



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

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute documents necessary to transfer the property at 5725 Moon Creek Way to Housing Solutions, Inc. (CEQA Exempt)

MEETING DATE: July 25, 2018

PREPARED BY: Sarah Bontrager, Housing and Public Services Manager

DEPARTMENT HEAD: Darren Wilson, PE, Development Services Director

RECOMMENDED ACTION:

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute documents necessary to transfer the property at 5725 Moon Creek Way to Housing Solutions, Inc., and to restrict its use to temporary housing for homeless families.

BACKGROUND INFORMATION:

The City purchased property at 5725 Moon Creek Way in February 2018 for use as “navigation housing” for Elk Grove’s homeless families. As with the City’s other homeless housing options, staff anticipated transfer of the property to Housing Solutions, Inc. (HSI), an affiliated nonprofit of Sacramento Self Help Housing, Inc. (SSHH), for ownership and management. The HSI/SSHH partnership has previously been implemented successfully on the City’s other three homeless housing resources.

Navigation housing is a concept similar to transitional housing. However, while transitional housing anticipates stays of six to twelve months, navigation housing aims to move residents to permanent housing as quickly as possible. From move-in until exit, case workers actively assist residents with securing permanent housing.

The Moon Creek navigation hub will serve only homeless families with one or more children under the age of eighteen, and with a documented connection to Elk Grove. Residents will have private bedrooms but will share common spaces, including bathroom, kitchen, living, and outdoor areas. The property will have a live-in house manager to assure that rules are followed and that there are no neighborhood problems.

The four-bedroom, three-bathroom house was in generally good condition at the time of acquisition, but does need some remodeling to increase livability for residents. Bardis Homes has volunteered to work with HSI and the City to make the improvements at no cost to the City or HSI.

ANALYSIS:

Rising rents and a lack of affordable housing options in Elk Grove have pushed some lower-income families into homelessness and have made securing permanent housing more challenging. The Moon Creek navigation hub provides a temporary housing option to homeless families, who currently have few shelter options aside from the Meadow House transitional home, which is consistently full and receives four to five applications for each available room.

In order to effectuate the transfer of the Moon Creek property, staff and HSI have negotiated several documents:

- *Real Property Transfer Agreement (Attachment 2)*. This document effectuates the transfer and includes conditions with which HSI must comply in owning and managing the property.
- *Regulatory Agreement (Attachment 3)*. The Regulatory Agreement is recorded against the property to ensure that it is used as navigation housing for homeless families for a minimum period of 55 years. It also contains minimum management standards and the right for the City to approve management plans and budgets.

- *Deed of Trust (Attachment 4)*. The Deed of Trust allows the City to foreclose on the property in the event the terms of the Regulatory Agreement and/or Real Property Transfer Agreement are not met.
- *Grant Agreement (Attachment 5)*. This document contains terms and provisions related to the use of up to \$500,000 in State homeless appropriation funding in order to offset operational costs over a 10-year timeframe. The City has the right to approve an annual budget for the property to ensure appropriate use of funds.
- *Grant Deed (Attachment 6)*. This is the formal document transferring the property from the City to HSI.

Under contract with HSI to manage the property, Sacramento Self Help Housing (SSHH) will provide day-to-day management of the property, including selection of residents, case management, and on-going property maintenance. To ensure that the house is well-maintained and all residents are good neighbors, SSHH will provide a house manager who lives on-site and enforces the house rules. This model has been successful at similar houses, including the two transitional homes within the City.

Following the transfer, the City's obligation to fund the operations of the house is limited to \$500,000 over 10 years. Staff anticipates that the operations funding will be sufficient to manage the property, pay utilities and property taxes, perform regular maintenance, and provide case management.

ENVIRONMENTAL ANALYSIS:

At the time of purchase, staff reviewed the project under the California Environmental Quality Act (CEQA). The project is categorically exempt from CEQA review per Section 15301(a) of the CEQA Guidelines, because it involves the acquisition and minor alteration of an existing facility, and involves negligible or no expansion of the existing use.

FISCAL IMPACT:

In November 2017, the Council allocated \$500,000 from the State homeless appropriation to cover operating costs of each navigation hub, including utilities, repairs, and house leader and case management costs.

That amount is expected to subsidize approximately 10 years of operations. In the event that there is no funding to continue operations after 10 years, the home could easily be transitioned to the permanent shared housing model, which covers operating costs through rent payments.

The project requires no funding from the General Fund.

ATTACHMENTS:

1. Resolution
2. Real Property Transfer Agreement
3. Regulatory Agreement
4. Deed of Trust
5. Grant Agreement
6. Grant Deed

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS NECESSARY TO
TRANSFER THE PROPERTY AT 5725 MOON CREEK WAY TO HOUSING
SOLUTIONS, INC.**

WHEREAS, on February 20, 2018, the City purchased real property located at 5725 Moon Creek Way (Property) with the intention of using it as a “navigation hub” for homeless families with one or more children under the age of 18 years; and

WHEREAS, the City intends to transfer the Property to Housing Solutions, Inc., an affiliated nonprofit of Sacramento Self Help Housing, Inc. for long-term ownership and management; and

WHEREAS, in recognition of the need for operations funding to successfully use the property to serve the needs of homeless families, the City plans to provide a grant of up to \$500,000 in State homeless appropriation funding to Housing Solutions, Inc., to offset operations costs over a 10-year period; and

WHEREAS, transfer documents, including a Real Property Transfer Agreement, Regulatory Agreement, Deed of Trust, Grant Agreement, and Grant Deed have been prepared in order to effectuate the transfer to Housing Solutions, Inc., and restrict the use of the property to temporary housing for homeless families for a period of fifty-five (55) years.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute all documents reasonably necessary to transfer the property at 5725 Moon Creek Way to Housing Solutions, Inc., and to restrict use of the Property to temporary housing for homeless families including, without limitation, the Real Property Transfer Agreement, Regulatory Agreement, Deed of Trust, Grant Agreement, and Grant Deed in substantially the form presented with the accompanying staff report, and all subject to approval as to form by the City Attorney, and the City Council of the City of Elk Grove further authorizes the City Manager to take all actions reasonably necessary to effectuate the transfer of the Property and the use restriction.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 25th day of July 2018.

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY



ATTACHMENT 2

2017 STATE HOMELESS APPROPRIATION REAL PROPERTY TRANSFER AGREEMENT Project Address: 5725 Moon Creek Way

THIS REAL PROPERTY TRANSFER AGREEMENT ("Agreement") is by and between the City of Elk Grove ("City"), a municipal corporation, and Housing Solutions, Inc., a California nonprofit public benefit corporation ("Transferee"), collectively as the Parties.

RECITALS

WHEREAS, the State of California Budget Act of 2017, as approved by the Governor on June 27, 2017, included a direct appropriation of \$5 million to the City of Elk Grove, to be used for "navigation centers," aimed at providing temporary housing while connecting individuals experiencing homelessness to permanent housing; and

WHEREAS, on November 8, 2017, the City Council approved the allocation of \$1 million in funding from the State of California's Budget Act of 2017 for the acquisition and rehabilitation of two single-family homes to be used for the purpose of establishing navigation hubs, one for single adults and one for families; and

WHEREAS, on February 14, 2018, the City Council adopted a resolution authorizing the City Manager to purchase real property located at 5725 Moon Creek Way (APN 117-1320-055) ("Property"), as more particularly described in Exhibit A, which exhibit is attached hereto and incorporated herein by reference, with the condition that the Property be used as navigation housing for homeless families; and

WHEREAS, the City subsequently completed the acquisition of the Property;

WHEREAS, the City selected Transferee, a nonprofit organization affiliated with Sacramento Self-Help Housing, Inc., to own and manage the Property;

WHEREAS, the City wishes to transfer the Property to Transferee for the duration of the Grant Period;

WHEREAS, concurrent with the execution of this Agreement, the City and Transferee shall execute an Operations Grant Agreement, committing the Transferee to operating the Property as a navigation hub for families with minor children, with funding to be provided by the City for a period of approximately ten (10) years;

WHEREAS, Transferee agrees to provide the services described in Exhibit B ("Activity"), which exhibit is attached hereto and incorporated herein by reference, in accordance with the terms of this Agreement and all attachments hereto, including the Regulatory Agreement and Deed of Trust; and

WHEREAS, the City and Transferee agree that providing the services described in Exhibit B serves a valid public purpose and principally benefits Homeless Low-Income Households residing in the City of Elk Grove.



NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions set forth in this Agreement, the Parties agree:

AGREEMENT

1. **RECITALS.** The above recitals are true and correct and incorporated herein by reference.
2. **DEFINITIONS.** As used in this Agreement:
 - A. "Activity" means all services and tasks described as a part of the scope of work stated in Exhibit B.
 - B. "City" means the City of Elk Grove, a municipal corporation, and includes a person or persons authorized to act on its behalf.
 - C. "Client" means a Homeless Person(s) receiving residency and services at Property under this Agreement. The term Client shall not include the House Leader.
 - D. "Date of Transfer" means the date of the recording of the Grant Deed transferring fee title for the Property from the City to Transferee or the date of the recording of the Regulatory Agreement and Deed of Trust against the Property, whichever occurs later.
 - E. "Deed of Trust" means that Deed of Trust, Assignment of Rents, and Security Agreement and Fixture Filing encumbering the Property as security for the Transferee's obligations under this Agreement and the Regulatory Agreement in the form attached hereto as Exhibit C, which exhibit is attached hereto and incorporated herein by reference, executed and delivered by Transferee as trustor with City 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.
 - F. "Grant" means the transfer of the Property to the Transferee in order to assist the Transferee in providing to the City the services described in Exhibit B.
 - G. "Grant Period" means a period beginning on the date of the Property transfer in ownership from the City to Transferee, and continuing for a term of no less than fifty-five (55) years, unless such other period is approved by the City in writing.
 - H. "Family" means a household consisting of one or more adult and one or more child under the age of eighteen (18) years.
 - I. "Homeless" and/or "Homeless Person(s)" means an individual or household who lacks a fixed, regular, and adequate nighttime residence, meaning the individual or household (a) has a primary nighttime residence that is a public or private place not meant for human habitation, (b) is living in a publicly or privately operated shelter designated to provide temporary living arrangements, or (c) is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.



- J. "House Leader" means the employee of the management agent of the Transferee designated to live on-site and, in coordination with staff of the management agent, who provides services to ensure the Property is maintained in accordance with the Management Plan and to provide support for and oversight of the Property and of the Clients.
 - K. "Low-Income Households" means households earning equal to or less than eighty percent (80%) of the area median income, adjusted for household size, as released by and occasionally updated by the US Department of Housing and Urban Development for the metropolitan area including the City.
 - L. "Project" means the one (1) single-family home acquired and maintained for the Activity, and which is situated on the Property.
 - M. "Property" means real property located at 5725 Moon Creek Way in Elk Grove, with the APN #117-1320-055, and as more particularly described in Exhibit A and made a part of this Agreement by reference.
 - N. "Qualifying Household" means a household meeting all of the following:
 - (1) The definition of Homeless or Homeless Person(s);
 - (2) The definition of Low-Income Household(s);
 - (3) The definition of Family; and
 - (4) A household whose current or last permanent residence was within the City limits, or who can provide verification satisfactory to Transferee that within the period 30 days prior to filing an application for housing, the household stayed within the City limits at least 16 nights previous to the filing of an application for housing (or, in the event of a person or household exiting an institution, at least 16 of the 30 nights prior to entering the institution).
 - O. "Real Property" means land, including any improvements to, and fixtures and structures located on the land, but excluding movable machinery and equipment.
 - P. "Regulatory Agreement" means that Regulatory Agreement to be executed by Transferee and City and recorded against the Property in the form attached hereto as Exhibit D, which is incorporated herein by reference, as well as any amendments to, modifications of, and restatements of said Regulatory Agreement.
 - Q. "Transferee" means Housing Solutions, Inc., the legal entity in possession of the Property provided in accordance with this Agreement, which is accountable to the City for the use of the Property transferred. Transferee includes any heirs, successors, or assignees.
1. **TRANSFEEE RESPONSIBILITIES.** The Transferee has full responsibility for the conduct of the Activity supported under this Grant and for adherence to the Grant conditions.
- B. **Scope of Services.** The Transferee shall perform Activity according to the scope of services attached as Exhibit B.



