

13

UNOFFICIAL COPY

210806

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

Patricia C. Holland
Albert, Whitehead P.C.
10 North Dearborn Street
Suite 600
Chicago, Illinois 60602



Doc#: 0426620267
Eugene "Gene" Moore Fee: \$44.00
Cook County Recorder of Deeds
Date: 09/22/2004 04:11 PM Pg: 1 of 11

This space reserved for Recorder's use only.

RETENTION / RECAPTURE AGREEMENT FOR RENTAL PROJECTS NOT USING LOW INCOME HOUSING TAX CREDITS (LIHTCs)

AFFORDABLE HOUSING PROGRAM RECAPTURE AGREEMENT

THIS AFFORDABLE HOUSING PROGRAM RECAPTURE AGREEMENT ("Agreement") is entered into this 20th day of September, 2004, by and between **LaSalle Bank National Association**, a national banking association ("Bank"), **The Interfaith Housing Development Corporation of Chicago** ("IHDCC"), an Illinois not for profit corporation, **Claretian Associates Inc.** ("CA"), an Illinois not for profit corporation (collectively CA and IHDCC are referred to herein as the "Sponsor") and **Casa Kirk, Inc.**, an Illinois corporation (the "Owner"). The Bank, Sponsor and Owner are jointly referred to as the "Parties."

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 September 30, 2003 ("the Application"), for an AHP subsidy to pay construction costs for 29 units of affordable rental housing (the "Project") located in Chicago, Illinois as legally described on Exhibit A attached hereto and incorporated by reference herein (the "Property").

Box 430

11

UNOFFICIAL COPY

C. Pursuant to regulations (including, without limitation, those contained in 12 CFR Part 951) 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") for Project No. 2003B0726 with Chicago Bank and Sponsor, pursuant to which Bank and Sponsor agreed to be bound by AHP Regulations and perform certain monitoring functions with respect to the AHP Subsidy (defined below).

E. The Parties desire to set forth those circumstances under which the Bank shall be entitled to a recapture of the AHP Subsidy funds from either the Sponsor or Owner in connection with the grant to Sponsor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Subsidy Amount. The parties acknowledge and agree that Bank has, on even date herewith, disbursed the sum of \$500,000.00 ("AHP Subsidy") to the Sponsor which Sponsor has agreed to contribute to Owner to be used solely for construction costs of the Project as described in the Application. 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 "Retention Period"), 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 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"), the AHP regulations, or as further provided in federal regulations. The Sponsor and Owner agree to make twenty-nine (29) units affordable for and occupied by Very Low Income Households during the Retention Period 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.

UNOFFICIAL COPY

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. In the event either Sponsor or Owner, at any time during the term of the Subsidy, defaults in its obligation to manage and operate the Property 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 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 or Owner shall immediately pay Bank that portion of the AHP Subsidy which may be recaptured from Bank by Chicago Bank.
6. Certifications. Sponsor and Owner hereby certifies to Bank as follows:
 - (a) All the units in this Project will be open to income-qualified families 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.
7. Sale or Refinancing of the Property. The Owner and Sponsor shall give written notice to the Bank and Chicago Bank within five days after any sale or refinancing of the Project occurring prior to the end of the 15 year Retention Period. If the Property is sold or refinanced prior to the end of the Retention Period, Sponsor or Owner must repay an amount equal to the full amount of the AHP Subsidy, unless the Property continues to be subject to a deed restriction or a mechanism incorporating income-eligibility and affordability restrictions committed to in the Application for the duration of the Retention Period.
8. Foreclosure. The income-eligibility and affordability restrictions applicable to the Project terminate after foreclosure on the Property.
9. Indemnification and Survival. 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 Sponsor's or Owner's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties,

UNOFFICIAL COPY

obligations and indemnification of and by the Sponsor and Owner shall survive the Term of this Agreement.

