


# UNOFFICIAL COPY

RECORDING COVER SHEET

FILE NO: 41055569

COOK COUNTY

  
\*2106846025\*

Doc# 2106846025 Fee \$88.00

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

KAREN A. YARBROUGH  
COOK COUNTY CLERK

DATE: 03/09/2021 12:38 PM PG: 1 OF 42

TYPE OF DOCUMENT: TAX REGULATORY AGREEMENT

GREATER ILLINOIS TITLE COMPANY

120 N. LASALLE, SUITE 900

CHICAGO, IL 60602

41055569 (4)

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Recording Requested By and When Recorded Send to:  
Illinois Housing Development Authority  
111 E. Wacker, Suite 1000  
Chicago, Illinois 60601  
Attention: Susan Kim, Esq.

Property Identification Nos.: See Exhibit A  
Primary Property Address: 920 West Lawrence Avenue, Chicago, Illinois 60640

---

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

and

ZIONS BANCORPORATION, NATIONAL ASSOCIATION,  
as Fiscal Agent and Subordinate Trustee

and

HEIWA TERRACE 920 LLC,  
an Illinois limited liability company,  
as Owner

---

TAX REGULATORY AGREEMENT

---

Dated as of March 1, 2021

41055569 (4)

---

This instrument prepared by:  
Bruce P. Weisenthal  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 7100  
Chicago, Illinois 60606

S W  
P 41  
S 41  
SC     
INT JP

# UNOFFICIAL COPY

## TABLE OF CONTENTS

	<b>Page</b>
Section 1. Term of Restrictions .....	2
Section 2. Project Restrictions.....	4
Section 3. Occupancy Restrictions .....	5
Section 4. Rental Restrictions.....	7
Section 5. Transfer Restrictions.....	7
Section 6. Enforcement.....	7
Section 7. Covenants to Run With the Land.....	8
Section 8. Recording.....	9
Section 9. Concerning the Fiscal Agent .....	9
Section 10. No Conflict With Other Documents .....	9
Section 11. Interpretation.....	10
Section 12. Amendment.....	10
Section 13. Severability.....	10
Section 14. Notices .....	10
Section 15. Governing Law .....	11
Section 16. Conflict with Mortgage and HUD Regulations; Supremacy of Mortgage and HUD.....	11
Section 17. Counterparts.....	11

# UNOFFICIAL COPY

## TAX REGULATORY AGREEMENT

THIS TAX REGULATORY AGREEMENT (this “Agreement”), entered into as of March 1, 2021, 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 “Authority”), HEIWA TERRACE 920 LLC, an Illinois limited liability company (the “Owner”) and ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a national banking association, as (i) fiscal agent (the “Fiscal Agent”) under a Funding Loan and Security Agreement, dated as of March 1, 2021 (the “Funding Loan Agreement”), among Bellwether Enterprise Real Estate Capital, LLC, (the “Initial Funding Lender”), the Authority and the Fiscal Agent, and (ii) as Subordinate Trustee under a Subordinate Trust Indenture among the Issuer, the Subordinate Trustee (the “Subordinate Trustee”) and the Owner.

### WITNESSETH:

WHEREAS, the Authority (i) is making mortgage loan funds in the amount of \$16,200,000 available to the Owner (the “Project Loan”) pursuant to a Borrower Loan Agreement, dated as of March 1, 2021 (the “Borrower Loan Agreement”), among the Authority, the Fiscal Agent and the Owner and (ii) is making a loan in the amount of \$23,800,000 available to the Owner from proceeds received by the Authority from the sale of its Illinois Housing Development Authority, Multifamily Housing Subordinate Revenue Bonds, Series 2020A (Heiwa Terrace) (the “Subordinate Bonds,” and, together with the Project Loan, the “Loans,” in each case, to pay a portion of the costs of financing the acquisition, rehabilitation and equipping, on the real property described on Exhibit A attached hereto, of an approximately 204-unit rental housing project for elderly households and certain non-elderly disabled households and near-elderly disabled households located within a 13-story building having a primary address of 920 West Lawrence Avenue, Chicago, Illinois (the “Project”); and

WHEREAS, the Authority is making the Project Loan to the Owner with the proceeds received from (i) the separate loan made to the Authority pursuant to this Funding Loan Agreement in the original principal amount of \$16,200,000 (the “Funding Loan”) and (ii) the sale of Subordinate Bonds in the original amount of \$23,800,000. The Funding Loan is being originated and funded by the Initial Funding Lender hereunder and is evidenced by the Multifamily Note (the “Governmental Lender Note”) delivered by the Authority to the Initial Funding Lender; and

WHEREAS, the Authority is issuing Subordinate Bonds to be purchased by the Japanese American Service Committee Housing Corporation;

WHEREAS, in order to assure the Authority and the owners of the Governmental Lender Note and the Subordinate Bonds that interest on the Governmental Lender Note and the Subordinate Bonds 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 Authority, 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 Owner, the Authority and the Fiscal Agent agree as follows:

# UNOFFICIAL COPY

## **Section 1. Term of Restrictions.**

(a) *Occupancy Restrictions:* The term of the Occupancy Restrictions set forth in Section 3 hereof shall commence on the first day on which at least 10% of the units in the Project are first occupied, and shall end on the latest of (i) the date which is 15 years after the date on which at least 50% of the units in the Project are first occupied; (ii) the first date on which no tax-exempt bond (including any refunding bond) issued with respect to the Project is outstanding; or (iii) the date on which any housing assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates (the "Qualified Project Period"). The Governmental Lender Note and the Subordinate Bonds are tax-exempt bonds for this purpose.