- C. **Transfer of Property.** The City may, in its sole discretion, transfer fee title to the Property to Transferee to assist in providing the services described in Exhibit B. Transferee shall carry out the full scope of services provided in Exhibit B, and comply with all terms of the Regulatory Agreement and Deed of Trust executed concurrent with this Agreement. Transferee shall execute the Deed of Trust and Regulatory Agreement in the forms attached hereto and incorporated by reference as Exhibits C and D, respectively. The Deed of Trust shall secure the promises made by Transferee under this Agreement and the Regulatory Agreement. The Regulatory Agreement and Deed of Trust shall be recorded against the Property.

The City shall have no obligation to provide funding for the ongoing maintenance or operations required under this Agreement, except to the extent provided for in the Operations Grant Agreement executed concurrently with this Agreement.

D. **Communications.**

- (1) Transferee shall include, upon approval by the City, the City's name and/or logo in all communications produced during the Grant Period in which Transferee identifies any person or entity as being a sponsor of, or donor or contributor to, the Property. The style of presentation (text and/or logo, font size, etc.) shall be determined by the City. It is generally expected that when another person or entity is identified in the communication as a sponsor, donor, or contributor, and that person's or entity's logo appears in the communication, the City's logo would also appear. When the style of presentation is based on the amount of financial support provided, the City's name and/or logo shall be treated equally with other supporters providing similar financial support, and shall be based on the total amount of City funds received and to be received pursuant to this Agreement.
- (2) In performing its obligations under subsection (1), Transferee must obtain the permission of the City before including the City's name or logo in any communication that is:
- (a) Required to include the name or logo pursuant to subsection (1), or
 - (b) Produced during the time period specified in subsection (1) if the communication identifies the City as a sponsor, donor, or contributor.

Permission may be granted by the Public Affairs Manager in the City Manager's Office, or designee. The Public Affairs Manager shall determine the style in which the City's name and logo are presented in such communications. If the City denies permission to place the City's name and logo in a particular communication, this section shall not apply to that particular communication, and nothing in this section shall prevent Transferee from sending that communication out.

2. **GRANT PERIOD.** This Agreement shall commence on the Date of Transfer of the Property and shall run for a minimum of fifty-five (55) years, unless terminated earlier pursuant to Section 8 of this Agreement. The term of this Agreement may be extended by mutual consent of the City and Transferee.



3. **AMENDMENTS.** The Parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, and are signed by both Parties' duly authorized representatives. Such amendments shall not invalidate this Agreement, nor relieve or release any party from its obligations under this Agreement. At any time during the term of this Agreement, the City, in its sole discretion, may amend this Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for any other reason and such amendments shall take effect thirty (30) days after written notice to Transferee unless a law requires and/or the Parties agree to an earlier date. If such amendment results in a change in the funding, scope of work, or schedule of the Activity to be undertaken as part of this Agreement, such modifications shall be incorporated only by written amendment signed by the Parties.
4. **SUBCONTRACTING.** The performance covered by this Agreement shall not be subcontracted, assigned, or delegated without the prior written consent of the City's Housing and Public Services Manager or designee. All subcontracted services must have a written contract between the Transferee and contractor that includes provisions necessary to address compliance with this Agreement. The Transferee shall monitor all subcontracted services on a regular basis to assure contract compliance.

The City hereby agrees that Sacramento Self Help Housing, Inc., a California nonprofit public benefit corporation, is an approved subcontractor.

5. **CONDITIONS OF THE GRANT.** The obligation of City to make this Grant is contingent upon the completion to the City's satisfaction of the following conditions:
 - A. **Organizational Documents and Standing.** Transferee must be in good standing with the California Secretary of State, and shall provide City with copies of its bylaws, articles of incorporation, and tax identification number prior to the effectuation of the Grant.
 - B. **Documentation Review.** Upon the request of City, Transferee shall provide City with any documents related to this Agreement or otherwise requested by the City including, but not limited to, financial information. City shall have the right to inspect, audit, and review all Transferee's financial documents relative to Transferee's use of the Grant and/or Property.
 - C. **Records and Reports.**
 - (1) **Establishment and Maintenance of Records.** Records shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of seven (7) years from the end of each fiscal year during the Grant Period, or longer if there is ongoing action that concerns the records. Records shall include:
 - (a) Records providing a full description of the Activity undertaken;
 - (b) Records required to determine the eligibility of Activity;
 - (c) Records required to document the acquisition, improvement, use, and/or disposition of Property; and
 - (d) Records documenting compliance with the fair housing and equal opportunity laws.



(2) Client Data.

- (a) The Transferee shall maintain Client data demonstrating Client eligibility for services provided. Such data shall include, but not be limited to, Client name, address, race, ethnicity, household characteristics, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the City upon request.
- (b) Except as otherwise provided for by law, individual Client information collected under this Agreement is private and use or disclosure to the public by Transferee is prohibited, unless written consent is obtained from the beneficiary, or in the case of a minor, of a responsible parent or legal guardian. Aggregate-level Client data is subject to disclosure by the City.

(3) Reports.

- (a) At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, data and information as the City may request pertaining to matters covered by this Agreement.
- (b) The Transferee shall, at a minimum, submit the following reports to the City:
 - (i) Progress reports in the form, content, and frequency required by the City.
 - (ii) A report due 30 days following the end of each fiscal year during the Grant Period that summarizes the successes and failures of the Activity, as applicable, and the level of attainment respective to the Activity goals.
- (c) Failure to comply with reporting requirements may be deemed a material breach of the Agreement, resulting in termination of the Grant or other such remedies as are described in the Regulatory Agreement and Deed of Trust.

(4) Financial Reporting. The Transferee, at the Transferee's sole expense, shall account for all funds received and all expenditures made in relation to the Property. The Transferee shall provide all information at such times and in such form and detail that the City may require, including but not limited to accounts, records, budget-to-actual statements, and other supporting documentation. Without limiting the preceding sentence, it is agreed that, if requested in writing by the City, the Transferee shall make all of that information available for inspection and audit by the City at any time during the workday.

(5) Access to Records and Audit Requirements. All of the Transferee's records with respect to any matters covered by this Agreement shall be made available to the City or its designees, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make copies, excerpts, or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Transferee within 30 days after receipt by the Transferee. Failure of the Transferee to comply with the above audit requirements shall constitute a violation of this Agreement.



D. Real and Non-expendable Property.

- (1) Inventory. The Transferee shall keep inventory records, acceptable to the City, on all Real Property subject to this Agreement. The Transferee shall submit an inventory record of all items at the end of each fiscal year of the Grant Period. The inventory record shall include the condition of all Real Property and be substantiated by photos when possible.
- (2) Insurance and Maintenance. For all real and non-expendable property occupied, operated and/or purchased under this Agreement, the Transferee shall maintain sufficient insurance to cover the cost of replacement due to loss by fire, theft, or accidental damage. The City shall be named as loss payee under such policies of insurance. The Transferee shall also be responsible for the maintenance and upkeep of all such property.

E. **Insurance.** Transferee shall comply with all insurance requirements of this Agreement. Insurance requirements are further described in Exhibit E, which is attached hereto and incorporated herein by reference.

- (1) Evidence of Insurance Coverage. Prior to effectuation of the Grant under this Agreement, Transferee shall provide and maintain in effect during the term of this Agreement evidence of insurance coverage as set forth in Exhibit E, attached hereto and incorporated herein by reference.
- (2) Evidence of Insurance Compliance. Transferee or its insurance broker shall deliver 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 to City. City may designate an insurance certificate processor ("Processor") to accept and process Transferee's proof of insurance. Transferee shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or processor upon their request.

F. **Disclosure.** Transferee understands, acknowledges, and agrees that any records it provides to the City may be subject to disclosure to the public pursuant to the California Public Records Act or other applicable law.

6. **ASSIGNMENT OR LIENS AGAINST PROPERTY.** The Transferee shall not assign, pledge, sell, transfer, and/or otherwise encumber the Transferee's or City's interest in the Property without the prior written consent of the City. The Transferee shall not pledge or mortgage the Property as collateral for loans without the prior written consent of the City. The Transferee shall cure and otherwise perfect all liens placed against the Property.
7. **NOTICES.** All notices, correspondence, and other communications concerning this Agreement shall be directed to the Parties' duly authorized representatives at the addresses set forth below or at any other addresses as may be noticed, in writing.



Any notice required to be given to the Transferee shall be deemed to be duly and properly given if mailed to the Transferee, postage prepaid, addressed to:

Attn: Secretary
Housing Solutions, Inc.
PO Box 188445
Sacramento, CA 95818

Required notice may also be personally delivered to the Transferee at such address or at such other addresses as the Transferee may designate in writing to the City.

Any notice required to be given to the City shall be deemed to be duly and properly given if mailed to the City, postage prepaid, addressed to:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: Housing and Public Services Manager

Required notice may also be personally delivered to the City at such address or at such other addresses as the City may designate in writing to the Transferee.

8. TERMINATION OF AGREEMENT.

A. By giving thirty (30) days written notice specifying the effective date, the City may terminate this Agreement in whole or in part for cause, which shall include:

- (1) Failure, for any reason, of the Transferee to fulfill in a timely and proper manner its obligations under this Agreement, including without limitation compliance with the approved program and Agreement conditions;
- (2) Transferee has materially failed to comply with any terms or condition of the Agreement, including without limitation deadlines for submitting any accounting, audit, statement, information, record, documentation, or report. The City Manager shall have the sole authority to decide whether the Transferee has materially failed to comply with the terms or conditions of this Agreement, including the attachments. That determination shall include the authority to construe vague and/or ambiguous requirements, if any;
- (3) Submission by the Transferee to the City of reports that are incorrect or incomplete in any material respect;
- (4) Ineffective or improper use of the Property, as determined by the City at the City's sole discretion;
- (5) Failure of the Transferee to supply the City with requested reports;
- (6) Failure of the Transferee to comply with the City's corrective action plan respective to the results of an independent audit or City monitoring;
- (7) When the City has other reasonable cause.



