



Stanislaus Regional Housing Authority

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DATE: June 11, 2020

TO: Board of Commissioners

FROM: Barbara S. Kauss, Executive Director

Subject: ACTION ITEM #4 – Resolution for consideration and approval of the financing and the various documents needed for the acquisition of property located at 1612 Sisk Road in Modesto, California.

Resolution No. 19-20-27

BACKGROUND

Resolution No.19-20-27 is to authorize the Housing Authority of the County of Stanislaus to enter into a mortgage loan for the purpose of financing the acquisition and rehabilitation of property located at 1612 Sisk Road in Modesto California, authorizing the execution and delivery of a loan agreement, regulatory agreement, and a deed of trust and authorizing the execution and delivery of and approving the other related documents and approving other related actions in connection therewith. The regulatory agreement is necessary due to the tax-exempt loan being provided by F & M Bank.

Resolution No. 19-20-27 is the final resolution needed for the purchase of the property located at 1612 Sisk Road Modesto, California. It incorporates all of the various documents that need to be approved by the Board of Commissioners and it also provides authorization to the designated officers of the Housing Authority to approve and sign all documents and take all actions necessary to complete the purchase of the property.

RECOMMENDATION

Following review and discussion, staff recommends approval of the proposed resolution approving the regulatory agreement.

FISCAL IMPACT

Resolution No. 19-20-27: New Bank loan not to exceed \$13,275,000.00.

ATTACHMENTS

1. Regulatory Agreement
2. Resolution



RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

JONES HALL, A PROFESSIONAL LAW
CORPORATION
475 SANSOME STREET, SUITE 1700
SAN FRANCISCO, CALIFORNIA 94111
ATTN: JULIE WUNDERLICH, ESQ.

**REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

By and Between

**HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS,
as Borrower**

and

**FARMERS & MERCHANTS BANK OF CENTRAL CALIFORNIA,
as Lender**

DATED AS OF JUNE 1, 2020

RELATING TO:

**\$ _____
CONSTRUCTION LOAN AGREEMENT DATED AS OF JUNE 1, 2020,
BETWEEN LENDER AND BORROWER
(1612 SISK ROAD, MODESTO, CALIFORNIA)**

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EXHIBIT A - LEGAL DESCRIPTION OF PROJECT SITE

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement") is made and entered into as of June 1, 2020, by and between the HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS, a public body corporate and politic, duly organized and existing pursuant to the laws of the State of California, as borrower (together with any successor to its rights, duties and obligations, the "Borrower"), and Farmers & Merchants Bank of Central California, a California banking corporation (the "Lender").

WITNESSETH:

WHEREAS, the Legislature of the State of California enacted Articles 1 through 5 of Chapter 1 of Part 2 of Division 24 of the Health and Safety Code (the "Act") to authorize, among other things, housing authorities to issue bonds or enter into mortgage loans to finance the acquisition and rehabilitation of multifamily rental housing for families and individuals of very low and low income; and

WHEREAS, in furtherance of the purposes of the Act, the Borrower proposes to enter into a mortgage loan (the "Loan") with the Lender, the proceeds of which will be used to finance the acquisition and rehabilitation by the Borrower of the property located at 1612 Sisk Road in the City of Modesto, California (the "Project") for the public purpose of providing decent, safe and sanitary housing and assisting persons of low and very low income within the County of Stanislaus to afford the cost of such decent, safe and sanitary housing, and to provide administrative offices for the Borrower; and

WHEREAS, on June __, 2020, the Borrower adopted a resolution (the "Resolution") authorizing the Loan, and approving the execution and delivery of the loan documents and this Regulatory Agreement; and

WHEREAS, all things necessary to make a loan in the amount of \$_____ (the "Loan") pursuant to that certain Construction Loan Agreement, dated as of June 1, 2020 (the "Loan Agreement"), between the Borrower and the Lender, when executed, the valid, binding and legal special obligation of the Borrower according to the import thereof, such Loan to be evidenced by a promissory note (the "Note") in favor of the Lender, and secured by a Construction Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents, with respect to the Project (the "Deed of Trust"); and

WHEREAS, the Code and the regulations and rulings promulgated with respect thereto, and the Act prescribe that the use and operation of the Project be restricted in certain respects and in order to ensure that the Project will be rehabilitated, constructed, used and operated in accordance with the Code and the Act, the Borrower and the Lender have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, rehabilitation and operation of the Project;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration the receipt and sufficiency of which hereby are acknowledged, the Borrower and the Lender hereby agree as follows:

Section 1. Definitions and Interpretation. The following terms shall have the respective meanings assigned to them in this Section 1 unless the context in which they are used clearly requires otherwise. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

“Act” means Articles 1-5 of Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California.

