COUNTY OF LANCASTER
HOME INVESTMENT PARTNERSHIPS PROGRAM
RESALE/RECAPTURE POLICY FOR HOMEOWNERSHIP ACTIVITIES

Use of HOME funds by the County of Lancaster (County), Community Housing Development Organizations (CHDOs), and subrecipients receiving HOME funds from the County are subject to resale or recapture regulations. The County has adopted a HOME Investment Partnerships Program Resale/Recapture Policy for Homeownership Activities, which is based on the Final Rule of the HOME Investment Partnerships Program published on July 24, 2013. Specifically, the policy is based on 24 CFR 92.254, Qualification as Affordable Housing: Homeownership. HOME funds may be provided as a development subsidy or as direct subsidy to an eligible buyer to purchase a home.

In order to qualify as affordable housing, housing must:

- Be single-family, modest housing;
- Be acquired by a low-income family, as its principal residence; and
- Meet affordability requirements for a specific period of time as determined by the amount of assistance provided.

Homebuyers assisted with HOME funds must continue to own the assisted property and occupy it as their principal residence for the entire period of affordability. The regulations at 24 CFR 92.254(a)(5) give the participating jurisdiction two broad options relative to the treatment of HOME-assisted homebuyer properties that are sold before the period of affordability has expired:

1. **Resale**: The owner that received HOME assistance must sell the home at an affordable price to a low-income family that will use the property as their principal residence, **or**

2. **Recapture**: The owner is permitted to sell the property to any willing buyer at any price, but the County must recapture some or all of the direct HOME subsidy that was initially provided to the homebuyer.

HOME subsidy to support homebuyer activities can take two different forms:

- ***HOME development subsidy*** writes down the development costs of a housing unit. Development subsidies are the difference between the cost of producing the unit and the fair market value of the unit.

- ***Direct HOME subsidy*** is the amount of HOME assistance, *including any program income*, that enabled the homebuyer to buy the unit. The direct subsidy includes downpayment, closing costs, interest subsidies, or other HOME assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced the purchase price from fair market value to an affordable price. If HOME funds are used for the cost of developing a property and the unit is sold below fair market value the difference between the fair market value and the purchase price is considered to be directly attributable to the HOME subsidy.

The County will apply the **resale** provision when only development subsidy is provided to the HOME-assisted homebuyer unit.

The County will apply the **recapture** provisions when a homeowner that received direct HOME subsidy under the HOME Program decides to sell the property. If the property is sold after the period of affordability has expired, there are no restrictions in terms of resale or recapture of HOME funds that apply to such a transaction. However, if the sale occurs, either voluntarily or involuntarily, before the period of affordability has expired, certain regulatory limitations apply, as established in this policy.

The guidelines for resale or recapture for the homebuyer programs that the County has established are as follows:

<u>RECAPTURE PROVISIONS:</u>

The County and its subrecipients use recapture provisions when HOME funds are provided to a homebuyer in the form of a direct HOME subsidy.

Under the recapture provisions (established at §92.254(a)(5)(ii)), if a HOME-assisted unit is sold during the period of affordability, the owner is permitted to sell the property to any willing buyer at any price, and the County will recapture all or a portion of the *direct* HOME subsidy that was initially provided to the original homebuyer from the available *net proceeds* of the sale.

Direct HOME subsidy is defined as the amount of HOME assistance, including program income, that enabled the homebuyer to buy the unit. The direct subsidy may be a down payment, closing costs, an interest subsidy, or other HOME assistance that is provided directly to the homebuyer. In addition, a direct subsidy includes any assistance that reduces the purchase price from fair market value to a price affordable to the low-income buyer. If HOME funds are used for the cost of developing a property and the unit is sold below fair market value, the difference between the fair market value and the purchase price is considered to be directly attributable to the HOME subsidy.

Under no circumstances can the County recapture more than is available from the net proceeds of the sale. ***Net proceeds*** are defined as the sales price minus the superior load payment (other than HOME funds) and any closing costs.

<u>Period of Affordability:</u>
The recapture of HOME funds will be in effect for the period of affordability as described by the HOME Program regulations at 24 CFR 92.254(a)(4):

HOME Investment (direct HOME subsidy)	**Period of Affordability**
Under $15,000	5 years
Between $15,000 and $40,000	10 years
Over $40,000	15 years

The repayment of the HOME loan does not terminate this affordability period. The period remains in effect for the affordability timeframe.

Recapture Amount:

If an assisted property is sold or an event of default occurs during the period of affordability, the direct HOME subsidy is subject to recapture. At that time, the buyer shall pay the County as follows:

The County will permit the homebuyer to recover their entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HOME investment. If net proceeds are insufficient, the homebuyer may not receive their entire investment back, or the County may not be able to recapture the full amount due under the recapture agreements from the net proceeds available. In instances where there are insufficient net proceeds to recapture the amount due, the County is not responsible for repaying the difference between the amount of direct HOME subsidy due and the recaptured amount available from net proceeds.

Example: A homebuyer receives $5,000 in HOME downpayment assistance and provides $5,000 of his or her own funds for down payment. After purchasing the home, the homebuyer invests $2,000 for capital improvements to the property. Two years into the 5-year period of affordability, the homebuyer decides to sell the home. The County's recapture provisions allow the HOME-assisted homebuyer to recover, from net proceeds, his or her entire investment in the property before the County recaptures any HOME subsidy. The net proceeds from the sale total $10,000. The homebuyer recovers his or her $7,000 investment (down payment plus capital improvements) from the net proceeds of the sale. The County is only able to recapture, from the remaining net proceeds, $3,000 of its original $5,000 investment. The County is not responsible for repaying the $2,000 difference between the recapture amount due and what is available from net proceeds.

Under no circumstances will the County recapture more than what is available from the net proceeds of the sale (sales price minus superior loan repayment (other than HOME funds) and any closing costs).

HOME funds that are recaptured by the County will be returned to the County's local HOME account for use in other HOME eligible activities and will be received in IDIS under the Recaptured Homebuyer Receipt Fund Type (HP).

Enforcement:

The County will require that a mortgage be placed on the property in its favor for the full amount of the direct HOME subsidy. The recapture provisions will be enforced through a separate agreement with the homebuyer that details the applicable HOME requirements and through a recorded Mortgage and Promissory Note.

Assumption of Assistance:

As noted in 24 CFR 92.254(ii), the County will consider that new recapture provisions, which allow a subsequent eligible buyer to assume the HOME assistance (subject to the HOME requirements for the remainder of the period of affordability), if the subsequent buyer household is low income and no additional HOME funds are provided. In cases in which the subsequent homebuyer household needs

HOME assistance in excess of the balance of the original HOME loan, the direct HOME subsidy to the original homebuyer would be recaptured and a separate HOME subsidy would be provided to the new homebuyer.

In the Event of Foreclosure:

If the ownership of the housing is conveyed pursuant to a foreclosure or other involuntary sale, the County will attempt to recoup any net proceeds that may be available through the foreclosure sale, in accordance with the recapture amount established in this policy. As the recapture provision is limited to what is available from net proceeds, compliance with the recapture requirements (and the HOME affordability requirements) is considered satisfied even if there are no net proceeds and no funds are recaptured.

RESALE PROVISIONS:

In cases where the County only provides HOME assistance as development subsidy (i.e., HOME funds are used only to develop the unit and do not lower the purchase price below fair market value), the resale method must be applied.

Under the resale provision, when a HOME-assisted homebuyer sells his or her property, either voluntarily or involuntarily, during the affordability period:

1. The property must be sold to another low-income homebuyer who will use the property as his or her principal residence;
2. The original homebuyer receives a fair return on investment, (i.e., the homebuyer's downpayment plus capital improvements made to the house); and
3. The property is sold at a price that is "affordable to a reasonable range of low-income buyers."

Period of Affordability:

The resale provisions will be in effect at least for the period of affordability as described by the HOME Program regulations at 24 CFR 92.254(a)(4):

TOTAL HOME Investment (direct HOME subsidy + development subsidy)	Period of Affordability
Under $15,000	5 years
Between $15,000 and $40,000	10 years
Over $40,000	15 years

The repayment of the HOME loan does not terminate this affordability period. The period remains in effect for the affordability timeframe.

Fair Return on Investment:

The resale provisions shall provide the original owner a fair return on investment. ***Fair Return on Investment*** is defined as the return of the homeowner's original investment (i.e. down payment) plus any capital improvements. The fair return will include using the percentage of increase in the National Consumer Price Index "CPI-U". This is calculated by subtracting the CPI-U on the sale date from the CPI-U on the initial purchase date. That amount is divided by the initial CPI-U to obtain the percent gain, if any. More information on the CPI-U Index can be found in Attachment A to this policy.

Capital improvements eligible as a credit toward the fair return calculation must have been installed as required under the respective municipality's Building Codes and Ordinances. This includes, but is not limited to, permits, zoning requirements and special exceptions. Capital improvements made without such approvals will not be credited in the fair return calculation. Approved capital improvements include:

- Energy upgrades such as solar hot water system or heating system or increased insulation
- Substantial remodel of kitchen or bathroom
- Kitchen modernization
- New flooring
- Increase of home footprint (additions)
- Construction of out buildings (garages)
- Addition of driveway, sprinkler systems, retaining walls, fencing, landscaping

The remediation of deficiencies identified during a home inspection in anticipation of a sale, will not be considered for inclusion in the capital improvement calculation. Maintenance costs are also excluded from inclusion in the capital improvement calculation. Capital improvements will be valued at the actual cost of improvements based on homeowner's receipts.

