

Loan Agreement

THIS LOAN AGREEMENT is made as of Dec. 29, 2009, (this "Agreement"), by and between El Dorado County Public Housing Authority ("County") and Mercy Housing California, a California nonprofit public benefit corporation or its assigns ("MHC" or "Borrower").

RECITALS

- A. MHC is a California nonprofit public benefit corporation organized under Section 501 (c)(3) of the IRS Code;
- B. MHC's tax exempt purposes include, among other things, the development of multifamily affordable rental housing in Shingle Springs, unincorporated El Dorado County, California;
- C. MHC has applied to the County for a California Housing Finance Agency (CalHFA) HELP loan in the amount of \$1,500,000 to be used solely toward the predevelopment and construction activities of an affordable housing project.
- D. El Dorado County Public Housing Authority, authorized by Resolution PHA 2-08 of the Board of Commissioners of the El Dorado County Public Housing Authority, approved May 6, 2008, was the entity to submit to CalHFA an application to participate in the HELP program to request a loan allocation for \$1,500,000 to be used for an affordable housing development in the County of El Dorado.
- E. MHC is the developer of a minimum 55-unit affordable family rental development in Shingle Springs, known as Sunset Lane Apartments (the "Development"). Incomes and rents at the Development will be restricted by the various regulatory agencies that will be providing permanent financing to the development. Rents will be affordable to households with incomes of no more than 60 % of the area median income.
- F. MHC intends to acquire certain real property in unincorporated El Dorado County on which it intends to develop the Development.
- G. County, in reliance upon information provided by MHC about the Development, now wishes to make a loan in the amount of \$100,000 to MHC for expenses associated with the pre-development, development and construction costs of the site.

NOW, THEREFORE, in consideration of the promises and mutual covenants and undertakings herein contained, the parties hereto, intending to be bound, hereby agree as follows:

1. Agreement to Lend. Subject to the terms of conditions of this Agreement, County shall lend to MHC, One Hundred Thousand Dollars (\$100,000) of HELP Funds (the "Loan"). The Loan shall be evidenced by a promissory note dated as of the date of this Agreement and in the form approved by MHC and County. Borrower will draw and utilize the funds as needed. The first loan draw in the amount of \$15,000 will be made on the date of this Agreement. Subsequent loan draws up to the amount of \$85,000 may be made as needed for pre-development costs of the Development. The Loan shall bear 3.5% simple interest per annum.
2. Draw Procedure. The Borrower shall request draws from the undisbursed loan proceeds by submitting a written request to County which represents that the Borrower intends to use the funds within 30 days of the draw. Loan funds received by the Borrower must be utilized within thirty (30) days of their disbursement by CalHFA or the funds shall be returned to County immediately.
3. Loan Repayment. The Loan shall be repaid in full, with accrued interest, upon the earliest of the following events:
 - i. Within 120 days after the issuance of the Certificates of Occupancy by the El Dorado County Building Department for the Development;
 - ii. Upon 90 days written notice to MHC, at any time after the date of the Agreement, if the County determines, at its sole discretion, that the Development described in Recital E cannot be accomplished as represented by MHC in applying for this loan;
 - iii. Five years from the date of execution of this Agreement.
4. Purpose and Use of Loan Proceeds. MHC will use the Loan proceeds to pay architectural, engineering, and building and planning permits and fees for the Development, or any other uses approved in writing by the County.
5. Recourse. If MHC fails to repay the Loan under the terms enumerated in Paragraph 3, the Loan shall constitute a full recourse obligation of the MHC or its assigns.
6. County's Remedies. Upon the happening of an Event of Default, the County may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to

any State court for specific performance of this Agreement and the Regulatory Agreement.

