



Doc#: 1526501090 Fee: \$52.00
RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/22/2015 02:57 PM Pg: 1 of 8

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

Dan Klaff
Applegate & Thorne-Thomsen, P.C.
626 W Jackson, Suite 400
Chicago, IL 60661

First American Title
Order # 266680 *494*

RECAPTURE AND LAND USE RESTRICTION AGREEMENT

THIS RECAPTURE AND LAND USE RESTRICTION AGREEMENT ("Agreement") is made this 28th day of August, 2015, by Aaron Smith and Tamara Smith, a MARRIED couple ("Owner"), to IFF, an Illinois not-for-profit corporation ("Sponsor"). Owner conditionally owes the Sponsor the amount of Ten Thousand Dollars (\$10,000.00) (the "Grant"). The grant proceeds from Sponsor to Owner consist of funds from the Illinois Department of Commerce and Economic Opportunity (DCEO) Housing Rehabilitation and Resale Program under the Illinois "Ike" Disaster Recovery Program, which is referred to herein as "IDRP". The Agreement is entered into, in part, to ensure compliance with all applicable regulations, restrictions, and requirements of the IDRP program (the "IDRP Program Requirements"). Owner is the holder of legal title to improvements and certain real property commonly known as 323 Frederick Ave, Bellwood, IL ("Property"), legally described on Exhibit A hereto located in the Cook County, State of Illinois.

Owner covenants that Owner is the lawful Owner of the Property conveyed by this Agreement and has the full right and power to enter into this Agreement and that the Property is unencumbered, except for a first Agreement to PNC Mortgage ("First Agreement" or "Senior Agreement") and any other encumbrances of record accepted by the Sponsor in writing (collectively, "Permitted Encumbrances"). Owner warrants and will defend generally the title to the Property against all claims and demands, subject to any Permitted Encumbrances.

Owner and Sponsor agree as follows:

1. **Recapture.**

(a) As a condition of the provision of the Grant, the Owner agrees to repay to the Sponsor the Repayment Amount (as hereinafter defined) upon the earliest to occur, within the Recapture Period (as hereinafter defined), of any Recapture Event (as herein defined). In the event of the occurrence of a Recapture Event, Owner shall repay to the Sponsor an amount ("Repayment Amount") equal to the unforgiven portion of the Grant, as set forth below. With respect to any Recapture Conveyance Event, the Grant shall be repaid only from the Net Proceeds if any, of

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such Conveyance, and any portion of the Repayment Amount in excess of such Net Proceeds shall be forgiven. If no Recapture Event occurs prior to the expiration of the Recapture Period, or if any permitted transfer occurs due to a foreclosure or deed in lieu of foreclosure as aforesaid, the obligation to repay the Grant shall be forgiven in its entirety.

(b) **"Recapture Event"** shall mean (i) any sale, conveyance or other transfer of the Property, excluding any sale, conveyance or transfer (A) to a spouse upon a dissolution of marriage, (B) to the surviving spouse upon the death of a joint tenant Owner, (C) by will, by foreclosure or deed in lieu of foreclosure or otherwise by operation of law, or (D) as may be approved in writing by the Sponsor, or (ii) the Property is abandoned or is no longer the Owner's principal residence or is converted in whole or in part to a rental unit, or (iii) the Property is liened, agreed, or encumbered without the written consent of the Sponsor, or (iv) the Property is re-financed without the written consent of the 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 (v) there exists a default by the Owner, beyond any applicable cure period, under this Agreement or any other document evidencing the Grant.

(c) **"Recapture Conveyance Event"** shall mean any sale, conveyance or other transfer of 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, by foreclosure or deed in lieu of foreclosure or otherwise by operation of law.

(d) **"Net proceeds"** shall mean the proceeds of sale minus any documented capital improvement costs incurred by the Owner, principal payments and the Owner's initial contribution to the cost of acquiring the Property. If none of the events described in clauses 3(b)(i), (ii), (iii), (iv), or (v) above occurs prior to the expiration of the Grant Term, the Grant shall be forgiven in its entirety.

(e) **"Recapture Period"** shall mean the period extending from the date hereof to August 21, 2020.

2. **Default.** The Owner's failure to make any payment due under this Agreement shall be an "Event of Default" hereunder. The Sponsor shall give written notice of an Event of Default and Recapture Event. If (i) the Event of Default is not cured within such further time as the Sponsor in its sole discretion permits, but in no event more than thirty (30) days after notice, or (ii) if there exists any default under the Agreement and of the documents associated with the IDPR Program Requirements (the "Grant Documents"), the Sponsor may declare a Default ("**Default**") under this Agreement effective on the date of such declaration of Default and notice thereof to the Owner, and upon such Default the Sponsor may:

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- (a) Declare the unforgiven portion of the Grant immediately due and payable; and/or
- (b) Exercise such other rights or remedies as may be available to the Sponsor hereunder, at law or in equity.

