



Doc#: 1136310098 Fee: \$90.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/29/2011 04:29 PM Pg: 1 of 10

AFFORDABLE HOUSING PROGRAM RECAPTURE AGREEMENT

THIS AFFORDABLE HOUSING PROGRAM RECAPTURE AGREEMENT ("Recapture Agreement") is entered into on the 28th day of December, 2007, by and among HARRIS N.A., a national banking association ("Member Bank"), SAFEWAY CONSTRUCTION COMPANY, an Illinois corporation ("Sponsor") and SCC RESTORATION, LLC, an Illinois limited liability company ("Owner"). The Member 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. Member Bank is a member of the Federal Home Loan Bank of Chicago ("Chicago Bank"), a FHLBank, and submitted an application dated March 15, 2006 (the "Application") for an AHP subsidy in a principal amount not to exceed One Hundred Forty Three Thousand and No/100 Dollars (\$143,000.00) (the "Grant") to pay a portion of the costs associated with the purchase, construction, or rehabilitation of the property commonly known as Restoration Apartments, which consists of eight multi-family residential buildings, six (6) three-flat and two (2) two-flat buildings (the "Buildings") situated on certain land on or about W. Douglas Boulevard in Chicago, Illinois (the "Property" and together with the Buildings, collectively referred to hereinafter as the "Project"), as legally described on Exhibit A attached hereto. Owner is the fee simple title owner of the Project.
- 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 Grant, the Member Bank entered into that certain Affordable Housing Program Agreement for Rental Project ("Subsidy Agreement") dated as of May 8, 2007, with Chicago Bank and Sponsor, pursuant to which Member Bank and Sponsor agreed to be bound by AHP Regulations and perform certain monitoring functions with respect to the Grant. Owner herewith also agrees to be bound by AHP Regulations and perform the monitoring functions with respect to the Grant as identified in the Subsidy Agreement.
- E. The Parties desire to set forth those circumstances under which Member Bank shall be entitled to a recapture of all subsidy funds from either Owner or Sponsor in connection with the Grant.

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:

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AGREEMENTS

1. Subsidy Amount. The Parties hereby acknowledge and agree that Member Bank has, on even date herewith, disbursed the proceeds of the Grant to Owner in the amount of One Hundred Forty Three Thousand and No/100 United States Dollars (U.S. \$143,000.00) to be used in connection with the Project. The term during which the Owner and the Sponsor must comply with the AHP Regulations to qualify and maintain the Grant is fifteen (15) years from the date of completion of the Project, at which time this Recapture Agreement shall terminate (“**Retention Period**”).
2. Affordability Requirements. Owner and Sponsor agree, during the term of the Grant, to manage and operate the Project as rental housing for very low, low and/or moderate income households. For purposes of this Recapture 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. Owner and Sponsor agree to make 14 of the units at the Project affordable for and occupied by very low income households and 8 of the units at the Project affordable to and occupied by moderate income households during the term of this Recapture Agreement.
3. Notice of Sale or Refinancing. The Member Bank and the Chicago Bank shall be given notice by Owner and Sponsor of any sale or refinancing of the Project occurring prior to the end of the Retention Period.
4. Sale or Refinancing of the Project. If the Project is sold or refinanced prior to the end of the Retention Period, Owner and Sponsor must repay an amount equal to the full amount of the Grant, unless the Project continues to be subject to a deed restriction or mechanism incorporating the 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 Project terminate after foreclosure of the Project.
6. Compliance Documentation. Owner and Sponsor shall provide to the Member Bank any information regarding the Project and use of the Grant pursuant to the AHP Regulations as amended from time to time and as required by the Chicago Bank.
7. Compliance. Owner and Sponsor shall at all times comply with 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, rehabilitation, ownership, management and operation of the Project.
8. Breach of Affordability Requirements. (a) In the event either Owner or Sponsor, at any time during the term of the Grant, defaults in its obligation to manage and operate the Project and provide compliance information as required pursuant to paragraph 6 above or otherwise fails to comply with the terms of this Recapture Agreement or the Application, and such default continues for a period of sixty (60) days after notice to Owner and Sponsor from Member Bank or such shorter period of time required to avoid a default by Member Bank under the Subsidy Agreement, it shall be an Event of Default of this Recapture Agreement and either

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Owner or Sponsor shall immediately pay Member Bank that portion of the Grant which Member Bank may be required to repay to Chicago Bank.

(b) Owner or Sponsor shall repay to Member Bank that portion of the AHP Subsidy, including interest, if appropriate, that, as a result of either Owner's or Sponsor'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 either by Owner or Sponsor within a reasonable period of time or the circumstances of noncompliance are eliminated through a modification of the Application, pursuant to the AHP Regulations.