“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons who intend to reside with such person in one residential unit) as calculated in the manner prescribed under the Act.

“Affordable Rent” or **“Rents”** means, with respect to the Very Low-Income Units, monthly rent (excluding any supplemental rental assistance from the State of California, the federal government or any other public agency) not in excess of thirty percent (30%) of one-twelfth of fifty percent (50%) of the Median Income for the Area, and (ii) with respect to Low Income Units, monthly rent (excluding any supplemental rental assistance from the State of California, the federal government or any other public agency) not in excess of thirty percent (30%) of one-twelfth of eighty percent (80%) of the Median Income for the Area, based upon the following assumed household sizes for the following sizes of residential units in the Project:

<u>No. of Bedrooms</u>	<u>Assumed Number of Persons In Family Affordable Units</u>
Studio	1
1	2
2	3
3	4
4	5

“Area” means the Modesto Metropolitan Statistical Area.

“Borrower” means the Housing Authority of the County of Stanislaus, and its successors and assigns.

“Bond Counsel” means Jones Hall, A Professional Law Corporation, or any other attorney at law or firm of attorneys approved by the Borrower of nationally recognized standing in matters pertaining to the exclusion of interest on bonds, notes or other debt obligations from gross income for federal income tax purposes issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America or the District of Columbia.

“Certificate as to Use of Proceeds” means the Certificate as to Use of Proceeds, dated as of the Closing Date, with respect to certain Project Costs, delivered by the Borrower.

“Code” means the Internal Revenue Code of 1986, as amended, including the Regulations promulgated thereunder or under any predecessor statute.

“County” means the County of Stanislaus, California.

“Deed of Trust” means that certain Construction Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated as of June 1, 2020, given by the Borrower, as trustor, for the benefit of the Lender.

“Disbursement Request” means a document substantially in the form described in the Loan Agreement, which has been duly authorized, executed and delivered by the Borrower’s authorized representative.

“Inducement Date” means May 14, 2020.

“Closing Date” shall mean the earlier of (a) the date on which the Deed of Trust is recorded in the Official Records of the County, and (b) the date of the funding of any proceeds of the Loan.

“Lender” means Farmers & Merchants Bank of Central California, a California banking corporation, or any successor lender serving as such under the Loan Agreement.

“Loan” means the mortgage loan entered into by the Borrower and the Lender, pursuant to the Loan Agreement and the other Loan Documents.

“Loan Documents” shall have the meaning given to that term in the Loan Agreement.

“Low Income Tenants” means persons or families with Adjusted Income which does not exceed eighty percent (80%) of the Median Income for the Area, adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 151(a)(4) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code.

“Low Income Units” means the dwelling units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(A) of this Regulatory Agreement.

“Median Income for the Area” means the median income for the Area as determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, median income for the Area determined under the method used by the Secretary prior to such termination.

“Program Administrator” means initially the Borrower, or a governmental entity, financial institution, certified public accountant, apartment management firm, mortgage insurance company or other business entity performing similar duties, selected by the Borrower, who, if other than the Borrower, shall enter into an administration agreement satisfactory to the Borrower; provided, however, in the absence of the appointment of a Program Administrator by the Borrower, the Program Administrator shall be the Borrower.

“Project” means the Project Facilities and the Project Site.

“Project Costs” means to the extent authorized by the Code and the Regulations, any and all costs incurred by the Borrower with respect to the acquisition, rehabilitation, construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date of execution of this Regulatory Agreement, including, without limitation, costs for site preparation, the planning of housing and improvements, the acquisition of property, the removal or demolition of existing structures, the construction and rehabilitation of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors’ and developers’ overhead and supervisors’ fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, the Borrower or any other entity for expenditures made, with the approval of the Borrower, for the Project), and interest accrued prior to the date of completion of the Project.

“Project Facilities” means the buildings, structures and other improvements to be acquired and rehabilitated on the Project Site, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements constituting the Project.

