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Cook County Recorder 71.50

**RECAPTURE AGREEMENT
(EXHIBIT A TO HOMEBUYER PROGRAM AGREEMENT)**



99-09758 40/4

This document was prepared by
and after recording should be
returned to:

Village of Arlington Heights
33 S. Arlington Heights Road
Arlington Heights, IL 60005
Attn: Planning Department

RECAPTURE AGREEMENT

(The above space for Recorder's use only)

THIS RECAPTURE AGREEMENT (the "Agreement"), dated as of the 11th day of January, 2000 by and between Sarah C. Crosby (the "Owner"), whose address is 2315 E. Olive Street, Unit 3G, Arlington Heights, IL 60004, and the Village of Arlington Heights, an Illinois municipal corporation (the "Sponsor"), having its principal office at 33 S. Arlington Heights Road, Arlington Heights, IL 60005.

WITNESSETH:

WHEREAS, the Owner is or will be the holder of legal title to certain real estate on which a single family residence (the "Residence") is located, commonly known as 2315 E. Olive Street, #3G, Arlington Heights, IL 60004, Cook County, Illinois. The real estate is legally described on Exhibit A attached hereto and by this reference made apart hereof; and

WHEREAS, pursuant to that certain Homebuyer Program Agreement dated as of the date hereof between the Owner and the Sponsor (the "Homebuyer Program Agreement"), the Sponsor has agreed to make a forgivable loan to the Owner in the amount of \$13,269.36, as evidenced by that certain note in said amount (the "Loan") to be used with such other monies as Owner may provide, if any, to acquire the Residence; and

WHEREAS, as an inducement to the Sponsor to make the Loan, the Owner has agreed to enter into this Agreement in accordance with the terms, conditions and covenants set forth below.

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NOW, THEREFORE, the parties hereto covenant and agree as follows:

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1. Incorporation. The foregoing recitals are made a part of this Agreement as fully and with the same force and effect as repeated herein at length.

2. Restrictions. As a condition of the provision of the Loan, the Owner agrees to repay to the Sponsor the Repayment Amount (as hereinafter defined) upon the earliest to occur, within the Recapture Period (as hereinafter defined), of the following (each, a **"Recapture Event"**): (i) a sale, conveyance or other transfer of the Residence for consideration, excluding any sale, conveyance or transfer (A) to a spouse upon dissolution of marriage, (B) to the surviving spouse upon the death of a joint tenant Homebuyer, (C) by will, (D) by foreclosure or deed in lieu of foreclosure or otherwise by operation of law; or (ii) the Residence is no longer the Owner's principal residence or is converted in whole or in part to a rental unit; or (iii) the refinancing of the first mortgage, if any, encumbering the Residence during the Loan term, except for a Permitted Refinancing (as hereinafter defined); or (iv) there exists a default by the Owner, beyond any applicable cure period, under the Homebuyer Program Agreement or any other Loan Documents (as defined in the Homebuyer Program Agreement). For purposes of this paragraph, the **"Recapture Period"** shall mean five (5) years from the date hereof. In the event of such Recapture Event, Owner shall repay to the Sponsor an amount (the **"Repayment Amount"**) equal to the unforgiven portion of the Loan, as set forth below; provided that, with respect to any sale, conveyance or transfer described in clause (i) above, the Loan shall be repaid only from the "net proceeds," if any, of such sale, conveyance or transfer, and any portion of the Repayment Amount in excess of such "net proceeds" shall be forgiven. For purposes of this subparagraph, **"net proceeds"** shall mean the proceeds of sale minus documented capital improvement costs incurred by the Homebuyer, principal payments and the Homebuyer's initial contribution to the cost of acquiring the Residence. If non of the events described in clauses (i), (ii), (iii) or (iv) above occurs prior to the expiration of the Recapture Period, or if any sale conveyance or transfer of the Residence occurs due to foreclosure of deed in lieu of foreclosure as aforesaid, the Loan shall be forgiven in its entirety. Absent a Recapture Event, one sixtieth (1/60th) of the original principal balance of the Loan shall be forgiven at the end of each full month of the Loan. As used herein, the term **"Permitted Refinancing"** shall mean a refinancing to lower the interest rate, decrease the loan term or lower the monthly payment of such first mortgage loan, but not a refinancing that increases the outstanding balance of such first mortgage loan, increases the interest rate or by any other means reduces borrower equity in the Residence or increases borrower obligations. Any permitted Refinancing must be approved by the Sponsor, in writing, in advance.

3. Violation of Agreement by Owner. Upon the Owner's failure to make any payment due under this Agreement, the Sponsor shall give written notice thereof, as provided in Paragraph 13 of the Homebuyer Program Agreement. If payment is not made within such further time as the Sponsor in its sole discretion permits, but not more than thirty (30) days, or if there exists any default under any other Loan Document, the Sponsor may declare a default under this Agreement effective on the date of such

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declaration of default and notice thereof to the Owner, and upon such default the Sponsor may:

- (a) Declare the unforgiven portion of the Loan immediately due and payable; and/or
- (b) Exercise such other rights or remedies as may be available to the Sponsor hereunder, at low or in equity.

The Sponsor's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of the Sponsor's other remedies.

4. Amendment. This Agreement shall not be altered or amended except in a writing signed by the parties hereto.

5. Partial invalidity. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

6. Gender. The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.

7. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of the agreement.

8. **WAIVER OF JURY TRIAL. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LOAN OR THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year above first written.

OWNER: Sarah C. Crosby
Sarah C. Crosby

SPONSOR:

VILLAGE OF ARLINGTON HEIGHTS

BY: W. Dixon

ITS: Village Mgr.

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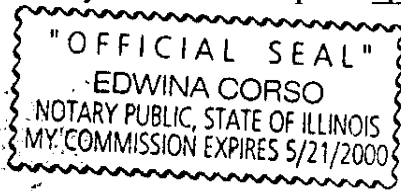
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Edwina Corso, a Notary Public in and for said county and state, do hereby certify that **William C. Dixon**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as **Village Manager** of the Village of Arlington Heights, an Illinois municipal corporation, appeared before me this day in person, and acknowledged that **he** signed and delivered the said instrument as **his** free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 11th day of JANUARY, 2000.

My commission expires: MAY 21, 2000



Edwina Corso, Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said county and state, do hereby certify that **Sarah C. Crosby**, 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 and delivered the said instrument as **her** free and voluntary act and as the free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 11th day of JANUARY, 2000.

My commission expires: _____

Carolyn Katta, Notary Public



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EXHIBIT A

Legal Description

Unit No. 11-3G in Brandenberry Park East Condominium, together with its undivided percentage interest in the common elements, as defined and delineated in the Declaration of Condominium recorded as Document Number 25108489, as amended from time to time, in the Southeast $\frac{1}{4}$ of Section 21, Township 42 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

Common Address: 231 East Olive Street, Unit 3G, ARLINGTON HEIGHTS, IL 60005

Permanent Index No.: 03-21-402-014-1342 ✓

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AFFIDAVIT OF HOME BUYER (Exhibit D to Homebuyer Program Agreement)

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STATE OF ILLINOIS

COUNTY OF COOK

CITY OF ARLINGTON HEIGHTS

The undersigned **Sarah C. Crosby** (hereinafter referred to as the "Mortgagor", whether one or more parties), having first been duly sworn upon their oath does hereby depose and state as follows:

Mortgagor understands the falsification of the Affidavit in any way may result in all amounts borrowed from the Illinois HOME Program administrated by the **Village of Arlington Heights** (hereinafter referred to as the "Program Administrator"), becoming immediately due and payable. Mortgagor is aware that all facts recited in this Affidavit will be independently verified and that intentional falsification of the Affidavit may subject the undersigned to criminal prosecution.

FURTHER THAT:

1. Mortgagor is purchasing a residence (the "Residence") located at:

Street: **2315 East Olive Street Unit 3G**

City of: **Arlington Heights**

County of: **Cook**

State of Illinois

From (Name of Seller'(s)):

Mark C. Hoffmeister, 2315 East Olive Street, Unit 3G, Arlington Heights, IL 60004
(hereinafter the "Seller", whether one or more parties)

2. The First Mortgage Lender (the "Lender") is: **Harris Bank Arlington-Meadow**. Mortgagor understands that the Program Administrator is assisting in the financing of the purchase of the above Residence with a second mortgage loan (the "HOME Loan"), made available by "Federal Funds" (said Federal Funds hereinafter referred to as the "HOME Funds"), provided through the provisions of the National Affordable Housing Act of 1990, HOME Investment Partnership Program, and pursuant to the Federal and Illinois rules and regulations promulgated thereunder (herein said act, program, rules and regulations collectively referred to as the "HOME Program"). The HOME Program is being administered for the Illinois Housing Development Authority (IHDA) by the Program Administrator. I shall be subject to specific requirements for a period of **five (5)** years following the date of the HOME Loan, all as more particularly set forth in a HOME Grant Agreement.