As provided by Revenue Procedure 2004-39, if less than ten percent (10%) of the residential units in the Project are Available Units (for example, because residential units are not available for occupancy due to renovations) at any time within 60 days after the later of (1) the date the Project is acquired, or (2) the issue date of the First Bonds, then the Qualified Project Period shall commence as set forth in the preceding paragraph (i.e., upon ten percent (10%) occupancy). Otherwise, for a period of 12 months beginning on the issue date of the First Bonds (the "Transition Period"), the failure to satisfy the Occupancy Restrictions will not cause the Project to not be a qualified residential rental project within the meaning of Section 142(d) of the Code. If the Occupancy Restrictions are not satisfied on the last date of the Transition Period, such failure will cause the Project to not be a qualified residential rental project within the meaning of Section 142(d) of the Code as of the issue date of the Governmental Lender Note and the Subordinate Bonds unless all of the Governmental Lender Note and Subordinate Bonds issued to finance the Project are prepaid as soon as possible, but in no event later than 18 months after the issue date of the First Bonds.

For purposes of this Section the following definitions shall apply:

"Available Units" means residential units in a residential rental 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 (a) in the case of an acquisition of an existing residential rental project, a residential unit that is unoccupied on the later of (i) the date the project is acquired, or (ii) the issue date of the First Bonds 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 (b) 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.

"First Bonds" means the first issue of bonds to which Section 142(d) of the Code applies issued to finance the acquisition and rehabilitation of an existing residential rental project, including the Governmental Lender Note and/or the Subordinate Bonds.

If the Occupancy Restrictions are not satisfied on the last date of the Transition Period, the Owner shall (i) pursuant to the Funding Loan Agreement cause the Governmental Lender Note and the Subordinate Bonds to be prepaid as soon as possible, but in no event later than 18 months after the issue date of the First Bonds, or (ii) deliver to the Authority an opinion of nationally recognized bond counsel ("Tax Counsel") to the effect that the failure to satisfy the Occupancy

# UNOFFICIAL COPY

Restrictions on the last date of the Transition Period will not adversely affect the exclusion of interest on the Governmental Lender Note and Subordinate Bonds from gross income for federal income tax purposes.

(b) *Rental Restrictions:* The Rental Restrictions set forth in Section 4 hereof shall, subject to paragraphs (c) and (d) of this Section 1, remain in effect with respect to the Project during the Qualified Project Period set forth in paragraph (a) of this Section 1.

(c) *Involuntary Loss or Substantial Destruction:* The Occupancy Restrictions set forth in Sections 1(a) and 3 hereof, and the Rental Restrictions set forth in Sections 1(b) and 4 hereof, shall cease to apply to the Project in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in federal law or an action of a federal agency after the date of delivery of the Governmental Lender Note and the Subordinate Bonds, which prevents the Authority and the Fiscal Agent from enforcing the Occupancy Restrictions (set forth in Sections 1(a) and 3) and the Rental Restrictions (set forth in Sections 1(b) and 4), or condemnation or similar event, but only if, within a reasonable time period, (i) the Governmental Lender Note and the Subordinate Bonds are promptly retired, or amounts received as a consequence of such event are used to provide a new project which meets all of the requirements of this Agreement, which new project is subject to new restrictions substantially equivalent to those contained in this Agreement, and which is substituted in place of the Project by amendment of this Agreement, and (ii) an opinion from Bond Counsel (as defined in the Funding Loan Agreement) is received by the Authority, the Fiscal Agent and the Owner to the effect that noncompliance with the Occupancy Restrictions and the Rental Restrictions as a result of such involuntary loss or substantial destruction resulting from an unforeseen event will not adversely affect the exclusion of the interest on the Governmental Lender Note and the Subordinate Bonds from the gross income of the owners thereof for purposes of federal income taxation; provided, however, that the preceding provisions of this paragraph shall cease to apply in the case of such involuntary noncompliance caused by foreclosure, transfer of title by deed in lieu of foreclosure or similar event if at any time during the Qualified Project Period subsequent to such event the Owner or any Related Party (as defined in Section 147(a)(2) of the Code) obtains an ownership interest in the Project for federal income tax purposes.

(d) *Termination:* This Agreement shall terminate upon the earliest of (i) termination of the Occupancy Restrictions and the Rental Restrictions, as provided in paragraphs (a) and (b) of this Section 1, or (ii) delivery to the Authority, the Fiscal Agent, the Subordinate Trustee and the Owner of an opinion of Bond Counsel to the effect that continued compliance with the Rental Restrictions and Occupancy Restrictions on the Project is not required in order for interest on the Governmental Lender Note and the Subordinate Bonds to remain excludible from gross income for federal income tax purposes.

(e) *Certification:* Upon termination of this Agreement, in whole or in part, the Owner and the Authority shall execute, and the Fiscal Agent and Subordinate Trustee shall acknowledge, and the parties shall cause to be recorded (at the Owner's expense), in all offices in which this Agreement was recorded, a certificate of termination, specifying (in the case of a termination in part) which of the restrictions contained herein has terminated, and the portion of the Project to which such termination relates.