10. 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: Claretian Associates Inc.
9108 South Brandon
Chicago, Illinois 60617
Attention: Angela Vick

If to Sponsor: The Interfaith Housing Development
Corporation of Chicago
100 South Morgan Street
Chicago, Illinois 60607
Attention: Perry Vietti

If to Owner: Casa Kirk, Inc.
c/o Claretian Associates Inc.
9108 South Brandon
Chicago, Illinois 60617
Attention: Angela Vick

With a courtesy copy to: Illinois Housing Development Authority
401 North Michigan Avenue, Suite 900
Chicago, Illinois 60611
Attention: General Counsel

With a courtesy copy to: City of Chicago
Department of Law
318 S. Michigan Avenue
Chicago, IL 60604
Attention: Commissioner

UNOFFICIAL COPY

In connection with the courtesy copy to Illinois Housing Development Authority and the City of Chicago, Bank will exercise reasonable efforts to provide copies of any notices given to Owner; however, Bank's failure to furnish copies of such notices shall not limit Bank's exercise of any of its rights and remedies under this Agreement or the AHP Regulations.

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

With a copy to: Albert, Whitehead P.C.
10 North Dearborn
Suite 600
Chicago, Illinois 60620
Attention: Gregory Whitehead

If to Chicago Bank: Federal Home Loan Bank of Chicago
111 East Wacker Drive, Suite 800
Chicago, Illinois 60601
Attention: Community Investment
Department

11. 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.
12. 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.
13. 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.
14. 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

UNOFFICIAL COPY

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.

15. 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.
16. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Illinois.
17. Joint and Several. Except as limited herein, the obligations of the Owner and Sponsor hereunder are joint and several.

THE REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

UNOFFICIAL COPY

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

BANK: LaSalle Bank National Association, a national banking association

By: Michael J. McGovern
Printed Name: Michael J McGovern
Title: Officer

SPONSOR: The Interfaith Housing Development Corporation of Chicago, an Illinois not for profit corporation

By: Gladys Jordan
Printed Name: GLADYS JORDAN
Title: President

SPONSOR: Claretian Associates Inc., an Illinois not for profit corporation

By: Mark J. Brummel
Printed Name: MARK J. BRUMMEL
Title: SECY / TREAS

OWNER: Casa Kirk, Inc., an Illinois corporation

By: Angela Vicks
Printed Name: ANGELA VICKS
Title: PRESIDENT

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

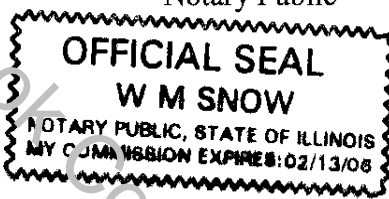
I, W.M. SNOW, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Michael J. McGovern personally known to me and known by me to be the officer of LaSalle Bank National Association ("Bank") and the same person in whose name the above and foregoing instrument is executed, 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 17th day of September, 2004.

W.M. Snow

Notary Public

My Commission Expires:



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

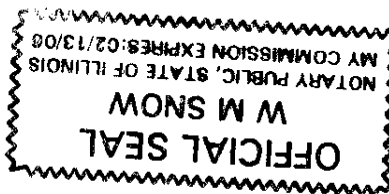
I, W.M. SNOW, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT GLADYS JORDAN, personally known to me and known by me to be the PRESIDENT of The Interfaith Housing Development Corporation of Chicago and the same person in whose name the above and foregoing instrument 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 corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of September, 2004.

W.M. Snow

Notary Public

My Commission Expires:



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, W. M. SNOW
~~MARK J. BRUNNELL~~, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT MARK J. BRUNNELL, personally known to me and known by me to be the SECY/TREAS of Claretian Associates Inc. 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 corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of September, 2004.



Notary Public

My Commission Expires:



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, W. M. SNOW, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Angela Vick, personally known to me and known by me to be the President of Casa Kirk, Inc. 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 corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of September, 2004.



Notary Public

My Commission Expires:



UNOFFICIAL COPY

EXHIBIT A Legal Description

***LOTS 21 THROUGH 38 (BOTH INCLUSIVE) IN BLOCK 66 IN SOUTH CHICAGO, BEING A SUBDIVISION BY THE CALUMET AND CHICAGO CANAL AND DOCK COMPANY, OF THE EAST HALF OF THE WEST HALF AND PARTS OF THE EAST FRACTIONAL HALF OF FRACTIONAL SECTION 6, NORTH OF THE INDIAN BOUNDARY LINE AND THAT PART OF FRACTIONAL SECTION 6, SOUTH OF THE INDIAN BOUNDARY LINE, LYING NORTH OF THE MICHIGAN AND SOUTHERN RAIL ROAD AND FRACTIONAL SECTION 5, NORTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 37 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS PER PLAT THEREOF RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS ON MARCH 6, 1874, AS DOCUMENT # 1455821, ALL IN COOK COUNTY ILLINOIS

ALSO: ALL OF THE EAST AND WEST 20.00 FOOT WIDE HERETOFORE VACATED ALLEY, AS HERETOFORE DEDICATED IN BLOCK 66 IN SOUTH CHICAGO SUBDIVISION AFOREDESCRIBED. ALSO: THAT PART OF THE NORTH AND SOUTH 20.00 FOOT WIDE HERETOFORE VACATED ALLEY AS HERETOFORE DEDICATED IN BLOCK 66 IN SOUTH CHICAGO SUBDIVISION AFOREDESCRIBED, LYING SOUTH OF A LINE DRAWN FROM THE NORTHEAST CORNER OF SAID LOT 38 TO THE NORTHWEST CORNER OF LOT 21 AFOREDESCRIBED, ALL IN COOK COUNTY, ILLINOIS.***

3236, 3242, 3248, 3254 AND 3260 EAST 92ND STREET, CHICAGO, ILLINOIS

Property of Cook County Clerk's Office

UNOFFICIAL COPY

PERMANENT REAL ESTATE INDEX NO. 26-05-112-015, vol. 294
Affects: Lot 38

PERMANENT REAL ESTATE INDEX NO. 26-05-112-016, vol. 294
Affects: Lot 37

PERMANENT REAL ESTATE INDEX NO. 26-05-112-017, vol. 294
Affects: Lot 36

PERMANENT REAL ESTATE INDEX NO. 26-05-112-026, vol. 294
Affects: Lot 21

PERMANENT REAL ESTATE INDEX NO. 26-05-112-027, vol. 294
Affects: Lot 22

PERMANENT REAL ESTATE INDEX NO. 26-05-112-028, vol. 294
Affects: Lot 23

PERMANENT REAL ESTATE INDEX NO. 26-05-112-029, vol. 294
Affects: Lot 35

PERMANENT REAL ESTATE INDEX NO. 26-05-112-030, vol. 294
Affects: Lot 34

PERMANENT REAL ESTATE INDEX NO. 26-05-112-031, vol. 294
Affects: Lots 31, 32 and 33

PERMANENT REAL ESTATE INDEX NO. 26-05-112-032, vol. 294
Affects: Lot 30

PERMANENT REAL ESTATE INDEX NO. 26-05-112-033, vol. 294
Affects: Lot 29

PERMANENT REAL ESTATE INDEX NO. 26-05-112-034, vol. 294
Affects: Lot 28

PERMANENT REAL ESTATE INDEX NO. 26-05-112-035, vol. 294
Affects: Lot 27

PERMANENT REAL ESTATE INDEX NO. 26-05-112-036, vol. 294
Affects: Lot 26

PERMANENT REAL ESTATE INDEX NO. 26-05-112-037, vol. 294
Affects: Lot 25

PERMANENT REAL ESTATE INDEX NO. 26-05-112-038, vol. 294
Affects: Lot 24