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**LIEN AND RESTRICTIVE COVENANT AGREEMENT FOR  
THE HOME INVESTMENT PARTNERSHIPS PROGRAM  
24 CFR §92.254: HOMEOWNERSHIP  
[RESALE RESTRICTION]**

This Lien and Restrictive Covenant Agreement for the HOME Investments Partnership Program (“Agreement”) is made by and between {Owner(s) Name(s)} (the “Owner”), the Owner of certain real estate located at {Address, City, State, Zip} in \_\_\_\_\_ County, {State}, more particularly described below (the “Real Estate”), and the undersigned, {Name of Entity, Address, City, State, Zip} (“Grantee”).

***{The legal description highlighted below can be added as an attachment instead of on this page}***

**LEGAL DESCRIPTION**

**PARCEL NO.:** \_\_\_\_\_

**PROPERTY ADDRESS:** \_\_\_\_\_

**LEGAL DESCRIPTION:** \_\_\_\_\_

**I. PURPOSE**

- A. Grantee administers the City of \_\_\_\_\_ HOME Investment Partnerships Program with funds from the United States Department of Housing and Urban Development (“HUD”) and pursuant to TITLE II of the Cranston-Gonzalez National Affordable Housing Act and other rules, regulations, guidance and notices, relating to the Home Investment Partnership Program, as issued by HUD.
- B. Owner’s cost for the acquisition, development, and/or rehabilitation conducted in connection with the residence located on the Real Estate was subsidized by a development subsidy in the amount of \_\_\_\_\_ **Thousand** \_\_\_\_\_ **Hundred** \_\_\_\_\_ **Dollars and 00/100 Cents** (\$ \_\_\_\_\_) (the “*Development Subsidy*”), which assistance is subject to the requirements of the HOME Program. *{The Development Subsidy is the difference between actual costs of the construction minus the sales price. For example: Total construction cost \$200,000 minus Sales Price \$150,000 therefore the Development Subsidy is \$50,000}*

- C. The HOME Program requires that certain use restrictions be imposed upon any real estate benefited by HOME funds awarded to ensure that the benefits of such funds remain with the intended beneficiaries under the HOME Program.
- D. Specifically, HUD requires that restrictive covenants be placed on the assisted property in the form of deed restrictions, covenants running with the land, or similar mechanisms that remain in effect for the following periods specified below as required by 24 CFR 92.254 (“Affordability Period”):

Insert “X”	HOME Funds	Term of Restrictive Covenants
	Under \$15,000.00	5 years
	\$15,000.00 to \$40,000.00	10 years
	Over \$40,000 per unit	15 years

**AFFORDABILITY PERIOD: \_\_\_ YEARS**

**AFFORDABILITY PERIOD BEGINS: \_\_\_\_\_, 20\_\_**

**AFFORDABILITY PERIOD ENDS: \_\_\_\_\_, 20\_\_**

## II. AGREEMENT

When a homebuyer’s property is constructed, redeveloped, rehabilitated, or acquired, in whole or in part, with HOME funds and the HOME funds are provided to the homebuyer property in the form of a development subsidy and there is no direct homebuyer subsidy utilizing HOME funds, the resale provisions must be implemented. A direct homebuyer subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise directly subsidizes the purchase (“**direct homebuyer subsidy**”). The development subsidy consists of the difference between the cost of producing the unit and the market value of the property (“**development subsidy**”).

What triggers the resale provisions during the Affordability Period?

- The Owner transfers or conveys the property by deed, land contract, or otherwise;
- Foreclosure proceedings are commenced against the property;
- The property is transferred by an instrument in lieu of foreclosure; or
- The title to the property is transferred from the owner through any other involuntary means.

The Owner and Grantee hereby impose the following restrictive covenants upon the Real Estate. The Owner hereby warrants, grants and conveys to Grantee a lien upon the Real Estate for the Affordability Period specified above (the “**Lien**”). In consideration of these mutual undertakings and covenants, the parties further agree as follows:

- A. Throughout the Affordability Period the Real Estate shall (1) be owned by an individual or family whose income is **at or below eighty percent (80%)** of area median income and (2) be occupied by that individual or family as its primary residence for the remainder of the Affordability Period (the “**Affordability Requirements**”).
- B. If the Owner no longer occupies the Real Estate as its primary residence the Real Estate: (1) must be resold to another individual or family who meets the Affordability Requirements and whose

income is at or below eighty percent (80%) of the area median income; and (2) must be resold at a price that **does not exceed thirty-three percent (33%)** of that individual's or family's gross income towards the principal, interest, taxes and insurance for the Real Estate on a monthly basis ("**Affordable Price**"). **The Owner must resale the Real Estate within six (6) months of the date it fails to occupy the Real Estate as its primary residence.**

- C. The homebuyer is entitled to a fair return on its investment (as described below) upon the sale of the property. The fair return will be based on the percentage change in the "Consumer Price Index for All Urban Consumers" (Bureau of Labor Statistics - <https://www.bls.gov/cpi/>) for Owners' Equivalent Rent of Primary Residence line item in Table I of the CPI Detailed Report ("CPI Index") under "Unadjusted Percent Change" during the last 12 months. Accordingly, the CPI Index during the month the residence was completed (the month during which the completion reports were received by and approved by the City of \_\_\_\_\_, administrator of the HOME funds for the City of \_\_\_\_\_) will be compared to the CPI Index during the month the homebuyer sells the residence to determine the percentage of return. This percentage will be multiplied by the homebuyer's investment.

