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DOCUMENT COVER SHEET

TITLE OF DOCUMENT: RECAPTURE AGREEMENT AND
COVENANT OF RESIDENCY

DATE OF DOCUMENT: _____, 20__

GRANTOR: _____

St. Louis, Missouri 631_____

GRANTEE: The City of St. Louis
Community Development Administration
1520 Market Street, Suite 2000
St. Louis, Missouri 63103

LEGAL DESCRIPTION: See "Exhibit A" attached hereto and incorporated herein
by this reference.

REFERENCE BOOK & PAGE: N/A

WHEN RECORDED RETURN TO: St. Louis Development Corporation
1520 Market Street, Suite 2000
St. Louis, Missouri 63103
Attention: _____

Note: The terms "Grantor" and "Grantee" as used in this Cover Page are for recording and indexing purposes only. The instrument itself refers to the parties by other designations.

**RECAPTURE AGREEMENT
AND COVENANT OF RESIDENCY**

This Recapture Agreement and Covenant of Residency (“Agreement”) is entered into as of this ____ day of _____ 20__ by and among _____ (“Borrower”), having as a notice and mailing address: _____, St. Louis, MO 63___; and the City of St. Louis (“City”) acting by and through the Community Development Administration (“CDA”), having as an address for notice purposes: 1520 Market Street, Suite 2000, St. Louis, MO 63103, Attention: Executive Director.

WHEREAS, the City has entered into a grant agreement with the United States Department of the Treasury pursuant to which the City shall secure certain Federal funds for projects which qualify for assistance under provisions of the State and Local Fiscal Relief Funds, 31 C.F.R. Part 35 ("SLFRF") and meet the core requirements of the HOME Investment Partnerships Program 24 C.F.R. Part 92 (the “HOME Program”); and

WHEREAS, the City has designated as part of the SLFRF, Incentives (as hereinafter defined) to provide home buying assistance to low- and moderate-income purchasers that qualify for assistance under provisions of the HOME Program; and

WHEREAS, the Borrower has been provided with SLFRF funds in the amount of _____ **Thousand and 00/100 Dollars (\$_____.**00) (“Assistance”) to assist Borrower in purchasing one (1) dwelling located at _____ in the City of St. Louis, Missouri (“Property”); and

WHEREAS, the Assistance may be recaptured by the City only upon the terms and conditions as set forth herein; and

WHEREAS, Borrower has agreed, intends, declares and covenants that the restrictive covenants set forth herein governing the use and occupancy of the Property shall be and are covenants running with the property for the term of the Affordability Period stated herein and shall be binding upon Borrower; and

WHEREAS, CDA and the City are requiring as a condition precedent to the provision of Incentives, that the Borrower execute, deliver and record in the official land deed records of the City in which the Property is located, this Agreement to create certain covenants running with the land by regulating and restricting the use and occupancy of the Property during the term hereof, as set forth herein; and

WHEREAS, the Borrower under this Agreement intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use and occupancy of the Property shall be and are covenants running with the Property and shall be binding on the Borrower for the term stated herein; and

WHEREAS, the City, acting through CDA, has approved this Agreement, such approval and authorization being evidenced by CDA’s signature hereto;

NOW THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, and of other valuable consideration, the Borrower, the City and CDA agree as follows:

1. **DEFINITIONS:**

1.1 “Affordability Period” shall mean the period of years, which shall commence on the Closing Date during which time the Borrower must occupy the Property as its primary residence as shown in the chart below:

Amount of Assistance	Length of Affordability Period	Annual Forgiveness
\$50,000 - \$40,001	15 years	1/15 th
\$40,000 - \$15,000	10 years	1/10 th
\$14,999 - \$1,000	5 Years	1/5 th

1.2. “Agreement” shall mean this Agreement, including any amendments or supplements hereto or any modifications or restatements hereof.

1.3. “Annual Income” shall mean the gross income anticipated to be received by all adults occupying the Property during any given year which shall be subject to verification by CDA through an inspection of paycheck stubs, tax returns, W-2 forms, statements of assets and third-party verification as needed.

