

# UNOFFICIAL COPY



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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 04/28/2017 03:50 PM PG: 1 OF 8

**THIS DOCUMENT WAS PREPARED BY:**

Legal Department  
Illinois Housing Development Authority  
111 E. Wacker Drive, Suite 1000  
Chicago, Illinois 60601

**AFTER RECORDING THIS DOCUMENT SHOULD BE RETURNED TO:**

Illinois Housing Development Authority  
111 E. Wacker Drive, Suite 1000  
Chicago, Illinois 60601  
Attention: Hardest Hit Fund

**Property Identification No.:**

18013160040000

**Property Address:**

7857 w. 45th st  
Lyons, Illinois

**Illinois Hardest Hit Fund  
Homeowner Emergency Loan Program**

## HELP

(The Above Space for Recorder's Use Only)

### RECAPTURE AGREEMENT

**THIS RECAPTURE AGREEMENT** (this "Agreement") dated as of the 1<sup>st</sup> day of December, 2016, made by Maria R. Fernandez and Israel Fernandez Married (the "Owner") whose address is 7857 w. 45th st, Lyons, Illinois, 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 3800/1 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 111 E. Wacker Drive, Suite 1000, Chicago, Illinois.

### WITNESSETH:

**WHEREAS**, the Owner is the owner of the fee estate of that certain real property which is commonly known as 7857 w. 45th st, Lyons, Illinois and all the improvements now or hereafter located thereon and which is legally described on **Exhibit A** attached to and made a part of this Agreement (the "Residence"); and

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**WHEREAS**, the Authority has agreed to make a forgivable loan to the Owner **in the LESSER AMOUNT of the following** the (“**Forgivable Loan**”): Thirty-Five Thousand and No/100 Dollars (\$35,000.00), or (b) twelve (12) months of interim mortgage payment assistance for the Property pursuant to the Authority’s Illinois Hardest Hit Fund Homeowner Emergency Loan Program (the “**Program**”);

**WHEREAS**, in addition to this Agreement, the Forgivable Loan is evidenced, secured and governed by the following documents which have been entered into contemporaneously with the execution of this Agreement: (a) the Forgivable Loan Agreement between the Owner and the Authority, (b) the Promissory Note from the Owner to the Authority (the “**Note**”) and (c) all other documents that evidence, govern or secure the Forgivable Loan (the “**Ancillary Loan Documents**”). This Agreement, the Forgivable Loan Agreement, the Note and the Ancillary Loan Documents are collectively referred to herein as the “**Loan Documents**”;

**WHEREAS**, terms not otherwise defined herein shall have the meaning ascribed thereto in the Forgivable Loan Agreement; and

**WHEREAS**, as an inducement to the Authority to make the Forgivable Loan, the Owner has agreed to provide this Agreement.

**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 Authority’s making of the Forgivable 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 before the Termination Date (as defined in Paragraph 3 below):

- (i) the Owner sells, conveys or transfers title to the Residence and there are Net Proceeds;
- (ii) the Owner refinances the Residence in a manner such that it is not a Permitted Refinancing (as defined below); or
- (iii) an Event of Default (as defined in Paragraph 4 below) occurs pursuant to the terms of any of the Loan Documents.

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

- (v) a transfer to a spouse as a result of a divorce;

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- (vi) a transfer by operation of law to a surviving spouse upon the death of a joint tenant Owner;
- (vii) a transfer by will; or
- (viii) a Permitted Refinancing.

The term "Permitted Refinancing" means a refinancing that lowers the interest rate of the first mortgage loan on the Residence, decreases its term or lowers the monthly payment of the loan; 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.

b. If a Recapture Event occurs during the first sixty (60) months after the date payments discontinue, but before the Termination Date the Owner shall pay to the Authority the full amount of the Forgivable Loan reduced by 1/60th of that amount for each full month the Owner has occupied the Residence after the date payments discontinue (the "Repayment Amount"). Notwithstanding the foregoing, (i) if the Repayment Amount is greater than the Net Proceeds, the Owner must pay only the amount of the Net Proceeds, and the amount of the Repayment Amount in excess of the Net Proceeds shall be forgiven, or (ii) if there are no Net Proceeds then the full amount of the Forgivable Loan shall be forgiven. For purposes of this Agreement, "Net Proceeds" means the proceeds of the sale or 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 after the date of this Agreement, as approved by the Authority, in its sole discretion, and (ii) the Owner's initial contribution to the cost of acquiring the Residence.

