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Doc#: 0935729028 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/23/2009 11:43 AM Pg: 1 of 11

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

This space reserved for Recorder's use only.

## AMENDMENT AND MODIFICATION OF RETENTION / RECAPTURE AGREEMENT FOR RENTAL PROJECTS USING LOW INCOME HOUSING TAX CREDITS (LIHTCs)

### AFFORDABLE HOUSING PROGRAM RECAPTURE AGREEMENT

This Amendment and Modification of Affordable Housing Program Recapture Agreement ("Modification") is made as of December 1, 2009, among Cole Taylor Bank, an Illinois banking corporation ("Bank"), Mercy Properties, Inc., a Colorado not for profit corporation ("Sponsor"), and Galewood SLF Associates, L.P., an Illinois limited partnership ("Owner"). The Bank, Sponsor and Owner are jointly referred to as the "Parties."

#### Recitals

WHEREAS, as of February 21, 2008, the Bank, Sponsor and Owner entered into that certain Affordable Housing Program Recapture Agreement recorded with the Cook County Recorder of Deeds on March 18, 2008 as document number 0807834134 ("Recapture Agreement") in connection with certain property located at 2370 North Newcastle Avenue, Chicago, Illinois 60707 as further described on Exhibit A attached thereto (the "Property");

WHEREAS, the Owner is closing on its permanent, HUD-insured loan in connection with the Property; and

WHEREAS, HUD has certain "HUD Required Provisions" that must be included in the Recapture Agreement.

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NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby received, the parties agree as follows:

1. The Recitals set forth above are hereby incorporated in their entirety as though fully set forth herein.

2. The Recapture Agreement is hereby amended to include the following new Section 18:

“18. HUD Rider. All of the terms and provisions of this Agreement are subject to the terms and provisions set forth in the attached HUD-REQUIRED PROVISIONS RIDER TO FEDERAL HOME LOAN BANK RETENTION/RECAPTURE AGREEMENT FOR RENTAL PROJECTS attached hereto and incorporated by reference herein by this reference.”

3. The HUD Rider attached hereto is hereby fully incorporated into the Recapture Agreement.

4. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Recapture Agreement.

5. In the event of any conflict between the terms of the Recapture Agreement and the terms of this Modification, the terms of this Modification shall control. Except as expressly modified herein, the terms and provisions of the Recapture Agreement remain in full force and effect, and such terms and provisions including all liabilities and obligations, as modified herein, are hereby ratified and confirmed by Owner and Sponsor.


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

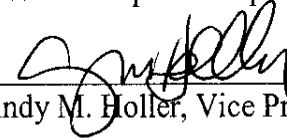
BANK:

Cole Taylor Bank,  
an Illinois banking corporation

By:   
Name: ~~Karen N. Thomas~~ Adam M. Ginter  
Title: Vice President

SPONSOR:

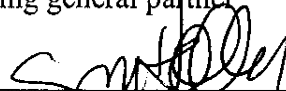
Mercy Properties, Inc.,  
an Colorado not for profit corporation

By:   
Cindy M. Holler, Vice President

OWNER:

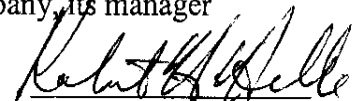
Galewood SLF Associates, L.P.,  
an Illinois limited partnership

By: Mercy Galewood SLF, Inc.,  
an Illinois corporation,  
its managing general partner

By:   
Cindy M. Holler, President

By: Galewood SLF Partners, LLC,  
an Illinois limited liability company,  
its administrative general partner

By: PSL Management LLC,  
an Illinois limited liability  
company, its manager

By:   
Robert H. Helle,  
Manager

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

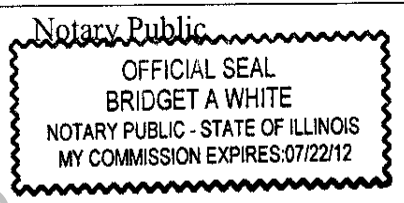
*Adam M. Garrett*

I, Bridget A. White, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT ~~Karen N. Thomas~~, personally known to me and known by me to be the Vice President of Cole Taylor Bank ("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 she signed and delivered the said instrument as 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 23rd day of December, 2009.

My Commission Expires:

\_\_\_\_\_



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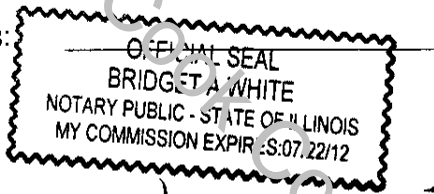
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Bridget A. White, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Cindy M. Holler, the Vice President of Mercy Properties, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her 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 20 day of December, 2009.

Bridget A. White  
Notary Public

My Commission Expires:



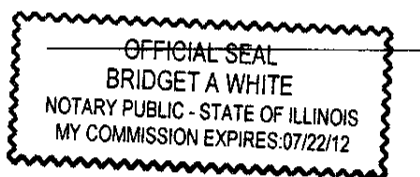
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Bridget A. White, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Cindy M. Holler, the President of Mercy Galewood SLF, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act and as the free and voluntary act of said company as the managing general partner of Galewood SLF Associates, L.P. for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of December, 2009.