1.4. “CDA Deed of Trust” shall mean the second priority Deed of Trust and Security Agreement in favor of the City encumbering the Property and securing the Loan in an amount not to exceed \$_____.00.

1.5. “CDA Note” shall mean the Promissory Note dated as of the Closing Date, executed by Borrower, payable to the order of the City, in an amount not to exceed \$_____.00, and all renewals, amendments, reinstatements, rearrangements, enlargements, modifications or extensions thereof or of any promissory note or notes given in substitution therefor.

1.6. “Closing Costs” shall mean ordinary and normal costs payable to third parties associated with a purchase of residential real estate, limited to the following: surveys, title insurance, costs of appraisals, credit reporting, recording costs, holding costs, prepaid condominium fees, if any, and initial property and mortgage insurance premiums, but shall not include any payment of principal on a loan or any taxes whatsoever.

1.7 “Closing Date” shall mean the date on which the CDA Note and CDA Deed of Trust are executed by the Borrower.

1.8. “Incentives” shall mean certain creative financing techniques including, among other things, Interest Reduction, interest rate reduction, the payment of closing costs and points and the write-down of the purchase price of the Property.

1.9. “Laws” shall mean all ordinances, statutes, rules, regulations, orders, injunctions, writs or decrees of any government or political subdivision or agency or authority thereof (including, without limitation, the State of Missouri and the City of St. Louis) or of any court or similar entity having jurisdiction over Owner or the Property.

1.10. “Loan” shall mean the loan of up to \$_____.00 to be made by the City to Borrower, which shall be subject to the recapture provisions (Section 7) of this Agreement.

1.11. "Loan Documents" shall mean this Agreement, the CDA Note and CDA Deed of Trust, and all other documents now or hereafter executed by Borrower or any other person or party to evidence or secure the payment of the Loan or the performance and discharge of the Obligations and all amendments, modifications and supplements thereto.

1.12. "Net Proceeds" shall mean the sale price less the balance due on superior secured debt and closing costs incurred by the Borrower at sale or transfer of Property.

1.13. "Obligations" shall mean all the covenants, warranties, representations and other obligations made or undertaken by Borrower to the City under the Loan Documents, including the obligation to pay the principal of and interest on the CDA Note in accordance with the terms thereof and to repay to the City all amounts advanced hereunder or under any of the Loan Documents.

1.14. "Permitted Liens" shall mean (i) the lien of the deed of trust against the Property securing the _____ loan; (ii) the lien securing the Loan; (iii) the lien created pursuant to this Agreement; and (iv) liens for taxes, assessments or similar charges incurred in the ordinary course of business that are not yet due and payable.

1.15. "Property" shall mean the residential dwelling unit located at the address in the recitals herein, which has been made available for purchase by a Qualified Purchaser at an affordable price and shall include all real estate more fully described in **Exhibit A**, attached hereto and incorporated herein by reference, and all improvements located thereon.

1.16. "Qualified Purchaser" shall mean certain individuals or families 1) with Annual Incomes which do not exceed those income levels established by the Department of Housing and Urban Development as being eligible to purchase a Property that meets the requirements of the HOME Program, and 2) which have not had any ownership interest in any principal residence during the last three (3) years as of the Closing Date.

2. **Use of the Loan**

2.1. CDA hereby agrees to make available to the Borrower of the Property a Loan in the amount of _____ **Thousand and 00/100 Dollars (\$_____00)**. The proceeds of the Loan shall be used to provide Incentives to assist the Borrower. It is further agreed that the proceeds of the Loan shall not be applied to the payment of principal on the private loan or payment of any taxes whatsoever. The Loan proceeds shall be disbursed in accordance herewith and repaid in accordance with the terms of the CDA Note.

2.2. **The CDA Note**. The Loan from the CDA to Borrower will be evidenced by and payable as to principal and interest, in accordance with the terms of the CDA Note, dated as of the Closing Date and being in an amount not to exceed \$_____.00.

