

Action Item #15

EXECUTIVE DOCUMENT SUMMARY

Department: <u>Planning/Comm. Dev.</u>	Submittal Dates
Contact Person: <u>Trudy Galla</u>	<input checked="" type="checkbox"/> Regular Session
Telephone No.: <u>231-256-9812</u>	<u>01/17/2023</u>
Source Selection Method	VENDOR: _____
<input type="checkbox"/> Select One	Address/
<input type="checkbox"/> Other: _____	Phone: _____
<i>Account Number</i>	
<i>(Funds to come from):</i> _____	

Budgeted Amount: <u>\$ 60,000.00</u>	Contracted Amount: <u>\$ 60,000.00</u>
--------------------------------------	--

Document Description	
<input type="checkbox"/> Select One	<input checked="" type="checkbox"/> Other <u>Mortgage Agreement with Habitat for</u>

<input type="checkbox"/> Request to Waive Board Policy on Bid Requirements
<p>At the January 10, 2023 Executive Committee meeting of the County Board of Commissioners, I presented a request from Habitat for Humanity for a \$60,000 loan from the County to Habitat for assistance in the buy back of a home in Cedar. A Resolution supporting this buy back from previously approved by the County Board on June 15, 2021 (Resolution #2021-009).</p> <p>Corporate Counsel has drafted a Mortgage and Promissory Note for \$60,000 which would be placed as a lien on the property when Habitat purchases the home from the current homeowner. Upon sale of the home to a new family, the County will be paid and the Mortgage will be released.</p> <p>Funds to come from Fund #275 Housing.</p>
<p>Suggested Recommendation: Motion to approve the Mortgage and Promissory Note drafted by Corporate Counsel for a \$60,000 loan to Habitat for Humanity Grand Traverse Region for a buy back of a home in Cedar, and authorize signature by the Board Chairman. Funds to come from Fund #275 Housing.</p>

Department Head Approval: Trudy J. Galla Date: 01/17/2023

MORTGAGE

This mortgage (the Mortgage) is made on **January __, 2023**, between **Habitat for Humanity, Grand Traverse Region**, a Michigan non-profit corporation, whose address is **P.O. Box 5412, Traverse City, Michigan 49696** (“Mortgagor”), and the **County of Leelanau**, a Michigan municipal corporation (“Mortgagee”), whose address is 8527 E. Government Center Dr., Suite 108, Suttons Bay, Michigan 49682, on the terms and conditions set forth below.

1. **Grant of Mortgage and Description of Premises.** As security for the Indebtedness (defined below), Mortgagor mortgages and warrants to Mortgagee, the real property situated in the Township of Solon, County of Leelanau State of Michigan, with a common address of 8706 S. Schomberg Road, Cedar, Michigan 49621, and whose legal description is:

LOTS 9 & 22 BOUGHEYS ADD TO VILLAGE OF CEDAR SEC 5 T28N

PP# 45-010-200-022-00

Commonly known as: 8706 S Schomberg Rd, Cedar, MI 49621

together with all proceeds, easements, appurtenances, rents, and license now or later situation on the real property (the “Premises”).

2. **Indebtedness.** The principal amount secured by this Mortgage, excluding protective advances, is \$60,000.00 as set forth in the Promissory Note of the same date as this Mortgage. Mortgagor agree that all of the following representations are true as of the date of this Mortgage and agrees to observe all of the following covenants for as long as the Indebtedness remains outstanding.
3. **Payment.** Mortgagor will pay all of the Indebtedness as and when it becomes due.
4. **Taxes.** Mortgagor shall pay all taxes, assessments, or other charges that are or may become a lien on the Premises before they become delinquent and, on Mortgagee’s request shall provide Mortgagee official receipts evidencing the payments.
5. **Insurance.** Mortgagor shall at all times maintain adequate insurance on the Premises, including, without limitation, hazard insurance providing an all-risk extended coverage endorsement. All such policies of insurance shall name Mortgagee as mortgagee and loss

payee under a standard mortgage loss payment clause. Mortgagor shall give immediate notice to Mortgagee of any accident or occurrence that gives, or may give rise to any claim under any insurance policy required under this section, and Mortgagee may make proof of loss to the insurance carrier if Mortgagor does not do so in a timely manner. Any proceeds of any such policies received by either Mortgagor or Mortgagee shall be applied to the Indebtedness, in inverse order of maturity, whether or not it is then due and payable.

6. **Maintenance of security.** Mortgagor shall not commit waste or permit or suffer the commission of waste with respect to the Premises. Mortgagor shall keep the improvements and fixtures on the Premises in good condition and repair. None of the buildings, structures, or improvements now or later erected or located on the Premises shall be removed, demolished, or substantially or structurally altered in any way without the prior written consent of Mortgagee. Mortgagor shall comply with all applicable laws and regulations and all requirements of any governmental authority relating to the Premises or their use or occupancy.
7. **Performance by Mortgagee.** Mortgagee may, at its option, take any action it deems necessary, including, without limitation, the payment of taxes, assessments, or insurance premiums, to protect the Premises and Mortgagee's interest in them, if Mortgagor fails or neglects to do so. All sums Mortgagee spends doing so, including expenses, costs, and reasonable attorney fees, shall become a part of the Indebtedness, shall be due and payable on demand, and shall be lien on the Premises until paid.
8. **Condemnation.** If all or any part of the Premises are damaged, taken, or acquired, either temporarily or permanently, in any condemnation proceeding or by exercise of any right of eminent domain or any conveyance under threat of eminent domain, the amount of any award or other payment shall be applied to the Indebtedness, in inverse order of maturity, whether or not it is then due and payable.
9. **Default.** Any of the following shall constitute a default under this Mortgage:
 - a. Any default or event of default exists or occurs with respect to the Indebtedness.
 - b. Mortgagor fails to observe or perform any obligation or covenant required under this Mortgage.
 - c. A trustee or receiver is appointed for the whole or any substantial part of the Premises; the holder of any lien or encumbrance on the Premises, other than this Mortgage, commences foreclosure proceedings or other proceedings to enforce its lien or encumbrance; or Mortgagor becomes a debtor in any voluntary or involuntary bankruptcy or insolvency proceeding.
 - d. Mortgagor sells, transfers, conveys, mortgages, or encumbers its interest in the Premises.

10. **Remedies.** Immediately on the occurrence of an event of default under any of the Obligations or any default in the performance of any of the covenants, conditions, and agreements in this Mortgage (an Event of Default), Mortgagee may, in addition to and not in lieu of or substitution for all other rights and remedies provided by law, take the following actions:

a. **Accelerate obligations.** Mortgagee may, without notice, except as expressly required by law, declare the entire unpaid and outstanding principal balance of the Obligations, and all accrued interest, to be immediately due and payable in full and, at Mortgagee's option, may bring suit for it and take any steps and institute any other proceedings that Mortgagee deems necessary to enforce the Obligations and to protect the lien of this Mortgage.

b. **Advance sums for other liens.** On the occurrence of any Event of Default arising out of the existence of any lien on the Property, Mortgagee shall have the right (without being obligated to do so or to continue to do so), without notice to Mortgagor, to advance on and for the account of Mortgagor sums Mortgagee in its sole discretion deems necessary to cure the Event of Default or to induce the holder of any lien to forbear from exercising its rights. The repayment of all advances, with interest at the highest rate applicable to the Obligations from the date of each advance, shall be secured by this Mortgage and shall be immediately due and payable without demand.

c. **Mortgage Foreclosure**

i. Mortgagee shall have the right to foreclose this Mortgage and sell the Property at public auction or venue pursuant to MCL 600.3201 et seq. or judicially foreclose this Mortgage under the provisions of MCL 600.3101 et seq., and Mortgagor agrees to pay all of Mortgagee's costs and expenses, including reasonable attorney fees, which shall be added to the Obligations secured by this Mortgage. At any foreclosure sale held under these Michigan statutes, Mortgagor agrees that in its foreclosure sale bid price, Mortgagee may deduct from the appraised value of the Property (A) a brokerage commission of not more than 10 percent of the Property value, (B) the unpaid balance of any mortgage or other liens that have priority over the lien of this Mortgage, and (C) the sum of all unpaid property taxes and assessments and insurance premiums due and to become due on the Property through the date when the foreclosure redemption period shall expire. Any foreclosure sale may, at the sole option of Mortgagee, be made en masse or in parcels, any law to the contrary notwithstanding; and Mortgagor knowingly, voluntarily, and intelligently waives any right to require any foreclosure sale to be made in parcels or any right to select which parcels shall be sold. The proceeds of any foreclosure sale shall be applied, as Mortgagee elects, to the payment of Mortgagee's collection and other expenses, including reasonable attorney fees, and to the payment of the Obligations, with the surplus, if any, to Mortgagor or Mortgagor's successor in interest. Commencement of proceedings to foreclose this Mortgage in any manner authorized by law shall be deemed an exercise of Mortgagee's option to accelerate the Obligations. After the date on which the maturity of the Obligations secured by this Mortgage has been accelerated, Mortgagee acceptance of any amounts

paid by Mortgagor less than the full unpaid principal balance of the Obligations plus accrued interest, late charges, and Mortgagee's costs and expenses as described in this Mortgage shall not waive the default or acceleration but shall only be credited on the unpaid balance of the Obligations unless Mortgagee specifically agrees in writing to waive any default or acceleration.

ii. This Mortgage contains a power of sale and on default may be foreclosed by advertisement. In a foreclosure by advertisement, no hearing is involved, and the only notice required is publication of a foreclosure notice in a local newspaper and posting a copy of the notice on the Property. If this Mortgage is foreclosed by advertisement under the provisions of MCL 600.3201 et seq., Mortgagor knowingly, voluntarily, and intelligently waives all rights under the constitution and laws of the State of Michigan and the constitution and laws of the United States of America to any notice or hearing in connection with a foreclosure by advertisement except as set forth in the Michigan statute and, if Mortgagee seeks a judicial foreclosure, to any right to a trial or hearing by a jury.

