



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: Adopt resolution authorizing the City Manager to sign the Loan Agreement and associated documents between the City of Elk Grove and Housing Solutions, Inc. for the acquisition of two properties on Emerald Park Drive

MEETING DATE: October 10, 2012

PREPARED BY: Sarah Bontrager, Housing Program Manager

DEPARTMENT HEAD: Taro Echiburú, Planning Manager

RECOMMENDED ACTION:

Staff recommends that the City Council of the City of Elk Grove adopt a resolution authorizing the City Manager, or designee, to sign the Loan Agreement and associated documents between the City of Elk Grove and Housing Solutions, Inc. for the acquisition of two properties on Emerald Park Drive.

BACKGROUND INFORMATION:

In 2008, the City received approximately \$2.4 million in Neighborhood Stabilization Program (NSP) funding from the US Department of Housing and Community Development (HUD). One of the City's NSP developers, HBT Remodeling of California, purchased two condominium units on Emerald Park Drive and rehabilitated them for resale to very low-income households. The units' addresses are 9508 Emerald Park Drive #4 and 9532 Emerald Park Drive #3.

Reselling the units to eligible households proved challenging due to financing restrictions imposed by lenders. After being listed for resale for over a year with no viable offers, the City Council approved the use of the units as rental housing on January 25, 2012. The City then entered into negotiations with Sacramento Self-Help Housing, a local nonprofit, for the acquisition and management of the units. Housing Solutions, Inc., a new nonprofit formed by Sacramento Self-Help Housing, is willing to acquire the units and rent them to very low-income households.

Housing Solutions, Inc. (HSI) has made an offer to purchase the units from HBT Remodeling of California, and a counteroffer is pending City approval of funding for some additional work to the properties. Both parties hope to complete the transfer of the units prior to October 31, 2012.

ANALYSIS:

In order to ensure long-term compliance with the NSP regulations, the City plans to structure the assistance to HSI as a loan. The City will provide funds to HSI to cover the acquisition cost of the units (the total of the price the developer paid plus eligible rehabilitation costs), closing costs, and a modest operating reserve that will cover the properties' homeowners association dues, utilities, and marketing costs for the first three months of operation.

City staff will have HSI execute several documents:

- The Loan Agreement, Promissory Note, and Deed of Trust contain the loan terms. The interest-free loan has deferred payments and a structure that forgives one-tenth of the principal balance each year in years 15-25 if the property owner is in compliance with all of the loan requirements. At the end of the 25-year loan term, the properties will be owned free and clear by HSI with no further restrictions imposed by the City.
- The Regulatory Agreement contains a 25-year deed restriction and the terms for complying with the deed restriction. HSI will be responsible for maintaining the units in compliance with community standards and NSP requirements.

- The Notice of Affordability Restrictions is recorded to ensure that any future property owner is aware of the deed restriction.

The final amount of the loan for each property will be determined prior to closing when closing costs are finalized. However, the loan amount will be not-to-exceed \$96,000 for 9408 Emerald Park #4 and \$90,000 for 9532 Emerald Park #3. The loan will be entirely funded by the City's NSP grant.

FISCAL IMPACT:

The City of Elk Grove received NSP funding to acquire and rehabilitate the Emerald Park units. At resale, the City typically receives the sales proceeds, less certain approved developer expenses, and these proceeds are rolled back into the program for use in purchasing additional homes. In this case, the City would effectively be transferring the units at no cost to a nonprofit, so the City would not receive sales proceeds. Additionally, the City would be using some of its existing program income to complete rehabilitation, pay for closing costs and a modest operating reserve. NSP funding allows for this, so there would be no fiscal impact to the General Fund.

ATTACHMENTS:

1. Resolution
2. Loan Agreement
3. Deed of Trust
4. Promissory Note
5. Regulatory Agreement
6. Notice of Affordability Restrictions

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE TO
AUTHORIZING THE CITY MANAGER TO EXECUTE THE LOAN AGREEMENT
AND ASSOCIATED DOCUMENTS BETWEEN THE CITY OF ELK GROVE
AND HOUSING SOLUTIONS, INC., FOR THE ACQUISITION OF
TWO PROPERTIES ON EMERALD PARK DRIVE**

WHEREAS, the City of Elk Grove has received Neighborhood Stabilization Program (NSP) funds as an entitlement jurisdiction from the Government of the United States under the Housing and Economic Recovery Act of 2008; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) is the federal agency that promulgates regulations and oversees the administration of the NSP funding; and

WHEREAS, the City used a portion of its NSP funding to acquire and rehabilitate two condominium units located at 9508 Emerald Park Drive #4 and 9532 Emerald park Drive #3; and

WHEREAS, the City Council on January 25, 2012 approved the use of the units as rental housing for very low-income households; and

WHEREAS, Housing Solutions, Inc., a California nonprofit, has proposed to acquire the units and maintain them as housing affordable to very low-income households using a loan of funds from the City; and

WHEREAS, the loan is considered an eligible use of NSP funds; and

WHEREAS, the City has prepared a Loan Agreement and associated documents in order to ensure compliance with NSP requirements.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby:

- 1) Approves a loan to Housing Solutions, Inc. in an amount not to exceed \$96,000 for 9508 Emerald Park Drive #4 and \$90,000 for 9532 Emerald Park #3 ("Units"); and
- 2) Authorizes the City Manager, or her designee, to execute the Loan Agreement and associated documents, in a form substantially similar to that proposed, to effectuate the loan of funds and transfer of Units to Housing Solutions, Inc.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 10th day of October 2012.

JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

LOAN AGREEMENT
[Address]
[Loan Amount]

This Loan Agreement (“Agreement” or “Loan Agreement”) is made this [DATE], 2012, by and between the CITY OF ELK GROVE, a California municipal corporation (“Lender” or “City”), and HOUSING SOLUTIONS, INC., a California nonprofit corporation (“Borrower” or “Owner”).

RECITALS

A. Borrower proposes to purchase and maintain one (1) unit of residential real property (the “Regulated Unit” or “Project”) at a site located in Elk Grove, California, at [ADDRESS and APN], (as more particularly described in Exhibit A, attached hereto and incorporated herein by reference) (the “Property”), which unit shall be rented at rents affordable to Qualifying Households.

B. Borrower wishes to borrow from Lender and Lender wishes to extend to Borrower a loan to support the acquisition of the Property (the “Loan”). This Loan is being made to help achieve financial feasibility for the Project and maximize the affordability of Project units.

C. The Project shall serve as a community resource by providing decent, safe, and sanitary housing for households who would otherwise be unable to afford such housing.

D. A Promissory Note shall be executed by Borrower evidencing this Loan, to be secured by a Deed of Trust, executed by Borrower and recorded against the Property. In addition, a Regulatory Agreement shall be executed by Borrower to secure Lender’s continuing interest in the affordability and habitability of the Project, as well as to secure performance of other covenants contained in these agreements. Together with this Loan Agreement, these documents are collectively referred to as the “Loan Documents.”

NOW, THEREFORE, Borrower and Lender hereby agree as follows:

The foregoing Recitals are true and correct and incorporated into this Loan Agreement.

DEFINITIONS

The following terms have the meanings set forth below wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.

1. **Borrower** means Sacramento Self-Help Housing, Inc., a California nonprofit corporation, along with any permitted assigns, transferees, or successors-in-interest. Borrower will also be the owner of the Property.

2. **City** means the City of Elk Grove, California, a municipal corporation.

3. **City Manager** means the City of Elk Grove City Manager or his or her designee.

4. **Deed of Trust** means that Deed of Trust, Assignment of Rents, and Security Agreement and Fixture Filing encumbering the Property as security for the Loan in the form attached hereto as Exhibit B, executed and delivered by Borrower as trustor with Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said Deed of Trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

5. **Events of Default** means any of the events described in Section 47 of this Agreement.

6. **Hazardous Materials** is defined as set forth in Section 42 of this Agreement. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

7. **Lender** means the City of Elk Grove, a municipal corporation, and any assigns, transferees, or successors-in-interest.

8. **Loan** means the loan of funds provided by Lender to Borrower made pursuant to the Loan Documents.

9. **Loan Documents** means collectively this Loan Agreement, the Deed of Trust, the Note, the Regulatory Agreement, and any other document required for the funding of the Loan, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents. All terms and conditions of the Loan Documents are incorporated into this Agreement by reference. In the event of conflict between terms contained in these Loan Documents, the more specific term shall control; however, if neither term is more specific, the terms in the exhibits shall govern over conflicting provisions.

10. **Note** means that Promissory Note to be executed by Borrower in favor of Lender evidencing the Loan in the form attached hereto as Exhibit C, which is to be secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of the Note. The terms of the Note are hereby incorporated into this Agreement by this reference.

11. **Operating Reserve** shall mean those funds provided for the purpose of offsetting direct expenditures on the Project in the first three months after the close of escrow. Operating Reserve funds may be used only to pay HOA fees, utility deposits and billings, and conduct marketing and tenant screening activities.

12. **Owner** means Housing Solutions, Inc., a California nonprofit corporation, along with any permitted assigns, transferees, or successors-in-interest. Borrower will also be the owner of the Property. All references in this Agreement and the other Loan Documents to "Owner" shall also be construed as references to "Borrower."

13. **Project** means the development and operation of the Property according to the terms of the Loan Documents.

14. **Property** means the real property described in the attached Exhibit A, which is incorporated into this Agreement by this reference, and any buildings, structures, or improvements now or hereafter situated on this real property.

15. **Regulatory Agreement** means that Regulatory Agreement to be executed by Owner and Lender and recorded against the Property in the form attached hereto as Exhibit D, as well as any amendments to, modifications of, and restatements of said Regulatory Agreement.

16. **Regulated Unit** means the one (1) two-bedroom rental dwelling unit acquired and maintained for the Project.

TERMS OF LOAN

17. **Loan.** Lender agrees to provide a loan of funds to Borrower under the terms and conditions of the Loan Documents. The proceeds of this Loan shall be used only to pay for the purchase of the Property and set up a modest Operating Reserve. All Loan funds will be disbursed through an escrow account established by the Trustee and in accordance with instructions provided by the Lender.

18. **Amount of Loan.** Subject to the terms and conditions of the Loan Documents, Lender agrees to make and Borrower agrees to accept a Loan in an amount not to exceed [AMOUNT] evidenced by the Note in this amount.

19. **Interest.** No interest will accrue during the loan term.

20. **Term of Loan.** The term of this Loan shall be twenty-five (25) years from the recordation of the Regulatory Agreement. Payments shall be made as required by the Note.

21. **Prepayment of Loan.** No prepayment penalty will be charged to Borrower for prepayment of any portion of the Loan amount prior to the end of the Loan term. However, prepayment of the entire outstanding balance of the Loan shall not affect Borrower's obligation under the Regulatory Agreement, which shall remain in full force and effect for the entire term of the Regulatory Agreement.

22. **Prevailing Wage.** It is the responsibility of the Borrower to determine whether state or federal prevailing wages apply to the Project. It is the responsibility of the Borrower to pay any required prevailing wages if and when required by state or federal law. Notwithstanding the foregoing, the City has not imposed and shall not impose in the future unless required by law, and nothing in this agreement shall be construed as imposing any independent prevailing wage requirements that are different from those imposed by applicable Federal or State law. Borrower shall indemnify, defend and hold harmless the City and Lender and any of their employees, officers or agents against any claim by any party related to compliance with applicable prevailing wage law, and Borrower shall be liable for the payment of all damages, penalties, wages and attorneys' fees and costs arising out of any such claim.

LOAN DISBURSEMENT

23. **Conditions Precedent to Disbursement.** Lender shall disburse loan proceeds upon satisfaction of the following conditions:

A. Borrower has executed and delivered to Lender each of the Loan Documents to be executed by Borrower in a form and substance satisfactory to Lender.

B. Borrower has delivered all documents, including evidence of insurance coverage, as required under the Loan Documents, and other documents, instruments, policies and forms of evidence or other materials reasonably requested by City under the terms of this agreement and any of the Loan Documents.

24. This section intentionally left blank.

DEVELOPMENT AND OPERATION OF PROJECT

25. **Contracts and Subcontracts.** All construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. No work on the Project that could result in a mechanic's lien shall commence prior to Recordation of the Deed of Trust, unless prior arrangements satisfactory to both the City and the title insurance company have been made.

26. **Records.** Borrower shall maintain records which clearly document Borrower's performance of its obligations to operate the Project under the terms of the Loan Documents. Borrower shall submit any records to the City within ten (10) business days of City's request. Borrower shall permit City to enter and inspect the Property for compliance with obligations under the Loan Documents upon five (5) days advance written notice of such visit by City to Borrower or Borrower's property manager and to tenants of any inspected Project units, subject to the provisions of the lease regarding inspection and entry rights, a copy of which Borrower must provide to City upon request.

Further, at the written request of the City, Borrower shall, within a reasonable time following receipt of such request, furnish reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operations, and condition of the property and the status of the Deeds of Trust.

27. **Audits.** Borrower shall make available for examination at reasonable intervals and during normal business hours to Lender's representatives all books, accounts, reports, files, and other papers or property with respect to all matters covered by these Loan Documents, and shall permit these representatives to audit, examine, and make copies, excerpts, or transcripts from such records. Lender's representatives may make audits of any conditions relating to this Loan. Lender must expressly approve of the company, person(s), or firm auditing the financial statements of the Project.

28. **Encumbrance of Property.** Borrower shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or allow any encumbrance or lien to be made

on or placed on the Property, except with the prior written consent of Lender or as otherwise specifically authorized under this Agreement.

29. **Transfer of Property and Project.** Transfer of the Property and Project shall not occur except as permitted by the Deed of Trust and Regulatory Agreement.

In the event of a Transfer, Borrower shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Borrower of an invoice detailing such costs.

30. This section intentionally left blank.

31. **Compliance with All Laws.** The Project shall be operated, and the Property shall be maintained, to comply with all applicable federal, state, and local requirements, including, but not limited to, those providing for access for persons with disabilities.

32. **Reports.** Borrower shall provide the Lender with annual operating reports, including but not limited to third-party audited financial statements, rent rolls, and any other documentation in such form and as may be required by the Lender.

33. **Operation.** Borrower and each of Borrower's agents shall diligently operate and manage the Project and the Property in substantial conformance with the covenants contained in the Regulatory Agreement, which are intended to run with the land and bind all successors-in-interest to the Property for the full term of that Regulatory Agreement.

34. **Non-Discrimination.** Borrower shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Property or the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, or any other arbitrary basis, or against any other protected class. Borrower shall otherwise comply with all applicable local, state, and federal housing discrimination laws.

35. **Fees, Taxes, and Other Levies.** Borrower shall be responsible for the payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Borrower shall not be required to discharge any such charge as long as (a) the legality thereof is being contested in good faith and by appropriate proceedings, and (b) Borrower maintains reserves adequate to pay any contested liabilities.