# UNOFFICIAL COPY

**Section 2. Project Restrictions.** The Owner represents, warrants and covenants as follows:

(a) The Owner has reviewed the provisions of the Code and the Treasury Regulations thereunder (the "Regulations") applicable to this Agreement (including, without limitation, Section 142(d) of the Code and Section 1.103-8(b) of the Regulations) with its counsel and understands said provisions.

(b) The Project is being acquired, constructed and/or rehabilitated and equipped for the purpose of providing a "qualified residential rental project" (within the meaning of Section 142(d) of the Code) and will, during the term of the Rental Restrictions and Occupancy Restrictions hereunder, continue to constitute a "qualified residential rental project" under Section 142(d) of the Code and any Regulations heretofore or hereafter promulgated thereunder and applicable thereto.

(c) At least 55% of the Project will consist of a "building or structure" (as defined in Section 1.103-8(b)(8)(iv) of the Regulations), or several proximate buildings or structures of similar construction, each containing one or more similarly constructed residential units (as defined in Section 1.103-8(b)(8)(i) of the Regulations, as modified by the definition of "single-room occupancy housing units" set forth in Section 3008 of the Housing and Economic Recovery Act of 2010) located on a single tract of land, including contiguous tracts of land (as defined in Section 1.103-8(b)(4)(ii)(b) of the Regulations), which will be owned, for federal tax purposes, at all times by the same person and financed pursuant to a common plan (within the meaning of Section 1.103-8(b)(4)(ii) of the Regulations), together with functionally related and subordinate facilities (within the meaning of Section 1.103-8(b)(4)(iii) of the Regulations). The Project will contain five or more similarly constructed units.

(d) None of the residential units in the Project will at any time be used on a transient basis, nor will the Project itself be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court for use on a transient basis.

(e) In no event will continual or frequent nursing, medical or psychiatric services be made available at the Project, within the meaning of Revenue Ruling 98-47, 1998-2 C.B. 397, or any successor thereto.

(f) Each Qualifying Tenant (as hereinafter defined) occupying a residential unit in the Project shall be required to execute a written lease agreement (the "Lease Agreement") with a stated term of not less than 30 days nor more than one year.

(g) Any functionally related and subordinate facilities (e.g., parking areas, swimming pools, tennis courts, etc.) which are financed by the Governmental Lender Note and/or Subordinate Bonds and included as part of the Project will be of a character and size commensurate with the character and size of the Project, and will be made available to all tenants on an equal basis. Fees will only be charged with respect to the use thereof if the charging of fees is customary for the use of such facilities at similar residential rental properties in the surrounding area (i.e., within a one-mile radius of the Project) and then only in amounts commensurate with the fees being charged at

# UNOFFICIAL COPY

similar residential rental properties within such area. In any event, any fees charged will not be discriminatory or exclusionary as to the Qualifying Tenants (as defined in Section 3 hereof). No functionally related and subordinate facilities will be made available to persons other than tenants or their guests.

(h) Each residential unit in the Project will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or family.

(i) No portion of the Project will be used to provide any health club facility, any facility primarily used for gambling, or any store, the principal business of which is the sale of alcoholic beverages for consumption off premises, in violation of Section 147(e) of the Code.

**Section 5. Occupancy Restrictions.** The Owner represents, warrants and covenants as follows:

(a) Pursuant to the election of the Authority and the Owner in accordance with the provisions of Section 142(d)(1)(B) of the Code, at all times during the term of the Occupancy Restrictions set forth in Section 1(a) hereof at least 40% of the completed residential units in the Project shall be continuously occupied (or treated as occupied as provided herein), or held available for occupancy, by Qualifying Tenants as herein defined. For purposes of this Agreement, "Qualifying Tenants" means individuals or families whose aggregate adjusted incomes do not exceed 60% of the applicable median gross income (adjusted for family size) for the area in which the Project is located, as such income and area median gross income are determined by the Secretary of the United States Treasury in a manner consistent with determinations of income and area median gross income under Section 8(f) the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such termination).

(b) Prior to the commencement of occupancy of any unit to be occupied by a Qualifying Tenant, the prospective tenant's eligibility shall be established by execution and delivery by such prospective tenant of an Income Computation and Certification substantially in the form attached hereto as Exhibit B or such other form as complies with the applicable tax law requirements of Section 142(d) of the Code and is acceptable to the Authority (the "Income Certification") evidencing that the aggregate adjusted income of such prospective tenant does not exceed the applicable income limit. In addition, such prospective tenant shall be required to provide whatever other information, documents or certifications are reasonably deemed necessary by the Owner or the Authority to substantiate the Income Certification

(c) Not less frequently than annually, the Owner shall determine whether the current aggregate adjusted income of each tenant occupying any unit being treated by the Owner as occupied by a Qualifying Tenant exceeds the applicable income limit. For such purpose the Owner shall require each such tenant to execute and deliver to the Owner the Income Certification substantially in the form attached hereto as Exhibit B.

(d) Any unit vacated by a Qualifying Tenant shall be treated as continuing to be occupied by such tenant until reoccupied, other than for a temporary period not to exceed 31 days,



# UNOFFICIAL COPY

at which time the character of such unit as a unit occupied by a Qualifying Tenant shall be redetermined.

(e) If an individual's or family's income exceeds the applicable income limit as of any date of determination, the income of such individual or family shall be treated as continuing not to exceed the applicable limit; provided that the income of an individual or family did not exceed the applicable income limit upon commencement of such tenant's occupancy or as of any prior income determination; and provided, further, that if any individual's or family's income as of the most recent income determination exceeds 140% of the applicable income limit, such individual or family shall cease to qualify as a Qualifying Tenant if, prior to the next income determination of such individual or family, any unit in that Project of comparable or smaller size to such individual's or family's unit is occupied by any tenant other than a Qualifying Tenant.