- B. The Transferee may propose to terminate this Agreement in whole or in part, for good cause only by giving at least twelve (12) months written notice specifically stating the cause for such requested termination. Any such request for termination shall be subject to the written approval of the City, acted upon by the City within thirty (30) business days of receipt of the notice of request to terminate, or such other time as the parties mutually agree upon in writing. The decision of the City shall be final and conclusive, provided that such approval shall not be unreasonably withheld.
- C. In the event of termination, Transferee shall transfer Property to the City with clear title and at no cost to the City.
9. **REVERSION OF PROPERTY.** Upon the expiration, termination, or cancellation of this Agreement, Transferee shall transfer fee title to the Property to the City within 120 calendar days of the date of expiration, termination, or cancellation, with clear title and at no cost to the City.
10. **PROGRAM CLOSEOUT.** The Transferee's obligation to the City shall not end until all closeout requirements are completed. Obligations during this closeout period shall include, but are not limited to, making any final payments, transferring the Property in accordance with this Agreement, and determining the custodianship of records.
11. **NONDISCRIMINATION.** The Transferee agrees to comply with all applicable nondiscrimination requirements, including, without limitation, the following:
- A. **Title VI, Civil Rights Act of 1964.** This provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- B. **Title VIII, Civil Rights Act of 1968.** This provides for fair housing throughout the United States. Kinds of discrimination prohibited include refusal to sell, rent, or negotiate, or otherwise to make unavailable; discrimination in terms, conditions, and privileges; discriminatory advertising; false representation; blockbusting; discrimination in financing; and discrimination in membership in multiple listing services and real estate broker organizations. Discrimination is prohibited on the grounds of race, color, religion, sex, and national origin. The Transferee shall administer programs and activities relating to housing and urban development in a manner conducive to affirmatively furthering the policies of this Title.
12. **OTHER REQUIREMENTS.** Notwithstanding the City's responsibilities with respect to the requirements listed below, the Transferee agrees to comply with the following requirements, when applicable:
- A. **Architectural Barriers.** The Transferee agrees to comply with the Architectural Barriers Act of 1968 (42 USC 4151) when applicable and with handicapped access requirements of the Americans with Disabilities Act of 1990 and State of California.
- B. **Cultural Environment.** The Transferee agrees to comply with the provisions of the Flood Disaster Act of 1973 (42 USC 4001, et seq.) and regulations pursuant to it.



- C. **Prevailing Wage.** The Transferee and any contractor or subcontractor hired by Transferee shall comply with California Labor Code section 1720, et seq., regarding the payment of prevailing wage to the extent applicable to the activities undertaken pursuant to the Agreement and the Property. Prevailing wage rates may be obtained from the California Director of Industrial Relations. The Transferee shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.
- (1) The contractor acknowledges that it has examined the prevailing rate of per diem wages as established the California Director of Industrial Relations. The contractor agrees to pay workers not less than the applicable prevailing rate of per diem wages.
 - (2) Contractor shall keep an accurate payroll record which shows the name, address, social security number, correct work classification (in accordance with the wage decision), both straight and overtime worked each day and week, and hourly rate of pay, gross wages earned, deductions made and net wages paid to each journeyman, apprentice (attention shall be directed to California Labor Code Section 1777.5 for compliance), worker or other employee paid by the contractor/subcontractor in connection with the Work.
 - (3) These payroll records shall be certified and shall be made available at contractor's principal office. These records shall be maintained during the course of the contract. The contractor and all subcontractors shall make the certified payroll records available for inspection by City representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.
 - (4) The City shall notify the contractor in writing of any discrepancies or violations that are discovered during such inspections. Written notification pursuant to this Section shall include the actions that will be necessary to resolve the discrepancies and/or violations. The contractor shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all subcontractors and any lower tier subcontractors.
 - (5) In order to bid on or to be listed on the bid proposal for this Public Works Project all contractors and subcontractors shall be registered with the Department of Industrial Relations and be qualified to perform public work pursuant to Section 1725.5 of the California Labor Code. Unregistered contractors may still submit bids provided the bid is authorized by 7029.1 of the Business and Professions Code or by either section 10164 and 20103.5 of the Public Contract Code and contractors register with the Department of Industrial Relations to perform Public Work pursuant to California Labor Code Section 1725.5 at the time the contract is awarded. Subcontractors shall be registered prior to bid opening or within 24 hours of bid opening and paid the required penalty registration fees to the Department of Industrial Relations, as applicable.
 - (6) The Project will not be accepted as complete by the City nor final payment made until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due.



- D. **California Public Contract Code.** Transferee shall comply with California Public Contract Code section 20161, et seq., regarding the Local Agency Public Construction Act to the extent applicable to the activities undertaken pursuant to this Agreement and the Property.
- E. **Independent Entity.** It is understood and agreed that Transferee (including Transferee's employees, agents, and contracts) is an independent party and that not relationship of employer-employee exists between the Parties hereto. Transferee's assigned personnel shall not be entitled to any benefits payable to employees of the City. City is not required to make any deductions or withholdings from the compensation payable to Transferee, if any, under the provisions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of Transferee's assigned personnel. Transferee, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed under this agreement. Any third-party person(s) employed by Transferee shall be entirely and exclusively under the direction, supervision, and control of the Transferee. Transferee hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

13. **PROHIBITIONS.**

- A. **Conflict of Interest.** No member, officer, or employee of the City, or its designees or agents or the Transferee (and no one with whom they have family or business ties) who exercises any functions or responsibilities with respect to the Grant and/or Activity during his or her tenure or for one year thereafter, shall have any personal or financial benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.
- B. **Political Activity.** None of the Grant funds, Property, or other property or services provided directly or indirectly under this Agreement shall be used for any candidate for public office or for political activities.
- C. **Religious Activities.** The Transferee agrees that the Grant provided under this Agreement will not be utilized for religious activities or to promote religious interests.
- D. **Lobbying.** None of the Grant provided under this Agreement shall be used for publicity or propaganda purposes designed to defeat or support legislation pending before Congress.

14. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.** The Transferee shall comply with all applicable local, state, and Federal laws and regulations in carrying out its activities. In the event that any specific code sections cited herein are superseded, modified, and/or amended, the replacement code shall apply as applicable.

15. **NON-COMPLIANCE.** In the event that Transferee does not comply with the terms of this Agreement, the City reserves the right to pursue all legal remedies available, up to and including requiring repayment of any Grant funds and taking ownership of the Property.



16. **ASSIGNMENT.** Neither this Agreement nor the right to receive Property under the Grant shall be assignable by Transferee without the prior written consent of City, which consent the City may withhold for any reason.
17. **REPRESENTATIONS AND WARRANTIES.** Transferee represents and warrants as of the date of this Agreement and as of the date of each Grant disbursement the following:
 - A. That Transferee is duly formed and organized and validly exists in good standing under the laws of the State of California, and has all necessary powers to enter into this Agreement.
 - B. The party executing this Agreement on behalf of Transferee is authorized to do so, and upon execution, this Agreement shall be binding upon Transferee.
 - C. All documents and written information provided or required to be provided by Transferee to City are, and shall be, true and correct copies, and contain true and correct information therein.
18. **INDEMNIFICATION.** Transferee shall protect, defend, indemnify, release, and hold harmless City, its elected or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney's fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with the Property, the Activity, the Homeless Person(s), the Grant, and the performance under this Agreement, including failure to comply with or carry out any of the provisions of this Agreement, by Transferee, Transferee's agents, officers, employees, subcontractors, consultants, and independent contractors hired by Transferee. The only exception to Transferee's responsibility to protect, defend, indemnify, and hold harmless the City is due to the sole active negligence or willful misconduct of City. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Transferee. The Transferee's obligations under this provision shall continue after termination and/or completion of this Agreement.
19. **MISCELLANEOUS PROVISIONS.**
 - A. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. If any legal action is brought by either party relating to this Agreement, venue shall lie exclusively in a court of competent jurisdiction in Sacramento County.
 - B. **Successors.** This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, successors, and assigns.
 - C. **Entire Agreement.** This Agreement and the documents referenced herein contain the entire agreement between the Parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.
 - D. **Recitals and Exhibits.** The recitals and exhibits attached hereto are hereby incorporated by reference.



- E. **Authority of Transferee.** Transferee shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.
 - F. **Compliance with Law.** Transferee shall comply with all applicable laws, ordinances, and codes of federal, State, and local governments, and shall commit no trespass on any public or private property in performing any of the work anticipated by this Agreement.
 - G. **Survivorship.** Any responsibility of Transferee for warranties, insurance, indemnity, record-keeping, or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination, or cancellation of this Agreement.
 - H. **Construction and Interpretation.** Transferee and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.
 - I. **Waiver.** The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.
 - J. **Severability.** The invalidity, illegality or unenforceability, of any provision of this Agreement shall not render the other provisions invalid, illegal or unenforceable.
 - K. **No Third Party Beneficiary.** It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and Transferee. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and the Transferee that any such person or entity, other than the City or Transferee, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.
 - L. **Non-Discrimination/Non-Preferential Treatment Statement.** In performing this Agreement, the Parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.
 - M. **No Joint Venture, Partnership, or Other Relationship Created.** The relationship between City and Transferee is that solely of a grantor/Transferee and no joint venture, partnership, or other relationship is created or implied by this Agreement.
20. **INSPECTION OF PROPERTY.** Transferee certifies that adequate time and access for Property inspection has been allowed. Transferee has satisfied itself as to the condition of the Property by inspection of the Property, and accepts the Property as-is.



CITY:
City of Elk Grove,
a municipal corporation

TRANSFeree:
Housing Solutions, Inc.,
a California nonprofit public benefit corporation

By: _____
Jason Behrmann, Interim City Manager

By: _____
John Foley, Secretary

Attest:

Approved as to form:

By: _____
Jason Lindgren, City Clerk

By: _____
Ronald S. Javor, Counsel for Transferee

Approved as to form:

By: _____
Jonathan P. Hobbs, City Attorney



Exhibit A
LEGAL DESCRIPTION

Real property in the City of Elk Grove, County of Sacramento, State of California, described as follows:

LOT 49, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PLAT OF LAGUNA VISTA UNIT NO. 29", ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, ON MARCH 9, 1999 IN BOOK 259 OF MAPS, PAGE 2.

APN: 117-1320-055



Exhibit B SCOPE OF SERVICES

1. ACTIVITIES

The Transferee shall be responsible for owning, operating, and maintaining the Project and offering a temporary housing program for Homeless Families in a manner satisfactory to the City and consistent with any standards required as a condition of providing this Grant. Such program shall include the following activities:

A. Program Delivery

Transferee shall own, maintain, and operate a temporary housing program for Homeless Families at the Property. Transferee shall provide, at a minimum, the following services:

- Maintain the Property in good condition, in good repair, and in a safe, sanitary, and habitable living condition for the benefit of the Property's occupants. Transferee shall not commit or permit any waste on or to the Property, and shall prevent and/or rectify any physical deterioration of the Property. At a minimum, Transferee shall maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Management Plan (as described below). Transferee shall also perform such other maintenance as reasonably requested by the City from time to time.
- House a maximum of fourteen Homeless individuals, or such other number of Homeless Person(s) as may be permitted by the Zoning Code, Housing Code, and/or other applicable law or regulation in effect at the time.
 - Identify Homeless Families through cooperation with the Elk Grove Food Bank, Elk Grove Homeless Assistance Resource Team (HART), and Transferee's own outreach methods.
 - Assist Clients to resolve barriers to maintaining permanent housing, including providing case management, housing search assistance, employment and benefits counseling referral, and other service referral as needed.
 - Designate a case manager to assist each resident by creating an individualized case plan for each Client. Provide ongoing case management appropriate to the Clients' needs as necessary to address the barriers and goals in the case plan.
- Utilize a House Leader to oversee operations of the Property and compliance by residents with the Property rules or conditions. The House Leader shall also address any complaints or grievances from neighbors or forward them to the appropriate person within the Transferee's agency.
- Submit a written Management Plan or amendment to an existing Management Plan annually, by March 31 of each year, for City approval. Notwithstanding City's approval of the Management Plan, the Management Plan must be prepared, and the Transferee's



management of the Property must be conducted, in accordance with all applicable Federal, State, and local law. At a minimum, the Management Plan shall describe the following:

- Employee hiring policies
 - Employee screening/background checks
 - Policies for selection of the House Leader
 - Client selection policies
 - Client screening/background checks
 - Lease terms
 - Drug/alcohol policies
 - Smoking policies
 - Pet policies
 - Reasonable accommodation policies
 - Property rules and regulations
 - On-site safety requirements
 - Process for evicting clients/unlawful detainer actions, including any due process to be afforded
 - Inventory of property policies (including at move-in, periodic, and move-out)
 - On-site services to be provided
 - Off-site services to be provided
 - Oversight/supervision strategy in the event the House Leader is off-site or unavailable
- Maintain an annual Property budget and accurate tracking of Property income and expenses, including property taxes, utilities, repairs, and staffing expenses (House Leader and case management).

