

This Document has been prepared by and after recording Return to:



Warren P. Wenzloff  
Applegate & Thorne-Thomsen  
332 South Green  
Suite 412  
Chicago, IL 60607

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**AFFORDABLE HOUSING PROGRAM**  
**RECAPTURE AGREEMENT**

**THIS AFFORDABLE HOUSING PROGRAM RECAPTURE AGREEMENT** ("Agreement") is entered into as of this 27th day of March, 2003 by and among **MARQUETTE BANK**, a National Banking association ("Member Bank"), **CHURCHVIEW SUPPORTIVE LIVING L.P.**, an Illinois limited partnership ("Owner"), and **GREATER SOUTHWEST DEVELOPMENT CORPORATION**, an Illinois not for profit corporation ("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 ("FHLB") to establish an affordable housing program ("AHP") to assist members of each FHLB to finance affordable housing for very low, low and moderate-income households.

B. Member Bank is a member of the Federal Home Loan Bank of Chicago ("Chicago Bank") and submitted an application ("Application") for an AHP subsidy in connection with the construction of a 86 unit building commonly known as Churchview Supportive Living Apartments, Chicago, Illinois, as described on Exhibit A attached hereto (the "Property").

C. Pursuant to regulations promulgated by the Board pursuant to FIRREA (including without limitation those contained in 12 CFR Part 951) ("AHP Regulations"), Member Bank is required to provide for the recapture of any subsidized advances or other subsidized assistance in connection with unused or improperly used AHP subsidies.

Lawyers Title Insurance Corporation

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D. In connection with the AHP Subsidy (defined below), Member Bank entered into that certain Affordable Housing Program Agreement for Rental Project effective as of December 19, 2001 with Chicago Bank and Sponsor ("Subsidy Agreement") pursuant to which Member Bank agreed to be bound by AHP regulations and perform certain monitoring functions with respect to the AHP Subsidy.

E. The parties desire to set forth those circumstances under which Member Bank shall be entitled to a recapture of subsidy funds in connection with the grant to Sponsor.

## AGREEMENTS

1. AHP Subsidy Amount. The parties acknowledge and agree that Member Bank has disbursed or will disburse forthwith the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) to the Sponsor (the "AHP Subsidy"), which Sponsor has agreed to loan to Owner to be used in connection with the rehabilitation of the Property (the "Project"). The term during which the Sponsor and Owner must comply with the AHP provisions of FIRREA to qualify for and maintain the AHP Subsidy is fifteen (15) years from the date of Project completion (the "Term"), at which time this Agreement shall terminate. The AHP Subsidy shall be deemed a grant to the Sponsor and shall not be considered a loan or extension of credit. Such funds may be retained by Sponsor without any obligation to repay such funds to the Member Bank except as specifically provided in this Agreement. The Sponsor has made or shall make a loan of the funds to the Owner in connection with the Project.

2. Affordability Requirements. Sponsor agrees, throughout the term of this Agreement, to manage and operate the Property as rental housing for low-income and very low-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 and low-income households shall mean households whose annual income is 60% 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. Sponsor and Owner agree to make thirty-five (35) of the units affordable for and occupied by very low-income seniors (ages 62 and older) and fifty-one (51) of the units affordable for and occupied by low-income seniors (ages 62 and older) during the term of this Agreement.

3. Compliance Documentation. Sponsor and Owner shall provide to Member Bank and the Chicago Bank any information regarding the Project and the use of the AHP Subsidy pursuant to the AHP Regulations as amended from time to time and as required by either the Member Bank or Chicago Bank.

4. Compliance. Sponsor and Owner shall at all times comply with the provisions contained in the Application, those provisions contained in the Subsidy Agreement that relate to the rehabilitation, ownership, management and operation of the Property, and with all laws, rules and regulations, including AHP Regulation 12 CFR Section 951.13(d)(3) ("If a member of a project sponsor lends a direct subsidy to a project, any repayments of principal and payments or interest received by the member or the project sponsor must be paid forthwith to the Bank.") and all other AHP Regulations. The AHP Regulations are incorporated herein by reference.

