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

Warren Wenzloff  
Applegate & Thorne-Thomsen  
332 South Green Street  
Suite 400  
Chicago, IL 60607



Doc#: 0627618031 Fee: \$42.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/03/2006 04:14 PM Pg: 1 of 10

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## AFFORDABLE HOUSING PROGRAM RECAPTURE AGREEMENT

**THIS AGREEMENT** is entered into as of this 21 day of September, 2006 by and between Northbrook Bank and Trust ("Bank"), PHHF LLC, an Illinois limited liability company ("Owner"), and Housing Opportunity Development Corporation, an Illinois not-for-profit corporation ("Developer").

### 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. Bank is a member of the Federal Home Loan Bank of Chicago ("Chicago Bank") and submitted an application dated March 15, 2006 ("the Application") for an AHP subsidy in connection with the acquisition and rehabilitation of properties commonly known as Permanent Housing for Homeless Households, to be located 1715 Harding Road, Northfield, IL and 784 Greenwood, Northbrook, IL, as described on Exhibit A attached hereto ("Project"). Developer has formed the Owner for the purpose of acquiring and rehabilitating the Project for rental to very-low income persons. The sole member of Owner is Housing Opportunity Development Corporation., an Illinois not-for-profit corporation.

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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 Agreement for Rental Projects ("Subsidy Agreement") dated June 19, 2006 with Chicago Bank and Developer, pursuant to which Bank and Developer 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 Bank shall be entitled to a recapture of subsidy funds from either Developer or Owner in connection with its AHP Subsidy to Developer for the purchase of the Properties.

## A G R E E M E N T S

1. Subsidy Amount. The parties acknowledge and agree that Bank has on even date herewith, disbursed the sum of \$20,000 (the "AHP Subsidy") to the Developer to be used in connection with the purchase or rehabilitation of Project. The Developer has contributed the AHP Subsidy to Owner. The term during which the Developer 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. Developer and Owner agree, during the term of this Agreement, to manage and operate the Project (or cause the Project to be managed and operated) as rental housing for very-low and/or 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. Developer agrees to cause Owner and the Project to make two (2) units affordable for and occupied by very-low income households.

3. Compliance Documentation. Developer and Owner shall provide to 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 the Chicago Bank.

4. Compliance. Developer 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 Project, and with all laws, rules and regulations, including all AHP Regulations.

5. Breach of Affordability or Reporting Requirements. In the event Owner or Developer, 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

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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 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 Owner and Developer shall immediately pay Bank that portion of the AHP Subsidy which may be recaptured from Bank by Chicago Bank. Notwithstanding the foregoing, the Developer shall not be deemed in default hereunder in the event any tenant of the Project has an increase in income that would otherwise disqualify such tenant from initial occupancy of a dwelling unit in such building provided that Developer takes such action as may be required in accordance with applicable AHP Regulations.

6. The Chicago Bank will be provided notice of any sale or refinancing of the Project occurring prior to the end of the 15-year AHP retention period.

7. In the case 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 direct subsidy shall be repaid 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.

8. The income-eligibility and affordability restrictions applicable to the Project terminate after any foreclosure.

9. Certifications. Developer hereby certifies to Bank as follows:

- (a) All the units in this Project will be open to income-qualified household 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.

10. Notices. All notices relating to this Repurchase 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 Owner:           PHHH LLC  
                                   c/o Housing Opportunities Development Corp.  
                                   1000 Skokie Blvd, Suite 500

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Wilmette, IL 60091  
Attn: Executive Director

With a copy to:

Applegate & Thorne-Thomsen  
322 S. Green Street, Suite 400  
Chicago, Illinois 60607  
Attention: Warren Wenzloff

If to Developer: Housing Opportunity Development Corp.  
1000 Skokie Blvd, Suite 500  
Wilmette, Illinois 60091  
Attn: Executive Director

If to Bank: Northbrook Bank & Trust  
1239 Shermer Rd.  
Northbrook, IL 60062  
Attn: Timothy McGrouary,  
Chief Financial Officer

11. Indemnification and Survival. Developer and Owner hereby agree to fully and unconditionally indemnify, defend and hold harmless 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 Bank that may arise in any manner out of actions or omissions which result from Owner or Developer's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties, obligations and indemnification of Owner and Developer shall survive the term of this Agreement.

12. Joint and Several. The obligations of Owner and Developer hereunder are joint and several.

13. Subordination. This Recapture Agreement is and shall be subject and subordinate in all respects to the following: (i) the lien of that certain Declaration of Restrictive Covenants and Lien dated as of April 1, 2006 and recorded in the Recorder's Office of Cook County ("Recorder's Office") as document no. 0610450070, executed in connection with a grant by HUD of \$562,175, and any other covenants, restrictions, or liens in favor of HUD and in connection with said grant; and (ii) the lien of that certain Mortgage by and between Owner and the Illinois Housing Development Authority ("IHDA") dated as of September 6 2006 and recorded with the Recorder's Office as document no. 0627618029, in connection with a loan for the Project of \$350,000, and all other covenants, restrictions, or liens in favor of IHDA

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and in connection with said loan, including without limitation that certain Regulatory Agreement by and between Owner and IHDA dated as of Sept. 6, 2006 and recorded in the Recorder's Office as document no. 06276180318

14. HUD Approval. No amendment to this Agreement shall have any force or effect unless or until such amendment is approved in writing by HUD.