36. **Damage to Property.** Subject to the rights of the Lender, if any buildings or improvements erected by Borrower on the Property are damaged or destroyed, Borrower shall, at its own cost and expense, repair or restore such buildings and improvements consistent with the original condition of the Property. The repair or restoration work shall be commenced within thirty (30) calendar days, or up to one hundred eighty (180) calendar days with written approval of City, after the damage or loss occurs, and must be completed within three hundred sixty (360)

calendar days thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, Borrower shall make up the deficiency.

37. **Property Improvements.** Borrower shall not cause and shall not permit expansion, reconstruction, or demolition of any part of improvements on the Property, except as provided by the Loan Documents and with the express written approval of the City.

INDEMNITY AND INSURANCE

38. **Insurance Coverage.** Borrower shall have in full force and effect during the full term of the Loan and Regulatory Agreement, the insurance coverage specified in Exhibit E to the Agreement, which is hereby incorporated into this Agreement by this reference. The City's insurance policies shall not be contributing. Insurance shall, in all events, be of an amount sufficient to cover the full replacement value of the Property and any improvements.

A. Borrower shall deliver to City a legible copy of each insurance policy (or duplicate original) and Borrower shall promptly deliver to City a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 5 days prior to the expiration date of any insurance policy, Borrower shall deliver to City evidence acceptable to City that the policy has been renewed. If Borrower has not delivered a legible copy of each renewal policy (or a duplicate original) prior to the expiration date of any insurance policy, Borrower shall deliver a legible copy of each renewal policy (or a duplicate original) in a form satisfactory to City within 120 days after the expiration date of the original policy.

B. The insurance requirements in effect at Loan closing shall remain in effect throughout the duration of this Loan and the Regulatory Agreement, unless City provides prior written consent to a modification of the insurance requirements.

39. **Evidence of Insurance Compliance.** Borrower or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City's representative Ebix BPO (Ebix) as set forth below prior to execution of this Agreement. Upon City's or Ebix's request, Borrower shall submit copies of the actual insurance policies or renewals or replacements to Ebix. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required pursuant to this Agreement shall be provided to:

By MAIL

Certificate Holder: The City of Elk Grove

c/o Ebix BPO

PO Box 257, Ref. # _____

Portland, MI 48875-0257

By FAX

(517) 647-7900

By E-MAIL
CertsOnly@periculum.com

All certificates and endorsements shall include the EBIX Reference Number _____.

40. **Non-Liability of Officials, Employees and Agents.** No member, official, director, employee, or agent of Lender shall be personally liable to Borrower for any obligation created under the terms of these Loan Documents, unless such an obligation is made express and by written instrument.

41. **Indemnity.** Notwithstanding the insurance coverage required herein, Borrower, its successors, assigns, and heirs shall indemnify, defend, and hold Lender, its members, officials, directors, employees, and agents (“Indemnitees”) harmless from any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys’ fees) which Lender may incur as a result of: (a) the making of this Loan to Borrower; (b) Borrower’s performance of or failure to perform any obligations as and when required by the Loan Documents; (c) a failure of any of Borrower’s representations or warranties under this Agreement to be true and complete in any material respect; (d) any act or omission by Borrower or any of Borrower’s contractors, subcontractors, architects, engineers, or suppliers with respect to the Project or the Property, except if the loss is caused by the sole negligence or willful misconduct of Lender; (e) failure of Borrower’s management agent, Borrower’s contractors, subcontractors, or property manager, to comply with the covenants, conditions, and restrictions contained in this Agreement or the Loan Documents or to comply with all other laws, rules, regulations, and restrictions related to the use of Lender’s funds, and/or (f) any claim related to the Property, Project, or Loan, except if the loss is caused by (i) the sole negligence or willful misconduct of Lender, or (ii) the material breach by Lender of any Loan Document. Borrower shall pay immediately upon Lender’s demand any amounts owing under this indemnity. The duty of Borrower to indemnify includes the duty to defend Lender in any court action, administrative action, or other proceeding brought by any third party arising from the Project, the Loan Documents, or the Property. Borrower’s duty to indemnify Lender shall survive the term of this Loan and the reconveyance of the Deed of Trust.

ENVIRONMENTAL COMPLIANCE

42. **Definitions of Environmental Terms.** For the purposes of this Loan Agreement, the following terms shall have the following meanings:

A. **Environmental Damages** means all claims, judgments, damages (including without limitation, punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ fees and disbursements and consultants’ fees, any of which are actually incurred by Lender at any time as a result of the existence of any Hazardous Materials upon, about, or beneath the Property or migrating or

threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property regardless of whether the existence of such Hazardous Materials or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property, and including, without limitation:

i. Damages for personal injury, or injury to Property or natural resources occurring upon or off of the Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on Property, interest and penalties including but not limited to claims brought by or on behalf of employees of Borrower, with respect to which Borrower waives, for the benefit of Lender only, any immunity to which it may be entitled under any industrial or worker's compensation laws;

ii. To the extent that the items of Environmental Damages described elsewhere in this subsection A have not yet been incurred as of the time of payment by Borrower of a claim by Lender under this subsection A, diminution in the value of the Property (to the extent such diminution results in the Lender being under-secured);

iii. Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation, cleanup or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remedial, removal, abatement, containment, closure, restoration, or monitoring work required by any federal, state, or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Property or any other real property or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs, and expenses incurred in enforcing these Loan Documents or collecting any sums due hereunder; and

iv. Liability to any person or entity to indemnify such person or entity for costs expended in connection with the items referenced in subsection iii hereof.

B. **Environmental Requirements** means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

i. All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials,

pollutants, contaminants or hazardous or toxic substances, materials, or wastes, whether solid, liquid or gaseous in nature; and

ii. All requirements pertaining to the protection of the health and safety of employees or the public.

C. **Hazardous Materials** means any substance:

i. The presence of which requires investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action or policy; or

ii. Which is or becomes defined as a “hazardous waste” or “hazardous substance” or “pollutant” or “contaminant” under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)(42 U.S.C. Section 9601 et seq.) or the Resource Conservation and Recovery Act (CRCRA) (42 U.S.C. Section 6901 et seq.) or

iii. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any State of the United States, or any political subdivision thereof; or

iv. The presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the Property or to the health or safety of persons on or about the Property; or

v. Which contains volatile organic compounds such as gasoline, diesel fuel, or other petroleum hydrocarbons; or

vi. Which contains polychlorinated biphenyls (PCBs) or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

vii. Radon gas.

43. **Environmental Covenants.** Borrower shall at all times comply with the following requirements:

A. **No Use, Disposal or Storage.** Borrower shall not cause, permit, or suffer any Hazardous Material (as defined herein) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Property or any portion thereof by Borrower, its agents, employees, contractors, invitees, tenants, or any other person, except to the extent commonly used in the day to day construction or operation of the Property and then only so long as in compliance with all Environmental Requirements (as defined herein).

B. **Compliance with Environmental Requirements.** Borrower shall not cause, permit or suffer the existence or the commission by Borrower, its agents, employees, or

contractors of a violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof and Borrower shall use its best efforts to prevent any such violation of any Environmental Requirements by any invitees, tenants or any other person. Borrower shall notify Lender in writing of any release of Hazardous Materials at, on, under or within the Property in violation of any Environmental Requirements, or of the presence of Hazardous Materials at the Property in violation of any Environmental Requirements, promptly upon discovery of such release or presence.

C. **Environmental Liens.** Borrower shall not create or suffer to exist with respect to the Property, or permit any of its agents to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to Section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. Section 9607(1)) or any similar state statute, and Borrower shall use its best efforts to prevent the creation of any such lien, security interest, charge or encumbrance by any of its tenants and shall not permit any of such tenants to suffer to exist any of such items.

D. **Mitigation.** Notwithstanding the obligation of Borrower to indemnify pursuant to Section 57, Borrower shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision or reasonably necessary to mitigate Environmental Damages (as defined in Section 54) and to allow full economic use of the Property (using the use of the Property as a multi-family housing complex, subject to the terms of the Regulatory Agreement, as the standard for such full economic use), which requirements of necessity arise from the presence upon, about or beneath the Property, of a Hazardous Material or a violation of Environmental Requirements. Such actions, which, except when required by any federal, state or local government agency or political subdivision, Borrower shall be required to take only when reasonable, shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of and feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Property. Borrower shall take all actions necessary to restore the Property to the condition existing prior to the introduction of Hazardous Material(s) upon, about or beneath the Property, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. Borrower shall proceed continuously and diligently with such investigatory and remedial actions, provided that in all cases such actions shall be in accordance with all applicable requirements of governmental entities. Any such actions shall be performed in a good, safe and workmanlike manner and shall minimize any impact on the business conducted at the Property. Borrower shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Borrower shall promptly provide to Lender copies of testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and remediation, Borrower shall permanently seal or cap all monitoring wells and test holes to industrial standards in compliance with applicable federal, state and local laws and regulations, remove all associated equipment, and restore the Property to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation hereunder.

E. **Notice of Environmental Risks.** If Borrower shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of Borrower for Environmental Damages in connection with the Property or past or present activities of any person thereon, or that any information supplied to Lender is not or is no longer accurate in any material respect, including but not limited to notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, and including without limitation any notice or other communication from any tenant, then Borrower shall deliver to Lender, within ten (10) calendar days of the receipt of such notice or communication by Borrower, a written description of said violation, liability, correcting information or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of Lender to defend or otherwise respond to any such notification.

F. **Notice of Test Results.** Borrower shall promptly provide to Lender the results of any tests and copies of all registration permits regarding any underground storage tanks located on the Property and Borrower shall comply with the same.

G. **Right to Enter and Inspect.** In the event Lender reasonably believes that there has been a release or threatened release of a Hazardous Material on the Property, or a breach of an Environmental Requirement or in the event of any default under this Loan Agreement or under the Note, Lender shall have the right in its sole and absolute discretion, but not the duty, to enter upon the Property at any reasonable time, at the expense of Borrower, to conduct an inspection of the Property including invasive tests and the activities conducted thereon to determine compliance with all Environmental Requirements and the existence of any Environmental damages as a result of the condition of the Property or any surrounding properties and activities thereon. Borrower hereby grants to Lender, and the agents, employees, consultants and contractors of Lender, the right to enter upon the Property and to perform such tests on the Property as are necessary to conduct such reviews and investigations in accordance with the preceding sentence. Lender shall use its best efforts to minimize interference with the business of Borrower and to restore the condition of the Property, but Lender shall not be liable for any interference caused thereby or failure to restore if Lender determines in its sole discretion that it is not economically practicable.

H. **Reimbursement of Lender.** In the event of any default under this Loan Agreement or any other Loan Document, Borrower shall promptly reimburse Lender for any environmental studies or tests which Lender deems necessary to ascertain the presence and/or level of any Hazardous Materials on the Property.

44. **Environmental Representations.** Borrower hereby represents and warrants as of the date hereof as follows:

A. **Handling of Hazardous Materials.** Neither Borrower nor, to the best knowledge of Borrower, any previous owner, tenant, occupant or user of the Property, nor any other person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving

the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials (whether legal or illegal, accidental or intentional) on, under, in or about the Property, except to the extent commonly used in the day to day operation of the Property and then only as long as in compliance with all Environmental Requirements, or transported any Hazardous Materials to, from or across the Property, nor to the best knowledge of Borrower are any Hazardous Materials presently constructed, deposited, stored, or otherwise located on, under, in or about the Property, nor to the best knowledge of Borrower have any Hazardous Materials migrated from the Property upon or beneath other properties, nor to the best knowledge of Borrower have any Hazardous Materials migrated from other properties upon, about or beneath the Property except as set forth in the Phase I Environmental Report (or any other environmental report) provided to the Lender.

B. **Compliance with Environmental Requirements.** Existing uses and activities on the Property, including but not limited to the use, maintenance and operation of the Property, and all activities and conduct of business related thereto, comply with all Environmental Requirements, and no activity on the Property constitutes a nuisance or a tortious condition with respect to any third party.

C. **Permits and Authorizations.** Borrower has obtained any or all permits, licenses and other authorizations which may be required under all Environmental Requirements, including laws relating to emissions, discharges, releases or threatened releases of Hazardous Material into the environment (including ambient air, surface water, ground water or land) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Material. Borrower is in compliance with all terms and conditions of any required permits, licenses and authorizations, and is also in compliance with all other Environmental Requirements.

D. **Notice of Claims or Liability.** Neither Borrower nor, to the best knowledge of Borrower, any prior owner, occupant or user of the Property has received notice or other communication concerning any alleged violation of Environmental Requirements, or notice or other communication concerning alleged liability for Environmental Damages in connection with the Property, and, to the best knowledge of Borrower after due inquiry, there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the ownership, use, maintenance or operation of the Property by any person or entity, or from any alleged violation of Environmental Requirements, or from any suspected presence of Hazardous Material thereon, nor, to the best knowledge of Borrower after due inquiry, does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed.

E. **PCBs and Other Materials Disclosed in Questionnaire.** To the best knowledge of Borrower, there is not constructed, placed, deposited, stored, disposed of nor located on the Property any polychlorinated biphenyls (PCBs) nor transformers, capacitors, ballasts, or other equipment which contains dielectric fluid containing PCBs, or any asbestos or asbestos-containing materials or any insulating material containing urea formaldehyde or any radon gas. To the best knowledge of Borrower, except as has been disclosed to Lender in

writing, no underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells are or have been located on the Property.

F. The above representations and warranties contained in this Section shall survive the termination and release of this Loan Agreement and the discharge of Borrower's other obligations hereunder.

45. **Environmental Indemnity.** Borrower agrees to indemnify, reimburse, defend, exonerate, pay and hold harmless (a) Lender, its affiliates and their respective successors and assigns who acquire all or any portion of the loan secured by this Loan Agreement or the Property in any manner, including but not limited to, purchase at a foreclosure sale, acceptance of a deed in lieu thereof or otherwise through the exercise of the rights and remedies of Lender under this Loan Agreement and (b) the directors, officers, shareholders, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees, and invitees of Lender and such other persons or entities, from and against any and all Environmental Damages arising from the presence of Hazardous Materials upon, about or beneath the Property or migrating to or from the Property prior to or during Borrower's use or ownership of the Property, or arising in any manner whatsoever out of the violation of any Environmental Requirements pertaining to the Property and the activities thereon, or the breach of any warranty or covenant or the inaccuracy of any representation of Borrower contained in this Loan Agreement unless and to the extent such Environmental Damages exist solely as a result of the gross negligence or willful misconduct of the otherwise indemnified person. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel chosen by Borrower and reasonably approved by the indemnified parties), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against such indemnified persons.

46. **Environmental Remedies Cumulative.** Notwithstanding anything to the contrary in this Loan Agreement, the rights of Lender and the obligations of Borrower created under this Agreement shall be in addition to those other rights and obligations, respectively, created or imposed by statutory, common, or case law.

DEFAULT AND REMEDIES

47. **Events of Default.** The occurrence of any of the following events shall be an "Event of Default" under this Loan:

A. **Monetary.** (a) Borrower's failure to pay when due any sums payable under the Note, including failure to reimburse Lender for any advances made by Lender under the Deed of Trust; (b) Borrower's use of Loan funds for uses inconsistent with the terms and restrictions in the Loan Documents; (c) Borrower's failure to make any other payment or assessment due under the Loan Documents.

B. **Construction.** (a) the filing of any claim of lien against the Property or service on Lender of any stop notice relating to the Loan, and the continuance of the claim of

lien or stop notice for thirty (30) calendar days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement.

C. **Operation.** (a) Rental of Regulated Unit to households whose incomes do not qualify them for occupancy in the Project, or any failure of Borrower or Borrower's agents to take adequate steps to certify incomes; (b) overcharging in rental of Regulated Unit by Borrower or Borrower's agents; (c) Borrower's or Borrower's agent's failure to materially comply with the management requirements as set forth in the Loan Documents; (d) discrimination by Borrower or Borrower's agents on the basis of characteristics prohibited by this Agreement or applicable law; (e) the imposition of any encumbrances or liens on the property without the Lender's prior written approval that are prohibited under this Agreement or that have the effect of reducing the priority of or invalidating the Deed of Trust; (f) the transfer of the Property, the Project, or this Agreement in violation of the Loan Documents; (g) any material adverse change in the condition of Borrower or the Project or permanent financing or funding for the Project that gives Lender reasonable cause to believe that the Project cannot be operated in material accordance with the terms of the Loan Documents; (i) Borrower's or Borrower's agent's failure to comply with any federal, state, or local laws or Lender policies governing the operation and management of housing, including without limitation provisions of this Agreement and the Loan Documents; (j) Borrower's or Borrower's agent's failure to provide records to Lender upon Lender's request.

D. **General Performance of Loan Obligations.** Any breach by Borrower or Borrower's agents of any obligations of Borrower imposed in the Loan Documents.

E. **Representations and Warranties.** A determination by Lender that any of Borrower's representations or warranties made in the Loan Documents, any statements made to Lender by Borrower, or any certificates, documents, or schedules supplied to Lender by Borrower were untrue in any material respect when made, or that Borrower concealed from Lender or failed to disclose to Lender a material fact.

F. **Tax-Exempt Status.** Failure of Borrower to obtain tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and provide documentation of such status to Lender on or before April 30, 2013.

G. **Damage to Property.** Material damage or destruction to the Property, if Borrower does not take steps to reconstruct the Property as required herein.

H. **Bankruptcy, Dissolution, and Insolvency.** Borrower's (a) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) calendar days after the filing; (b) making a general assignment for the benefit of creditors; (c) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) calendar days after the filing; (d) insolvency, and/or (e) failure, inability, or admission in writing of its inability to pay its debts as they become due.

48. **Notice of Borrower's or Owner's Default and Opportunity to Cure.** Lender shall give written notice and opportunity to cure to Borrower of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Event of Default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days from the mailing of the notice, by which such action to cure must be taken, if an action to cure is possible. If the default is such that it is not capable of being cured within thirty (30) calendar days and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City; provided, however, that any cure must be completed within one hundred eighty (180) calendar days from the mailing of the notice.

49. **Lender's Remedies.** As provided for in Section 48 above, Lender shall give written notice to Borrower of any Event of Default. If an action to cure is specified in the notice, Borrower's failure to cure the deficiency within the time specified in the notice, or failure to commence the cure within thirty (30) calendar days, if cure would take longer than thirty (30) calendar days, Lender may, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination Lender may choose in its sole discretion:

A. Terminate this Agreement, in which case Lender may declare the entire principal amount outstanding and all accrued interest under the Note, as well as any other funds advanced to Borrower by Lender under the Loan Documents including administrative costs, immediately due and payable;

B. Bring an action in equitable relief (a) seeking the specific performance by Borrower of the terms and conditions of the Loan Documents, and/or (b) enjoining, abating, or preventing any violation of said terms and conditions, and/or (c) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding and all accrued interest under the Note, as well as any other funds advanced to Borrower by Lender under the Loan Documents;

D. Enter the Property and take any actions necessary in its judgment to complete project construction as permitted including without limitation (a) making changes in the plans and specifications or other work or materials for the Project, (b) entering into, modifying, or terminating any contractual arrangements (subject to Lender's right at any time to discontinue work without liability), or (c) taking any remedial actions with respect to Hazardous Materials that Lender deems necessary to comply with any laws applicable to hazardous materials or to render the Property suitable for occupancy;

E. This section intentionally left blank;

F. This section intentionally left blank;

G. Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the Deed of Trust and apply them to operate the Property

or to pay off the Loan or any advances made under the Loan Documents, as provided for in the Deed of Trust;

H. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

I. With respect to defaults under Hazardous Materials provisions herein, pursue the rights, and remedies permitted under California Civil Code Section 2929.5, and Code of Civil Procedures Sections 726.5; and 736;

J. Pursue any other remedy allowed at law or in equity.

GENERAL PROVISIONS

50. **Borrower's Warranties.** Borrower represents and warrants: (a) that Borrower has access to professional advice and support to the extent necessary to enable Borrower to comply with the terms of the Loan Documents, and otherwise carry out the Project; (b) that Borrower is duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in California; (c) that Borrower has the full power and authority to undertake the Project, take ownership of the Property, and to execute the Loan Documents; and (d) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Borrower.

51. **Project Monitoring and Evaluation.** Except as otherwise provided for in this Agreement, Borrower shall submit available records to Lender within ten (10) business days of Lender's request which reasonably document Borrower's performance under each material requirement of the Loan Documents. Borrower shall comply promptly with all requirements of this Agreement relating to notices, extension, and other events required to be reported or that are requested by Lender. Borrower shall provide, upon Lender's reasonable request, any information or documentation available to Borrower pertaining to the Project and shall cooperate with Lender's representatives on matters related to Project monitoring and evaluation. The City shall have the right to review and approve the management entity chosen by Borrower for the Property and the right to require a change in the management entity for reasonable cause at any time during the term of this Agreement, provided, however, the City shall provide not less than sixty (60) days notice and right to cure any defects in the management of the Property prior to requiring a change to the property manager, unless there is an immediate health and safety concern or evidence of fraudulent activity by the property manager.

52. **Political Activity.** None of the funds, materials, property, or services contributed by Lender to Borrower under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

53. **Compliance with Restrictive Covenants.** Owner shall also comply with the Second Restated Declaration of Covenants, Conditions, and Restrictions for Emerald Greens Homeowners Association ("CC&Rs"), recorded November 24, 1999 by the Sacramento County Recorder, or such CC&Rs as may be subsequently amended or adopted.

If the recipient refuses or rejects delivery, notice is deemed complete as of the date on which the Notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

61. **Binding upon Successors.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Agreement by Borrower without Lender's consent. The terms "Borrower" and "Owner" as used in these Loan Documents shall include all permitted assigns, successors-in-interest, and transferees of Borrower and Owner.

62. **Relationship of Parties.** The relationship of Borrower with Lender for this Project is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as provided for herein) or any third party with respect to the Project, the Property, or the Loan. Except as Lender may specify in writing, Borrower shall have no authority to act as an agent of Lender or to bind Lender to any obligation.

63. **Waiver.** Any waiver by Lender of an obligation in these Loan Documents must be in writing. 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 Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be a consent to any other act or omission or to waive the requirement for Lender's written consent to future waivers.

64. **Integration.** The Loan Documents, including exhibits, contain the entire agreement of the parties and supersede any prior negotiations.

65. **Other Agreements.** Borrower represents that Borrower has not entered into any agreements that are inconsistent with the terms of the Loan Documents. Borrower shall not enter into any agreements that are inconsistent with terms of the Loan Documents without an express waiver by Lender in writing.

66. **Amendments and Modification.** Any amendments or modifications to the Loan Documents must be in writing, and shall be effective only if executed by Borrower and Lender.

67. **Severability.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

68. **Counterparts.** This Agreement and all other agreements executed pursuant to this Agreement may be executed in counterpart originals, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

69. **Agreement and Acknowledgement of Contract.** Lender and Borrower acknowledge and agree that this Loan Agreement has been negotiated at arm's length, that each party has been represented by independent counsel and/or has had an opportunity to consult with and be represented by independent counsel, that this Loan Agreement is deemed to be drafted by both parties, that no one party shall be construed as the drafter of this Loan Agreement, and that any rule of construction that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Loan Agreement.

70. **Authority.** The person(s) signing this Agreement hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of their respective party and to legally bind such party to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement as of the date first above written.

CITY:

CITY OF ELK GROVE,
a California municipal corporation

By: _____
Laura S. Gill
City Manager

Approved as to form:

By: _____
Jonathan P. Hobbs
City Attorney

Attest:

By: _____
Jason Lindgren
City Clerk

ALL SIGNATURES MUST BE NOTARIZED

BORROWER:

HOUSING SOLUTIONS, INC., a California
nonprofit corporation

By: _____
John Foley,
Secretary

Approved as to form:

By: _____
Ronald S. Javor,
Counsel for Borrower

State of California

County of _____

On _____, 201_ before me, _____,
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

State of California

County of _____

On _____, 201_ before me, _____,
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

EXHIBIT A

Legal Description

INSERT LEGAL DESCRIPTION

EXHIBIT B

Deed of Trust

[See attached document]

EXHIBIT C

Promissory Note

[See attached document]

EXHIBIT D

Regulatory Agreement

[See attached document]

EXHIBIT E

Insurance Requirements

Prior to commencement of any work under this Contract, Consultant shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:
 - Each occurrence: One Million Dollars (\$1,000,000)
 - Products & Completed Operations: One Million Dollars (\$1,000,000)
 - Personal & Advertising Injury: One Million Dollars (\$1,000,000)
- e. Coverage shall contain a provision or endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 8 and 9 (hired and non-owned autos).
- c. The limits of liability per accident shall not be less than:
 - Combined Single Limit One Million Dollars (\$1,000,000)
- d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.

3. Worker's Compensation and Employer's Liability

- a. Worker's compensation insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and employers liability coverage. The Consultant shall execute a

certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit F.

- b. Employer's liability coverage shall not be less than the statutory requirements.
- c. If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.
- d. Should the Consultant be exempt from California Labor Code §3700, Consultant shall execute the "Consultant Release of Liability for Worker's Compensation Coverage" on the form provided in Exhibit F in lieu of providing proof of Worker's Compensation Insurance. Consultant shall also execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit F.

4. Hazard/Property Insurance

- a. At all times during the term hereof, at operator's expense, the operator shall keep the property, including improvements and personal property now existing or hereafter located on the property, insured against all risks of loss.
- b. The policy shall be written on a full replacement value basis and shall name City as loss payee as its interest may appear. The full replacement value of the improvements to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the operator or the City shall have the right to notify the other party that it elects to have the replacement value re-determined by the insurance company.
- c. The policy's deductible shall not exceed One Thousand Dollars (\$1,000).

5. Other Insurance Provisions: The general liability and automobile liability coverages shall contain the following provisions and endorsements:

- a. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the City Attorney.

- b. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
 - c. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.
 - d. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect Consultant's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
6. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII**.
7. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
8. The Consultant shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At anytime at the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
9. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
10. The Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
11. If the Consultant fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.

12. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
13. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
14. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
15. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

EXHIBIT F
Certificate of Compliance with Labor Code § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this Agreement. (Cal. Labor Code §§1860, 1861.)

BORROWER

HOUSING SOLUTIONS, INC., a California
nonprofit corporation

By: _____
John Foley,
Secretary

NO FEE DOCUMENT

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

City of Elk Grove
c/o City Clerk
8401 Laguna Palms Way
Elk Grove, California 95758

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**
(Securing affordable housing loan of [AMOUNT] to Housing Solutions, Inc.)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT (“Deed of Trust”) is made this [DATE], 2012, by HOUSING SOLUTIONS, INC., a California nonprofit corporation (“Trustor”), to [TITLE COMPANY] as trustee (“Trustee”), for the benefit of the CITY OF ELK GROVE, a municipal corporation (“Beneficiary”). Trustor is sometimes referred to herein as “Borrower.” Trustor is granting this Deed of Trust on Trustor’s property located at [ADDRESS and APN], (the “Property”) to provide collateral for, among other things, credit being extended by Beneficiary to Trustor in connection with the acquisition and maintenance of one (1) condominium unit to be used as affordable housing (the “Project”), to be governed by a Regulatory Agreement (“Regulatory Agreement”) executed by Beneficiary and Trustor. The one (1) condominium unit shall be rent-restricted (the “Regulated Unit” as defined in the Regulatory Agreement) at fifty percent (50%) of the area median income. This Deed of Trust is being executed in order to secure Beneficiary’s interest as a governmental agency in ensuring both that public funds loaned for the acquisition and maintenance of the Project are repaid, and that housing projects assisted by public funds are developed and operated in a manner that is consistent with the public interest.

GRANT IN TRUST

1. **Grant.** Trustor, in consideration of the indebtedness referred to below, hereby irrevocably grants and conveys to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all of Trustor’s interest in the Property, more particularly described in the attached Exhibit A, and incorporated herein by this reference,

TOGETHER WITH all interest, estates, or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs, and landscaping now or hereafter erected or located on the Property, including all equipment and machinery used for supplying or distributing heating, cooling, electricity, gas, water, air, and light, all kitchen and laundry appliances such as washers, dryers, refrigerators, garbage disposals, ovens, ranges, dishwashers, all plumbing and bathroom fixtures, all security and access control equipment, fire prevention and extinguishment equipment, elevators, floor coverings, window coverings, paneling, cabinets, (provided,

however, that Trustor shall have the right to remove, if necessary, such fixtures, furnishings, and equipment for the purpose of replacement with similar items of the same quality performing the same functions, which replacements shall themselves become part of this grant); all building material and equipment either now or hereafter delivered to the Property and intended to be installed therein or any such material and equipment purchased with Loan proceeds whether or not located on the Property; all reserves, accounts, deferred payments, and refunds relating to development on the Property; all rents and income generated by the property or improvements thereon; all leases, subleases and rental agreements covering the Property or any portion thereof now existing or hereafter entered into, and all interests of Trustor in security deposits, advance rentals, accounts, or payments of similar nature with respect to such leases, subleases, or rental agreements; all easements and rights-of-way appurtenant to the Property, including parking and recreational easements, and all interests of Trustor in any land lying within the right-of-way of any street, sidewalks, and areas of land adjacent to or used in connection with the Property; all development rights and credits, air rights, water rights, and oil, gas, or mineral rights with respect to the Property; all claims or demands with respect to insurance proceeds, and all awards made for a taking by eminent domain; all interests and rights in any private or government grants, subsidies, loans, or other financing with respect to development on the Property; all interests in personal property used in and about the Property (except furniture and other personal property of occupants of dwelling units on the Property); all intangible property and rights relating to the Property or operations on the Property, including trade names, goodwill, trademarks, and service marks; all government permits, approvals, and map rights related to construction on the Property; all architectural, structural, and mechanical plans, specifications, designs, studies, and data with respect to construction of improvements on the Property; all environmental tests, studies and reports with respect to the Property; all current and future claims and rights of action of Trustor against prior owners and operators of the Property, neighboring property owners and operators, tenants and former tenants, consultants, advisors, and other third parties with respect to environmental or Hazardous Materials contamination and cleanup of the Property under any federal, state, or local ordinances, statutes, regulations, or administrative decisions or common law.