“Project Site” means the parcel or parcels of real property described in Exhibit “A”, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.

“Qualified Project Period” means the period beginning on the Closing Date, and ending on the first day on which no tax-exempt note or bond or other debt obligation issued pursuant to the Act with respect to the Project is outstanding.

“Regulations” means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time, or pursuant to any predecessor statute to the Code.

“Regulatory Agreement” means this Regulatory Agreement and Declaration of Restrictive Covenants, as the same may be amended from time to time.

“Very Low-Income Tenants” means persons or families with Adjusted Income which does not exceed fifty percent (50%) of the Median Income for the Area, adjusted for household size. In no event will the occupants of a unit be considered to be Very Low-Income Tenants if all of such occupants are students (as defined in Section 151(c)(4) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code.

“Very Low-Income Units” means the dwelling units in the Project designated for occupancy by Very Low-Income Tenants pursuant to Section 4(A) of this Regulatory Agreement.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1 notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 2. **Acquisition and Rehabilitation of the Project.** The Borrower hereby represents as of the date hereof, covenants and agrees as follows:

(A) The Borrower has incurred a substantial binding obligation to acquire the Project.

(B) The Borrower's reasonable expectations respecting the total cost of the acquisition, rehabilitation and equipping of the Project are accurately set forth in the Certificate as to Use of Proceeds.

(C) The Borrower will proceed with due diligence to complete the acquisition and rehabilitation of the Project.

(D) The statements made in any certificate of the Borrower or any Authorized Representative, delivered by the Borrower on the Closing Date are true and correct in all material respects.

(E) The Borrower will submit to the Lender, on or before the date of each disbursement the proceeds of the Loan, a Disbursement Request certifying that the full amount of such disbursement will be applied to pay or to reimburse the Borrower for the payment of Project Costs and that after taking into account the proposed disbursement, the aggregate disbursements of the Loan will have been applied to pay or to reimburse the Borrower for the payment of Project Costs in an amount equal to ninety-five percent (95%) or more of such disbursements.

(F) Money on deposit in any fund or account in connection with the Loan, whether or not such money was derived from other sources, shall not be used by or under the direction of the Borrower, in a manner which would cause the Loan Agreement to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(G) The Borrower will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the proceeds from the Loan to be applied in a manner contrary to the requirements of this Regulatory Agreement.

Section 3. **Residential Rental Property.** The Borrower hereby acknowledges and agrees that the Project is to be owned, managed and operated as required by Section 34312.3 of the Act for the Qualified Project Period. To that end, and for the term of this Regulatory Agreement, the Borrower hereby represents, covenants, warrants and agrees as follows:

(A) The Project will be acquired and rehabilitated for the purpose of providing multifamily residential rental property, and the Borrower shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a

building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with the Act and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(B) All of the dwelling units in the Project are similarly constructed units separate and distinct from other units in the Project, and each dwelling unit in the Project will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(C) None of the dwelling units in the Project will at any time be utilized on a transient basis, or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement home or trailer court or park.

(D) [Reserved]

(E) All of the dwelling units will be available for rental on a continuous basis to members of the general public, and the Borrower will not give preference to any particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented to Low-Income Tenants and Very Low-Income Tenants hereunder.

(F) The Project Site consists of a parcel or parcels that are contiguous except for the interposition of a road, street or stream, and all of the Project Facilities comprise a single geographically and functionally integrated project for residential rental property, except for the portion of the Project to be used for administrative offices of the Borrower, as evidenced by the ownership, management, accounting and operation of the Project.

(G) The Borrower shall not discriminate on the basis of national origin, race, color, religion, disability, sex, familial status, sexual orientation, gender identity and expression, marital status, source of income (e.g. AFDC, SSI), or age in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(H) The average maturity of the Loan does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the facilities being financed by the Loan.

Section 4. **Low and Very Low-Income Tenants.** Pursuant to the requirements of the Act, the Borrower hereby represents, warrants and covenants as follows:

(A) Throughout the Qualified Project Period, not less than ten percent (10%) of the units in the Project shall be continuously occupied (or held vacant for occupancy) by Very Low-Income Tenants and not less than ten percent (10%) of the units in the Project shall be continuously occupied (or held vacant for occupancy) by Low Income Tenants, which units shall be rented at Affordable Rents. Upon the reasonable request of the Lender, the Borrower shall deliver to the Lender a certificate regarding the status of the occupancy of the Very Low-Income Units and Low Income Units on a quarterly basis for the term of this Regulatory Agreement.

