

# UNOFFICIAL COPY



3

Doc#: 1234735049 Fee: \$52.00  
Karen A. Yarbrough RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/12/2012 11:00 AM Pg: 1 of 8

This Document Prepared By:  
Jacqueline Carroll  
Assistant State's Attorney  
Cook County State's Attorney's Office  
500 Richard J. Daley Center  
Chicago, Illinois 60602  
(312) 603-6634

**PLEASE MAIL TO BOX 183**

Project Number: 07184300076

[Space Above This Line for Recording Data]

**SECOND AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**HOME INVESTMENT PARTNERSHIPS PROGRAM**

**THIS DECLARATION ("Declaration") is made as of this 15 day of November, 2012 by 1411-23 Shields LLC, an Illinois limited liability company having its principal place of business at 325 N. Wells, 8<sup>th</sup> Floor, Chicago, Illinois 60654 ("Declarant").**

**WHEREAS, Declarant is the fee owner and legal title holder of certain real estate in Chicago Heights, County of Cook and State of Illinois which real estate is legally described in Exhibit A attached hereto and by this reference made a part hereof (the "Real Estate"); and**

**WHEREAS, the County of Cook, a body politic and corporate of the State of Illinois, (the "County") has been designated a Participating Jurisdiction and receives HOME Program funds under the Cranston-Gonzalez National Affordable Housing Act of 1990. The HOME Investment Partnerships Act, as amended (The "Act"), which is implemented by the HOME Investment Partnerships Program, 24 CFR Part 92, as amended ("HOME Program"); and**

**WHEREAS, a fundamental purpose of the HOME Program is to provide Participating Jurisdictions with federal housing assistance to expand the supply of decent, safe, sanitary and affordable housing for very low-income and low-income persons and to make new construction, rehabilitation, substantial rehabilitation, and acquisition of such housing feasible; and**

**WHEREAS, in fulfilling this public purpose and in consideration of HOME Program assistance, the HOME Program requires that the assisted real estate qualify as affordable housing for very low-income and low-income persons as to occupancy under rental housing, and as to occupancy and ownership under home ownership, for a minimum number of years, which depends on the use of the loan funds and the amount of funds loaned for that use, as specified at 24 CFR Part 92 ("Minimum Affordable Housing Periods"); and**

**WHEREAS, the Minimum Affordable Housing Periods set forth in the HOME**

~~07184300076~~  
10 9 17

1st AMERICAN TITLE order # 2362952

Y  
18  
N  
SCY  
TD

# UNOFFICIAL COPY

Program, 92 CFR Part 24, are not necessarily terminated by the term of any mortgage or the transfer of any ownership of real estate; and

**WHEREAS**, the Home Program specifies that housing will or may remain affordable for at least the Minimum Affordable Housing Periods set forth therein to low or very low-income persons pursuant to covenants running with the land. This provision is set forth at 24 CFR section 92.252 ("**Qualification as affordable housing and income targeting: Rental Housing**") and at 24 CFR section 92.254 ("**Qualification as affordable housing: homeownership**"); and

**WHEREAS**, the County has established the County HOME Program ("**County HOME Program**") pursuant to the Act and the HOME Program. The County HOME Program assists in the financing and provision of affordable home ownership or rental housing which is decent, safe and sanitary to low and very-low income persons. Further, the County HOME Program expends its time and funds to fulfill this public purpose; and

**WHEREAS**, the County HOME Program restricts ownership and transfer of ownership of the Real Estate to those who maintain or will maintain affordable housing on the Real Estate during the applicable affordable housing period, as defined below, in fulfillment of this public purpose; and

**WHEREAS**, the County HOME Program sets forth what the affordable housing period applicable to the Real Estate is ("**Applicable Affordable Housing Period**"); and

**WHEREAS**, on or about December 1, 2002, the County and Christian Vision Center, Inc., an Illinois not for profit corporation ("**Former Declarant**"), entered into an Agreement including a Declarations of Covenants, Conditions and Restrictions where the Former Declarant agreed to a Minimum Affordable Housing Period of twenty (20) years; and

