**Arkansas Development Finance Authority – HOME Program**

**Homebuyer Agreement – Recapture Model**

**NOTICE TO HOMEBUYER:** *This Agreement explains the terms of the purchase assistance you are receiving through the HOME Investment Partnerships Program. This Agreement is separately enforceable from the Note(s) and Mortgage(s) for the Term in Section 3, unless you sell and repay the balance specified in Section 8. Read each paragraph carefully and ask questions regarding any sections you do not fully understand before you sign.*

**THIS AGREEMENT** is entered into this **DATE** day of **MONTH, YEAR** by and among the Arkansas Development Finance Authority, a body corporate and politic of the State of Arkansas, 1 Commerce Way, Suite 602, Little Rock, Arkansas 72202 (“**ADFA**”), **HABITAT AFFILIATE NAME** (“**Habitat**”) and **BUYER NAME(S)**, (the “**Homebuyer**”).

**WITNESSETH**

**WHEREAS**, ADFA is a Participating Jurisdiction under the HOME Investment Partnerships Program (“**HOME**” or “**HOME Program**”) administered by the United States Department of Housing and Urban Development (“**HUD**”) and is authorized by HUD to provide homebuyer assistance through its Consolidated Plan; and

**WHEREAS**, HOME regulations at 24 CFR 92 govern ADFA’s implementation of the HOME Program and are made a part this Agreement; and

**WHEREAS**, ADFA has provided funds to Habitat for the construction of single-family homes, and Homebuyer intends to purchase one of the Habitat homes pursuant to this Agreement;

**WHEREAS**, as part of the Homebuyer’s purchase of the Property (as further defined herein), Homebuyer will obtain purchase money financing from Habitat which was funded with HOME funds provided by ADFA; and

**WHEREAS**, ADFA has determined that the Homebuyer meets the HOME Program eligibility requirements to purchase the dwelling located at PROPERTYADDRESS, more particularly described in Attachment “A” (the “**Property**”) at the price of $PURCHSASEPRICE (the “**Purchase Price”**) and will assume fee simple ownership upon closing.

**NOW, THEREFORE**, in accordance with the mutual understanding and agreements set forth herein, ADFA, Habitat, and the Homebuyer agree as follows:

**SECTION 1. ROLE OF HABITAT**

Pursuant to a prior agreement between Habitat and ADFA, Habitat borrowed HOME funds to develop the Property being acquired by the Homebuyer. Homebuyer will receive purchase financing from Habitat which was originally funded by ADFA’s HOME investment.

While Habitat will be the holder of the Note and the mortgagee under the Mortgage described in Section 2, ADFA remains responsible to HUD for compliance with the requirements of the HOME Program. In its role as the lender, Habitat will collect payments of principal and interest (if any) from the Homebuyer and remit same to ADFA.

To further secure performance, Habitat has executed an Agreement to Pay Over Proceeds of Mortgage and Note (the “Proceeds Agreement”) with ADFA which will be recorded in the records of the county in which the Property is located. Its provisions will, among other items, require that:

1. Habitat not assign the Note or Mortgage, or transfer the servicing thereof, without the prior and express written permission of ADFA, the granting of which shall be in the sole and exclusive discretion of ADFA;
2. Habitat promptly remit to ADFA all payments of principal and interest collected under the HOME-funded Note and Mortgage. This includes both regularly scheduled monthly payments and any lump-sum payments or payoff, such as a payoff resulting from the Homebuyer’s sale of the Property;
3. Prior to accepting any payoff of the net proceeds of sale (see Section 8) which is less than the outstanding balance of the Note, Habitat must notify and receive ADFA’s approval of same;
4. Habitat promptly report to ADFA any default by the Homebuyer under the Note, Mortgage, or this Agreement and diligently pursue corrective actions available under the Note and Mortgage; and
5. Habitat not modify the payment terms or otherwise amend the Note or Mortgage without the express written approval of ADFA, which approval shall be in the sole and exclusive discretion of ADFA;

Further, the Proceeds Agreement between Habitat and ADFA will provide that, at any point during the term of the Loan, ADFA in its sole discretion may, upon notice to the Habitat and Homebuyer, require Habitat to assign the Note and Mortgage to ADFA.