For purposes of satisfying the Very Low-Income Tenant and Low Income Tenant occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Very Low-Income Tenant or Low Income Tenant, as applicable, shall be treated as occupied by a Very Low-Income Tenant or Low Income Tenant, as applicable, until such time as any recertification of such tenant's income in accordance with Section 4(C) below demonstrates that such tenant's income exceeds fifty percent (50%) or eighty percent (80%), respectively, of the Median Income for the Area for the same size family. Should a Very Low-Income Tenant's or Low Income Tenant's, as applicable, Adjusted Income, as of the most recent determination thereof, exceed fifty percent (50%) or eighty percent (80%), respectively, of the Median Income for the Area of the same size family, the next available unit of comparable size must, if necessary to comply with this Section 4(A), be rented to a Very Low-Income Tenant or Low Income Tenant, as applicable, the former Very Low-Income Tenant or Low Income Tenant, as applicable, who has ceased to qualify as such shall be deemed to continue to be a Very Low-Income Tenant or Low Income Tenant, respectively, for purposes of the ten percent (10%) or thirty percent (30%), respectively requirement of this Section 4(A) if the next available unit of comparable or smaller size is rented to a qualifying Very Low-Income Tenant or Low Income Tenant, as applicable.

(B) Notwithstanding the foregoing provisions of Section 3 (A) hereof, the Borrower hereby elects to comply with the occupancy restrictions applicable to the Project pursuant to Section 34312.3(c) of the Act through the application of Section 34312.3(c)(6), whereby the aggregate number of those units assisted by the Borrower pursuant to Section 34312.3 of the Act shall comply with the provisions of Section 34312.3 of the Act.

The Borrower hereby represents, warrants and covenants that 20% of the housing units assisted by the Borrower pursuant to Section 34312.3 of the Act, shall be available on a priority basis to, or occupied by, households whose Adjusted Income does not exceed the applicable limits prescribed by Section 34312.3(c) of the Act. The Borrower shall complete and maintain complete and accurate records pertaining to the housing units assisted by the Borrower pursuant to Section 34312.3 of the Act and shall certify to the Lender when requested, that 20% of the units assisted by the Borrower comply with the provisions of Section 34312.3(c) of the Act.

Section 5. **Management.** The Borrower shall provide competent and responsible management for the Project either by itself or by an experienced management company.

Section 6. **Tax Exempt Status of the Loan Agreement.** The Borrower hereby represents, warrants and agrees that:

(A) It will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect either the exclusion from gross income under federal tax law or the exemption from California personal income taxation of the interest on the Loan Agreement and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof;

(B) It will take such action or actions as may be necessary, in the written reasonable opinion of Bond Counsel filed with the Lender, (i) to comply fully with all

applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 103 of the Code, and (ii) to comply with the Act; and

(C) It will file of record such documents and take such other steps as are necessary, in the written reasonable opinion of Bond Counsel filed with the Lender, in order to insure that the requirements and restrictions of this Regulatory Agreement will be binding upon the present and future owners of the Project, including, but not limited to, the execution and recordation of this Regulatory Agreement concurrently with the Borrower's acquisition of title to the Project Site in the real property records of the County.

The Borrower hereby covenants to reference this Regulatory Agreement in any documents transferring any interest (other than a leasehold interest in individual units) in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to abide to all requirements and restrictions of this Regulatory Agreement.

Section 7. Modification of Covenants. The Lender and the Borrower hereby agree as follows:

(A) To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the Borrower and the Lender, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement which must be complied with in order to maintain the exclusion from gross income under federal tax law of interest on the Loan, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(B) The Borrower and, if applicable, the Lender shall execute, deliver and, if applicable, file of record any and all documents and instruments, necessary to effectuate the intent of this Section 7, and the Borrower hereby appoints the Lender as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file and/or record on behalf of the Borrower, as is applicable, any such document or instrument (in such form as shall be approved in writing by Bond Counsel) if the Borrower defaults in the performance of its obligations under this subsection (B); provided, however, that the Lender shall take no action under this subsection (B) without first notifying the Borrower, unless directed in writing by the Borrower and without first providing the Borrower, or both, as is applicable, an opportunity to comply with the requirements of this Section 7. The Lender shall have no duty to initiate any action under this Section 7.

