

This Document Prepared By and After
Recording Return to:

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Senior Legal Counsel
Cook County Land Bank Authority
69 W. Washington St., Ste. 3100
Chicago, IL 60602

(Space Above Line for Recording Data)

RECAPTURE AGREEMENT

This Recapture Agreement (“Recapture Agreement”) is entered into by and between the County of Cook, a body politic and corporate, d/b/a Cook County Land Bank Authority (“CCLBA”) and _____ (“Recipient”) as of the ____ day of _____, 20__ (“Closing Date”).

RECITALS

WHEREAS, CCLBA is authorized under its enabling ordinance, Chap. 103, Art. 1, Sec. 103-1, et seq., of the Cook County Code of Ordinances, to use available resources to facilitate the return of vacant, abandoned, and tax delinquent properties to productive use thereby combating community deterioration, creating economic growth, and stabilizing the housing and job markets; and

WHEREAS, CCLBA has authorized the establishment of that certain Home Purchase Down Payment Assistance Grant Program (“Program”) for the purpose of financing a portion of the down payment and/or closing costs for the acquisition of certain properties owned by CCLBA through the use of certain funds available through the fund known as the “Equity Fund”; and

WHEREAS, the Program is administered in accordance with certain program guidelines established by CCLBA, as may be amended from time to time (“Program Guidelines”); and

WHEREAS, the Recipient is purchasing the property commonly known as _____ and further described in **Exhibit A** attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, the Recipient desires to receive and CCLBA desires to give the Grant Amount (as defined below) to be funded through Equity Funds, and which Grant Amount shall be paid at closing on behalf of the Recipient and which is to be used solely for the Eligible Costs (as defined below); and

WHEREAS, the Grant Amount shall be forgiven provided that the Recipient continues in title and in possession of the Premises and meets the other terms and conditions of this Recapture Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits accruing to the Recipient as a result of receiving the Grant Amount, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. RECITALS

The above recitals are hereby incorporated herein and made a part hereof by reference.

SECTION 2. GRANT

The forgivable grant (“Grant”) shall be made from CCLBA to the Recipient upon the following terms and conditions:

- (a) The principal sum of the Grant shall be for the amount of \$ _____ (“Grant Amount”) which Grant Amount shall be for no more than six percent (6%) of the purchase price of the Property, not to exceed \$20,000.00, and shall only be used for Eligible Costs.
- (b) “Eligible Costs” shall mean down payment and closing costs related to the purchase of the Property as shown on the settlement statement at closing.

SECTION 3. RECAPTURE; SELF-OPERATIVE TERMINATION

- (a) As a condition to CCLBA’s making of the forgivable Grant, Recipient agrees to repay the Grant Amount (“Recapture Amount”) to CCLBA if the Property does not remain primary owner-occupied by recipient for a period of three (3) years from the Closing Date. The “Recapture Period” shall mean the three (3) year period starting on the Closing Date and terminating on the third (3rd) anniversary thereof (“Expiration Date”).
- (b) This Recapture Agreement shall be binding upon the owner of the Property and the holder of any legal, equitable or beneficial interest in the Property for a period of three (3) years from the Closing Date; provided, however, that: (i) if no Event of Default occurs before the Termination Date; or (ii) if any sale, conveyance or transfer of the Property occurs due to a foreclosure or deed in lieu of foreclosure, this Recapture 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 CCLBA to record a written release of termination of this Recapture Agreement.

SECTION 4. COVENANTS, REPRESENTATIONS AND WARRANTIES

Recipient covenants and agrees with CCLBA that:

4.1 Taxes and Assessments

- (a) Recipient will pay when due all general taxes and assessments, special assessments, water charges and all of the charges against the Premises and shall, upon written request, furnish to CCLBA receipts evidencing payment thereof, provided that Recipient, in good faith and with reasonable diligence, may contest the validity or amount of any such taxes, assessments or charges, provided that during any such contest the enforcement of the lien of such taxes, assessments or charges is stayed.
- (b) Recipient will not suffer (unless bonded or insured over) any mechanic's, laborer's, materialmen's, or statutory lien to remain outstanding upon any of the Premises. Recipient may contest such lien, provided that Recipient shall first post a bond in the amount of the contested lien, or provide title insurance over such contested lien, and further provided that the Recipient shall diligently prosecute the contested lien and cause the removal of the same.

