



After Recording Return To:
Los Alamos County
Homebuyer Assistance Program
1000 Central Avenue
Los Alamos, NM 87544

STATE OF NEW MEXICO
INCORPORATED COUNTY OF LOS ALAMOS
Homebuyer Assistance Program Loan No.: HAP-2023-

RESIDENTIAL MORTGAGE

I. DEFINITIONS:

The following terms have, unless otherwise provided, the following meaning:

“*Affordability period*” means that amount of time represented by the term of a mortgage which secures a Deferred Payment Loan made from County funds to low income households holding title to a home they occupy and which shall equal the following time periods: (1) with a Deferred Payment Loan from \$1,500.00 to \$14,999.00, then the Affordability Period shall be ten (10) years; or (2) with a Deferred Payment Loan from \$15,000.00 to \$45,000.00, then the affordability period shall be fifteen (15) years.

“*Borrower*” is _____. Borrower is used singularly but includes all named persons whether individually or collectively. Borrower is the mortgagor under this Security Instrument.

“*Community association dues, fees, and assessments*” means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners’ association, or similar organization.

“*Deferred payment loan*” is a non-amortizing loan, meaning that no payments are due during the loan term until the property is sold, vacated, or where the title is otherwise transferred to a household who does not qualify for the program.

“*Lender*” is the Incorporated County of Los Alamos through its Homebuyer Assistance Program or contracted agent. Lender is a political subdivision organized and existing under the laws of the State of New Mexico. Lender is the mortgagee under this Security Instrument.

“*Low income household*” means a household earning less than 80 percent of the Los Alamos County Area Median Income, as calculated by the United States Department of Housing and Urban Development, prior to its downward cap adjustment to the national low income limit.

“*Property*” means the real property and improvements thereon that is described below and attached hereto as **Exhibit A**.

“*Purchase Lender*” refers to the mortgage lender making the first mortgage loan to the Borrower for purchase of the Property.

“*Purchase Note*” refers to the written promise from the Borrower to the Purchase Lender to pay the amount borrowed with a predetermined set of payments over an agreed upon amortization schedule.

“*Purchase Mortgage*” means a debt instrument, secured by a lien on the Property, that the Borrower is obliged to pay back with a predetermined set of payments over an agreed upon amortization schedule.

“*Security Instrument*” means this document together with all Riders and Exhibits to this document, whether incorporated by reference or by attachment.

“*Very low income household*” means a household earning less than 50 percent of Los Alamos County Area Median Income, as defined by the United States Department of Housing and Urban Development.

II. TRANSFER OF RIGHTS IN THE PROPERTY:

THIS MORTGAGE (“Security Instrument”), made this the _____ day of _____, 2023, by and between the Borrower of that real property and improvements located at _____, Los Alamos, New Mexico 87544, described more particularly as set forth in **Exhibit A**, and Lender, secures to Lender: (i) the repayment of the Loan and all renewals, extensions and modifications of the Note in the principal sum of _____

(\$ _____ US) ("Principal"); and (ii) the performance of Borrower's covenants and agreements under this Security Instrument herein and the Note.

Borrower owes Lender the Principal sum of _____
(\$ _____ US) and _____ PERCENT (_____ %) ANNUAL INTEREST for each of the _____ (_____) years of the Affordability Period. In addition to this Mortgage, Borrower's debt is evidenced by the Promissory Note ("Note") attached as **Exhibit B**.

Borrower acknowledges that this Security Instrument is subject to the requirements of the Lender's Homebuyer Assistance Program, as set forth in County Ordinance 02-270 and the Homebuyer Assistance Program Policies and Procedures. Borrower represents and warrants that the information submitted by Borrower and used by Lender to verify Borrower's eligibility under the Homebuyer Assistance Program is true and correct.

Lender acknowledges that Borrower is paying the balance of the purchase price of the Property with a loan from _____ ("Purchase Lender"), in the amount of _____ ("Purchase Note") and that Borrower has granted a security interest ("Purchase Mortgage") to the Purchase Lender, both executed on the same date as this Security Instrument, to secure the Purchase Note. In the event that the Purchase Lender exercises any of its rights or remedies under the Purchase Note and Purchase Mortgage, this Security Instrument shall be subordinate to the Purchase Mortgage in all respects, for all purposes, and for all amounts that may be due and payable to the Purchase Lender or its successors and assigns under the Purchase Note and Purchase Security Instrument.

This Security Instrument does not alter, amend or in any way affect Purchase Lender's rights under the Purchase Note and Purchase Mortgage. Lender further agrees that, in the event of a default of the Note or this Security Instrument, Lender shall promptly provide to the Purchase Lender or its successors and assigns a copy of the written default notice.

Borrower does hereby mortgage, grant, and convey, with mortgage covenants, a security interest to Lender in the Property, real and personal, described on **Exhibit A**, attached hereto and

incorporated herein for all purposes, together with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Security Instrument.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants, as provided by this and other covenants herein, and will defend the title to the Property in favor of Lender against all claims and demands, subject to any recorded encumbrances recorded prior to this Security Instrument.

This Security Instrument secures to the Mortgagee: (a) the repayment of the debt evidenced by the Note, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced pursuant to this Security Instrument, including without limitation sums advanced by Mortgagee in the exercise of remedies provided herein; and (c) the performance of Borrower's covenants and agreements herein and in the Note, all subject to the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law, and with mortgage covenants.

III. UNIFORM COVENANTS:

Borrower and Lender covenant and agree as follows:

A. Payment of Principal and Interest; and Default Interest. Borrower shall promptly pay, when due, the principal balance and interest due on the Note and default interest due under the Note, if any. Payments due under the Note and this Security Instrument shall be made in U.S. currency. If any check or other instrument due and payable is received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

B. Application of Payments. Unless otherwise required by law, all payments received by Lender shall be applied first, to accrued interest due, and then to costs incurred by Lender to enforce the Note and this Security Instrument, and then to Principal due.

C. Charges; Liens. Borrower shall timely pay all liens, taxes, assessments, charges, fines, community association dues, fees, and assessments attributable to the Property which may attain priority over this Security Instrument. Borrower shall pay these charges on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph where such amount would impair or impede Lender's interest of title. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument except the Purchase Mortgage or any Refinance Mortgage, as defined below.

D. Hazard or Property Insurance. Borrower shall keep all improvements on the Property insured against loss by fire and other hazard included within the term "extended coverage," and any other hazards, including floods or flooding, for which Lender requires insurance. Insurance shall be maintained by Borrower in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval, which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option and Borrower's expense, obtain coverage to protect Lender's rights in the Property as provided below. Borrower acknowledges that the cost of the insurance coverage so obtained may significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender pursuant to this section shall become additional debt of Borrower secured by this Security Instrument. Such coverage shall cover Lender, but may not protect Borrower, Borrower's equity in the Property, or the real or personal property therein of the Property against any risk, hazard, or liability and might provide greater or lesser coverage than was previously in effect.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause, adding Lender as an additional insured, and shall provide notice to Lender of cancellation or termination of such policy at least thirty (30) days prior to the effective date of

termination or cancellation. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may provide proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not reduced.

If the restoration or repair is not economically feasible or Lender's security would be reduced, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, to any prior lien or mortgage holder, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within ten (10) days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender is hereby authorized by Borrower to settle such claim and to collect any and all insurance proceeds then due and owing to Lender. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. Notwithstanding the foregoing, all rights of Lender hereunder are and shall remain subordinate and subject to the rights of any holder of a Purchase Mortgage or any Refinance Mortgage properly recorded prior to this Security Instrument.

E. Occupancy, Preservation, Maintenance, and Protection of the Property. Borrower shall continue to occupy, establish, and use the Property as Borrower's principal residence after the date of this Security Instrument. Borrower shall not destroy, damage, or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that, in Lender's good-faith judgment, could result in forfeiture of the Property or otherwise materially impairs the lien created by this Security Instrument or Lender's security interest.

F. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any environmental law. The preceding two sentences shall not apply to the presence, use, or storage on the Property

of small quantities of hazardous substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

G. Borrower's Loan Application. Borrower shall also be in default of this Security Instrument if Borrower, during the application process, gave materially false or inaccurate information or statements to Lender, or failed to provide Lender with any material information in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence.

H. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees, and entering on the Property to make repairs. Although Lender may take action under this paragraph, Lender is under no obligation to do so.

For any amounts disbursed by Lender under this paragraph Borrower specifically agrees that such amounts shall become additional debt of Borrower secured by this Security Instrument. These amounts only shall bear interest from the date of disbursement at the rate set of **FIFTEEN PERCENT (15%) PER ANNUM**, until repaid, and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

I. Repayment of Loan. No repayment is due from Borrower until the Borrower sells the Property, vacates the Property, transfers or conveys in any manner title to the Property. This Security Instrument and Note will be released upon: 1) full payoff by the Borrower of all principal and interest accrued thereon, and any interest on Lender provided fees or costs, or with the consent of the Lender in its absolute and sole discretion; or 2) the Property is transferred (by sale or otherwise) to a person of low income as established by operation of Ordinance No. 02-270 and the

regulations authorized thereunder, and the transferee agrees to execute a new Mortgage and Note containing the same or similar terms.

This Security Instrument and the Note may also be called for repayment if the Property is transferred as a result of the death of the Borrower or, if more than one, all Borrowers or is transferred by devise or operation of law to the Borrower's relation by blood or marriage within the third degree, or is transferred as a result of a marital settlement agreement, operation of bankruptcy or other insolvency laws.

J. Events of Default. The Lender is authorized to declare, at its option, all or any part of the indebtedness secured by this Security Instrument immediately due and payable upon the happening of any of the following events:

- (a) Nonperformance by the Borrower of any covenant, agreement, term, or condition of this Security Instrument, or of the Note or of any other agreements heretofore, herewith to hereafter made by the Borrower with the Lender in connection with such indebtedness, after the Borrower has been given due notice by the Lender of such nonperformance;
- (b) The Lender's discovery of the Borrower's failure in any application of the Borrower to the Lender to disclose any fact deemed by the Lender to be material, of the making therein, or in any of the agreements entered into by the Borrower with the Lender or any misrepresentation by, on behalf of, or for the benefit of, the Borrower; or
- (c) The sale, vacation, transfer, or conveyance of in any manner of title to the Property, or any part thereof.

The Lender's failure to exercise any of its rights hereunder shall not constitute a waiver thereof. All of the events of this paragraph shall cause the Note to become immediately due and payable and are in this Security Instrument called "Events of Default."

K. Cure Default. The Lender may from time to time cure each default under any covenant or agreement in any instrument creating a lien upon the Property, or any part thereof, which shall have priority over the lien of this Security Instrument, to such an extent as the Lender may exclusively determine, and each amount paid (if any) by the Lender to cure any such default shall be added to the indebtedness secured by this security instrument and paid by the Borrower to the

Lender; and the Lender shall also become subrogated to whatever rights the holder of the prior lien might have under such instrument. Any costs associated with cure of any default will be added to the original Loan amount and will be subject to a **FIFTEEN PERCENT (15%) ANNUAL PERCENTAGE RATE** until defaulted covenant is cured by Borrower, however subsequent cure of any default by Borrower will not relieve Lender incurred costs plus stated interests.

L. **Receiver.** The Lender in any action to foreclose this Security Instrument shall be entitled to the appointment of a receiver without notice, as a matter of right and without any regard to the value of the Property or the balance of the indebtedness secured hereby, or the solvency or insolvency of the Borrower or other party liable for the payment of the Note and other indebtedness secured by this Security Instrument.

M. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to any inspection specifying reasonable cause for the inspection.

N. **Successor and Assigns Bound; Joint and Several Liability.** The covenants and agreements of this Security Instrument and Note are joint and several and shall bind and benefit the successors and assigns of Lender and Borrower.

O. **Transfer of the Property.** If all or any part of the Property or any interest in it is sold or transferred, in law or equity, without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument.

