



Doc#: 1513429100 Fee: \$62.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/14/2015 04:51 PM Pg: 1 of 13

Document Number

**RETENTION / REPAYMENT
AGREEMENT FOR RENTAL
PROJECTS USING LOW INCOME
HOUSING TAX CREDITS (LIHTCs)**

Document Title

Property of Cook County Clerk's Office

Recording Area

After Recording Return to:

Albert, Whitehead, P.C.
10 North Dearborn Street
Suite 600
Chicago, Illinois 60602
Attn: Patricia Holland

40017064 (9/16)

Parcel Identification Number: See attached Exhibit

A

CCRD REVIEWER

UNOFFICIAL COPY

RETENTION / REPAYMENT AGREEMENT FOR RENTAL PROJECTS USING LOW INCOME HOUSING TAX CREDITS (LIHTCs)

AFFORDABLE HOUSING PROGRAM REPAYMENT AGREEMENT

THIS AGREEMENT is entered into this 14th day of May, 2015, by and between **IFF**, an Illinois not-for-profit corporation, its successors and assigns ("IFF"), **Hispanic Housing Development Corporation**, an Illinois not-for-profit corporation ("Sponsor") and **Sacramento and Thomas Limited Partnership**, an Illinois limited partnership ("Owner"). IFF, Owner and Sponsor 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. IFF is a member of the Federal Home Loan Bank of Chicago ("Chicago Bank"). First American Bank (the "Initial Member Bank"), which is also a member of the Chicago Bank, submitted an application to the Chicago Bank ("the Application") for an AHP subsidy in connection with the acquisition of a leasehold estate in and the construction of a forty-nine (49) unit multifamily rental apartment building to be known as 65th Infantry Regiment Veterans Housing (the "Project") on certain property commonly known as 1045 N. Sacramento Avenue, Chicago, Illinois as legally described on Exhibit A attached hereto and incorporated herein by reference (the "Property"). Sponsor has formed Owner for the purposes of acquiring the leasehold estate and constructing the Project to be rented to very low and low income persons. Sponsor is the sole shareholder of Owner's general partner. The Application was modified on December 12, 2014 by an Affordable Housing Program Modification Request, pursuant to which IFF replaced the Initial Member Bank.
- C. 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.
- D. In connection with the AHP Subsidy, IFF entered into that certain Affordable Housing Program Agreement ("Subsidy Agreement") with an effective date of November 17, 2014 with Chicago Bank and Sponsor for project no. 2014A07027 pursuant to which IFF and Sponsor

UNOFFICIAL COPY

agreed to be bound by AHP Regulations and perform certain monitoring functions with respect to the AHP Subsidy (defined in paragraph 1 below).

E. The parties desire to set forth those circumstances under which the IFF shall be entitled to repayment of the AHP Subsidy proceeds from the Owner or Sponsor in connection with its AHP Subsidy to Sponsor for the purchase, construction or rehabilitation of the Property.

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:

AGREEMENTS

1. Subsidy Amount. The parties acknowledge and agree that subject to the approval of the Chicago Bank, IFF will disburse the sum of Three Hundred Ninety Two Thousand Eight Hundred Six and 00/100 Dollars (\$392,806.00) ("AHP Subsidy") to the Sponsor, which Sponsor has agreed to loan to Owner for use in connection with the acquisition of the leasehold estate and construction of the Project in accordance with the Application. The term during which the Owner and Sponsor must comply with the AHP Regulations 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 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 or as further provided in federal regulations. During the term of this Agreement, the Owner agrees to make Ten (10) units affordable for and occupied by Very-Low Income Households and Thirty Eight (38) units affordable for and occupied by Low Income Households during the Retention Period (the "Income-Eligibility and Affordability Restrictions"). The Project will also contain One (1) market rate unit. In addition, Owner shall reserve Ten (10) units for homeless households in accordance with the "Summary of AHP Project Commitments as of 11/17/2014" appended to the Chicago Bank letter dated November 20, 2014.
3. Notice of Sale or Refinancing. The Sponsor and Owner shall give written notice to IFF and Chicago Bank at least five days prior to any sale or refinancing of the Property occurring prior to the end of the Retention Period.
4. Sale or Refinancing of the Property. If the Property is sold or refinanced prior to the end of the Retention Period, Sponsor and/or Owner must repay an amount equal to the full amount of the AHP Subsidy, unless the Project continues to be subject to a deed restriction, this Agreement

UNOFFICIAL COPY

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 Retention Period.

5. Foreclosure. Upon any foreclosure resulting from any event of default under any senior mortgage on the Property securing the financing for the Project described in the Application, the Income-Eligibility and Affordability Restrictions applicable to the Project shall terminate. Notwithstanding the foregoing, this provision shall not apply following foreclosure of the Third Junior Leasehold Mortgage, Assignment of Rents and Security Agreement (DCEO Loan and Donation Proceeds) granted by Owner in favor of Sponsor.

6. Compliance Documentation. Owner and Sponsor shall provide to IFF 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.

7. 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, ownership, management and operation of the Property.