4.2 Insurance

Recipient shall keep the Premises continuously insured in such amounts and against such risks as required of Recipient by the Senior Lender (as hereinafter defined), paying the premiums for said insurance as they become due. Policies of insurance shall name CCLBA as an additional insured. All policies of insurance shall provide that the same shall not be cancelled, except upon thirty (30) days' prior written notice to CCLBA.

4.3 Maintenance of the Premises

- (a) Recipient shall preserve and maintain the Premises in good condition and repair, will not commit or suffer any waste thereof, and will keep the same in a clean, orderly and attractive condition. Recipient shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.
- (b) If the Premises or any part thereof is damaged by fire or any other cause, Recipient will immediately give notice to CCLBA.
- (c) CCLBA or its representatives shall have the right to inspect the Premises to assure compliance with the terms of this Recapture Agreement.
- (d) Recipient shall promptly comply, and cause the Premises to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Premises or any part thereof and with all instruments and documents of record or otherwise affecting the Premises or any part thereof.
- (e) If all or any part of the Premises shall be damaged by fire or other casualty, Recipient, subject to the rights of the insurer, will promptly restore the Premises to the equivalent of its condition prior to the casualty, to the extent of any insurance proceeds made available to the Recipient for that purpose.

4.4 Subordination

This Recapture Agreement shall be subject and subordinate in all respects to that certain mortgage (“Senior Mortgage”) dated as of even date herewith between Recipient and _____ (“Senior Lender”) recorded with the Office of the Cook County Clerk to secure an indebtedness in the original principal amount of \$_____ not to exceed the amount paid for the purchase of the Property (“Sale Price”). This Recapture Agreement shall also be subordinate to any subsequent mortgage that refinances the Senior Mortgage, so long as such refinancing is not in an original principal amount greater than the Sale Price.

4.5 Foreclosure of Senior Mortgage.

In the event of a transfer of title of the Premises through foreclosure or recording of a deed in lieu of foreclosure to the Senior Lender pursuant to the Senior Mortgage, Recipient acknowledges and agrees that the three (3) year owner-occupancy requirement set out herein shall be released and shall have no further force or effect; provided, however, that all such covenants and restrictions shall be revived according to the original terms if, during the Recapture Period, the Recipient or any member of Recipient’s household or family reacquires an ownership interest in the Premise. Any other person (including the successors and/or assigns of Senior Lender) receiving title to the Premises through a foreclosure or deed in lieu of foreclosure of the Senior Mortgage shall also receive title to the Premises free and clear of such restriction.

Further, if Senior Lender acquires title to the Premises pursuant to a deed in lieu of foreclosure, the lien of this Recapture Agreement and the restrictions contained herein shall automatically terminate upon the Senior Lender’s acquisition of title to the Premises, provided that : (i) the Senior Lender has given written notice to Recipient of a default under the Senior Mortgage in accordance with its terms, and (ii) the Recipient shall not have cured the default under the Senior Mortgage within any applicable cure period(s) provided for therein.

SECTION 5. DEFAULT

5.1 Events of Default.

The following shall constitute a default under this Recapture Agreement (“Event of Default”):

- (a) Recipient’s failure to maintain primary owner-occupancy by Recipient of the Property for a period of three (3) years from the Closing Date; or
- (b) Recipient’s failure to comply with the requirements set out in Sections 4.1, 4.2 and 4.3 of this Recapture Agreement; or
- (c) Recipient commits fraud under this Recapture Agreement or any and all agreements, instruments and documents executed and delivered to CCLBA previously, now or hereafter by, on behalf of or for the benefit of the Recipient in connection with the purchase of the Property including, but not limited to, this Recapture Agreement, the CCLBA grant application, the CCLBA Affidavit of Occupancy, and any other documents as required by CCLBA, all as from time to time may be amended, supplemented or restated (“Grant Documents”) or any terms of the Program.

5.2 Remedies.

If an Event of Default occurs, the Recapture Amount shall become immediately due and payable and subject to recapture without further notice or demand and CCLBA shall be entitled to

immediate payment of such Recapture Amount. CCLBA shall have such rights and remedies as may be available at law or at equity.

5.3 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to CCLBA by this Recapture Agreement is intended to be exclusive of any other right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder now or hereafter existing at law, in equity, or by statute.

SECTION 6. NO WAIVER

6.1 CCLBA's failure to require strict performance by the Recipient of any provision of this Recapture Agreement shall not waive, affect or diminish any right of CCLBA thereafter to demand strict compliance and performance therewith, nor shall any waiver by CCLBA of an Event of Default waive, suspend or affect any other Event of Default under this Recapture Agreement, whether the same is prior or subsequent thereto, or of the same or a different type.

6.2 Failure of CCLBA, for any period of time or on more than one occasion, to exercise any remedy available to CCLBA as described in Section 7 shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Event of Default. No act of omission or commission of CCLBA, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by CCLBA and then only to the extent specifically recited therein.

SECTION 7. GENERAL CONDITIONS

7.1 Joint and Several Obligations.

If the Recipient shall consist of more than one individual, all of the representations, warranties, obligations and covenants of the Recipient contained herein and in the Grant Documents shall be joint and several with respect to each such individual, unless otherwise specifically provided.

7.2 Successors and Assigns.

This Recapture Agreement shall inure to the benefit of and be binding upon Recipient and CCLBA and their respective legal representatives, successors, and assigns. Whenever a reference is made in the Recapture Agreement to the Recipient or CCLBA, such reference shall be deemed to include a reference to legal representatives, successors, and assigns of Recipient or CCLBA, as applicable.

7.3 Limitation of Liability

The Recipient expressly agrees that no member, official, employee, or agent of CCLBA shall be individually or personally liable to the Recipient, its successors or assigns in the event of any default or breach by CCLBA under this Recapture Agreement.

7.4 Assignment.

The Recipient may not sell, assign or transfer this Recapture Agreement or any of the other Grant Documents. The Recipient consents to CCLBA's sale, assignment, transfer or other disposition of this Recapture Agreement and the other Grant Documents at any time in whole or in part.

7.5 Terminology.

All personal pronouns used in this Recapture Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Title and section headings are for convenience only and neither limit nor amplify the provisions of this Recapture Agreement.

7.6 Modification.

This Recapture Agreement may not be altered, modified, or amended except by a written instrument signed by all the parties hereto.

7.7 Severability.

If any provision of this Recapture Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the Recapture Agreement and application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by law.

7.8 Governing Law.

This Recapture Agreement and any other Grant Documents shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of laws principles. All references herein to statutes, regulations, rules, executive orders, ordinances, resolutions or notices issued by any governmental body shall be deemed to include any and all amendments, supplements, and restatements from time to time to or of such statutes, regulations, rules, executive orders, ordinances, resolutions, and notices.

7.9 Disbursements.

No disbursement of grant proceeds shall be made except for the payment of Eligible Costs.

7.10 Notices.

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, including email; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested.

If to CCLBA: Cook County Land Bank Authority
69 W. Washington Street, Ste. 3100
Chicago, IL 60602
Attn: Executive Director

If to Recipient: _____

Such addresses may be changed by notice to the other party given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be

deemed received upon such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the business day immediately following deposit with the overnight courier, and any notice, demand or request sent pursuant to clause (d) above shall be deemed received two (2) business days following deposit in the mail.

7.12 Counterparts.

This Recapture Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, CCLBA and the Recipient have caused this Recapture Agreement to be duly executed and delivered as of the date first above written.

COOK COUNTY LAND BANK AUTHORITY

Jessica A. Caffrey
Executive Director

RECIPIENT

EXHIBIT A
LEGAL DESCRIPTION

PIN:

COMMON ADDRESS: