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Eugene "Gene" Moore Fee: \$32.00  
Cook County Recorder of Deeds  
Date: 06/06/2005 10:16 AM Pg: 1 of 5

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

After Recording Mail to:  
Maurice Grant, Esq.  
Grant Holt & Schumann, LLC  
30 North LaSalle Street, Suite 3400  
Chicago, Illinois 60602

**AFFORDABLE HOUSING PROGRAM  
RECAPTURE AGREEMENT**

**THIS AGREEMENT** is entered into this 10<sup>th</sup> day of May, 2005 by and between LaSalle Bank, N.A. ("Bank") and Turnstone Development ("Sponsor") and Delaney Real Estate Holdings, Inc., ("Owner").

**RECITALS:**

**P.N.T.N.**

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 ("FHL Bank") to establish an affordable housing program ("AHP") to assist members of each FHL Bank 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 October 1, 2003 ("the Application") for an AHP subsidy in connection with the purchase, construction, or rehabilitation of the property commonly known as Project Opportunity to be located at 131 Peter Court, Unit D, Bartlett, Illinois.

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 FHL Bank 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 November 25, 2003, 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 Subsidy (defined below).

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

## AGREEMENTS

1. Subsidy Amount. The parties acknowledge and agree that Bank has on even date herewith disbursed the sum of \$ 5000.00 ("AHP Subsidy") to the Owner to be used in connection with the purchase, construction, or rehabilitation of Project. The term during which the Sponsor, Owner, 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. Owner agrees, 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 Owner agrees to make one unit affordable for and occupied by very low income households during the term of this Recapture Agreement.

3. Notice of Sale or Refinancing. The Bank and Chicago Bank shall be given notice by Sponsor and/or Owner of any sale or refinancing of the Property occurring prior to the end of the Retention Period.

4. Sale or Refinancing of the Property. If the Property is sold or refinanced prior to the end of the Retention Period, Sponsor and/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.

5. Foreclosure. The income-eligibility and affordability restrictions applicable to the Property terminate after foreclosure on the Property.

6. Compliance Documentation. Sponsor 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.

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7. 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.

8. Breach of Affordability or Reporting Requirements. In the event 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 and Owner shall immediately pay Bank that portion of the Subsidy which may be recaptured from Bank by Chicago Bank.

9. Certifications. Sponsor and Owner hereby certify 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 951.3 of the Affordable Housing Regulations.

NAME OF MEMBER

By: Michael McNamee

Its: Loan Officer

NAME OF SPONSOR

By: \_\_\_\_\_

Its: \_\_\_\_\_

NAME OF OWNER

By: Debreay Real Estate Holdings, Inc

By: Marcus Debreay

Its: President

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NAME OF MEMBER

By: \_\_\_\_\_

Its: \_\_\_\_\_

NAME OF SPONSOR

By: *Patricia Mc Donough*

Its: EXEC. DIRECTOR

NAME OF OWNER

By: \_\_\_\_\_

By: \_\_\_\_\_

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## EXHIBIT "A"

**PROPERTY ADDRESS:** 151 Peter Court, Unit D  
Bartlett, Illinois 60103

**LEGAL DESCRIPTION:** Unit "D" in Building 5 together with its undivided percentage interest in the common elements in Bartlett Green No. 5 Condominium as delineated and defined in the Declaration recorded as Document No. 22449519, as amended, in Sections 25 and 35, Township 41 North, Range 9, East of the Third Principal Meridian, in Cook County, Illinois.

**PERMANENT INDEX NO.:** 06-35-305-051-1020

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