Following any such assignment, Homebuyer will make payments under the Note and Mortgage to ADFA, or its designee.

**SECTION 2. FORM, AMOUNT, and Use OF ASSISTANCE**

Using HOME Program funds provided by ADFA, Habitat will loan Homebuyer an amount not to exceed $DIRECTASSISTANCETOTAL (the “Loan”) to assist Homebuyer with a down payment, closing costs, and/or a portion of the purchase price of the Property, therefore representing direct HOME assistance to the Homebuyer.

The assistance will be provided in the form of a loan with two parts. $PART\_A\_AMOUNT will be provided as an amortizing loan over a 30 year term with 0% interest (the “**Amortizing Balance**”), and another $PART\_B\_AMOUNT will be provided as a deferred loan which is forgivable on a pro rata basis over the Affordability Period defined in Section 4 below (the “**Deferred Balance**”).

The loan will be evidenced by a promissory note executed by the Homebuyer in favor of Habitat (the “**Note**”) and secured by a mortgage securing the promissory note to be filed in the official real property records of the county in which the Property is located (the “**Mortgage**”). The terms and duration of the loan are specified in the Note and Mortgage, and the Note and Mortgage will be released upon repayment under the terms set forth therein. The Homebuyer may, but is not required to, prepay the loan without penalty, in whole or in part, at any time.

The Homebuyer agrees that the HOME Assistance will be used at closing as gap financing to cover portions of the down payment, closing costs, and/or the Purchase Price of the Property. This will reduce the total amount the Homebuyer will be required to borrow from a bank, credit union, or other lender in order to purchase the Property.

*{If signing the agreement prior to closing, the following provision can be used to clarify that the final HOME amount may change slightly.}* The amount of HOME Assistance will not be final until ADFA has updated all necessary underwriting and subsidy layering requirements based on final Purchase Price and/or closing costs.

**SECTION 3. AGREEMENT TERM**.

This Agreement will automatically terminate if the Homebuyer does not close and take title to the Property on or before ABSOLUTECLOSINGDEADLINE.

Otherwise, this Agreement will expire upon expiration of the Affordability Period as defined in Section 4 or satisfaction of the Mortgage, whichever is later.

This Agreement shall survive any prepayment of the Loan and/or any release of the Mortgage that does not include a transfer of the Property and shall continue for the full Affordability Period, as defined in Section 4.

**SECTION 4. AFFORDABILITY PERIOD**

The Affordability Period for the Property will begin on the Completion date as determined by ADFA (“**Completion Date**”) and shall end **fifteen (15)** years after the Completion Date (the “**Affordability Period**”). As required by the HOME Program, the Completion Date is the date the activity is shown as completed in HUD’s Integrated Disbursement and Information System (IDIS), the entry into which cannot be made until after closing on the Property has occurred. ADFA will provide a formal written notice to Habitat and the Homebuyer of the Completion Date and the resulting expiration date of this Affordability Period and this Agreement. Upon issuance of such notice, this Agreement shall be deemed amended to reflect the expiration date of the Affordability Period.

If the Homebuyer sells or transfers ownership of the Property voluntarily or involuntarily, including via foreclosure or deed in lieu of foreclosure, the Affordability Period will end upon the recapture of the full amount of the direct HOME Assistance by ADFA as described in Section 8 below.

**SECTION 5. Homebuyer Representations**

By signing this Agreement, the Homebuyer attests to the following:

* The Homebuyer warrants that all information and documentation provided to Habitat and ADFA is true and correct. The Homebuyer has fully disclosed all income and assets to Habitat and ADFA and warrants that the Homebuyer’s household or financial situation has not changed materially since the application for HOME Assistance was made. The Homebuyer acknowledges that any material discrepancies or misstatements may result in the Homebuyer’s disqualification from participation in the program and shall be deemed a breach of this Agreement and the Loan, and the Homebuyer will be required to repay the entire HOME investment amount.
* The Homebuyer has completed homeownership counseling as required by ADFA and will complete any post-closing counseling required by ADFA.
* The Homebuyer has agreed to purchase a dwelling unit that meets HOME Program requirements, and that the dwelling unit must meet Program property standards prior to purchase.
* The Homebuyer understands and agrees to the requirements stated in this Agreement for the Agreement Term.

