

COUNTY HOME-ARP LOAN PROMISSORY NOTE

\$3,530,383

Santa Barbara, California

June 27, 2023

FOR VALUE RECEIVED, the Housing Authority of the County of Santa Barbara, a public body, corporate and politic (“Borrower”), whose address is 815 West Ocean Avenue, Lompoc, California 93436, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California (“Lender”), whose address is 123 E. Anapamu Street, 2nd Floor, Santa Barbara, California, 93101, the principal amount equal to Three Million Five Hundred Thirty Thousand, Three Hundred and Eighty-Three Dollars (\$3,530,383), or so much thereof as may be advanced by Lender to Borrower, together with interest thereon, as set forth below.

1. **PURPOSE.** In order to assist Borrower in developing fifty-nine (59) affordable rental housing units and one (1) manager’s unit located at 6021 Hollister Avenue, in the city of Goleta, Santa Barbara County, California (“Project”), Lender has agreed to loan the amount of Three Million Five Hundred Thirty Thousand, Three Hundred and Eighty-Three Dollars (\$3,530,383), which funds are derived from funds (“HOME-ARP Funds”) received by the Lender from the United States Department of Housing and Urban Development (“HUD”) through the HOME Investment Partnerships Program, under the American Rescue Plan (“HOME-ARP”) and through the American Recovery Plan Act (“ARPA”).

2. **BORROWER’S OBLIGATION.** This promissory note (“County HOME-ARP Loan Note”) evidences Borrower’s obligation to pay Lender the principal amount of Three Million Five Hundred Thirty Thousand, Three Hundred and Eighty-Three Dollars (\$3,530,383) (“County HOME-ARP Loan”) for the HOME-ARP Funds loaned to Borrower by Lender for the specific uses designated in that certain Loan Agreement by and between Borrower and Lender dated June 27th, 2023 (“County HOME-ARP Loan Agreement”).

3. **INTEREST.** Subject to Section 4, this County HOME-ARP Loan Note shall bear zero percent interest (0%) per annum from the date hereof.

4. **DEFAULT INTEREST.** In the Event of Default by Borrower of any of its obligations under this County HOME-ARP Loan Note or the HOME-ARP Loan Documents, Borrower shall pay to Lender interest on the outstanding principal of this County HOME-ARP Loan Note, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law (“Default Interest”), from the date of the Event of Default until the date that the Event of Default is cured, if subject to cure, or until the County HOME-ARP Loan is repaid in full. Such Default Interest shall be paid monthly and is due to the County on the first day of each month following such Event of Default.

5. **AMOUNT AND TIME OF PAYMENT.** The entirety of principal and all current and accrued interest of the County HOME-ARP Loan shall be due and payable on the earlier of: (a) twenty (20) years after the date of Project completion in conformance with 92 CFR 92.2 and 24 CFR 92,252(e), and as evidenced by a written notice of completion provided by Borrower to County, or (b) the date the Property is sold or otherwise transferred, or (c) Borrower has failed to commence construction as set forth in Section 4.1 of the County HOME-ARP Loan Agreement,

or (d) an event of default by Borrower, as defined in Section 8.1 of the County HOME-ARP Loan Agreement, which, if subject to cure, has not been cured as provided for in Section 8.2 of the County HOME-ARP Loan Agreement, in which case, the principal and all current and accrued interest shall be due and payable in accordance with Sections 9 and 10 of this County HOME-ARP Loan Note. The foregoing notwithstanding, if Borrower remains compliant with the terms of the County HOME-ARP Regulatory Agreement, as determined by the County through periodic inspections of the Project and tenant files documenting occupancy by Qualified Households and Qualifying Population households, as applicable, and as indicated with monitoring close-out letters from Lender to Borrower indicating compliance with the HOME-ARP Regulatory Agreement, for the twenty (20) year HOME-ARP Affordability Period described in the County HOME-ARP Loan Agreement, then the principal amount of the County HOME-ARP Loan, along with all accrued interest, except interest accrued pursuant to Section 2.4 of the County HOME-ARP Loan Agreement, shall be forgiven upon the expiration of such 20-year HOME-ARP Affordability Period.