If Lender exercises this option, Lender shall give Borrower and the holder of any Purchase Mortgage notice of the default and notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument or cure of any defaulting provision or covenant. If Borrower fails to pay these sums prior to the expiration of this period or fails to cure any covenant or term, Lender may invoke any remedies permitted by this Security Instrument and allowed by

law without further notice or demand on Borrower or the holder of any prior recorded Purchase Mortgage.

If this Security Instrument secures a “home loan” as defined in the New Mexico Home Loan Protection Act (NMSA 1978, § 58-21A-1 *et seq.*), certain provisions of that act may be applicable with respect to default, notice, right to cure, method of foreclosure and/or other issues. Notwithstanding any other provisions in this Security Instrument, to the extent any provision of this Security Instrument is inconsistent with the applicable requirements of the Home Loan Protection Act, the provisions of that act shall control.

P. Exception to Transfer Restriction: Transfer by Devise. Notwithstanding any other provision of this Security Instrument and the Note, the Security Instrument and Note will not be due on transfer of the Property if: (a) a transfer of the Property is the result of the death of the Borrower and the transfer is by devise or operation of law; and (b) the transfer is to a member of Borrower’s immediate family (“Heir”) (for purposes of this Security Instrument the term “immediate family” means spouse, parents, siblings or children only); and (c) the Heir qualifies for assistance under the Lender’s Homebuyer Assistance Program policies and regulations governing income qualification; and (d) the Heir covenants and agrees in writing to maintain the Property as Heir’s principal residence and to otherwise comply with all the terms and conditions of the Security Instrument and Note.

Q. Subordination to Purchase Mortgage and Refinance Mortgage. Lender and Borrower acknowledge and agree that this Security Instrument is subordinate in all respect to any prior recorded liens, terms, covenants, and conditions of any prior mortgages (“Purchase Mortgage”) including all sums advanced for the purpose of: (a) protecting or further securing the lien of the Purchase Mortgage, or (b) constructing, renovating, repairing, furnishing, fixturing, or equipping the Property. Additionally, in the event Borrower shall elect, from time to time, to re-finance the Purchase Mortgage, Lender agrees to execute any documentation reasonably required by Borrower’s lender to subordinate this Security Instrument to a mortgage granted by Borrower to secure such debt refinance (“Refinance Mortgage”). In connection with obtaining the Refinance Mortgage and pursuant to Lender’s Subordination Policy, Borrower may be entitled to increase

the amount of debt which was initially secured by the Purchase Mortgage by an amount equal to Borrower's equity in the Property as determined by an appraisal obtained in connection with the refinance. Lender shall have no obligation to subordinate this Security Instrument to a Refinance Mortgage to the extent that the amount of the loan secured by the Refinance Mortgage exceeds the Purchase Mortgage plus Borrower's equity.

It is understood by the Borrower and Lender that the terms and provisions of the Purchase Mortgage or a Refinance Mortgage, as the case may be, are paramount and controlling and they may supersede any other term and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the Purchase Mortgage or a Refinance Mortgage, any provisions herein or any provisions in any other collateral agreement or document restricting the use of the Property to low income households or otherwise restricting the Borrower's ability to sell the Property shall have no effect on subsequent owners or purchasers of the Property. Any person, including successors (other than the Borrower or a related entity of the Borrower), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the Purchase Mortgage or a Refinance Mortgage shall receive title to the Property free and clear from such restrictions. Further, if the holder of the Purchase Mortgage or a Refinance Mortgage acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Security Instrument shall automatically terminate upon the holder of the Purchase Mortgage or Refinance Mortgage holder's acquisition of title provided that (1) the Lender has been given written notice of a default under the Purchase Mortgage or Refinance Mortgage and (2) Lender shall not have cured the default under the Purchase Mortgage or Refinance Mortgage within the time period permitted for a cure by the Borrower. Nothing herein shall release the Borrower from personal liability for amounts due under the Note or hereunder in the event title is transferred pursuant to a deed in lieu of foreclosure.

In the event of a default of this Security Instrument, Lender shall provide to the holder of a Purchase Mortgage or Refinance Mortgage, a copy of the written default notice and any notice of acceleration sent by Lender to Borrower.

R. **Release.** Upon payment of all sums secured by this Security Instrument, or forgiveness under other conditions set forth in this Security Instrument, Lender shall release this Security Instrument, without charge, to Borrower. Borrower shall pay any recording costs, unless otherwise agreed to by the parties in writing. Following release of this Security Instrument, any provisions herein or any provisions in any other collateral agreement or document restricting the use of the Property to low income households or otherwise restricting the Borrower's ability to sell the Property shall have no effect on Borrower or any subsequent owners or purchasers of the Property.

S. **Waiver of Deficiency.** Any amount due and payable under this Mortgage for which are insufficient moneys from the proceeds of an arms-length sale of the Property to pay, after payment of all amounts due and payable under the Purchase Mortgage, may be forgiven by the Lender and the lien created by this Mortgage may be released.

T. **Redemption Period.** If this Security Instrument is foreclosed, the redemption period after the date that the judicial sale is confirmed shall be thirty (30) calendar days including all weekends and holidays.

U. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by certified mail, return receipt requested, or by hand-delivery, unless applicable law requires use of another method. The notice shall be directed to _____, Borrower, _____, Los Alamos, New Mexico 87544 or any other address Borrower designates by written notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address at **1000 Central Avenue, Attention: Homebuyer Assistance Program, Los Alamos, New Mexico 87544**, or any other address Lender designates by notice to Borrower. A copy of any required Borrower' notice shall also be given and provided to: **Los Alamos Housing Partnership, Inc., 1362 Trinity Drive, Suite C-1, Los Alamos, New Mexico 87544.**

Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given, as provided in this paragraph.

V. **Statutory Mortgage Condition.** This Security Instrument shall be subject to the “statutory mortgage condition” as set out in NMSA 1978, § 47-1-41 (“**Statute**”). This Security Instrument is the same as a mortgage under the Statute. The Statute states that if Borrower does not pay and perform all obligations in this Security Instrument, Lender has the right to foreclose on the Property.

W. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the State of New Mexico. Lender and Borrower agree, unless otherwise provided by law, that jurisdiction and venue shall be in the First Judicial District Court of the State of New Mexico, Los Alamos Division as the Property and the parties are located therein. In the event that any provision, covenant, or clause of this Security Instrument or the Note conflicts with applicable law, the Parties agree that such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end, the provisions of this Security Instrument and the Note are declared to be severable.

X. **Environmental Compliance.** Borrower is, and shall remain, until this Security Instrument is canceled, released, re-conveyed, or discharged, the "owner and operator" of the Property within the meaning of, and for the purpose of, 42 U.S.C. Section 96-1(20) (A). At its sole cost and expense, Borrower shall comply with any and all federal, state, and local laws, rules, regulations, or orders with respect to environmental regulation, protection, or remediation (collectively, "Environmental Laws") and Borrower shall pay immediately when due the cost of removal of any hazardous and toxic substances, wastes, or materials, pollutants or contaminants, defined or regulated under any Environmental Laws (collectively, "Hazardous Substances") occurring on, before, or after the date of this Security Instrument, and Borrower shall keep the Property free of any lien imposed pursuant to any Environmental Laws.

Borrower:

Borrower:

Name (Printed)

Date

Signature

ACKNOWLEDGEMENT

State of New Mexico)
) ss.
County of Los Alamos)

The foregoing instrument was hereby acknowledged before me this ____ day of _____, 20__ by _____, Qualifying Grantee.

Notary Public

My commission expires:

LENDER:

LOS ALAMOS COUNTY:

Steven Lynne, County Manager

Date

APPROVED AS TO LEGAL FORM:

J. Alvin Leaphart, County Attorney

Date

LOS ALAMOS COUNTY CLERK:

County Clerk or Seal

Attested to this the _____ day of _____, 20__.

EXHIBIT A
Legal Description of Property

**EXHIBIT B
PROMISSORY NOTE**