

**LIEN AND RESTRICTIVE COVENANT AGREEMENT FOR
CITY OF GARY COMMUNITY DEVELOPMENT DIVISION
HOME INVESTMENT PARTNERSHIPS HOMEBUYER PROGRAM**

2017 JUL 14 11:18 AM
FILED
MICHAEL J. BOYER
CLERK

2017-043182

This Lien and Restrictive Covenant Agreement for the City of Gary Community Development Division HOME Investment Partnership Homebuyer Program ("Agreement") is made by and between (**HOMEBUYER**) (the "Owner"), the Owner of certain real estate located at **1717 ADAMS STREET**, Gary in Lake County, Indiana, more particularly described on **"Exhibit A"** (the "Real Estate"), and the undersigned, **HABITAT FOR HUMANITY OF NWI** ("Developer"), as recipient of an award of funds from the City of Gary Community Development Division.

Developer enters this Agreement for the benefit of the City of Gary, a public body corporate and politic of the State of Indiana. The City of Gary has the exclusive right to enforce the terms of and protect the interests created by this instrument.

I. PURPOSE

- A. The Community Development Division administers the city's HOME Investment Partnerships program (the "HOME Program") with funds from the United States Department of Housing and Urban Development ("HUD") and pursuant to the Cranston Gonzales National Affordable Housing Act, 42 U.S.C. § 12701 *et seq.*, regulations found at 24 CFR Part 92, and other rules, regulations, guidance and notices, relating to the HOME Program, as issued by HUD and/or the City of Gary Community Development Division from time to time.
- B. The Developer applied for and received a grant from the City of Gary to be used for new construction of affordable residential housing for individuals whose income is at or below **eighty percent (80%)** of the area median income (the "Beneficiaries").
- C. The Developer's cost for the new construction in connection with the residence located on the Real Estate was subsidized by a direct subsidy in the amount of **Seventy four Thousand Dollars and 00/100 (\$74,000.00)** (the "Direct Subsidy"), which assistance is subject to the requirements of the HOME Program.
- D. The HOME Program requires that certain use restrictions be imposed upon any real estate benefited by HOME funds awarded by the City of Gary Community Development Division to ensure that the benefits of such funds remain with the intended Beneficiaries under the HOME Program.
- E. Specifically, City of Gary Community Development Division and HUD require that restrictive covenants be placed on the assisted property in the form of deed restrictions, covenants running with the land, or other similar mechanisms that remain in effect for the following periods specified below as required by 24 CFR 92.254 ("Affordability Period").



STATE OF INDIANA
LAKE COUNTY
FILED
MICHAEL J. BOYER
CLERK
2017 JUL 14 11:18 AM

	Funds per Residential Unit	Term of Restrictive Covenants
	Under \$15,000.00	5 years
	\$15,000.00 to \$40,000.00	10 years
X	Over \$40,000.00	15 years

FILED

JUL 14 2017

JOHN E. PETALAS
LAKE COUNTY AUDITOR

**Heartland
Title Services, Inc.**
101 E. 90th Drive Suite C
Merrillville, IN 46410

HTS,000
HT

040708

II. AGREEMENT

Developer and the City of Gary hereby impose the following restrictive covenants upon the Real Estate, which shall be enforceable by the City of Gary Community Development Division, and Owner hereby warrants, grants and conveys to the City of Gary a lien upon the Real Estate for the period specified above (the "Lien"). In consideration of these mutual undertakings and covenants, the parties further agree as follows:

A. If any of the events listed in Section B occur during the Affordability Period, the City of Gary may recapture its proportionate share of the amount invested in the Real Estate and secured by the Lien, without interest ("Recapture Amount"). This sum is calculated by the method selected below:

- the amount of the Direct Subsidy reduced on a pro rata basis, determined by dividing the amount of time the Owner has used the housing for a principal residence by the total amount of time in the Affordability Period; or
- a share of the net proceeds based on the ratio of the Direct Subsidy to the sum of the Owner's investment plus the Direct Subsidy; or
- a share of the net proceeds after deducting Owner's entire investment in the Real Estate, which share is to be divided evenly between Owner and the City of Gary.