All of the foregoing, together with the Property, is herein referred to as the “Security.”

OBLIGATIONS SECURED

2. Trustor makes this grant for the purpose of securing the following obligations:

A. Repayment of the indebtedness of Borrower to Beneficiary in the principal sum of [AMOUNT] with interest thereon (the “Loan”) evidenced by a promissory note executed by Borrower (the “Note”), on file at the offices of Beneficiary, which is hereby incorporated into this Deed of Trust by this reference, or as much as has been disbursed to Trustor therewith, along with any extensions, amendments, modifications, or renewals to the Note; and

B. Payment of any sums advanced by Beneficiary to protect the security and priority of this Deed of Trust; and

C. Payment of any sums advanced by Beneficiary following a breach of Trustor's obligation to advance such sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

D. Performance of every obligation, condition, covenant, or agreement of Trustor contained in the Loan Documents, including the Deed of Trust, the Loan Agreement executed between Borrower, Trustor and Beneficiary for the Loan (the "Loan Agreement" on file at the offices of Beneficiary, which is hereby incorporated into this Deed of Trust by this reference) and the Regulatory Agreement, together with performance of every obligation, condition, covenant, or agreement of Borrower contained in the Note and the Loan Agreement, including all modifications, extensions, and renewals of these obligations; and

E. Performance of any other obligation or repayment of any other indebtedness of Trustor or Borrower to Beneficiary, where such evidence of obligation or indebtedness specifically recites that it is secured by this Deed of Trust; and the Security, whether or not Beneficiary is a party to such agreements.

ABSOLUTE ASSIGNMENT OF RENTS AND RIGHT TO POSSESSION

3. **Assignment.** Trustor hereby assigns to Beneficiary: (a) all of the rents, revenues, profits, and income from the Security, any deposits now or hereafter in Trustor's possession which have been collected with respect to the Security, and any reserve or capital funds now or hereafter held by Trustor with respect to construction or operation of the Security (collectively, the "Rents"); and (b) the right to enter, take possession of and manage the Security; provided however that Trustor shall have, before an Event of Default, the exclusive right to possess the Security and to collect Rents and use them in accordance with the Loan Documents. This assignment is intended to be an absolute and present transfer of Trustor's interest in existing and future Rents, effective as of the date of this Deed of Trust.

4. **Enforcement.** Upon the happening of an Event of Default which has not been cured in the manner and time provided in the Loan Documents, including the Loan Agreement or Regulatory Agreement as applicable, Beneficiary may, in addition to other rights and remedies permitted by the Loan Documents, including the Loan Agreement, this Deed of Trust, or applicable law: (a) enter upon, take possession of, and manage the Security, either in person as a mortgagee-in-possession, by agent, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security; (b) collect all Rents, including those past due and unpaid, and apply the same to pay for the costs and expenses of operation of the Security, including attorneys' fees, and pay off any indebtedness secured by this Deed of Trust, all in such order as Beneficiary may determine; and/or (c) enter upon and take possession of the Security, and complete construction of any improvements on the Security as provided for in the Plans and Specifications approved under the Loan Agreement or any modifications to the Plans and Specifications or the Project that Beneficiary, in its sole discretion, believes is appropriate. Beneficiary may make, cancel, enforce, and modify leases and rental agreements, obtain and evict tenants, set and modify rent terms, sue for rents due, enter into, modify, or terminate any contracts or agreements, or take any legal action, as it deems necessary with respect to the Rents or to development or operation of the Security in compliance with the Regulatory Agreement.

5. **Appointment of a Receiver.** In any action to enforce this assignment, Beneficiary may apply, at its discretion, for the appointment of a receiver to take possession of the Security and take whatever measures are necessary to preserve and manage the Security for the benefit of Beneficiary and the public interest. Trustor hereby consents to the appointment of a receiver. The receiver shall have all of the authority over the Security that Beneficiary would have if Beneficiary took possession of the Security under this assignment as mortgagee-in-possession, including the right to collect and apply Rents and the right to complete construction of improvements.

6. **No Waiver of Power of Sale.** The entering upon and taking possession of the Security and the collection of Rents shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or notice of default and, notwithstanding the continuance in possession of the Security or the collection and application of Rents, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

COMMERCIAL CODE SECURITY AGREEMENT

7. **Grant.** This Deed of Trust is intended to be a security agreement and financing statement pursuant to the California Commercial Code for any of the items specified above as part of the Security which under applicable law may be subject to a security interest pursuant to the Commercial Code, and Trustor hereby grants Beneficiary a security interest in said items. Beneficiary may file a copy of this Deed of Trust in the real estate records or other appropriate index as a financing statement for any of the items specified as part of the Security. Trustor shall execute and deliver to Beneficiary, at Beneficiary's request, any financing statements, as well as extensions, renewals, and amendments thereof, and copies of this instrument in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and shall pay all reasonable costs of any record searches for financing statements and releases. Without the prior written consent of Beneficiary, Trustor shall not create or permit any other security interest in said items. This Deed of Trust constitutes a fixture filing under Sections 9313 and 9402(6) of the California Commercial Code. Trustor is the record owner in the Property.

8. **Remedies.** Upon Trustor's breach of any obligation or agreement in any of the Loan Documents, Beneficiary shall have the remedies of a secured party under the Commercial Code and at Beneficiary's option, may also invoke the remedies provided for elsewhere in this Deed of Trust with respect to said items. Beneficiary may proceed against the items of real property and personal property specified above, separately or together, and in any order whatsoever.

RIGHTS AND OBLIGATIONS OF TRUSTOR

9. **Performance of Secured Obligation.** Trustor shall perform each obligation secured by this Deed of Trust in a manner consistent with industry standards.

10. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Note. Upon assignment of the Note, the assignee shall assume all of Borrower's obligations under the Loan Documents, including the Loan Agreement, this Deed of Trust, and Regulatory Agreement.

11. **Maintenance of the Security.** Trustor shall, at the Trustor's own expense, maintain, and preserve the Security or cause the Security to be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable, and tenantable condition. Trustor shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitude as they pertain to improvements, alterations, maintenance or demolition of the Security. Trustor shall not commit or permit waste on or to the Security. Trustor shall not abandon the Security. Beneficiary shall have no responsibility over maintenance of the Security. In the event Trustor fails to maintain the Security in accordance with the standards in this Deed of Trust, the Loan Agreement, or the Regulatory Agreement, Beneficiary, after at least thirty (30) calendar days prior notice to Trustor, may, but shall be under no obligation to, make such repairs or replacements as are necessary and provide for payment thereof. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

12. **Inspection of the Security.** Trustor shall permit Beneficiary to enter and inspect the Security for compliance with these obligations upon a reasonable advance notice of such visit by Beneficiary to Trustor or Trustor's management agent.

13. **Liens, Encumbrances, and Charges.** Trustor shall discharge any lien or encumbrance not approved by Trustor in writing that may attain priority over this Deed of Trust, as provided for in the Loan Agreement.

14. **Defense and Notice of Claims and Actions.** Trustor shall appear in, indemnify and defend, at its own expense, any action or proceeding purporting to affect the Security and/or the rights of Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, and of any condemnation offer or action with respect to the Security.

15. **Suits to Protect the Security.** Beneficiary shall have power to institute and maintain such suits and proceedings as it may deem expedient: (a) to prevent any impairment of the Security or the rights of Beneficiary; (b) to preserve or protect its interest in the Security and in the Rents; and (c) to restrain the enforcement of or compliance with any governmental legislation, regulation, or order, if the enforcement of or compliance with such legislation, regulation, or order would impair the Security or be prejudicial to the interest of Beneficiary.

16. **Damage to Security.** Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to the Security. If any building or improvements erected on the Property is damaged or destroyed, Trustor shall, at its own cost, repair or restore said buildings and improvements consistent with the original plans and specifications. Such work shall be commenced within thirty (30) calendar days or up to one hundred (180) days with the written

approval of City after the damage or loss occurs and shall be completed no later than three hundred sixty (360) calendar days thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, Trustor shall make up the deficiency.

17. **Title.** Trustor warrants that upon or contemporaneously with funding of the Loan and the sale of the Property to Trustor, Trustor lawfully has legal title to the Security without any limitation on the right to encumber.

18. **Granting of Easements.** Trustor may not grant easements, licenses, rights-of-way or other rights in the nature of easements with respect to the Security, without the prior written approval of Beneficiary, except those needed for installation and maintenance of roadways, landscape corridors and utilities including water, gas, electricity, sewer, cable television, telephone, or those required by law, which may be granted by Trustor without the approval of Beneficiary.

19. **Taxes and Levies.** Trustor shall pay prior to delinquency, all taxes, fees, assessments, charges, and levies imposed by any public authority or utility company which are, or may become, a lien affecting the Security. However, Trustor shall not be required to pay any tax, assessment, charge, or levy as long as: (a) the legality thereof shall be promptly and actively contested in good faith and by the appropriate proceedings; and (b) Trustor maintains reserves adequate to pay any contested liabilities. In the event that Trustor fails to pay any of the foregoing items, Beneficiary may, but shall be under no obligation to, pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which case interest shall accrue at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

20. **Insurance.** Trustor shall provide such insurance as required under the Loan Documents including the Loan Agreement and the Regulatory Agreement. In the event Trustor fails to maintain the full insurance coverage required by this Deed of Trust, Beneficiary, after at least seven (7) business days' prior notice to Trustor, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which case interest shall accrue at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

21. **Definitions of Environmental Terms.** For the purposes of this Deed of Trust, the following terms shall have the following meanings:

A. **Environmental Damages** means all claims, judgments, damages (including without limitation, punitive damages), losses, penalties, fines, liabilities (including

strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are actually incurred by City or Trustee at any time as a result of the existence of any Hazardous Material upon, about, or beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property regardless of whether the existence of such Hazardous Materials or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property, and including, without limitation:

i. Damages for personal injury, or injury to Property or natural resources occurring upon or off of the Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on Property, interest and penalties including but not limited to claims brought by or on behalf of employees of Trustor, with respect to which Trustor waives, for the benefit of City only, any immunity to which it may be entitled under any industrial or worker's compensation laws;

ii. To the extent that the items of Environmental Damages described elsewhere in this subsection A have not yet been incurred as of the time of payment by Trustor of a claim by City under this subsection A, diminution in the value of the Property (to the extent such diminution results in the City being under-secured);

iii. Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation, cleanup or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remedial, removal, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Property or any other real property or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing these Loan Documents or collecting any sums due hereunder; and

iv. Liability to any person or entity to indemnify such person or entity for costs expended in connection with the items referenced in subsection iii hereof.

B. **Environmental Requirements** means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

i. All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, pollutants, contaminants or hazardous or toxic substances, materials, or wastes, whether solid, liquid or gaseous in nature; and

ii. All requirements pertaining to the protection of the health and safety of employees or the public.

C. **Hazardous Materials** means any substance:

i. The presence of which requires investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action or policy; or

ii. Which is or becomes defined as a “hazardous waste” or “hazardous substance” or “pollutant” or “contaminant” under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. Section 9601 et seq. or the Resource Conservation and Recovery Act (CRCRA) (42 U.S.C. Section 6901 et seq.); or

iii. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any State of the United States, or any political subdivision thereof; or

iv. The presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the Property or to the health or safety of persons on or about the Property; or

v. Which contains volatile organic compounds such as gasoline, diesel fuel or other petroleum hydrocarbons; or

vi. Which contains polychlorinated biphenyls (PCBs) or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

vii. Radon gas.

22. **Environmental Covenants.** Trustor shall at all times comply with the following requirements:

A. **No Use, Disposal or Storage.** Trustor shall not cause, permit or suffer any Hazardous Material (as defined in Section 21) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Property or any portion thereof by Trustor, its agents, employees,

contractors, invitees, tenants, or any other person, except to the extent commonly used in the day to day construction or operation of the Property and then only so long as in compliance with all Environmental Requirements including these requirements (as defined in Section 21).

B. **Compliance with Environmental Requirements.** Trustor shall not cause, permit or suffer the existence or the commission by Trustor, its agents, employees, or contractors of a violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof and Trustor shall use its best efforts to prevent any such violation of any Environmental Requirements by any invitees, tenants or any other person. Trustor shall notify City in writing of any release of Hazardous Materials at, on, under or within the Property in violation of any Environmental Requirements, or of the presence of Hazardous Materials at the Property in violation of any Environmental Requirements, promptly upon discovery of such release or presence.

C. **Environmental Liens.** Trustor shall not create or suffer to exist with respect to the Property, or permit any of its agents to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to Section 107(f) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. Section 9607(1)) or any similar state statute, and Trustor shall use its best efforts to prevent the creation of any such lien, security interest, charge or encumbrance by any of its tenants and shall not permit any of such tenants to suffer to exist any of such items.

D. **Mitigation.** Notwithstanding the obligation of Trustor to indemnify pursuant to Section 24, Trustor shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision or reasonably necessary to mitigate Environmental Damages (as defined in Section 21.A) and to allow full economic use of the Property (using the use of the Property as a multi-family housing complex, subject to the terms of the Regulatory Agreement, as the standard for such full economic use), which requirements of necessity arise from the presence upon, about or beneath the Property, of a Hazardous Material or a violation of Environmental Requirements. Such actions, which, except when required by any federal, state or local government agency or political subdivision, Trustor shall be required to take only when reasonable, shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of and feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Property. Trustor shall take all actions necessary to restore the Property to the condition existing prior to the introduction of Hazardous Material(s) upon, about or beneath the Property, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. Trustor shall proceed continuously and diligently with such investigatory and remedial actions, provided that in all cases such actions shall be in accordance with all applicable requirements of governmental entities. Any such actions shall be performed in a good, safe and workmanlike manner and shall minimize any impact on the business conducted at the Property. Trustor shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Trustor shall promptly provide to City copies of testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and remediation, Trustor shall permanently seal or cap all

monitoring wells and test holes to industrial standards in compliance with applicable federal, state and local laws and regulations, remove all associated equipment, and restore the Property to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation hereunder.

