

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

701270 3/3

Report Mortgage Fraud
800-532-8785



1436522068

Doc#: 1436522068 Fee: \$62.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/31/2014 11:22 AM Pg: 1 of 13

The property identified as: **PIN: 29-22-408-019-0000**

Address:

Street: 545 E. 168th St.

Street line 2:

City: South Holland

State: IL

ZIP Code: 60473

Lender: South Suburban Housing Center

Borrower: Byron Bankston

Loan / Mortgage Amount: \$5,500.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

RECEIVED
DEC 31 2014

Certificate number: A4E389B6-3F4E-47C9-823A-3583DEF39BAD

Execution date: 12/19/2014

UNOFFICIAL COPY

701270

This document was prepared by and
after recording should be returned to:

DLA Piper LLP
Att: Elizabeth Friedgut
203 N. LaSalle St., Suite 1900
Chicago, Illinois 60601-1293

RECAPTURE AND LAND USE RESTRICTION AGREEMENT

THIS RECAPTURE AND LAND USE RESTRICTION AGREEMENT (the "Agreement") is made this 19th day of **December, 2014**, by **Byron Bankston**, ("Owner"), to the South Suburban Housing Center, an Illinois not-for-profit corporation ("Sponsor"). Owner conditionally owes Sponsor the amount of **Five Thousand Five Hundred (\$5,500.00)** (the "Grant"). The Grant proceeds from Sponsor to Owner were provided to Sponsor pursuant to the terms and conditions of the United States Department of Housing and Urban Development ("HUD")'s Conciliation Agreement dated June 5, 2013, between the National Fair Housing Alliance, et al. and Wells Fargo Bank, N.A., Case No. 09-12-0708-8 (the "Settlement"). The Agreement is entered into as part of Sponsor's Inclusive Community Fund Program (the "ICF Program"), which aims to provide relief and assistance to communities impacted by the foreclosure crisis and to promote diverse, inclusive recovery in furtherance of the Settlement and the mission of Sponsor. Owner is the holder of legal title to improvements and certain real property commonly known as **545 East 168th Street, South Holland, IL 60473**, located in Cook County, Illinois, and legally described in **Exhibit A** (the "Property").

Owner covenants that Owner is the lawful owner of the Property and has the full right and power to enter into this Agreement and that the Property is unencumbered, except for permitted encumbrances approved by Sponsor as described in **Exhibit B** attached hereto, and any other encumbrances of record accepted by Sponsor in writing (collectively, "**Permitted Encumbrances**"). Owner warrants and will defend the title to the Property against all claims and demands, subject to any Permitted Encumbrances.

UNOFFICIAL COPY

In consideration of Sponsor's provision of the Grant and the benefits accruing to Owner as a result of the Grant such as Owner's ability to either purchase or maintain ownership of the Property, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner has executed and delivered to Sponsor this Recapture Agreement.

Owner and Sponsor agree as follows:

1. Definitions

(a) **"Anniversary Date"** shall mean each anniversary date of the Closing Date during and including the last day of the Recapture Period. For example, if the Closing Date was June 30, 2014, the first Anniversary Date would be June 30, 2015, and each June 30th after that (through the last day of the Recapture Period) would be a subsequent Anniversary Date.

(b) **"Closing Date"** shall mean the date on which the Grant is issued to Owner, which shall be deemed to be the date this Agreement is recorded.

(c) **"Eligible Use of Funds"** shall mean either of the following exclusive uses associated with the Property:

(1) Property Acquisition Costs, which mean (i) down payment assistance, (ii) closing cost assistance, or (iii) escrow reserve assistance; or

(2) Foreclosure Avoidance Costs, which mean (i) delinquent mortgage payments, (ii) property taxes, (iii) homeowners insurance, (iv) homeowner assessment fees, or (v) other fees (including attorneys' fees), costs and advances associated with foreclosure

(d) **"Ineligible Use of Funds"** shall mean any use that Sponsor, in its sole discretion, determines is not an Eligible Use of Funds, including but not limited to the following: costs unassociated with Property Acquisition Costs such as cash payment to Owner at closing; costs unassociated with Foreclosure Avoidance Costs; costs unassociated with housing in general, such as debt consolidation costs.