7. Records and Reports. MHC shall make its records pertaining to the Development available for inspection by the County during normal business hours for the purpose of allowing the County to confirm compliance with the Agreement. MHC shall provide a semi-annual written report of progress on the development to the Contract Administrator identified in Paragraph 16. The first report shall be submitted April 30, 2010; subsequent reports will be submitted every six months thereafter until the loan is repaid in full. Tenant Income Reports will be required for at least ten (10) years after the date of occupancy of the Development.
8. Fiscal Considerations. Should California Housing Finance Agency reduce, order a reduction or cancel HELP Program funding, this Agreement may be deemed to be cancelled in its entirety.
9. Assignment. This Agreement shall inure to the benefit of, and be binding on, the parties, their respective successors and assigns; provided, however that MHC may not assign this Agreement without County's written consent.
10. Conflict of Interest. No employee, agent, consultant, officer, elected or appointed official or member of the County has or may obtain a personal or financial interest in or benefit from the Borrower or the Development or in any contract or subcontract to agreement, or the proceeds thereof, relating to the Development either for themselves or for those with whom they have family or business ties, during their tenure or one year thereafter.
11. Nondiscrimination. The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Development on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related condition (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.
12. Hold Harmless.
 - i. The Borrower hereby agrees to, and shall defend and hold County, its elective and appointive boards, officer, agents and employees, harmless from an liability for damage or claims for damage or any

other types of losses resulting from personal injury, including death, or property damage, and arising from or in any way relating to Borrower's actions or inactions in connection with the Development or this Agreement, whether such actions or inactions be by the Borrower or Borrower's subcontractors, or any persons directly or indirectly employed by, or acting as agent for, the Borrower or any subcontractor. The Borrower agrees to, and shall defend and hold the County, its elective and appointive boards, officers, agents and employees harmless from any suits or actions at law or in equity for damages, and all costs, including reasonable attorneys' fees and expert witness fees, caused, or alleged to have been caused or in any way relating to Borrower's actions or inactions in connection with the Development of the actions and inactions of Borrower's subcontractors, employees, agents, or any persons directly or indirectly employed by Borrower; provided Borrower shall not be liable for any amounts attributable to County's gross negligence or willful misconduct.

ii. The Borrower agrees to provide all costs of any necessary reasonable legal defense and all attorney's fees incurred in defending any claim, whether or not actually filed in any court.

13. Amendment. This Agreement may be amended only in writing signed by authorized representatives of the County and the Borrower. By resolution of the County Board of Supervisors, the County Administrator or Assistant Director of Human Services is authorized to act on behalf of the County.

14. Notice. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

County: County of El Dorado
Public Housing Authority
c/o Department of Development Services
2850 Fairlane Court
Placerville, CA 95667
Attn: Shawna Purvines, Senior Planner

Borrower: Mercy Housing California
3120 Freeboard Drive, Suite 202
West Sacramento, CA 95691

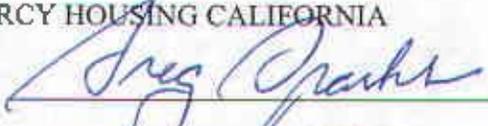
15. No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the

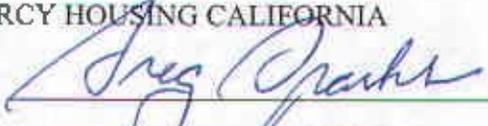
exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

16. Contract Administrator. The County Officer or employee with responsibility for administering this Agreement is Janet Walker-Conroy, Executive Director, El Dorado County Department Public Housing Authority or his successor.
17. Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.
18. Titles and Heading. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.
19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
20. Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.
21. Signs. During the construction period, should the Borrower place or cause to be placed signs on the property identifying funding for the Development, the signs shall indicate in a typeface and size commensurate with its funds that El Dorado County is a source of financing.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the 29th day of December 2009.

MERCY HOUSING CALIFORNIA

BY: 

TITLE: 

Vice President

BY: Amy Bayley

TITLE: Secretary

COUNTY OF EL DORADO

BY: Janet Walker-Conroy
Janet Walker-Conroy, Executive Director
Public Housing Authority

PROMISSORY NOTE

Mercy Housing California

\$100,000.00

Dec. 29, 2009

PLACERVILLE, EL DORADO COUNTY, CALIFORNIA

FOR VALUE RECEIVED, MERCY HOUSING CALIFORNIA., a California nonprofit public benefit corporation (the "Maker") promises to pay to the EL DORADO COUNTY PUBLIC HOUSING AUTHORITY ("Payee") the principal sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000), or so much of such principal as may be advanced (the "Loan"). The loan shall bear simple interest at a per annum rate of 3.5 percent.

1. This Loan is made pursuant to that certain Loan Agreement between Maker and Payee of even date herewith. The Loan will be used by Maker for the development (the "Development") of the property described in the Loan Agreement and pursuant to the terms and conditions contained therein.
2. Maker agrees to pay the sum of \$100,000, or so much principal as has been advanced, with interest from the date of execution on unpaid principal at the rate of 3.5% per annum. Payments shall be made according to the following terms:

This Note shall become immediately due and payable in full with accrued interest on the earliest of:

- i. Upon 90 days written notice to Maker, at any time after the date of this Agreement, if the County determines, at its sole discretion, that the housing described in Recital C of the Loan Agreement cannot be accomplished as presented by Maker in applying for the loan; or
- ii. Five years from the date of execution of the Loan Agreement; or
- iii. Within 120 days after the issuance of the Certificates of Occupancy by the El Dorado County Building Department for the Development.

In the event any payment is not paid within fifteen (15) days of its due date, a late charge of 6% shall immediately become due and payable.

3. Beginning with the first year after execution of the Loan Agreement, Maker shall deliver to Payee each year an annual audited financial statement, in addition to the semi-annual written progress report required by the Loan Agreement. Payee shall have the right to inspect and audit Maker's books and records.
4. Payment shall be made in lawful money of the United States to Payee at 2580 Fairlane Court, Placerville CA 95567, Attn: Housing, Community and Economic Development Programs. The place of payment may be changed from time to time as the Payee may designate in writing.

5. Maker shall have the right to prepay this Note in whole or in part without penalty or premium.
6. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within fifteen (15) days of its due date; (ii) any default by Maker under the Loan Agreement; or (iii) any sale, exchange, transfer, assignment or other conveyance of the Development to any party other than an affiliate of Maker for the purpose identified in Recital C of the Loan Agreement.
7. Upon the occurrence of any event of default, or at any time thereafter, at the option of the Payee hereof, the entire unpaid principal and accrued interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of such option with respect to any subsequent event. Payee's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.
8. Payee shall not exercise any right or remedy provided for herein because of any default of Maker unless, in the event of a monetary default, Maker shall have failed to pay the outstanding sums within a period of thirty (30) calendar days after receipt of notice that payment was due, or in the event of a nonmonetary default, Payee shall have first given written notice thereof to Maker and Maker shall have failed to cure the nonmonetary default within a period of thirty (30) days from Maker's receipt of such notice of such default; provided that if the nonmonetary default cannot be cured within (30) days and Maker proceeds diligently with effort to cure such default until it shall be fully cured within no more than sixty (60) days after the receipt of the initial notice of default, Payee shall not exercise any right or remedy provided for herein until such sixty (60) days period shall expire; provided, however, Payee shall not be required to give any such notice or allow any part of the grace period if Maker shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if Maker shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Maker and such appointment or such receivership is not terminated within forty-five (45) days.
9. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without in any way affecting or discharging this liability.
10. Maker agrees to pay immediately upon demand all costs and expenses of Payee including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after default hereunder or under the Loan Agreement, Payee finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against maker, any guarantor or any other party liable therefore or to the protection of its rights under this Note, the Loan Agreement, or other loan document, or (iii) if Payee seeks to have the Development abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection

of the Note or prohibiting the enforcement of any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

11. If Payee shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the Development or the title thereto or the interest of the Payee, including without limitation, any form of condemnation or eminent domain proceeding, Payee shall be reimbursed by Maker immediately upon demand for all costs, charges, and attorneys' fees incurred by Payee in any such case.
12. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the addresses set forth in the Loan Agreement or at such address as either party may designate by written notice.
13. This Note shall be binding upon Maker, its successors and assigns.
14. This Note shall be construed in accordance with and be governed by the laws of the State of California.
15. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

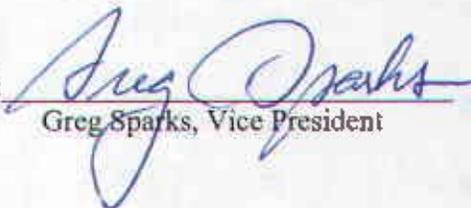
PAYEE:

County of El Dorado

BY: 
Janet Walker-Conroy, Executive Director PHTA
Department of Human Services

MAKER:

Mercy Housing California, a California nonprofit
Public Benefit Corporation

BY: 
Greg Sparks, Vice President