**WHEREAS**, on or about December 1, 2002, the Former Declarant entered into a first position mortgage loan with the **Illinois Housing Development Authority** ("**IHDA**") as evidenced by IHDA Loan Documents; and

**WHEREAS**, on or about December 1, 2004, the County and the Former Declarant entered into a First Amendment of the Declarations of Covenants, Conditions and Restrictions amending the Declaration to have an estimated date of project completion as October 1, 2004; and

**WHEREAS**, IHDA filed a foreclosure case in the Circuit Court of Cook County on February 23, 2011; on October 11, 2011, the judge granted summary judgment in favor of the IHDA; and

**WHEREAS**, prior to the judicial sale, the Former Declarant has provided a deed-in-lieu of foreclosure dated September 10, 2012 to IHDA; and

**WHEREAS**, the County and IHDA have worked together to find a suitable buyer to stabilize the Property; and

# UNOFFICIAL COPY

**WHEREAS**, the Borrower was approved to become the new owner of the Property and assume the obligations and affordability requirements under the HOME Loan Documents; and

**WHEREAS**, Declarant has acquired, and/or will rehabilitate, the Real Estate ("the Project"), including sixteen (16) HOME-assisted units, as a result of receiving loan funds from the County pursuant to the County HOME Program and this public purpose; and

**WHEREAS**, it was not possible for Declarant to receive loan funds from conventional lending sources, in either the amount or at the interest rate provided by the County, and therefore without funding under the County HOME Program, the Declarant could not perform or have performed such acquisition, rehabilitation or new construction on the Real Estate; and

**WHEREAS**, Declarant will be materially benefitted by such loan; and

**WHEREAS**, as a condition to receiving the HOME loan, Declarant agreed to comply with: the Act, implemented by the HOME Program at 24 CFR Part 92, as amended; the County's requirements pursuant to the County HOME Program; and this Declaration of Covenants, Conditions and Restrictions.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares that the Real Estate described in Exhibit A and any such addition thereto as may hereafter be made is and shall be transferred, held, sold, conveyed and accepted subject to this Declaration of Covenants, Conditions, and Restrictions. The Declarant does hereby further declare that the following covenants, restrictions, conditions, burdens and uses shall: (1) exist at all times during the term of this Declaration amongst all parties having or acquiring any right, title or interest in all or any portions of the Real Estate; (2) be binding upon each Owner, where said Owner is one or more persons or entities holding title to or an interest in the Real Estate or any portion thereof, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation ("Owner"); (3) be enforced by the County of Cook, and its successors and assigns to the administration or management of the County HOME Program; and (4) run with the land subjected to this Declaration, to be held, sold and conveyed subject thereto.

## **RECITALS**

The foregoing recitals and declarations are incorporated herein and made a part hereof by reference.

## **MAINTAINING AFFORDABLE HOUSING**

Every person or entity who is an Owner of the Real Estate is bound to comply with the HOME Program set forth at 24 CFR Part 92, and as amended, as well as those requirements of the County HOME Program set forth herein, in each case with respect to the sixteen (16) HOME-assisted units.

(A) Compliance with the County HOME Program includes maintaining affordable housing for very low-income and low-income persons as set forth at 24 CFR Part 92, sections 92.252 and 92.254 for the Applicable Affordable Housing Period:

# UNOFFICIAL COPY

(i) Section 92.252 sets forth, inter alia, rent limitations necessary to qualify as affordable housing and provides that an Owner of real estate must reexamine the income of each tenant household living in low-income units at least annually pursuant to Department of Housing and Urban Development ("HUD") guidelines. The maximum monthly rent must be recalculated by the Owner and reviewed and approved by Cook County annually; and

(ii) Section 92.254 sets forth, inter alia, purchase and/or rehabilitation limitations for qualification as affordable homeownership and provides that as to purchase, resale restrictions include making the housing available only to a low-income family, as determined by HUD, that will use the Real Estate as its principal residence.

(iii) Declarant represents and warrants that all the units are comparable for purposes of 24 CFR 92.252(j) and, in the event that HUD determines that they are not comparable, Declarant agrees to cover all costs incurred by the County associated with the adverse determination by HUD.

