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Prepared by and after recording return to:

Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attn: Heather Aeschleman



Doc# 1908806043 Fee \$64.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00
EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 03/29/2019 09:52 AM PG: 1 OF 14

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**RETENTION / RECAPTURE AGREEMENT
FOR RENTAL PROJECTS**

THIS AGREEMENT is entered into this 15th day of MARCH, 2019 among **CIBC BANK USA**, an Illinois state chartered bank (the "Member"), and **MERCY HOUSING LAKEFRONT**, an Illinois not for profit corporation (the "Sponsor"), and **MIRIAM APARTMENTS LP**, an Illinois limited partnership (the "Owner"). For projects using Low Income Housing Tax Credits, the Owner will be an Illinois limited partnership or limited liability company. The Member, the Sponsor, and the Owner are each a "Party" to this agreement, and 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 Agency ("FHFA") 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. The Member is a member of the Federal Home Loan Bank of Chicago ("FHLBC") and submitted an application dated June 15, 2018 (the "Application") for an AHP grant for the purchase, construction, or rehabilitation of property commonly known as Miriam Apartments and located at 4707 N. Malden Street in Chicago, Illinois and legally described on Exhibit A attached hereto (the "Project"). The Owner and Sponsor each have an ownership interest in the Project.

C. Pursuant to regulations (including, without limitation, those contained in 12 CFR Part 1291) promulgated by the FHFA pursuant to FIRREA (the "AHP Regulations"), members of each FHLBank are required to provide for the repayment of any subsidized advances or other subsidized assistance in connection with unused or improperly used AHP subsidies.

D. In connection with the AHP grant, the Member entered into that certain Federal

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Home Loan Bank of Chicago Affordable Housing Program Agreement (“Subsidy Agreement”) dated November 14, 2018 with the FHLBC and the Sponsor, pursuant to which the Member and the Sponsor agreed to be bound by the AHP Regulations and to perform certain monitoring functions with respect to the Grant (defined below).

E. The Parties desire to set forth the nature and duration of the income-eligibility and affordability restrictions associated with the Project.

F. The Parties desire to set forth, *inter alia*, those circumstances under which the Member shall be entitled to a recapture of Grant funds from either the Sponsor or the Owner in connection with the Grant to the Sponsor for the purchase, construction, or rehabilitation of the Project.

AGREEMENTS

1. Subsidy Amount. The Parties hereby acknowledge and agree that the Member has, on even date herewith, disbursed the proceeds of an AHP grant to the Sponsor and/or the Owner in the amount of \$750,000 (the “Grant”).

2. Compliance and Term. The Sponsor and the Owner shall, at all times, comply with all laws, rules, and regulations (including, without limitation, the AHP Regulations), and with the provisions contained in the Application and in the Subsidy Agreement as they relate to the construction, ownership, management, and operation of the Project. The term, during which the Sponsor and the Owner must comply with the AHP Regulations to qualify and maintain the Grant, is fifteen (15) years from the date of project completion, at which time this Agreement shall terminate (the “Retention Period”).

3. Affordability Restrictions. The Sponsor and the Owner agree, during the Retention Period, to manage and operate the Project 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 the U.S. Department of Housing and Urban Development (“HUD”), the AHP Regulations, or as further provided in federal regulations. The Sponsor and the Owner agree to make 40 of the units affordable for and occupied by very-low-income households, 0 of the units affordable for and occupied by low-income households, and 10 units affordable for and occupied by moderate-income households during the term of the Retention Period.

4. Notice of Sale or Refinancing. The Member and the FHLBC shall be given notice by the Sponsor and/or the Owner of any sale or refinancing of the Project occurring prior to the end of the Retention Period.

5. Sale or Refinancing of the Project. If the Project is sold or refinanced prior to the end of the Retention Period, the Sponsor and/or the Owner must repay to the FHLBC an amount equal to the full amount of the Grant, unless the Project continues to be subject, for the duration of the Retention Period, to a deed restriction or other mechanism incorporating the income-eligibility

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and affordability restrictions committed to in the Application.

6. Foreclosure. The income-eligibility and affordability restrictions applicable to the Project terminate after foreclosure on the Project.

7. Compliance Documentation. The Sponsor and the Owner shall provide to the Member any information regarding the Project and use of the Grant pursuant to the AHP Regulations, as amended from time to time, and as required by the FHLBC.

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

(a) In the event that the Sponsor and/or the Owner, at any time during the term of the Grant, defaults in its obligation to manage and operate the Project and/or to provide compliance information as required pursuant to Section 7 above, or otherwise fails to comply with the terms of this Agreement or the Application, and such default continues for a period of sixty (60) days after notice to the Sponsor and/or the Owner from the Member, or such shorter period of time required to avoid a default by the Member under the Subsidy Agreement, it shall be an Event of Default of this Agreement, and the Sponsor and the Owner shall immediately pay the Member that portion of the Grant which the Member may be required to repay to the FHLBC.