(f) For purposes of satisfying the requirement that 40% of the completed residential units of each Project be occupied by Qualifying Tenants, the following principles shall apply: (i) at the time 10% of the residential units in the Project are occupied, 40% of such units must be occupied by Qualifying Tenants in the number set forth in Exhibit D hereto for the Project, and (ii) after 10% of the residential units in the Project are occupied, non-Qualifying Tenants may occupy the remaining units in the Project other than those listed in Exhibit D, but only if the Qualifying Tenants' occupancies predate the non-Qualifying Tenants' occupancies.

(g) Except as set forth in any lease form required by HUD due to the HAP Contract, the Lease Agreement to be utilized by the Owner in renting any residential units in the Project to a prospective Qualifying Tenant shall provide for termination of the Lease Agreement following 30 days' notice, subject to applicable provisions of Illinois law (including for such purpose all applicable home rule ordinances), for any material misrepresentation made by such person with respect to the Income Certification with the effect that such tenant is not a Qualifying Tenant.

(h) All Income Certifications will be maintained on file at the Project so long as the Governmental Lender Note and Subordinate Bonds are outstanding and for five years thereafter with respect to each Qualifying Tenant who occupied a residential unit in the Project during the period the restrictions hereunder are applicable; and the Owner will, promptly upon receipt, file a copy thereof with the Authority, and at the written request of the Fiscal Agent.

(i) On the first day of each Qualified Project Period, on the fifteenth day of March, June, September and December of each year during the applicable Qualified Project Period, and within 30 days after the final day of each month in which there occurs any change in the occupancy of a residential unit in the Project, the Owner will submit to the Authority and the Fiscal Agent a "Certificate of Continuing Program Compliance" with respect to the Project, in the form attached hereto as Exhibit C, executed by the Owner.

(j) The Owner shall submit to the Secretary of the United States 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. Failure to comply with such requirement may subject the Owner to the penalty provided in Section 6652(j) of the Code. The Owner shall submit a copy of each such annual certification to the Authority and, if the

# UNOFFICIAL COPY

Governmental Lender Note remains outstanding, to the Fiscal Agent and if the Subordinate Bond remains outstanding to the Subordinate Trustee.

**Section 4. Rental Restrictions.** The Owner represents, warrants and covenants that, once available for occupancy, each residential unit in the Project will be rented or available for rental on a continuous basis to members of the general public (other than (a) units for a resident manager or maintenance personnel, and (b) units for Qualifying Tenants as provided for in Section 3 hereof and (c) elderly households, where “elderly households” is defined to mean that the head of household is at least 62 years of age or older), “non-elderly disabled households” and “near-elderly disabled households” as such terms are used in the HUD Occupancy Handbook 4350.3 Rev.-1, Chapter 3-18.A.

**Section 5. Transfer Restrictions.** The Owner covenants and agrees that, except as provided in the last sentence of this Section 5, and except as provided in Exhibit E hereto, no conveyance, transfer, assignment or any other disposition of title to the Project (a “Transfer”) shall be made prior to the termination of the applicable Rental Restrictions and Occupancy Restrictions hereunder, unless the transferee pursuant to the Transfer assumes in writing, in a form reasonably acceptable to the Authority and the Fiscal Agent, all of the executory duties and obligations hereunder of the Owner, including this Section 5, and agrees to cause any subsequent transferee to assume such duties and obligations in the event of a subsequent Transfer by the transferee prior to the termination of the Rental Restrictions and Occupancy Restrictions hereunder (the “Assumption Agreement”). The Owner shall deliver the Assumption Agreement to the Authority, the Fiscal Agent and the Subordinate Trustee at least 30 days prior to a proposed Transfer.

**Section 6. Enforcement.** (a) The Owner shall permit all duly authorized representatives of the Authority, the Fiscal Agent or the Subordinate Trustee to inspect any books and records of the Owner regarding the Project and the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Agreement and Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder at reasonable times and upon reasonable notice.

(b) In addition to the information provided for in Section 3(i) hereof, the Owner shall submit any other information, documents or certifications reasonably requested by the Authority, the Fiscal Agent or the Subordinate Trustee which the Authority, the Fiscal Agent or the Subordinate Trustee deems reasonably necessary to substantiate continuing compliance with the provisions of this Agreement and Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.

(c) The Authority and the Owner each covenants 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 Governmental Lender Note or the Subordinate Bonds from the gross income of the owners thereof for purposes of federal income taxation pursuant to Section 103 of the Code. Moreover, the Authority and the Owner covenant to take any lawful action within their control and the Fiscal Agent or Subordinate Trustee, as applicable, covenants to take any lawful action it is directed to take by the Owner, the Authority or nationally recognized bond counsel (including amendment of this Agreement as may be necessary, in the opinion of Tax Counsel) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated

# UNOFFICIAL COPY

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.