(B) In the event that any Owner, including a contract seller, desires to transfer title to the Real Estate within the applicable affordable housing period, as a condition precedent to each and every proposed transfer, the Owner shall notify the Director of Housing at the Cook County Bureau of Economic Development in writing to that effect by registered or certified mail. The Cook County Bureau of Economic Development administers the County HOME Program. Further, the Owner and prospective grantee shall submit to the Director of Housing the information necessary for the County to make a determination as to whether affordable housing will be maintained by the prospective grantee pursuant to the County HOME Program.

Within thirty (30) days subsequent to the sending of notice by the County to the Owner that both the Owner's notice and the necessary information has been received, the County shall issue, or refuse to issue, its "Cook County HOME Program Certificate of Compliance", executed by the Bureau Chief or his designee, or the County's successors and assigns to the administration or management of the County HOME Program. In the event the County refuses to issue, as aforesaid, it will deliver to Borrower, together with the notice of said refusal, a statement of the reason(s) for such refusal.

The Certificate of Compliance is the County's certification that the covenants, conditions and restrictions in this Declaration are not violated by the proposed transfer of title. If the County refuses to issue its Certificate of Compliance, any transfer of title is in violation of the covenants, conditions and restrictions contained herein, and the County will have the right to exercise all remedies set forth in this agreement in addition to all other rights and remedies at law or in equity.

## **TERM**

The Minimum Federal Affordable Housing Period applicable to this Real Estate set forth in the HOME Program is twenty (20) years from the date of certification of occupancy as defined by HUD.

Pursuant to the County HOME Program requirements, the "**Applicable Affordable Housing Period**" for this Project is twenty (20) years.

# UNOFFICIAL COPY

The County's HOME loan is secured by a Junior Mortgage ("Mortgage") on the Real Estate conveyed by Declarant. Notwithstanding anything contained herein to the contrary, the term of the Covenants, Conditions and Restrictions is no less than the term of the Mortgage.

Therefore, pursuant to the County HOME Program, that **THE COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED HEREIN RUN WITH THE LAND FOR A MINIMUM PERIOD OF TWENTY (20) YEARS FROM THE DATE OF CERTIFICATION OF OCCUPANCY AS DEFINED BY HUD IS A LIEN ON THE REAL ESTATE.**

**THE FOREGOING COVENANTS, CONDITIONS, AND RESTRICTIONS CONTAINED HEREIN WHICH RUN WITH THE LAND SHALL BE BINDING ON ALL PERSONS AND ENTITIES WHO HOLD TITLE TO OR AN INTEREST IN THE REAL ESTATE, OR ANY PORTION THEREOF, INCLUDING CONTRACT SELLERS, AND THOSE CLAIMING UNDER THEM, BUT EXCLUDING THOSE HAVING SUCH INTEREST MERELY AS SECURITY FOR THE PERFORMANCE OF AN OBLIGATION, DURING THE TERM, UNLESS AN INSTRUMENT SIGNED BY THE THEN OWNER OF THE REAL ESTATE AND THE DULY AUTHORIZED CHIEF ADMINISTRATIVE OFFICER OF THE COUNTY OF COOK OR HIS/HER DESIGNEE, ON BEHALF OF COOK COUNTY, OR THE COUNTY'S SUCCESSORS AND ASSIGNS TO THE ADMINISTRATION OR MANAGEMENT OF THE COUNTY HOME PROGRAM, CHANGING SAID DECLARATION IN WHOLE OR IN PART HAS BEEN EXECUTED AND RECORDED.**

**BY EXECUTION AND RECORDATION OF THIS DECLARATION, THE DECLARANT SUBJECTS THE REAL ESTATE DESCRIBED IN EXHIBIT A, AND ANY SUCH ADDITION THERETO AS MAY HEREAFTER BE MADE, TO THE COVENANTS, CONDITIONS AND RESTRICTIONS HEREIN.**

**THIS DECLARATION AND THE COVENANTS, CONDITIONS, AND RESTRICTIONS CONTAINED HEREIN LAPSES AT THE EXPIRATION OF THE TERM.**

#### **INVALIDATION**

Invalidation of any of these covenants, conditions or restrictions by judgment or order shall in no way affect any other provisions which shall remain in full force and effect.