A determination of a fair return on investment will be made by the County for sales within the HOME affordability period. Example calculation of fair return:

Homeowner Downpayment = $5,000
Capital Improvements = $4,000
Percentage change in CPI for this example: 6%

$5,000 downpayment + $4,000 capital improvements= $9,000 homeowner investment
$9,000 x 6% = $540 return on investment

Maximum Total Return to Original Homebuyer at Sale = homebuyer's initial investment + capital improvements + return on investment = $5,000 + $4,000 + $540 = $9,540

The determination of fair return on investment will be used to arrive at the maximum allowable sales price at which the unit may be sold. See Attachment A to this policy.

A HOME-assisted homebuyer is not guaranteed a fair return on investment at sale. If the sales price that the market will support (i.e., the fair market value) is less than what is required to provide the homebuyer a fair return on investment, than the fair return on investment (as outlined in this provision) will not be realized.

Affordable to a Reasonable Range of Low-Income Buyers:

Under resale, the housing must be affordable to a reasonable range of lower-income homebuyers. ***Affordable to a reasonable range of lower-income buyers*** is defined as a price affordable to an income eligible household at or between 60% and 80% of the jurisdiction's area median income at the time of sale that will not pay more than 33% of their income for PITI (principal, interest, taxes and insurance).

If the sales price necessary to provide a fair return on investment is not affordable to a subsequent low-income homebuyer, the County will offer the new homebuyer HOME assistance through Lancaster Housing Opportunity Partnership's Community Homebuyer Program.

Enforcement:

Resale requires a separately recorded covenant running with the land, or other similar mechanism to impose the resale requirements from 24 CFR 92.254(a)(5)(i)(A). The resale provisions limit subsequent purchase of the property only to income-eligible households who will use the property as its principal residence. An income-eligible household is defined as a household with income below 80% AMI. The resale provisions will be also enforced through a separate agreement with the homebuyer that details the applicable HOME requirements.

In the Event of Foreclosure:

For HOME-assisted homebuyer housing under a resale agreement, if the affordability is not preserved by a subsequent purchase at a reasonable price by a low-income homebuyer who will use the property as its principal residence, and who agrees to assume the remainder of the original affordability period, the County must repay the HOME investment to HUD. This is considered noncompliance.

Special Considerations for Habitat for Humanity:

It is not permissible to use a HOME resale provision in a project where Habitat retains its right of repurchase (including right of first refusal or right of first offer), because the HOME program regulations require the homebuyer to sell the home-assisted property to another low-income household at an affordable price, and Habitat does not constitute a low-income buyer. The County will consider the value of the sweat equity contribution to be included as part of the homebuyer's initial investment and include this amount in the resale provision accordingly.

NONCOMPLIANCE

Failure to comply with the resale or recapture requirements means that:

1. the original HOME-assisted homebuyer no longer occupies the unit as his or her principal residence (i.e., the unit is rented or vacant), or

2. the home was sold during the period of affordability and the applicable resale or recapture provision were not enforced.

In the event of noncompliance, the HOME-assisted homebuyer is required to repay the County the total amount of HOME funds invested in the housing. This includes any HOME development subsidy in the project plus any direct subsidy provided to the buyer (i.e., HOME downpayment or closing cost assistance) minus any HOME funds already repaid (i.e., payment of principal on a HOME loan). The County is required to repay HUD the entire HOME investment in the event of noncompliance.

ONGOING MONITORING:

The County (or the City if the property is located within the boundaries of the City of Lancaster) will monitor compliance with principal residency requirements by annually checking the Lancaster County Property Assessment website to see if the property owner's address matches the location of the property. If the owner's address is not the same as the property, the owner will be contracted to clarify the residency.

ADDITIONAL CONSIDERATIONS:

In some instances, the County may provide HOME assistance to an eligible subsequent homebuyer to ensure that the unit is affordable to the defined low-income population. HOME funds may be used to provide assistance to another eligible homebuyer following either the County's acquisition of a foreclosed unit or a sale of a unit under resale or recapture provisions during the period of affordability. If the County provides HOME assistance to another eligible HOME buyer, the additional HOME investment must be treated as an amendment to the original project. Consequently, the additional HOME investment may extend the original period of affordability. For example, if the original HOME investment was $10,000 and resulted in a five-year period of affordability, the addition of another $10,000 to a subsequent homebuyer would extend the period of affordability to ten years. The original HOME investment plus any additional HOME investment cannot exceed the maximum per unit subsidy.

Attachment A:
SAMPLE SALES PRICE CALCULATION UNDER THE RESALE PROVISION

Setting the Sales Price Example:
Original Purchase Price = $200,000
Homeowner Downpayment = $5,000
Original Loan Amount = $195,000
Capital Improvements = $4,000

Fair Return (6% based on CPI for this example): ($5,000 downpayment + $4,000 capital improvements) x 6% = $540

Total Return to Original Homebuyer at Sale = $5,000 + $4,000 + $540 = $9,540

In this example, the maximum allowable resale price is $204,540:
$195,000 (Original loan amount)
\+ $9,540 (Return to Original Homebuyer: $5,000 downpayment + $4,000 capital improvements + $540 return on investment) ____________________
= $204,540