

Appendix VI

HOME Recapture/Resale Policy

**Community and Human Services
Administrative Policy/Procedure**

Recapture and Resale Provisions

Revision 0

Effective Date 2/19/2015

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Sponsor: Kim Grant, Director-CHS

Approved



Geoffrey Magon-Monitoring Unit Supervisor

2/19/15

Date

HOME RECAPTURE/RESALE POLICY

Resale and Recapture Policies

Participating Jurisdictions (PJs) undertaking HOME-assisted homebuyer activities, including any projects funded with HOME Program Income (PI) must establish written resale and/or recapture provisions that comply with HOME statutory and regulatory requirements. These provisions must also be set forth in the PJ's Consolidation Plan. The written resale and/or recapture provisions that a PJ submits in its annual Action Plan must clearly describe the terms of the resale and/or recapture provisions, the specific circumstances under which these provisions will be used (if more than one set of provisions is described), and how the PJ will enforce the provisions for HOME-funded ownership projects. HUD review and approves the provisions as part of the annual Action Plan process.

The purpose of this section is to provide the "resale" and "recapture" policies of Collier County Community and Human Services Division (CHS). As stated above, HOME requires that PJs utilize resale and/or recapture provisions to ensure continued affordability for low to moderate income homeowners and as a benefit to the public through the wise stewardship of federal funds. CHS does not use Resale at this time for the HOME program.

CHS has two programs which use HOME funds to assist homeowners or homebuyers:

1. Down Payment Assistance (DPA) - new homebuyers - Recapture
2. Acquisition and Development – developers of new rental housing - Recapture

Recapture

Under HOME recapture provisions financial assistance must be repaid if it is provided directly to the buyer or the homeowner. Upon resale, the seller may sell to any willing buyer at any price. The written agreement and promissory note will disclose the net proceeds percentage, if any, that will be allotted to the homebuyer and what proceeds will return to the PJ. Once the HOME funds are repaid to the PJ, the property is no longer subject to any HOME restrictions. The funds returned to the PJ may then be used for other HOME-eligible activities.

Collier County Recapture Policy

The Collier County Community and Human Services HOME funded programs under the recapture provisions is the Down Payment Assistance Program (DPA) and the Development of new housing.

The (HOME) federal assistance will be provided in the form of a 0% interest, deferred payment loan. The full executed (by all applicable parties) and dated Promissory Note and Mortgage and Warranty Deed will serve as the security for these loans. The Mortgage and Warranty Deed will also be recorded in the land records of Collier County.

The repayment of the DPA or County is made solely from the net proceeds of sale of the Property (except in the event of fraud or misrepresentation by the Borrower described in the Promissory Note).

Under "Recapture" provisions, if the home is SOLD prior to the end of the required affordability period, the net sales proceeds from the sale, if any, will be returned to CHS to be used for other HOME-eligible activities. Other than the actual sale of the property, if the homebuyer or homeowner, or developer breaches the terms and conditions for any other reason, e.g. no longer occupies the property as his/her/their principal residence, the full amount of the subsidy is the immediately due and payable. This repayment of funds is in accordance with Section 92.254(a)(5)(ii) of the HOME Investment Partnerships Program regulations which provides for the recapture of the full HOME investment out of the net proceeds from the sale of the property.

Shared Net Proceeds

If in the case the net proceeds are not sufficient to recapture the full HOME investment and enable the homeowner to recover the amount of the homeowners down-payment and any capital improvement investment made by the owner since purchase CHS may share the net proceeds.

The net proceeds may be divided proportionally as set forth in the following formula:

$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HOME amount to be recaptured}$
$\frac{\text{homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$

Sample Note and Mortgage

Prepared by and return to:
Collier County
Housing, Human, and Veteran Services
3339 Tamiami Trail E, Suite 211,
Naples, FL 34112

(THIS SPACE FOR RECORDING)

(Exempt from Intangible Tax due to Government Funding)

HOME INVESTMENT PARTNERSHIP ACT (HOME)

SAMPLE SECOND MORTGAGE

THIS SECOND MORTGAGE is made by John and Jane Doe, a married couple ("Borrowers"), in favor of COLLIER COUNTY, a political subdivision of the State of Florida, ("Mortgagee"), which terms, "Borrower" and "Mortgagee" shall include heirs, legal representatives, successors, and assigns.