6. **DEFINITIONS.** All capitalized terms used but not defined in this County HOME-ARP Loan Note shall have the respective meanings ascribed to such terms in the County HOME-ARP Loan Agreement. The following terms are defined in the County HOME-ARP Loan Agreement and repeated here for convenience of reference:

- a. “Annual Financial Statement” means the financial statement of Operating Expenses and Revenue, prepared at Borrower’s expense, by an independent certified accountant acceptable to Lender, which shall be provided as part of Borrower’s annual reporting to Lender, in conformance with Section 5.12 of the HOME-ARP Loan Agreement.
- b. “County HOME-ARP Loan Deed of Trust” means that deed of trust, assignment of rents, and security agreement recorded against the Property and the improvements to be constructed thereon as security for the County HOME-ARP Loan by Borrower as trustor with Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said County HOME-ARP Loan Deed of Trust.
- c. “County HOME-ARP Loan Regulatory Agreement” means the agreement executed by Borrower and Lender, attached as Exhibit E to the HOME-ARP Loan Agreement, and recorded against the Property which regulates the use of the HOME-ARP Assisted Units.
- d. “County HOME-ARP Loan Documents” means, collectively, the County HOME-ARP Loan Agreement, the County HOME-ARP Loan Note, the County HOME-ARP Loan Deed of Trust, and the County HOME-ARP Loan Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to such documents
- e. “Fiscal Year” means the twelve (12) month accounting period, beginning July 1 and ending June 30, for which annual financial statements are regularly prepared.
- f. “Operating Expenses” means, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, and management of

the Project, including painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, certificates, permits and licenses, sewer charges, real and personal property taxes and assessments, insurance, reasonable property management fee, County monitoring fee, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, lease payments if any, cash deposited into reserves for operating expenses with respect to the Project, not to exceed an amount equal to three (3) months' operating expenses, and capital replacements with respect to the Project in an amount not to exceed \$3,000 annually, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals. The Operating Expenses shall be reported in the Annual Financial Statement.

- g. "Project" means the construction, operation and management of the Property and the improvements to be constructed thereon according to the terms of the County HOME-ARP Loan Agreement and as defined in 24 CFR 92.2.
- h. "Property" means the property located at 6021 Hollister Avenue in the city of Goleta, County of Santa Barbara, California as is more fully described in Exhibit A of the County HOME-ARP Loan Agreement and County HOME-ARP Loan Deed of Trust, executed concurrently herewith.
- i. This paragraph left intentionally blank.
- j. This paragraph left intentionally blank.
- k. "Term" means twenty (20) years from the date of completion of the Project in conformance with 24 CFR 92.2 and 24 CFR 92.252(e) and as evidenced by a Certificate of Occupancy for the Project issued by the City of Goleta Building Official and delivered to Lender by Borrower.

7. **PAYMENTS.** All accrued interest and principal shall be due and payable in accordance with the terms set forth in Section 5, above, and Section 9, below. All payments made by Borrower shall be applied as follows: first to pay current annual interest due, if any; then to the cumulative interest owed, if any; then to reduce the principal amount of the County HOME-ARP Loan.

8. **PLACE AND MANNER OF PAYMENT.** All amounts due and payable under this County HOME-ARP Loan Note are payable at the office of Lender at the address set forth above, or at such other place as Lender may designate to Borrower in writing from time to time, in any coin or currency of the United States which on the respective Payment Dates thereof shall be legal tender for the payment of public and private debts.

9. **DEFAULT AND ACCELERATION.** This County HOME-ARP Loan Note is secured by a County HOME-ARP Loan Deed of Trust. All covenants, conditions and agreements contained in the County HOME-ARP Loan Deed of Trust and the County HOME-ARP Loan Agreement are hereby made a part of this County HOME-ARP Loan Note. Borrower agrees that the principal and all current and accrued interest, shall, at the option of Lender, be immediately

due and payable upon any event of default as defined in the County HOME-ARP Loan Agreement which, if capable of cure, has not been cured pursuant to the County HOME-ARP Loan Agreement, including, but not limited to, the failure of Borrower to make any payment when due. Upon any event of default, Lender may exercise any other right or remedy permitted under this County HOME-ARP Loan Note and the County HOME-ARP Loan Documents.

10. PREPAYMENT OF COUNTY HOME LOAN. No prepayment penalty will be charged to Borrower for payment of all or any portion of the County HOME-ARP Loan amounts prior to the end of the Term. However, prepayment of the County HOME-ARP Loan shall not affect Borrower's obligations under the County HOME-ARP Loan Regulatory Agreement.

11. NO OFFSET. Borrower hereby waives any rights of offset it now has or may hereafter have against Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this County HOME-ARP Loan Note.

12. WAIVERS. All presentments, notices of dishonor, and protests are waived by all makers, sureties, guarantors, and endorsers of this County HOME-ARP Loan Note, if any.

13. CONSENTS AND APPROVALS. Any consent or approval of Lender required under this County HOME-ARP Loan Note shall not be unreasonably withheld or delayed.

14. NOTICES. Except as may be otherwise specifically provided herein, any approval, notice, direction, consent request or other action by Lender shall be in writing and may be communicated to Borrower at the principal office of Borrower set forth below, or at such other place or places as Borrower shall designate in writing, from time to time, for the receipt of communications from Lender. Copies of all notices which are sent to Borrower under the terms of the HOME-ARP Loan Documents shall also be sent to Borrower's counsel at the address below.

BORROWER: Housing Authority of the County of Santa Barbara
815 West Ocean Avenue
Lompoc, CA 93436
Attn: Executive Director

With copy to: Mark S. Manion
Price, Postel & Parma, LLP
200 E. Carrillo St., Suite 400
Santa Barbara, CA 93101

15. BINDING UPON SUCCESSORS. All provisions of this County HOME-ARP Loan Note shall be binding upon and inure to the benefit of the permitted successors-in-interest, permitted transferees and permitted assigns of Borrower and Lender.

16. GOVERNING LAW. This County HOME-ARP Loan Note shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

17. **SEVERABILITY.** Every provision of this County HOME-ARP Loan Note is intended to be severable in the event that any provision of this County HOME-ARP Loan Note shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in which event the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

18. **TIME.** Time is of the essence in this County HOME-ARP Loan Note.

19. **WAIVER.** No waiver by Lender of any obligation in this County HOME-ARP Loan Note or any of the other County HOME-ARP Loan Documents shall be valid or enforceable unless delivered by Lender to Borrower in writing in accordance with the Notice provisions hereof and thereof. No waiver shall be implied from any delay or failure by Lender to take action on any breach or default of Borrower or to pursue any remedy allowed under the County HOME-ARP Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the County HOME-ARP Loan Documents shall not operate as a waiver or release from any of the Borrower's obligations under the County HOME-ARP Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be consent to any other or subsequent act or omission, or to waive the requirement for Lender's written consent for future waivers.

20. **AMENDMENTS AND MODIFICATIONS.** All amendments or modifications to this County HOME-ARP Loan Note, if any, must be in writing, and shall be valid and enforceable only if duly executed by both Borrower and Lender.

21 **NONRECOURSE.** Except as expressly provided in the second paragraph of this Section 21, the Borrower, and the Borrower's partners, officers, directors, employees and agents (collectively, the "Borrower Parties") shall not have any personal liability for payment of the principal of, or interest on, this County HOME- ARP Loan Note. The sole recourse of the Lender with respect to the principal of, or interest on, the County HOME-ARP Loan Note shall be to the property securing the indebtedness evidenced by the County HOME-ARP Loan Deed of Trust. Provided, however, that nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the County HOME-ARP Loan Note of all the rights and remedies of the Lender, or (ii) be deemed in any way to impair the right of the Lender to assert the unpaid principal amount of the County HOME-ARP Loan Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on, the County HOME-ARP Loan Note, except as hereafter set forth; provided, however, that nothing contained herein is intended to relieve any of the Borrower Parties of personal liability to the extent of actual damages for any of the following: (i) the Borrower Parties' fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments, or other charges (which are not contested by the Borrower in good faith or which, if contested, are nevertheless found to be validly assessed) which may create liens on the Property that are payable or applicable prior to any foreclosure under the County HOME- ARP Loan Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by or on behalf of any of the Borrower Parties other than in accordance with the County HOME-ARP Loan Deed of

Trust; (iv) the material misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (v) the Borrower's indemnification obligations under the County HOME-ARP Loan Agreement; (vi) any Lender obligation to repay to HUD any HOME-ARP Funds in connection with Borrower's failure to comply with any of the HOME-ARP Regulations, and (vii) payment to the Lender of any rental income or other income arising with respect to the Property received by any of the Borrower Parties after the Lender has given notice to the Borrower of the occurrence of an Event of Default and after the expiration of all applicable notice and cure periods, subject to the rights of any lender providing a loan secured by the Property to which the Lender has subordinated the County HOME-ARP Loan Deed of Trust.

22. COUNTY HOME ARP LOAN AGREEMENT CONTROLS. In the event that any provisions of this County HOME-ARP Loan Note and the County HOME-ARP Loan Agreement conflict, the terms of the County HOME-ARP Loan Agreement shall control and prevail.

BORROWER:

HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA, a public body, corporate and politic,

By: 
Robert P. Havlicek, Jr.
Executive Director