9. Indemnification and Survival. Owner and Sponsor hereby agree to fully and unconditionally indemnify, defend and hold harmless Member Bank from and against any judgments, losses, repayment, liabilities, damages (including consequential damages), costs, expenses of whatsoever kind or nature, including, without limitation, attorneys' fees, expert witness fees, and any other professional fees and litigation expenses or other obligations incurred by Member Bank that may arise in any manner out of action or omissions which result from either Owner's or Sponsor's performance or failure to perform pursuant to the terms of this Recapture Agreement. The representations, warranties, obligations and indemnification of Owner and Sponsor shall survive the term of this Recapture Agreement.

10. Notices. Notices, reports and communications hereunder shall be in writing and will be deemed to be properly given when personally delivered to the party entitled to receive the notice or three days after the same is sent by certified or registered U.S. mail, postage prepaid, or by overnight courier properly addressed to the party entitled to receive such notice at the addresses below; provided that recurring reports, certifications and ordinary communications shall be permitted to be transmitted electronically via facsimile. Any party may at any time give notice in writing to the other parties of a change of its address for the purpose of this Section 10.

If to the Member Bank:

Harris N.A.
111 West Monroe Street
Second Floor, East
Chicago, Illinois 60603
Phone: 312-461-3717
Fax: 312-293-4702
Attention: Community Investments Department

If to the Sponsor:

Safeway Construction Company
4327 W. Roosevelt Road
Chicago, Illinois 60624
Phone: 773-522-3000
Fax: 773-522-4043
Attention: John Bonds

If to the Owner:

SCC Restoration, LLC
c/o Safeway Construction Company
4327 W. Roosevelt Road
Chicago, Illinois 60624
Phone: 773-522-3000
Fax: 773-522-4043
Attention: John Bonds

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If to Chicago Bank:

Federal Home Loan Bank of Chicago
111 East Wacker Drive, Suite 800
Chicago Illinois 60601
Phone: 312-565-5824
Fax: 312-565-6947
Attention: Community Investment Department

11. Certifications. Owner and Sponsor hereby certify to Member 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 Part 951 of the AHP Regulations.

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

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Executed and delivered as of the date first above written.

MEMBER BANK:

HARRIS N.A.,
a national banking association

By: Ailisa Herrera
Name: Ailisa Herrera
Title: Vice President

SPONSOR:

SAFEWAY CONSTRUCTION COMPANY, an Illinois corporation

By: _____
Name: _____
Title: _____

OWNER:

SCC RESTORATION, LLC, an Illinois limited liability company

By: Douglas Boulevard LRF II, Inc., its managing member

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

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Executed and delivered as of the date first above written.


MEMBER BANK:

HARRIS N.A.,
a national banking association

By: _____
Name: Ailisa Herrera
Title: Vice President

SPONSOR:

SAFEWAY CONSTRUCTION COMPANY, an Illinois corporation

By: 
Name: Alan Coleman
Title: President

OWNER:

SCC RESTORATION, LLC, an Illinois limited liability company

By: Douglas Boulevard LRP II, Inc., its managing member

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Executed and delivered as of the date first above written.


MEMBER BANK:

HARRIS N.A.,
a national banking association

By: _____
Name: Ailisa Herrera
Title: Vice President

SPONSOR:


SAFEMART CONSTRUCTION COMPANY, an Illinois corporation

By: 
Name: Alan Coleman
Title: President

OWNER:

SCC RESTORATION, LLC, an Illinois limited liability company

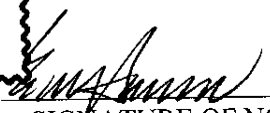
By: Douglas Boulevard LRP II, Inc., its managing member

By: 
Name: John W. Berens, Jr.
Title: President

Property of Cook County Clerk's Office

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All-Purpose Acknowledgement

<p>State of Illinois)) County of Cook)</p> <p>On December <u>28</u>, 2007 before me, Evelyn D. Turner, personally appeared John W. Bonds, Jr.,</p> <p><input checked="" type="checkbox"/> personally known to me -OR- <input type="checkbox"/> proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons acted, executed the instrument.</p> <p style="text-align: right;">Witness my hand and official seal.</p> <div style="border: 2px dashed black; padding: 5px; width: fit-content; margin: 10px auto;"> <p style="text-align: center; margin: 0;">OFFICIAL SEAL EVELYN D TURNER NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES: 10/31/10</p> </div> <p style="text-align: center; margin-top: 10px;"> SIGNATURE OF NOTARY</p>	<p style="text-align: center;">CAPACITY CLAIMED BY SIGNER</p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input checked="" type="checkbox"/> CORPORATE _____ OFFICER(S) _____ TITLES(S) _____</p> <p><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p><input type="checkbox"/> OTHER: _____ _____ _____</p> <p>SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES) _____ _____ _____</p>
<p>ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.</p> <p style="text-align: right;">Title or Type of Document _____</p> <p style="text-align: right;">Number of Pages _____ Date of Document _____</p> <p style="text-align: right;">Signer(s) Other than Named Above _____</p> <p>THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:</p>	