(d) The Owner covenants and agrees to inform the Authority, the Fiscal Agent and Subordinate Trustee 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 Authority, the Fiscal Agent or the Subordinate Trustee, as applicable, within the period of time specified by either the Authority, the Fiscal Agent or the Subordinate Trustee, as applicable, which shall be (A) 60 days after the effective date of any notice to or from the Owner, 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 such exclusion of interest on the Governmental Lender Note or without further notice, the Authority, the Fiscal Agent or the Subordinate Trustee, as applicable, shall declare a default under this Agreement effective on the date of such declaration of default, and the Authority, the Fiscal Agent or the Subordinate Trustee, as applicable, shall apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this 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 Agreement. The investor member(s) of the Owner shall have the right, but not the obligation, to cure any violation of the Owner's obligations hereunder.

(e) The Owner, the Authority, the Fiscal Agent or the Subordinate Trustee, as applicable, each acknowledges that the primary purpose for requiring compliance with the restrictions provided in this Agreement is to preserve the exclusion of interest on the Governmental Lender Note and the Subordinate Bonds from gross income for purposes of federal income taxation, and that the Authority, the Fiscal Agent and the Subordinate Trustee, on behalf of the owners of the Governmental Lender Note and/or the Subordinate Bonds, respectively, who are declared to be third-party beneficiaries of this 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 Authority and nationally recognized bond counsel could adversely affect the exclusion of interest on the Governmental Lender Note or the Subordinate Bonds from gross income for purposes of federal income taxation.

(f) In the enforcement of this Agreement, the Authority, the Fiscal Agent and the Subordinate Trustee may rely on any certificate delivered by or on behalf of the Owner or any tenant with respect to the Project.

(g) Nothing in this Section shall preclude the Authority, Fiscal Agent, the Subordinate Trustee or the lender 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 Authority and Tax Counsel could adversely affect the exclusion of interest on the Governmental Lender Note or the Subordinate Bonds from gross income for purposes of federal income taxation.

**Section 7. Covenants to Run With the Land.** The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. The Authority, the Fiscal Agent, the Subordinate Trustee and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants, reservations and restrictions running with the land to the extent permitted by law, and, subject to paragraphs (c) and (d) of Section 1, shall pass to and be binding upon the Owner's successors in title to the

# UNOFFICIAL COPY

Project throughout the term of this Agreement. Each and every contract, deed, mortgage, lease or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (excluding any transferee of a limited liability company investor member interest in the Owner) shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed, mortgage, lease or other instrument.

**Section 8. Recording.** The Owner shall cause this 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 Authority may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

**Section 9. Concerning the Fiscal Agent and the Subordinate Trustee.**

(a) Both the Fiscal Agent and the Subordinate Trustee (together, the "Parties") are executing and delivering this 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 Parties. With respect to matters set forth in the remaining Sections of this Agreement, the Parties have made no investigation, makes no representation and undertakes no duties or responsibilities. No implied duties or responsibilities may be read into this Agreement against the Parties, and the Parties shall be entitled to the protections, privileges, exculpation and indemnities contemplated under the Funding Loan Agreement and the Subordinate Indenture, respectively. Except pursuant to Section 1(e) after the date on which no Governmental Lender Note remains outstanding as provided in the Funding Loan Agreement, the Fiscal Agent shall have no duties or responsibilities under this Agreement, and all references herein to the Fiscal Agent shall be deemed references to the Authority. Except pursuant to Section 1(e), after the date on which no Subordinate Bonds remain outstanding as provided in the Subordinate Trust Indenture, the Subordinate Trustee shall have no duties or responsibilities under this Agreement, and all references herein to the Subordinate Trustee and, as applicable, to the Parties shall be deemed references to the Authority.

(b) In determining whether any default or lack of compliance by the Owner exists under this Agreement, the Parties shall not be required to conduct any investigation into or review the operations or records of the Owner and, absent actual knowledge of any default or noncompliance, may assume compliance by the Owner with this Agreement unless otherwise specifically notified in writing.

(c) The permissive right of the Parties to take actions permitted by this Agreement shall not be construed as an obligation or duty to do so.

(d) The Parties 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 Authority.



# UNOFFICIAL COPY

(e) The Parties have 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.

**Section 10. No Conflict With Other Documents.** The Owner warrants and covenants that it has not and will not execute any other agreement with provisions inconsistent or in conflict with the provisions hereof (except documents that are subordinate to the provisions hereof or as provided in Section 16 hereafter), and the Owner agrees that the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth, which supersede any other requirements in conflict herewith.

**Section 11. Interpretation.** Any terms not defined in this Agreement shall have the same meaning as terms defined in the Funding Loan Agreement, the Subordinate Indenture or Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.

**Section 12. Amendment.** This Agreement may be amended by the parties hereto to reflect changes in Section 142(d) of the Code, the regulations hereafter promulgated thereunder and revenue rulings promulgated thereunder, or in the interpretation thereof, subject to an opinion of Tax Counsel that such amendment will not adversely affect the exclusion of the interest on the Governmental Lender Note or the Subordinate Bonds from the gross income of the owners thereof for purposes of federal income taxation.