(e) **"Net Proceeds"** shall mean the gross sale proceeds arising from a direct or indirect sale or transfer of the Property, minus (i) the amount of any permitted Senior Agreement indebtedness or any permitted refinancing thereof repaid at the time of such sale or transfer, (ii) any commercially reasonable, third party brokerage fee paid by Owner with respect to such sale or transfer, (iii) any transfer taxes which, pursuant to applicable law, are paid by Owner, (iv) customary title, escrow and recording charges paid by Owner, (v) customary pro rations or credits made pursuant to the contract for such sale or transfer, (vi) any down payment amount paid directly by Owner to purchase the Property and not provided by Sponsor, but only if the Grant is provided for a Property Acquisition Cost and (vii) such other amounts that Sponsor, in its sole discretion, may deem necessary, appropriate and equitable.

UNOFFICIAL COPY

(f) **"Recapture Conveyance Event"** shall mean any sale, conveyance or other transfer of the Property or any portion of Owner's interest in the Property, excluding any sale, conveyance or transfer (i) to a spouse upon a dissolution of marriage, (ii) to the surviving spouse upon the death of a joint tenant Owner, (iii) by will, or (iv) by foreclosure or deed in lieu of foreclosure or by transferring title to a third party in a short sale that is an arms-length transaction resulting in a release of the Senior Agreement or otherwise by operation of law.

However, upon a Recapture Conveyance Event described in subparagraph (f)(iv) above, if within five years of the Closing date, Owner or any member of Owner's household or immediate family reacquires an ownership interest in the Property, this Agreement in its entirety will be revived and such reacquisition will be deemed a Recapture Conveyance Event.

(g) **"Recapture Event"** shall mean (i) a Recapture Conveyance Event, (ii) the abandonment of the Property or the Property not being in use as Owner's principal residence, or (iii) the conversion of the Property in whole or in part to a rental unit, or (iv) the additional encumbrance of the Property by lien or other agreement without the written consent of Sponsor, or (v) the re-financing of the Property without the written consent of Sponsor (said re-financing restriction shall be construed to include using the Property as collateral for getting *any* additional loans including but not limited to loans to repay credit card debt, debt consolidation loans, home equity loans, or loans to purchase automobiles, consumer goods, real estate, or personal property), or (vi) a Default by Owner, beyond any applicable cure period, under this Agreement or any other document evidencing the Grant, or (vii) dedication of all or a portion of the Grant proceeds by Owner for an Ineligible Use of Funds.

(h) **"Recapture Period"** shall mean the period extending from the date hereof to **December 19, 2019**, the fifth anniversary of the date hereof.

(i) **"Repayment Amount"** shall mean an amount equal to the amount of the Grant.

2. Recapture.

(a) As a condition of the provision of the Grant, Owner agrees to repay to Sponsor the Repayment Amount upon the earliest occurrence within the Recapture Period of any Recapture Event. If no Recapture Event occurs prior to the expiration of the Recapture Period the Grant shall be forgiven in its entirety.

(b) In the event of a Recapture Conveyance Event, the Repayment Amount shall first be repaid from the Net Proceeds of such Conveyance. In the event that the Repayment Amount exceeds the Net Proceeds, Owner shall be liable for the difference, which shall be immediately due and payable. For example, if after a Recapture Conveyance Event the applicable Repayment Amount is \$3,000, and the Net Proceeds are \$1,000, the Net Proceeds will be paid to Sponsor, and Owner's

UNOFFICIAL COPY

remaining liability, immediately due and payable, will be \$2,000. The Sponsor may, at any time and in its sole discretion, waive or amend this subparagraph 2(b) to reduce the Repayment Amount obligation of the Owner.

3. **Default.**

(a) The term "Event of Default" shall mean any one of the following:

(1) Owner's breach of any term, covenant, condition, or agreement of the Agreement, which breach is not cured by Owner within thirty (30) days of Owner's receipt of written notice from Sponsor of such breach; provided, however, that in the event such default cannot reasonably be cured within such thirty (30) day period and if Owner has commenced efforts to cure, then the time to cure shall be extended so long as said party diligently continues to cure such default, as determined by Sponsor in its sole discretion; or

(2) Owner's failure to make any payment due under this Agreement; or

(3) The dedication of all or a portion of the Grant proceeds by Owner for an Ineligible Use of Funds; or

(4) Any default continuing beyond all applicable cure periods under a Senior Agreement that permits the Senior Sponsor to foreclose its lien thereunder.

