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Doc#: 1132618047 Fee: \$58.00
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Cook County Recorder of Deeds
Date: 11/22/2011 01:09 PM Pg: 1 of 12

and after recording return to :

Hinsdale Bank & Trust Company
25 East First Street
Hinsdale, IL 60521
Attn: Michael Waldron

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

BOX 15

16 03 18
THIS AGREEMENT is entered into this 1st day of November, 2011, by and between Hinsdale Bank & Trust Company ("Bank"), All Saints Senior Housing, NFP, an Illinois not for profit corporation ("Owner"), and All Saints Senior Housing, NFP an Illinois not for profit corporation, in its capacity as the sponsor for the affordable housing program project (hereinafter, All Saints Senior Housing, NFP in its capacity as sponsor, is referenced as "Sponsor"). The Bank, Owner and Sponsor are jointly referred to as the "parties."

RECITALS: FIDELITY NATIONAL TITLE

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 1, 2010, for an AHP subsidy in connection with

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the purchase, construction or rehabilitation of certain real property commonly known as 11701 S. State Street and 21 E. 117th Street (for parking lot), Chicago, Illinois 60628, as described on Exhibit A attached hereto and incorporated herein by reference (the "Property").

C. The Owner will own the Project (as hereafter defined in paragraph 1) upon closing of a Capital Advance Grant (the "HUD Grant") from the United States Department of Housing and Urban Development ("HUD"), which HUD Grant will provide the majority of funds for the development, construction and operation of the Project for very-low income elderly under the HUD Section 202 Supportive Housing for the Elderly program and known as HUD Project Number 071-247/IL06-S091-006. The Owner will acquire, construct, own, and operate the Project in connection with the requirements of the HUD Grant, and will rent 42 units in the Project to very low income elderly persons or families.

D. Pursuant to regulations (including, without limitation, those contained in 12 CFR Part 1291) 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.

E. In connection with the AHP grant, Bank entered into that certain Affordable Housing Program Agreement for Rental Project ("Subsidy Agreement") effective November 15, 2010, with Chicago Bank and Sponsor for project no. 2010A0725, 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 in paragraph 1 below).

F. This Recapture Agreement sets forth those circumstances under which the Bank shall be entitled to a recapture of the AHP Subsidy proceeds from the Owner and Sponsor with regard to the Property.

AGREEMENTS

1. Subsidy Amount. The parties acknowledge and agree that Bank has disbursed or will disburse forthwith the sum of Two Hundred Seventy-Three and No/100 Dollars (\$273,000.00) to the Owner ("AHP Subsidy"), for use by the Owner in connection with the construction of the 42-unit All Saints Residence (the "Project") in accordance with the Application. The term during which the Owner and Sponsor 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. Owner and Sponsor agree, 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 HUD, the AHP

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Regulations or as further provided in federal regulations. During the Retention Period, the Sponsor and Owner agree to make forty-two (42) units affordable for and occupied by very-low income elderly households, as set forth in the Application.

3. Compliance Documentation. Owner and 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, including all information necessary for the FHLB Affordable Housing Program semi-annual progress report and project close out report.

4. Compliance. Owner and Sponsor 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, lease, management and operation of the Property.

5. Breach of Affordability or Reporting Requirements. (a) In the event the Owner or Sponsor, at any time during the term of the AHP 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 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 shall immediately pay Bank that portion of the AHP Subsidy which may be recaptured from Bank by Chicago Bank.

(b) Owner shall repay to Bank that portion of the AHP Subsidy, including interest, if appropriate, that, as a result of Owner's actions or omission, is not used in compliance with the terms of the Application or the requirements of the AHP Regulations, unless such noncompliance is cured by Owner within a reasonable period of time or the circumstances of noncompliance are eliminated through a modification of the Application, pursuant to the AHP Regulations.

Neither Owner nor Sponsor shall 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 the Project if (i) the Owner elects to charge a rent that is affordable as defined in 12 CFR Section 1291.1 of the AHP Regulations for the household occupying such unit, or (ii) the Owner or 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 1291.5(f) or 1291.8(c)(2) of the AHP Regulations.

