

Loan Agreement
(4040 West 70th Street)

This Loan Agreement (this “Agreement”) is made and entered into effective _____, 2020, by and between the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the state of Minnesota (the “HRA” or “Lender”) and the EAST EDINA HOUSING FOUNDATION, a Minnesota nonprofit corporation dba EDINA HOUSING FOUNDATION (“Borrower”).

Recitals:

A. Pursuant to that certain Real Estate Purchase Agreement dated December 3, 2019 between ACA International Enterprises, Inc., a Minnesota corporation (“Seller”), as seller, and Borrower, as buyer (the “Purchase Agreement”), Borrower has the right to purchase from Seller that certain improved real property located at 4040 70th Street West, Edina, Minnesota, legally described on the attached **Exhibit A**, and generally consisting of an existing office building and surface parking (collectively, the “Property”).

B. Borrower is a nonprofit corporation whose purpose and mission is to promote the development of affordable housing in the City of Edina, Minnesota (the “City”) and to provide assistance to families and individuals looking for affordable housing options in the City.

C. Borrower’s acquisition of the Property is for the purpose of Borrower securing the Property for affordable housing purposes and collaborating with an affordable housing developer to develop an affordable housing project on the Property.

D. Pursuant to Minnesota Statutes, Sections 469.001 to 469.047 and Sections 469.174 to 469.1794, inclusive, as amended (the “TIF Act”), the City and the HRA previously established the “Southeast Edina Redevelopment Plan” for the “Southeast Edina Redevelopment Project Area”, in order to encourage the development and redevelopment of such designated area within the City, including increasing the availability of affordably-priced housing.

E. The Property is located in Southdale 2 Tax Increment Financing District (the “District”), an economic development tax increment financing district, located in the Southeast Edina Redevelopment Project Area.

F. Pursuant to HRA Resolution No. 2019-12 adopted on December 12, 2019 and City Council Resolution 2019-116 adopted on December 17, 2019 (collectively, the “Authorizing Resolutions”), the HRA and the City modified the Tax Increment Financing Plan for the District (as modified, the “TIF Plan”) to designate the Property to be acquired for affordable housing purposes using District funds, all pursuant to and in conformity with the Southeast Edina Redevelopment Plan, the TIF Act, , Minnesota Session Laws 2014, Chapter 308, Article 6, Section 8, as amended by Minnesota Session Laws 2017, First Special Session Chapter 1, Article 6, Sections 11 and 16 and Minnesota Session Laws 2019, First Special Session Chapter 6, Article 7, Section 3 (the “Special TIF Housing Legislation”), and other applicable law.

G. In accordance with the Authorizing Resolutions and the TIF Plan, the HRA, as Lender, has agreed to loan, and Borrower has agreed to borrow, upon the terms and conditions of this Agreement, District funds in an aggregate amount of up to **\$3,650,000.00** to finance Borrower’s acquisition of the Property for affordable housing purposes.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the others as follows:

Article 1
Recitals; Exhibits, Definitions

1.1 **Recitals.** The foregoing Recitals are incorporated into this Agreement by this reference, including the definitions set forth therein.

1.2 **Exhibits.** All Exhibits referred to in and attached to this Agreement upon execution are incorporated in and form a part of this Agreement as if fully set forth herein.

1.3 **Definitions.** Unless the context otherwise specifies or requires, the following terms have the following definitions. Certain other capitalized terms are defined elsewhere in this Agreement. Unless otherwise defined herein or unless context requires otherwise, undefined terms used herein shall have the meanings set forth in the Mortgage. All defined terms may be used in the singular or the plural, as the context requires.

“**Affordable Housing Developer**” means a qualified developer of multi-family affordable housing projects selected by Borrower through a competitive process to develop the Project on the Property.

“**Agreement**” means this Agreement, as the same may be from time to time modified, amended or supplemented.

“**AMI**” means the Area Median Income for the Minneapolis-Saint Paul-Bloomington Metropolitan Statistical Area (including adjustments for household size), as determined by the U.S. Department of Housing and Urban Development (“**HUD**”).

“**Loan**” means the loan to be made, not to exceed the maximum loan amount of **\$3,650,000.00** and repayable in accordance with the terms set forth herein and in the Note.

“**Loan Documents**” means the Note, the Mortgage, this Agreement and such other documents as Lender may reasonably require to be given to Lender as security for the Loan.

“**Mortgage**” means the Mortgage, Assignment of Rents, Security Agreement, and Fixture Financing Statement of even date herewith to be executed and delivered by Borrower to Lender and mortgaging the Property to Lender as security for repayment of the Loan and Borrower’s performance of its obligations in the Loan Documents, to be substantially in the form attached to this Agreement as **Exhibit B**.