Bridget A. White  
Notary Public

My Commission Expires:



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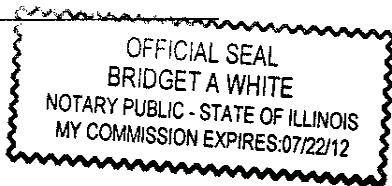
STATE OF ILLINOIS                    )  
  ) SS.  
COUNTY OF COOK                    )

I, Bridget A. White, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Robert H. Helle, a manager of PSL Management LLC the Manager of Galewood SLF Partners, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, 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 as the administrative general partner of Galewood SLF Associates, L.P. for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of December, 2009.

Bridget A. White  
Notary Public

My Commission Expires:



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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 1 AND 2 AND THE EAST ½ OF LOT 3 IN BLOCK 2 IN MONTCLARE, A SUBDIVISION IN THE NORTH HALF OF THE NORTHWEST ¼ OF SECTION 31 AND PART OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF FULLERTON AVENUE, IN COOK COUNTY, ILLINOIS

Permanent Real Estate Index Numbers: 13-31-104-010-0000; 13-31-104-011-0000 and 13-31-104-012-0000

Address of Real Estate: 2370 N. Newcastle Avenue  
Chicago, Illinois

Property of Cook County Clerk's Office

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## HUD-REQUIRED PROVISIONS RIDER TO FEDERAL HOME LOAN BANK RETENTION/RECAPTURE AGREEMENT FOR RENTAL PROJECTS

**THIS RIDER** (the "Rider") is attached to and made a part of that certain Retention/Recapture Agreement for Rental Projects (the "Document" and "Agreement"), dated as of December 1, 2009, entered into by and between **Cole Taylor Bank** (the "Subordinate Lender"), **Mercy Properties, Inc.**, an Illinois not for profit corporation (the "Sponsor"), and **Galewood SLF Associates, L.P.**, an Illinois limited partnership (the "Owner"), relating to the property known as Victory Centre of Galewood SLF and located at 2370 North Newcastle Avenue, Chicago, Illinois. In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the Document, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined in this Rider shall have the meaning given to such terms in the Agreement. As used herein, the term "HUD" shall mean the United States Department of Housing and Urban Development; the term "FHA" shall mean the Federal Housing Administration, an organizational unit within HUD; the term "Property" shall have the same meaning as the term "Project" in the HUD Regulatory Agreement described below; and the term "HUD/FHA Loan Documents" shall mean the following documents relating to the HUD-insured mortgage loan for the Property (FHA No. 071-43208):

- A. Amended Commitment for Insurance Upon Completion dated October 14, 2009, as amended, issued by the Secretary of HUD pursuant to Section 232 to Capmark Finance, Inc. ("Capmark") in the original principal amount of \$9,550,000, as assigned by Capmark to Berkadia Commercial Mortgage LLC ("Mortgagee") pursuant to an Assignment of Firm Commitment;
- B. Building Loan Agreement dated as of December 1, 2009, between the Owner and Mortgagee;
- C. Mortgage Note dated December 1, 2009 made by Owner payable to the order of Mortgagee in the principal amount of \$9,550,000 ("Mortgage Note");
- D. Mortgage dated as of December 1, 2009, made by Owner in favor of Mortgagee and encumbering the Property as security for the Mortgage Note ("Mortgage");
- E. Security Agreement dated as of December 1, 2009 between the Owner, as debtor, and Mortgagee and/or the Secretary of HUD as their interests may appear, as secured party;
- F. UCC-1 Financing Statements made by the Owner, as debtor, in favor of Mortgagee and/or Secretary of HUD as their interests may appear, as secured party recorded with the Cook County Recorder's Office and filed with the Illinois Secretary of State;