E. **Notice of Environmental Risks.** If Trustor shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of Trustor for Environmental Damages in connection with the Property or past or present activities of any person thereon, or that any information supplied to City is not or is no longer accurate in any material respect, including but not limited to notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, and including without limitation any notice or other communication from any tenant, then Trustor shall deliver to City, within ten (10) calendar days of the receipt of such notice or communication by Trustor, a written description of said violation, liability, correcting information or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of City to defend or otherwise respond to any such notification.

F. **Notice of Test Results.** Trustor shall promptly provide to City the results of any tests and copies of all registration permits regarding any underground storage tanks located on the Property and Trustor shall comply with the same.

G. **Right to Enter and Inspect.** In the event City reasonably believes that there has been a release or threatened release of a Hazardous Material on the Property, or a breach of an Environmental Requirement or in the event of any default under this Deed of Trust or under the Note, City shall have the right in its sole and absolute discretion, but not the duty, to enter upon the Property at any reasonable time, at the expense of Trustor, to conduct an inspection of the Property including invasive tests and the activities conducted thereon to determine compliance with all Environmental Requirements and the existence of any Environmental damages as a result of the condition of the Property or any surrounding properties and activities thereon. Trustor hereby grants to City, and the agents, employees, consultants and contractors of City, the right to enter upon the Property and to perform such tests on the Property as are necessary to conduct such reviews and investigations in accordance with the preceding sentence. City shall use its best efforts to minimize interference with the business of Trustor and to restore the condition of the Property, but City shall not be liable for any interference caused thereby or failure to restore if City determines in its sole discretion that it is not economically practicable.

H. **Reimbursement of City.** In the event of any default under the Loan Documents, including the Deed of Trust or under the note, Trustor shall promptly reimburse City for any environmental studies or tests which City deems necessary to ascertain the presence and/or level of any Hazardous Materials on the Property.

23. **Environmental Representations.** Trustor hereby represents and warrants as of the date hereof as follows:

A. **Handling of Hazardous Materials.** Neither Trustor nor, to the best knowledge of Trustor, any previous trustor, tenant, occupant or user of the Property, nor any other person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials (whether legal or illegal, accidental or intentional) on, under, in or about the Property, except to the extent commonly used in the day to day operation of the Property and then only as long as in compliance with all Environmental Requirements, or transported any Hazardous Materials to, from or across the Property, nor to the best knowledge of Trustor are any Hazardous Materials presently constructed, deposited, stored, or otherwise located on, under, in or about the Property, nor to the best knowledge of Trustor have any Hazardous Materials migrated from the Property upon or beneath other properties, nor to the best knowledge of Trustor have any Hazardous Materials migrated from other properties upon, about or beneath the Property except as set forth in the Phase I Environmental Report (or any other environmental report) provided to the City.

B. **Compliance with Environmental Requirements.** Existing uses and activities on the Property, including but not limited to the use, maintenance and operation of the Property, and all activities and conduct of business related thereto, comply with all Environmental Requirements, and no activity on the Property constitutes a nuisance or a tortious condition with respect to any third party.

C. **Permits and Authorizations.** Trustor has obtained any or all permits, licenses and other authorizations which may be required under all Environmental Requirements, including laws relating to emissions, discharges, releases or threatened releases of Hazardous Material into the environment (including ambient air, surface water, ground water or land) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Material. Trustor is in compliance with all terms and conditions of any required permits, licenses and authorizations, and is also in compliance with all other Environmental Requirements.

D. **Notice of Claims or Liability.** Neither Trustor nor, to the best knowledge of Trustor, any prior trustor, occupant or user of the Property has received notice or other communication concerning any alleged violation of Environmental Requirements, or notice or other communication concerning alleged liability for Environmental Damages in connection with the Property, and, to the best knowledge of Trustor after due inquiry, there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the ownership, use, maintenance or operation of the Property by any person or entity, or from any alleged violation of Environmental Requirements, or from any suspected presence of Hazardous Material thereon, nor, to the best knowledge of Trustor after due inquiry, does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed.

E. **PCBs and Other Materials Disclosed in Questionnaire.** To the best knowledge of Trustor, there is not constructed, placed, deposited, stored, disposed of nor located on the Property any polychlorinated biphenyls (PCBs) nor transformers, capacitors, ballasts, or other equipment which contains dielectric fluid containing PCBs, or any asbestos or asbestos-

containing materials or any insulating material containing urea formaldehyde or any radon gas. To the best knowledge of Trustor, except as has been disclosed to City in writing, no underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells are or have been located on the Property.

F. The above representations and warranties contained in this Section shall survive the termination and release of this Deed of Trust and the discharge of Trustor's other obligations hereunder.

24. **Environmental Indemnity.** Trustor agrees to indemnify, reimburse, defend, exonerate, pay and hold harmless (a) City, its affiliates and their respective successors and assigns who acquire all or any portion of the loan secured by this Deed of Trust or the Property in any manner, including but not limited to, purchase at a foreclosure sale, acceptance of a deed in lieu thereof or otherwise through the exercise of the rights and remedies of City under this Deed of Trust and (b) the directors, officers, shareholders, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees, and invitees of City and such other persons or entities, from and against any and all Environmental Damages arising from the presence of Hazardous Materials upon, about or beneath the Property or migrating to or from the Property prior to or during Trustor's use or ownership of the Property, or arising in any manner whatsoever out of the violation of any Environmental Requirements pertaining to the Property and the activities thereon, or the breach of any warranty or covenant or the inaccuracy of any representation of Trustor contained in this Deed of Trust unless and to the extent such Environmental Damages exist solely as a result of the gross negligence or willful misconduct of the otherwise indemnified person. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel chosen by Trustor and reasonably approved by the indemnified parties), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against such indemnified persons.

25. **Environmental Remedies Cumulative.** Notwithstanding anything to the contrary in this Deed of Trust, the rights of City and the obligations of Trustor created under the foregoing Sections 21, 22, 23, and 24 shall be in addition to those other rights and obligations, respectively, created or imposed by statutory, common or case law.

26. **Condemnation.** All judgments, awards of damages, settlements, and compensation made in connection with or in lieu of taking any part of or interest in the Security under assertion of the power of eminent domain ("Funds") are hereby assigned to and shall be paid to Beneficiary. Beneficiary is authorized (but not required) to receive any funds and is authorized to apply any such Funds to any indebtedness or obligation secured hereby, in such order and manner as Beneficiary determines. Any part of the Funds may be released to Trustor upon such conditions as Beneficiary may impose for its disposition. Application or release of any Funds shall not cure or waive any default under this Deed of Trust.

27. **Acceleration on Transfer of Security.** In the event that Trustor, without the prior written consent of Beneficiary, sells, agrees to sell, transfers, or conveys its interest in the

Security or any part thereof, Beneficiary may at its option declare all sums secured by this Deed of Trust to be immediately due and payable.

28. **Reconveyance by Trustee.** This Deed of Trust is intended to continue for the entire term of the Loan. Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid and all other obligations cured by this Deed of Trust have been discharged, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

DEFAULT AND REMEDIES

29. **Events of Default.** Any of the events listed in any of the Loan Documents, including the Loan Agreement and the Regulatory Agreement as an Event of Default shall also constitute an Event of Default under this Deed of Trust, including, but not limited to, (a) Trustor's failure to pay when due any sums payable or perform any of its other covenants, agreements or obligations under the Note, or the Loan Agreement; (b) Trustor's failure to observe or to perform any of its covenants, agreements, or obligations under this Deed of Trust or the Regulatory Agreement (after expiration of applicable cure periods); or (c) Trustor's failure to make any payment or perform any of its other covenants, agreements, or obligations under any other agreement with respect to financing for the Project or the Security, whether or not Beneficiary is a party to such agreement.

30. **Acceleration of Maturity.** Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the Loan Agreement, the Note and/or the Regulatory Agreement, Beneficiary may declare all sums advanced to Trustor under the Note and this Deed of Trust immediately due and payable.

31. **Beneficiary's Remedies.** Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the Loan Agreement, the Note or the Regulatory Agreement, Beneficiary may, in addition to other rights and remedies permitted by the Loan Documents, including the Loan Agreement, the Note, the Regulatory Agreement or applicable law, proceed with any of the following remedies:

A. Enforce the assignment of rents and right to possession as provided for in this Deed of Trust, and/or seek appointment of a receiver to take over possession of the Security and collect rents;

B. Enter the Security and take any actions necessary in its judgment to complete construction on the Security as permitted under assignment of rents and right to possession in this Deed of Trust, either in person or through a receiver appointed by a court;

C. (This section intentionally left blank);

D. Commence an action to foreclose this Deed of Trust pursuant to California Code of Civil Procedure sections 725a, et seq., and/or seek appointment of a receiver from a court of competent jurisdiction with the authority to protect Beneficiary's interests in the Security, including the authority to complete construction of improvements;

E. Deliver to Trustee a written declaration of Default and demand for sale, and a written Notice of Default and election to cause Trustor's interest in the Security to be sold, which notice Trustee or Beneficiary shall duly file for record in the official records of Sacramento County, and exercise its power of sale as provided for below; or

F. Pursue any other rights and remedies allowed at law or in equity.

32. **Foreclosure by Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale contained in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust (the deposit of which shall be deemed to constitute evidence that the unpaid sums disbursed under the Note are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in the notice of Sale. The sale of the Security shall be as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by Trustor, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

Trustee may postpone sale of the Security by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement or may, in its discretion, give a new Notice of Sale.

After deducting all reasonable costs and fees of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale as follows: (a) first, to payment of all sums then secured by this Deed of Trust, in such order and amounts as Beneficiary in its sole discretion determines; and (b) the remainder, if any, to the person or persons legally entitled thereto.

33. **Remedies Cumulative.** No right, power, or remedy conferred upon Beneficiary by this Deed of Trust is intended to be exclusive of any other rights, powers, or remedies, but each such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or existing at law or in equity.

GENERAL PROVISIONS

34. **Governing Law.** This Deed of Trust shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law.

40. **Waiver.** Any waiver by Beneficiary of any obligation of Trustor in this Deed of Trust must be in writing. No waiver shall be implied from any delay or failure by Beneficiary to take action on any breach or default of Trustor or to pursue any remedy allowed under this Deed of Trust or applicable law. Any extension of time granted to Trustor to perform any obligation under this Deed of Trust shall not operate as a waiver or release from any of its obligations under this Deed of Trust. Consent by Beneficiary to any act or omission by Trustor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's written consent to future waivers.

41. **Amendments and Modifications.** Any amendments or modifications to this Deed of Trust must be in writing, and shall be made only if agreed upon by Trustor and Beneficiary.

42. **Loan Agreement Controls.** If there is any contradiction between this instrument and the Loan Agreement, the terms of the Loan Agreement shall control, except that Trustor shall have no defense or claim that this instrument does not establish a valid lien on the Property or the Security.

43. **Definitions.** Capitalized terms not otherwise defined in this Deed of Trust shall have the same meaning as defined in the Loan Agreement or other pertinent Loan Documents.

44. **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, recomposition, or other proceedings affecting Trustor, its creditors or its property, Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

45. **Severability.** Every provision of this Deed of Trust is intended to be severable. If any provision of this Deed of Trust is declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt or the Security, the unsecured or partially secured portion of the debt and all payments made on the debt (whether voluntary or under foreclosure or other enforcement action or procedure) shall be considered to have been first applied to the payment of that portion of the debt which is not secured by the lien of this Deed of Trust.

46. **Substitution of Trustees.** Beneficiary may, from time to time, appoint another trustee to act in the place of Trustee or any successor. Upon such appointment and without conveyance, the successor trustee shall be vested with all title, powers, and duties conferred upon Trustee. Each such appointment and substitution, shall be made by a written instrument executed by Beneficiary containing reference to this Deed of Trust and its place of record, which, when duly recorded in the Sacramento County Office of the Recorder shall be conclusive proof of proper appointment of the successor trustee.

47. **Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Except as otherwise

provided by law, Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

48. **Counterparts.** This Deed of Trust and all other agreements executed pursuant to this Agreement may be executed in counterpart originals, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

49. **Lender's Signatory Authority.** Any provision of the Loan Documents, including this Deed of Trust, requiring the signature, consent, authorizing waiver, and/or approval of the Lender shall mean the signature of the City Manager or his/her designee.

50. **Agreement and Acknowledgement of Contract.** Trustor and Beneficiary acknowledge and agree that this Deed of Trust has been negotiated at arm's length, that each party has been represented by independent counsel and/or has had an opportunity to consult with and be represented by independent counsel, that this Deed of Trust is deemed to be drafted by both parties, that no one party shall be construed as the drafter of this Deed of Trust, and that any rule of construction that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Deed of Trust.

51. **Authority.** The person(s) signing this Deed of Trust hereby represents and warrants that he/she is fully authorized to sign this Deed of Trust on behalf of their respective party and to legally bind such party to the performance of its obligations hereunder.

52. **Nonrecourse.** The obligations of Trustor under this Deed of Trust are limited in the manner and to the extent provided in Section 9 of the Note.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written.

TRUSTOR:

HOUSING SOLUTIONS, INC., a California
nonprofit corporation

By: _____
John Foley,
Secretary

Approved as to form:

By: _____
Ronald S. Javor,
Counsel for Trustor

State of California

County of _____

On _____, 201_ before me, _____,
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

EXHIBIT A
Legal Description of Property

INSERT LEGAL DESCRIPTION

PROMISSORY NOTE SECURED BY DEED OF TRUST

[ADDRESS]

Affordable Housing Loan Note

[AMOUNT]

[DATE]

FOR VALUE RECEIVED, HOUSING SOLUTIONS, INC., a California nonprofit corporation, with its principal office at 1250 Sutterville Road, Suite 260, Sacramento, California, 95822, (“Borrower”), hereby promises to pay to the order of the CITY OF ELK GROVE, a California municipal corporation, whose address is 8401 Laguna Palms Way, Elk Grove, California, 95758 (“Lender” or “City”), a principal amount equal to [AMOUNT], or such lesser amount that may be endorsed on this Note on behalf of Lender. The obligation of Borrower and Lender is subject to the terms of: (a) this Note; (b) the Deed of Trust, Assignment of Rents, and Security Agreement and Fixture Filing recorded on the real property located at [ADDRESS and APN] (the “Property”), by Borrower as Trustor, for the benefit of Lender, as beneficiary, which secures payment of this Loan (the “Deed of Trust”); (c) Loan Agreement by and between Borrower and Lender (Loan Agreement”), and (d) that certain Regulatory Agreement by and between Borrower and Lender to be recorded on the Property (the “Regulatory Agreement”) (the above documents are collectively referred to as the “Loan Documents”).