#### **BINDING EFFECT**

All the covenants, conditions and restrictions contained herein shall run with the land and be binding upon Declarant and each subsequent holder of any interest in any portion of the Real Estate, and their respective grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Real Estate or any part thereof.

#### **TERMINATION ON FORECLOSURE**

At the election of the County, this Declaration and the Minimum Affordable Housing Period may terminate upon occurrence of any of the following termination events in accordance with 24 CFR Section 92.254: Foreclosure, transfer in lieu of foreclosure, or assignment of an FHA insured mortgage to HUD. The County may use purchase options, rights of first refusal or other

# UNOFFICIAL COPY

preemptive rights to purchase the Property or buy out the lien of any senior lender before foreclosure or the transfer of a deed in lieu of foreclosure. Notwithstanding anything herein to the contrary, this Declaration shall terminate upon foreclosure or deed in lieu of foreclosure of the Senior Mortgage (as described in the Mortgage) from Declarant to the Illinois Housing Development Authority. This Declaration and the affordability restrictions shall be revived according to the original terms if, during the original affordability restriction period or the original term of this Declaration, the Owner of record before the termination event, or any entity that includes the former owner or those with whom the former Owner has or had family or business ties, obtains an ownership interest in the Project or Real Estate. The election to allow the termination of this Declaration and the Minimum Affordable Housing Period shall only be effective if made in writing by the County.

## **BAR FROM OTHER HOUSING PROGRAMS**

If the County determines that any Owner has violated any of the covenants, conditions or restrictions of this Declaration, the County may bar the Owner, its directors, officers, principals, and agents from ever again participating in any Cook County administered or Cook County related federally assisted housing program, and all such Owners, directors, officers, principals and agents are bound by said determination made by the County.

## **VOID CONVEYANCE; REMEDIES AT LAW AND IN EQUITY; NO WAIVER**

Any conveyance or transfer of the Real Estate made or attempted to be made by the Owner in violation of the covenants, conditions and restrictions of this Declaration is void.

The County, and its successors or assigns to the administration or management of the County HOME Program, has the right to enforce, by any proceeding at law or in equity, all covenants, conditions, or restrictions, now or hereafter imposed by the provisions of this Declaration. The County's remedies include but are not limited to seeking restraint or injunction of a violation of the covenants, conditions or restrictions of this Declaration and recovering damages, including but not limited to those resulting from the labor and expense incurred by the County in making substitute affordable housing available to low and very-low income persons.

Any Owner found to be in violation by a court of competent jurisdiction of any of the foregoing shall also be liable for reasonable attorneys' fees and court costs incurred by the County in prosecuting such action.

Failure by the County to enforce any covenant, condition or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the Borrower has caused this Assignment to be executed by its authorized representatives as of the date first written above.

## BORROWER

**1411-23 Shields, LLC**

An Illinois limited liability company

By: Hispanic Housing Development Corporation  
its managing member

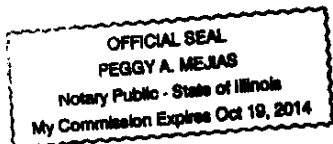
By: *Hipolito Roldan*  
Name: Hipolito Roldan  
Its: President

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

The foregoing instrument was signed and acknowledged before me on November 13, 2012, by Hipolito Roldan, the President of Hispanic Housing Development Corporation, in its capacity as the managing member of 1411-23 Shields, LLC, on behalf of said company.

Given under my hand and official seal, this 13<sup>th</sup> day of November, 2012

My Commission expires: Oct. 19, 2014



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION:

LOTS 11 THROUGH 19, BOTH INCLUSIVE IN BLOCK 79, IN THE SUBDIVISION OF BLOCKS 79, 80 AND 81 AND OUTLOT F OF CHICAGO HEIGHTS IN THE WEST HALF OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 21, TOWNSHIP 35, NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PERMANENT INDEX NUMBER:

32-21-402-036-0000

### COMMON STREET ADDRESSES:

1411, 1415, 1419, 1423 and 1427 Shields Avenue  
Chicago Heights, Illinois 60411

Property of Cook County Clerk's Office