"Net proceeds" means the amount paid to or for Owner upon any transfer of the Real Estate, minus the costs of that transfer, including but not limited to title fees, appraisal fees and/or commissions. If there are no net proceeds, the amount to be recaptured will be zero.

B. Recapture will be triggered by any of the following events ("Recapture Event"):

1. Owner's transfer or conveyance of the Real Estate by deed, land contract, lease, or otherwise, at any time within the applicable Affordability Period;
2. Commencement of foreclosure proceedings by any mortgagee, or transfer of instrument in lieu of foreclosure, within 15 years from the effective date of this Agreement; or
3. The Real Estate is no longer being used as Owner's principle residence in accordance with the HOME Program affordability requirements.

C. The Lien may be foreclosed and the restrictive covenants shall terminate on the date the Real Estate is acquired by foreclosure in accordance with the laws of the State of Indiana, or instrument in lieu of foreclosure.

D. If any of the Recapture Events specified in subparagraphs B(1) - B(3) above have occurred within the Affordability Period, the City of Gary will not terminate this Agreement or release the Lien. The City of Gary reserves the right to seek repayment from Developer of the Recapture Amount if it is unable to recover from Owner.

E. Owner states and the Developer acknowledges that the financial assistance received through the HOME Program represents good and valuable consideration for this Agreement and that the restrictions on the use of the Real Estate are consistent with the statutes, regulations, terms, conditions, and requirements for the HOME Program as administered by HUD.

F. Notwithstanding anything to the contrary in this Agreement, Developer, City of Gary and Owner agree that the Lien is subject and subordinate to any Senior Debt, as defined below, in priority as to City of Gary's interest in the Real Estate and in payment of the Recapture Amount. As used in this Agreement, "Senior Debt" means any indebtedness of Owner to any lender that has provided financing to Owner for the purchase, construction, rehabilitation, or refinancing of the Real Estate prior to the date of this Agreement. This Agreement will not be subordinate to any debt incurred by Owner in the form of a second mortgage on the Real Estate, unless that second mortgage is in favor of the lender holding the Senior Debt. If the Real Estate is transferred to the Senior Debt holder in lieu of foreclosure, or the mortgage securing the Senior Debt is foreclosed, the Lien is to be terminated and released.

II. AGREEMENT

Developer and the City of Gary hereby impose the following restrictive covenants upon the Real Estate, which shall be enforceable by the City of Gary Community Development Division, and Owner hereby warrants, grants and conveys to the City of Gary a lien upon the Real Estate for the period specified above (the "Lien"). In consideration of these mutual undertakings and covenants, the parties further agree as follows:

A. If any of the events listed in Section B occur during the Affordability Period, the City of Gary may recapture its proportionate share of the amount invested in the Real Estate and secured by the Lien, without interest ("Recapture Amount"). This sum is calculated by the method selected below:

- the amount of the Direct Subsidy reduced on a pro rata basis, determined by dividing the amount of time the Owner has used the housing for a principal residence by the total amount of time in the Affordability Period; or
- a share of the net proceeds based on the ratio of the Direct Subsidy to the sum of the Owner's investment plus the Direct Subsidy; or
- a share of the net proceeds after deducting Owner's entire investment in the Real Estate, which share is to be divided evenly between Owner and the City of Gary.

"Net proceeds" means the amount paid to or for Owner upon any transfer of the Real Estate, minus the costs of that transfer, including but not limited to title fees, appraisal fees, and/or commissions. If there are no net proceeds, the amount to be recaptured will be zero.

B. Recapture will be triggered by any of the following events ("Recapture Event"):

1. Owner's transfer or conveyance of the Real Estate by deed, land contract, lease, or otherwise, at any time within the applicable Affordability Period;
2. Commencement of foreclosure proceedings by any mortgagee, or transfer of instrument in lieu of foreclosure, within 15 years from the effective date of this Agreement; or
3. The Real Estate is no longer being used as Owner's principle residence in accordance with the HOME Program affordability requirements.

