

UNOFFICIAL COPY

Doc#: 1915755145 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 06/06/2019 09:48 AM Pg: 1 of 12

This document was prepared by,
and after recording, return to:

Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place
Suite 1900
Chicago, Illinois 60605
Attn: Gregory C. Whitehead

Permanent Tax Index Numbers:
03-08-100-053-0000
03-08-100-054-0000

Property Address(es):
120 W. Boeger Drive
5 West Dundee Road
Arlington Heights, Illinois

This space reserved for Recorders use only.

**FIDELITY NATIONAL TITLE
NC1800022CE**

2 of 4

RETENTION / RECAPTURE AGREEMENT FOR RENTAL PROJECTS

THIS AGREEMENT is entered into this 15th day of May, 2019, by and between **VILLAGE BANK & TRUST**, an Illinois banking corporation ("Bank"), **HOUSING OPPORTUNITY DEVELOPMENT CORPORATION**, an Illinois not-for-profit corporation ("Sponsor") and **HEART'S PLACE LP**, an Illinois limited partnership ("Owner"). The Bank, 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. The Bank is a member of the Federal Home Loan Bank of Chicago ("Chicago Bank") and submitted an application dated June 13, 2018 to the Chicago Bank ("the Application") for an AHP subsidy in connection with the purchase, construction and/or rehabilitation of the property commonly known as Heart's Place located in Arlington Heights, Illinois as legally described on Exhibit A attached hereto and incorporated herein by reference (the "Property"). Sponsor has formed Owner for the purpose of acquiring, constructing or rehabilitating the Property to be

UNOFFICIAL COPY

rented to Low Income Households and Very-Low Income Households (each as defined herein). Sponsor is the sole member of Owner's general partner.

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, Bank entered into that certain Affordable Housing Program Agreement ("Subsidy Agreement") with an effective date of November 14, 2018 with Chicago Bank and Sponsor for project no. 2018A07007 pursuant to which Bank and Sponsor 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 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 Bank 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, Bank shall disburse the sum of **Two Hundred Seventy Thousand and No/ Dollars (\$270,000.00)** ("AHP Subsidy") to the Sponsor, which Sponsor has agreed to loan to Owner for use in connection with the purchase, construction or rehabilitation of the Property 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 Sponsor and the Owner agree to make **Eleven (11)** units affordable for and occupied by Very-Low Income Households

UNOFFICIAL COPY

and **Seven (7)** units affordable for and occupied by Low Income Households. Owner and Sponsor also acknowledge that **Four (4)** units shall be reserved for homeless households in accordance with the “Summary of AHP Project Commitments as of 11/14/2018” appended to the Chicago Bank letter dated November 30, 2018.

3. Notice of Sale or Refinancing. The Sponsor and Owner shall give written notice to the Bank 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 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.

6. Compliance Documentation. Owner and Sponsor shall provide to the Bank 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 the AHP Subsidy, 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 written notice to Owner from Bank or such shorter period of time required to avoid a default by Bank under the Subsidy Agreement, it shall be an “Event of Default” of this Agreement and Sponsor or Owner shall immediately pay Bank that portion of the AHP Subsidy which may be recaptured from Bank by Chicago Bank.

(b) Owner and/or Sponsor shall repay to Bank that portion of the AHP Subsidy, 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 Owner or Sponsor within a reasonable period of time or the

UNOFFICIAL COPY

circumstances of noncompliance are eliminated through a modification of the Application, pursuant to AHP Regulations.

9. Indemnification and Survival. Sponsor and Owner hereby agree to fully and unconditionally indemnify, defend and hold harmless the Bank 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 the Bank 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 expiration or termination of this Agreement.

10. Notices. All notices relating to this Agreement or required by the AHP Regulations shall be in writing and shall be deemed properly given when personally delivered to the Party entitled to receive the notice, or three (3) days after the same is sent by registered or certified 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. 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. Notices, requests and demands shall be addressed as follows:

If to Owner:

Heart's Place, LP
2001 Waukegan Road
P.O. Box 480
Techney, Illinois 60082
Attention: Richard Koenig

NEF Assignment Corporation
10 South Riverside Plaza
Suite 1700
Chicago, Illinois 60606
Attn: General Counsel

If to Sponsor:

Housing Opportunity Development
Corporation
2001 Waukegan Road
P.O. Box 480
Techney, Illinois 60082
Attention: Richard Koenig

If to Bank:

Village Bank & Trust
234 West Northwest Highway
Arlington Heights, Illinois 60004
Attention: Stephanie Molster

UNOFFICIAL COPY

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

11. Certifications. Owner and Sponsor hereby certify to Bank 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.

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. Bank'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 Obligors, and Bank may resort to every other right or remedy available at law or in equity

UNOFFICIAL COPY

without first exhausting the rights and remedies contained herein. Failure of Bank, 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. Bank 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 Bank, 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.