Section 8. Reliance. The Borrower and the Lender hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Loan Agreement, and in the exemption from federal income taxation and California personal income taxation of the interest on the Loan. In performing their duties and obligations hereunder, the Borrower and the Lender may rely conclusively upon statements and certificates of the Borrower (in the case of the Lender), Very Low-Income Tenants, Low Income Tenants and (in the case of the Lender) upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Borrower and the Lender may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Borrower or the Lender hereunder in

good faith and in conformity with such written opinion. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Lender shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Lender by the Borrower or any Program Administrator with respect to the occurrence or absence of a default unless it has actual knowledge that the notice or certificate is erroneous.

Section 9. **Project in the County.** The Borrower hereby represents and warrants that the Project is located entirely within the County.

Section 10. **Term.** This Regulatory Agreement and all and several of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Loan and expiration of the Loan Agreement, if the Qualified Project Period has not been completed at the time of such retirement and expiration; provided, however, in the event that the Loan is paid in full on or prior to its maturity date, this Regulatory Agreement shall terminate if tax-exempt obligations are issued to pay or refund the Loan and in connection with such issuance of tax-exempt obligations, the Borrower or any successor thereto executes and delivers, and causes to be recorded, a regulatory agreement and declaration of restrictive covenants which has provisions included therein requiring occupancy and rents similar to those included herein and meets the requirement of the laws of the State of California and the Code. Notwithstanding any other provisions of this Regulatory Agreement, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Borrower and the Lender if there shall have been received an opinion of Bond Counsel that such termination will not adversely affect the exclusion from federal gross income or the exemption from State income taxation of the interest on the Loan, and is otherwise permitted under the Act.

The terms of this Regulatory Agreement to the contrary notwithstanding, this Regulatory Agreement, and all and several of the terms hereof, shall terminate and be of no further force and effect in the event of (i) a foreclosure or delivery of a deed in lieu of foreclosure whereby the Lender or a third party shall take possession of the Project or involuntary non-compliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the date hereof which prevents the Borrower and the Lender from enforcing the provisions hereof or condemnation or a similar event, and (ii) the retirement of the Loan within a reasonable period thereafter; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower obtains an ownership interest in the Project for Federal income tax purposes. Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 11. **Covenants to Run With the Land.** The Borrower hereby subjects the Project (including the Project Site) to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Borrower and the Lender hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Borrower's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants,

reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

Section 12. **Burden and Benefit.** The Borrower hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Borrower hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Very Low-Income Tenants and Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Loan Agreement was executed and delivered.

Section 13. **Uniformity; Common Plan.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project Site.

Section 14. **Enforcement.** If the Borrower defaults in the performance or observance of any covenant, agreement or obligation set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after written notice thereof shall have been given by any Program Administrator (if other than Borrower) to the Borrower and the Lender or the Lender to the Borrower then the Lender for so long as the Loan Agreement is outstanding, acting on its own behalf, shall declare an "Event of Default" to have occurred hereunder, and, at its option, may take any one or more of the following steps:

- (A) by mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Borrower or the Lender hereunder;
- (B) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project; or
- (C) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder;

provided, however, that if the default stated in the notice is of such a nature that it cannot be cured within 60 days, such default shall not constitute an Event of Default hereunder as long as (i) the Borrower institutes corrective action within said 60 days and diligently pursues such action until the default is corrected; and (ii) in the opinion of Bond Counsel to the Borrower, the failure to cure such default within 60 days will not adversely affect the exclusion of interest on the Loan Agreement from gross income for federal income tax purposes.

Section 15. **Recording and Filing.** The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County with its acquisition of title to the Project Site. The Borrower shall pay all fees and charges incurred in connection with any such recording.

Section 16. **Governing Law.** This Regulatory Agreement shall be governed by the laws of the State of California. Except as otherwise specifically provided herein, the Lender's rights, duties and obligations hereunder are governed in their entirety by the terms and provisions of the Loan Agreement.

Section 17. **Amendments.** This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County.