C. The Lien may be foreclosed and the restrictive covenants shall terminate on the date the Real Estate is acquired by foreclosure in accordance with the laws of the State of Indiana, or instrument in lieu of foreclosure.

D. If any of the Recapture Events specified in subparagraphs B(1) - B(3) above have occurred within the Affordability Period, the City of Gary will not terminate this Agreement or release the Lien. The City of Gary reserves the right to seek repayment from Developer of the Recapture Amount if it is unable to recover from Owner.

E. Owner states and the Developer acknowledges that the financial assistance received through the HOME Program represents good and valuable consideration for this Agreement and that the restrictions on the use of the Real Estate are consistent with the statutes, regulations, terms, conditions, and requirements for the HOME Program as administered by HUD.

F. Notwithstanding anything to the contrary in this Agreement, Developer, City of Gary and Owner agree that the Lien is subject and subordinate to any Senior Debt, as defined below, in priority as to City of Gary's interest in the Real Estate and in payment of the Recapture Amount. As used in this Agreement, "Senior Debt" means any indebtedness of Owner to any lender that has provided financing to Owner for the purchase, construction, rehabilitation, or refinancing of the Real Estate prior to the date of this Agreement. This Agreement will not be subordinate to any debt incurred by Owner in the form of a second mortgage on the Real Estate, unless that second mortgage is in favor of the lender holding the Senior Debt. If the Real Estate is transferred to the Senior Debt holder in lieu of foreclosure, or the mortgage securing the Senior Debt is foreclosed, the Lien is to be terminated

G. This Agreement shall be binding upon the Real Estate and shall constitute covenants running with the land. Developer and 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 covenants 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, the City of Gary 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: Owner; Developer; or any subsequent owner in possession at the time of the breach or violation. In addition, the City of Gary may recover reasonable attorney's fees and court costs incurred enforcing the Lien.

This Lien and Restrictive Covenant Agreement for the City of Gary Community Development Division HOME Investment Partnerships Homebuyer Program is effective as of the 4th day of August, 2016.

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



OWNER:

By: Shirley C. Williams

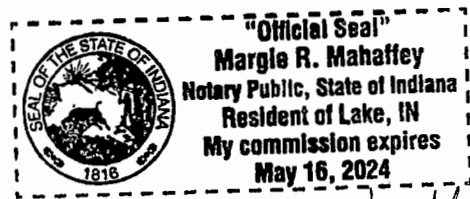
Printed: Shirley C. Williams

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public, in and for said County and State, personally appeared Shirley Williams who acknowledged that the foregoing Lien and Restrictive Covenant Agreement for City of Gary Community Development Division Home Investment Partnerships Homebuyer 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 29th day of JUNE, 2017

My Commission Expires: May 16, 2024



Margie R. Mahaffey

DEVELOPER:

By: Penny Triezenberg

Printed: Penny Triezenberg

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public, in and for said County and State, personally appeared Penny TRIEZENBERG who acknowledged that the foregoing Lien and Restrictive Covenant Agreement for City of Gary Community Development Division Home Investment Partnerships Homebuyer 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 21st day of June, 2018

Document is NOT OFFICIAL!

This Document is the property of the Lake County Recorder!

My Commission Expires:

May 16, 2024



"Official Seal"
Margie R. Mahaffey
Notary Public, State of Indiana
Resident of Lake, IN
My commission expires
May 16, 2024

Margie R. Mahaffey

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT UNLESS REQUIRED BY LAW.

[Handwritten signature]

KIM SCHULTZ



EXHIBIT A
LEGAL DESCRIPTION

Lot 2 IN FIELD OF DREAMS ADDITION TO THE CITY OF GARY, INDIANA, AS PER RECORD PLAT THEREOF
APPEARING IN PLAT BOOK 107, PAGE 44 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA

