

# SUBORDINATE PROGRAM MORTGAGE

Based on Grounded Solutions Network 2021 Model Subordinate Program Mortgage

This Subordinate Program Mortgage (as amended and/or restated from time to time, this "**Security Instrument**"), is executed by [FULL NAMES OF HOMEBUYERS], [each] an individual ([together,] the "**Mortgagor**"), residing at [Home Address] (the "**Property Address**"), in favor of the City of Ketchum, a municipal corporation of the State of Idaho, its successors and assigns (the "**Mortgagee**"), with an address of [Office Address], as of [Month Date], 20[Year], for the purpose of encumbering the improved real estate described on attached Exhibit A (as defined in greater detail below, the "**Property**").

## DEFINITIONS

Words used in multiple sections of this document are defined below. Certain rules regarding the usage of words used in this document are also provided in Section 12.

**"Applicable Law"**: All controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

**"Declaration"**: The Declaration of Local Ownership Covenant signed by the Mortgagor, dated and recorded the same date as this Security Instrument, and encumbering the Property.

**"Default"**: (i) The failure to pay any Payment on the date it is due, (ii) a breach of any other representation, warranty, covenant, requirement, restriction, obligation or agreement in the Declaration, (iii) the failure to pay any other amount secured by this Security Instrument on the date it is due, (iv) a breach of any representation, warranty, covenant, requirement, restriction, obligation or agreement in this Security Instrument, (v) a breach of any representation, warranty, covenant, requirement, restriction, obligation or agreement in the first lien security instrument that is secured by the Property, or (iv) the commencement of any action or proceeding described in Section 7(d).

**"Obligations"**: Payment of all monetary obligations evidenced by the Declaration, including Program Fees, Excess Proceeds, and Unpaid Amounts (as defined in the Declaration) plus any interest, prepayment charges, costs, expenses and late charges due under the Declaration, and all sums due under this Security Instrument, plus any interest, together with performance of all non-monetary obligations evidenced by the Declaration.

**"Payment"**: (i) The regularly scheduled amounts due under the Declaration, and (ii) any other amounts due from time to time under the Declaration, including, without limitation, Program Fees, Excess Proceeds, and Unpaid Amounts and all other amounts payable by Mortgagor under the terms of the Declaration.

**"Property"**: The property described below under the heading "TRANSFER OF RIGHTS IN THE PROPERTY."

**"Successor in Interest of Mortgagor"**: Any party that has taken title to the Property, whether or not that party has assumed Mortgagor's obligations under the Declaration and/or this Security Instrument.

### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Mortgagee: (i) the payment of the Obligations; and (ii) the performance of Mortgagor's covenants and agreements under this Security Instrument and the Declaration. For this purpose, Mortgagor mortgages, grants and conveys to Mortgagee the Property, which is located in [Blaine County, Idaho] and has an address of the Property Address.

TOGETHER WITH all the improvements now or subsequently erected on the Property, including replacements and additions to the improvements on such Property, all property rights, including, without limitation, all easements, appurtenances, royalties, mineral rights, oil or gas rights or profits, water rights, and fixtures now or subsequently a part of the property. All of the foregoing is referred to in this Security Instrument as the "**Property**".

MORTGAGOR REPRESENTS, WARRANTS, COVENANTS AND AGREES that: (i) Mortgagor lawfully owns and possesses the Property in fee simple or lawfully has the right to use and occupy the Property under a leasehold estate; (ii) Mortgagor has the right to mortgage, grant and convey the Property; and (iii) the Property is unencumbered, and not subject to any other ownership interest in the Property, except for encumbrances and ownership interests of record. Mortgagor warrants generally the title to the Property and covenants and agrees to defend the title to the Property against all claims and demands, subject to any Permitted Mortgages (as defined in the Declaration).

### COVENANTS

Mortgagor and Mortgagee covenant and agree as follows:

**1. Payment of Program Fees, Excess Proceeds, Unpaid Amounts, Interest, and Other Amounts.** Mortgagor will make each Payment when due. All Payments must be made in U.S. currency.

Payments are deemed received by Mortgagee when received at the location designated in the Declaration, or at such other location as may be designated by Mortgagee in accordance with the notice provisions in Section 11.

Any offset or claim that Mortgagor may have now or in the future against Mortgagee will not relieve Mortgagor from making the full amount of all payments due under the Declaration and this Security Instrument or performing the covenants and agreements set forth in the Declaration and this Security Instrument and secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted by Mortgagee will be applied in the following order of priority: (a) interest due under the Declaration or Security Instrument (if any); and (b) amounts due under the Declaration or this Security Instrument, as applicable. Such payments will be applied to each Payment in the order in which it became due. Any remaining amounts will be applied first to late charges, second to any other amounts due under the Declaration, and third to any other amounts due under this Security Instrument.

**3. Prior Security Instruments; Charges; Liens.** Mortgagor will perform all of Mortgagor's obligations under any security instrument with a lien which has priority over the lien of this Security Instrument, including Mortgagor's covenants to make payments when due. Mortgagee and Mortgagor each recognize that provisions in the Declaration and in this Security Instrument give Mortgagee certain rights with respect to the Property and to the receipt of certain funds, including the right to receive payment of insurance proceeds, condemnation and other Miscellaneous Proceeds and the use and application of the proceeds, including the right to hold and disburse the proceeds, and that these rights are subject to the terms of any Permitted Mortgage.

**4. Property Insurance.** Mortgagor must keep the improvements now existing or subsequently erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes, winds and floods. Mortgagor must maintain the types of insurance Mortgagee requires, all in accordance with the terms of any Permitted Mortgage. This insurance must be maintained in the amounts (including deductible levels) and for the periods that Mortgagee requires. What Mortgagee requires pursuant to the preceding sentences can change during the term of the Declaration, and may exceed any minimum coverage required by Applicable Law. Mortgagor may choose the insurance carrier providing the insurance, subject to Mortgagee's right to disapprove Mortgagor's choice, which right will not be exercised unreasonably.

If Mortgagee has a reasonable basis to believe that Mortgagor has failed to maintain any of the required insurance coverages described above, Mortgagee may obtain insurance coverage, at Mortgagee's option and at Mortgagor's expense. Mortgagee is under no obligation to purchase any particular type or amount of coverage. Any such coverage will insure Mortgagee, but might not protect Mortgagor, Mortgagor's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect.

All insurance policies required by Mortgagee and renewals of such policies: (i) will be subject to Mortgagee's right to disapprove such policies; (ii) must include a standard mortgage clause; and (iii) must name Mortgagee as mortgagee and/or as an additional loss payee in the order of the priority of its lien.

**5. Preservation, Maintenance and Protection of the Property.** Mortgagor will not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Mortgagor must maintain the Property in accordance with the Declaration and in order to prevent the Property from deteriorating or decreasing in value due to its condition.

**6. Protection of Mortgagee's Interest in the Property and Rights Under this Security Instrument.**

**(a) Protection of Mortgagee's Interest.** If: (i) Mortgagor fails to perform the covenants and agreements contained in the Declaration and/or this Security Instrument; (ii) there is a legal proceeding or government order that might significantly affect Mortgagee's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien that has priority or may attain priority over this Security Instrument or to enforce laws or regulations); or (iii) Mortgagee reasonably believes that Mortgagor has abandoned the Property, then Mortgagee may do and pay for whatever is reasonable or appropriate to protect Mortgagee's interest in the Property and/or rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property, and may enter the Property for purposes of performing same.

Mortgagee's actions may include, but are not limited to: (I) paying any sums secured by a lien that has priority or may attain priority over this Security Instrument; (II) appearing in court; and (III) paying (A) reasonable attorneys' fees and costs, (B) property inspection and valuation fees, and (C) other fees incurred for the purpose of protecting Mortgagee's interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, inspections of the Property, entering the Property to make repairs, changing locks, replacing or boarding up doors and windows, draining water from pipes, eliminating building or other code violations or dangerous conditions, and having utilities turned on or off. Although Mortgagee may take action under this Section 6, Mortgagee is not required to do so and is not under any duty or obligation to do so. Mortgagee will not be liable for not taking any or all actions authorized under this Section 6.

**(b) Additional Amounts Secured.** Any amounts disbursed by Mortgagee under this Section 6 will become additional Obligations of Mortgagor secured by this Security Instrument. If not paid by Mortgagee to Mortgagor within 30 days after issuance of an invoice reflecting amounts disbursed by Mortgagee, these amounts shall bear interest at the rate specified in the Declaration for late payments under Article IV of the Declaration.

**(c) Declaration Terms.** Mortgagor will comply with all the provisions of the Declaration.

**(d) Leasehold Terms.** If this Security Instrument is on a leasehold, Mortgagor will comply with all the provisions of the lease. If Mortgagor acquires fee title to the Property, the leasehold and the fee title will not merge unless Mortgagee agrees to the merger in writing.

**7. Assignment of Miscellaneous Proceeds; Forfeiture.**

**(a) Assignment of Miscellaneous Proceeds.** Mortgagor unconditionally assigns the right to receive all insurance, condemnation, and other proceeds arising from a casualty or condemnation impacting the Home (“**Miscellaneous Proceeds**”) to Mortgagee and agrees that, subject to the requirements of any Permitted Mortgagee, such amount will be paid to Mortgagee.

**(b) Application of Miscellaneous Proceeds upon Damage to Property.** If the Property is damaged, any Miscellaneous Proceeds will be applied to restoration or repair of the Property, if Mortgagee deems the restoration or repair to be economically feasible and Mortgagee's security will not be lessened by such restoration or repair. During such repair and restoration period, Mortgagee will have the right to hold such Miscellaneous Proceeds until Mortgagee has had an opportunity to inspect the Property to ensure the work has been completed to Mortgagee's satisfaction, provided that such inspection must be undertaken promptly. Mortgagee may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Mortgagee may make such disbursements directly to Mortgagor, to the person repairing or restoring the Property, or payable jointly to both. Unless Mortgagee and Mortgagor agree in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Mortgagee will not be required to pay Mortgagor any interest or earnings on such Miscellaneous Proceeds. If Mortgagee deems the restoration or repair not to be economically feasible or Mortgagee's security would be lessened by such restoration or repair, the Miscellaneous Proceeds will be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor.

**(c) Application of Miscellaneous Proceeds upon Total Taking of Property.** In the event of a total taking, destruction, or loss in value of the Property, all of the Miscellaneous Proceeds will be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor. Notwithstanding the foregoing, any Excess Proceeds shall be paid to Mortgagee in accordance with Section 1.03 of the Declaration.

**(d) Proceeding Affecting Mortgagee's Interest in the Property.** Mortgagor will be in Default if any action or proceeding begins, whether civil or criminal, that, in Mortgagee's judgment, could result in forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. Mortgagor can cure such a Default by causing the action or proceeding to be dismissed within sixty (60) days after commencement with a ruling that, in Mortgagee's judgment, precludes forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. Mortgagor unconditionally assigns to Mortgagee the proceeds of any award or claim for damages that are attributable to the impairment of Mortgagee's interest in the Property, which proceeds will be paid to Mortgagee.

**8. Mortgagor Not Released; Forbearance by Mortgagee Not a Waiver.** Mortgagor or any Successor in Interest of Mortgagor will not be released from liability under this Security

Instrument if Mortgagee extends the time for payment or modifies the amortization of the sums secured by this Security Instrument. Mortgagee will not be required to commence proceedings against any Successor in Interest of Mortgagor, or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Mortgagor or any Successors in Interest of Mortgagor. Any forbearance by Mortgagee in exercising any right or remedy including, without limitation, Mortgagee's acceptance of payments from third persons, entities or Successors in Interest of Mortgagor or in amounts less than the amount then due, will not be a waiver of, or preclude the exercise of, any right or remedy by Mortgagee.

**9. Joint and Several Liability; Signatories.** Mortgagor's obligations and liability under this Security Instrument will be joint and several. However, any Mortgagor who signs this Security Instrument but does not sign the Declaration: (a) signs this Security Instrument to mortgage, grant and convey such Mortgagor's interest in the Property under the terms of this Security Instrument; (b) signs this Security Instrument to waive any applicable inchoate rights such as dower and curtesy and any available homestead exemptions; (c) signs this Security Instrument to assign any Miscellaneous Proceeds, Rents or other earnings from the Property to Mortgagee; (d) is not personally obligated to pay the sums due under the Declaration or this Security Instrument; and (e) agrees that Mortgagee and any other Mortgagor can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument without such Mortgagor's consent and without affecting such Mortgagor's obligations under this Security Instrument.

Subject to the provisions of Section 14, any Successor in Interest of Mortgagor who assumes Mortgagor's obligations under this Security Instrument in writing, and is approved by Mortgagee, will obtain all of Mortgagor's rights, obligations and benefits under this Security Instrument. Mortgagor will not be released from Mortgagor's obligations and liability under this Security Instrument unless Mortgagee agrees to such release in writing.

**10. Charges.** If permitted under Applicable Law, Mortgagee may charge Mortgagor fees for services performed in connection with Mortgagor's Default to protect Mortgagee's interest in the Property and rights under this Security Instrument, including, (i) reasonable attorneys' fees and costs, (ii) property inspection, valuation, mediation and loss mitigation fees, and (iii) other related fees.