3. **Disbursement of Loan Amount**

Upon execution of the Loan Documents the Loan Amount shall be disbursed on the Closing Date.

4. **Recording and Filing; Covenants to Run with the Land**

(a) Upon execution and delivery by the Borrower and CDA, the Borrower shall cause this Agreement to be recorded and filed in the official public land deed records of the City and shall pay all fees and charges incurred in connection with such recording. Upon

foreclosure of the Property by a lender or other transfer in lieu of foreclosure, the restrictions hereunder shall terminate. However, the affordability restrictions shall again spring into effect subsequent to foreclosure and during the remaining term of the Affordability Period hereof, if following such foreclosure or transfer in lieu of foreclosure, the Borrower of record before such foreclosure or transfer in lieu of foreclosure, or any entity that includes the former Borrower or those with whom the former Borrower has or had family or business ties, obtains an ownership interest in the Property.

- (b) The Borrower intends, declares and covenants that during the Affordability Period of this Agreement, the covenants and restrictions set forth herein regulating and restricting the use and occupancy of the Property (i) shall be and are covenants running with the land and improvements, encumbering the Property for the term of the Affordability Period of this Agreement and shall be binding upon Borrower. Further, Borrower hereby agrees that any and all requirements of the laws of the State of Missouri to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that the equitable servitude has been created to insure that these restrictions run with the land for the term of this Agreement.

5. **Occupancy Requirements**

Borrower covenants to the City that it shall own the Property and utilize the Property as its primary residence during the _____ (_____) **year Affordability Period** which shall commence on the Closing Date. These Occupancy Restrictions may terminate upon the occurrence of any of the following events:

- (a) Foreclosure;
- (b) Transfer in lieu of foreclosure; or
- (c) Assignment of an FHA-insured mortgage to HUD.

In the event of foreclosure, or a deed in lieu of foreclosure of higher priority deed of trust, any provision herein or in any collateral agreement restricting the use of the Property or restricting the Borrower's ability to sell the Property, shall automatically have no further force or effect on subsequent Borrowers or purchasers of the Property. Any Person, including his successors and assigns (other than the Borrower or any related entity or person to the Borrower), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of higher priority deed of trust shall receive title to the Property free and clear from such restrictions.

6. **Insurance Requirements**

At all times during the term of this Agreement Borrower shall maintain a valid and current hazard insurance policy on the Property for the current appraised value of the Property and naming the City acting by and through CDA as an additional loss payee in primary coverage. Failure to maintain a valid and current insurance policy will be considered a breach of this Agreement, and CDA will have the right to secure insurance for the Property and charge such costs to the Borrower or to foreclose on its CDA Deed of Trust, if necessary, to protect the SLFRF investment. If the Property is in a 100-year flood zone,

Borrower shall maintain a current and valid flood insurance policy on the Property. Evidence of insurance must be provided at closing and annually thereafter to CDA or CDA's designee.

7. **Recapture**

(a) The overall amount of funds disbursed by the City to Borrower subject to recapture pursuant to this Agreement is _____ **Thousand and 00/100 Dollars (\$_____.00)**. Should Borrower make or cause any of the following circumstances to occur prior to expiration of the Affordability Period: (i) convey the Property, or execute a deed in lieu of foreclosure; (ii) fail to occupy the Property as its principal residence; (iii) convert the Property to rental property; (iv) refinance the Property without the prior written consent of the City; or (iv) fail to perform any covenant or agreement contained in any security instrument, deed of trust, or restrictive covenant to which Borrower is a party, the City shall be entitled to recapture, and Borrower shall be obligated to pay to the City, such amount equal to the funds subject to recapture, (\$_____.00); provided, however, that during the Affordability Period, the Loan Amount shall decline by a pro rata amount (\$_____.00) on each anniversary of the execution hereof.

(b) In the event the net proceeds from the sale of the Property are not sufficient to fully recapture the amount of Assistance as reduced above, the City and the Borrower shall share the net proceeds, 75% of which shall be refunded to the City of St. Louis and the remaining 25% of which shall be retained by the Borrower.

8. **Default & Enforcement**

In the event Borrower violates any terms of this Agreement or any other agreement between Borrower and CDA, CDA shall issue a notice of violation to Borrower. Upon receipt of such a notice, Borrower agrees to remedy the violation within 30 days. In such cases, Borrower must take action to begin corrections within 30 days of the date of CDA's notice of violation. Upon Borrower's failure to correct the violation within the allotted time, CDA may take additional corrective action including suing for specific performance, declaring a default under the Loan, and seeking any other legal remedies available.

In the event of Borrower's uncured violation of the primary residency provisions of Section 5, Borrower will be required to repay the Loan, provided however, that the amount to be repaid shall decline by the pro rata amount calculated in Section 7.

9. **Duplication of Benefits**

A duplication of benefits occurs when a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance received for that purpose is more than the total need for assistance. Duplication of benefits occurs when Federal financial assistance is provided to a person or entity through a program to address losses and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source (including insurance), and the total amount received exceeds the total need for those costs. The City of St. Louis and the U.S. Department of Treasury require procedures to prevent the duplication of benefits when it provides financial assistance with American Rescue Plan Coronavirus State and Local Fiscal Recovery funds. (U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Funds Final Rule, 31 CFR Part 35 RIN 1505-AC81). Therefore, the Loan proceeds may not be used to pay for a cost if another source of financial assistance is available to pay for the same cost. Borrower agrees to provide a fully executed Coronavirus State and Local Fiscal Recovery Funds Duplication of Benefits Certification attached hereto and incorporated herein as Exhibit B.

9. **Representations, Warranties and Indemnifications**

CDA is ultimately responsible to the Department of the Treasury for compliance with all SLFRF and HOME requirements, including the enforcement of this Agreement and in particular its provisions related to principal residency and recapture. Borrower hereby represents and warrants that:

9.1. All information and documentation provided to CDA or the City is truthful and correct to the best of Borrower's knowledge and belief. Borrower acknowledges that any discrepancies or misstatements may result in Borrower's disqualification from participation in the program and shall be deemed a breach of this Agreement and the Loan, and Borrower will be required to repay the entire SLFRF investment amount.

9.2. Borrower's financial situation has not changed materially since the application for SLFRF assistance was made.

9.3. Borrower shall indemnify, defend and hold the City and CDA harmless from and against any claim, loss, liability or expense, including reasonable attorneys' fees and expenses, arising from this Agreement or involving the Property.

9.4. Borrower shall not incur any obligation, liability or expense of any kind and at any time in the name of or on behalf of the City or CDA.

9.5. Borrower warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

9.6. Borrower specifically acknowledges that CDA or its designee may review, monitor, or seek to confirm the Borrower's ongoing compliance with the terms of this Agreement and the Loan, and Borrower agrees to provide such information or documents to CDA or its designee as CDA may reasonably require in the course of such monitoring or reviews, including but not limited to evidence that the Borrower is in compliance with Section 5.

9.7. Borrower hereby represents and warrants that Borrower has read this Agreement, fully understands all terms, stipulations and conditions hereof and has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Borrower hereunder.

10. **Miscellaneous**

10.1. **Interpretation.** Any term not defined in this Agreement shall have the same meaning as terms defined in the SLFRF and HOME regulations.

10.2. **Amendment.** No change, amendment, modification, cancellation or discharge hereof shall be valid unless in writing and signed by the parties hereto. The Borrower and CDA agree that they will take all actions necessary to effect amendment of this Agreement, as may be necessary to comply with the SLFRF and HOME regulations.

