOR SOUTHBRIDGE PHASE 1A

#### PARCEL 1:

THE LEASEHOLD ESTATE CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE GROUND LEASE, EXECUTED BY CHICAGO HOUSING AUTHORITY, AN ILLINOIS MUNICIPAL CORPORATION, AS LANDLORD, AND TCB DEVELOPMENT SERVICES LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AS TENANT, DATED AS OF JANUARY 16, 2020, WHICH LEASE WAS RECORDED JANUARY 17, 2020, AS DOCUMENT NUMBER 2001719057 ASSIGNED BY THE ASSIGNMENT AND ASSUMPTION AND AMENDMENT OF GROUND LEASE, DATED AS OF JANUARY 16, 2020, BETWEEN SAID TCB DEVELOPMENT SERVICES LLC, AND SOUTHBRIDGE 4 MASTER OWNER LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, WHICH ASSIGNMENT AND ASSUMPTION AND AMENDMENT OF GROUND LEASE WAS RECORDED JANUARY 17, 2020, AS DOCUMENT NUMBER 2001719058 WHICH LEASE DEMISES THE FOLLOWING DESCRIBED PROPERTY FOR A TERM OF 99 YEARS ENDING JANUARY 15, 2119:

THAT PART OF LOTS 1 THROUGH 12 (BOTH INCLUSIVE), THAT PART OF LOTS 40 THROUGH 46 (BOTH INCLUSIVE), AND THAT PART OF THE NORTH-SOUTH 15 FOOT WIDE PUBLIC ALLEY VACATED PER DOCUMENT NUMBER 15805877, RECORDED JANUARY 6, 1954, ALL IN BLOCK 10, IN UHLICH AND MUHLKE'S ADDITION TO CHICAGO, A SUBDIVISION OF THE EAST HALF OF THE NORTHEAST QUARTER (EXCEPT THE SOUTH HALF OF THE SOUTH HALF THEREOF) IN SECTION 26, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

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

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

#### PARCEL 2:

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

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

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

## PROPERTY PINS

Property Pins: 17-28-218-028 (affects part of the land and other property);  
17-28-218-029 (affects part of the land and other property); and  
17-28-218-030 (affects part of the land and other property)

Property of Cook County Clerk's Office