**SECTION 6. Homebuyer Responsibilities**

The Homebuyer agrees to the following to meet the requirements of this assistance:

* The Homebuyer will provide the following buyer funds required for closing: $XXXXX.
* The Homebuyer will occupy the property as his/her principal residence for the Affordability Period as described in Section 7.
* The Homebuyer will maintain the property, maintain hazard insurance, and pay all required taxes during the term of this Agreement as described in Section 9.
* The Homebuyer will provide information as required by ADFA to monitor compliance with Program requirements.
* The Homebuyer will comply with the refinancing policy stated in Section 10.
* In the event of sale of the property during the Agreement Term, the Homebuyer will notify ADFA and comply with Recapture requirements in Section 8.

**SECTION 7. PRINCIPAL RESIDENCE**

During the Affordability Period, barring a sale or transfer of title to the Property, which shall be governed by Section 8 below, the Homebuyer shall at all times maintain the Property as his/her principal residence. Should the Homebuyer cease to maintain the Property as his/her principal residence, rent the residence to another party, or convert the Property to a non-residential use, the Homebuyer will be in breach of this Agreement and subject to the Default and Enforcement provisions under Section 12.

**SECTION 8. RECAPTURE OF DIRECT HOME ASSISTANCE**

In compliance with the HOME Rule at 24 CFR 92.254(a)(5), if the Homebuyer sells or otherwise voluntarily or involuntarily transfers title to the Property during the Agreement Term, including transfer as a result of foreclosure or deed in lieu of foreclosure, then the outstanding direct HOME Assistance to the Homebuyer will be subject to recapture by ADFA.

The “Recapture Amount” will be determined by adding together the then outstanding balance of the Amortizing Balance to the outstanding balance of the Deferred Balance (after accounting for any prorated forgiveness based on the Homebuyer’s actual period of ownership).

If there are no net proceeds of sale or the net proceeds are insufficient to repay the Recapture Amount, then the entire net proceeds, if any, will be recaptured and retained by ADFA to satisfy both this Agreement and the Loan. The term “net proceeds” is defined as the sale price less the balance due on superior secured non-HOME debt and less the closing costs incurred by the Homebuyer at sale or transfer. In the event the net proceeds are projected to be less than the total outstanding loan balance, ADFA reserves the right to determine whether the sales price is comparable to the sales price in an arms-length transaction for a similar unit and to evaluate the closing costs being charged to the Homebuyer to ensure they are reasonable and customary. If the sales price or closing costs are unreasonable, ADFA may adjust the payoff to reflect net proceeds calculated using its estimates of arms-length market value and customary closing costs.

Net proceeds of sale in excess of the outstanding direct HOME Assistance may be retained by the Homebuyer.

To facilitate the expeditious administration of this Section, the Homebuyer shall provide notice to Habitat and ADFA of any anticipated transfer of title, including but not limited to a sale or foreclosure.

If the Homebuyer is determined to be in violation of this Agreement, the full amount of the Loan shall be due and payable as stated in Section 12.

**SECTION 9. INSURANCE and Taxes**

At all times during the term of this Agreement, the Homebuyer shall maintain a valid and current hazard insurance policy on the Property for the current appraised value of the Property and naming Habitat (or, following any assignment of the loans, ADFA) 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 Habitat (or ADFA) will have the right to secure insurance for the Property and charge such costs to the Homebuyer or to foreclose on its Mortgage(s), if necessary, to protect the HOME program investment. If the Property is in a 100-year floodplain, the Homebuyer shall maintain a current and valid flood insurance policy on the Property. Evidence of insurance must be provided at closing of the Loan and annually thereafter.

At all times during the term of this Agreement, the Homebuyer shall pay property taxes and other similar assessments when due.

**SECTION 10. Refinancing**

During the Agreement Term, the Homebuyer will notify Habitat (or ADFA) of the intent to refinance any loan that is senior to the HOME Mortgage(s). ADFA will only approve subordination of the HOME debt to a new loan in compliance with its then current refinancing policy.