5. Breach of Affordability or Reporting Requirements. In the event Owner or Sponsor, at any time during the term of the AHP Subsidy, defaults in its obligation to manage and operate the Project and provide compliance information as required pursuant to Paragraph 3 above or otherwise fails to comply with the terms of this Agreement, and such default continues for a period of 60 days after notice to Owner from Member Bank or such shorter period of time required to avoid a default by Member Bank under the Subsidy Agreement, it shall be an Event of Default of this Agreement and Owner and Sponsor shall immediately pay Member Bank that portion of the AHP Subsidy which may be recaptured from Member Bank by Chicago Bank. Notwithstanding the foregoing, the Sponsor shall not be deemed in default of its Affordability Requirements in the event any household of the Project has an increase in income that would otherwise disqualify such household from initial occupancy of a dwelling unit in such building if (i) the Sponsor elects to charge a rent that is affordable as defined in 12 CFR section 951.1 of the AHP Regulations for the household occupying such unit, or (ii) the Sponsor has otherwise acted to cure any non-compliance with the Affordability Requirements within a reasonable period of time in accordance with applicable AHP Regulations, or (iii) the circumstances of non-compliance are eliminated through a modification of the terms of the application for the subsidy pursuant to Sections 951.7 or 951.9 of the AHP Regulations.

6. Sale or Refinancing. The Owner and Sponsor shall give written notice to the Member Bank and the Chicago Bank within five days after any sale or refinancing of the Project occurring prior to the end of the 15-year AHP retention period. In the event of a sale or refinancing of the Project prior to the end of the 15-year AHP retention period, an amount equal to the full amount of the AHP Subsidy shall be repaid by the Sponsor to the Member Bank for payment to the Chicago Bank, unless the Project continues to be subject to a deed restriction, this Agreement or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the Application for the duration of the 15-year AHP retention period.

7. Foreclosure. Upon any foreclosure or deed in lieu of foreclosure resulting from any event of default under any mortgage on the Property securing the financing for the acquisitions and rehabilitation of the Project described in the Application, the income-eligibility and affordability restrictions applicable to the Project terminate.

8. Certifications. Sponsor hereby certifies to Member 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 951.3 of the Affordable Housing Regulations.

9. Recitals. The Recitals set forth above are specifically incorporated into and made a part of this Agreement.

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10. Joint and Several. Except as limited herein, the obligations of the Sponsor and Owner are joint and several.

11. Notices. All notices relating to this Agreement or required by the AHP Regulations shall be in writing and shall be delivered by hand or by prepaid courier (including, without limitation, Federal Express or other express mail service) or sent by registered or certified mail, postage prepaid, return receipt requested, through the United States Postal Service. Alternatively, notices, requests and demands may be served by facsimile transmission, provided that the same shall not be effective unless or until receipt of a complete, legible copy has been confirmed telephonically by, or by return facsimile from, the recipient. Such notices, requests and demands shall be deemed served when delivery is received or refused. Notices, requests and demands shall be addressed as follows:

If to Sponsor: Greater Southwest Development Corporation  
2601 W. 63<sup>rd</sup> Place  
Chicago, Illinois 60629  
Attention: James Capraro

If to Owner: Churchview Supportive Living L.P.  
2601 W. 63<sup>rd</sup> Place  
Chicago, Illinois 60629  
Attention: James Capraro

With a copy to: Applegate & Thorne-Thomsen, P.C.  
322 South Green St., #412  
Chicago, Illinois 60607  
Attention: Warren P. Wenzloff

And to: Chicago Equity Fund 2002 Limited  
Partnership  
One East Superior Street, Suite 603  
Chicago, Illinois 60611  
Attention: Nick Shapiro

If to Member Bank: Marquette Bank  
6316 S. Western Avenue  
Chicago, IL 60636  
Attention: George S. Moncada

If to Chicago Bank: Federal Home Loan Bank of Chicago  
111 East Wacker Drive  
Chicago, Illinois 60601  
Attention: Community Investment  
Department

12. Indemnification and Survival. The Sponsor and Owner 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 or Sponsor's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties, obligations and indemnification of and by the Owner and the Sponsor shall survive the term of this Agreement.

13. Successors and Assigns. The rights and obligations of the parties to this Agreement shall inure to the benefit of, and shall be binding upon, their respective successors and assigns.

14. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

16. Entire Agreement. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. This Agreement supersedes all prior written and oral communications relating to the subject matter of this Agreement.

17. Modification, Waiver and Termination. This Agreement and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge.

18. Construction.

(a) The words "hereof," "herein," "hereunder," and other words of similar import refer to this Agreement as a whole not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.

(c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in the singular shall include the plural and vice versa, and words of one gender shall include all other genders.

(e) Each party to this Agreement and legal counsel to each party have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

19. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Illinois.

