

DRAFT PENDING COUNTY COUNSEL REVIEW

Loan Agreement

THIS LOAN AGREEMENT is made as of _____, 2012, (this "Loan Agreement"), by and between El Dorado County Public Housing Authority ("County") and Mercy Housing California 55, a California Limited Partnership ("MHC" or "Borrower").

RECITALS

- A. MHC is a California Limited Partnership whose general partner, Sunset Lane Apartments LLC ("SLA"), sole member Mercy Housing Calwest is organized under Section 501 (c)(3) of the Internal Revenue Code.
- B. SLA's tax exempt purposes include, among other things, the development of multifamily affordable rental housing in Shingle Springs, unincorporated El Dorado County, California.
- C. On May 6, 2008, the Board of Directors for the El Dorado County Public Housing Authority adopted Resolution PHA 2-08 to submit an application to CalHFA to participate in the HELP program. In this application, the PHA requested a loan allocation for \$1,500,000, to be used for an affordable housing development in the County of El Dorado.
- D. MHC previously applied to the County for, and received, a \$100,000 California Housing Finance Agency (CalHFA) HELP loan. MHC is now applying for an additional amount not to exceed \$1,400,000 in CalHFA HELP loan funds.
- E. MHC intends to acquire certain real property (APNs 090-430-21 and -22) in unincorporated El Dorado County (the "Real Property") on which it intends to develop a 40-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 sixty percent (60%) of the area median income.
- F. County, in reliance upon representations provided by MHC about the Development, now wishes to make a loan in an amount not to exceed \$1,400,000 to MHC for expenses associated with the pre-development, property acquisition and construction costs of the Development.
- G. The \$1,400,000 loan will be evidenced by a Promissory Note of even date herewith, and will be secured by a Deed of Trust With Assignment of Rents on the Real Property and Development to be executed by MHC and County and recorded once acquisition of the Real Property by MHC is complete.

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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 and conditions of this Loan Agreement, County shall lend to MHC One Million Four Hundred Thousand Dollars (\$1,400,000) of HELP Funds (the "Loan"). The Loan shall be evidenced by a Promissory Note dated as of the date of this Loan Agreement and in the form attached hereto. Once site acquisition by Mercy is complete, a Deed of Trust and Assignment of Rents on the subject site (APNs 090-430-21 and -22) will be executed and recorded in the amount of this Loan Agreement. Borrower will draw and utilize the funds as needed. The disbursements made pursuant to this Loan Agreement shall accrue simple interest the rate of three and one half percent (3.5%) per annum.
2. Draw Procedure. The Borrower shall request draws from the undisbursed loan proceeds by submitting a written request, along with detailed records specifying how the funds have been spent and/or are to be spent, to County which represents that the Borrower intends to fully expend 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 County or the funds shall be returned to County immediately. Any disbursed funds that are not utilized within this thirty (30) day period shall be immediately repaid with interest. The Borrower shall draw funds authorized under this Loan Agreement on or before March 31, 2013.
3. Loan Repayment. The Loan shall be repaid in full with accrued interest upon the earliest of the following events:
 - a. After an Event of Default described in the Loan Agreement and failure to cure within the applicable cure period; or
 - b. Five years from the date of execution of this Loan Agreement; or
 - c. Within 120 days of Borrower obtaining permanent loan funding.
4. Application of Payments. All payments received by the County from the Borrower on account of this Loan Agreement shall be applied first to charges due under this Loan Agreement other than interest and principal (i.e., reasonable attorneys' fees and enforcement costs, if applicable), then to accrued interest and then to a reduction of the outstanding principal amount.
5. Purpose and Use of Loan Proceeds. MHC will use the Loan proceeds to pay architectural, engineering, building and planning permits and fees, property acquisition costs and/or construction costs for the Development, or any other uses approved in writing by the County.