“**Note**” means the Promissory Note of even date herewith, in the amount of **\$3,650,000.00** made by Borrower and payable to the order of Lender to evidence of the Loan, to be substantially in the form attached to this Agreement as **Exhibit C**.

“**Project**” means the development and construction of an age-restricted affordable housing project on the Property which (a) is approved through the City’s regulatory process; (b) consists of approximately 118 housing units; (c) includes either (i) at least 20% of the housing units reserved for households who have a combined gross annual income which does not exceed 50% of AMI or (ii) at least 40% of the housing units reserved for households who have a combined gross annual income which does not exceed 60% of AMI; (d) such minimum affordability levels are legally required to remain for at least 25 years and the Property is encumbered by a restrictive covenant ensuring such affordability requirement will run with the Land; and (e) otherwise complies with the requirements of the TIF Plan, the TIF Act, Special TIF Housing Legislation, and the Greater Southdale District Plan.

“**Property**” means the real property described in the attached **Exhibit A**.

Article 2
Project

2.1 **Project Requirement.**

(a) Borrower acknowledges and agrees that Lender is entering into this Agreement and making the Loan for the sole purpose of facilitating the redevelopment of the Property with the Project. Therefore, Borrower shall use best efforts to identify an Affordable Housing Developer to develop the Project on the Property and to affirmatively assist such Affordable Housing Developer with obtaining governmental entitlements and approvals and to secure commitments for all sources of financing, in each case, necessary to construct the Project.

(b) Throughout the term of the Loan and not less frequently than quarterly, Borrower shall provide to Lender a written status update on Borrower's progress in achieving the necessary steps for the development of the Project, which written status update shall include documentation mutually acceptable to Lender and Borrower substantiating the progress to date. Borrower shall provide Lender with such other information regarding the status of the Project as Lender may reasonably request from time to time. If at any time Borrower determines the planned project is not feasible, Borrower shall immediately notify Lender.

(c) Borrower shall not enter into any definitive agreement for the sale or transfer of the Property, except any such agreement with an Affordable Housing Developer in connection with the development of the Project.

Article 3
Loan

3.1 **Loan.** Subject to and upon the terms and conditions of this Agreement, Lender shall loan to Borrower, and Borrower shall borrow from Lender, the Loan. Borrower shall use the Loan proceeds to only to finance its acquisition of the Property.

3.2 **Payments and Interest.** Borrower shall repay the Loan together with interest thereon accruing at the rate of **0.00%** per annum following the date of disbursement of the Loan (the "**Disbursement Date**") and until the Loan is repaid in full. Borrower shall not be obligated to make any periodic payments of principal or interest on the Loan before the Maturity Date (defined below).

3.3 **Maturity Date; Extensions.**

(a) Subject to clause (b) below, the principal of the Loan, together with any accrued but unpaid interest shall be repaid no later than **June 1, 2022** ("**Maturity Date**").

(b) If, in Lender's reasonable discretion, Borrower is making reasonable progress in achieving the necessary steps for the development of the Project in accordance with **Article 2**, but, on or before the Maturity Date, Borrower is not yet prepared to or authorized under this Agreement to transfer the Property to an Affordable Housing Developer for the construction of the Project, and provided there is not an uncured Event of Default under this Agreement, Borrower may request, and Lender will not unreasonably deny its consent to, an extension of the Maturity Date for (i) one year beginning immediately following the original Maturity Date (the "**First Maturity Extension**") and (ii) provided Borrower requested and Lender approved the First Maturity Extension, an additional one-year extension of the Maturity Date beginning immediately following the end of the

First Maturity Extension (the “Second Maturity Extension”, and together with the First Maturity Extension, each a “Maturity Extension”).

(c) Borrower may request each Maturity Extension by written notice to Lender delivered at least 30 days prior to the Maturity Date then in effect time being of the essence. If Borrower does not request a Maturity Extension or if Lender denies Borrower’s request for a Maturity Extension, then the principal of the Loan, together with any accrued but unpaid interest shall be repaid no later than the Maturity Date then in effect. If Lender does not deny Borrower’s request for a Maturity Extension by the date that is 30 days after Lender’s receipt of Borrower’s request, then the requested Maturity Extension will be deemed granted by Lender.