**Section 13. Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

**Section 14. Notices.** Any notice, demand or other communication required or permitted hereunder shall be in writing or by electronic means and shall be deemed to have been given if and when personally delivered and receipted for, or, if sent by electronic means, private courier service or sent by overnight mail service, shall be deemed to have been given if and when received (unless the addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the addressee for acceptance), or on the first day after being sent by electronic means or telegram, or on the third day after being deposited in United States registered or certified mail, postage prepaid. Any such notice, demand or other communication shall be addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith or to the current e-mail addresses of the parties or departments listed below:

If to the Authority: Illinois Housing Development Authority  
111 E. Wacker, Suite 1000  
Chicago, Illinois 60601  
Attention: Multifamily Housing Department

with a copy to: Illinois Housing Development Authority  
111 E. Wacker, Suite 1000  
Chicago, Illinois 60611  
Attention: General Counsel

**UNOFFICIAL COPY**

If to the Fiscal Agent  
or Subordinate

Trustee: Zions Bancorporation, National Association  
111 West Washington Street, Suite 1860  
Chicago, Illinois 60602  
Attention: Robert Cafarelli

If to the Owner: Heiwa Terrace 920 LLC  
c/o Heiwa Terrace 920 MM LLC  
920 West Lawrence Avenue  
Chicago, Illinois 60640  
Attention: President

with copy to: Applegate & Thorne-Thomsen, P.C.  
425 South Financial Place  
Suite 1900  
Chicago, Illinois 60605  
Attention: Bill Skalitzky  
wskalitzky@att-law.com

with a copy to: c/o Related Companies  
60 Columbus Circle, 18<sup>th</sup> Floor  
New York, New York 10023  
Attention: Matthew Finkle

with a copy to  
Investor Member: Hudson Heiwa Terrace LLC  
c/o Hudson Housing Capital LLC  
630 Fifth Avenue, 28<sup>th</sup> Floor  
New York, New York 10111  
Attention: General Counsel

Holland & Knight LLP  
10 St. James Avenue, 12<sup>th</sup> Floor  
Boston, Massachusetts 02116  
Attention: Dayna M. Hutchins, Esq.

If to the Funding  
Lender:

Bellwether Enterprise Real Estate Capital, LLC  
230 West Monroe Street  
Suite 1250  
Chicago, Illinois 60602

with a copy to  
Lender's Special  
Counsel:

Tiber Hudson LLC  
1900 M Street NW



# UNOFFICIAL COPY

4<sup>th</sup> Floor  
Washington, DC 20036  
Attention: Kent Neumann, Esq.

**Section 15. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, and where applicable, the laws of the United States of America.

**Section 16. Conflict with Mortgage and HUD Regulations; Supremacy of Mortgage and HUD.** Notwithstanding anything in this Agreement to the contrary, the provisions of this Agreement are subject and subordinate to the National Housing Act, all applicable HUD insurance (and Section 8, if applicable) regulations and related administrative requirements, all as set forth in Exhibit E, which is incorporated into this Agreement in whole. In the event of any conflict between the provisions of this Agreement and the provisions of Exhibit E, Exhibit E shall be controlling in all respects.

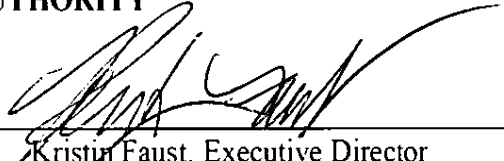
**Section 17. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the day and year first above written.

**ILLINOIS HOUSING DEVELOPMENT  
AUTHORITY**

By:   
Kristin Faust, Executive Director

**HEIWA TERRACE 920 LLC,**  
an Illinois limited liability company

By: Heiwa Terrace 920 MM LLC,  
an Illinois limited liability company,  
its Managing Member

By: Japanese American Service Committee  
Housing Corporation,  
an Illinois not-for-profit corporation,  
its sole member

By: \_\_\_\_\_  
John Suzuki, President

**ZIONS BANCORPORATION, NATIONAL  
ASSOCIATION, as Fiscal Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ZIONS BANCORPORATION, NATIONAL  
ASSOCIATION, as Subordinate Trustee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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 "Authority"), 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 Authority.

GIVEN UNDER MY HAND and seal of office, this the 9<sup>th</sup> day of March, 2021.

*Liliana Valentino*

Notary Public in and for the State of Illinois  
[SEAL] 

My commission expires on:

06/15/2021

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the day and year first above written.

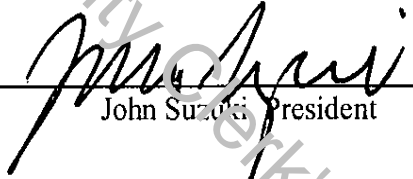
**ILLINOIS HOUSING DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
Kristin Faust, Executive Director

**HEIWA TERRACE 920 LLC,  
an Illinois limited liability company**

By: Heiwa Terrace 920 MM LLC,  
an Illinois limited liability company,  
its Managing Member

By: Japanese American Service Committee  
Housing Corporation,  
an Illinois not-for-profit corporation,  
its sole member

By:  \_\_\_\_\_  
John Suzuki, President

**ZIONS BANCORPORATION, NATIONAL  
ASSOCIATION, as Fiscal Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ZIONS BANCORPORATION, NATIONAL  
ASSOCIATION, as Subordinate Trustee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) ss:  
COUNTY OF COOK        )

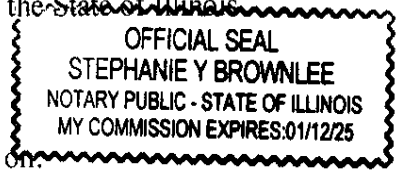
I, the undersigned, a Notary Public in and for the County and State aforesaid, certify John Suzuki, personally known to me to be the President of Japanese American Service Committee Housing Corporation, an Illinois not-for-profit corporation, sole member of Heiwa Terrace 920 MM LLC, an Illinois liability company, Managing Member of Heiwa Terrace 920 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 acknowledged that he signed and delivered the said instrument in his capacity as authorized borrower representative, as his free and voluntary act and deed and as the free and voluntary act and deed of Heiwa Terrace 920 LLC, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and seal of office, this the 9th day of February, 2021.