(b) The Sponsor and/or the Owner shall repay to the Member that portion of the Grant, including interest, if appropriate, that, as a result of their respective actions or omissions, is not used in compliance with the terms of the Application or the requirements of the AHP Regulations, unless such noncompliance is cured by the Sponsor and/or the Owner within a reasonable period of time, or the circumstances of noncompliance are eliminated through a modification of the Application, pursuant to the AHP Regulations.

9. Indemnification and Survival. The Sponsor and the Owner hereby agree to fully and unconditionally indemnify, defend, and hold harmless the Member from and against any judgments, losses, repayment, liabilities, damages (including consequential damages), costs, expenses of whatsoever kind or nature, including, without limitation, attorneys' fees, expert witness fees, and any other professional fees and litigation expenses, or other obligations incurred by the Member that may arise in any manner out of actions or omissions which result from the Sponsor's or the Owner's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties, obligations, and indemnification of the Sponsor and the Owner shall survive the term of this Agreement.

10. Notices. Notices, reports, and communications hereunder shall be in writing and shall be deemed to be properly given when personally delivered to the Party entitled to receive the notice, or three (3) days after the same is sent by certified or registered U.S. mail, postage prepaid, or by overnight courier properly addressed to the Party entitled to receive such notice at the addresses below; provided that recurring reports, certifications, and ordinary communications shall be permitted to be transmitted electronically via facsimile. Any Party may, at any time, give notice in writing to the other Parties of a change of its address for the purpose of this Section 10.

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If to the Member: CIBC Bank USA
120 S. LaSalle Street
Chicago, Illinois 60603
Attn: Cheryl Wilson

With a copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attn: Heather Aeschleman, Esq.

If to the Sponsor: Mercy Housing Lakefront
120 South LaSalle, Suite 1850
Chicago, Illinois 60603
Attn: David Lyon

With a copy to: Applegate & Thorne-Thomsen
425 S. Financial Place, Suite 1900
Chicago, Illinois 60605
Attn: Bennett P. Applegate Jr.

If to the Owner: Miriam Apartments LP
120 South LaSalle, Suite 1850
Chicago, Illinois 60603
Attn: David Lyon

With a copy to: Applegate & Thorne-Thomsen
425 S. Financial Place, Suite 1900
Chicago, Illinois 60605
Attn: Paul Davis

And: NEF Assignment Corporation
10 South Riverside Plaza
Suite 1700
Chicago, Illinois 60606-3908
Attention: Senior Vice President, Asset Management

And: Barnes & Thornburg LLP
41 S. High Street
Suite 3300
Columbus, Ohio 43215-6104
Attention: Holly Heer

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If to the FHLBC: Federal Home Loan Bank of Chicago
 200 East Randolph Drive
 Chicago, Illinois 60601
 Phone: 312-565-5824
 Fax: 312-565-6947
 Attention: Community Investment Department

11. Certifications. The Sponsor and the Owner hereby certify to the Member as follows:
- (a) All the units in the 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 Grant shall only be for uses authorized under Part 1291 of the AHP Regulations.
12. Joint and Several. The obligations of the Sponsor and the Owner hereunder are joint and several.
13. HUD Secondary Financing Rider. The HUD Secondary Financing Rider attached to this agreement is hereby incorporated into this agreement as if fully set forth herein. In the event of any inconsistency between this agreement and the provisions of the HUD Secondary Financing Rider, the HUD Secondary Financing Rider shall control.

[SIGNATURES ON NEXT PAGE]


COOK COUNTY
 RECORDER OF DEEDS

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Executed and delivered as of the date first above written.

CIBC BANK USA, an Illinois state chartered bank

By: 
 Name: Cheryl Wilson
 Title: Managing Director

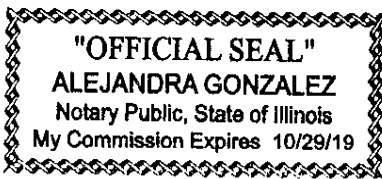
STATE OF ILLINOIS)
) ss
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Cheryl Wilson, personally known to me to be the Managing Director of **CIBC BANK USA**, an Illinois state chartered bank, and 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 severally acknowledged that as such Managing Director, she signed and delivered the said instrument, as her free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and official seal this 26 day of March, 2019.

