



001127436

209567

**RETENTION / RECAPTURE AGREEMENT FOR BETH-ANNE EXTENDED LIVING
AFFORDABLE HOUSING PROGRAM
RECAPTURE AGREEMENT**

THIS AGREEMENT is entered into this 20 of November, 2001 by and between LaSalle Bank, N.A. ("Bank"), Beth-Anne Extended Living ("Owner") and Bethel New Life, Inc. ("Sponsor").

RECITALS:

- A: Pursuant To Section 721 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), the Federal Housing Finance Board ("Board") is required to cause each Federal Home Loan Bank ("FHLBank") to establish an affordable housing program ("AHP") to assist members of each FHLBank to finance affordable housing for very low, low, and moderate income households.
- B: The Bank is a member of the Federal Home Loan Bank of Chicago ("Chicago Bank") and submitted an application dated April 2, 2001, ("the Application") for an AHP subsidy in connection with the purchase, construction, or rehabilitation of the property commonly known as Beth-Anne Extended Living to be located at 1143-1153 N. Lavergne, Chicago, Illinois 60651 and legally described on Exhibit A attached hereto (the "Property").
- C: Pursuant to regulations (including, without limitation, those contained in 12 CFR Part 960) promulgated by the Board pursuant to FIRREA ("AHP Regulations"), members of each FHLBank are required to provide for the recapture of any subsidized advances or other subsidized assistance in connection with unused or improperly used AHP subsidies.
- D: In connection with the AHP grant, Bank entered into that certain Affordable Housing Program Subsidy Agreement ("Subsidy Agreement") dated July 5, 2001 with an attachment dated July 6, 2001, with Chicago Bank and Sponsor, for Project No. 01A0719 pursuant to

Box 430

which Bank and Sponsor agreed to be bound by AHP Regulations and perform certain monitoring functions with respect to the Subsidy (defined below).

- E: Owner is a not-for-profit affiliate controlled by Sponsor and will own the Project (as the term "Project" is defined in the Regulatory Agreement described in Paragraph 11 hereof) upon closing of a Capital Advance Grant (the "HUD Grant") from the United States Department of Housing and Urban Development ("HUD"), which HUD Grant will provide certain funds for the acquisition, construction, and operation of the Project for the elderly under the HUD Section 202 Program.
- F. The Bank is satisfied that the HUD Section 202 Program complies with the AHP Regulations and requirements.
- G. The parties desire to set forth those circumstances under which the Bank shall be entitled to a recapture of Subsidy funds from either the Sponsor or the Owner in connection with its AHP grant to the Sponsor for the purchase and construction of the Property.

AGREEMENTS

1. Subsidy Amount. The parties acknowledge and agree that Bank has on even date herewith, disbursed the sum of \$100,000.00 ("AHP Subsidy") to the Sponsor to be used in connection with the purchase, construction, or rehabilitation of the Beth-Anne Extended Living facility by the Owner. The term during which the Sponsor and project must comply with the AHP provisions of FIRREA to qualify and maintain the subsidy is 15 years from the date of project completion, at which time this Recapture Agreement shall terminate.
2. Affordability Requirements. Sponsor and Owner agree, during the term of this agreement to manage and operate the Property as rental housing for very low, low, and/or moderate income households. For purposes of this Agreement, very low income households shall mean households whose annual income is 50% or less of area median income, low income households shall mean households whose annual income is 60% or less of area median income, and moderate income households shall mean households whose annual income is 80% or less of area median income, as determined from time to time by the U.S. Department of Housing and Urban Development ("HUD") or as further provided in federal regulations. The Sponsor and Owner agree to make 85 of units affordable for and occupied by very low income households during the term of this Recapture Agreement.
3. Compliance Documentation. Sponsor and Owner shall provide to the Bank and Chicago Bank any information regarding the project and use of the AHP subsidy pursuant to the AHP Regulations as amended from time to time and as required by the Chicago Bank.
4. Compliance. Sponsor and Owner shall at all times comply with all laws, rules and regulations (including, without limitation, AHP Regulations) and with the provisions

contained in the Application and those provisions contained in the Subsidy Agreement as they relate to the construction, ownership, management and operation of the Property.

5. Breach of Affordability or Reporting Requirements. If the Sponsor or Owner, at any time during the term of the Subsidy, default in their obligation to manage and operate the Property and provide compliance information as required pursuant to paragraph 3 above, or otherwise fail to comply with the terms of this Agreement, and such default continues for a period of 60 days after notice to Sponsor and Owner from Bank or such shorter period of time required to avoid a default by Bank under the Subsidy Agreement, it shall be an Event of Default of this Agreement and Sponsor (this is limited to Sponsor) shall immediately pay Bank that portion of the Subsidy which may be recaptured from Bank by Chicago Bank.
6. Sale or Refinancing. Sponsor and the Owner shall give written notice to the Bank and the Chicago Bank within five days after any sale or refinancing of the Property during the Term of this Agreement. In the event of any sale or refinancing of the Property during the Term of this Agreement, an amount equal to the amount of the subsidy shall be repaid by the Sponsor (this is limited to Sponsor) to the Bank for payment to the Chicago Bank, unless the Property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income eligibility and affordability restrictions committed to in the Application and this Agreement for the duration of the Term of this Agreement. Upon any foreclosure or deed in lieu of foreclosure resulting from any event of default under any mortgage on the Property securing the original financing for the acquisition and construction of the Property described in the Application, the income eligibility and affordability restrictions applicable to the Property shall terminate.
7. Indemnification and Survival. The Sponsor (this is limited to Sponsor) shall fully and unconditionally indemnify, defend and hold harmless the Bank from and against any judgments, losses, recapture, liabilities, damages (including consequential damages), costs, expenses of whatsoever kind or nature, including without limitation attorney's fees, expert witness fees, and any other professional fees and litigation expenses or other obligations incurred by the Bank that may arise in any manner out of actions or omissions which result from the Owner's or the Developer's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties, obligations and indemnification of and by the Developer shall survive the Term of this Agreement.
8. Joint and Several. Except as limited herein, the obligations of the Owner and the Sponsor hereunder are joint and several.
9. Certifications. Sponsor hereby certifies to Bank as follows:
 - a. All the units in this Project will be open to income – qualified households without regard to sex, race, creed, religion, sexual orientation, or type or degree of disability.