**Section 11. ADFA Responsibilities**

As the HOME Participating Jurisdiction, ADFA is ultimately responsible to HUD for compliance with all HOME requirements, including the ongoing enforcement of this Agreement regarding principal residency and recapture.

* ADFA has determined the Homebuyer to be eligible according to the HOME Program’s income limits and other eligibility requirements and will review any changes to eligibility at time of closing.
* ADFA has determined the property to be eligible under the HOME Program’s requirements, including Program purchase price limits and property standards.
* ADFA has completed the environmental review required by 24 CFR Part 58 and determined that the property and assistance meet federal requirements.
* ADFA has determined the amount of Homebuyer’s assistance to be reasonable and in compliance with Program requirements and its underwriting policy and may adjust the assistance based on final price, costs and underwriting.
* ADFA will require HABITAT AFFILIATE NAME review, monitor, or seek to confirm the Homebuyer’s ongoing compliance with the terms of this Agreement and the Loan, including but not limited to principal residency. ADFA will enforce the other provisions of this agreement and the recorded documents.

ADFA may issue notices of violation (or require Habitat to do so), require corrective action, or seek performance using any and all legal remedies available.

**SECTION 12. DEFAULT AND ENFORCEMENT**

In the event the Homebuyer violates any terms of this Agreement or any other agreement between the Homebuyer and ADFA, ADFA shall issue a notice of violation to the Homebuyer. Upon receipt of such a notice, the Homebuyer agrees to remedy the violation within 30 days or, in the case of violations requiring longer cure periods, ADFA may allow for a period of up to 90 days to correct the violation. In such cases, the Homebuyer must take action to begin corrections within 30 days of the date of ADFA’s notice of violation. Upon the Homebuyer’s failure to correct the violation within the allotted time, ADFA may take additional corrective action including suing for specific performance, declaring a default in the Loan and initiating foreclosure proceedings (or requiring Habitat to do so), and seeking any other available legal remedies.

In the event of the Homebuyer’s uncured violation of the principal residency provisions of Section 7, the Homebuyer will be required to repay the entire HOME investment in the Property.

**SECTION 13. MISCELLANEOUS**

This Agreement shall be construed and interpreted in accordance with Arkansas law. In the event of legal action resulting from a dispute hereunder, the parties agree that the state and federal courts of the State of Arkansas shall have jurisdiction and that the proper forum for such action shall be Pulaski County, Arkansas.

None of the rights and remedies conferred upon or reserved to ADFA under this Agreement is intended to be exclusive of any other rights, and each and every right shall be cumulative and concurrent, and may be enforced separately, successively, or together, and may be exercised from time to time as often as may be deemed necessary by ADFA.

Each party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly. Any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived.

The paragraph headings contained herein are for convenience in reference to this Agreement and are not intended to define or to limit the scope of any provision of this Agreement. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neutral gender, shall include all other genders and singular nouns used herein shall include the plural and vice versa.

Executed and effective as of the day and year first above written and for the purposes herein expressed, by ADFA, signing by and through its AUTHORIZED SIGNER, by Habitat, and by the Homebuyer.

*{Signature Pages Follow}*

**Homebuyer(s)**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME

STATE OF ARKANSAS

COUNTY OF COUNTY

BEFORE ME, the undersigned Notary Public, on this day personally appeared NAME(s), known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that s/he/they executed the same of the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC, State of Arkansas

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Habitat**

HABITAT AFFILIATE NAME

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF ARKANSAS

COUNTY OF COUNTY

BEFORE ME, the undersigned Notary Public, on this day personally appeared NAME, TITLE of HABITAT AFFILIATE NAME known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same of the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC, State of Arkansas

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ADFA**

Arkansas Development Finance Authority

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF ARKANSAS

COUNTY OF COUNTY

BEFORE ME, the undersigned Notary Public, on this day personally appeared NAME, TITLE of the Arkansas Development Finance Authority known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same of the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC, State of Arkansas

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Attachment A**

**Legal Description**

*{Insert legal description}*