3.4 Loan Security. Borrower shall execute (a) the Note and (b) to secure the Note, the Mortgage, to be recorded by Borrower with the Hennepin County Recorder and/or Registrar of Titles, as applicable. Borrower, for itself and for its successors and/or its assigns, further agrees and consents to the filing of such security instruments in the appropriate Hennepin County land records if necessary to protect the interest of Lender in the Property as described in this Agreement

3.5 Conditions Precedent to Advance. Lender’s commitment to advance any of the proceeds of the Loan shall be subject to the prior fulfillment by Borrower of the following conditions precedent:

(a) No Event of Default. There shall not be an uncured Event of Default under this Agreement.

(b) Agreement, Note, and Mortgage. Lender shall have received this Agreement, the Note, and the Mortgage, each duly executed and delivered by an authorized officer of Borrower.

(c) Title Insurance. Lender shall have received a fully paid mortgagee title insurance policy (or a binding commitment to issue title insurance policies, marked to Lender’s satisfaction to evidence the form of such policy to be delivered with respect to the Mortgage), in standard ALTA form, issued by a title insurance company satisfactory to Lender, in an amount equal to not less than the Loan, insuring the Mortgage to create a valid lien on the Property with no exceptions which Lender shall not have approved in writing and no survey exceptions.

(d) Environmental Reports. Lender shall have received a current Phase I Environmental Site Assessment, addressed to Lender, indicating that the Property is subject to no “recognized environmental conditions” (as that term is defined by the American Society for Testing and Materials) and is not in need of remedial action to avoid subjecting its owner to any present or future liability or contingent liability with respect to the release of toxic or hazardous wastes or substances, along with any other environmental studies or reports with respect to the Property reasonably requested by Lender.

(e) Insurance. Lender shall have received in form and substance satisfactory to Lender, (i) evidence that adequate insurance, including without limitation, casualty and liability insurance, required to be maintained under the Mortgage is in full force and effect, (ii) insurance certificates issued by Borrowers’ insurance broker containing such information regarding Borrowers’ casualty and liability insurance policies as Lender shall request and naming Lender as an additional insured, lenders loss payee and/or mortgagee, as applicable, and (iii) loss payable endorsements issued by Borrowers’ insurer naming Lender as loss payee and mortgagee, as applicable.

(f) No Litigation. No litigation, investigation, or proceeding before or by any arbitrator or governmental authority shall be continuing or threatened against Borrower or against the Property.

3.6 Loan Closing Costs. Lender shall pay all costs of closing the Loan, including, without limitation, the following:

- (a) Recording fees for documents necessary for the Mortgage;
- (b) All commitment, abstracting, examination, searches and title insurance costs including the premium for Lender's policy of title insurance; and
- (c) All costs incurred by Lender in connection with the closing of the Loan or necessary to close Loan, except that Lender will pay its own staff costs and attorneys' fees in connection with the preparation and negotiation of the Loan Documents.

Article 4 **Representations and Warranties**

4.1 Lender Representations. Lender hereby represents and warrants to Borrower as follows:

- (a) Lender is a public body corporate and politic organized and existing under the laws of the state of Minnesota.
- (b) Lender is duly authorized to enter into this Agreement and to carry out its covenants and agreements hereunder.

4.2 Borrower Representations. Borrower hereby represents and warrants to Lender as follows:

- (a) Borrower is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the state of Minnesota.
- (b) The execution and delivery of this Agreement, the other Loan Documents, and the consummation of the transactions contemplated hereby have been duly authorized by Borrower and no other proceedings on the part of Borrower are necessary to authorize its officers to perform this Agreement and the transactions contemplated hereby.
- (c) The execution and performance of this Agreement by Borrower does not violate or result in a breach of or constitute a default under any judgment, order or decree to which Borrower may be subject, nor does such execution or performance constitute a violation of or conflict with any duty to which Borrower is subject or any provision of Borrower's operating agreement or bylaws or any material agreement or instrument to which Borrower is a party or by which Borrower is bound.

Article 5 **Additional Covenants and Agreements of Borrower**

5.1 Indemnity. Borrower agrees that Lender will bear no responsibility or liability to Borrower for any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Property to the extent not attributable to the gross negligence or willful misconduct of the Lender. Borrower agrees to indemnify and hold harmless Lender against all claims, costs, and

liabilities arising out of arising from the actions or inactions of Borrower (or if other persons acting on their behalf or under its direction or control) under this Agreement or the construction, installation, ownership, and operation of the Property excluding any claims, costs or liability arising out of the gross negligence or willful misconduct of the Lender. If Borrower fails to defend Lender, Lender shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter, for the account of and at the risk of Borrower. If Borrower fails to defend, all attorneys' fees incurred by Lender related to such defense shall be paid for by Borrower.

5.2 Compliance with Mortgage. At all times during the term of the Loan and this Agreement (which duration shall extend until the Loan has been paid in full), Borrower promptly comply with, or cause to be complied with the terms and conditions of the Mortgage.