b. The AHP Subsidy shall only be for uses authorized under Section 960.3 of the Affordable Housing Regulations.

10. Notices. All communications provided for herein shall be in writing and shall be deemed to be given or made when served personally or two business days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

If to the Bank: LaSalle Bank, N.A.
135 South LaSalle Street
Chicago, Illinois 60603
Attention: Community Development

If to the Sponsor: Bethel New Life, Inc.
4950 West Thomas
Chicago, Illinois 60651

If to the Owner: Beth-Anne Extended Living
4950 West Thomas
Chicago, Illinois 60651

11. HUD Provisions. Notwithstanding anything in this Agreement or in the Subsidy Agreement to the contrary, the following provisions shall control in every instance:

- a) The rights granted under this Agreement or under the Subsidy Agreement shall be and are subject and subordinate to the rights of HUD pursuant to a Mortgage to be granted by Owner to HUD, and to a Regulatory Agreement and Use Agreement between Owner and HUD with respect to the HUD Project known as No. 071EE149, all of which shall be recorded in the Office of the Recorder of Deeds of Cook County, Illinois, in connection with the initial closing of the funding of the Project by HUD, and prior to commencement of construction of the Project.
- b) Failure on the part of the Sponsor or Owner to comply with the covenants contained in this Agreement or in the Subsidy Agreement shall not serve as the basis for default on the HUD mortgage or other HUD Grant documents affecting the Project.

- c) Compliance or non-compliance by the Sponsor or Owner with the provisions and covenants of this Agreement or the Subsidy Agreement and enforcement of the provisions and covenants contained herein, including, without limitation, any indemnification provisions and recapture provisions, will not and shall not result in any claim or lien against the Project, any asset of the Project, the proceeds of the Mortgage, any reserve, or deposit required by HUD in connection with the Project or Mortgage transaction or the rents or other income from the Project.
- d) No amendment to this Agreement shall have any force or effect, unless and until it is approved in writing by HUD.

BANK:

LaSalle Bank, N.A.

By: *Richard J. Gay*
 Its: *First Vice President*

SPONSOR:

Bethel New Life, Inc.

By: *[Signature]*
 Its: President

OWNER:

Beth-Anne Extended Living

By: *[Signature]*
 Its: *[Signature]*

Property of Cook County Clerk's Office

EXHIBIT A

LEGAL DESCRIPTION

LOT 5 IN BETH-ANNE SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

Commonly known as 1143 Lavergne Avenue, Chicago, Illinois

P.I.N. # 16-04-404-008, Vol. 545 ✓

Property of Cook County Clerk's Office

UNOFFICIAL COPY

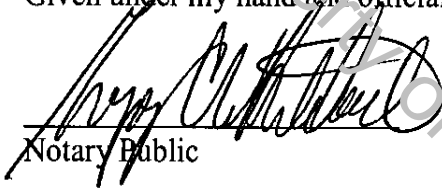
11127436

State of IL)

County of COOK)

I, Gregory Whitehead, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DeValda Gay, First Vice President of LaSalle Bank, N.A., Chicago, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, and as the act of said Bank for the uses and purposes therein set forth.

Given under my hand and official seal, this 23rd day of November, 2001.


Notary Public



Proprietor of Cook County Clerk's Office

UNOFFICIAL COPY

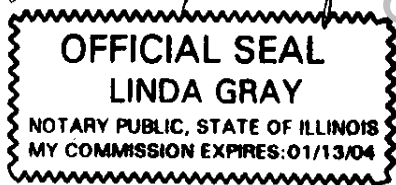
11127436

State of ILLINOIS)
County of COOK)

I, Linda Gray, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MARY NELSON, PRESIDENT of Bethel New Life, Inc., Chicago, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that SHE signed, sealed and delivered the said instrument as A free and voluntary act, and as the act of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 28th day of November 2001.

Linda Gray
Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

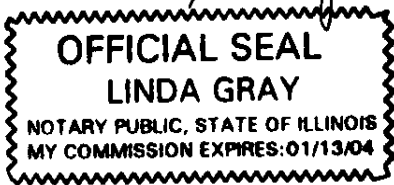
11127436

State of Illinois)
)
County of COOK)

I, Linda Gray, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MARY NELSON, PRESIDENT of Beth-Anne Extended Living, Chicago, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that SHE signed, sealed and delivered the said instrument as A free and voluntary act and as the act of said Corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 28th day of November, 2001.

Linda Gray
Notary Public



Property of Cook County Clerk's Office