Transferee may charge rent to clients residing at the Property in an amount not to exceed the Qualifying Rent, as defined in the Regulatory Agreement.

Transferee shall comply with all laws related to these services, including, but not limited to, laws regarding privacy rights.

B. General Administration

Transferee shall maintain program and financial records documenting the residency, provision of services, and Transferee expenses relative to the Clients and the Property. The Transferee must also complete all required progress reports.

2. LEVELS OF ACCOMPLISHMENT – GOALS AND PERFORMANCE MEASURES

Transferee agrees to provide temporary housing to a minimum of ten unduplicated Elk Grove Qualifying Households each year. An unduplicated Qualifying Household is considered one Elk Grove Qualifying Household who has not previously been counted in the applicable fiscal year. A household may contain multiple individuals, but the household may only be counted once.

The Transferee shall measure effectiveness by determining the number and percentage of Clients that have obtained permanent housing at the time of exit from the Property.



4. **STAFFING**

At a minimum, the Transferee will assign the following staff members, each of whom has appropriate licenses and certifications, to the program: Executive Director, House Leader, Case Manager, and Property Manager. The House Leader must maintain residency at the Property as his/her primary residence, and the Property Manager must ensure that the presence or availability of staff or the House Leader results in appropriate supervision of the Property in accordance with the Management Plan.

All personnel, including the House Leader, contractors, subcontractors, volunteers, and anyone providing services to youth under this Agreement (collectively "staff member") must undergo a criminal background check in compliance with California state and federal law, including, without limitation, a background check meeting the requirements of California Penal Code section 11105.3, et seq.

5. **PERFORMANCE MONITORING**

The City shall monitor the performance of the Transferee against goals and performance standards as stated above. Substandard performance as determined by the City shall constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Transferee within a reasonable period of time after being notified by the City, contract suspension or termination procedures shall be initiated.



Exhibit C
DEED OF TRUST

Real Property Transfer Agreement
Property Address - 5725 Moon Creek Way



Exhibit D
REGULATORY AGREEMENT



EXHIBIT E Insurance Requirements

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

1. Hazard/Property Insurance

- a. Property/Hazard insurance on the Property, including improvements and personal property now existing or hereafter located on the Property, insured against all risks of loss including but not limited to fire, windstorm, vandalism, malicious mischief and allied perils, general boiler and machinery coverage, and business interruption including loss of rental value insurance for the Property with extra expense insurance.
 - b. If City so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. In the event any updated reports or other documentation are reasonably required by City in order to determine whether such additional insurance is necessary or prudent, Transferee shall pay for all such documentation at its sole cost and expense.
 - c. If any of the Property is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, Transferee shall insure such improvements against loss by flood.
 - d. Transferee acknowledges and agrees that City's insurance requirements may change from time to time throughout the term of this agreement.
 - e. 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 Property 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.
 - f. Transferee shall comply with all insurance requirements and shall not permit any condition to exist on the Property that would invalidate any part of any insurance coverage that this Instrument requires Transferee to maintain.
 - g. In the event of loss, Transferee shall give immediate written notice to the insurance carrier and to City.
 - h. The policy's deductible shall not exceed One Thousand Dollars (\$1,000).
2. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII**.
3. 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.



4. The Transferee 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 any time at the written request of the City, Transferee agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
5. 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.
6. The Transferee 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.
7. If the Transferee 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 Transferee under the Agreement.
8. Failure of the City to obtain such insurance shall in no way relieve the Transferee from any of its responsibilities under the Agreement.
9. The making of progress payments to the Transferee shall not be construed as relieving the Transferee or its sub-contractors or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
10. 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 Agreement.
11. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Transferee are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Transferee under the Agreement.



EXHIBIT F
Certificate of Compliance with Labor Code § 3700, Release and Indemnification

The undersigned, on behalf of and as the duly certified representative of Transferee, certifies as follows:

1. Transferee is 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 Transferee has complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor Code §§1860, 1861.)
2. Should Transferee fail to secure Workers' Compensation coverage as required by the State of California, Transferee shall release, hold harmless, defend and indemnify the City of Elk Grove from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Agreement. It is further understood and agreed that this release and assumption of risk is to be binding on Transferee's successors, heirs and assigns.

TRANSFEEE

John Foley, Secretary

RECORDING REQUESTED BY,)
MAIL TAX STATEMENTS TO)
AND WHEN RECORDED MAIL TO:)
)
City of Elk Grove)
8401 Laguna Palms Way)
Elk Grove, CA 95758)
Attn: Housing Program Manager)

Exempt from recording fee (Govt. Code § 6103 and § 27383) Space above this line reserved for use by Recorder's Office

**REGULATORY AGREEMENT
5725 Moon Creek Way**

This Regulatory Agreement ("Regulatory Agreement") is made as of _____, 2018, by and between the CITY OF ELK GROVE, a California municipal corporation ("City"), and HOUSING SOLUTIONS, INC., a California nonprofit public benefit corporation ("Owner").

RECITALS

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

A. Owner proposes to maintain one (1) Temporary Housing project (the "Project") at a site located in Elk Grove, California, at 5725 Moon Creek Way and APN 117-1320-055 (as more particularly described in Exhibit A, attached hereto and incorporated herein by reference) (the "Property"), which shall be used as temporary housing for homeless families and occupied by a maximum of fourteen Homeless persons and two House Leaders, or such other number of Homeless residents as may be permitted by the Zoning Code, Housing Code, and/or other applicable law or regulation in effect at the time.

B. The Project shall serve as a community resource by providing decent, safe, and sanitary temporary housing with a focus on navigating families from homelessness to permanent housing. The City has agreed to provide Owner with Property at which to operate the Project. A Real Property Transfer Agreement has been executed by Owner evidencing and regulating certain aspects of the transfer; in addition, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing has been recorded to secure the City's interest in the property; these documents and this Regulatory Agreement are collectively referred to as the "Transfer Documents."

C. As further consideration for this funding and to further the public interests of the City in seeing the Project maintained as temporary 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:

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 Transfer Documents.

1. **City** means the City of Elk Grove, California, a municipal corporation, and includes a person or persons authorized to act on its behalf.
2. **City Manager** means the City of Elk Grove City Manager or his or her designee.
3. **Client** means a Homeless Person(s) receiving residency and services at Property under this Agreement. The term Client shall not include the House Leader.
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 Real Property Transfer Agreement, Regulatory Agreement, and any other instrument which is incorporated in the Transfer Documents.

An Event of Default includes, without limitation, the following:

- A. City discovers that Owner has made any misrepresentations or has intentionally withheld any fact in the making of this Grant, the knowledge of which could have affected the decision of City to make this Grant.
- B. Owner defaults or breaches any of the terms of the Deed of Trust, the Real Property Transfer Agreement, or this Regulatory Agreement.
- C. Owner fails to perform any covenant, term, or condition in any instrument creating a lien upon the Property which is the security under the Deed of Trust, or any part thereof.
- D. 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 City.
- E. The occurrence of any of the following:
 - i. Owner becoming insolvent or bankrupt or being unable or admitting, in writing, Owner'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 Owner or a substantial part of such assets, being authorized or instituted by or against the Owner.

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

6. **Family** means a household consisting of one or more adult and one or more child under the age of eighteen (18) years.

7. **Homeless or Homeless Person(s)** means an individual or household who lacks a fixed, regular, and adequate nighttime residence, meaning the individual or household (a) has a primary nighttime residence that is a public or private place not meant for human habitation, (b) is living in a publicly or privately operated shelter designated to provide temporary living arrangements, or (c) is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

8. **House Leader** means an employee of the management agent of the Owner designated to live on-site and, in coordination with the staff of the management agent provides services to ensure the Property is maintained in accordance with the Transfer Documents and the Management Plan (as defined in Section 25(B)) and to provide support for and oversight of the Property and of the Clients.

9. **Low-Income Households** means households earning equal to or less than eighty percent (80%) of the area median income, adjusted for household size, as released by and occasionally updated by the US Department of Housing and Urban Development for the metropolitan area including the City.

10. **Operating Expenses** means the following costs, fees, and expenses reasonably and actually incurred for the operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles consistently applied: property taxes and assessments or payments in lieu thereof; direct payroll expenses and payroll taxes; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by Clients; maintenance, repairs, grounds, and turnover costs; costs associated with accounting; legal fees of Owner incurred in the ordinary course of business; expenses for security services; expenses for fire alarm monitoring; and costs and expenses associated with the provision of social services to the Clients.

11. **Owner** means the fee title owner of the Property, defined above as Housing Solutions, Inc. The term "Owner" includes any person or entity acquiring fee title to the Property.

12. **Project** means the development and operation of the Property as Temporary Housing for Homeless Families according to the terms of the Real Property Transfer Agreement and this Regulatory Agreement.

13. **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.

14. **Qualifying Household** means a household meeting all of the following:

- A. The definition of Homeless or Homeless Person(s);
- B. The definition of Low-Income Household(s); and

- C. The definition of Family; and
- D. A household whose current or last permanent residence was within the City limits, or who can provide verification satisfactory to Owner that within the period 30 days prior to filing an application for housing, the household stayed within the City limits at least 16 nights previous to the filing of an application for housing (or, in the event of a person or household exiting an institution, at least 16 of the 30 nights prior to entering the institution).

15. **Qualifying Rent** means the maximum amount charged to and paid by a resident for the occupancy of the Project, which on a monthly (1/12 year) basis shall not exceed 30 percent of the Qualifying Household's documented income. No utility allowances are permitted; it is the responsibility of Owner to pay all utilities.

16. **Temporary Housing** means housing available to Qualifying Households on a short-term basis, during which time Qualifying Households must receive access to services designed to assist them with securing permanent housing as quickly as possible. In no event may any Homeless Person occupy the Property for longer than twelve (12) months.

17. **Transfer Documents** means collectively this Regulatory Agreement, the Real Property Transfer Agreement, the Deed of Trust, and any other document required for the transfer of the Property, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

REPRESENTATIONS

18. **Representations.** The City has provided funding in the approximate amount of \$430,000 to acquire the Property. This Regulatory Agreement is a substantial part of the consideration to City for transferring the Property to Owner for the purpose of operating a Temporary Housing program. 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. Therefore, the City has made the transfer conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement and other Transfer 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

19. **Compliance with Transfer Documents.** Owner's actions with respect to the Property shall at all times be in full conformity with the requirements of the Transfer Documents.

20. **Term of Agreement.** This Regulatory Agreement shall commence upon execution and shall remain in full force and effect until fifty-five (55) 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 payment, 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

21. **Occupancy of Project.** Owner shall limit for the full term of this Regulatory Agreement the occupancy of the Project to Qualifying Households. Owner may impose additional requirements on eligibility of applicants, provided such requirements are included in the Management Plan, approved by the City in advance of application, and compliant with applicable federal, state, and local laws. The qualifications of Clients shall be certified by Owner prior to initial occupancy in conformance with the Management Plan, as these rules may be amended from time to time.