Section 18. **Notice.** All notices, certificates or communications shall be in writing and shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been personally delivered or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

Borrower or the initial Program Administrator:	Housing Authority of the County of Stanislaus 1701 Robertson Road Modesto, California 95351 Attention: Executive Director
Lender:	Farmers & Merchants Bank of Central California 116 West Pine Street Lodi, California 95241 Attention: Loan Center Manager

Any of the foregoing parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

Section 19. **Severability.** If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 20. **The Lender.** Notwithstanding anything to the contrary contained herein, the Lender is entering into this Regulatory Agreement solely in its capacity as Bank under the Loan Agreement and the duties, powers and liabilities of the Lender in acting hereunder shall be subject to the provisions of the Loan Agreement.

Neither the Lender nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith except for its or their own negligence or willful misconduct. The Lender may consult with legal counsel selected by it and an action taken or suffered by it in accordance with the opinion of such counsel shall be full justification and protection to it. The Lender shall have no duty to act with respect to enforcement of the Borrower's performance hereunder as described in Section 14 hereof unless it shall have actual knowledge of any such default.

The Lender's rights, duties and obligations hereunder shall terminate upon discharge of the Loan Agreement.

The Lender shall not be responsible for monitoring or verifying compliance of the Borrower with its obligations under this Regulatory Agreement.

Section 21. **Multiple Counterparts.** This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 22. **Limited Liability.** All obligations of the Borrower hereunder shall be limited obligations of the Borrower, payable solely and only from amounts derived by the Borrower from the Net Operating Income (as defined in the Loan Agreement).

Section 23. **Attorney's Fees.** In case any action at law or in equity, including an action for declaratory relief, is brought against the Borrower to enforce the provisions of this Regulatory Agreement, the Borrower agrees to pay reasonable attorney's fees and other reasonable expenses incurred by the Lender in connection with such action.

Section 24. **Annual Reporting Covenant.** By February 1 of each year, commencing February 1, 2021, the Borrower agrees to file the annual report required by Section 8855(k)(1) of the California Government Code. This covenant shall remain in effect until the termination and discharge of the Loan Agreement. [Note: if loan closes after July 1, the first annual report date will be February 1, 2022]

IN WITNESS WHEREOF, the Borrower and the Lender have executed this Regulatory Agreement by duly authorized representatives, all on the date first written hereinabove.

HOUSING AUTHORITY OF THE COUNTY
OF STANISLAUS

By: _____
Authorized Representative

Attest:

Secretary

[REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS
LENDER SIGNATURE PAGE]

FARMERS AND MERCHANTS BANK OF
CENTRAL CALIFORNIA, as Lender

By: _____
Authorized Signatory

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 _____)
)
COUNTY OF _____) ss.

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

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

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

(Seal)

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 _____)
)
COUNTY OF _____) ss.

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

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

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE



Stanislaus Regional Housing Authority

ALPINE | AMADOR | CALAVERAS | INYO | MARIPOSA
MONO | STANISLAUS | TUOLUMNE COUNTIES

RESOLUTION NO. 19-20-27

A RESOLUTION OF THE HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS AUTHORIZING ENTERING INTO A MORTGAGE LOAN FOR THE PURPOSE OF FINANCING THE ACQUISITION AND REHABILITATION OF PROPERTY LOCATED AT 1612 SISK ROAD IN MODESTO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT, A REGULATORY AGREEMENT, AND A DEED OF TRUST, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AND APPROVING OTHER RELATED DOCUMENTS AND APPROVING OTHER RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Housing Authority of the County of Stanislaus (the "Authority") is authorized pursuant to Articles 1 through 5 of Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California (the "Act"), to issue bonds or enter into revenue obligations and to use the proceeds thereof to finance the acquisition, rehabilitation and development of multifamily housing projects for persons and families of low and very low income residing within the jurisdiction of the Authority; and

WHEREAS, in order to provide funds to finance the acquisition and rehabilitation of the property located at 1612 Sisk Road in Modesto, California, for multifamily housing purposes and administrative offices to be occupied by the Authority (the "Project"), the Authority has, pursuant to the Act, determined to enter into a mortgage loan (the "Loan") with Farmers and Merchants Bank of Central California (the "Lender"); and

WHEREAS, the Authority hereby finds and declares that it is necessary, essential and a public purpose for the Authority to finance the acquisition and rehabilitation of multifamily rental housing and administrative offices, and has determined to borrow money for such purposes by entering into the Loan; and

WHEREAS, the Authority hereby finds and declares that this resolution is being adopted pursuant to the powers granted by the Act; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to entering into the Loan and the implementation of the Program as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

NOW, THEREFORE, BE IT RESOLVED by the Housing Authority of the County of Stanislaus, as follows:

Section 1. The Authority hereby finds and declares that the above recitals are true and correct.