8. Breach of Affordability or Reporting Requirements; Breach by Owner.

(a) In the event the Owner or Sponsor, at any time during the term of this Agreement, defaults in its obligation to manage and operate the Property and provide compliance information as required pursuant to paragraph 6, 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 IFF or such shorter period of time required to avoid a default by IFF under the Subsidy Agreement, it shall be an "Event of Default" of this Agreement and Sponsor or Owner shall immediately pay IFF that portion of the AHP Subsidy which may be recaptured from IFF by Chicago Bank.

(b) Owner shall repay to IFF 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 AHP Regulations.

(c) IFF shall give Owner's tax credit investor ("Investor") the same written notice of an Event of Default given to Owner as required herein; provided that IFF's failure to give separate written notice to Investor shall not impair or invalidate any notice of default given to Owner or give rise to any liability on the part of IFF to Investor or any other third party. Investor shall have the right to cure defaults within the time periods provided to Owner herein and performance of a cure by Investor or an affiliate of Investor shall have the same effect as would like performance by Owner. Investor's address for notice purposes is included in Section 10 hereafter.

UNOFFICIAL COPY

9. Indemnification and Survival. Sponsor and Owner hereby agree to fully and unconditionally indemnify, defend and hold harmless IFF from and against any judgments, losses, recapture, 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 IFF 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, obligations and indemnification of and by the Sponsor and Owner shall survive the term of this Agreement.

10. Notices. All notices 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:

If to Owner: Sacramento and Thomas Limited
Partnership
c/o Sacramento and Thomas Corporation
325 N. Wells Street, Suite 800
Chicago, IL 60654

With courtesy
copies to: Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Boulevard, Suite 400
Chicago, IL 60661
Attn: Bill Skalitzky

Bank of America, N.A., and
Bank of America CDC Special Holding
Company, Inc.
c/o Bank of America Merrill Lynch
Tax Credit Equity Investment Asset
Management
Mail Code NC1-007-11-25
100 North Tryon Street
Charlotte, NC 28202
Attention: Nicole Baldon, Vice President

If to Sponsor: Hispanic Housing Development Corporation
325 N. Wells, Suite 800
Chicago, Illinois 60654

UNOFFICIAL COPY

Attn: President

If to IFF:

IFF
One North LaSalle Street
Suite 700
Chicago, Illinois
Attn: Stephanie Socall

With a courtesy
copy to:

Albert Whitehead PC
10 N. Dearborn Street
Suite 600
Chicago, IL 60602
Attention: Patricia C. Holland

If to Chicago IFF:

Federal Home Loan IFF of Chicago
200 E. Randolph Drive
Chicago, Illinois 60601
Attention: Community Investment
Department

11. Certifications. Owner and Sponsor hereby certify to IFF 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 1291 of the Affordable Housing Regulations.

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

13. Successors and Assigns. The rights and obligations of the parties to this 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 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 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.

UNOFFICIAL COPY

16. Modification, Waiver and Termination. This Agreement and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the parties hereto.

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

18. 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.

19. Nature of Remedies. IFF'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, Owner and any other Obligor, and IFF 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 IFF, 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. IFF 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 IFF, 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.

SIGNATURE PAGE FOLLOWS

UNOFFICIAL COPY

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

SPONSOR:

HISPANIC HOUSING DEVELOPMENT CORPORATION

An Illinois not-for-profit corporation

By: 
Hipolito Roldan, President

IFF:

IFF

an Illinois not-for-profit corporation

By: _____

Vice President of Capital Solutions

OWNER:

SACRAMENTO AND THOMAS LIMITED PARTNERSHIP, an Illinois limited partnership

By: Sacramento and Thomas Corporation, an Illinois corporation, its general partner

By: 
Hipolito Roldan, President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

SPONSOR:

**HISPANIC HOUSING
DEVELOPMENT CORPORATION**
An Illinois not-for-profit corporation

By: _____
Hipolito Roldan, President

IFF:

IFF
an Illinois not-for-profit corporation

By: Clayton W. [Signature]
Wanda D. [Signature]
Vice President of Capital Solutions

OWNER:

**SACRAMENTO AND THOMAS LIMITED
PARTNERSHIP**, an Illinois limited partnership

By: Sacramento and Thomas Corporation, an Illinois corporation, its general partner

By: _____
Hipolito Roldan, President

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County in the State aforesaid, does hereby certify that ~~Walter D. Matusz~~ the authorized signer for IFF, an Illinois not-for-profit corporation, 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/she signed and delivered such instrument as his/her own free and voluntary act, for all for the uses and purposes set forth therein.

Given under my hand and notarial seal on May 11, 2015.

Jennifer Overton

Notary Public

My Commission Expires:

5/22/16

[SEAL]



Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF ~~COOK~~ WILL)

The undersigned, a Notary Public in and for said County in the State aforesaid, does hereby certify that Hipolito Roldan, the President of Sacramento and Thomas Corporation, which is the general partner ("General Partner") of Sacramento and Thomas Limited Partnership, an Illinois limited partnership (the "Partnership"), personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary act, and as the free and voluntary act of the General Partner, on behalf of the Partnership, all for the uses and purposes set forth therein.