Borrower is justly indebted to Mortgagee in the principal sum of **Eighteen Thousand Five Hundred and no/100 Dollars (\$18,500.00)**, which is evidenced by a Promissory Note (the "Note") executed by Borrower in favor of Mortgagee dated of even date, the terms and conditions of which are incorporated in and made a part of this Second Mortgage by reference. This debt is evidenced by Borrower's Note dated the same date as this Security Instrument ("Mortgage"), which provides for the full debt, if not paid earlier, due and payable on transfer of title, sale of property, refinance, or loss of homestead exemption. **This Mortgage will be forgiven at the five (5th) year anniversary date of mortgage.**

TO SECURE to Mortgagee the repayment of the indebtedness evidenced by the Note and the performance of the covenants and agreements contained in this Second Mortgage and the Note, Borrower does hereby grant unto Mortgagee all that certain land situated in Collier County, Florida, more particularly described as follows:

Legal Description:

Folio Number:

Property Address: 111111 Majestic Circle, Naples Florida 34000

TOGETHER with all and singular the tenements, hereditaments, easements, and appurtenances, and all structures, buildings, and improvements of every kind and description now or hereafter on the land shall be deemed to be and remain a part of the real Property covered by this Second Mortgage.

All of the above described Property and interests are referred to in this Mortgage as the "Premises".

The terms of this Mortgage do not require that payments be made as long as the makers comply with the following conditions and provisions:

AND SO LONG AS the Premises are subject to the First, Second and Second Mortgage, Borrower agrees that Borrower shall perform all of Borrower's obligations under the First, Second and Second Mortgage, including making payments when due.

FURTHERMORE, any default by Borrower under the First Mortgage shall constitute a default under this Mortgage, and Mortgagee shall have all the rights and privileges granted to it under this Mortgage in the event of such default.

ADDITIONALLY, Mortgagee, at its election, and without notice to Borrower, may make, but shall not be obligated to make, any payments Borrower has failed to make under the First and Second Mortgage. Mortgagee may add the amount of those payments to the principal debt secured by this mortgage. Any payment by Mortgagee shall not release Borrower from Borrower's

obligations or constitute a waiver of the Borrower's default under this Mortgage.

PROVIDED ALWAYS, that if the Borrower pays to Mortgagee the principal sum of the Note, and if the Borrower shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Note, this Mortgage and all other documents and instruments executed as further evidence of or as security for the principal sum of the Note, then this Mortgage and the estates and interest granted and created shall cease, terminate and be null and void;

AND BORROWER COVENANTS and agrees to be bound by the following terms and conditions until the indebtedness secured by this mortgage is fully repaid:

1. Performance. The Borrower expressly covenants and agrees to perform, comply with, and abide by, each and every one of the covenants, stipulations, agreements and conditions contained and set forth in the Note, this Mortgage and any and all other documents and instruments executed and delivered by the Borrower to and in favor of the Mortgagee as security for, evidence of, or otherwise connected with, or incidental to, the loan transaction evidenced by the Note and secured by this Mortgage.

2. Taxes and Assessments. Borrower shall pay, before they become delinquent, and before any interest or penalty shall attach thereto, all taxes, assessments, and encumbrances of every nature that may for any and all purposes be payable, assessed, or imposed on the premises or any part thereof. Borrower shall deliver official receipts showing the payment of the same to the Mortgagee not later than thirty (30) days following the payment of the same or five (5) days following Mortgagee's demand for the official receipts.

3. No Waste. Borrower will permit, commit, or suffer no waste, impairment, or deterioration of the premises and will keep and maintain all improvements now and hereafter on the premises in sound condition and good repair. Borrower will not use or cause the property to be used for purposes contrary to applicable law. Mortgagee, or its agent, shall have the right and shall be permitted, but shall not be required, at all reasonable times, to enter upon and inspect the Mortgaged Property to insure compliance with the foregoing covenants and conditions set forth in this Mortgage.

4. Insurance. Borrower shall keep the dwelling and eligible appurtenant structure(s) insured against loss by the perils of fire, windstorm, extended coverage, vandalism and malicious mischief (FEC, V & MM) for an amount equal to or greater than the actual cash value (ACV) of the said dwelling and appurtenant structure(s). This amount of coverage shall be for the highest insurable value, so that Mortgagee is not subject to coinsurance.