(SEAL)


 Notary Public

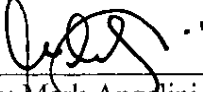


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 RECORDER OF DEEDS

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MERCY HOUSING LAKEFRONT, an Illinois not for profit corporation

By: 
Name: Mark Angelini
Title: President

STATE OF ILLINOIS)
COUNTY OF Cook) ss

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Mark Angelini, personally known to me to be the President of **MERCY HOUSING LAKEFRONT**, an Illinois not for profit corporation, and 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 severally acknowledged that as such President, he signed and delivered the said instrument, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 27th day of March, 2019.


Notary Public



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MIRIAM APARTMENTS LP, an Illinois limited partnership

By: MHL Miriam Apartments GP LLC, an Illinois limited liability company, its General Partner

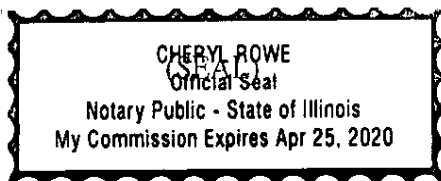
By: Mercy Housing Lakefront, an Illinois not-for-profit corporation, its manager

By: [Signature]
Name: Mark Angelini
Title: President

STATE OF ILLINOIS)
COUNTY OF Cook) ss

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Mark Angelini, personally known to me to be the President of Mercy Housing Lakefront, an Illinois not for profit corporation the manager of MHL Miriam Apartments GP LLC, an Illinois limited liability company, the general partner of Miriam Apartments LP, an Illinois limited partnership, and 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 severally acknowledged that as such President, he signed and delivered the said instrument, as his free and voluntary act, and as the free and voluntary act of said partnership, for the uses and purposes therein set forth.

Given under my hand and official seal this 20th day of March, 2019.



[Signature]
Notary Public

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EXHIBIT A LEGAL DESCRIPTION

LOT 134 IN SHERIDAN DRIVE SUBDIVISION, BEING A SUBDIVISION OF THE NORTH THREE QUARTERS OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THAT PART OF THE WEST HALF OF SAID NORTHWEST QUARTER SECTION, WHICH LIES NORTH OF THE SOUTH 800 FEET THEREOF AND EAST OF THE GREEN BAY ROAD, IN COOK COUNTY, ILLINOIS. ✓

PLN: 14-17-104-011-0000

Address: 4707 N. Malden Street, Chicago IL 60640

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HUD SECONDARY FINANCING RIDER

This Rider ("Rider") is attached to and made a part of that certain Retention/Recapture Agreement For Rental Projects (herein, the "Agreement") dated MARCH 1, 2019 among **CIBC BANK USA**, an Illinois state chartered bank (the "Member"), **MERCY HOUSING LAKEFRONT**, an Illinois not for profit corporation (the "Sponsor"), and **MIRIAM APARTMENTS LP**, an Illinois limited partnership (the "Owner"). The Agreement and any and all other documents now or hereafter executed and/or delivered in connection with the Agreement (the "Junior Obligation") are hereafter collectively referred to as the "Junior Obligation Documents." The terms and conditions of this Rider supersede all other terms of the Junior Obligation Documents, and, should there be any conflict or inconsistency between this Rider and any other provisions of the Junior Obligation Documents, the terms and conditions of this Rider shall prevail.

As used herein, "Senior Loan Documents" shall mean (i) that certain Note (Multistate) dated MARCH 1, 2019 made by the Owner payable to the order of PNC Bank, N.A., a national banking association ("Senior Lender") in the principal amount of \$2,950,000 (herein, the "Senior Note") evidencing a loan (herein, the "Senior Loan") from Senior Lender to Owner and (ii) that certain Multifamily Mortgage, Assignment of Leases and Rents, and Security Agreement dated MARCH 1, 2019 made by Owner in favor of Senior Lender (herein, the "Senior Mortgage") dated MARCH 1, 2019, ~~20~~ from Owner in favor of Senior Lender, granting a mortgage on the project known as Miriam Apartments and located at 4707 N. Malden Street in Chicago, Illinois, FHA Project No. 071-35918 (herein, the "Project"); (iii) that certain Regulatory Agreement for Multifamily Projects (herein, the "Regulatory Agreement") dated MARCH 1, 2019, ~~20~~ by and between Owner and the Secretary of Housing and Urban Development (herein, "HUD"); and (iv) any and all other documents required by Senior Lender and/or HUD in connection with, evidencing and/or securing the Senior Loan.