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.

OWNER:

HEART'S PLACE LP,
an Illinois limited partnership

By: Heart's Place GP, LLC,
an Illinois limited liability company,
its general partner

By: Housing Opportunity Development
Corporation,
an Illinois not for profit corporation,
its managing member

By: _____
Name: _____
Title: _____

SPONSOR
HOUSING OPPORTUNITY DEVELOPMENT
CORPORATION,
an Illinois not-for-profit corporation

By: _____,
_____, President

BANK:

VILLAGE BANK & TRUST,
an Illinois banking corporation

By: Stephanie Molster
Printed Name: Stephanie Molster
Title: Vice President

Cook County Clerk's Office

UNOFFICIAL COPY

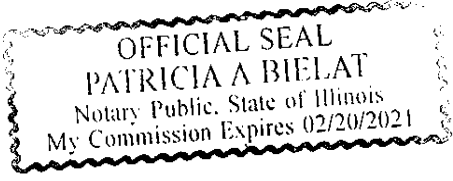
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, PATRICIA BIELAT, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Stephanie Molski personally known to me and known by me to be an Authorized Signer for **VILLAGE BANK & TRUST** ("Bank") and the same person in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that 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 Notarial Seal this 15th day of MAY 2019.

Patricia Bielat
Notary Public

My Commission Expires:
2/20/21



STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, _____, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as the _____ of Housing Opportunity Development Corporation, the managing member of **HEART'S PLACE GP, LLC**, general partner of **HEART'S PLACE, LP**, an Illinois limited partnership ("Owner"), appeared before me this day in person and acknowledged that ___ signed and delivered the said instrument as ___ own free and voluntary act and as the free and voluntary act of said corporation on behalf of Owner for the uses and purposes therein.

Given under my hand and notarial seal this _____ day of _____, 2019.

Notary Public

My Commission Expires:

UNOFFICIAL COPY

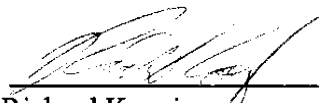
IN WITNESS WHEREOF, the parties have executed this Affordable Housing Program Repayment Agreement as of the date first written above.

OWNER:

HEART'S PLACE LP,
an Illinois limited partnership

By: Heart's Place GP, LLC,
an Illinois limited liability company,
its general partner

By: Housing Opportunity Development
Corporation,
an Illinois not for profit corporation,
its managing member

By: 
Name: Richard Koenig
Title: Executive Director

BANK:

VILLAGE BANK & TRUST,
an Illinois banking corporation

By: _____
Printed Name: _____
Title: _____

SPONSOR
HOUSING OPPORTUNITY DEVELOPMENT
CORPORATION,
an Illinois not-for-profit corporation

By: 
Name: Richard Koenig
Title: Executive Director

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT _____ personally known to me and known by me to be an Authorized Signer for **VILLAGE BANK & TRUST** ("Bank") and the same person in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that 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 Notarial Seal this _____ day of _____ 2019.

Notary Public

My Commission Expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Laura Ruiz, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Richard Koenig, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as the Executive Director of Housing Opportunity Development Corporation, the managing member of **HEART'S PLACE GP, LLC**, general partner of **HEART'S PLACE, LP**, an Illinois limited partnership ("Owner"), appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation on behalf of Owner for the uses and purposes therein.

Given under my hand and notarial seal this 15th day of May, 2019.

Laura Ruiz
Notary Public

My Commission Expires:



UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

I, Laura Ruiz, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as the President of **HOUSING OPPORTUNITY DEVELOPMENT CORPORATION**, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein.

Given under my hand and notarial seal this 15th day of May, 2019.

Laura Ruiz
Notary Public

My Commission Expires:



UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

Lot 1 in Hearts Place Resubdivision, being a resubdivision of lots 2 and 3 in Hardee's Dundee road Resubdivision; being a subdivision of parts of the Northwest 1/4 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 8, Township 42 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof recorded July 30, 2018 as document 1821145026, in Cook County, Illinois.

Address: 5 West Dundee Road and 120 W. Boeger Drive, Arlington Heights, Illinois

PIN Number: 03-08-100-053-0000
03-08-100-054-0000

Property of Cook County Clerk's Office