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

3. Owner Representations and Warranties. The Owner represents and warrants to the Sponsor as follows:

(a) The Owner's household has a gross annual income, as adjusted for family size that is less than or equal to eighty percent (80%) of the median income for the metropolitan statistical area in which the Property is located, as determined by the United States Department of Housing and Urban Development ("HUD").

(b) The Owner will hold fee simple title to the Property.

(c) The Property will be the principal Property of the Owner and the Owner will not lease or rent the Property.

(d) The Owner has completed eight (8) hours of comprehensive home Owner training from a HUD-approved housing agency.

(e) The Owner will not re-finance the Property (except as expressly allowed for herein) and the Owner will not transfer, hypothecate, Agreement, encumber, or lien the Property (except as expressly allowed for herein or in the Grant Documents);

(e) The Owner understands and acknowledges that it is receiving financial assistance from IDR Program, that it would not be able to purchase the Property without this financial assistance, and that the IDR Program imposes certain requirements and restrictions on any Property purchased with IDR Funds, including but not limited to restrictions on use and resale of the Property, as more fully described herein.

4. Program Requirements. The Owner shall, upon the Sponsor's request, certify as to its household income on a form provided by the Sponsor (the "Income Certification"). The Owner shall provide such written evidence substantiating the information on such Income Certification as the Sponsor may require.

5. Records. At the request of the Sponsor, the Owner shall furnish such reports, records and shall give specific answers to questions from the Sponsor from time to time relative to any resale of the Property or any potential Recapture Event or Repayment Amount as defined herein.

6. Indemnification.

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(a) The Owner shall indemnify the Sponsor and the 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 the Owner's performance under this Agreement, in any claim or suit brought by a person or third party against the Sponsor or the Sponsor's officers, agents, employees or servants.

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

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.

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Owner: Aaron Smith and Tamara Smith
323 Frederick Ave
Bellwood, IL 60104

Sponsor: IFF
1 N LaSalle, Suite 700
Chicago, IL 60602
Attn: James Ratner
(312) 629-0060

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 subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (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 subsection (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 _____ between Owner and _____ (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 \$_____.

This Agreement shall be subject and subordinate in all respects to (i) that certain Agreement dated as of _____ between Owner and Cook County HOME Down Payment Assistance (the "Second Senior Sponsor"), recorded in Office of the Recorder of Deeds of Cook County (the "Second Senior Agreement"), securing a loan in the original principal amount of \$5,000.00.

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

In the event of foreclosure or deed-in-lieu of the First Senior Agreement, any provisions herein or any provisions in any other collateral agreement restricting the use of the property to low or moderate-income households or otherwise restricting the Owner's

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ability to sell the property shall have no further force or effect. Any person (including his successors or assigns) receiving title to the property through a foreclosure or deed-in-lieu of foreclosure shall receive title to the property free and clear from such restrictions.] [Include this paragraph if using FHA financing.

15. Acceleration; Remedies. Upon Owner's breach of any of its agreements in this Agreement, and/or a default, declared by the Senior Sponsor(s), continuing beyond all cure periods and permitting foreclosure under the First Senior Agreement and/or the Second Senior 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; (2) the action required to cure such breach; (3) a date, not less 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 the 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 occurred; (b) Owner cures all breaches of any other agreements 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.

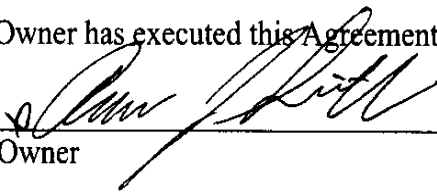
17. Assumption. This Agreement may not be assumed.

18. Release. Upon expiration of the Recapture Period, the Sponsor shall release the Agreement and Owner shall pay the costs of recordation, if any.

[Signature on Next Page]

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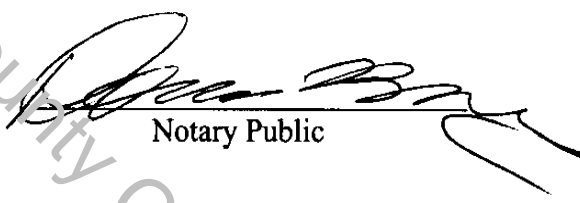
IN WITNESS WHEREOF, Owner has executed this Agreement.

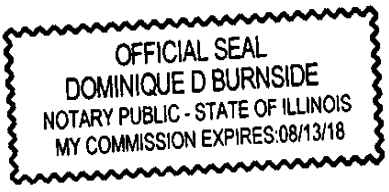

Owner

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Aaron Smith, 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 she signed and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 8/28/15.


Notary Public



PROPERTY OF COOK COUNTY Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION

Legal Description: LOT 290 IN CUMMINGS AND FOREMAN REAL ESTATE CORPORATION RESUBDIVISION OF PART OF MIAMI PARK IN THE WEST 1/2 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index #'s: 15-09-301-003-0000 Vol. 0160

Property Address: 323 Frederick Ave., Bellwood, Illinois 60104

Property of Cook County Clerk's Office