5.3 Leases. Borrower may lease all or part of the Property during the term of this Agreement provided the following conditions are satisfied: (a) no lease shall be for a term which extend beyond the Maturity Date unless otherwise approved by Lender in writing and (b) each lease must contain the following provisions: (i) that the lease is subordinate to the Mortgage; (ii) that the tenant will attorn to Lender and Lender's successor if Lender succeeds to Borrower's interest under the lease; and (iii) that the tenant will furnish estoppel certificates to Lender, as requested by Lender. Promptly upon Lender's request, Borrower shall provide Lender copies of any such Property leases.

Article 6 Default and Remedies

6.1 Events of Default. Any of the following shall constitute an "Event of Default" hereunder and shall entitle Lender to exercise its rights and remedies under Section 6.2:

(a) If Borrower (i) fails to make any payment of principal or interest required to be paid under this Agreement within five calendar days following notice from Lender that payment is past due or (ii) fails to perform any other obligation required to be performed under this Agreement within 30 days written notice of such failure has been given by Lender to Borrower;

(b) If Borrower uses any portion of the proceeds of the Loan, or any interest or earnings thereon, other than in a manner specifically authorized in this Agreement;

(c) The occurrence of any default or Event of Default beyond any applicable notice and cure period under any of the other Loan Documents;

(d) If any representation, warranty or covenant made by Borrower herein or in any document, instrument or certificate given in connection with this Agreement shall be materially false when made;

(e) If Borrower shall be dissolved, liquidated, or wound up, or shall fail to maintain its existence as a going concern in good standing (excepting reorganizations, consolidations, and/or mergers into or with affiliates owned by, owning, or under common control of or with such entity or into the parent of such entity, providing the succeeding organization assumes and accepts such entity's obligations under the Agreement);

(f) If Borrower shall admit in writing its inability to pay its debts as they mature; or

(g) If Borrower shall be adjudicated a bankrupt or insolvent, and such adjudication shall continue undischarged or unstayed for a period of 30 days; or Borrower shall make an

assignment for the benefit of creditors; or Borrower shall apply for or consent to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of Borrower, as the case may be, and such appointment shall continue undischarged for a period of 30 days.

6.2 Rights and Remedies. Upon the occurrence of an Event of Default, Lender may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

- (a) Suspend or terminate its performance under this Agreement;
- (b) Declare the entire unpaid principal balance of the Note to be immediately due and payable (together with accrued and unpaid interest thereon, if any), without notice to or demand on Borrower; or
- (c) Exercise its Acquisition Option in accordance with Article 8.
- (d) Exercise any or all remedies specified herein and in the other Loan Documents, including (without limiting the generality of the foregoing) the right to foreclose the Mortgage, and any other remedies which Lender may have therefor at law, in equity or under statute.

6.3 Lender's Costs of Enforcement. If an Event of Default has occurred as provided herein, then upon demand by Lender, Borrower will pay or reimburse Lender for all reasonable expenses, including reasonable attorneys' fees, incurred by Lender in connection with the enforcement of this Agreement, or in connection with the protection or enforcement of the interests of Lender in any litigation or bankruptcy or insolvency proceeding or in any action or proceeding relating in any way to the transactions contemplated by this Agreement.

Article 7 Limitation on Liability

7.1 Release from Personal Liability. Borrower is hereby released from all personal liability under the Loan Documents to the extent such release does not operate to invalidate the lien of this Mortgage. In the event of foreclosure of this Mortgage or other enforcement of the collection of the indebtedness evidenced by the Note, Lender agrees, and any holder hereof shall be deemed by acceptance hereof to have agreed, not to take a deficiency judgment against Borrower with respect to said indebtedness.

7.2 Non-Recourse Exceptions. Notwithstanding the provisions of Section 7.1, Lender, may, in its discretion cause the Borrower to be fully and personally liable to the holder of the Note for the repayment of any loss or damage suffered by Lender as a result of (a) fraud or willful misrepresentation committed by Borrower in connection with the execution and delivery of the Loan Documents or the application for or creation of the indebtedness evidenced by the Note; (b) the willful misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage or destruction to any portion of the Property or any building or buildings located thereon; or (c) without Lender's prior written consent, the Property or any part thereof or interest therein being encumbered by any consensual lien or encumbrance other than expressly permitted by the Mortgage.

7.3 Full Recourse Events. In its sole discretion, Lender may cause Borrower to not be entitled to the benefits of the provisions of Section 7.1 if, without Lender's prior written consent, the Property or any part thereof shall become an asset in (i) a voluntary bankruptcy or insolvency proceeding, or (ii) an

involuntary bankruptcy or insolvency proceeding (other than one filed by Lender) which is not dismissed within 90 days of filing.

7.4 Control Over Conflicting Provisions. The provisions of this Article 7 shall control over any conflicting provisions of the Loan Documents.

Article 8 **Lender Acquisition Option**

8.1 Lender Acquisition Option. After an Event of Default or upon maturity of the Loan, in lieu of accepting repayment of the Loan, Lender shall have the option (the "Acquisition Option") to acquire the Property from the Borrower in accordance with the terms and conditions of this Article 8. Lender shall have the right, but not the obligation, to exercise its Acquisition Option by written notice to Borrower. The closing of the Acquisition Option will occur no later than 30 days after such notice (the "Lender Closing Date"). Lender may reject and/or return any repayment of the Loan while it exercises its Acquisition Option.

8.2 Option Closing. On the Lender Closing Date, Lender and Borrower shall close on Lender acquisition of the Property by executing and/or delivering, as applicable, the following items:

(a) Lender will return and cancel the Note in full (except any liability of Borrower under Article 7, which shall survive the termination of this Agreement and the Note and Lender's acceptance of the Deed);

(b) Borrower will convey the Property to Lender by limited warranty deed (the "Deed") free and clear of all encumbrances, except such encumbrances which Lender has previously approved in writing;

(c) Borrower will assign to Lender any such contract(s) related to the design, development, and construction of the Property as Lender may request; such assignment to be pursuant to an assignment agreement in a form required by Lender;

(d) Borrower will execute and deliver to Lender and Lender's title company a standard "seller's affidavit" stating under oath, inter alia, that Borrower has paid for all work performed or supplies ordered or delivered with respect to the Property;

(e) Borrower shall deliver, at Borrower's sole cost and expense, an updated title insurance commitment to Lender evidencing the status of title to the Property; and

(f) Borrower shall pay with respect to the Property and/or the transfer thereof (A) any closing fee or charge imposed by Lender's title company, (B) all state deed tax or transfer tax or fee, (C) special assessments, if any, (D) real estate taxes applicable to the period prior to the Lender Closing Date, prorated as of such date.

Article 9 **Additional Provisions**

9.1 Titles of Articles and Sections. Any titles of the several parts, articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

each remaining term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

9.6 Additional Documents. When reasonably requested to do so by another party, each party shall execute or cause to be executed any further documents as may be reasonably necessary or expedient and within their lawful obligation in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement.

9.7 Superseding Effect. This Agreement reflects the entire agreement of the parties with respect to the subjects hereof, and supersedes in all respects all prior agreements of the parties.

9.8 Amendment. This Agreement may not be amended or modified except in writing properly subscribed by each party hereto.

9.9 Assignment. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns. All rights and powers specifically conferred upon Lender may be transferred or delegated by Lender to any of its successors and assigns. Borrower shall not assign, subcontract, transfer, or pledge this Agreement and/or its obligations hereunder, whether in whole or in part, without the prior written consent of Lender.

9.10 Relationship of Parties. Nothing in this Agreement is intended, or shall be construed, to create a partnership or joint venture among or between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement.

9.11 Binding Effect; Waiver. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. No delay on the part of Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege constitute such waiver nor exhaust the same, which shall be continuing. The rights and remedies of Lender specified in this Agreement shall be in addition to and not exclusive of any other right and remedies which Lender, by operation of law, would otherwise have.

9.12 No Third Party Benefit. Other than as explicitly stated in this Agreement, the obligations, covenants, representations, and agreements of Borrower hereunder are for the exclusive benefit of Lender and shall not be construed to create rights or convey benefits to any other third party not a party to this Agreement.

9.13 City and HRA Regulatory Authority. Nothing in this Agreement shall be construed to limit or modify the City's or HRA's regulatory authority.

[Remainder of page intentionally left blank; signatures on following page(s)]

IN WITNESS WHEREOF, Lender and Borrower have caused this Loan Agreement to be duly executed in their names and on their behalf, all on or as of the date first above written.

LENDER:

HOUSING AND REDEVELOPMENT AUTHORITY
OF EDINA, MINNESOTA

By: _____
James B. Hovland, Chair

By: _____
Michael Fischer, Secretary

BORROWER:

EAST EDINA HOUSING FOUNDATION,
a Minnesota nonprofit corporation

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Exhibit A

Legal Description of the Property

Tract C, Registered Land Survey No. 1365, Hennepin County, Minnesota

Torrens Property

Exhibit B

Form of Mortgage

[See attached.]

Exhibit C

Form of Note

[See attached.]