(b) Sponsor shall give written notice to Owner of any Event of Default. If the Event of Default is not cured within such further time as Sponsor in its sole discretion permits, but in no event more than thirty (30) days after notice, Sponsor may declare a Default ("**Default**") under this Agreement effective upon the date of declaration without further demand of Owner, and as further described in Paragraph 15, and upon such Default Sponsor may:

(1) Declare the unforgiven portion of the Grant immediately due and payable; and/or

(2) Exercise such other rights or remedies as may be available to Sponsor hereunder, at law or in equity.

(c) Sponsor's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of Sponsor's other remedies.

4. **Owner Representations and Warranties.** Owner represents and warrants to Sponsor as follows:

(a) Owner shall only use the Grant proceeds for an Eligible Use of Funds, and shall not use any portion of the Grant proceeds for an Ineligible Use of Funds;

UNOFFICIAL COPY

- (b) The Property shall be the primary residence of Owner at all times during the Recapture Period;
 - (c) Owner shall not lease or rent the Property at any time during the Recapture Period;
 - (d) Owner shall hold fee simple title to the Property at all times during the Recapture Period;
 - (e) Owner shall not own additional residential properties, individually or jointly, except as permitted by Sponsor in its sole discretion.
 - (f) Owner shall notify Sponsor of a Recapture Event no later than five (5) business days subsequent to any event that could reasonably constitute a Recapture Event;
 - (g) Owner has completed comprehensive home ownership and financial counseling approved by Sponsor;
 - (h) Owner agrees to additional **quarterly** counseling approved by Sponsor and attendance at related workshops approved by Sponsor;
 - (i) Owner shall not re-finance the Property (except as expressly allowed for herein) and Owner will not transfer, hypothecate, assign, encumber, or lien the Property (except as expressly allowed for herein);
 - (j) Owner understands and acknowledges that it is receiving financial assistance from Sponsor, as part of the ICF Program, that it would not be able to purchase or maintain the Property without this financial assistance, and that the ICF Program imposes certain requirements and restrictions on any Property purchased or maintained with ICF Program funds, including but not limited to restrictions on use and resale of the Property, as more fully described herein;
 - (k) The information provided by Owner has been true, accurate and complete to the best of Owner's knowledge and ability in completing all eligibility, application, and documentation requirements of the ICF Program, and in all communications with Sponsor, and has not misrepresented or omitted any information to Sponsor that Sponsor in its reasonable discretion deems material in its decision to issue the Grant to Owner; and
 - (l) Owner acknowledges that the Grant proceeds will be distributed directly to the Senior Sponsor or other third party creditors;
5. **Records.** Upon the request of Sponsor, Owner shall furnish within seven (7) days such reports, records, and answers to specific questions from Sponsor relative to any

UNOFFICIAL COPY

lease, sale, or transfer of the Property or any potential Recapture Event or Repayment Amount as defined herein.

6. Indemnification.

(a) Owner shall indemnify Sponsor and Sponsor's respective officers, agents, employees or servants against, and hold them harmless from, liabilities, claims, damages, losses and expenses, including, but not limited to, legal defense costs, attorneys' fees, settlements or judgments, whether by direct suit or from third parties, arising out of Owner's performance under this Agreement, in any claim or suit brought by a person or third party against Sponsor or Sponsor's officers, agents, employees or servants.

(b) If a claim or suit is brought against Sponsor or Sponsor's officers, agents, employees or servants, for which Owner is responsible pursuant to **subparagraph (a)** of this **Paragraph 6**, Owner shall defend, at Owner's cost and expense, any suit or claim, and shall pay any resulting claims, judgments, damages, losses, costs, expenses or settlements against Sponsor or Sponsor's officers, agents, employees or servants.

7. Owner Not Released. Extension of the time for payment of the sums secured by this Agreement granted by Sponsor to any successor in interest of Owner shall not operate to release, in any manner, the liability of the original Owner and Owner's successors in interest. Sponsor shall not be required to commence proceedings against such successor or refuse to extend time for payment of the sums secured by this Agreement by reason of any demand made by the original Owner or Owner's successors in interest.

8. Forbearance by Sponsor Not a Waiver. Any forbearance by Sponsor in exercising any right or remedy under this Agreement, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Sponsor shall not be a waiver of Sponsor's right to accelerate the repayment secured by this Agreement.

9. Remedies Cumulative. All remedies provided in this Agreement are distinct and cumulative to any other right or remedy under this Agreement or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Successors and Assigns Bound; Joint and Several Liability; Captions. The agreements contained in this Agreement shall bind, and the rights under it shall inure to, the respective successors and assigns of Sponsor and Owner, subject to the provisions of **Paragraph 15**. The captions and headings of the paragraphs of this Agreement are for convenience only and are not to be used to interpret or define the provisions of this Agreement.

UNOFFICIAL COPY

11. **Notice.** Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

Owner: **Byron Bankston**
545 East 168th Street
South Holland, IL 60473

Sponsor: **South Suburban Housing Center**
Att: Derek Adkisson/John Petruszak
18220 Harwood Ave, Suite 1
Homewood, IL 60430

Such addresses may be changed by notice to the other party given in the same manner as provided in this Agreement. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) days after proper deposit with the United States Postal Service.

12. **Owner's Copy.** Owner shall be furnished with a conformed copy of this Agreement at the time of execution or after its recordation.

13. **Transfer of the Property.** Owner covenants and agrees to comply with all restrictions on the transfer of the Property, including without limitation the provisions of **Paragraphs 1 and 2** of this Agreement.

14. **Subordination.** This Agreement shall be subject and subordinate in all respects to (i) that certain Agreement dated as of **December 19, 2014** between Owner and **First Savings Bank of Hegewisch** (the "First Senior Sponsor"), recorded in Office of the Recorder of Deeds of Cook County (the "First Senior Agreement"), securing a loan in the original principal amount of **\$134,500**.

The First Senior Sponsor and any secured senior lender is referred to collectively in this Agreement as the "Senior Sponsor."

This Agreement shall also be subordinate to (i) any subsequent mortgage that refinances a Senior Agreement and (ii) any loan modification of a Senior Agreement, so long as such refinancing or modification is in an original principal amount less than or equal to the original principal amount of the mortgage loan or loans being refinanced or modified,

UNOFFICIAL COPY

unless Sponsor, in its sole discretion, agrees to senior refinancing or modification in a greater amount.

15. **Acceleration; Remedies.** Upon an Event of Default under this Agreement, Sponsor, prior to acceleration of the sums secured under this Agreement, shall mail notice to Owner as provided in Paragraph 11 specifying: (1) the breach and Event of Default; (2) the action required to cure such breach; (3) a date, not more than thirty (30) days from the date the notice is mailed to Owner, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Agreement. The notice shall further inform Owner of its right to reinstate after acceleration and the right to assert in any foreclosure proceeding the non-existence of a default, or any other defense of Owner to acceleration. If the breach is not cured on or before the date specified in the notice, Sponsor, at its option, may declare all of the sums secured by this Agreement to be immediately due and payable without further demand and may file a legal action to enforce this Agreement. Sponsor shall be entitled to collect, in such proceeding, all expenses of such action, including, but not limited to, reasonable attorneys' fees, and costs of documentary evidence, abstracts and title reports.

16. **Owner's Right to Reinstate.** Notwithstanding Sponsor's acceleration of the sums secured by this Agreement, Owner shall have the right to have any proceedings implemented by Sponsor to enforce this Agreement discontinued at any time prior to entry of a judgment enforcing this Agreement if: (a) Owner pays Sponsor all sums that would then be due under this Agreement had no acceleration taken place; (b) Owner cures all breaches of Owner contained in this Agreement; (c) Owner pays all reasonable expenses incurred by Sponsor in enforcing the agreements of Owner contained in this Agreement and in enforcing Sponsor's remedies as provided in Paragraph 15, including, but not limited to, reasonable attorneys' fees; and (d) Owner takes such action as Sponsor may reasonably require to assure that the lien of this Agreement, Sponsor's interest in the Property and Owner's obligation to pay the sums secured by this Agreement shall continue unimpaired. Upon such payment and cure by Owner, this Agreement and the obligations secured by it shall remain in full force and effect as if no acceleration had occurred.

17. **Assumption.** This Agreement may not be assumed.

18. **Insurance.** For the duration of the Recapture Period, Owner shall provide or cause to be provided to Sponsor Certificates of Insurance, together with satisfactory evidence of payment of premiums or other related documentation as requested by Sponsor (collectively, "**Insurance Documents**") to confirm that Owner is the owner of (i) a home owner's insurance policy, in which Sponsor is named as a subordinate loss payee, and (ii) a flood hazard insurance policy, in which Sponsor is named as a subordinate loss payee (collectively, the "**Insurance Policies**"). The Insurance Documents shall be provided to Sponsor at least ten (10) days prior to each Insurance Policy's commencement, renewal, and anniversary dates. Owner shall provide Sponsor at

UNOFFICIAL COPY

least thirty (30) days prior written notice of any amendment or termination of coverage of the Insurance Policies.

19. **REASONABLE RESTRAINT ON ALIENATION.** OWNER ACKNOWLEDGES AND AGREES THAT TO THE EXTENT THAT THE RECAPTURE CONVEYANCE EVENT OR ANY OTHER PROVISION IN THIS RECAPTURE AGREEMENT COULD BE DEEMED A RESTRAINT ON ALIENATION, THAT ANY SUCH RESTRAINT (A) IS REASONABLE, (B) IS SUPPORTED BY ADEQUATE CONSIDERATION, (C) IS NECESSARY TO IMPLEMENT SPONSOR'S CHARITABLE OBJECTIVE OF ELIMINATING HOUSING DISCRIMINATION BASED ON RACE AND FOSTERING STABLE, LONG-TERM DIVERSE COMMUNITIES, (D) SHOULD BE ENFORCED AS WRITTEN, AND (E) WAS A MATERIAL INDUCEMENT TO SPONSOR'S INITIAL DECISION TO PROVIDE THE GRANT, WHICH HAS ENABLED OWNER TO BUY THE PROPERTY OR MAINTAIN OWNERSHIP OF THE PROPERTY. THEREFORE, KNOWINGLY AND VOLUNTARILY, TO THE FULLEST EXTENT PERMITTED BY LAW, OWNER WAIVES THE RIGHT TO RAISE ANY DEFENSE TO THE ENFORCEMENT OF ANY PART OR ALL OF THIS RECAPTURE AGREEMENT, WHETHER AT LAW OR IN EQUITY.

20. **Covenant Running with the Land.** This Agreement shall be imposed as an encumbrance and as a covenant running with the land.

21. **Release.** Upon expiration of the Recapture Period, Sponsor shall release the Agreement as permitted hereby and Owner or Owner's successor-in-interest to this Agreement shall pay the costs of recordation, if any.

[Signature on Next Page]

UNOFFICIAL COPY

Exhibit A

Legal Description of Real Estate

Lot 134, in Chapman's Sixth Addition to Tulip Terrace, being a subdivision of part of Lot 7, in County Clerks Division of the Southeast Quarter of Section 22, (recorded September 12, 1888), and also part of Lot 3 and all of Lot 4, in Owners Subdivision of part of the East Half of the Southeast Quarter of Section 22, together with that portion of said East Half of the Southeast Quarter of Section 22, described as beginning at the Southwest corner of aforesaid Lot 4, in Owners Subdivision; thence East to the Southeast corner of said Lot 4; thence South to the North line of aforesaid Lot 3, in Owners Subdivision; thence West to the Northwest corner of said Lot 3; thence North to the point of beginning, all in Township 36 North, Range 14, East of the Third Principal Meridian, according to the plat of said Chapman's Sixth Addition to Tulip Terrace, registered in the Office of the Registrar of Titles of Cook County on February 6, 1963, as Document number 2076742, all in Cook County, Illinois.

Permanent Index Number(s): 29-22-408-019-0000

For informational purposes only, the subject parcel is commonly known as:
545 East 168th Street, South Holland, IL 60473

UNOFFICIAL COPY

Exhibit B

Permitted Encumbrances

This Agreement shall be subject and subordinate in all respects to (i) that certain Agreement dated as of **December 19, 2014** between Owner and **First Savings Bank of Hegewisch** (the "First Senior Sponsor"), recorded in Office of the Recorder of Deeds of Cook County (the "First Senior Agreement"), securing a loan in the original principal amount of **\$134,500**.

Property of Cook County Clerk's Office