1. **Borrower’s Obligation.** This Note evidences the obligation of Borrower to Lender for the repayment of funds loaned to Borrower by Lender to finance the acquisition of one (1) two-bedroom residential real property unit in the City of Elk Grove, which shall be rent-restricted (the “Regulated Unit” as described in the Regulatory Agreement). The Regulated Unit shall be rent-restricted such that it is rented only to households earning at or below fifty percent (50%) of the Area Median Income.

2. **Fiscal Year.** For the purposes of this Note, the fiscal year for Borrower shall be the twelve (12) month period beginning January 1 and ending December 31.

3. **Term.** The term of this Note shall be twenty-five (25) years from the recordation of the Regulatory Agreement.

4. **Interest.** No interest will accrue during the loan term.

5. **Terms of Payment.** Payments on the Loan will be deferred for the term of the loan, except as otherwise provided for in the Loan Documents. The principal amount shall be due and payable as set forth herein.

A. In Years 1 through 15 (months 1-180), the full principal balance shall be owed upon any uncured default. In Years 16 through 25 (months 181-300), upon City staff confirmation of continued compliance with the terms of the Loan Documents, the loan will be forgiven at a rate of ten (10) percent per year, and this amount will be deducted annually, starting

at the end of Year 16 (month 192), assuming all loan conditions are met during the full loan term.

B. Subject to the requirements of this Section, the amount owed on the loan shall be as follows:

Number of Full Years Since Recordation of the Regulatory Agreement	Amount Owed
Original Loan Amount	[AMOUNT]
1	[AMOUNT]
2	[AMOUNT]
3	[AMOUNT]
4	[AMOUNT]
5	[AMOUNT]
6	[AMOUNT]
7	[AMOUNT]
8	[AMOUNT]
9	[AMOUNT]
10	[AMOUNT]
11	[AMOUNT]
12	[AMOUNT]
13	[AMOUNT]
14	[AMOUNT]
15	[AMOUNT]
16	[AMOUNT]
17	[AMOUNT]
18	[AMOUNT]
19	[AMOUNT]
20	[AMOUNT]
21	[AMOUNT]
22	[AMOUNT]
23	[AMOUNT]
24	[AMOUNT]
25	[AMOUNT]

C. The Borrower shall have the right to prepay, at any time, all or any part of the outstanding balance without paying any prepayment charge.

6. **Maturity Date.** The full amount of the outstanding principal advanced under this Note shall be due and payable in full on the earliest of:

A. The date the Property is sold or refinanced or the Borrower's interest in the Property is transferred or conveyed (except as specifically contemplated herein or as permitted in the Deed of Trust); or

B. An Event of Default by Owner as defined under the Loan Documents, and any of them, which has not been cured in the manner and time provided in the Loan Documents, as applicable.

7. **Place and Manner of Payment.** All amounts due and payable under this Note and any Loan Document are payable at the office of Lender as set forth above, or at such other place as Lender may designate to Borrower in writing from time to time, in any currency of the United States which on the date of payment is legal tender for the payment of public and private debts.

8. **Waivers by Borrower.** Presentment, notice of dishonor, and protest are waived by all makers, sureties, guarantors, and endorsers of this Note.

9. **Default and Acceleration.** This Note is secured by the Deed of Trust. All provisions in the Deed of Trust, Loan Agreement, and the Regulatory Agreement are hereby incorporated by reference. Borrower agrees that the unpaid balance of the principal amount of this Note shall, at the option of Lender, become immediately due and payable upon any Event of Default as defined in the Loan Documents which has not been cured, including without limitation 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 the Loan Documents.

Upon occurrence of any one or more of the following, Lender may, at its sole discretion, declare all unpaid principal immediately due and payable, subject to applicable cure periods, if any:

A. Borrower defaults in the payment of any principal when due.

B. Lender discovers that Borrower, in any application to Lender in connection with the Loan, failed to disclose or misrepresented any fact that would have prevented Borrower from being eligible for the Loan.

C. Lender discovers that Borrower has made any misrepresentations or has intentionally withheld any fact in the making of this Loan, the knowledge of which could have affected the decision of Lender to make the Loan.

D. Borrower defaults or breaches any of the terms of the Trust Deed, the Loan Agreement, the Regulatory Agreement, or this Note.

E. Borrower fails to perform any covenant, term or condition in any instrument creating a lien upon the Property which is the security under the Trust Deed, or any part thereof, which lien shall have priority over the lien of the Trust Deed securing this Note.

F. The sale, transfer of title, conveyance or further encumbrance of the Property, whether by sale, exchange, gift, inheritance or other means, without prior written consent of Lender.

G. The occurrence of any of the following:

i. Borrower becoming insolvent or bankrupt or being unable or admitting, in writing, Borrower's inability to pay debts as they mature or making a general assignment of or entering into any restructure payment arrangement with creditors.

ii. Proceedings for the appointment of a receiver, trustee, or liquidator of the assets of Borrower or a substantial part of such assets, being authorized or instituted by or against the Borrower.

iii. Proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction being authorized or instituted against Borrower.

10. **Deed of Trust.** This Note is secured by a Deed of Trust described in Exhibit A, recorded in the office of the County Recorder of Sacramento County. The Deed of Trust securing this Note provides that Lender may at its option, declare all funds secured by the Deed of Trust immediately due and payable, if any interest in the real property is sold, transferred or conveyed to any person, whether voluntarily or involuntarily. The Deed of Trust further provides that if Borrower does not comply with the requirements of the Regulatory Agreement and fails to come into compliance with the Regulatory Agreement within thirty (30) days after Lender's written notice to Borrower of such failure, Lender may at its option, declare all funds secured by the Deed of Trust immediately due and payable.

11. **Non-Recourse Loan.** This Loan is a non-recourse loan, and notwithstanding any provision of this Note or any document evidencing or securing this Loan, Borrower, and Borrower's principals, members, partners, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan.

12. **Consents and Approvals.** Any consent or approval required under this Note shall not be unreasonably withheld by Lender or Borrower.

13. **Notices.** Any notices, communications, or demands shall be in writing and may be communicated to Lender or Borrower at the addresses set forth in the Regulatory Agreement.

14. **Binding upon Successors.** All provisions of this Note shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Borrower and Lender.

15. **Assignment and Assumption.** Borrower shall not assign any of its interests under this Note to any other party, except as specifically permitted under the terms of the Loan Documents, without the prior written consent of Lender.

16. **Definitions.** Capitalized terms not defined in this Note shall have the same meaning as defined in the Loan Documents.

17. **Governing Law.** The Loan Documents shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. However, the laws of the State of California shall not be applied to the extent that they would require or allow the court to use the laws of another state or jurisdiction. Borrower agrees that all actions or proceedings arising in connection with the Loan Documents shall be tried and litigated only in the state and federal courts located in the State of California, except that Lender, in its sole discretion, may elect that all such actions or proceedings be tried and litigated in the County of Sacramento or the United States District Court for the Eastern District of California.

18. **Conflicts.** In the event of a conflict between terms contained in this Note and the Regulatory Agreement, the more specific term shall control; however, if neither term is more specific, the terms in this Note shall govern over conflicting provisions in the Regulatory Agreement.

19. **Severability.** Every provision of this Note is intended to be severable. If any provision of this Note is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

20. **Time.** Time is of the essence in this Note.

21. **Attorneys' Fees and Costs.** In the event of any Event of Default, or any legal action is commenced to interpret or to enforce the terms of this Note, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action. In addition, Borrower agrees to pay Lender all reasonable costs incurred in collection of amounts due under this Note which are not paid by the due date as specified herein, whether or not a legal action has been filed.

22. **Waiver.** Any waiver by Lender of any obligation in this Note must be in writing. No waiver shall be implied from any delay or failure by Lender to take action on any breach or default by Borrower or to pursue any remedy allowed under this Note or applicable law. Any extension of time granted to Borrower to perform any obligation under this Note must be in writing, signed by Lender and shall not operate as a waiver or release from any of Borrower's obligations under the Note. Consent by Lender to any act or omission by Borrower shall not be construed to be a consent to any other act or omission or to waive the requirement for Lender's written consent to future waivers.

23. **Amendments and Modifications.** Any amendments or modifications to this Note must be in writing, and shall be effective only if executed by both Borrower and Lender.

Executed as of the date first written above.

BORROWER:

HOUSING SOLUTIONS, INC., a California
nonprofit corporation

By: _____
John Foley,
Secretary

Approved as to form:

By: _____
Ronald S. Javor,
Counsel for Borrower

NO FEE DOCUMENT

RECORDING REQUESTED BY:
AND WHEN RECORDED, MAIL TO:

City of Elk Grove
c/o City Clerk
8401 Laguna Palms Way
Elk Grove, CA 95758

**REGULATORY AGREEMENT
[ADDRESS]**

This Regulatory Agreement (“Regulatory Agreement”) is made as of [DATE], by and between the CITY OF ELK GROVE, a California municipal corporation (“City”), and HOUSING SOLUTIONS, INC., a California nonprofit corporation (“Owner”).

RECITALS

A. Owner proposes to maintain one (1) unit of rental housing (the “Regulated Unit” or “Project”) at a site located in Elk Grove, California, at [ADDRESS and APN], (as more particularly described in Exhibit A, attached hereto and incorporated herein by reference) (the “Property”), which unit shall be rented at rents affordable to Qualifying Households.

B. The Project shall serve as a community resource by providing decent, safe, and sanitary housing for households who would otherwise be unable to afford such housing. The City has agreed to provide Owner with financial assistance in the form of a loan in an amount not to exceed [AMOUNT] (the “Loan”), to support the acquisition and maintenance of the Property and the Project. A Loan Agreement and Promissory Note have been executed by Owner evidencing and regulating certain aspects of the Loan; in addition, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing has been recorded to secure the Loan; these documents and this Regulatory Agreement are collectively referred to as the “Loan Documents.”

C. As further consideration for this funding and to further the public interests of the City in seeing the Project maintained as affordable housing, Owner has agreed to enter into and record this Regulatory Agreement. The purpose of this Regulatory Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Project for the benefit of Project occupants and the people of the City of Elk Grove. The covenants in this Regulatory Agreement shall run with the land and be binding on Owner and successors to the land for the full term of this Regulatory Agreement.

NOW, THEREFORE, Owner and the City hereby agree as follows:

The foregoing Recitals are true and correct and incorporated into this Regulatory Agreement.

DEFINITIONS

The following terms have the meanings set forth in this section wherever used in this Regulatory Agreement or attached exhibits. Capitalized terms not defined in this Regulatory Agreement shall have the same meaning as defined in the Loan Documents.

1. **Area Median Income** (referred to herein as “AMI”) means the median income for the Metropolitan Statistical Area which includes the City of Elk Grove, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development (HUD) pursuant to Section 8(f)(3) of the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Elk Grove that HUD may hereafter adopt in connection with said Act. If HUD should cease making such determination, the City may designate another fair method of calculation of area median income used by any federal or state agency and applicable to the City of Elk Grove.

2. **City** means the City of Elk Grove, California, a municipal corporation.

3. **City Manager** means the City of Elk Grove City Manager or his or her designee.

4. **Deed of Trust** means the Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing placed on the Property as security for the Loan with Owner as trustor and the City as beneficiary, as well as any amendments to, modifications of, and restatements of said Deed of Trust.

5. **Event of Default** means a breach of or default in a party’s obligations under the Loan Agreement, Regulatory Agreement, the Deed of Trust, the Note and any other instrument which is incorporated in the Loan Documents or which otherwise secures the repayment of the Loan.

6. **Gross Income** means “annual income” as defined in the Code of Federal Regulations, Title 24, Volume 1, Part 5, Section 5.609, or any successor thereto.

7. **Loan** means the loan of funds provided by Lender to Borrower made pursuant to the Loan Documents.

8. **Loan Documents** means collectively this Regulatory Agreement, the Loan Agreement, the Deed of Trust, and the Promissory Note for the Project, and any other document required for the funding of the Loan, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

9. **Note** means the promissory note or notes executed by Owner in favor of the City evidencing the Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note. The Note is on file with the City of Elk Grove.

10. **Owner** means the fee title owner of the Property. The term “Owner” includes any person or entity acquiring fee title to the Property.

11. **Project** means the development and operation of the Property for residential use according to the terms of the Loan Documents.

12. **Property** means the real property described in the attached Exhibit A, which is hereby incorporated into this Regulatory Agreement by this reference, and any buildings or improvements now or hereafter situated on such real property.

13. **Qualifying Household** means a Household in which Gross Income does not exceed fifty (50) percent of Area Median Income. A Household shall be considered all persons living or applying to live in the Regulated Unit, unless such unit is designated shared housing, in which case each of two tenants shall be evaluated separately for status as a Qualifying Household and maintain separate leases. A household of related individuals may not be evaluated separately for status as a Qualifying Household if their combined income would exceed fifty (50) percent of Area Median Income.

14. **Qualifying Rent** means the maximum amount charged to and paid by a tenant for the occupancy of the Regulated Unit, which on a monthly (1/12 year) basis shall not exceed 30 percent of 50 percent of the monthly Area Median Income for a three-person household, less a reasonable utility allowance if the tenant pays utilities. The utility allowances permitted for use shall be consistent with those allowed in Sacramento County and published annually by the Sacramento Housing and Redevelopment Agency, or any successor thereto. The Qualifying Rent for the Regulated Unit shall not be adjusted more often than annually.

15. **Regulated Unit** means the one (1) two-bedroom rental dwelling unit acquired and maintained for the Project, and which is situated on the Property.

REPRESENTATIONS

16. **Representations.** The City has provided Federal funding to acquire and rehabilitate the Regulated Unit. This Regulatory Agreement is a substantial part of the consideration to City for making the Loan. The funds used by the City are funds from public funding sources administered by the City and their use is subject to certain requirements, some of which are embodied in this Regulatory Agreement. Further, the City has made the Loan in accordance with the laws, rules, and regulations to which the City is subject. Therefore, the City has made the Loan conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement and other Loan Documents. Owner has had full opportunity to make itself independently familiar with such limitations and restrictions, and Owner accepts them and agrees to comply fully with them.

OWNER'S OBLIGATIONS

17. **Compliance with Loan Documents.** Owner's actions with respect to the Property and the use of Loan funds shall at all times be in full conformity with the requirements of the Loan Documents and specifically with Exhibit B, Special Requirements of the NSP Program.

18. **Term of Agreement.** This Regulatory Agreement shall commence upon execution and shall remain in full force and effect until twenty-five (25) years from the recordation date of this Agreement. The obligations in this Regulatory Agreement shall remain effective and fully binding on Owner, and its successors, assigns and heirs, and any subsequent owner of the Property, for this full term regardless of any expiration of the term of any Loan, any payment, or prepayment of any loan, any assignment of a Note, any reconveyance of a Deed of Trust, or any

sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by the City in a recorded writing or extended by mutual consent of the parties.