Notary Public in and for the State of Illinois

[SEAL]



My commission expires on:

January 12, 2025

Notary Public in and for the State of Illinois  
Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the day and year first above written.

## ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Kristin Faust, Executive Director

## HEIWA TERRACE 920 LLC, an Illinois limited liability company

By: Heiwa Terrace 920 MM LLC,  
an Illinois limited liability company,  
its Managing Member

By: Japanese American Service Committee  
Housing Corporation,  
an Illinois not-for-profit corporation,  
its sole member

By: \_\_\_\_\_  
John Suzuki, President

## ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as Fiscal Agent

By: \_\_\_\_\_  
Name: **Robert Cafarelli**  
Its: **Vice President** **Zions Bank Division**

## ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as Subordinate Trustee

By: \_\_\_\_\_  
Name: **Robert Cafarelli**  
Its: **Vice President** **Zions Bank Division**

Property of Cook County Clerk's Office

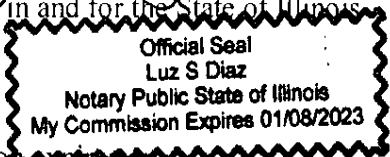


# UNOFFICIAL COPY

STATE OF ILLINOIS       )  
  ) ss:  
COUNTY OF COOK        )

BEFORE ME, the undersigned authority, on this day personally appeared Robert Cafarelli of Zions Bancorporation, National Association, a national banking association (the "Fiscal Agent" and the "Subordinate Trustee," respectively), 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 Subordinate Trustee, 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 15<sup>th</sup> day of December, 2020.

Luz S. Diaz  
Notary Public in and for the State of Illinois  
[SEAL]         
My commission expires on:

1-8-2023

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

---

EXHIBIT-A  
Legal Description

LOT 33 (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING OF SHEFFIELD AVENUE) AND ALL OF LOTS 34 THROUGH 38 AND LOT 39 (EXCEPT THE EAST 20 FEET THEREOF) IN SNOW AND DICKINSON'S SUBDIVISION OF THE SOUTH 20 ACRES OF THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

ALSO, ALL OF THE 16 FOOT ALLEY LYING DUE EAST OF AND ADJOINING LOT 33 IN SNOW AND DICKINSON'S SUBDIVISION, AFORESAID, VACATED BY INSTRUMENT RECORDED AS DOCUMENT NO. 24321607.

Commonly known as 920 W. Lawrence, Chicago, Illinois 60640

PINS: 14-08-419-004-0000 (v. 478)  
14-08-419-022-0000 (v. 478)  
14-08-419-023-0000 (v. 478)  
14-08-419-024-0000 (v. 478)  
14-08-419-025-0000 (v. 478)

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT B: INCOME COMPUTATION AND CERTIFICATION<sup>1</sup>

**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 the Tax Regulatory Agreement, dated as of March 1, 2021, among Heiwa Terrace 920 LLC, an Illinois limited liability company (the “Owner”), the Illinois Housing Development Authority and Zions Bancorporation, National Association, as Fiscal Agent and Zions Bancorporation, National Association, as Subordinate Trustee.

Re: Heiwa Terrace  
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 the date that I/we plan to move into a unit (i.e., is \$ \_\_\_\_\_) 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 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

<sup>1</sup> The form of Income Computation and Certification shall be conformed to any amendments made to 24 CFR Part 5, or any regulatory provisions promulgated in substitution therefore.

# UNOFFICIAL COPY

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;
- (d) amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

# UNOFFICIAL COPY

- (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 Owner, 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;
- (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;

# UNOFFICIAL COPY

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



# UNOFFICIAL COPY

A residential unit will not satisfy the income tests if all the occupants are students (as defined above) and are not entitled to file a joint tax return 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. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Owner"), has any family relationship to the Owner, or owns directly or indirectly any interest in the Owner. 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 Owner 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 or notes 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 Authority of such bonds or notes, the holders of such bonds or notes, any Fiscal Agent 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.

11. Further Assistance. I/We will assist the Owner 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.

# UNOFFICIAL COPY

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 Owner to lease the unit, and may entitle the Owner 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 4 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

# UNOFFICIAL COPY

enter the remaining balance (\$ \_\_\_\_\_);  
and

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

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

2. The amount entered in 1.c is:

\_\_\_\_\_ Less than 60% of Median Gross Income for Area.<sup>2</sup>

\_\_\_\_\_ More than 60% of Median Gross Income for the  
Area<sup>3</sup>

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 60% of Median Gross Income for the Area

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

\_\_\_\_\_ Employer income verification.

\_\_\_\_\_ Copies of tax returns.

\_\_\_\_\_ Other ( \_\_\_\_\_ )

<sup>2</sup> "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.

<sup>3</sup> See Footnote 2.

# UNOFFICIAL COPY

**HEIWA TERRACE 920 LLC,**  
an Illinois limited liability company

By: Heiwa Terrace 920 MM LLC,  
an Illinois limited liability company,  
its Managing Member

By: Japanese American Service Committee  
Housing Corporation,  
an Illinois not-for-profit corporation,  
its sole member

By: \_\_\_\_\_  
John Suzuki, President

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 Heiwa Terrace 920 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 Representative of Heiwa Terrace 920 LLC, an Illinois limited liability company (the "Owner"), hereby certifies as follows:

1. The undersigned has read and is thoroughly familiar with the provisions of the Tax Regulatory Agreement, dated as of March 1, 2021, among the Owner, the Illinois Housing Development Authority and Zions Bancorporation, National Association, as Fiscal Agent and Zions Bancorporation, National Association, as Subordinate Trustee (the "Tax Regulatory Agreement").

