

# UNOFFICIAL COPY

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Karen A. Yarbrough  
Cook County Recorder of Deeds  
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**THIS DOCUMENT WAS PREPARED  
BY, AND AFTER RECORDING THIS  
DOCUMENT SHOULD BE  
RETURNED TO:**

Jeffrey B. Horwitz  
Deutsch, Levy & Engel, Chartered  
225 W. Washington Street, Suite 1700  
Chicago, Illinois 60606

PIN: 15-08-403-076-0000

**Commonly known as:**

430 Geneva Avenue  
Bellwood, Illinois 60104

**Neighborhood Stabilization Program**

(The Above Space for Recorder's Use Only)

## RECAPTURE AGREEMENT

**THIS RECAPTURE AGREEMENT** (this "Agreement") is dated as of the 30th day of November, 2016 made by **LINDA GRIFFIN** (the "Owner"), whose address is 430 Geneva Avenue, Bellwood, Illinois 60104, in favor of the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** (the "Authority") a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3895/1 et seq., as amended from time to time (the "Act"), and the rules promulgated under the Act, as amended and supplemented (the "Rules") whose address is 401 North Michigan Avenue, Suite 700, Chicago, Illinois.

## WITNESSETH:

**WHEREAS**, the Owner is the owner of the fee estate of that certain real property commonly known as 430 Geneva Avenue, Bellwood, Illinois 60104, and all the improvements now or hereafter located thereon, legally described on Exhibit "A" attached to and made a part of this Agreement (the "Residence"); and

**WHEREAS**, the Authority has applied for and received an allocation of funds (the "NSP Funds") from the United States Government under the Neighborhood Stabilization Program (the "Neighborhood Stabilization Program") as authorized by Title

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III of Division B of the Housing and Economic Recovery Act of 2008, Public Law 110-289 ("HERA"), and other applicable NSP Laws (as defined NSP Allocation Agreement), all as the same may be amended and supplemented from time to time, and which are hereby incorporated herein by reference.

**WHEREAS**, Proviso Township Mental Health Commission, a unit of local government (the "Subgrantee"), applied for an award of Neighborhood Stabilization Program funds, to be used in connection with the Neighborhood Stabilization Program objective to benefit Low, Moderate and Middle Income Persons as set forth in 24 CFR 570, as supplemented by the October 2008 Notice, the June 2009 Notice and the April 9, 2010 Notice, and as further amended, supplemented or revised from time to time (the "National Objective").

**WHEREAS**, subject to the terms and conditions set forth in that certain Neighborhood Stabilization Program Agreement, dated as of April 8, 2010, the Authority agreed to award Subgrantee a portion of the NSP Funds (the "Allocated Funds") to be used by Subgrantee in connection with certain activities in furtherance of the National Objective and other uses of NSP Funds permitted under the NSP Laws (the "NSP Allocation Agreement"; terms not otherwise defined herein shall have the meanings given thereto in the NSP Allocation Agreement).

**WHEREAS**, the Subgrantee and The Resurrection Project, an Illinois not-for-profit corporation ("TRP"), as developer, entered into that certain Neighborhood Stabilization Program Loan Agreement dated as of June 3, 2010 (the "Development Agreement"), whereby Subgrantee agreed to allocate a portion of the Allocated Fund to the TRP for use in connection with certain Eligible Uses (as defined in the NSP Allocation Agreement), including, but not limited to, the providing of financial assistance to the purchaser of the Residence. Pursuant to that certain First Amendment to Development Agreement, dated September 1, 2010, TRP was authorized to directly acquire the Residence in the name of Melrose Park NSP 1, LLC, an Illinois limited liability company ("Developer"), and rehabilitate and sell or rent the Residence in accordance with the Development Agreement.

**WHEREAS**, at the request of the Subgrantee, TRP, Developer and the Owner, the Authority has agreed to provide direct financial assistance to the Owner, in the form of a forgivable loan from the Allocated Funds in the amount Twenty-Four Thousand and 00/100 Dollars (\$24,000.00) (the "Loan"), in order to help the Owner meet the cost of purchasing the Residence. In consideration of the foregoing, the Owner agrees to comply with the terms, conditions and covenants set forth below, and consents to be regulated and restricted by the Authority as herein provided and as provided for in the NSP Laws, and any additional rules, regulations, policies and procedures of HUD or the Authority promulgated from time to time, all as the same may be amended and supplemented from time to time and as applicable.

**WHEREAS**, in addition to this Agreement, the Loan is evidenced, secured and governed by the following documents, all of which have been entered into

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contemporaneously with the execution of this Agreement: (a) that certain Promissory Note from the Owner to the Authority in the amount of the Loan (the "Note"); (c) that certain Second Mortgage of even date herewith by Owner in favor of the Authority (the "Mortgage"); and (d) all other documents that evidence, govern or secure the Loan (the "Ancillary Loan Documents"); this Agreement, the Note, the Mortgage and the Ancillary Loan Documents are collectively referred to herein as the "Loan Documents".

**NOW, THEREFORE**, the parties agree as follows:

1. **Incorporation**. The foregoing recitals are made a part of this Agreement.