For so long as HUD is the holder of any mortgage on the Property or Project relating to the HUD Grant or any other indebtedness secured by a mortgage on the Property or Project, the Owner shall only repay any such recaptured AHP Subsidy from distributable Residual Receipts,

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as such term is defined in, and in accordance with the conditions prescribed in the HUD Regulatory Agreement.

6. Certifications. Owner and Sponsor hereby certify to Bank as follows:

(a) All the units in this Project will be open to income-qualified elderly households without regard to sex, race, creed, religion, sexual orientation, or type or degree of disability, provided at least one member of the household is 62 years of age or older at initial occupancy.

(b) The AHP Subsidy shall only be for uses authorized under Part 1291 of the AHP Regulations.

7. Sale or Refinancing. The Owner shall give written notice to the Bank and Chicago Bank within five days prior to 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 15-year Retention Period, Sponsor and/or Owner must repay an amount equal to the full amount of the AHP Subsidy to the 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 Retention Period.

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

9. Indemnification and Survival.

The Sponsor and Owner hereby agree to fully and unconditionally indemnify, defend and hold harmless the Bank from and against any judgments, losses, repayment, 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 and Owner's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties and obligations of and indemnification by the Sponsor and Owner shall survive the term of this Agreement.

10. Notices. All notices, reports and communications 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:

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If to Owner and Sponsor: All Saints Senior Housing, NFP
c/o Catholic Charities Housing Development Corporation
721 N. LaSalle Street, 5th Floor
Chicago, Illinois 60654
Attention: Gracia M. Shiffrin

With a copy to: Law Offices of William G. Skalitzky, P.C.
626 W. Jackson Boulevard, Suite 400
Chicago, IL 60661

If to Bank: Hinsdale Bank & Trust Company
25 East First Street
Hinsdale, IL 60521
Attn: Mike Waldron

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

Any party may at any time give notice in writing to the other parties of a change of its address for purposes of this Section 10.

11. Subordination. Notwithstanding anything in this Recap Agreement or in the Subsidy Agreement to the contrary, the rights granted under this Recap Agreement or under the Subsidy Agreement shall be and are subject and subordinate to (1) the rights of HUD pursuant to the lien of that certain Capital Advance Program Mortgage of even date herewith executed and delivered by Owner to and in favor of The Secretary of Housing and Urban Development ("HUD Mortgage") securing repayment of a capital advance made pursuant to the Section 202 Program for HUD Project 071-EE247/IL06-S091-006, which HUD Mortgage is recorded with the Recorder's Office of Cook County, Illinois ("Recorder's Office") concurrently herewith, and any other documents evidencing or securing such indebtedness, including the Capital Advance Program Regulatory Agreement of even date herewith between Owner and HUD ("HUD Regulatory Agreement"), which HUD Regulatory Agreement is recorded with the Recorder's Office concurrently herewith, and the Capital Advance Program Use Agreement between Owner and HUD ("HUD Use Agreement") of even date herewith, which HUD Use Agreement is recorded with the Recorder's Office concurrently herewith; (2) the rights of the City of Chicago ("City") pursuant to the lien of that certain Junior Mortgage of even date herewith executed and delivered by Owner to and in favor of the City (the "City Mortgage") securing repayment of a loan not to exceed \$892,678.00, which City Mortgage is recorded with the Recorder's Office concurrently herewith, and any other documents evidencing or securing such indebtedness,

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including the Regulatory Agreement of even date herewith between Owner and City ("City Regulatory Agreement"), which City Regulatory Agreement is recorded with the Recorder's Office concurrently herewith; and (3) the right of the City in connection with the Donation Tax Credit Regulatory Agreement between the City and Sponsor (the "Donation Regulatory Agreement"), which Donation Regulatory Agreement is recorded with the Recorder's Office concurrently herewith. The HUD Mortgage, HUD Regulatory Agreement, HUD Use Agreement, City Mortgage, City Regulatory Agreement and Donation Regulatory Agreement shall be recorded in the Recorder's Office in connection with the initial closing of the funding of the Project by HUD and City, and prior to commencement of construction of the Project.