The Junior Lender, by acceptance of delivery and recordation of the Agreement, and the Owner, by execution of the Agreement, agree to the following provisions incorporated in said Agreement to the same extent as if fully rewritten therein:

1. The Junior Obligation Documents and all amounts now and/or hereafter advanced thereunder and/or secured thereby are specifically subordinate to the Senior Loan Documents and all amounts now and/or hereafter advanced thereunder and/or secured thereby.
2. Intentionally Deleted.
3. The Junior Obligation may be assumed on behalf of the Owner (but not on behalf of the Sponsor) when a sale or transfer of the physical assets occurs under the following conditions:
 - a. Not more than the excess, if any, of (i) 75 percent of the net proceeds of the sale or transfer is applied to the reduction of the Junior Obligation over (ii) the amount paid on account of any other loans with respect to the Project which are junior to the Senior Loan but senior to the Junior Obligation; provided, however, that if there are other loans which have the same priority as the Junior Obligation, the foregoing amount shall be allocated *pari passu* among such loans based upon the total outstanding indebtedness of each.
 - b. As used herein, net proceeds are the funds available to the Owner after:

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Correcting any monetary or covenant default under any of the Senior Loan Documents, and

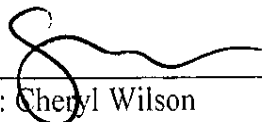
Making required contributions to any reserve funds and needed improvements to the Project as evidenced by HUD's annual inspection reports.

4. If HUD approves a sale of the project pursuant to HUD guidelines for transfers of physical assets, then Junior Lender will agree to such transfer of ownership of the project.
5. If HUD acquires title to the project by foreclosure or a deed in lieu of foreclosure, the obligations of Owner under the Agreement shall terminate (but the obligations of Sponsor under the Agreement shall remain in place).
6. All work performed with the proceeds of the Agreement must be cost certified and conformed to Davis-Bacon requirements, if applicable in accordance with Program Obligations.
7. The Agreement is subject to and subordinate to the Senior Mortgage, the Regulatory Agreement and that certain Building Loan Agreement between the Owner and Senior Lender.
8. Proceeds of the Junior Obligation may only be used to cover allowable project costs or any anticipated operating shortfall.
9. As long as HUD or its successors or assigns is the insurer or holder of the Senior Mortgage, any payments by Owner due under the Junior Obligation Documents shall be payable only from 75 percent of available "surplus cash" (or "residual receipts") as that term is defined in the Regulatory Agreement and subject to the availability of such surplus cash (or residual receipts) in accordance with the provision of said Regulatory Agreement. The restriction on payment imposed by this paragraph shall not excuse any default caused by failure of the Owner to pay the Junior Obligation.
10. Owner has obtained the prior written consent of the Senior Lender to the existence of the Junior Obligation.
11. Intentionally Deleted.
12. Intentionally Deleted.
13. The Junior Lender certifies that the Junior Obligation Documents represent a bona fide transaction and that it fully understands all of HUD's requirements for such secondary financing.
14. In the event of any conflict between (i) any of the Junior Obligation Documents, and (ii) any of the Senior Loan Documents, the Section of the National Housing Act under which HUD insures the Senior Mortgage, and/or any applicable HUD rule, regulation, or requirement (collectively, the "HUD Documents and Requirements"), the HUD Documents and Requirements shall be controlling in all respects.
15. Nothing herein shall limit Member's right to pursue remedies against Sponsor under the Junior Obligation Documents, and Member may apply any and all funds received by Sponsor at any time against the Junior Obligation.

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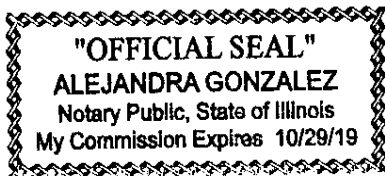
Executed and delivered as of the date first above written.

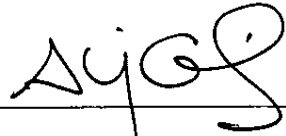
CIBC BANK USA, an Illinois state chartered bank

By: 
 Name: Cheryl Wilson
 Title: Managing Director

STATE OF Illinois)
) SS.
 COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 26 day of March, 2019, by Cheryl Wilson, Managing Director of **CIBC BANK USA**, an Illinois state chartered bank, on behalf of the bank.





Printed Name: Alejandra Gonzalez

Notary Public in and for said County and State

[SEAL, IF ANY]

My appointment expires: 10/29/19

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MIRIAM APARTMENTS LP, an Illinois limited partnership

By: MHL Miriam Apartments GP LLC, an Illinois limited liability company, its General Partner

By: Mercy Housing Lakefront, an Illinois not-for-profit corporation, its manager

By: [Signature]
Name: Mark Angelini
Title: President

STATE OF Illinois)
) SS.
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 27th day of March, 2019, by Mark Angelini, President of Mercy Housing Lakefront, an Illinois not-for-profit corporation, manager of MHL Miriam Apartments GP LLC, an Illinois limited liability company, General Partner of MIRIAM APARTMENTS LP, an Illinois limited partnership, on behalf of the limited partnership.

[Signature]
Printed Name: Cheryl Rowe
Notary Public in and for said County and State



My appointment expires: April 25, 2020

COOK COUNTY
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