PROJECT OCCUPANCY AND RENTS

19. **Occupancy of Project.** Owner shall limit for the full term of this Regulatory Agreement the rental of the Regulated Unit to Qualifying Households. The income levels and other qualifications of applicants shall be certified by Owner prior to initial occupancy in conformance with the Management Plan and the City's rules governing income certification, as these rules may be amended from time to time.

The Regulated Unit shall be owned, managed, and operated as a permanent residential rental dwelling unit comprised of separate and complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or family or one or more single persons, including sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink. None of the residential dwelling units shall at any time be utilized on a transient basis. The Regulated Unit shall never be used as hotel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or court.

20. **Regulated Unit Rent.** Rents for the Regulated Unit shall be limited to the Qualifying Rent. Owner may charge rent lower than the Qualifying Rent, unless such proposed rent is insufficient to pay the costs associated with the Regulated Unit, including property taxes, homeowner or condominium association dues, utilities, and a reasonable contribution to replacement reserves. The City shall have the right to review and approve said lower rent. The Owner shall present to the City information upon which it bases the lower proposed rent. The decision of the City shall be final.

21. **Lead-Based Paint and Asbestos.** Owner and its contractors and subcontractors shall not use lead-based paint or asbestos in the construction, design, or maintenance of the Property. Owner shall insert this provision in all contracts and subcontracts for work performed on the Regulated Unit which involves the application of paint or potentially asbestos-containing materials.

22. **Nondiscrimination.** Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Regulated Unit on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, or any other arbitrary basis. Owner shall include a statement in all advertisements, notices, and signs for the availability of the Regulated Unit for rent to the effect that Owner is an Equal Housing Opportunity Provider, as that term is defined by State and Federal law.

Further, Owner shall not cause and shall not permit discrimination on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, or rental or in the use or

occupancy of the Property. Owner covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. This covenant against discrimination shall continue in perpetuity.

23. **Personal Responsibility and Work Opportunity Act.** Owner shall assure compliance with the obligations imposed by the federal Personal Responsibility and Work Opportunity Act (Public Law 104-193, commonly known as the Welfare Reform Act), which restrict the City funding of federal benefits to persons who are not citizens or qualified aliens as defined in such act.

24. **Operation and Management of Project.** Owner and each of Owner's officers, agents, and/or employees shall diligently operate and manage the Regulated Unit after completion in substantial conformance with the covenants contained in this Agreement, which shall run with the land and bind all successors-in-interest to the Property, and with the terms of the Management Plan as defined below.

A. **Management Entity.**

City and Owner agree that Owner shall manage the Property upon acquisition. If Owner desires to seek the services of an outside property management firm to manage the Property, Owner may contract with an experienced property management firm subject to the prior written approval of City. The City shall have the right to review and approve the management entity chosen by Owner for the Property and the right to require a change in the management agent for reasonable cause at any time during the term of this Regulatory Agreement, provided, however, the City shall provide not less than sixty (60) days notice and right to cure any defects in the management of the Property prior to requiring a change to the property manager, unless there is an immediate health and safety concern or evidence of fraudulent activity by the property manager. Any contracting of management services by Owner shall not relieve Owner of its primary responsibilities for proper performance of management duties.

The City shall have the right to review and approve any proposed amendments to Owner's contract with its management firm (other than changes mandated by Internal Revenue Service regulations), any new management contracts, and any substantive changes in the Management Plan during the term of this Agreement, which approval shall not be unreasonably withheld. At least 30 days before any proposed amendment is executed, Owner must provide City with notice and a copy of proposed amendment for review and approval. Should City disapprove of the proposed amendment, then Owner must revise the proposed amendment to the reasonable satisfaction of City. If the City does not disapprove the proposed amendment within thirty (30) calendar days, the City shall be deemed to approve said amendment, unless the City notifies Owner in writing that additional time for review is needed, in which case an extension shall be granted pursuant to the City's request.

B. **Management Plan.**

Prior to initial tenant occupancy of the Regulated Unit, Owner shall submit to the City for

review and approval a Management Plan for marketing and managing the Property. The City shall review and Owner shall update, if City deems necessary, the Management Plan at least once every three (3) years. The Management Plan shall be the plan addressing how the Property will be managed, and shall include, but not be limited to, provisions set forth in the Management Responsibilities.

C. Management Responsibilities. The Owner shall perform and provide the following:

i. A major maintenance schedule, prepared by Owner, which specifies maintenance work to be performed on a periodic basis over the estimated lifetime of the housing units on the Regulated Unit. The annual schedule must be submitted to the City by March 31 of each calendar year.

ii. Establishment of a replacement reserve account identifying the manner in which the maintenance schedule described in item C.i. above, and projected replacement activities will be funded from monthly project income. The schedule for deposits and withdrawals from the replacement reserve account shall be submitted to the City by March 31 of each calendar year.

iii. Annual inspections of the Regulated Unit to ensure continued compliance with state and local housing codes. Results of the inspections must be documented in a report, and copies may be requested by the City. The City may also independently schedule during a calendar year, one or more property inspections upon 5 business days' advance written notice by City to Owner.

iv. Annual reporting to the City regarding compliance with the deferred maintenance schedule and the results, findings, and any corrective measures taken or to be undertaken arising from the annual inspections of units.

v. Audited annual financial statements prepared by a certified public accountant, approved in advance, in writing, by City, which reflect the status of the reserve fund for maintenance and replacement activities. Copies of audited annual financial statements must be provided to the City within ninety (90) calendar days of the fiscal year-end date.

vi. A plan for certifying the eligibility of each person or household, including annual verification of tenant income and measures to take in the event a tenant exceeds the maximum income.

vii. A tenant selection process that includes, but is not limited to, the following:

a. Review of the following criteria:

i. History of habitual rent delinquencies or evictions;

ii. History of drug or alcohol abuse;

iii. History of criminal or drug related offenses, including, but not limited to: assault, battery, abuse, destructive or violent behavior.

b. Prospective tenants must be required to fill out an application form, verify income/employment, attend a private interview with Owner or a selected property management firm, consent to a credit check, and agree to abide by property management rules for Property.

c. Selected tenants must be given a set of “rules and regulations” for the Property.

d. Leases with tenants must provide that non-compliance with building rules shall be an event of default on the lease and grounds for eviction.

viii. The duties of the manager regarding operation of the Property.

ix. A sample lease form.

x. Plan for handling terminations with cause, including providing tenant with due process (notice and opportunity to be heard) by a court prior to eviction.

Owner shall provide and maintain the Regulated Unit in a safe and sanitary manner and shall comply with all Federal, State, and local housing codes, licensing requirements, and other requirements regarding the condition of the Property and the operation of rental housing units in the City of Elk Grove, including, but not limited to, laws related to terminating a lease, due process, and evictions. Owner shall also comply with the Second Restated Declaration of Covenants, Conditions, and Restrictions for Emerald Greens Homeowners Association (“CC&Rs”), recorded November 24, 1999 by the Sacramento County Recorder, or such CC&Rs as may be subsequently amended or adopted.

Owner shall be specifically responsible, subject to its obligations herein, for all management functions with respect to the Property, including, without limitation, the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as otherwise provided herein, the City shall have no responsibility over management of the Property.

25. **Maintenance and Security.** Owner shall, at its own expense, maintain the Property in good condition, in good repair, and in a safe, sanitary, and habitable, living condition for the benefit of the Project’s occupants. Owner shall not commit or permit any waste on or to the Property, and shall prevent and/or rectify any physical deterioration of the Property. Owner shall maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Management Plan; however, Owner’s maintenance obligations shall not be limited only to the standards contained in these laws or the Management Plan.

In the event the Owner fails to maintain the Property in accordance with these standards and after thirty (30) calendar days prior written notice to Owner, the City or its agent may, but

shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in City's reasonable discretion, and provide for payment thereof. Any amount advanced by City to make such repairs, together with interest thereon at the legal rate (unless payment of such an interest rate would be contrary to applicable law, in which case interest shall accrue at the rate then allowed by applicable law), shall become an additional obligation of Owner to City and shall be secured by the Deed of Trust.

Nothing contained in this Section shall be interpreted to place any restriction or limitation on the City's right to take such actions as it deems necessary or proper to protect the health and safety of the public in the proper exercise of the City's authority under federal, state, and local laws.

26. **Unit Vacancies.** Owner shall use its best efforts to fill vacancies in the Regulated Unit as quickly as possible.

27. **Inspection and Records.** Owner shall maintain records which clearly document Owner's performance of its obligations to operate the Property under the terms of the Loan Documents. Owner shall submit any records to the City within ten (10) business days of City's request. Owner shall permit City to enter and inspect the Property for compliance with obligations under the Loan Documents upon five (5) days advance written notice of such visit by City to Owner or Owner's property manager and to tenants of any inspected Project units, subject to the provisions of the lease regarding inspection and entry rights, a copy of which Owner must provide to City upon request.

Further, at the written request of the City, Owner shall, within a reasonable time following receipt of such request, furnish reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operations, and condition of the property and the status of the Deeds of Trust.

28. **Audit and Inspection.** The Property and all related equipment, buildings, plans, offices, books, contracts, records, documents and other related papers shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the City or its agents. The books and accounts of the operations of the Regulated Unit and of the Property shall be kept in accordance with generally accepted accounting principles.

29. **Annual Report.** Owner shall submit an annual report to City, which shall include, at a minimum, the initial and current rental rates and the income and household size of the occupants at the time such occupants initially take occupancy. The income information required under this report shall be supplied by the tenant in a certified statement in compliance with all applicable rules and regulations of the U.S. Department of Housing and Urban Development. City may require additional information to be included in the annual report.

30. **Fees, Taxes, and Other Levies.** Owner shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority, utility company, or homeowner or condominium association with respect to the Property, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge as long as (a)

the legality thereof is being contested in good faith and by appropriate proceedings, and (b) Owner maintains reserves adequate to pay any contested liabilities.

31. **Insurance Coverage.** Owner shall cause to have in full force and effect during the term of this Regulatory Agreement insurance coverage as required in Exhibit C.

32. **Property Damage or Destruction.** If any part of the Property is damaged or destroyed, Owner shall, at its own cost and expense, repair or restore the Property consistent with the original condition of the Regulated Unit. Such work shall be commenced within thirty (30) calendar days, or up to one hundred eighty (180) calendar days with written approval of City, after the damage or loss occurs and shall be completed within three hundred sixty (360) calendar days thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if insurance proceeds are insufficient for such purpose, Owner shall make up the deficiency.

33. **Property Improvements.** Owner shall not cause and shall not permit expansion, reconstruction, or demolition of any part of improvements on the Property, except as provided by the Loan Documents.

GENERAL PROVISIONS

34. **Transfer and Encumbrance of Property.** Owner shall not transfer the Property, in whole or in part, without the prior written consent of the City and the approval of the Elk Grove City Council in the form of a resolution. Requests to transfer the Property shall be considered for approval only if the following conditions are satisfied: (A) the receipt by the City of evidence acceptable to the City that (1) the Owner shall not be in default hereunder or the transferee undertakes to cure any defaults of the Owner to the reasonable satisfaction of the City; (2) the continued operation of the Project shall comply with the provisions of the Loan Documents; (3) either (a) the transferee or its property manager has at least three (3) years' experience in the ownership, operation, and management of similar size rental housing projects, and at least five (5) years' experience in the ownership, operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions or other state or federal laws or regulations or local government requirements applicable to such projects, or (b) the transferee agrees to retain a property management firm with the experience and record described in subclause (a) above, or (c) the transferring Owner or its management company will continue to manage the Project, or another management company reasonably acceptable to the City will manage, for at least one (1) year following such transfer and, if applicable, during such period the transferring Owner or its management company will provide training to the transferee and its manager in the responsibilities relating to the Regulated Unit; and (4) the person or entity that is to acquire the Project does not have pending litigation against it, and does not have a history of significant and material building code violations or complaints concerning the maintenance, upkeep, operation, and Regulatory Agreement compliance of any of its projects as identified by any local, state or federal regulatory agencies; (B) the execution by the transferee of any document reasonably requested by the City to evidence the assumption of the Owner's obligations under this Regulatory Agreement.

Owner shall not transfer or encumber any of the Property or permit the conveyance,

transfer, or encumbrance of the Property unless such assignee, transferee or encumbrancer has agreed, in writing and in a form suitable for recordation, to be bound by the terms of this Regulatory Agreement.

35. **Revival of Covenants after Foreclosure.** The affordability restrictions shall be revived after foreclosure, or deed in lieu of foreclosure according to the original terms if, during the original term of this Regulatory Agreement, if the Owner, who was owner of record before the termination event, or a party related to the Owner obtains an ownership interest in the Property or Regulated Unit, as the case may be. For purposes of these provisions, a related party is anyone with whom the Owner has or had family or business ties; provided that such interest would not be considered a “remote interest” in the usual and customary use of the term.

36. **Default and Remedies.** In the event of any breach or violation of any agreement, obligation, or warranty under the Loan Documents, City shall give written notice to Owner by specifying: (a) the nature of the breach or violation, (b) the action required to cure the breach or violation, if an action to cure is possible, and (c) a date, which shall not be less than ninety (90) calendar days from the mailing of the notice, by which such action to cure must be taken, if an action to cure is possible. If Owner fails to cure the breach or violation within the timeframe specified in the notice, or if a cure is not possible, City may proceed with any of the following remedies:

A. Bring an action for equitable relief seeking the specific performance by Owner of the terms and conditions of the Loan Documents, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

B. Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property, and continue in possession until such time as City determines that Owner is in a position to operate the Property in compliance with this Regulatory Agreement;

C. After notice provided for herein, make such repairs or replacements to the Property as are necessary and provide for payment thereof; or

D. For violations of Owner’s obligations with respect to occupancy restrictions, Regulated Unit maintenance, and unit vacancies, there shall be imposed, as liquidated damages, a charge upon Owner in an amount of ONE HUNDRED DOLLARS (\$100) per day for each Regulated Unit that is not operated in compliance with this Regulatory Agreement commencing after the expiration of any applicable notice and cure period. The parties to this Regulatory Agreement expressly agree that this charge of ONE HUNDRED DOLLARS (\$100) per day is reasonable under the circumstances existing at the time of this Regulatory Agreement was entered into and represents a reasonable attempt by the parties to estimate the damaged to be suffered by the City in the event of Owner’s breach; these damages include, but are not limited to, the City’s loss of use of funds that were loaned to Owner pursuant to the Loan Documents, including this Regulatory Agreement, and that could have been used to support other projects but for City’s commitment to fund Owner’s Project pursuant to the Loan

Documents. This provision will remaining in full force and effect even if the parties fail to expressly initial where indicated below.

Initials: Owner _____, City Manager _____.