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- G. Regulatory Agreement for Multifamily Housing Projects, between the Owner and HUD (“HUD Regulatory Agreement”) dated December 1, 2009;
  - H. Assignment of Contracts and Documents by the Owner to the Mortgage dated December 1, 2009; and
  - I. Assignment of Rents and Leases by the Owner to the Mortgagee dated December 1, 2009.
- R-1 Notwithstanding anything in the Document to the contrary, the provisions of the Document are subordinate to all applicable Federal Statutes, HUD mortgage insurance regulations and related HUD directives and administrative requirements other than those HUD mortgage insurance regulations, related HUD directives or administrative requirements which have been waived in writing by HUD with respect to the Project. The provisions of the Document are also expressly subordinate to the HUD/FHA Loan Documents. In the event of any conflict between the Document and the provisions of applicable Federal Statutes, HUD mortgage insurance regulations, related HUD directives and administrative requirements, or HUD/FHA Loan Documents, the Federal statutes, HUD mortgage insurance regulations, related HUD directives and administrative requirements and HUD/FHA Loan Documents shall control, except for those HUD mortgage insurance regulations, related HUD directives or administrative requirements which have been waived in writing by HUD with respect to the Property.
- R-2 Failure on the part of the Owner to comply with the covenants contained in the Documents shall not serve as a basis for default on any HUD-insured or HUD-held mortgage on the Property.
- R-3 No amendment to the Document shall have any force or effect until and unless such amendment is approved in writing by the HUD Director of Multifamily Housing in Chicago. No amendment made after the date of the Document to any HUD/FHA Loan Document shall be binding upon the Subordinate Lender unless the Subordinate Lender has consented thereto in writing.
- R-4 Compliance by the Owner with the provisions and covenants of the Document and enforcement of the provisions and covenants contained in the Document, including, but not limited to any indemnification provisions or covenants, will not and shall not result in any claim or lien against the Property, any asset of the Property, the proceeds of the Mortgage, any reserve, or deposit required by HUD in connection with the Mortgage transaction or the rents or other income from the Property, other than distributable “Surplus Cash” (as the term “Surplus Cash” is defined in the HUD Regulatory Agreement).
- R-5 Unless waived in writing by HUD with respect to the Property, any action of the Owner which is prohibited or required by HUD pursuant to applicable Federal law, HUD mortgage insurance regulations, HUD directives and administrative requirements, or the HUD/FHA Loan Documents shall supersede any conflicting provisions of the Document,

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and the performance or failure to perform of the Owner in accordance with such laws, regulations, directives, administrative requirements or HUD/FHA Loan Documents shall not constitute an event of default under the Document.

- R-6 So long as HUD is the insurer or holder of any mortgage on the Property or any indebtedness secured by a mortgage on the Property, the Owner shall not and is not permitted to pay any amount required to be paid under the provisions of the Document from any assets or income of the Property or from any Mortgage proceeds, except from distributable Surplus Cash, as such term is defined and in accordance with the conditions prescribed in the HUD Regulatory Agreement. In the event that there is insufficient available Surplus Cash to pay any amount in full, when due, failure to pay such amount shall not be a default or event of default under the Document but such amount shall accrue and be payable when there is sufficient available Surplus Cash or at the termination of the Mortgage, whichever shall occur first.
- R-7 In the event of the appointment, by any court, of any person, other than HUD or the Mortgagee, as receiver, as a mortgagee or party in possession, or in the event of any enforcement or any assignment of leases, rents, issues, profits, or contracts contained in the Document, with or without court action, no rents, revenue or other income of the Property collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the Document, except from the distributable Surplus Cash in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Property in accordance with all provisions of the HUD/FHA Loan Documents.
- R-8 A duplicate of each notice given, whether required or permitted to be given, under the provisions of the Document shall also be given to:

Department of Housing and Urban Development  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
Attention: Office of Regional Counsel-Chief Programs Attorney  
Project No. 071-43208

HUD may designate any further or different addresses for such duplicate notices.

- R-9 Notwithstanding anything in the Document to the contrary, the Owner and its successor and assigns may sell, convey, transfer, lease, sublease or encumber the Property or any part thereof, provided it obtains prior written consent of HUD to any such sale, conveyance, transfer, lease, sublease, or encumbrance. Such prior written consent of HUD shall be deemed the prior written consent of Subordinate Lender. Prior to the Owner requesting or receiving HUD consent to any such sale, conveyance, transfer, lease, sublease, or encumbrance, it shall be the independent obligation hereunder of the Owner to send the Subordinate Lender a copy of all document furnished or to be furnished to HUD in that regard, provided that nothing contained in this paragraph R-9

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shall impose any requirement on HUD to obtain any written consent from Subordinate Lender, and provided further that the failure of the Owner to send such copies to Subordinate Lender at any time shall not impair or invalidate any HUD consent.

- R-10 Subordinate Lender shall have no right (A) to bring any action or proceeding on or pursuant to the terms and provisions of the Document, or (B) to bring any action or proceeding to foreclose the Document or (C) to commence any bankruptcy, reorganization, or insolvency proceeding involving the Owner, or (D) enforce any remedies it may have under the terms and provisions of the Document or to commence any other enforcement action, in each instance, without the prior written consent of HUD and if such action or proceeding to foreclosure is approved, no tenant of any portion of the Property shall be named as a party defendant in any such action or proceeding, nor will any other action or proceeding be brought or taken with respect to any tenant or any portion of the Property, the effect of which would be to terminate any occupancy or lease of any portion of the Property, unless HUD specifically consents thereto in writing.
- R-11 The Document and all covenants and provisions therein and all lien rights created thereby, if any, shall automatically terminate in the event of a foreclosure of any mortgage insured or held by HUD with respect to the Property or any portion thereof. Upon such termination, Subordinate Lender shall furnish to HUD and the Mortgagee such releases and other documentation as HUD or the Mortgagee shall deem necessary or convenience to confirm or evidence such termination.
- R-12 Notwithstanding anything in the Document to the contrary, the provisions of this HUD-Required Provisions Rider and any provisions granting rights to HUD contained in the Document are for the benefit of and are enforceable by HUD and the Mortgagee.

CHICAGO-#95329-v3