The Project shall be owned, managed, and operated as a temporary residential dwelling unit comprised of complete facilities for living, sleeping, eating, cooking, and sanitation for a maximum of fourteen (14) Homeless individuals and one (1) House Leader, or such other number of Homeless individuals as may be permitted by the Zoning Code, Housing Code, and/or other applicable law or regulation in effect at the time. At all times, the Property shall include sleeping areas adequate to accommodate the number of Homeless individuals, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink. The Project shall never be used as a hotel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, trailer park or court, or any other use that would violate federal, state, or local laws and ordinances.

Additions to the Property may not be constructed without the written permission of the City, and subject to receipt of a City-issued Building Permit, if required.

22. **Project Rent.** Rents for the Project shall be limited to the Qualifying Rent. Owner may charge rent lower than the Qualifying Rent, as long as the Owner has adequate funding to pay the costs associated with the Project, including property taxes, utilities, and a reasonable contribution to replacement and operating reserves.

23. **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 Project which involves the application of paint or potentially asbestos-containing materials.

24. **Nondiscrimination.** Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of 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. Owner shall include a statement in all advertisements, notices, and signs for the availability of the Project 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.

25. **Operation and Management of Project.** Owner and each of Owner's officers, agents, and/or employees shall diligently operate and manage the Project 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, 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 occupancy of the Project by anyone other than the House Leader, 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 per year, with submittal to the City on March 31 annually. 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 Project. 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 and other sources. 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 Project 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 property inspections, without limitation, upon five 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, which reflect the status of the reserve fund for maintenance and replacement activities and of any reserve fund for Operating Expenses. 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 Qualifying Household, including verification of income and measures to take in the event the maximum income is exceeded.

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

a. Review of the following criteria:

i. Verification that the applicant meets the definition of a Qualifying Household;

ii. Verification of the applicant's income and assets;

iii. History of drug and/or alcohol abuse;

iv. History of criminal and/or drug-related offenses, including but not limited to: assault, battery, abuse, and destructive or violent behavior;

v. Inclusion on the California Sex and Arson Registry or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 USC 16901 et seq.).

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

c. Selected Clients must be given a set of "rules and regulations" for the Property.

viii. Provide to the City and keep on file the following information:

- a. The duties of the property manager regarding operation of the Property.
- b. A sample residency agreement form.
- c. Plan for handling terminations with cause, including providing Client with due process (notice and opportunity to be heard) by a court prior to eviction.

Owner shall provide and maintain the Project 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 in the City of Elk Grove, including, but not limited to, laws related to terminating a lease, due process, and evictions, as applicable.

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 Clients, verification 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.

Notwithstanding the foregoing, Owner shall comply with all federal, state, and local laws and any provision stated herein shall be waived if in conflict with applicable law.

26. **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. Owner shall also perform such other maintenance as reasonably requested by the City from time to time.

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.

27. **Unit Vacancies.** Owner shall use its best efforts to fill vacancies in the Project with Qualifying Households as quickly as possible. If the Owner is unable to fill vacancies within a reasonable period of time due to a lack of Qualifying Households, Owner shall contact City to request an exception to one or more of the standards for determining a Qualifying Household. The City shall retain sole discretion over any exception to standards noted herein.

28. **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 Transfer 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 Transfer 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 Deed of Trust.

29. **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 Project and of the Property shall be kept in accordance with generally accepted accounting principles.

30. **Reporting.** Owner shall submit reports in line with the requirements of the Real Property Transfer Agreement. City may, at its sole discretion, require additional reporting.

31. **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.

32. **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 B, which is attached hereto and incorporated herein by reference.

33. **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 Project. 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.

34. **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 Transfer Documents.

GENERAL PROVISIONS

35. **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 Transfer 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 housing projects, or at least five (5) years' experience in the ownership, operation, and management of Temporary 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 Project; 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.

36. **Revival of Covenants after Foreclosure.** The affordability restrictions herein 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, 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 Project, 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.

37. **Default and Remedies.** In the event of any breach or violation of any agreement, obligation, or warranty under the Transfer 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 Transfer 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;

D. For violations of Owner's obligations with respect to occupancy restrictions, Project 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 Project 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 used to purchase the Property granted to Owner pursuant to the Transfer 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 Transfer Documents. This provision will remain in full force and effect even if the parties fail to expressly initial where indicated below.

Initials: Owner _____, City Manager _____.

(Failure to initial does not invalidate this provision.)

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.

38. **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 Transfer Documents.

39. **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 Transfer Documents; (b) a failure of any of Owner's representations or warranties under the Transfer 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

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.

46. **Binding upon Successors.** All provisions of this Regulatory Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Owner and City, and shall run with the land for the full term of this Regulatory Agreement, regardless of any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property. Any successor-in-interest to Owner and any purchaser or transferee of 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.

47. **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.

48. **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.

49. **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 or Transfer Documents. 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.

50. **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.

51. **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

52. **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.

53. **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]

Regulatory Agreement
Property Address - 5725 Moon Creek Way

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: _____
Jason Behrmann
Interim City Manager

Approved as to form:

By: _____
Jonathan P. Hobbs
City Attorney

Attest:

By: _____
Jason Lindgren
City Clerk

Regulatory Agreement
Property Address - 5725 Moon Creek Way

ALL SIGNATURES MUST BE NOTARIZED

OWNER:

HOUSING SOLUTIONS, INC.,
a California nonprofit public benefit corporation

By: _____
John Foley,
Secretary

Approved as to form:

By: _____
Ronald S. Javor,
Counsel for Owner

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

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

Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

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

Signature of Notary Public

Regulatory Agreement
Property Address - 5725 Moon Creek Way

EXHIBIT A

Legal Description

Real property in the City of Elk Grove, County of Sacramento, State of California, described as follows:

LOT 49, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PLAT OF LAGUNA VISTA UNIT NO. 29", ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, ON MARCH 9, 1999 IN BOOK 259 OF MAPS, PAGE 2.

APN: 117-1320-055

EXHIBIT B
Insurance Requirements

Prior to commencement of any work under this Regulatory Agreement, Owner shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Regulatory Agreement, 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. There shall be no coverage exclusion for abuse and molestation.
 - e. 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)
 - f. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to this Regulatory Agreement.
 - g. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to this Regulatory Agreement.
 - h. The City, its officials, employees, agents and authorized volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Owner, products and completed operations of the Owner, premises owned, occupied, or used by the Owner, or automobiles owned, leased, hired, or borrowed by the Owner on a separate endorsement acceptable to the City.
 - i. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or authorized volunteers.
 - j. Provision or endorsement stating that for any claims related to this Regulatory Agreement, the Owner's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents, and authorized volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officials, employees, agents, or authorized volunteers shall be in excess of the Owner's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

- k. Any failure to comply with reporting or other provisions of the policies on the part of the Owner, including breaches of warranties, shall not affect Owner's requirement to provide coverage to the City, its officials, employees, agents, or authorized volunteers.
 - l. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by the Owner.
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 automobiles with combined single limits of no less than Three Hundred Thousand Dollars (\$300,000).
 - b. Non-commercial policies are acceptable.
3. Worker's Compensation
 - a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Owner is a qualified self-insurer with the State of California), and Employers Liability coverage. The Owner shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit C, which is attached hereto and incorporated herein by reference.
 - b. Employer's Liability Coverage shall not be less than the statutory requirements.
 - c. If an injury occurs to any employee of the Owner 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 Owner under this Regulatory Agreement, 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 Owner.
 - d. 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 Owner.
4. Errors and Omissions; Malpractice; Professional Liability. Errors and omissions, malpractice, or professional liability insurance with coverage of not less than \$1,000,000 per occurrence. Upon termination of this Regulatory Agreement, the same insurance requirements in Section 4 of this Exhibit will apply for a one (1) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.
5. Hazard/Property Insurance
 - a. Property/Hazard insurance on the Property, including improvements and personal property now existing or hereafter located on the Property, insured against all risks of loss including but not limited to fire, windstorm, vandalism, malicious mischief and allied perils, general boiler and machinery coverage, and business interruption

- including loss of rental value insurance for the Property with extra expense insurance.
- b. If City so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. In the event any updated reports or other documentation are reasonably required by City in order to determine whether such additional insurance is necessary or prudent, Owner shall pay for all such documentation at its sole cost and expense.
 - c. If any of the Property is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, Owner shall insure such improvements against loss by flood.
 - d. Owner acknowledges and agrees that City's insurance requirements may change from time to time throughout the term of this agreement.
 - e. 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 Property 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.
 - f. Owner shall comply with all insurance requirements and shall not permit any condition to exist on the Property that would invalidate any part of any insurance coverage that this Instrument requires Owner to maintain.
 - g. In the event of loss, Owner shall give immediate written notice to the insurance carrier and to City.
 - h. The policy's deductible shall not exceed One Thousand Dollars (\$1,000).
6. Other Insurance Provisions: The general and auto liability coverage 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 Owner, products and completed operations of the Owner, premises owned, occupied, or used by the Owner, or automobiles owned, leased, hired, or borrowed by the Owner on a separate endorsement acceptable to the City.
 - 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 Regulatory Agreement, the Owner'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 Owner'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 Owner, including breaches of warranties, shall not affect Owner's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
7. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
8. 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.
9. The Owner 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 Regulatory Agreement. At anytime at the written request of the City, Owner agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
10. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the Regulatory Agreement by giving 30 days written notice.
11. The Owner 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.
12. If the Owner 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 Owner under the Regulatory Agreement.
13. Failure of the City to obtain such insurance shall in no way relieve the Owner from any of its responsibilities under the Regulatory Agreement.
14. The making of progress payments to the Owner shall not be construed as relieving the Owner 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.
15. 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 Regulatory Agreement.

16. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Owner are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Owner under the Regulatory Agreement.

EXHIBIT C
Certificate of Compliance with Labor Code § 3700, Release and Indemnification

The undersigned, on behalf of and as the duly certified representative of Owner, certifies as follows:

1. Subrecipient is 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 Owner has complied or will comply with such provisions before commencing the performance of the work of this Regulatory Agreement. (Cal. Labor Code §§1860, 1861.)
2. Should Subrecipient fail to secure Workers' Compensation coverage as required by the State of California, Owner shall release, hold harmless, defend and indemnify the City of Elk Grove from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Regulatory Agreement. It is further understood and agreed that this release and assumption of risk is to be binding on Subrecipient's successors, heirs and assigns.

OWNER

John Foley, Secretary

RECORDING REQUESTED BY,)
MAIL TAX STATEMENTS TO)
AND WHEN RECORDED MAIL TO:)
)
City of Elk Grove)
8401 Laguna Palms Way)
Elk Grove, CA 95758)
Attn: Housing Program Manager)

Exempt from recording fee (Govt. Code § 6103 and § 27383) Space above this line reserved for use by Recorder’s Office

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT (“Deed of Trust”) is made this ____ day of July, 2018, by HOUSING SOLUTIONS, INC., a California nonprofit public benefit corporation (“Trustor”), to Placer Title Company, a California corporation, as trustee (“Trustee”), for the benefit of the CITY OF ELK GROVE, a municipal corporation (“Beneficiary”). Trustor is sometimes referred to herein as “Transferee.” Trustor is granting this Deed of Trust on Trustor’s property located at 5725 Moon Creek Way and APN 117-1320-055 (the “Property”) to provide collateral for, among other things, Beneficiary’s transfer of the Property to Trustor in connection with the acquisition and maintenance of one (1) single-family home to be used as temporary housing for homeless families (the “Project”), to be governed by a Regulatory Agreement (“Regulatory Agreement”) and the Real Property Transfer Agreement (“Real Property Transfer Agreement” and, together with this Deed of Trust and the Regulatory Agreement, the “Transfer Documents”) executed by Beneficiary and Trustor, and to secure the promises made under the Transfer Documents. The one (1) single-family home shall be operated as Temporary Housing (as defined in the Regulatory Agreement) for Families meeting the definition of Homeless. This Deed of Trust is being executed in order to secure Beneficiary’s interest as a governmental agency in ensuring both that public funds granted or loaned for the acquisition, rehabilitation, and/or 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. Performance of every obligation, condition, covenant, or agreement of Trustor contained in the Transfer Documents, including all modifications, extensions, and renewals of these obligations; and
 - B. Performance of any other obligation or repayment of any other indebtedness of Trustor or Transferee 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 Transfer 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 within sixty (60) calendar days, Beneficiary may, in addition to other rights and remedies permitted by the Transfer Documents, 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 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, provided that such actions are undertaken in full compliance with the provisions of the Transfer Documents, and State and Federal Law.