12. HUD Provisions

(a) Failure on the part of the Sponsor or Owner to comply with the covenants contained in this Agreement or in the Subsidy Agreement shall not serve as the basis for default of the HUD Mortgage, HUD Regulatory Agreement, HUD Use Agreement or other HUD documents affecting the Project.

(b) Compliance or non-compliance by the Sponsor or Owner with the provisions and covenants of this Agreement or the Subsidy Agreement and enforcement of the provisions and covenants contained herein, including, without limitation, any indemnification provisions and recapture provisions, will not and shall not result in any claim or lien against the Project, any asset of the Project, the proceeds of the HUD Mortgage (as hereafter defined), any reserve or deposit required by HUD in connection with the Project or HUD Mortgage transaction, or the rents or other income from the Project, except as set forth in the Rider to Lender's Junior Mortgage dated as of even date herewith and executed by Owner, Bank and HUD.

13. Successors and Assigns. The rights and obligations of the parties to this Recapture 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 Recapture 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 Recapture 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 Recapture Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Recapture 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 Recapture Agreement supersedes all prior written and oral communications relating to the subject matter of this Recapture Agreement.

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17. Modification, Waiver and Termination. This Recapture 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, and with the prior written consent of HUD and Chicago Bank.

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

19. Headings. The headings of sections and paragraphs in this Agreement are for convenience only and shall not be construed to limit or define the content, scope or intent of the provisions hereof. As used in this Agreement, the singular shall include plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

20. Nature of Remedies. Bank's remedies under this Agreement and any other document executed in connection with the AHP Subsidy shall be cumulative and concurrent and may be pursued singly, successively, or together against any or all of Sponsor and Owner, and Bank may resort to every other right or remedy available at law or in equity without first exhausting the rights and remedies contained herein. Failure of Bank, for any period of time or on more than one occasion, to exercise any option hereunder shall not constitute a waiver of the right to exercise the same at any time during the continued existence of the Event of Default or in the event of any subsequent Event of Default. Bank shall not by any other omission or act be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by Bank, and then only to the extent specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or as a waiver of any right or remedy in connection with a subsequent event.

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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:

Hinsdale Bank & Trust Company, a national banking association

By: _____

Name:

Title:

SPONSOR:

All Saints Senior Housing, NFP, an Illinois not for profit corporation

By: Msgr. Michael M. Boland
Rev. Msgr. Michael M. Boland, President

OWNER:

All Saints Senior Housing, NFP, an Illinois not for profit corporation

By: Msgr. Michael M. Boland
Rev. Msgr. Michael M. Boland, President

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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:

Hinsdale Bank & Trust Company, a national banking association

By: *Michael Waldron*

Name: *Michael Waldron*

Title: *Assistant Vice President*

SPONSOR:

All Saints Senior Housing, NFP, an Illinois not for profit corporation

By: _____

Rev. Msgr. Michael M. Boland, President

OWNER:

All Saints Senior Housing, NFP, an Illinois not for profit corporation

By: _____

Rev. Msgr. Michael M. Boland, President

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

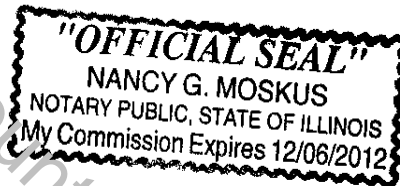
The undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT MICHAEL WALDRON personally known to me and known by me to be the AVP of Hinsdale Bank & Trust Company, a BANK ("Bank") and the same person in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that 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 16 day of November, 2011.