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1: THE WEST 33 FEET OF THE EAST 183 FEET OF BLOCK 1 IN DOUGLAS PARK ADDITION TO CHICAGO, A SUBDIVISION OF LOTS 4 AND 5 OF CIRCUIT COURT PARTITION OF THE WEST 1 / 2 OF THE WEST 1 / 2 OF SECTION 24, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 3112 W. DOUGLAS BOULEVARD, CHICAGO, ILLINOIS

PARCEL 2: THE WEST 33 FEET OF THE EAST 216 FEET OF BLOCK 1 IN DOUGLAS PARK ADDITION TO CHICAGO, A SUBDIVISION OF LOTS 4 AND 5 OF CIRCUIT COURT PARTITION OF THE WEST 1 / 2 OF THE WEST 1 / 2 OF SECTION 24, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 3116 W. DOUGLAS BOULEVARD, CHICAGO, ILLINOIS

PARCEL 3: THE WEST 33 FEET OF THE EAST 249 FEET OF BLOCK 1 IN DOUGLAS PARK ADDITION TO CHICAGO, A SUBDIVISION OF LOTS 4 AND 5 OF CIRCUIT COURT PARTITION OF THE WEST 1 / 2 OF THE WEST 1 / 2 OF SECTION 24, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 3118 W. DOUGLAS BOULEVARD, CHICAGO, ILLINOIS

PARCEL 4: LOT 20 AND THE WEST 5 FEET OF LOT 19 IN BLOCK 2 OF PRESCOTT'S DOUGLAS PARK ADDITION TO CHICAGO BEING A SUBDIVISION OF BLOCK 1 IN CIRCUIT COURT PARTITION OF THE EAST 1 / 2 OF THE NORTHEAST 1 / 4 AND THAT PART OF THE EAST 1 / 2 OF THE SOUTH EAST 1 / 4 LYING NORTH OF THE CENTER LINE OF OGDEN AVENUE, IN SECTION 23, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 3216 W. DOUGLAS BOULEVARD, CHICAGO, ILLINOIS

PARCEL 5: LOT 16 IN BLOCK 3 IN DOWNING, CORNING AND PRENTISS' DOUGLAS PARK ADDITION TO CHICAGO, A SUBDIVISION OF BLOCK 4 AND LOT 2 IN BLOCK 3 IN THE CIRCUIT COURT PARTITION OF THE EAST 1 / 2 OF THE NORTHEAST 1 / 4 AND THAT PART OF THE EAST 1 / 2 OF THE SOUTHEAST 1 / 4 LYING NORTH OF THE CENTER LINE OF OGDEN AVENUE IN SECTION 23, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 3338 W. DOUGLAS BOULEVARD, CHICAGO, ILLINOIS

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PARCEL 6: LOT 19 IN BLOCK 3 IN DOWNING, CORNING AND PRENTISS' DOUGLAS PARK ADDITION TO CHICAGO, A SUBDIVISION OF BLOCK 4 AND LOT 2 IN BLOCK 3 IN THE CIRCUIT COURT PARTITION OF THE EAST 1 / 2 OF THE NORTHEAST 1 / 4 AND THAT PART OF THE EAST 1 / 2 OF THE SOUTHEAST 1 / 4 LYING NORTH OF THE CENTER LINE OF OGDEN AVENUE IN SECTION 23, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY.

COMMONLY KNOWN AS: 3346 W. DOUGLAS BOULEVARD, CHICAGO, ILLINOIS

PARCEL 7: LOT 20 IN BLOCK 3 IN DOWNING, CORNING AND PRENTISS' DOUGLAS PARK ADDITION TO CHICAGO, A SUBDIVISION OF BLOCK 4 AND LOT 2 IN BLOCK 3 IN THE CIRCUIT COURT PARTITION OF THE EAST 1 / 2 OF THE NORTHEAST 1 / 4 AND THAT PART OF THE EAST 1 / 2 OF THE SOUTHEAST 1 / 4 LYING NORTH OF THE CENTER LINE OF OGDEN AVENUE IN SECTION 23, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 3348 W. DOUGLAS BOULEVARD, CHICAGO, ILLINOIS

PARCEL 8: LOT 33 IN BLOCK 4 IN DOWNING, CORNING AND PRENTISS' DOUGLAS PARK ADDITION TO CHICAGO, A SUBDIVISION OF BLOCK 4 AND LOT 2 IN BLOCK 3 IN THE CIRCUIT COURT PARTITION OF THE EAST 1 / 2 OF THE NORTHEAST 1 / 4 AND THAT PART OF THE EAST SECTION 23, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1331 S. CHRISTIANA AVENUE, CHICAGO, ILLINOIS

PINS: 16-23-210-031
16-23-210-033
16-23-211-005
16-23-213-026
16-24-103-038