E. For violations of Owner's obligations with respect to Project rents, there shall be imposed as liquidated damages, a charge upon Owner in an amount equal to three (3) times the actual amount Owner has collected from any Qualifying Household in excess of the Qualifying Rent; or

F. Pursue any other remedy allowed at law or in equity.

The parties agree that the sums and formulas designated herein as liquidated damages represent a reasonable approximation of the damages City is likely to suffer from violations of the respective terms. Owner agrees to pay in full any accrued liquidated damages to City within ten (10) business days of a written demand by City for such payment.

37. **Non-Liability of Officials, Employees, and Agents.** No member, official, director, employee, or agent of City shall be personally liable to Owner or third party beneficiaries for any obligation created under the terms of the Loan Documents.

38. **Indemnity.** Notwithstanding the insurance coverage required herein, Owner, its successors, assigns and heirs shall defend, indemnify and hold City, its members, officials, directors, employees, and agents, harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorney's fees) which City may incur as a result of (a) Owner's failure to reasonably perform any material obligations as required by the Loan Documents; (b) a failure of any of Owner's representations or warranties under the Loan Documents to be true and complete in any material respect; (c) any material breach, act or omission by Owner, management agent, Owner's contractors, subcontractors, or suppliers with respect to the Project or the Property, and/or (d) any claim related to the Project or Property, except if the loss is caused by the sole negligence or willful misconduct of the City. Owner shall pay immediately upon City's demand any amounts owing under this indemnity. The duty of the Owner to indemnify includes the duty to defend City in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. Owner's duty to indemnify City shall survive the term of this Regulatory Agreement.

39. **Governing Law.** This Regulatory Agreement shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. However, the laws of the State of California shall not be applied to the extent that they would require or allow the court to use the laws of another state or jurisdiction. Owner agrees that all actions or proceedings arising in connection with this Regulatory Agreement shall be tried and litigated only in the state and federal courts located in the State of California, except that City, in its sole discretion, may elect that all such actions or proceedings be tried and litigated in the County of Sacramento or the United States District Court for the Eastern District of California.

the Property shall be subject to all of the duties and obligations imposed on Owner under this Regulatory Agreement for the full term of this Regulatory Agreement. The term “Owner” as used in this Regulatory Agreement shall include all such assigns, successors-in-interest, and transferees.

46. **Relationship of Parties.** The relationship of Owner and City for this Project during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. City neither undertakes nor assumes any responsibility or duty to Owner or to any third party with respect to the operation of the Property or the actions of Owner. Except as City may specify in writing, Owner shall have no authority to act as an agent of City or to bind City to any obligation.

47. **Waiver.** Any waiver by City of any obligation in this Regulatory Agreement must be in writing. No waiver will be implied from any delay or failure by City to take action on any breach or default of Owner or to pursue any remedy allowed under this Regulatory Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Regulatory Agreement shall not operate as a waiver or release from any of its obligations under this Regulatory Agreement. Consent by City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for City’s written consent to future waivers.

48. **Other Agreements.** Owner represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Regulatory Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Regulatory Agreement without a written waiver by City, which shall not be unreasonably withheld.

49. **Amendments and Modifications.** Any amendments or modifications to this Regulatory Agreement must be in writing, and shall be effective only if executed by both Owner and City.

50. **Severability.** Every provision of this Regulatory Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

SPECIAL PROVISIONS

51. **Agreement and Acknowledgement of Agreement.** City and Owner acknowledge and agree that this Agreement has been negotiated at arm’s length, that each party has been represented by independent counsel and/or has had an opportunity to consult with and be represented by independent counsel, that this Agreement is deemed to be drafted by both parties, that no one party shall be construed as the drafter of this Agreement, and that any rule of construction that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement.

52. **Authority.** The person(s) signing this Regulatory Agreement hereby represents and warrants that he/she is fully authorized to sign this Regulatory Agreement on behalf of their respective party and to legally bind such party to the performance of its obligations hereunder.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Regulatory Agreement as of the date first above written.

CITY:

CITY OF ELK GROVE,
a California municipal corporation

By: _____
Laura S. Gill
City Manager

Approved as to form:

By: _____
Jonathan P. Hobbs
City Attorney

Attest:

By: _____
Jason Lindgren
City Clerk

ALL SIGNATURES MUST BE NOTARIZED

OWNER:

HOUSING SOLUTIONS, INC., a California
nonprofit corporation

By: _____
John Foley,
Secretary

Approved as to form:

By: _____
Ronald S. Javor,
Counsel for Owner

State of California

County of _____

On _____, 201_ before me, _____,
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

State of California

County of _____

On _____, 201_ before me, _____,
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

EXHIBIT A
Legal Description

INSERT LEGAL DESCRIPTION

EXHIBIT B

Special Requirements of Neighborhood Stabilization Program

I. GENERAL CONDITIONS

A. General Compliance

Owner agrees to comply with all applicable Neighborhood Stabilization Program (“NSP”) requirements, including those found in the Loan Agreement, the Housing and Economic Recovery Act of 2008, and the requirements applicable to entitlement communities under Community Development Block Grant regulations. Owner also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract.

B. Suspension or Termination

In accordance with 24 CFR 85.43 or 84.62, the City may suspend or terminate the Loan Agreement and/or Regulatory Agreement if the Owner materially fails to comply with any terms of the Loan Documents, which include (but are not limited to) the following:

1. Failure to comply with any of the applicable statutes, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Owner to fulfill in a timely and proper manner its obligations under the Loan Documents;
3. Ineffective or improper use of funds provided under the Loan Documents; or
4. Submission by the Owner to the City reports that are incorrect or incomplete in any material respect.

II. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

If applicable, Owner shall be subject to the provisions of 24 CFR Part 84 and 24 CFR Part 85, which apply to governmental entities and nonprofit subrecipients carrying out NSP programs. Owner will use adequate internal controls, and maintain necessary source documentation for all costs incurred and adhere to any other accounting requirements included in the Loan Documents.

2. Cost Principles

OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” shall apply to this Project.

B. Documentation and Record Keeping

1. Client Data

Owner shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service or benefit provided. Such information shall be made available upon request to City monitors or their designees for review.

2. Records to be Maintained

Owner shall maintain all records required by Federal regulations specified in 24 CFR 570.506. Such records shall include but not be limited to:

- a.
- b. Records demonstrating that the rental of the Regulated Units benefits very low-income persons.
- c. Records required to determine the eligibility of all households assisted;
- e. Records documenting compliance with the fair housing and equal opportunity requirements of the NSP program, including but not limited to the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program;
- f. Financial records; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

3. Retention

Owner shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Loan Documents for a period of five (5) years. The retention period begins on the date that the City submits its first quarterly performance report to the US Department of Housing and Urban Development (“HUD”) regarding the transfer of the Regulated Unit. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the

expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

4. Disclosure

Owner understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Owner's responsibilities with respect to services provided under this Regulatory Agreement, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

Owner's obligation to the City shall not end until HUD completes all close-out requirements for the NSP grant or the date identified in the Loan Documents, whichever is later. Activities during HUD's close-out period shall include, but are not limited to: the return of all unspent cash advances, program income balances, and accounts receivable to the City; and determining the custodianship of records. However, the terms of the Loan Documents shall remain in effect during any period that the Owner has control over NSP funds, including program income.

6. Audits & Inspections

All Owner records with respect to any matters covered by the Loan Documents shall be made available to the City, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Owner within 30 days after receipt by the Owner. Failure of the Owner to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments or an Event of Default.

C. Procurement

Owner shall follow a procurement policy that meets the minimum standards in 24 CFR 84.40-48.

D. Use of and Reversion of Assets

The use and disposition of real property under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. Owner shall transfer to the City any NSP funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination, unless otherwise specified in the HUD closeout agreement with the City.

2. Real property under the Owner's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used in accordance with this Agreement. If the Owner fails to use NSP-assisted real property in a manner that meets NSP affordability and benefit requirements within and for the prescribed period of time, the Owner shall comply with the applicable sections under 24 CFR 570.503, 570.504, and 570.505.

III. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

Owner agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24; 24 CFR Part 42 – Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD Assisted Programs; and 24 CFR 570.606 – Displacement, relocation acquisition, and replacement of housing. Owner shall provide appropriate relocation assistance (URA or section 104(d)) to eligible displaced persons as defined by applicable HUD and/or URA regulations that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for an NSP-assisted project. Owner also agrees to comply with applicable City or local ordinances, resolutions, and policies concerning the displacement of persons.

Owner shall not demolish major structures or convert units from non-residential uses.

IV. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

Owner agrees to comply with applicable state and local civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, section 104(b) and section 109 of Title I of the Housing and Community Development Act of 1974 as amended (the HCDA), section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

Owner agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in section 109 of the HCDA are still applicable.

3. Section 504

Owner agrees to comply with all Federal regulations issued pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Borrower with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

Owner will, in all solicitations or advertisements for employees placed by or on behalf of the owner, state that it is an Equal Opportunity or Affirmative Action employer.

2. Subcontract Provisions

Owner will include the provisions of Paragraphs XI.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

C. Employment Restrictions

Owner is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

D. Conduct

1. Assignability

Owner shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto and HUD.

2. Subcontracts

a. Approvals

Owner shall not enter into any subcontracts over \$100,000 with any organization or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement.

b. Monitoring

Owner will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

Owner shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

Owner shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

Owner agrees that no funds provided, nor personnel employed under the Loan Documents, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

4. Conflict of Interest

Owner agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. Owner shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Owner shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or

responsibilities with respect to NSP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the NSP-assisted activity, or with respect to the proceeds from the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Owner, or any designated public agency.

5. Lobbying

Owner hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subcontracts and that Owner shall certify and disclose accordingly:

d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this Agreement results in any copyrightable material or inventions, HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

Owner agrees that it will comply with 24 CFR 570.200(j) so that funds are not used to support inherently religious activities.

VI. ENVIRONMENTAL CONDITIONS

A. Air and Water

Owner agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C. , 7401, et seq.;

2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Owner shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

Owner agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.487 or 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all NSP-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions

that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

Owner agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

IX. ELIGIBILITY AND ALLOWABLE COSTS

Owner will ensure and document that its NSP activities meet eligible use, allowable cost, and eligible activity requirements of NSP.

EXHIBIT C

Insurance Coverage Requirements

Prior to commencement of any work under this Contract, Consultant shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:
 - Each occurrence: One Million Dollars (\$1,000,000)
 - Products & Completed Operations: One Million Dollars (\$1,000,000)
 - Personal & Advertising Injury: One Million Dollars (\$1,000,000)
- e. Coverage shall contain a provision or endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 8 and 9 (hired and non-owned autos).
- c. The limits of liability per accident shall not be less than:
 - Combined Single Limit One Million Dollars (\$1,000,000)
- d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.

3. Worker's Compensation and Employer's Liability

- a. Worker's compensation insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and employers liability coverage. The Consultant shall execute a

certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit D.

- b. Employer's liability coverage shall not be less than the statutory requirements.
- c. If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.
- d. Should the Consultant be exempt from California Labor Code §3700, Consultant shall execute the "Consultant Release of Liability for Worker's Compensation Coverage" on the form provided in Exhibit D in lieu of providing proof of Worker's Compensation Insurance. Consultant shall also execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit D.

4. Hazard/Property Insurance

- a. At all times during the term hereof, at operator's expense, the operator shall keep the property, including improvements and personal property now existing or hereafter located on the property, insured against all risks of loss.
- b. The policy shall be written on a full replacement value basis and shall name City as loss payee as its interest may appear. The full replacement value of the improvements to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the operator or the City shall have the right to notify the other party that it elects to have the replacement value re-determined by the insurance company.
- c. The policy's deductible shall not exceed One Thousand Dollars (\$1,000).

5. Other Insurance Provisions: The general liability and automobile liability coverages shall contain the following provisions and endorsements:

- a. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the City Attorney.
- b. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.

- c. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.
 - d. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect Consultant's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
6. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII**.
7. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
8. The Consultant shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At anytime at the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
9. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
10. The Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
11. If the Consultant fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.
12. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.

13. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
14. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
15. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

EXHIBIT D
Certificate of Compliance with Labor Code § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this Agreement. (Cal. Labor Code §§1860, 1861.)

OWNER

HOUSING SOLUTIONS, INC., a California
nonprofit corporation

By: _____
John Foley,
Secretary

NO FEE DOCUMENT

RECORDING REQUESTED BY:
AND WHEN RECORDED, MAIL TO:

City of Elk Grove
c/o City Clerk
8401 Laguna Palms Way
Elk Grove, CA 95758

**NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY
[ADDRESS]**

This Notice of Affordability Restrictions on Transfer of Property (“Notice”) shall be recorded concurrently with the City of Elk Grove Regulatory Agreement for [ADDRESS], as described below.

1. The property (“Property”) that is the subject of this Notice is located at [ADDRESS and APN] in the City of Elk Grove, County of Sacramento, State of California, and is further described in the legal description attached as Exhibit A and incorporated into this Notice by reference.
2. The Regulatory Agreement is the agreement recorded on _____ in Book _____, Page _____, in the Official Records of Sacramento County. The Regulatory Agreement contains the conditions, covenants, and restrictions running with the land and restricting the affordability of the Regulated Units on the Property as described in the following Section 3. The Regulatory Agreement is between the following parties and dated as of the following Effective Date.
 - a. Agency: City of Elk Grove, a California municipal corporation
 - b. Owner: Housing Solutions, Inc., a California non-profit corporation
 - c. Effective Date: [DATE]
3. The Property shall follow the affordability covenants set forth in the Regulatory Agreement.
4. Units listed for rental shall be rented at or below amounts that do not exceed payments of thirty percent (30%) of fifty percent (50%) of the Area Median Income as adjusted for household size appropriate to the number of bedrooms in the unit.
5. This Notice is descriptive of the terms of the Regulatory Agreement and is not intended to, and does not, affect any rights or obligations of the parties under the Regulatory Agreement. For more detailed information regarding the implementation and interpretation of the described affordability covenants, refer to the Regulatory Agreement. This document shall not be used to interpret or modify the terms of the Regulatory Agreement or any other document affecting the Property.

CITY:

CITY OF ELK GROVE,
a California municipal corporation

By: _____
Laura S. Gill
City Manager

Approved as to form:

By: _____
Jonathan P. Hobbs
City Attorney

Attest:

By: _____
Jason Lindgren
City Clerk

ALL SIGNATURES MUST BE NOTARIZED

OWNER:

HOUSING SOLUTIONS, INC., a California
nonprofit corporation

By: _____
John Foley,
Secretary

Approved as to form:

By: _____
Ronald S. Javor
Counsel for Owner

State of California

County of _____

On _____, 201_ before me, _____
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

State of California

County of _____

On _____, 201_ before me, _____
(Here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

EXHIBIT A
Legal Description

INSERT LEGAL DESCRIPTION