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 of the Property.

8. **Remedies.** Upon Trustor's breach of any obligation or agreement in any of the Transfer 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. **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 or the Transfer Documents, 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 at a rate of ten (10) percent per annum thereon from the date of such advance (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.

11. **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.

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

13. **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.

14. **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.

15. **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 are 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.

16. **Title.** Trustor warrants that upon the Date of Transfer (as defined in the Real Property Transfer Agreement), Trustor lawfully has legal title to the Security without any limitation on the right to encumber, except for those limitations set forth in the Transfer Documents.

17. **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.

18. **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 rate of interest of ten (10) percent per annum (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.

19. **Insurance.** Trustor shall provide such insurance as required under the Transfer Documents. 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 rate of interest of ten (10) percent per annum (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. **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 Transfer 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.

21. **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 20) 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 20).



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 23, 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 20.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 any 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 the Transfer Documents, 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 Transfer Documents, including this Deed of Trust, 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.

22. **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.

23. **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 rights 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, 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.

24. **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 20, 21, 22, and 23 shall be in addition to those other rights and obligations, respectively, created or imposed by statutory, common or case law.

25. **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.

26. **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.

27. **Reconveyance by Trustee.** This Deed of Trust is intended to continue for the entire term of the Regulatory Agreement. Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid and all other obligations secured 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

28. **Events of Default.** Any of the events listed in any of the Transfer Documents 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 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 (b) Trustor's failure to make any payment or perform any of its other covenants, agreements, or obligations under any other agreement with respect to the Project or the Security, whether or not Beneficiary is a party to such agreement.



29. **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 applicable Transfer Documents, Beneficiary may, in addition to other rights and remedies permitted by the Real Property Transfer Agreement, 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. 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;

D. 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

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

30. **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, 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.



TRANSFeree/TRUSTOR:

ATTN: Secretary
Housing Solutions, Inc.
PO Box 188445
Sacramento, CA 95818

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.

37. **Binding upon Successors.** All provisions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Trustor, Trustee, and Beneficiary.

38. **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.

39. **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.

40. **Real Property Transfer Agreement Controls.** If there is any contradiction between this instrument and the Real Property Transfer Agreement, the terms of the Real Property Transfer 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.

41. **Regulatory Agreement Controls.** If there is any contradiction between this instrument and the Regulatory Agreement, the terms of the Regulatory 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.

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

43. **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.



44. **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.

45. **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.

46. **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.

47. **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.

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

49. **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.

50. **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.

51. **Nonrecourse.** The obligations of Trustor under this Deed of Trust are limited in the manner and to the extent provided in the Transfer Documents.

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

Deed of Trust
Property Address - 5725 Moon Creek Way



TRUSTOR:

HOUSING SOLUTIONS, INC.,
a California nonprofit public benefit corporation

By: _____
John Foley,
Secretary

Approved as to form:

By: _____
Ronald S. Javor,
Counsel for Trustor



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
Date Here Insert Name and Title of the Officer
personally appeared _____,
Name(s) of Signer(s)

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

Signature of Notary Public

EXHIBIT A
Legal Description of Property

Real property in the City of Elk Grove, County of Sacramento, State of California, described as follows:

LOT 49, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PLAT OF LAGUNA VISTA UNIT NO. 29", ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, ON MARCH 9, 1999 IN BOOK 259 OF MAPS, PAGE 2.

APN: 117-1320-055



**2017 STATE HOMELESS APPROPRIATION
OPERATIONS GRANT AGREEMENT
Project Address: 5725 Moon Creek Way**

THIS AGREEMENT ("Agreement") is by and between the City of Elk Grove ("City"), a municipal corporation, and Housing Solutions, Inc., a California nonprofit public benefit corporation ("Grantee"), collectively as the parties.

RECITALS

WHEREAS, the City desires to provide grant funding ("Grant") to Grantee to assist the Grantee in providing to the City of Elk Grove the services described in Exhibit A ("Program"); and

WHEREAS, the City and Grantee agree that providing the services desired in Exhibit A serves a valid public purpose and benefits the residents of the City of Elk Grove.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions set forth in this Agreement, the parties agree:

AGREEMENT

1. **Grantee Responsibilities.** The Grantee has full responsibility for the conduct of the project and/or activity supported under this Agreement and for adherence to the Grant conditions.
 - a. **Budget.** The City may, in its sole discretion, provide up to five hundred thousand dollars (\$500,000) during the period from August 1, 2018 to July 31, 2028 ("Grant Period") to Grantee to assist in providing the services described in Exhibit A, which is attached hereto and incorporated herein by reference. This Grant funding shall only be used for the purposes described in Exhibit A, and shall be spent in accordance with the budget in Exhibit B, which is attached hereto and incorporated herein by reference. Any amendments to the budget must be requested by the Grantee and approved by the City in writing.
 - b. **Communications.**
 - (i) Grantee shall include, upon approval by the City, the City's name and/or logo in all communications produced during the Grant Period in which Grantee identifies any person or entity as being a sponsor of, or donor or contributor to, Grantee. In instances where Grantee receives funding related to the arts, such communications shall also display the logo for the City of Elk Grove Committee for the Arts. The style of presentation (text and/or logo, font size, etc.) shall be determined by the City. It is generally expected that when another person or entity is identified in the communication as a sponsor, donor, or contributor, and that person's or entity's logo appears in the communication, the City's logo would also appear. When the style of presentation is based on the amount of financial support provided, the City's name and/or logo shall be treated equally with other supporters providing similar financial support, and shall be based on the total amount of City funds received and to be received pursuant to this Agreement.



- (ii) In performing its obligations under subsection (i), Grantee must obtain the permission of the City before including the City's name or logo in any communication that is:
 - 1. Required to include the name or logo pursuant to subsection (i), or
 - 2. Produced during the time period specified in subsection (i) if the communication identifies the City as a sponsor, donor, or contributor.

Permission may be granted by the Public Affairs Manager in the City Manager's Office. The Public Affairs Manager shall determine the style in which the City's name and logo are presented in such communications. If the City denies permission to place the City's name and logo in a particular communication, this subsection (b) shall not apply to that particular communication, and nothing in this section (b) shall prevent Grantee from sending that communication out.

- 2. **Deadline for Performance.** Grantee shall comply, by July 31, 2028, with all of the requirements imposed on it by this Agreement, unless granted a no-cost extension. In any event all requirements of this Agreement shall be fulfilled.
- 3. **No-Cost Extensions.** The City may, in its sole discretion, authorize a one-time extension of the expiration date of the Grant up to six months, if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed six months, must be made prior to the originally established expiration date. This one-time extension shall not be exercised merely for the purpose of using any unliquidated Grant balances. Any approved extension will increase the Grant Period by the length of the extension.

Grantee shall, in writing, notify the City of its request for an extension and provide supporting reasons for the extension and the requested revised expiration date, at least ten (10) business days prior to the expiration date specified in Section 2 of this Agreement.

- 4. **Conditions of the Grant.** The obligation of City to make the Grant is contingent upon the satisfaction of the following conditions:
 - a. **Organizational Agreements and Standing.** Grantee must be in good standing with the California Secretary of State and the California Attorney General's Registry of Charitable Trusts, if required by law to be registered, and upon request shall provide City with copies of its bylaws, articles of incorporation, and tax identification number prior to the disbursement of Grant funds.
 - b. **Documentation Review.** Upon the request of City, Grantee shall provide City with any documents related to this Agreement or otherwise requested by the City including, but not limited to, financial information. City shall have the right to inspect, audit, and review all Grantee's financial documents relative to Grantee's use of the Grant funds.
 - c. **Program Reporting.**
 - (i) Annually, Grantee shall submit a mid-year report regarding progress of the program and progress toward program outcomes and performance measures



related to the success of the program, in a format provided by the City. This report shall be provided to the City on or before January 31 each year. Failure to comply may be deemed a material breach of the Agreement, resulting in termination of the Grant with no further funding.

- (ii) Annually, Grantee shall submit a year-end report regarding program accomplishments and stating whether program goals were met, in a format provided by the City. This report shall be provided to the City on or before July 31 each year.
- (iii) To assure the City, in its sole satisfaction, that Grant funds were used only for the purposes authorized by this Agreement, Grantee shall, prior to July 31 annually, provide the City with a closing statement relative to the use of Grant funds in providing the services authorized by this Agreement during the prior fiscal year (July 1 to June 30). Upon the City's request, Grantee must provide all back-up and supporting documentation necessary to verify the closing statement. In the event City determines that Grantee expended any of the Grant funding for purposes other than authorized herein, City may, at its sole option, require that Grantee reimburse City for the portion of the Grant used for the subsidizing of services not described in Exhibit A.
- (iv) In the event that a no-cost extension is authorized, the City shall have the right to request additional reporting from Grantee.

d. Financial Reporting.

- (i) The Grantee, at the Grantee's sole expense, shall account for all funds received from the City under this Agreement and all expenditures made from Grant funds. The Grantee shall provide all information at such times and in such form and detail that the City may require, including but not limited to accounts, records, budget-to-actual statements, and other supporting documentation. Without limiting the preceding sentence, it is agreed that, if requested in writing by the City, the Grantee shall make all of that information available for inspection and audit by the City at any time during the workday.
- (ii) Grantee, at Grantee's sole expense, shall prepare a certified and sworn statement and a schedule of Grantee receipts and expenditures (cash basis) in a format prescribed by the City. The Grantee shall provide the City's Housing and Public Services Manager with the statement and schedule within six months after the close of the Grantee's fiscal year.
- (iii) Grantee, at Grantee's sole expense, shall obtain an audit of its financial statements. The audit shall be performed by a Certified Public Accountant or a Certified Public Accounting firm. This audit shall be conducted in accordance with generally accepted auditing standards, and the financial statements shall be prepared in conformity with generally accepted accounting principles. The Grantee shall provide the City's Housing and Public Services Manager with the audit report within six months after close of Grantee's fiscal year.



- (iv) Grantee, at Grantee's sole expense, shall prepare and submit its financial statements, including a profit and loss statement and a general ledger. The Grantee shall provide the City's Housing and Public Services Manager with the financial statements within six months after close of Grantee's fiscal year.
 - e. Insurance. Grantee shall comply with all insurance requirements of this Agreement, including those noted in Exhibit C.
 - f. Recordkeeping. Grantee shall retain financial and program records for a minimum period of three (3) years following the expiration of the Grant Period or earlier termination of this Agreement.
 - g. Real and Non-Expendable Property.
 - (i) The Grantee shall keep inventory records, acceptable to the City, on all real and non-expendable property purchased under this Agreement. For the purposes of this Agreement, non-expendable property shall be considered all property having a useful life of one (1) year or more and having an acquisition cost of \$300 or more per unit. Grantee shall submit an inventory record of all items at the end of the program year and resubmit it each program year with revisions as necessary.
 - (ii) For all real and non-expendable property occupied, operated, or purchased under this Agreement, Grantee shall maintain sufficient insurance to cover the cost of replacement due to loss by fire, theft, or accidental damage. The City shall be named as loss payee under such policies of insurance. The Grantee shall also be responsible for the maintenance and upkeep of all such property.
 - h. Disclosure. Grantee understands, acknowledges, and agrees that any records it provides to the City may be subject to disclosure to the public pursuant to the California Public Records Act or other applicable law.
5. Terms of Disbursement.
- a. Advances. The City shall not make advances of funds for costs not yet incurred unless approved in writing by the City Manager. In that event, advances of funds shall be limited to no more than one-quarter of the Grant funds, and no further advances shall be approved until such time as the City has received adequate documentation for any and all funds previously advanced.
 - b. Reimbursement. The City shall provide reimbursement only for expenses incurred and paid within the Grant Period, including any approved extensions as described in this Agreement, provided they are consistent with Exhibits A and B and the Grantee is in compliance with all terms of this Agreement. All requests for reimbursement must be adequately documented by financial records, including checks, payrolls, invoices, receipts, contracts, vouchers, or other documentation deemed acceptable by the City. At its sole discretion and approved in writing by the Housing and Public Services Manager, City may allow reimbursement or direct payment to vendor of expenses incurred but not yet paid by Grantee.



- c. Disbursement Schedule. Unless terminated early as provided herein, the City shall make disbursements of Grant funds in disbursements not more than once per calendar quarter, all of which together equal no more than the total provided in Section 1 of this Agreement. Calendar quarters shall end on the final day of the following months: March, June, September, and December.

At its sole discretion, the City may approve one or more lump-sum payments of the Grant. In that event, the City's obligation to make disbursements of Grant funds shall terminate upon disbursement of lump-sum payments equal to the awarded Grant funds.

In lieu of quarterly disbursements and/or any lump-sum payments, and at its sole discretion and approved in writing by the Housing and Public Services Manager, the City may allow reimbursement of expenses in a maximum of twelve disbursements per year, on a basis that is no more frequent than once per calendar month, and all of which together equal no more than the total provided in Section 1.

Until disbursement, all Grant funds remain the property of the City.

- d. Timing. Disbursement requests may not be submitted more often than quarterly, unless an exception is approved by the City in writing.
 - e. Allowable and Allocable Costs. Costs must be necessary, reasonable, and directly related to the scope of services described in Exhibit A. In addition, all costs must be legal and proper. The budget included in Exhibit B shall control amounts of allowable expenditures within budget categories.
6. Termination. The Grant award may be terminated in whole or in part, at the City's sole discretion and without penalty to, and/or further obligation owed by, the City, at any time during the year if any one of the following situations occurs:
 - a. The City budgeted Grant funds are no longer available;
 - b. Grantee has materially failed to comply with any terms or condition of the Agreement, including deadlines for submitting any accounting, audit, statement, information, record, documentation, or report. The City Manager shall have the sole authority to decide whether the Grantee has materially failed to comply with the terms or conditions of this Agreement, including the attachments. That determination shall include the authority to construe vague and/or ambiguous requirements, if any;
 - c. Ineffective or improper use of Grant funds, as determined by the City at the City's sole discretion;
 - d. When the City has other reasonable cause;
 - e. By City and the Grantee by written mutual agreement.

No costs incurred after the effective date of termination shall be allowable, except those costs which, in the opinion of the City, the Grantee could not reasonably avoid or eliminate.



Within thirty (30) calendar days of the termination date, the Grantee shall furnish a summary of progress under the Grant and an itemized accounting of costs incurred prior to the termination date. Final allowable costs under a termination settlement shall be in accordance with the terms of the Agreement. In no event shall the total of City payments under a terminated Grant exceed the Grant amount.

7. **Non-compliance.** In the event that Grantee does not comply with the terms of this Agreement, the City reserves the right to pursue all legal and equitable remedies available, up to and including, without limitation, requiring repayment of all Grant funds.
8. **Audit.** This Agreement may be subject to a financial and program audit by City staff. All relevant documentation must be kept on file for three (3) years following the end of the Grant Period, including any extension authorized by the City. An audit may be conducted by the City at any time during the Grant Period and within the three years following the Agreement's expiration or termination date.
9. **Assignment.** Neither this Agreement nor the right to receive Grant funds under the Grant shall be assignable by Grantee without the prior written consent of City, which consent the City may withhold for any reason.
10. **Informational Meetings.** The City Manager, or the City Manager's designee, may, in his or her discretion, schedule periodic meetings/workshops on Grant-related topics. Such meetings may, in the City Manager's sole discretion, require mandatory attendance by a representative of Grantee.
11. **Additional Funding.** Grantee shall continue to aggressively seek donations, contributions, grants, and other revenue sources to generate additional income and to become financially independent of the City.
12. **Conflict of Interest.** No member, officer, or employee of the City, or its designees or agents or any member, officer, or employee of the Grantee (and no one with whom they have family or business ties) who exercises any functions or responsibilities with respect to the program during his or her tenure or for one year thereafter, shall have any personal or financial benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.
13. **Political Activity.** None of the Grant funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any candidate for public office or for political activities.
14. **Religious Activity.** None of the Grant funds, materials, property, or services provided directly or indirectly under this Agreement shall be used to advance or inhibit religion.
 - a. Grantee shall not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the activity funded by this Agreement. If Grantee conducts such activities, the activities must be offered separately, in time or location, from



the programs or services funded under this Agreement, and participation must be voluntary for the beneficiaries of programs or services funded by the Grant.

- b. Grantee shall not discriminate against any program participant, prospective program participant, employee, or prospective employee on the basis of religion or religious belief.
15. **Representations and Warranties.** Grantee represents and warrants as of the date of this Agreement and as of the date of each Grant disbursement the following:
- a. That Grantee is duly formed and organized and validly exists in good standing under the laws of the State of California and has all necessary powers to enter into this Agreement.
 - b. The party executing this Agreement on behalf of Grantee is authorized to do so, and upon execution, this Agreement shall be binding upon Grantee.
 - c. All documents and written information provided or required to be provided by Grantee to City are, and shall be, true and correct copies, and contain true and correct information therein.
16. **Amendments.** The parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, and signed by their duly authorized representatives. Such amendments shall not invalidate this Agreement, nor relieve or release any party from its obligations under this Agreement. At any time during the term of this Agreement, the City, in its sole discretion, may amend this Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for any other reason. If such amendments result in a change in the scope of services or budget of the activities to be undertaken as part of this Agreement, such modifications shall be incorporated only by written amendment signed by the parties.
17. **Subcontracting.** The performance covered by this Agreement shall not be subcontracted, assigned, or delegated without the prior written consent of the City. Grantee must monitor all subcontracted services on a regular basis to assure contract compliance.

The City hereby agrees that Sacramento Self Help Housing, Inc., a California nonprofit public benefit corporation, is an approved subcontractor.

18. **California Prevailing Wage Requirements.** The Grantee and any contractor or subcontractor hired by Grantee shall comply with California Labor Code section 1720, et seq., regarding the payment of prevailing wage to the extent applicable to the activities undertaken pursuant to the Agreement and the property. Prevailing wage rates may be obtained from the California Director of Industrial Relations. The Grantee shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.
- (1) The contractor acknowledges that it has examined the prevailing rate of per diem wages as established by the California Director of Industrial Relations. The contractor agrees to pay workers not less than the applicable prevailing rate of per diem wages.



- (2) Contractor shall keep an accurate payroll record which shows the name, address, social security number, correct work classification (in accordance with the wage decision), both straight and overtime worked each day and week, and hourly rate of pay, gross wages earned, deductions made and net wages paid to each journeyman, apprentice (attention shall be directed to California Labor Code Section 1777.5 for compliance), worker or other employee paid by the contractor/subcontractor in connection with the Work.
 - (3) These payroll records shall be certified and shall be made available at contractor's principal office. These records shall be maintained during the course of the contract. The contractor and all subcontractors shall make the certified payroll records available for inspection by City representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.
 - (4) The City shall notify the contractor in writing of any discrepancies or violations that are discovered during such inspections. Written notification pursuant to this Section shall include the actions that will be necessary to resolve the discrepancies and/or violations. The contractor shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all subcontractors and any lower tier subcontractors.
 - (5) In order to bid on or to be listed on the bid proposal for this Public Works project all contractors and subcontractors shall be registered with the Department of Industrial Relations and be qualified to perform public work pursuant to Section 1725.5 of the California Labor Code. Unregistered contractors may still submit bids provided the bid is authorized by 7029.1 of the Business and Professions Code or by either section 10164 and 20103.5 of the Public Contract Code and contractors register with the Department of Industrial Relations to perform Public Work pursuant to California Labor Code Section 1725.5 at the time the contract is awarded. Subcontractors shall be registered prior to bid opening or within 24 hours of bid opening and paid the required penalty registration fees to the Department of Industrial Relations, as applicable.
 - (6) The project will not be accepted as complete by the City nor final payment made until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due.
19. **Copyrights.** If this Agreement results in a publication or other copyrightable material, the author may copyright the work, but the City shall reserve royalty free, nonexclusive, and irrevocable licenses to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.
 20. **Income.** Any gross income directly generated from the use of the Grant shall be returned to the City.
 21. **Indemnification.** Grantee shall protect, defend, indemnify, release, and hold harmless City, its elected or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney's fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way



connected with this Agreement, including, without limitation, failure to comply with or carry out any of the provisions of this Agreement, by Grantee, Grantee's agents, officers, employees, subcontractors, consultants, and independent contractors hired by Grantee. The only exception to Grantee's responsibility to protect, defend, indemnify, and hold harmless the City is due to the sole active negligence or willful misconduct of City, as determined by a Court of competent jurisdiction. Unless and until such judicial determination is made; or as otherwise agreed by the parties, grantee shall remain obligated to protect, defend, indemnify, release, and hold harmless the City, its elected or appointive boards, officers, agents, and employees pursuant to this agreement. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Grantee. The Grantee's obligations under this provision shall continue after termination and/or completion of this Agreement.

22. **Evidence of Insurance Coverage.** Prior to disbursement of Grant funds under this Agreement, Grantee shall provide and maintain in effect during the term of this Agreement evidence of insurance coverage as set forth in Exhibit C, attached hereto and incorporated herein by reference.

23. **Evidence of Insurance Compliance.** Grantee 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 to City. City may designate an insurance certificate processor ("Processor") to accept and process Grantee's proof of insurance. Grantee shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or Processor upon their request.

24. **Miscellaneous.**

a. **Notices.** Grantee shall transmit all notices and any other written communication required by this Agreement to the City as follows:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: Housing and Public Services Manager

City shall transmit all notices, disbursement, and any other written communication required by the Agreement to the Grantee as follows:

Housing Solutions, Inc.
PO Box 188445
Sacramento, CA 95818
Attn: Secretary

b. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. If any legal action is brought by either party relating to this Agreement, venue shall lie exclusively in a court of competent jurisdiction in Sacramento County.