**Here is an example of the calculation:**

Original Sales Price: \$110,000

Initial Homebuyer Investment: \$1,000

Capital Investment/Improvements: \$5,000

CPI Percentage at completion: 3.1%

CPI Percentage at sale of property: 3.9%

$3.9\% + 3.1\% = 7\% \div 2 = 3.5\%$

$(\$1,000 + \$5,000) \times 3.5\% = \$210$  (Fair return)

$\$1,000 + \$5,000 + \$210 = \$6,210$  (Total return to original homebuyer at sale)

$\$110,000 + \$6,210 = \mathbf{\$116,210}$  (Maximum allowable subsequent sales price)

The homebuyer's investment will include any down payment (**excludes the City's Forgivable Down Payment Assistance Program**), plus any capital improvements. A capital improvement is any property enhancement that increases the overall value of the property, adapts it to new uses, or extends its life such as: adding windows, insulation, a new driveway, a new furnace, a garage, bedroom, new roof, remodeling kitchen, etc. Any capital improvements will be valued based on actual costs as documented by the homebuyer's receipts. Generally, replacing worn or dated components such as appliances or carpet would not be considered an improvement that adds value or adapts it to new uses. In certain circumstances, such as a declining housing market where home values are depreciating, the homebuyer may not receive a return on his or her investment because the home sold for less or the same price as the original purchase price and a loss on investment may constitute a fair return.

- D. The City of \_\_\_\_\_ will provide HOME assistance to the subsequent homebuyer to ensure that the original homebuyer receives a fair return and that the unit is affordable to the defined low-income population. The Owner and Grantee acknowledge that the financial assistance received through the HOME Program represents good and valuable consideration for this Agreement and these restrictions on the use of the Real Estate are consistent with the statutes, regulations, terms, conditions, and requirements for the HOME Program.

- E. Notwithstanding anything to the contrary in this Agreement, Grantee and the Owner agree that the Lien is subject and subordinate to any Senior Debt, as defined below. As used in this Agreement, "Senior Debt" means any indebtedness of the Owner to any lender that has provided financing to the Owner for the purchase, construction, rehabilitation, or refinancing of the Real Estate prior to the date of this Agreement. Refinancing of senior debt after this agreement will typically be limited to cases where the Owner is reducing his or her monthly housing costs. All other instances will be reviewed on a case by case basis. Grantee must be notified in writing of when such a process has been initiated.
- F. The Lien may be foreclosed on the date the Real Estate is acquired by foreclosure in accordance with the laws of the State of \_\_\_\_\_, or an instrument in lieu of foreclosure. The restrictions contained herein will automatically and permanently terminate upon the occurrence of any of the following: (1) if the Real Estate is transferred to the Senior Debt holder in lieu of foreclosure; or (2) the mortgage securing the Senior Debt is foreclosed; or (3) if the insured mortgage securing the Senior Debt is assigned back to the U.S. Department of Housing and Urban Development or its successor. However, the restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.
- G. This Agreement shall be binding upon the Real Estate and shall constitute a covenant running with the land. Grantee and the Owner agree that any and all requirements of the laws of the State of Indiana which must be satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and a covenant running with the Real Estate shall be satisfied in full. Except as otherwise provided herein, the covenants and restrictions contained herein shall survive and be effective throughout the Affordability Period, regardless of whether any contract, deed or other instrument hereafter executed conveying the Real Estate or a portion thereof provides that such conveyance is subject to this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.
- H. In the event there is a breach or violation of the restrictions and covenants set forth herein during the Affordability Period or the Owner is unable or unwilling to resale the Real Estate within six (6) months after it has vacated the Real Estate, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the Lien and restrictions and covenants set forth herein against any or all of the following: the Owner; Grantee; or any subsequent owner in possession at the time of the breach or violation. In addition, Grantee may recover reasonable attorney's fees and court costs incurred enforcing the Lien.

This Lien and Restrictive Covenant Agreement is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

IN WITNESS WHEREOF, the Owner and Grantee have caused this Agreement to be signed by duly authorized representatives, on the day and year first written above.

**OWNER:**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for said County and State, personally appeared, \_\_\_\_\_, who acknowledged that the foregoing Lien and Restrictive Covenant Agreement for the HOME INVESTMENT PARTNERSHIPS PROGRAM was executed in such capacity as its voluntary act and deed and that the foregoing representations are true and correct.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
A Resident of \_\_\_\_\_ County, {State} \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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**GRANTEE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for said County and State, personally appeared, \_\_\_\_\_, who acknowledged that the foregoing Lien and Restrictive Covenant Agreement for the HOME INVESTMENT PARTNERSHIPS PROGRAM was executed in such capacity as its voluntary act and deed and that the foregoing representations are true and correct.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
A Resident of \_\_\_\_\_ County, Indiana

My Commission Expires: \_\_\_\_\_

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law, /s/ \_\_\_\_\_