2. **Recapture**.

a. As a condition to the making of the Loan, the Owner agrees to repay to the Authority the Repayment Amount (as defined in subparagraph b. below) if one or more of the following events (each such event is called a "Recapture Event") occurs within the Recapture Period (as hereinafter defined):

- (i) the Residence is no longer the Owner's principal residence or the Owner converts the Residence to a rental unit; or
- (ii) upon the occurrence of an Event of Default hereunder, or upon the occurrence of a default by the Owner under any other document evidencing or securing the Loan; or
- (iii) a refinancing of a senior mortgage loan other than a Permitted Refinancing (as defined below); or
- (iv) a sale, conveyance or other transfer of ownership of the Residence for consideration, excluding Permitted Transfers (as defined below).

The following events (each such event is called a "Permitted Transfer") are *not* Recapture Events:

- (iv) a transfer by will or by operation of law upon the death of a joint tenant Owner or death of either husband or wife as tenants by the entirety Owner;
- (v) a transfer to a spouse as a result of a dissolution of marriage; or
- (vi) a refinancing that lowers the interest rate of a senior mortgage loan on the Residence, decreases its term or lowers the monthly payment of the loan ("Permitted Refinancing"); it does *not* include a refinancing that increases the outstanding balance of the first mortgage loan, increases the interest rate on the loan or allows the Owner to receive money as a result of the refinancing. Any

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Permitted Refinancing must be approved by the Authority, in writing, in advance, and the failure to so approve will result in such refinancing not being deemed to be an eligible Permitted Refinancing.

b. If a Recapture Event occurs, the Owner shall pay to the Authority the amount of the Loan reduced by **one-one hundred twentieth (1/120<sup>th</sup>)** of that amount for each full month the Owner has occupied the Residence during the term of this Agreement (the "Repayment Amount"), but only to the extent of Net Proceeds, if any, resulting from such Recapture Event. If the Repayment Amount is greater than the Net Proceeds, the Owner must pay only the amount of the Net Proceeds; the amount of the Repayment Amount in excess of the Net Proceeds shall be forgiven. For purposes of this Paragraph 2.b, "Net Proceeds" means the proceeds of the sale, conveyance or other transfer of the Residence after payment of reasonable and customary closing costs and expenses *less* (i) the amount of any documented capital improvement costs to the Residence incurred by the Owner; (ii) the Owner's initial contribution to the cost of acquiring the Residence; and (iii) the amount of superior liens against the Residence.

c. If no Recapture Event occurs prior to the expiration of the Recapture Period, the Loan shall be forgiven in its entirety. In the event of a Recapture Event described in Section 2.a. above which does not trigger a Net Proceeds calculation, the Loan shall not be forgiven in whole or in part, rather, in such event, the Owner shall be responsible for the repayment of the full Loan amount.

3. **Recapture Period; Self-Operative Termination Provision.** This Agreement shall encumber the Residence and be binding on the Residence and the holder of any legal, equitable or beneficial interest in it for **ten (10) years** from the date of this Agreement (the "Recapture Period").

4. **Prohibited Transfer.** Without the prior written consent of the Authority, the Owner shall not effect, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Residence (each a "Prohibited Transfer") not in compliance with the terms and conditions of this Agreement. A Prohibited Transfer shall include without limitation, any re-subordination of a Loan by Owner without the prior written consent of the Authority, which may be granted or withheld in the Authority's sole discretion.

5. **Event of Default.** The occurrence of any of the following shall be an "Event of Default" hereunder: (i) Owner fails to make any payment due under this Agreement, (ii) the violation by Owner of any of the provisions of this Agreement or the occurrence of a default by Owner under any other document evidencing or securing the Loan or any senior loan; or (iii) the Owner provides the Authority false or misleading information or representations in connection with the Loan. If the Event of Default is not cured within such time as the Authority in its sole discretion permits, but in no event more than thirty (30) days after notice, or (ii) if there exists any Default under any other Loan Document, the Authority may:

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- a. Declare the unforgiven portion of the Loan immediately due and payable; provided, however, if such Event of Default is a result of the providing of false or misleading information or representations by the Owner to the Authority in connection with the Loan, the Loan shall not be forgiven in whole or in part and the full amount of the Loan shall be immediately due and payable; and/or
- b. Exercise such other rights or remedies as may be available to the Authority hereunder or under any of the Loan Documents, at law or in equity.

The Authority's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of the Authority's other remedies. No delay on the part of the Authority in exercising any rights hereunder, failure to exercise such rights or the exercise of less than all of its rights shall operate as a waiver of any such rights.

6. **Amendment.** This Agreement shall not be altered or amended without the prior written approval of the Authority.

7. **Partial Invalidity.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

8. **Gender.** The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.

9. **Captions.** The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of the agreement.

10. **WAIVER OF JURY TRIAL.** THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LOAN OR THIS AGREEMENT.

(Signature Page Follows)



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**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

LOT 11 (EXCEPT THE NORTH 15 FEET THEREOF) AND THE NORTH 5 FEET OF LOT 12 IN BLOCK 9 IN THE RESUBDIVISION OF BLOCKS 5 TO 10, INCLUSIVE IN FIRST ADDITION TO HULBERT'S ST. CHARLES ROAD SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office