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6. **Event of Default.** Any of the following items shall be considered an Event of Default under this Loan Agreement and/or attached Promissory Note:
- a. Borrower fails to fully expend disbursed funds within 30 days from the date of disbursement from County; or
 - b. Borrower fails to pay any outstanding sums under this Loan Agreement within a period of thirty (30) calendar days after receipt of notice that payment was due; or
 - c. Borrower uses these funds for purposes not approved by the County; or
 - d. Borrower fails to comply with the occupancy and rent requirements for the Development as stated in Recital E and fails to cure within any applicable cure period; or
 - e. Borrower fails to execute a Deed of Trust and Assignment of Rents pursuant to this Loan Agreement at the time of acquisition of the Real Property; or
 - f. Any sale, exchange, transfer, assignment or other conveyance of the Development or Real Property to any party other than Borrower without prior written consent of County; or
 - g. Proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction being authorized or instituted against the Borrower(s) that is not dismissed within ninety (90) days; or
 - h. Proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower(s) or a substantial part thereof, being authorized or instituted by or against the Borrower(s) that is not stayed within ninety (90) days; or
 - i. Borrower ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Loan Agreement and/or attached Promissory Note; or
 - j. Borrower transfers a majority ownership interest in or control of the business to a third party other than a transfer of a limited partner interest; or
 - k. Any material misrepresentation with respect to the Borrower's warranties and representations under this Loan Agreement or the Loan Application that has a material adverse effect on County; or
 - l. Borrower fails to maintain and pay insurance, taxes and/or assessments when due, and fails to cure within ten (10) days of receipt of notice from County; or
 - m. The occurrence of any other event (whether termed default, event of default or otherwise) which under the terms of this Loan Agreement or attached Promissory Note shall entitle the County to exercise rights or remedies hereunder, provided that the County shall give written notice to the Borrower of any of the foregoing events and the Borrower shall have thirty (30) days to cure, or if the cure cannot be reasonably accomplished in thirty (30) days, such additional time as is necessary provided Borrower has commenced the cure in thirty (30) days and is diligently pursuing the cure to completion, before any acceleration of the unpaid balance. Borrower's limited partner

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shall receive notice of any such event and shall have an additional thirty (30) days to cure. In the event that the Borrower uses disbursed Loan funds for a purpose which is not authorized or approved under this Loan Agreement, or otherwise by the County in writing, the County may demand and the Borrower shall immediately repay such funds to the County.

7. County's Remedies. Should Borrower fail to satisfy or adhere to the terms of this Loan Agreement or the attached Promissory Note, and fail to cure as provided in Section 7 of this Loan Agreement, the County may exercise any and all legal remedies available to it, including, but not limited to:
 - a. Accelerating payment under the Promissory Note;
 - b. Increasing the rate of interest charged on any outstanding principal amount disbursed under this Loan Agreement and attached Promissory Note to an amount not to exceed 10% simple interest per annum in accordance with County's agreement with CalHFA;
 - c. County, under the Deed of Trust With Assignment of Rents, may proceed by a suit or suits in equity or at law, whether for a foreclosure hereunder or (to the extent permitted by law) for the sale of the Real Property and Development, or against the Borrower on a recourse basis for the Promissory Note balance, or for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power granted herein, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Real Property and Development, or for the enforcement or any other appropriate legal or equitable remedy.
 - d. Instituting against the Borrower, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including, without limitation, an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;
 - e. Where one or more persons have received financial benefit as a result of violation of this Loan Agreement, the County may assess, and institute legal action to recover, as necessary, a penalty in any amount up to and including the amount of financial benefit received up to 5% of the principal disbursed, in addition to recovery of the benefit received;
 - f. Any other means authorized under law.

8. Interest Rate Adjustment. In addition to any other default remedies that the County may have as provided herein, the County may, upon thirty (30) days written notice to the Borrower, increase the rate of interest charged on any outstanding principal amount disbursed to the Borrower and not used in accordance with the terms of this Loan Agreement, or not paid back when due, to a rate not to exceed ten percent (10%) per annum. Such rate adjustment shall occur commencing on the first (1st) day of the first (1st) month following expiration of such thirty (30) day notice, or such extended cure period as provided in Section 7 of this Loan Agreement. Such increased interest rate shall only be charged so long as the Borrower remains in default.