- c. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors, and assigns.
- d. Entire Agreement. This Agreement and the documents referenced herein contain the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.
- e. Recitals and Exhibits. The recitals and exhibits attached hereto are hereby incorporated by reference.
- f. Authority of Grantee. Grantee shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.
- g. Compliance with Law. Grantee shall comply with all applicable laws, ordinances, and codes of federal, State, and local governments, and shall commit no trespass on any public or private property in performing any of the work anticipated by this Agreement.
- h. Survivorship. Any responsibility of Grantee for warranties, insurance, indemnity, record-keeping, or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination, or completion of this Agreement.
- i. Construction and Interpretation. Grantee and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.
- j. Waiver. The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.
- k. Severability. The invalidity, illegality or unenforceability, of any provision of this Agreement shall not render the other provisions invalid, illegal or unenforceable.
- l. No Third Party Beneficiary. It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and Grantee. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and the Grantee that any such person or entity, other than the City or Grantee, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.
- m. Non-Discrimination/Non-Preferential Treatment Statement. In performing this Agreement, the parties shall not discriminate or grant preferential treatment on the



basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

- n. Authority to Execute. The person or persons executing this Agreement on behalf of the Grantee warrant and represent that they have the authority to execute this Agreement on behalf of their agency and further warrant and represent that they have the authority to bind Grantee to the performance of its obligations hereunder.
- o. No Joint Venture, Partnership, or Other Relationship Created. The relationship between City and Grantee is that solely of a grantor/grantee and no joint venture, partnership, or other relationship is created or implied by this Agreement.

<Remainder of page intentionally left blank>
<Agreement continued on next page>

Operations Grant Agreement
Property Address – 5725 Moon Creek Way



CITY:
City of Elk Grove
a municipal corporation

GRANTEE:
Housing Solutions, Inc.,
a California nonprofit public benefit corporation

By: _____
Jason Behrmann, Interim City Manager

By: _____
John Foley, Secretary

Attest:

By: _____
Jason Lindgren, City Clerk

Approved as to form:

By: _____
Jonathan P. Hobbs, City Attorney



EXHIBIT A Scope of Services

1. Activities

The Grantee shall be responsible for owning, operating, and maintaining the real property at 5725 Moon Creek Way and using it to offer a temporary housing program for homeless families in a manner satisfactory to the City and consistent with any standards required as a condition of providing this Grant. Such program shall include the following activities:

A. Program Delivery

Own, maintain, and operate a temporary housing program for homeless families at 5725 Moon Creek Way (APN 117-1320-055) in Elk Grove ("Property"). Grantee shall provide, at a minimum, the following services:

- 1) Maintain the Property in good condition, in good repair, and in a safe, sanitary, and habitable living condition for the benefit of the Property's occupants, all of whom shall meet the definition of Homeless and Family as defined in the Real Property Transfer Agreement. At a minimum, Grantee shall not commit or permit any waste on or to the Property, and shall prevent and/or rectify any physical deterioration of the Property. Grantee shall maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Management Plan (as described below). Grantee shall also perform such other maintenance as reasonably requested by the City from time to time.
- 2) House a maximum of fourteen Homeless individuals, or such other number of Homeless Person(s) as may be permitted by the Zoning Code, Housing Code, and/or other applicable law or regulation in effect at the time.
 - o Identify Homeless Families through cooperation with the Elk Grove Food Bank, Elk Grove Homeless Assistance Resource Team (HART), and Grantee's own outreach methods.
 - o Assist Clients (as defined in the Real Property Transfer Agreement) to resolve barriers to maintaining permanent housing, including providing case management, housing search assistance, employment and benefits counseling referral, and other service referral as needed.
 - o Designate a case manager to assist each resident by creating an individualized case plan for each Client. Provide ongoing case management appropriate to the Clients' needs as necessary to address the barriers and goals in the case plan.
- 3) Utilize a House Leader to oversee operations of the Property and compliance by residents with the Property rules or conditions. The House Leader shall also address any complaints or grievances from neighbors or forward them to the appropriate person within the Grantee's agency.



- 4) Submit a written Management Plan or amendment to an existing Management Plan annually, by March 31 of each year, for City approval. Notwithstanding City's approval of the Management Plan, the Management Plan must be prepared, and the Grantee's management of the Property must be conducted, in accordance with all applicable Federal, State, and local law. At a minimum, the Management Plan shall describe the following:
 - o Employee hiring policies
 - o Employee screening/background checks
 - o Policies for selection of the House Leader
 - o Client selection policies
 - o Client screening/background checks
 - o Lease terms
 - o Drug/alcohol policies
 - o Smoking policies
 - o Pet policies
 - o Reasonable accommodation policies
 - o Property rules and regulations
 - o On-site safety requirements
 - o Process for evicting clients/unlawful detainer actions, including any due process to be afforded
 - o Inventory of property policies (including at move-in, periodic, and move-out)
 - o On-site services to be provided
 - o Off-site services to be provided
 - o Oversight/supervision strategy in the event the House Leader is off-site or unavailable
- 5) Maintain an annual Property budget and accurate tracking of Property income and expenses, including property taxes, utilities, repairs, and staffing expenses (House Leader and case management).

Grantee may charge rent to clients residing at the Property in an amount not to exceed the Qualifying Rent, as defined in that certain Regulatory Agreement by and between Grantee and the City, entered into in connection with the Property.

Grantee shall comply with all laws related to these services, including, but not limited to, laws regarding privacy rights.

B. General Administration

Grantee shall maintain program and financial records documenting the residency, provision of services, and Grantee expenses relative to the Clients and the Property. The Grantee must also complete all required progress reports.

2. Public Purpose



Grantee's Program serves a valid public purpose by providing temporary shelter for Homeless Persons, who but for this assistance would be unsheltered or sheltered in a manner not safe and sanitary.

3. Program Goals and Performance Measures

Grantee agrees to provide temporary housing to a minimum of ten unduplicated Elk Grove Qualifying Households (as defined in the Real Property Transfer Agreement) each year. An unduplicated Qualifying Household is considered one Elk Grove Qualifying Household who has not previously been counted in the applicable fiscal year. A household may contain multiple individuals, but the household may only be counted once.

The Grantee shall measure effectiveness by determining the number and percentage of Clients that have obtained permanent housing at the time of exit from the Property.

3. Staffing

At a minimum, the Grantee will assign the following staff members, each of whom has appropriate licenses and certifications, to the program: Executive Director, House Leader, Case Manager, and Property Manager. The House Leader must maintain residency at the Property as his/her primary residence, and the Property Manager must ensure that the presence or availability of staff or the House Leader results in appropriate supervision of the Property in accordance with the Management Plan.

For Grants involving youth, all personnel, including contractors, subcontractors, volunteers, and anyone providing youth services under this Agreement (collectively "staff member") must undergo a criminal background check in compliance with California state and federal law, including, without limitation, a background check meeting the requirements of California Penal Code section 11105.3, et seq.

4. Performance Monitoring

The City shall monitor the performance of the Grantee against goals and performance standards as stated above. Substandard performance as determined by the City shall constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Grantee within a reasonable period of time after being notified by the City, contract suspension or termination procedures shall be initiated.



EXHIBIT B Budget

With the submission of original invoices together with the proper support documentation, as described herein, for the services described in Exhibit A of this Agreement.

Annually, Grantee shall submit by December 1 a budget for operations in the coming calendar year. The City shall retain sole discretion over approval of the budget and shall identify eligible line item expenditures, with a maximum quarterly and annual budget for each. The Grantee shall be reimbursed according to the budget approved by the City for the applicable year, provided that the total reimbursement does not exceed \$55,000 per year or \$500,000 during the term of this Agreement.

All expenses billed must be directly attributable to the provision of services to Elk Grove residents, unless indirect costs are approved by the City, in which case they must be proportionate to the share of the City's residents using services provided by Grantee under this Agreement. No costs attributable to any other contract or agreement held by the Grantee shall be billed under this Agreement.

At Grantee's request, the Housing and Public Services Manager may, but shall not be required to, administratively approve adjustments to individual budget line items (e.g., personnel) as long as adequate justification is provided, there is a corresponding increase or decrease to one or more other budget line items, and the adjusted total of all line items does not exceed the Grant amount; such adjustments shall be documented in writing.

Volunteer stipends; gifts, awards, or prizes, including vouchers and/or gift cards; and support for fundraising efforts, including grant writing, donor management, and fundraising event planning, shall specifically be ineligible for reimbursement.



EXHIBIT C Insurance Requirements

Prior to commencement of any work under this Agreement, Grantee shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Agreement, 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. There shall be no coverage exclusion for abuse and molestation.
- e. 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)
- f. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the Agreement.
- g. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the Agreement.
- h. 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 Grantee, products and completed operations of the Grantee, premises owned, occupied, or used by the Grantee, or automobiles owned, leased, hired, or borrowed by the Grantee on a separate endorsement acceptable to the City.
- i. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
- j. Provision or endorsement stating that for any claims related to this project, the Grantee'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 Grantee's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.



- k. Any failure to comply with reporting or other provisions of the policies on the part of the Grantee, including breaches of warranties, shall not affect Grantee's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
 - l. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by the Grantee.
 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 automobiles with combined single limits of no less than Three Hundred Thousand Dollars (\$300,000).
 - b. Non-commercial policies are acceptable.
 3. Worker's Compensation
 - a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Grantee is a qualified self-insurer with the State of California), and Employers Liability coverage. The Grantee 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 Grantee 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 Grantee under this Agreement, 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 Grantee. 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 Grantee.
 - d. 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 Grantee.
 4. Errors and Omissions; Malpractice; Professional Liability. Errors and omissions, malpractice, or professional liability insurance with coverage of not less than \$1,000,000 per occurrence. Upon termination of this Agreement, the same insurance requirements in Section 4 of this Exhibit will apply for a one (1) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.
 5. Acceptability of Insurers: Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
 6. 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.
 7. The Grantee 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 Agreement. At any time at the written request of the City, Grantee agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.

8. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the Agreement by giving 30 days written notice.
9. The Grantee 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.
10. If the Grantee 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 Grantee under the Agreement.
11. Failure of the City to obtain such insurance shall in no way relieve the Grantee from any of its responsibilities under the Agreement.
12. The making of progress payments to the Grantee shall not be construed as relieving the Grantee or its subconsultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
13. 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 Agreement.
14. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Grantee are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Grantee under the Agreement.



EXHIBIT D
Certificate of Compliance with Labor Code § 3700, Release and Indemnification

The undersigned, on behalf of and as the duly certified representative of Grantee, certifies as follows:

1. Grantee is 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 Grantee has complied or will comply with such provisions before commencing the performance of the work of this Agreement. (Cal. Labor Code §§1860, 1861.)
2. Should Grantee fail to secure Workers' Compensation coverage as required by the State of California, Grantee shall release, hold harmless, defend and indemnify the City of Elk Grove from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Agreement. It is further understood and agreed that this release and assumption of risk is to be binding on Grantee's successors, heirs and assigns.

GRANTEE

John Foley, Secretary

RECORDING REQUESTED BY:)
City of Elk Grove)
)
WHEN RECORDED, MAIL THIS DEED AND)
TAX STATEMENTS TO:)
Housing Solutions, Inc.)
PO Box 188445)
Sacramento, CA 95818)
Attn: Secretary)

Exempt from recording fee (Govt. Code § 6103 and § 27383) Space above this line reserved for use by Recorder's Office

GRANT DEED

APN: 117-1320-055

DOCUMENTARY TRANSFER TAX \$0.00
EXEMPTION (R&T CODE) 11929
EXPLANATION Grantor is a non-federal gov't agency;
grantee is a nonprofit corporation

Signature of Declarant or Agent determining tax

For a valuable consideration, receipt of which is hereby acknowledged, the City of Elk Grove, a municipal corporation, hereby grants to Housing Solutions, Inc., a California nonprofit public benefit corporation, the following real property in the City of Elk Grove, County of Sacramento:

LOT 49, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PLAT OF LAGUNA VISTA UNIT NO. 29", ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, ON MARCH 9, 1999 IN BOOK 259 OF MAPS, PAGE 2.

Date: _____

City of Elk Grove:

By: _____
Jason Behrmann, Interim City Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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 _____
Signature of Notary Public

Place Notary Seal Above