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3. Such Residence is a one-family Residence at the time of execution of the note evidencing the HOME Loan.
4. Mortgagor intends to occupy such Residence as Mortgagor's principal Residence within 60 days after the financing described in paragraph 2 is provided.
5. Mortgagor will occupy the Residence as Mortgagor's principal Residence so long as the HOME Loan is outstanding. 00059543
6. All of the land being purchased with the Residence, if any is being purchased, or upon which the Residence is located, reasonably maintains the basic livability of the Residence and does not and will not provide, other than incidentally, a source of income to me.
7. Mortgagor will not rent the Residence or use the Residence as an investment property or as a recreational or "second" home.
8. Neither Mortgagor, nor any party related to the Mortgagor, has entered into any agreement with the seller of the Residence, or any developer, contractor, or any other person pursuant to which Mortgagor has agreed to pay consideration, either in cash or in-kind, in excess of the purchase price for the Residence or pursuant to which any portion of the Residence has been left unfinished or any fixtures or other architectural appointments have been omitted or removed from the Residence in order to reduce the purchase price.
9. Mortgagor has not been a party to a conditional sales contract, pledge, agreement to hold title in escrow, or any other form of owner-financing (whether or not paid off) on the Residence at any time prior to the execution of this Affidavit.
10. Mortgagor will not use any portion of the proceeds of this HOME Loan to acquire or replace an existing mortgage under which Mortgagor may be obligated.
11. The purchase price of the Residence and any improvements purchased in connection therewith, including, any attached items such as carpeting, curtain rods and light fixtures exclusive of any settlement or financing costs or any amount paid for property which is not real property or a fixture, is **\$71,000**. Mortgagor is not purchasing any unattached items from the Seller in connection with the purchase of the Residence, except as stated in Exhibit A attached hereto.
12. Apart from any normal real estate agent's commission, no money is being paid, no promissory note is being delivered, nor anything else of value is being exchanged for or transferred to the Seller or any other person by the Mortgagor or, to the Mortgagor's knowledge, by any other person in connection with the purchase of the Residence except as indicated in the escrow and settlement documents or in the Seller's Affidavit or Lender's Certificate.

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13. I have read the note, and understand that:

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- (A) The loan is being funded by the Program Administrator from Federal funds provided through the HOME Program created thereunder. The terms of the loan are available only to persons with a family income not in excess of HUD approved HOME Loan Program guidelines. Mortgagor's interest in the premises described may be adversely affected if this Affidavit and other Affidavits and certificates given in connection with the making of the HOME loan are untrue.
- (B) A lease or rental of the residence to another may result in foreclosure and loss of possession of the Residence; and,
- (C) Any assumption of the loan without prior written approval from the Program Administrator may result in foreclosure and loss of possession of the Residence; and,
- (D) Any untrue or incorrect statement in this Affidavit may result in foreclosure and loss of possession of the Residence.

14. Mortgagor hereby authorizes the Program Administrator to conduct such investigation as they deem necessary to ascertain the truth and correctness of the statements made in this Affidavit, and Mortgagor hereby agrees to provide such information as the Program Administrator shall reasonably request for such purpose.

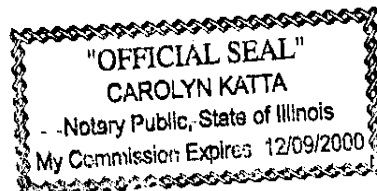
16. Mortgagor has no reason to believe that any certification contained in this Affidavit is false and Mortgagor has been informed and understands that perjury is punishable by imprisonment or a fine or both. Mortgagor hereby certifies and declares, under penalty of perjury, that all of the foregoing statements are, to the best of Mortgagor's knowledge and belief, true, correct and complete.

Sarah C. Crosby
Sarah C. Crosby, Mortgagor

Subscribed and sworn to me this 11th day of January, 2000

Carolyn Katta
Notary Public

My Commission Expires:



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EXHIBIT A

List each item of unattached personal property and the purchase price therefore:

None

The purchase price of the unattached personal property stated above does not exceed the fair market value of such property.

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