

RETENTION / RECAPTURE AGREEMENT FOR RENTAL

PROJECTS NOT USING LOW INCOME HOUSING TAX CREDITS (LIHTCs)

**AFFORDABLE HOUSING PROGRAM
RECAPTURE AGREEMENT**

THIS AGREEMENT is entered into this ____ day of _____, ____ by and between _____ (“Bank”), _____ (“Sponsor”) and _____ (“Owner”). The Bank, Sponsor and Owner 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 _____, _____ (“the Application”) for an AHP subsidy in connection with the purchase, construction, or rehabilitation of the property commonly known as _____ to be located at _____ (“Property”).

C. Pursuant to regulations (including, without limitation, those contained in 12 CFR Part 951) 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 grant, Bank entered into that certain Affordable Housing Program Subsidy Agreement (“Subsidy Agreement”) dated _____, _____ with Chicago Bank and Sponsor, 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 below).

E. The Parties desire to set forth those circumstances under which the Bank shall be entitled to a recapture of subsidy funds in connection with the grant to Sponsor.

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:

1. Subsidy Amount. The Parties acknowledge and agree that Bank has, on even date herewith, disbursed the sum of \$ _____ (“AHP Subsidy”) to the Sponsor and/or Owner to be used in connection with the purchase, construction, or rehabilitation of the Property. The term during which the Sponsor and Owner must comply with the AHP Regulations to qualify and maintain the AHP Subsidy is 15 years from the date of project completion, at which time this Agreement shall terminate (“Retention Period”).

2. Affordability Requirements. Sponsor and Owner 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 the U.S. Department of Housing and Urban Development (“HUD”), the AHP Regulations, or as further provided in federal regulations. The Sponsor and Owner agree to make _____ of units affordable for and occupied by very low income households and _____ of units affordable for and occupied by low income households, and _____ of units affordable for and occupied by moderate income households during the term of this Agreement.

3. Notice of Sale or Refinancing. The Bank and Chicago Bank shall be given notice by Sponsor and/or Owner of 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 Property continues to be subject to a deed restriction or a mechanism incorporating income-eligibility and affordability restrictions committed to in the Application for the duration of the Retention Period.

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

6. Compliance Documentation. Sponsor and Owner 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. Sponsor and Owner 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 Sponsor or Owner, 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 notice to Sponsor or 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 Subsidy which may be recaptured from Bank by Chicago Bank.

(b) Owner shall repay to Bank that portion of the AHP Subsidy, including interest, if appropriate, that, as a result of Owner's actions or omission, 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 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. Sponsor and Owner hereby agree to fully and unconditionally indemnify, defend and hold harmless Bank from and against any judgments, losses, repayment, 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 Bank that may arise in any manner out of actions or omissions which result from Owner or Sponsor's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties, obligations and indemnification of Owner and Sponsor shall survive the term of this Agreement.

10. Notices. Notices, reports and communications hereunder shall be in writing and will be deemed to be properly given when personally delivered to the party entitled to receive the notice or three 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.

If to Sponsor : [Sponsor Name]
[Street Address]
[City, State, Zip]
Phone:
Fax:
Attention:

If to Owner : [Owner Name]
[Street Address]
[City, State, Zip]
Phone:
Fax:
Attention:

If to Bank: [Bank Name]
[Street Address]
[City, State, Zip]
Phone:
Fax:
Attention:

If to Chicago Bank: Federal Home Loan Bank of Chicago
111 East Wacker Drive, Suite 800
Chicago, Illinois 60601
Phone: 312-565-5824
Fax: 312-565-6947
Attention: Community Investment
Department

11. Certifications. Sponsor and Owner 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 951 of the AHP Regulations.

12. Joint and Several. The obligations of Owner and Sponsor hereunder are joint and several.

Executed and delivered as of the date first written above.

Name of Bank

By: _____

Its: _____

Name of Sponsor

By: _____

Its: _____

Name of Owner

By: _____

Its: _____