- Section 2.** Pursuant to the Act and the Loan Agreement (hereinafter defined), the Authority is hereby authorized to enter into the Loan with the Lender in an aggregate principal amount not to exceed \$13,275,000. The Loan shall be evidenced by a promissory note (the "Note") in favor of the Lender, and secured by a Deed of Trust (as hereinafter defined), for the benefit of the Lender.
- Section 3.** A Construction Loan Agreement (the "Loan Agreement") between the Authority and the Lender, in the form on file with the Secretary of the Authority, is hereby approved. The Chairman, Vice Chairperson, Chief Executive Officer or Executive Director of the Authority (each, a "Designated Officer" and, collectively, the "Designated Officers") are, and each of them acting alone is, hereby authorized, for and in the name and on behalf of the Authority, to execute and deliver the Loan Agreement, with such additions thereto or changes therein as are recommended or approved by such Designated Officers upon consultation with bond counsel to the Authority, including such additions or changes as are necessary or advisable in accordance with Section 6 hereof, including additions or changes which may be required in connection with providing alternate security for the payment of the principal of and interest on the Loan, (provided that no additions or changes shall authorize an aggregate principal amount of the Loan in excess of the principal amount of \$13,275,000), the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the Authority of the Loan Agreement. The dated date, maturity date, interest rate or rates, interest payment dates, manner of execution, place of payment, terms of prepayment, and other terms of the Loan shall be as provided in the Loan Agreement as finally executed.
- Section 4.** A Regulatory Agreement and Declaration of Restrictive Covenants with respect to the Project (the "Regulatory Agreement") between the Authority and the Lender, in the form on file with the Secretary of the Authority, is hereby approved. The Designated Officers of the Authority are, and each of them acting alone is, hereby authorized, for and in the name of and on behalf of the Authority, to execute, and deliver the Regulatory Agreement in said form, with such additions thereto or changes therein as are recommended or approved by such Designated Officers upon consultation with bond counsel to the Authority, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the Authority of the Regulatory Agreement.
- Section 5.** A Construction Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents, with respect to the Project (the "Deed of Trust"), made by the Authority, for the benefit of the Lender, in the form on file with the Secretary of the Authority, is hereby approved. The Designated Officers of the Authority are, and each of them acting alone is, hereby authorized, for and in the name of and on behalf of the Authority, to execute, and deliver the Deed of Trust in said form, with such additions thereto or

changes therein as are recommended or approved by such Designated Officers upon consultation with bond counsel to the Authority, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the Authority of the Deed of Trust.

Section 6. All actions heretofore taken by the officers and agents of the Authority with respect to the financing contemplated by this Resolution and the Project are hereby approved, confirmed and ratified, and the proper officers of the Authority, including the Designated Officers, are hereby authorized, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements, assignments, notes and other documents which they, or any of them, may deem necessary or advisable in order to consummate the lawful execution and delivery of the Loan Agreement in accordance with this Resolution and resolutions heretofore adopted by the Authority and in order to carry out the proposed financing and the Program, including but not limited to those certificates, agreements, assignments, notes and other documents described in the Loan Agreement, the Regulatory Agreement, Note, Deed of Trust, agreements for services with Jones Hall, A Professional Law Corporation, as Bond Counsel, and with Brandis Tallman LLP, as Placement Agent, and the other documents herein approved and any certificates, agreements, assignments, notes or documents as may be necessary to further the purposes hereof.

Section 7. This resolution shall take effect from and after its adoption.

DULY AND REGULARLY ADOPTED by the Board of Commissioners of the Housing Authority of the County of Stanislaus this 11th Day of June, 2020.

On motion of Commissioner _____, seconded by Commissioner ____ and on the following roll call vote:

AYES:

NAYS:

ABSENT:

ABTAIN:

Attest: _____
Secretary

Approved: _____
Chairperson