10.3. **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

BORROWER:

COMMUNITY DEVELOPMENT ADMINISTRATION

By: _____
Nahuel Fefer
Executive Director

Date: _____

CITY OF ST. LOUIS

By: _____
Darlene Green
Comptroller

Date: _____

CITY COUNSELOR

Approved as to form only:

Sheena Hamilton

Date: _____

REGISTER

Amber Simms

Date: _____

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

On this ____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that they executed the within instrument, and acknowledged to me that they executed the same as their free act and deed for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public
Print Name: _____

My term expires:

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

On this ____ day of _____, 20____, before me appeared Nahuel Fefer, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of the Community Development Administration, an authorized agent of the City of St. Louis, Missouri, a body politic and corporate of the State of Missouri, and that the within instrument was signed and sealed on behalf of said body politic and corporate of the State of Missouri by authority of its governing body, and that said individual acknowledged said instrument to be the free act and deed of said body politic and corporate.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public
Print Name: _____

My term expires:

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this ____ day of _____, 20____, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the City of St. Louis, Missouri, a body politic and corporate of the State of Missouri, and that the within instrument was signed and sealed on behalf of said body politic and corporate of the State of Missouri by authority of its governing body, and that said individual acknowledged said instrument to be the free act and deed of said body politic and corporate.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public
Print Name: _____

My term expires:

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

**CORONAVIRUS STATE & LOCAL FISCAL RECOVERY FUNDS
DUPLICATION OF BENEFITS CERTIFICATION**

Recipients of Coronavirus State and Local Fiscal Recovery Funds (SLFRF), including _____ (the “Borrower”), are not permitted to cover a single cost multiple times with different funding sources. Please complete this affidavit to disclose any additional funding sources for the loan or program funded by SLFRF funds and attest that Borrower will comply with the City of St. Louis’s Community Development Administration (“CDA”) duplication of benefit requirements.

Part 1: Sources of Funding

This section identifies any sources of funds that Borrower has applied for regarding this loan or program. Sources of funds include but are not limited to: Federal, state and local loan/grant programs, private or bank loans, nonprofit donations or loans. Please mark any of the boxes below which apply to Borrower regarding any other sources of funds:

- BORROWER HAS NOT applied for or received funding from Federal, state, local programs or from other sources for this project or program.
- BORROWER HAS received funding for this project or program from the following sources:

Funding Source 1

Lender/Grant Source Name:
Amount requested: \$
Amount received: \$
Date received:
How funds are being used (please be specific):

Funding Source 2

Lender/Grant Source Name:
Amount requested: \$
Amount received: \$
Date received:
How funds are being used (please be specific):

Funding Source 3

Lender/Grant Source Name:
Amount requested: \$
Amount received: \$
Date received:
How funds are being used (please be specific):

- Borrower has APPLIED FOR funding, and the application is PENDING from the following sources:

Funding Source 1

Lender/Grant Source Name:
Amount requested: \$
How funds are being used (please be specific):

Funding Source 2

Lender/Grant Source Name:

Amount requested: \$

How funds are being used (please be specific):

Part 2: Certification

As a recipient of State and Local Fiscal Relief Funds (“SLFRF”), I assert that:

1. I understand that duplication of benefits (DOB) are prohibited and recipients may not claim use of Federal financial assistance to cover a cost that the recipient is covering with another Federal award, by insurance, or from another source.
2. I have not received any previous funding assistance for any of the expenses being covered by the SLFRF funds.
3. I will not apply for more funding than needed for the eligible activity or project for which SLFRF funds are provided.
4. I will immediately report to the Community Development Administration of the City of St. Louis if I apply for or accept any financial assistance from other funding sources (federal, state, local or private) that constitute a duplication of benefits received under the Homebuyer Down Payment Assistance Program.
5. I agree only to use the funding I have received in connection with this program for eligible uses, which include interest rate reduction, the payment of closing costs and points and the write-down of the purchase price of the property. I acknowledge that any duplication of funds may have to be paid back to the City.
6. I understand that this Certification is appended to and part of the Recapture Agreement and Covenant of Residency that the Borrower executes with the City for SLFRF and is a condition of the receipt of such funds.

I certify that the information that I have provided above is a true, accurate and complete disclosure. I understand that to perjure myself in order to obtain assistance is a fraudulent offense for which I can be prosecuted.

Date: _____, 20__

Borrower’s Signature: _____

Borrower’s printed name: _____