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9. Records and Reports. MHC shall make its records pertaining to the Development and Real Property available for inspection by the County during normal business hours for the purpose of allowing the County to confirm compliance with the Loan Agreement. MHC shall provide a semi-annual written report of progress on the Development to the Contract Administrator identified in Paragraph 22. The first report shall be submitted by May 1, 2012; subsequent reports will be submitted every six (6) months thereafter, or more frequently if requested in writing by County, until the loan is repaid in full. MHC shall deliver to County each year an annual audited financial statement until the loan is repaid in full. MHC shall deliver annually to County Tenant Income Reports for all units in the Development for a minimum of ten (10) years after the date of occupancy of the Development.
10. Accounting. Borrower agrees to establish and maintain fiscal control and accounting procedures that assure funds loaned to Borrower pursuant to this Loan Agreement are properly disbursed, adequately controlled and reasonably accounted for. Adequate documentation of each transaction shall be maintained to permit the determination, through an audit if requested by the County, of the accuracy of the records and the allowability of expenditures payable with Loan funds. If the allowability of any expenditure cannot be determined, the questionable expenditure may be disallowed by the County in its sole discretion. Upon demand by the County, Borrower shall immediately repay the County for any disallowed expenditures.
11. Fiscal Considerations. Should California Housing Finance Agency reduce, order a reduction or cancel HELP Program funding as it relates to this Loan, this Loan Agreement may be deemed to be cancelled in its entirety, except to the extent that funds were disbursed to MHC prior to the reduction or cancellation of HELP Program funding.
12. Assignment. This Loan 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 Loan Agreement without County's written consent.
13. 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.
14. 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

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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.

15. Fair Employment Practices. The Borrower shall provide, and require that any contractor or subcontractor engaged in work on the Development shall provide, equal opportunity for employment without discrimination as to race, sex, marital status, color, region, sexual orientation, source of income, national origin or ancestry.
16. Compliance with Laws. The Borrower shall comply with all applicable federal, State and local laws. Borrower hereby warrants such legal compliance and agrees to indemnify the County against any damages and reasonable costs of attorneys' fees incurred by the County as a result of any such noncompliance.
17. Hold Harmless.
 - a. The Borrower hereby agrees to, and shall defend and hold County, its elective and appointive boards, officer, agents and employees, harmless from any 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 Loan 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 of Borrower. 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 or 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.
 - b. The Borrower agrees to provide all costs of any necessary reasonable legal defense and all reasonable attorneys' fees incurred in defending any claim, whether or not actually filed in any court.
18. Amendment. This Loan Agreement may be amended only in writing signed by authorized representatives of the County and the Borrower. By resolution of the County Board of Directors for the El Dorado County Public Housing Authority, the Executive Director of the El Dorado County Public Housing Authority is authorized to act on behalf of the County.

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19. Notice. Any notice required or authorized under this Loan 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 Health and Human Services Agency
3057 Briw Road, Suite A
Placerville, CA 95667
Attn: Ren Scammon, Administrative Services Officer

Borrower: Mercy Housing California 55
3120 Freeboard Drive, Suite 202
West Sacramento, CA 95691

With a copy: c/o Enterprise Community Investment, Inc.
10227 Wincopin Circle
Columbia, MD 21044
Attention: General Counsel

20. Remedies Cumulative/No Waiver. No right, power, or remedy given to the County by the terms of this Loan Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such document, ordinances of the County, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.
21. Contract Administrator. The County Officer or employee with responsibility for administering this Loan Agreement is Daniel Nielson, M.P.A., Executive Director, El Dorado County Public Housing Authority, or his successor.
22. Severability. Should any provision of this Loan 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.
23. Titles and Heading. The titles and headings in this Loan Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Loan Agreement.

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- 24. Governing Law. This Loan Agreement and attached Promissory Note shall be governed by and construed in accordance with the laws of the State of California.
- 25. 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 Loan Agreement or attached Promissory Note.
- 26. 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 Loan Agreement as of the _____ day of _____, 2012.

MERCY HOUSING CALIFORNIA 55,
A CALIFORNIA LIMITED PARTNERSHIP

By: Sunset Lane Apartments, LLC , its general partner

By: Mercy Housing Calwest, member/manager)

Signature

Name and Title

COUNTY OF EL DORADO
PUBLIC HOUSING AUTHORITY

BY: _____
Daniel Nielson, M.P.A.
Executive Director