20. Subordination. This Recap Agreement is and shall be subject and subordinate in all respects to the following: (i) the lien of that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement of even date herewith executed and delivered by Borrower to and in favor of Harris Trust and Savings Bank, an Illinois banking corporation ("Harris Mortgage") securing repayment of a loan in the amount of \$7,627,446, which Harris Mortgage is recorded with the Recorder's Office of Cook County, Illinois, ("Recorder's Office") as document no. 0030415532, and any other documents evidencing or securing such indebtedness, including the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith executed and delivered by Borrower to and in favor of the City of Chicago and Trustee ("Bond Regulatory Agreement"), which Bond Regulatory Agreement is recorded with the Recorder's Office as document no. 0030415531, (ii) the lien of that certain Mortgage of even date herewith executed and delivered by Borrower in favor of the City of Chicago, an Illinois municipal corporation ("City"), securing repayment of a loan in the amount of \$4,000,000 recorded in the Recorder's Office as document no. 0030415533 and any other documents evidencing or securing such indebtedness, including the CDBG Regulatory Agreement of even date herewith executed and delivered by Borrower to and in favor of the City, which Agreement is recorded with the Recorder's Office as document no. 0030415530.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have executed this Affordable Housing Program Recapture Agreement as of the date first written above.

MARQUETTE BANK

By: Thomas A. Lina  
Its: SENIOR VICE PRESIDENT

GREATER SOUTHWEST DEVELOPMENT CORPORATION,  
an Illinois not for profit corporation

By: [Signature]  
Its: EXECUTIVE DIRECTOR

CHURCHVIEW SUPPORTIVE LIVING L.P.,  
an Illinois limited partnership

By: Churchview Supportive Living, Inc.,  
an Illinois corporation,  
its general partner

By: [Signature]  
Its: Secretary

Office of Cook County Clerk's Office



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

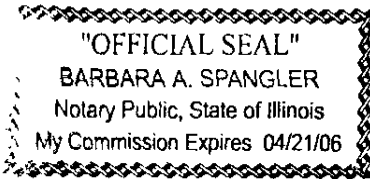
I, BARBARA A. SPANGLER Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT THOMAS P. RYAN personally known to me and known by me to be the S. Vice Pres. of Marquette Bank (the "Bank"), and the same person in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25<sup>th</sup> day of March, 2003.

Barbara A. Spangler  
Notary Public

My Commission Expires:

4/21/06





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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

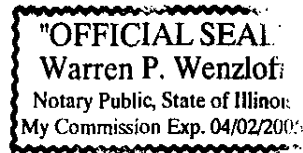
I, Warren P. Wenzloff, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT James Caprao personally known to me and known by me to be of Greater Southwest Development Corporation, and the same person in whose name the above and foregoing instrument is executed, appeared 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 Notarial Seal this 25 day of March, 2003.

Warren P. Wenzloff  
Notary Public

My Commission Expires:

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

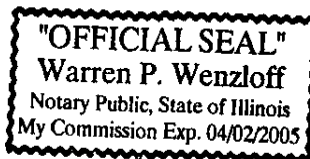
I, Warren P. Wenzloff, a Notary Public in and for said County in the Commonwealth aforesaid, DO HEREBY CERTIFY THAT Harry Meyer personally known to me and known by me to be the Secretary of Churchview Supportive Living, Inc., the general partner of Churchview Supportive Living L.P., and the same person in whose name the above and foregoing instrument is executed, 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 managing member and limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25th day of March, 2003.

Warren P. Wenzloff  
Notary Public

My Commission Expires:

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## EXHIBIT A

### Description of Property

LOTS 16, 17, 18, 19, 20, 21, 22, 23, 24 AND 25 IN BLOCK 16 IN COBE AND McKINNON'S 63<sup>RD</sup> STREET AND CALIFORNIA AVENUE SUBDIVISION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; ALONG WITH PORTION OF VACATED TALMAN AVENUE, ADJACENT TO AFORESAID LAND, AS DESCRIBED IN ORDINANCE RECORDED AUGUST 13, 2002 AS DOCUMENT NUMBER 0020886357.

PINS: 19-13-427-030  
19-13-427-031  
19-13-427-032  
19-13-427-033  
19-13-427-034  
19-13-427-035  
19-13-427-036  
19-13-427-037  
19-13-427-040

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ADDRESS

2600-2624 WEST 63RD ST.  
CHICAGO IL 60629

32639 v4

Property of Cook County Clerk's Office