### **3. Covenants to Run With the Land; Self-Operative Termination Provision.**

This Agreement shall encumber the Residence and be binding on any future owner of the Residence and the holder of any legal, equitable or beneficial interest in it for five (5) years from the date payments discontinue (the "Termination Date"); provided, however: that: (a) if no Recapture Event occurs before the Termination Date; (b) if any sale, conveyance or transfer of the Residence occurs due to a foreclosure or a deed in lieu of foreclosure; this Agreement shall automatically terminate and shall be deemed to have been released and this release provision shall be self-operative without the need, necessity or requirement for the Authority to record a written release or termination of this Agreement.

**4. Event of Default.** The following shall constitute a default under this Agreement (an "Event of Default"): (a) Owner's failure to make any payment due under this Agreement, or (b) if the Owner commits fraud under the Loan Documents or pursuant to the Program as determined by a court of competent jurisdiction ("Fraud"). The Authority shall give written notice of an Event of Default to Owner at the Residence. Upon an Event of Default the Authority may:

- a. Declare the unforgiven portion of the Forgivable Loan immediately due and payable;

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b. Refuse to subordinate this Agreement to any subsequently recorded document or lien; and/or

c. For the commission of Fraud only, 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.

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

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

7. **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.

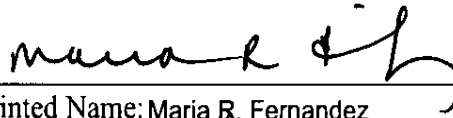
8. **Captions**. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of the agreement.

9. **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 FORGIVABLE LOAN OR THIS AGREEMENT.

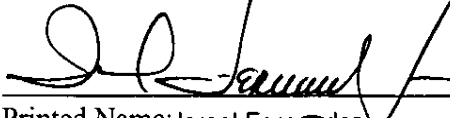
[Signature Page Follows]

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IN WITNESS WHEREOF, the Owner has executed this Agreement as of the date and year first above written.



Printed Name: Maria R. Fernandez



Printed Name: Israel Fernandez

Property of Cook County Clerk's Office

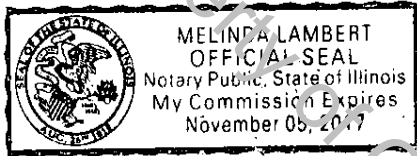
COOK COUNTY  
RECORDER OF DEEDS

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STATE OF ILLINOIS )  
Cook COUNTY ) SS  
)

I, Melinda Lambert, a Notary Public in and for said county and state, do hereby certify that Maria R. Fernandez & Israel Fernandez is 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 a signed and delivered the said instrument as an free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 1<sup>st</sup> day of December, 2016.



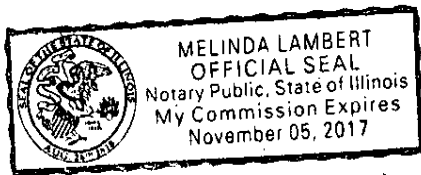
[Signature]  
Notary Public

My commission expires: 11/5/17

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Cook COUNTY ) SS  
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[Signature]  
Notary Public

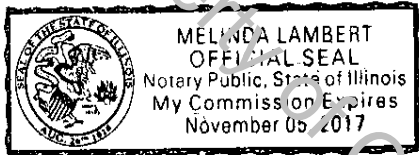
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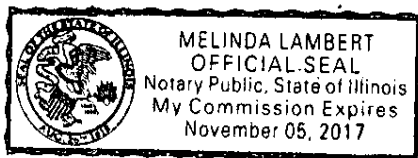
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[Signature]  
Notary Public

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## EXHIBIT A

### Legal Description

Maria R. Fernandez  
Israel Fernandez

LOT 8 (except 93 feet thereof and except the East 68.5 feet thereof) in Riverside Acres a subdivision in the South ½ of Section 1 TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

COOK COUNTY  
RECORDER OF DEEDS

Common Address:

7857 w. 45th st  
Lyons, IL 60534

Permanent Index No.:

18013160040000