In the event of loss by reason of hazards, casualties, contingencies and perils for which insurance has been required by the Mortgagee, the Borrower shall give immediate notice thereof by mail to the Mortgagee.

The Borrower agrees that the County does not in any way represent that the type or amount of insurance is sufficient or adequate to protect the Borrower's interests or liabilities, but is merely a minimum.

5. Right to Cure. In the case of any breach under this mortgage by Borrower, mortgagee may, at its option, and after at least 10 days notice to Borrower, expend any sums necessary to cure such default, and all sums so expended shall be secured by this mortgage.

6. Acceleration. The whole amount of the indebtedness secured by this mortgage shall become due and payable, at the option of mortgagee: (i) after default in the performance of any covenant in this mortgage which remains uncured for 15 days after notice of default; or, (ii) upon institution of foreclosure proceedings of any other mortgage or lien affecting the premises which is not dismissed within 15 days, and this mortgage may be foreclosed, and all costs and expenses of collection by foreclosure or otherwise, including attorney's fees, shall be paid by Borrower and secured by this mortgage.

In the event of a foreclosure, the recapture amount will be reduced on a prorated basis for the time the homeowner has owned and occupied the home as referenced by the note, and will be paid from the net proceeds available from the sale of the property. The net proceeds are the sales price minus superior loan repayment. If there are no net proceeds from the foreclosure sale, repayment is not required and the HOME Program requirements are considered satisfied.

7. Occupancy; Encumbrance; Transfer of Premises. The Borrower shall notify the Mortgagee in the event the Borrower transfers, assigns, sells, refinances, mortgages, does not continuously occupy and homestead the property as their primary residence, or in any manner disposes of all or a portion of any interest in the premises. Upon the happening of any such event, and at the mortgagee's option, the whole amount of the indebtedness secured by Mortgagee shall become immediately due and payable. Should the outstanding indebtedness not be satisfied on the date of such transfer, assignment, sale, refinancing, mortgage, non-occupancy, or other conveyance, this mortgage may be foreclosed, and all costs and expenses of collection by foreclosure or otherwise, including attorney's fees, shall be paid by Borrower and secured by this mortgage. That so long as the Note secured hereby remains outstanding, the Borrower shall neither voluntarily or involuntarily permit the Mortgaged Property or any part thereof to become subject to any secondary or other junior lien, mortgage, security interest or encumbrance of any kind whatsoever without the prior written consent of the Mortgagee.

8. Receiver. In the event suit is instituted to foreclose this mortgage or to enforce payment of any claims under this mortgage, mortgagee shall be entitled to the appointment of a receiver to take charge of the premises, to collect the rents, and care for the premises, and such appointment shall be made by the court having jurisdiction thereof as a matter of absolute right to the mortgagee, and all rents, profits, incomes, issues, and revenues of the premises are hereby assigned and pledged as further security for payment of the mortgage indebtedness, with the right on the part of mortgagee at any time after default under this mortgage to demand and receive and apply the same to the indebtedness secured by this mortgage.

9. Condemnation. In the event all or any part of the premises shall be condemned or taken for public use under powers of eminent domain, the proceeds of any award or claim for damages, direct or consequential, connected with the condemnation or taking are hereby assigned and shall be paid to mortgagee up to the amount of the outstanding indebtedness secured by this mortgage. Such condemnation or application shall not otherwise affect or vary the obligation of Borrower to pay the indebtedness.

10. Notice. Any notices permitted or required under this mortgage or the note shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows or as otherwise designated by written notice given in the same manner:

As to Borrower: **xxxx**
 10585 Majestic Circle
 Naples, Florida 34----

As to Mortgagee: **Collier County Community and Human Services**
 3299 Tamiami Trail E, Suite 211
 Naples, Florida 34112

11. Parties Bound. This mortgage shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, administrators, successors, and assigns. Borrower's covenants and agreements shall be joint and several.

12. Severability. If any provision of this mortgage shall be invalid or unenforceable under applicable law, the remainder of the mortgage which can be given effect without the invalid provision shall be enforceable to the maximum extent permitted by law.

13. Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this second mortgage.

14. Applicable Law. This mortgage shall be governed by and construed in accordance with the laws of the State of Florida.

15. Compliance with Laws. Borrower warrants and represents that Borrower has complied, and shall hereafter comply, with all valid laws, ordinances, regulations, and orders of federal, state, local and other governmental authorities that relate to the premises.