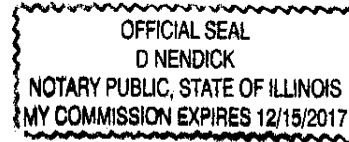
Given under my hand and notarial seal on ~~April~~ ^{MAY} 14, 2015.

D. Nendick

Notary Public

My Commission Expires:

12-15-2017



[SEAL]

STATE OF ILLINOIS)
) SS.
COUNTY OF ~~COOK~~ WILL)

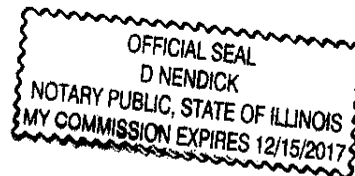
The undersigned, a Notary Public in and for said County in the State aforesaid, does hereby certify that Hipolito Roldan, the President of Hispanic Housing Development Corporation (the "Corporation"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such officer, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary act, and as the free and voluntary act of the Corporation, all for the uses and purposes set forth therein.

Given under my hand and notarial seal on ~~April~~ ^{MAY} 14, 2015.

D. Nendick

Notary Public

My Commission Expires: 12-15-2017



UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

PARCEL 1:

LEASEHOLD ESTATE CREATED BY THE AMENDED AND RESTATED GROUND LEASE MADE BY AND BETWEEN NORWEGIAN AMERICAN HOSPITAL, INC., AN ILLINOIS NOT FOR PROFIT CORPORATION, LANDLORD, AND HISPANIC HOUSING DEVELOPMENT CORPORATION, AN ILLINOIS NOT FOR PROFIT CORPORATION, TENANT, DATED FEBRUARY 4, 2015, WHICH LEASE WAS RECORDED FEBRUARY 5, 2015 AS DOCUMENT 1503619169 AND ASSIGNED TO SACRAMENTO AND THOMAS LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP BY THE ASSIGNMENT AND ASSUMPTION AND AMENDMENT OF GROUND LEASE MADE BY AND AMONG

HISPANIC HOUSING DEVELOPMENT CORPORATION, AN ILLINOIS NOT FOR PROFIT CORPORATION, ASSIGNOR, SACRAMENTO AND THOMAS LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, ASSIGNEE, AND NORWEGIAN AMERICAN HOSPITAL, INC., AN ILLINOIS NOT FOR PROFIT CORPORATION, LANDLORD, DATED FEBRUARY 4, 2015, RECORDED FEBRUARY 5, 2015 AS DOCUMENT NO. 1530619170, AND AS FURTHER AMENDED BY THE SECOND AMENDMENT TO AMENDED AND RESTATED GROUND LEASE DATED May 14, 2015 AND RECORDED MAY 14, 2015 AS

DOCUMENT NO. 1513429092, MADE BY AND BETWEEN SACRAMENTO AND THOMAS LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, ASSIGNEE, AND NORWEGIAN AMERICAN HOSPITAL, INC., AN ILLINOIS NOT FOR PROFIT CORPORATION, LANDLORD, DEMISING AND LEASING FOR A TERM OF 99 YEARS COMMENCING ON FEBRUARY 4, 2015 AND EXPIRING ON JANUARY 31, 2114, THE FOLLOWING DESCRIBED PREMISES, TO WIT:

LOTS 1 THROUGH 6, BOTH INCLUSIVE, EXCEPT THE EAST 33.25 FEET OF SAID LOT 6, LOTS 7 THROUGH 12, BOTH INCLUSIVE, TOGETHER WITH THE NORTH/SOUTH 16 FOOT ALLEY, VACATED BY THE ORDINANCE RECORDED MARCH 1, 1995 AS DOCUMENT NO. 95143450, ALL IN BLOCK 5, IN CARTER'S RESUBDIVISION OF BLOCKS 1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15 AND LOTS 2, 4 AND 5 IN BLOCK 17 IN CARTER'S SUBDIVISION OF BLOCKS 1, 2, 3, 4 AND 7 IN CLIFFORD'S ADDITION TO CHICAGO, A SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM ALL BUILDINGS AND IMPROVEMENTS LOCATED, OR TO BE LOCATED AFTER THE DATE OF THE AFORESAID GROUND LEASE, THEREON.

UNOFFICIAL COPY

PARCEL 2:

FEE SIMPLE TITLE TO ALL BUILDINGS AND IMPROVEMENTS LOCATED, OR TO BE LOCATED AFTER THE DATE OF THE AFORESAID GROUND LEASE, ON THE LEASEHOLD ESTATE HEREINABOVE DESCRIBED AS PARCEL 1.

COMMON ADDRESS: 1045 -51 N. SACRAMENTO AVENUE,
CHICAGO, IL 60622

PERMANET INDEX NUMBERS: 16-01-305-001-0000;
16-01-305-002-0000;
16-01-305-003-0000;
16-01-305-004-0000;
16-01-305-005-0000;
16-01-305-006-0000;
16-01-305-007-0000;
16-01-305-008-0000;
16-01-305-009-0000;
16-01-305-010-0000, AFFECTS OTHER PROPERTY

159973v2

Property of Cook County Clerk's Office