If Applicable Law sets maximum interest rates or other charges, and that law is finally interpreted so that the interest or other charges collected or to be collected in connection with the Obligations exceed the permitted limits, then: (i) any such charge will be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Mortgagor which exceeded permitted limits will be refunded to Mortgagor. Mortgagee may choose to make this refund by reducing the obligations owed under the Declaration or by making a direct payment to Mortgagor. To the extent permitted by Applicable Law, Mortgagor's

acceptance of any refund made by direct payment to Mortgagor will constitute a waiver of any right of action Mortgagor might have arising out of such overcharge.

**11. Notices.** All notices given by Mortgagor or Mortgagee in connection with this Security Instrument must be in writing. Any written notice to Mortgagor in connection with this Security Instrument will be deemed to have been given to Mortgagor when (i) mailed by certified or registered mail, return receipt requested, or (ii) actually delivered to Mortgagor's notice address if sent by other means. Notice to any one Mortgagor will constitute notice to all Mortgagors unless Applicable Law expressly requires otherwise. The notice address for Mortgagor will be the Property Address.

Any notice to Mortgagee will be given by delivering it or by mailing it by certified or registered mail, return receipt requested, to Mortgagee's address stated in this Security Instrument unless Mortgagee has designated another address by notice to Mortgagor. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**12. Governing Law; Severability; Rules of Construction.** This Security Instrument is governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence should not be construed as a prohibition against agreement by contract. If any provision of this Security Instrument or the Declaration conflicts with Applicable Law, such conflict will not affect other provisions of this Security Instrument or the Declaration that can be given effect without the conflicting provision. If any provision of this Security Instrument conflicts with the Declaration, the provisions of the Declaration shall govern and control. Any action required under this Security Instrument to be made in accordance with Applicable Law is to be made in accordance with the Applicable Law in effect at the time the action is undertaken.

As used in this Security Instrument: (a) words in the singular will mean and include the plural and vice versa, and (b) the word "may" gives sole discretion without any obligation to take any action.

**13. Mortgagor's Copy.** One Mortgagor will be given one copy of the Declaration and this Security Instrument.

**14. Mortgagee's Successors and Assigns.** Mortgagee is also the Program Manager under the Declaration. The Declaration permits the Program Manager from time to time to designate a successor or assign its rights and obligations under the Declaration, provided that such successor or assign is a governmental body, governmental agency, or non-profit entity with a charitable purpose consistent with the Program (as defined in the Declaration). Upon such a designation under the Declaration of a successor or assign by the Program Manager, all of

Mortgagee's rights and obligations under this Security Instrument will likewise convey to such successor or assign.

**15. Acceleration; Remedies.**

**(a) Notice of Default.** Mortgagee will give a notice of Default to Mortgagor prior to exercising remedies under this Security Instrument following Mortgagor's Default. The notice will specify: (i) the Default; (ii) the action required to cure the Default; (iii) a date, not less than 30 days from the date the notice is given to Mortgagor (or such longer period set forth in Article IX of the Declaration), by which the Default must be cured; (iv) that failure to cure the Default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property; (v) Mortgagor's right to reinstate after acceleration; and (vi) the right to deny in the foreclosure proceeding the existence of a Default or to assert any other defense of Mortgagor to acceleration and foreclosure. In the case of Defaults under subparagraphs (i) or (ii) of the Definition for "**Default**" set forth above, the notice and cure periods under this Section 19(a) shall run concurrently with any applicable notice and cure periods under Article IX of the Declaration.

**(b) Acceleration; Foreclosure; Expenses.** If the Default is not cured on or before the date specified in the notice, Mortgagee may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Mortgagee will be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 19, including, but not limited to: (i) reasonable attorneys' fees and costs; (ii) property inspection and valuation fees; and (iii) other fees incurred to protect Mortgagee's interest in the Property and/or rights under this Security Instrument.

**16. Release.** Upon payment and performance of all Obligations secured by this Security Instrument, Mortgagee shall release this Security Instrument. Mortgagor shall pay any recordation costs. Mortgagee may charge Mortgagor a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**17. Attorneys' Fees.** As used in this Security Instrument and the Declaration, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

**18. Jury Trial Waiver.** The Mortgagor hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Declaration.

**MORTGAGEE REQUESTS NOTICE OF ANY ADVERSE ACTION THAT A PRIORITY LIEN HOLDER TAKES WITH REGARD TO THE PROPERTY, INCLUDING DEFAULT AND FORECLOSURE**



**[Signatures appear on the following pages]**



Witness by hand and official seal

Name:

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Notary Public for Idaho  
Residing at

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My commission expires

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**EXHIBIT A**

**Legal Description  
of the Property**