16. Remedies Cumulative. In the event of a default in payments due under the note which remains uncured for 15 days after the due date, or in the event of any other default under this mortgage which remains uncured for 15 days after notice from mortgagee to Borrower, mortgagee shall have, in addition to other rights and remedies specified in this mortgage, all other

rights and remedies provided by law or in the note. The remedies of mortgagee shall be cumulative and concurrent, and may be pursued singularly, successively, or together at the sole discretion of mortgagee, which may exercise them whenever necessary. The failure to exercise any right or remedy shall in no event be construed as a waiver or release of the right or remedy.

17. Release. Upon payment of all sums secured by this mortgage, mortgagee shall release this mortgage without charge to Borrower. Borrower shall pay any recordation costs.

IN WITNESS WHEREOF, this Second mortgage has been given, executed, and delivered by Borrower on the date first above written.

In the presence of:

Borrower Signature

Co-Borrower Signature

XXXXXXXXXXXXXXXXXXXX
Printed Name

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Printed Name

Property: 11111 Majestic Circle
Naples, Florida 34---

STATE OF FLORIDA

COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this _____ day of _____,

2013, by XXXXXXXXXXXXXXXXXXXXXXXXXXXX who is (are) _____ personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(SEAL)

Signature

Typed Name

Commission expiration date

**SAMPLE PROMISSORY NOTE
HOME INVESTMENT PARTNERSHIPS ACT (HOME)**

Borrower(s): John and Jane Doe.

11111 Majestic Circle, Naples FL 34---
(Property Address) (City) (State) (Zip)

FOR VALUE RECEIVED, the undersigned jointly and severally ("Borrower") promise(s) to pay to the order of **COLLIER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA**, or to any other holder of this Note (the "Lender"), whose address is 3339 Tamiami Trail E, Suite 211, Naples, Florida 34112 the principal sum of **Eighteen Thousand Five Hundred and no/100 Dollars (\$18,500.00)**, without interest, unless otherwise required below. I/We understand that the Lender may transfer the Promissory Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder".

If the terms of this note and the mortgage securing the note are fully complied with, then the outstanding principal balance shall be forgiven on the maturity date, which shall be **five years from the date of the executed note.**

This note is secured by a third mortgage on real property located in Collier County, Florida, of the same date as this note and executed by maker in favor of the County. If the borrower occupies the property continuously as required by 24 CFR 92.254 for the **five (5) year term, a satisfaction of mortgage will be given at the end of the term.**

In the event maker transfers, assigns, sells, refinances, does not continuously occupy and homestead property as their primary residence, or in any manner disposes of all or a portion of the property which is subject to the third mortgage securing this note during the five (5) year term, the entire principle balance of this note will be due and payable. Subletting of the Property is not allowed. A refinance of the first mortgage may be approved without repayment if the request is submitted in writing and the refinance is in accordance with the Collier County "Subordination Policy".

The Maker shall be required to submit proof of principal occupancy to Collier County on an annual basis beginning on the anniversary of the first-year occupancy and annually until the end of the amortization period. Such proof shall include: proof of homestead exemption. If the Maker fails to provide sufficient proof of occupancy in a timely manner, the County may contract with an independent title company to perform the necessary title re-certification, the cost of which will be added to the principal amount of this Promissory Note.

The County shall have the option, without notice to maker, to declare the entire principal balance of this note to be due and payable forthwith in advance of the maturity date upon the failure of maker to perform in accordance with any of the terms, covenants, or conditions of the second mortgage securing this note, to pay any amount due under this note, or otherwise comply with 24 CFR 92.254 or any other applicable HOME regulation.

If COLLIER COUNTY takes such actions as described above, it will have the right to be paid back for all of its costs and expenses, including reasonable attorney's fees.

Maker may prepay this note in full, or in part, at any time without penalty.

This note and the third mortgage securing it shall be governed by and construed in accordance with the laws of the State of Florida.

Maker waives presentment, notice of dishonor, and protest and agrees to pay all costs, including reasonable attorney's fees, whether suit be brought or not, for the services of legal counsel employed to collect this note or protect its security upon maturity or default.

This note is governed and construed in accordance with the Laws of the State of Florida.

Borrower Signature Date

Co-Borrower Signature Date