

HOMEBUYER HOME INVESTMENT PARTNERSHIP FUNDS RECAPTURE AGREEMENT

This Agreement regarding a HOME subsidy (the "Agreement"), dated as of _____, September, 2014, is made and entered into by and between the Town of Davidson (the "Town"), pursuant to the federal HOME Investment Partnerships Act Program, and _____, the Homebuyer ("Borrower").

Property Address: _____, Davidson, NC 28036

I. Definitions

- A. "Agreement" means a document to comply with the regulations at 24 CFR Section 92.254.
- B. "Deed of Trust" means a deed of trust securing a lien on the property.
- C. "Eligible Homebuyer" means one or more adult members of a Household who sign the Deed of Trust, related Promissory Note and other documents required for a Second Mortgage, who have completed a Homebuyer Education Program, and whose Household has an Annual Income (as of the date of signing the purchase agreement in the case of new home being constructed, or as of the date of purchase in the case of an existing home) that does not exceed the lesser of:
 - 1. eighty percent (80%) of the median family income for the Charlotte-Gastonia-Rock Hill, NC-SC HUD Metro FMR Area, as then most recently published by HUD, adjusted downward in the case of a Household size of less than four persons, and adjusted upward in the case of a Household size of more than four persons, in each case by the same percentages as are applied by HUD to adjust eligible income levels for occupancy of public housing; and
 - 2. the maximum income level permitted by federal regulations applicable to loans of HOME Funds for homebuyer assistance.
- D. "Household" has the meaning set forth for "family" in 24 CFR Section 5.403, or successor provision, and includes an individual person.
- E. "HOME" means the federal HOME Investment Partnerships Act Program.
- F. "HOME Funds" means funds derived from the federal grants to the Charlotte – Mecklenburg HOME Consortium under HOME, including program income as defined in HUD regulations for HOME.
- G. "HUD" means the United States Department of Housing and Urban Development or any successor to its functions.

H. "Loan Documents" means each original document evidencing or securing the loan (or any part thereof), and all documents incidental or collateral to the loan, including without limitation, the note or notes evidencing the loan, the deed of trust, each guarantee securing the loan, all applications, loan commitments, reports, security and loan agreements, disclosure statements, appraisals, loan settlement statements, title evidence, title insurance, hazard insurance, flood liability insurance, and all other insurance policies and any assignments thereof, correspondence applicable to the loan, and all other documents relating to the loan, all as the same may be amended, and all such documents or instruments subsequently executed and delivered.

I. "Modest Housing" means the housing has a purchase price for the type of single-family housing that does not exceed the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)), as provided annually by the Greensboro Office of HUD.

J. "Net Proceeds" Net Proceeds shall be calculated as:

the gross sales price of the Property less any debt senior to this Loan; and actual and reasonable costs of sale paid by the Seller including; real estate commissions, real property excise tax paid by the Seller, escrow fees, recording fees, reasonable attorneys' fees, title insurance, and title insurance premiums, paid by the Seller; or, at the option of the Holder

K. "Qualifying Home" means a legal dwelling unit in the Town of Davidson that, as of the date of purchase by an Eligible Homebuyer:

1. is "Modest Housing "; and
2. satisfies the Town of Davidson and Mecklenburg County Housing and Building Maintenance Code as it applies to owner-occupied units, satisfies federal Housing Quality Standards as defined in 24 CFR Section 982.401; and
3. may legally be sold separately from any other dwelling unit or structure, whether as a separate lot or condominium unit; and
4. where a dwelling unit is an existing new or pre-owned site-built detached single-family residence, condominium or modular/manufactured housing unit with a permanent foundation assembled on-site in a place in compliance with zoning and town ordinances that meets the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280. (excludes double-wide or single-wide trailers transferred to lot in one or two parts on easel with wheels) or townhome on its own lot, the "qualifying home" includes such lot and any appurtenances. Where a dwelling unit is a condominium unit, the "qualifying home" includes all rights in common elements and other rights appurtenant to the condominium unit.

II. Agreement

As required by the HOME Program, this Agreement between the Town and the Borrower identifies the HOME Program requirements. The funds provided for the purchase of the Qualifying Home are HOME Funds in the amount of \$ _____. Therefore, and as

a condition to participation in that program, Borrower makes the following additional covenants, representations and warranties:

A. Use of HOME Funds

1. HOME Funds as Loan. Borrower understands that the HOME Funds are provided as a loan. A loan provided under the Town's Home Buyer Assistance Program is a second mortgage that repayment is as follows: Principal is repayable at no interest on a declining, sliding scale, of 20% per year for five years, and being more specifically outlined as follows:

- In the event the home is sold in the first year (between the dates of _____, 2014, and December, 31, 2014) \$_____;
- In the event the home is sold in the second year (between the dates of January 1, 2015, and December 31, 2015) \$_____;
- In the event the home is sold in the third year (between the dates of January 1, 2016, and December 31, 2016) \$_____;
- In the event the home is sold in the fourth year (between the dates of January 1, 2017, and December 31, 2017) \$_____;
- In the event the home is sold in the fifth year (between the dates of January 1, 2018, and December 31, 2018) \$ _____. In the event Borrower does not sell the property prior to January 1, 2019, this loan shall be deemed null and void

2. Use of Loan Proceeds; Purchase Price. Borrower agrees that the HOME Funds shall be used solely to pay down payment or closing costs of a Qualifying home. Borrower represents and warrants that:

- a. Borrower is purchasing the Qualifying Home in good faith for use as the principal residence of Borrower;
- b. Borrower does not have any arrangement or understanding involving the intended resale, lease, or other transfer of the Qualifying Home by Borrower; and
- c. The total purchase price of the Qualifying Home is \$_____ and does not exceed the maximum purchase price limit of \$155,000.00

3. Deadline for Completion of Purchase and Occupancy. Borrower agrees that the home purchase funded in part with HOME Funds be completed no later than 60 days after the date of this Agreement, and that the Town shall have no obligation to make any disbursement if the purchase is not completed by that date. Borrower shall occupy the Qualifying Home as Borrower's principal residence no later than 60 days after the date of the Deed of Trust.

B. Affordability Restrictions

1. Affordability Period. Borrower understands the affordability period of this HOME agreement shall begin on the date of signing of this agreement and shall end five years from this date.
2. Property Value. Borrower agrees that the value of the qualifying home, as determined by appraisal completed not more than 60 days from the date of this agreement, is \$ _____.
3. Borrower Principal Residence. Borrower understands that funds are provided under a Town-funded home buyer assistance program, using funds available under the federal HOME program. Borrower understands the intent of the program is to provide assistance to the eligible homebuyers only so long as it is their principal residence.
4. Recapture Provisions. Borrower agrees that if at any time during the Affordability Period the Qualifying Home is not their principal residence or is transferred either through sale, foreclosure, or other event, that the Charlotte Mecklenburg HOME Consortium and the Town of Davidson shall have the right to require Borrower to pay in full all amounts owed on the Promissory Note, including principal and accrued interest, on thirty (30) days' notice. This is known as Recapture.
 - a. Amount to be Recaptured. In the event of Recapture, The Town shall collect from Net Proceeds all HOME Funds, including outstanding principal plus interest as outlined in the Loan Documents.
 - b. Amount to be Recaptured if Net Proceeds are Insufficient. In the event that Net Proceeds are insufficient to repay the HOME Funds, including principal plus interest, the amount to be recaptured shall be any funds remaining after payment of all senior non-HOME debt and closing costs. In no event shall the borrower be required to use funds other than net proceeds to repay the HOME Funds.

III. Additional Agreement

The provisions stated above are in addition to those contained within the Loan Documents and do not in any way abrogate the Town's rights contained within the Loan Documents.

IV. Enforcement Responsibility

The borrower acknowledges that the HOME funds are being provided by the Town of Davidson through the HOME Investments Partnership Program and that as the administrator and provider of such funds, the Town has overall responsibility for the enforcement of federal HOME regulations, and for the collection of funds due under this Agreement.

Executed this _____ day of _____, 2014 .

BORROWER(S):

Signature

Date

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

I certify that I know or have satisfactory evidence that _____ is the person(s) who appeared before me and said person acknowledged that he/she signed this instrument and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in the instrument.

Witness my hand and official seal, this _____ day of _____, 20_____.

(Official Seal)

Notary Public

My commission expires: _____

TOWN OF DAVIDSON

Name

Title

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

I certify that I know or have satisfactory evidence that _____ is the person(s) who appeared before me and said person acknowledged that he/she signed this instrument and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in the instrument.

Witness my hand and official seal, this _____ day of _____, 20_____.

(Official Seal)

Notary Public

My commission expires: _____