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

[remainder of page was left blank intentionally]

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

**BANK:**  
Northbrook Bank & Trust

By: *[Signature]*  
Name: Timothy C. McGrouney  
Its: *[Signature]*

**DEVELOPER:**  
HOUSING OPPORTUNITY  
DEVELOPMENT CORPORATION, an  
Illinois not-for profit corporation

By: *[Signature]*  
Richard Koenig, Executive Director

**OWNER:**  
PHHH LLC, an Illinois limited liability  
company

By: Housing Opportunity Development  
Corporation, its managing member

By: *[Signature]*  
Richard Koenig,  
Executive Director

Property of Cook County Clerk's Office

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STATE OF ILLINOIS            )  
   ) SS.  
 COUNTY OF COOK             )

I, the undersigned Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Timothy McGrouary personally known to me and known by me to be the CEO of Northbrook Bank & Trust ("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 (s)he 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 29<sup>th</sup> day of August

Theresa Clarke  
 Notary Public

My Commission Expires:

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STATE OF ILLINOIS                    )  
   ) SS.  
 COUNTY OF COOK                    )

I, the undersigned Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Richard Koenig personally known to me and known by me to be Executive Director of Housing Opportunity 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 28 day of August.

N. Kitaychik  
 Notary Public

My Commission Expires:

7-2-07





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STATE OF ILLINOIS                    )  
   ) SS.  
 COUNTY OF COOK                    )

I, the undersigned Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Richard Koenig personally known to me and known by me to be the Executive Director of Housing Opportunity Development Corporation, the sole member of PHHH LLC (the "Company") 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 Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28 day of August.

*N. Kitaychik*

Notary Public

My Commission Expires:

7-2-07



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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

Parcel 1: 784 Greenwood, Northbrook, Illinois, PIN: 04-04-302-058-0000

Parcel 1A: THAT PART OF LOTS 23, 24 AND 25 (TAKEN AS A TRACT) IN OLIVER SALINGER AND COMPANY'S DUNDEE ROAD ACRES, BEING A SUBDIVISION OF THE EAST 36 RODS OF THE WEST 74 RODS OF THE SOUTH 120 RODS OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT A POINT 128.70 FEET NORTH OF THE SOUTH LINE AND 41.19 FEET WEST OF THE EAST LINE OF SAID TRACT (BOTH RIGHT ANGLE MEASURE); THENCE SOUTH 0 DEGREES, 06 MINUTES, 33 SECONDS EAST, A DISTANCE OF 58.12 FEET TO A POINT, SAID POINT BEING 70.58 FEET NORTH OF THE SOUTH LINE AND 40.93 FEET WEST OF THE EAST LINE OF SAID TRACT (BOTH RIGHT ANGLE MEASURE); THENCE NORTH 89 DEGREES, 59 MINUTES, 58 SECONDS WEST, A DISTANCE OF 125.43 FEET TO THE POINT OF BEGINNING; THENCE NORTH 0 DEGREES, 06 MINUTES, 33 SECONDS WEST, A DISTANCE OF 37.70 FEET; THENCE NORTH 89 DEGREES, 59 MINUTES, 58 SECONDS WEST, A DISTANCE OF 6.70 FEET; THENCE NORTH 0 DEGREES, 06 MINUTES, 33 SECONDS WEST, A DISTANCE OF 20.42 FEET, THENCE NORTH 89 DEGREES, 59 MINUTES, 58 SECONDS WEST, A DISTANCE OF 17.80 FEET; THENCE SOUTH 0 DEGREES, 06 MINUTES, 33 SECONDS EAST, A DISTANCE OF 24.19 FEET; THENCE NORTH 89 DEGREES, 59 MINUTES, 58 SECONDS WEST, A DISTANCE OF 0.83 FEET; THENCE SOUTH 0 DEGREES, 06 MINUTES, 33 SECONDS EAST, A DISTANCE OF 33.85 FEET; THENCE SOUTH 89 DEGREES, 59 MINUTES, 58 SECONDS EAST, A DISTANCE OF 25.33 FEET TO THE POINT OF BEGINNING.

Parcel 1B: EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 OVER THE COMMON AREA DESIGNATED ON EXHIBIT "A" OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND EASEMENT DATED OCTOBER 20, 1982 AND RECORDED FEBRUARY 25, 1983 AS DOCUMENT 26518091, IN COOK COUNTY, ILLINOIS.

Parcel 2: 1715 Harding Property, PIN: 05-19-321-007-000

LOT 7 IN SCHMIDT'S SUBDIVISION OF THAT PART OF LOT 2 IN HAPP'S SUBDIVISION OF THE SOUTH 107 ACRES OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 19, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, LYING WEST OF HAPP ROAD AND EAST OF THE RIGHT OF WAY OF THE PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS, IN THE VILLAGE OF NORTHFIELD, COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 26, 1928 AS DOCUMENT NUMBER 10242652.