2. Based on Income Computations and Certifications on file with the Owner, 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<sup>4</sup> \_\_\_\_\_ No. of Units

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

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.

**HEIWA TERRACE 920 LLC,**  
an Illinois limited liability company

By: Heiwa Terrace 920 MM LLC,  
an Illinois limited liability company,  
its Managing Member

By: Japanese American Service Committee  
Housing Corporation,  
an Illinois not-for-profit corporation,  
its sole member

By: \_\_\_\_\_  
John Suzuki, President

<sup>4</sup> A unit all of the occupants of which are full-time students does not qualify as a unit occupied by Qualifying Tenants, unless permitted under Section 42(i)(3)(D) of the Code.

# UNOFFICIAL COPY

## EXHIBIT D: RENT-UP SCHEDULE

<u>Units Occupied by Qualifying Tenants</u>	<u>Units Available for Tenants Other than Qualifying Tenants</u>	<u>Total Completed Units</u>
		1
		2
		3
		4
		5
		6
		7
		8
		9
		10
		11
		12
		13
		14
		15
		16
		17
		18
		19
		20
		21
		22
		23
		24
		25
		26
		27
		28
		29
		30
		31
		32
		33
		34
		35
		36
		37
		38
		39
		40

# UNOFFICIAL COPY

<u>Units Occupied by Qualifying Tenants</u>	<u>Units Available for Tenants Other than Qualifying Tenants</u>	<u>Total Completed Units</u>
		41
		42
		43
		44
		45
		46
		47
		48
		49
		50
		51
		52
		53
		54
		55
		56
		57
		58
		59
		60
		61
		62
		63
		64
		65
		66
		67
		68
		69
		70
		71
		72
		73
		74
		75
		76
		77
		78
		79
		80
		81
		82

# UNOFFICIAL COPY

<u>Units Occupied by Qualifying Tenants</u>	<u>Units Available for Tenants Other than Qualifying Tenants</u>	<u>Total Completed Units</u>
		83
		84
		85
		86
		87
		88
		89
		90
		91
		92
		93
		94
		95
		96
		97
		98
		99
		100
		101
		102
		103
		104
		105
		106
		107
		108
		109
		110
		111
		112
		113
		114
		115
		116
		117
		118
		119
		120
		121
		122
		123
		124

# UNOFFICIAL COPY

<b>Units Occupied by Qualifying Tenants</b>	<b>Units Available for Tenants Other than Qualifying Tenants</b>	<b>Total Completed Units</b>
		125
		126
		127
		128
		129
		130
		131
		132
		133
		134
		135
		136
		137
		138
		139
		140
		141
		142
		143
		144
		145
		146
		147
		148
		149
		150
		151
		152
		153
		154
		155
		156
		157
		158
		159
		160

# UNOFFICIAL COPY

## EXHIBIT E: HUD RIDER

This HUD RIDER is made as of March 1, 2021, by Heiwa Terrace 920 LLC, an Illinois limited liability company ("Borrower") and Illinois Housing and Development Authority, a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq. ("Authority").

WHEREAS, Borrower has obtained financing from Bellwether Enterprise Real Estate Capital, LLC ("Lender") for the benefit of the project known as Heiwa Terrace ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of 3/1/2021, and presented for recording in the Recorder's Office of Cook County, Illinois ("Records"), and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received tax-exempt bond financing<sup>1</sup> from the Authority, which Authority is requiring certain restrictions be recorded against the Project ("Restrictive Covenants"); and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Authority has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means Bellwether Enterprise Real Estate Capital, LLC, its successors and assigns.

<sup>1</sup> Reference Governmental Lending Note and Subordinate Bonds.

# UNOFFICIAL COPY

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Authority’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Authority acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Authority’s reporting requirement, in enforcing the Restrictive Covenants the Authority will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;



# UNOFFICIAL COPY

- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity;
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity; or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Authority shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Authority may require the Borrower to indemnify and hold the Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Authority relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Authority harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

# UNOFFICIAL COPY

EXHIBIT A  
Legal Description

LOT 33 (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING OF SHEFFIELD AVENUE) AND ALL OF LOTS 34 THROUGH 38 AND LOT 39 (EXCEPT THE EAST 20 FEET THEREOF) IN SNOW AND DICKINSON'S SUBDIVISION OF THE SOUTH 20 ACRES OF THE SOUTHEAST FRACTIONAL ¼ OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

ALSO, ALL OF THE 16 FOOT ALLEY LYING DUE EAST OF AND ADJOINING LOT 33 IN SNOW AND DICKINSON'S SUBDIVISION, AFORESAID, VACATED BY INSTRUMENT RECORDED AS DOCUMENT NO. 24321607.

Commonly known as 920 W. Lawrence, Chicago, Illinois 60640

- PINS: 14-08-419-004-0000 (v. 478)
- 14-08-419-022-0000 (v. 478)
- 14-08-419-023-0000 (v. 478)
- 14-08-419-024-0000 (v. 478)
- 14-08-419-025-0000 (v. 478)