Nancy G. Moskus
Notary Public

My Commission Expires:

12-06-2012



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

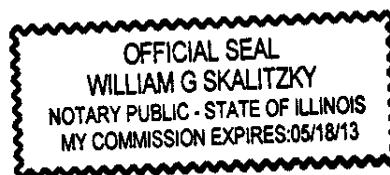
The undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Rev. Msgr. Michael M. Boland, personally known to me and known by me to be the President of All Saints Senior Housing, NFP and the same person in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as both the Owner and Sponsor as each term is defined in the foregoing instrument, 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 22 day of November, 2011.

William G. Skalitzky
Notary Public

My Commission Expires:

5-18-13



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HUD Project No. 071-EE247/IL06-S091-006
All Saints Residence
Chicago, Illinois

EXHIBIT A

Legal Description

PARCEL A:

LOTS 1 TO 5 BOTH INCLUSIVE, LOT 6 (EXCEPT THE SOUTH 7.37 FEET THEREOF), THE WEST 12.5 FEET OF LOT 37, ALL OF LOT 38 AND THE VACATED NORTH-SOUTH ALLEY (AS VACATED PURSUANT TO THE ORDINANCE RECORDED MARCH 31, 1959 AS DOCUMENT NO. 17494788) ADJOINING SAID LOTS 1, 2, 3, 4, 5 AND 38 IN BLOCK 2 IN SAWYER'S SUBDIVISION OF BLOCK 3 IN FIRST ADDITION TO KENSINGTON, A SUBDIVISION OF THE SOUTH 20 ACRES OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 22 (EXCEPT THE NORTHEAST 4 ACRES) ALSO, THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 22 (EXCEPT THE RAILROAD) NORTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL B:

LOT 36 AND THE EAST 1/2 OF LOT 37 IN BLOCK 2 IN SAWYER'S SUBDIVISION OF BLOCK 3 IN FIRST ADDITION TO KENSINGTON, A SUBDIVISION OF THE SOUTH 20 ACRES OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 22 (EXCEPT THE NORTHEAST 4 ACRES) ALSO, THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 22 (EXCEPT THE RAILROAD) NORTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL C:

ALL THAT PART OF THE SOUTH 7.37 FEET OF LOT 6 IN BLOCK 2 IN SAWYER'S SUBDIVISION OF BLOCK 3 IN FIRST ADDITION TO KENSINGTON, A SUBDIVISION OF THE SOUTH 20 ACRES OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 22, EXCEPT THE NORTHEAST 4 ACRES, ALSO THE SOUTH HALF OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 22, EXCEPT THE RAILROAD, NORTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 6; THENCE NORTH ALONG THE WEST LINE OF SAID LOT TO AN INTERSECTION WITH THE NORTH LINE OF THE SOUTH 7.37 FEET THEREOF;

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THENCE SOUTH 89 DEGREES 35 MINUTES 43 SECONDS EAST, BEING AN ASSUMED BEARING FOR THE PURPOSE OF THIS LEGAL DESCRIPTION, ALONG SAID LAST DESCRIBED NORTH LINE, 56.17 FEET TO THE POINT OF BEGINNING OF THIS LEGAL DESCRIPTION; THENCE SOUTH 89 DEGREES 35 MINUTES 43 SECONDS EAST, CONTINUING ALONG SAID LAST DESCRIBED NORTH LINE, 20.83 FEET; THENCE SOUTH, PARALLEL WITH THE WEST LINE OF SAID LOT 6, 3.79 FEET TO AN INTERSECTION WITH THE NORTH WALL OF AN EXISTING BUILDING; THENCE NORTH 89 DEGREES 58 MINUTES 41 SECONDS WEST, ALONG SAID LAST DESCRIBED NORTH WALL AND THE WESTERLY EXTENSION THEREOF, 20.83 FEET; THENCE NORTH, PARALLEL WITH THE WEST LINE OF SAID LOT 6, 3.93 FEET TO AN INTERSECTION WITH THE NORTH LINE OF THE SOUTH 7.37 FEET OF LOT 6 AND THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 11701 S. STATE STREET AND 21 E. 117TH STREET, CHICAGO, IL
PINS: 25-22-309-001-000 (part of); 25-22-309-002; 25-22-309-003

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