11. **Invalidity.** If any term, covenant, or condition of this Mortgage or its application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Mortgage or the application of the term, covenant, or condition to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected and each term, covenant, or condition of this Mortgage shall be invalid and be enforced to the fullest extent permitted by law.
12. **Expenses.** Any expense, including reasonable attorney fees, reasonably incurred by Mortgagee in protecting its security, in enforcing its rights, or otherwise with respect to the Indebtedness, shall immediately due and payable, and shall bear interest at the highest lawful rate from the time incurred until paid.
13. **Definitions.** As used in this Mortgage, when appropriate and unless the context requires otherwise, the singular number shall include the plural, the plural shall include the singular, and any gender shall include all genders.
14. **Notices.** Any notice, demand, or other communication shall be deemed properly given if delivered personally or if deposited in the U.S. mail, postage prepaid, address to the addressed of the parties at the address listed above. Any such notice shall be deemed given on the date of personal service or on the date of mailing, as the case may be.
15. **Binding effect.** All of the covenants and conditions shall run with the land, be binding on the successors and assigns of the Mortgagor, and inure to the benefit of the successor and assigns of the Mortgagee. Any reference in this Mortgage to Mortgagee shall include the successors and assigns of the Mortgagee.

16. **Effective date.** This Mortgage was signed and delivered by Mortgagor on the date stated in the first paragraph.

MORTGAGOR (Borrower)

Habitat for Humanity, Grand Traverse Region

By _____

Wendy Irvin

Its: Chief Executive Officer

STATE OF MICHIGAN)

_____ COUNTY)

Acknowledged before me in _____ County, Michigan, on January __, 2023, Wendy Irvin, of Habitat for Humanity, Grand Traverse Region, a Michigan non-profit corporation, on behalf of the entity.

/s/ _____

Notary public, State of Michigan, County of _____.

My commission expires _____.

Acting in the County of _____.

MORTGAGEE (Lender)

County of Leelanau

By _____

Ty Wessel

Chairman of Board of Commissioners

STATE OF MICHIGAN)

_____ COUNTY)

Acknowledged before me in Leelanau County, Michigan, on January __, 2023 by Ty Wessell, Chairman of Board of Commissioner, of Leelanau County, a municipal corporation, on behalf of the County of Leelanau.

/s/ _____

Notary public, State of Michigan, County of _____.

My commission expires _____.

Acting in the County of _____.

Drafted by and when recorded return to:

Christian K. Mullett (P57042)
Cohl, Stoker & Toskey, P.C.
601 N. Capitol Ave, Lansing, MI 48933
517-372-9000
cmullett@cstmlaw.com

PROMISSORY NOTE

\$60,000.00

Dated: January ___, 2023

Due Date: March 1, 2026

FOR VALUE RECEIVED, Habitat for Humanity, Grand Traverse Region (“Borrower”), whose address is P.O. Box 5412, Traverse City, MI 49696, promises to pay to the order of County of Leelanau (“Lender”), at 8527 E. Government Center Dr. Suite 108, Suttons Bay, MI 49682 or another place Lender designates in writing, the principal sum of \$60,000.00, plus interest as provided in this note on all amounts outstanding, all in lawful money of the United States of America as stated below.

1. Interest rate. The principal amount outstanding under this Promissory Note (the “Note”) shall bear interest on a basis of a year of 360 days for the actual number of days amounts are outstanding at the rate of 0% per annum.

2. Payment. This Note shall be paid by Borrower to Lender in one full installment of the balance, upon the transfer to any other party or parties by deed, assignment, sale of any kind including conveyance by land contract, or distribution, or when for any reason the undersigned Borrower no longer holds an absolute fee title interest in said premises of the real property situated in the Township of Solon, County of Leelanau State of Michigan, with a common address of 8706 S. Schomberg Road, Cedar, Michigan 49621, and whose legal description is:

LOTS 9 & 22 BOUGHEYS ADD TO VILLAGE OF CEDAR SEC 5 T28N

PP# 45-010-200-022-00

Commonly known as: 8706 S Schomberg Rd, Cedar, MI 49621

If this Note is not paid off in full prior to March 1, 2026, then the Borrower shall pay any remaining unpaid balance on the Due Date, March 1, 2026, in an amount equal to the then remaining unpaid principal and accrued interest. All payments required to be paid shall first be applied to costs and expenses required to be paid, then to accrued interest, and then the balance against the principal.

3. Prepayment. This Note may be prepaid in whole at any time by Borrower with no prepayment penalty.

4. Interest rate limited to maximum provided by law. Nothing in this Note or any transaction relating to it shall be construed or operate to require Borrower to pay or be charged interest at a rate greater than the maximum allowed by the applicable law relating to this Note. If any interest or other charges charged, paid, or payable by Borrower in connection with this Note or any other document delivered in connection with this Note result in the charging, compensation, payment, or earning of interest in excess of the maximum allowed by applicable law, the excess

shall be waived by the holder, and the excess paid shall be automatically credited against and in reduction of the principal due under this Note. If Lender reasonably determines that the interest rate (together with all other charges or payments that may be deemed interest) stipulated under this Note is or may be usurious or otherwise limited by law, the unpaid balance of this Note, with accrued interest at the highest rate permitted to be charged by stipulation in writing between Lender and Borrower, at the option of Lender, shall immediately become due and payable.

5. Events of default. Borrower, without notice or demand of any kind, shall be in default under this Note on the occurrence of any of the following Events of Default:

(a) if any amount due and owing on this Note, any fees due Lender, any expenses incurred by Lender under this Note, or any and all other liabilities and obligations of Borrower to Lender are not paid when due or

(b) if any other Event of Default, as defined in the Mortgage referenced below occurs.

6. Remedies. On the occurrence of any Event of Default, Lender may, without notice, declare the entire unpaid and outstanding principal balance under this Note and all accrued interest, together with all other indebtedness of Borrower to Lender, to be immediately due and payable in full, without presentment, demand, or notice of any kind, all of which Borrower expressly waives. Lender shall then have and may exercise any one or more of the rights and remedies provided in this Note or in any loan agreement, mortgage, guaranty, security agreement, assignment, or other document relating to this Note. The remedies provided for under this Note are cumulative to the remedies for collection of the amounts owing under this Note as provided by law or by any loan agreement, mortgage, guaranty, security agreement, or other document relating to this Note. Nothing in this Note is intended or should be construed to preclude Lender from pursuing any other remedy for the recovery of any other sum to which Lender may be or become entitled for breach of the terms of this Note or any loan agreement, mortgage, guaranty, security agreement, or other instrument relating to this Note.

7. Costs of collection. Borrower agrees, in case of an Event of Default under the terms of this Note or under any loan, security, or other agreement signed in connection with this Note, to pay all Lender' costs for collection of this Note and all other liabilities of Borrower to Lender and enforcement of its rights under this Note, including reasonable attorney fees and legal expenses, including participation in bankruptcy proceedings.

8. Default rate of interest. During any periods that an Event of Default has occurred and is continuing, after the Due Date, or after acceleration of maturity, the outstanding principal amount shall bear interest at a rate equal to 2 percent per annum greater than the interest rate otherwise charged under this Note.

9. Late charges. If any required payment is not made within 10 days after the date it is due (other than the total payment of principal due on the Due Date), at the option of Lender, a late charge in the amount of 5 percent of the overdue payment may be charged.

10. No waiver of default. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire

amount then due shall be and continue to be an Event of Default. On any Event of Default, neither the failure of Lender promptly to exercise its right to declare the outstanding principal and accrued unpaid interest to be immediately due and payable nor the failure of Lender to demand strict performance of any other obligation of Borrower or any other person who may be liable shall constitute a waiver of any such rights or a waiver of such rights in connection with any future default on the part of Borrower or any other person who may be liable under this Note.

11. General. Borrower and all endorsers and guarantors of this Note, if any, jointly and severally waive presentment for payment, demand, notice of nonpayment, notice of protest or protest of this Note, and diligence in collection or bringing suit and consent to any and all extensions of time, renewals, waivers, or modifications that Lender may grant with respect to payment or any other provisions of this Note and to the release of any collateral or any part of it, with or without substitution. Borrower's liability shall be absolute and unconditional, without regard to the liability of any other party to this Note. This Note shall be deemed to have been executed in, and all rights and obligations shall be governed by, the laws of the State of Michigan. Venue for all actions and disputes under this Note shall lie in Leelanau County, Michigan.

12. Other documents. The indebtedness evidenced by this Note is secured by a Future Advance Mortgage granted by Borrower to Lender dated January ___, 2023, and supersedes any and all previous Notes executed between the Borrower and the Lender. Reference is made to that Mortgage for additional rights and obligations of the Borrower and Lender.

Signed as of the ___ day of January, 2023.

BORROWER

Habitat for Humanity, Grand Traverse Region

By _____

Wendy Irvin

Its: Chief Executive Officer