

**CALIFORNIA HOUSING FINANCE AGENCY**

**LOAN AGREEMENT**

**Housing Enabled by Local Partnerships**

**CalHFA Loan No. HELP- 022607-02**

This Loan Agreement (the "Agreement") is made and entered into on \_\_\_\_\_, 2008, by and between the El Dorado County Public Housing Authority, an independent public agency of the State (the "Borrower"), and the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California (the "Agency").

**RECITALS**

A. The Agency has authorized the making of a loan (the "HELP Loan") to the Borrower for the purpose of assisting the Borrower in operating a local housing program (the "Project") as more particularly described in the Borrower's loan application to the Agency and as further described in **Exhibit A** attached hereto and incorporated herein by this reference; and

B. The Agency and the Borrower intend, by this Agreement, to provide for the funding and repayment of the HELP Loan.

NOW, THEREFORE, in consideration of the mutual promises expressed herein, the parties hereto agree as follows:

1. HELP Loan. The Agency shall lend and the Borrower shall borrow and repay the HELP Loan in accordance with the provisions of this Agreement.

2. Disbursement of Loan. The Agency shall disburse the HELP Loan to the Borrower in accordance with the purposes and provisions described in **Exhibit A** which Exhibit is incorporated herein in its entirety.

3. Repayment of Loan.

(a) For value received, the Borrower agrees to pay to the order of the Agency the principal amount of the HELP Loan, as described in **Exhibit A**, or so much thereof as may be disbursed by the Agency to the Borrower, or for its account, as provided herein. The Borrower also promises to pay to the order of the Agency interest and other charges in the amounts and at or before the times herein provided. Notwithstanding any provision to the contrary in the Borrower's application or other Project information submittals, this Agreement shall be a general obligation of the Borrower and the source of funds utilized for repayment shall not be limited to any particular asset(s) of the Borrower.

(b) The disbursements made pursuant to this Agreement shall accrue simple interest at the percentage rate per annum as specified in **Exhibit A** from the date that they are disbursed to the Borrower or for its account, until repaid.

(c) Any balance owed pursuant to this Agreement, whether principal, interest or otherwise, if not sooner due and payable as provided herein, shall be due and payable at the end of the HELP Loan term as specified in **Exhibit A**.

4. Interest Rate Adjustment. In addition to any other default remedies that the Agency may have as provided herein, the Agency 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 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. Such increased interest rate shall only be charged so long as the Borrower remains in default.

5. Place and Manner of Payment. All amounts due and payable under this Agreement are payable at the principal office of the Agency as set forth herein, or at such other place or places as the Agency may designate to the Borrower in writing from time to time, in any coin or currency of the United States of America which on the respective dates of payment thereof shall be legal tender for the payment of public and private debts and which on the respective dates on which such payments are due shall be immediately available funds.

6. Application of Payments. All payments received by the Agency from the Borrower on account of this Agreement shall be applied first to charges due under this Agreement other than interest and principal (i.e., attorneys fees and enforcement costs, if applicable), then to accrued interest and then to a reduction of the outstanding principal amount.

7. Timely Progress.

(a) The Borrower shall diligently commence and proceed with the implementation of the Project in a timely manner, and shall report such progress to the Agency, as specified in **Exhibit A**.

(b) In the event that the Borrower experiences any delay in the timely commencement of or progress in the implementation of the Project, the Borrower shall immediately notify the Agency of same. Failure of the Borrower to timely commence or proceed with the implementation of the Project shall (i) release the Agency from the obligation to make any further disbursements under this Agreement, and (ii) entitle the Agency to recapture from the Borrower all disbursed funds which have not been timely used, provided that the Agency shall have given the Borrower at least fifteen (15) days written notice of its intent to take such actions(s) and shall have given the Borrower a reasonable opportunity to correct such failure.

8. Default. The Borrower agrees that the unpaid balance of the then principal amount of this Agreement, together with all accrued interest thereon and charges owing, shall, at the option of the Agency, become immediately due and payable, upon:

- a) the failure of the Borrower to make any payment hereunder as and when due,
- b) the Agency's discovery of any misrepresentation of material facts as stated in the Borrower's application or other Project information submittals,
- c) the use of HELP Loan funds for purposes not approved by the Agency,
- d) the Project's lack of compliance with the occupancy and rent requirements as stated in

**Exhibit A,**

e) the failure of the Borrower to perform or observe any other term or provision of this Agreement or

f) the occurrence of any other event (whether termed default, event of default or otherwise) which under the terms of this Agreement shall entitle the Agency to exercise rights or remedies hereunder, provided that the Agency shall give written notice to the Borrower of any of the foregoing events and the Borrower shall have thirty (30) days to cure before any acceleration of the unpaid balance. In the event that the Borrower uses disbursed HELP Loan funds for a purpose which is not authorized or approved under this Agreement, or otherwise by the Agency in writing, the Agency may demand and the Borrower shall immediately repay such funds to the Agency.

9. Right to Inspect. The Borrower shall allow the Agency, on written request, to have reasonable access to and the right to inspect all records that pertain to the Project and this HELP Loan. The Borrower shall also permit the Agency to enter, at reasonable times, upon the Project to inspect the work progress. All records, accounts, documentation and other material relevant to a fiscal audit or examination, as specified by the Agency, shall be retained and made available to the Agency for a period of not less than three (3) years from the date of the termination of this Agreement.

10. Periodic Reports.

(a) Within fifteen (15) business days after the end of each reporting period as described in **Exhibit A**, the Borrower shall submit to the Agency a status report describing the Project's progress and detailing compliance with the requirements of the Agency. The format of the report shall be as provided or approved by the Agency.

(b) The Borrower agrees to establish and maintain fiscal control and accounting procedures which assure that funds loaned to it pursuant to this 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 Agency, of the accuracy of the records and the allowability of expenditures payable with HELP Loan funds. If the allowability of any expenditure cannot be determined, the questionable expenditure may be disallowed by the Agency in its sole discretion. Upon demand by the Agency, the Borrower shall immediately repay the Agency for any disallowed expenditures.

11. Fair Employment Practices. The Borrower shall provide, and require that any contractor or subcontractor engaged in work on the Project shall provide, equal opportunity for employment without discrimination as to race, sex, marital status, color, religion, sexual orientation, source of income, national origin or ancestry.

12. Use of Funds. The Borrower agrees that it shall hold, in trust, any funds received by it pursuant to this Agreement and apply them only for the purpose for which such funds were approved by the Agency. Approved use of funds may include the Borrower's reasonable administrative costs in administering the Project and HELP Loan to the extent, but only to the extent, provided for in **Exhibit A**.

13. Time. Time shall be of the essence in this Agreement.

14. Term of Agreement. The term for this Agreement shall commence upon execution and shall continue until all terms hereof, including but not limited to affordability covenants and requirements, shall have been completed.

15. Communications. All notices, and other communications made pursuant to this Agreement shall be effective upon personal delivery or, if mailed, on the date which is three (3) business days after deposit with the United States Postal Service, postage prepaid, and addressed to the applicable party as follows:

To the Borrower:	At the Borrower's address as described on <b>Exhibit A</b> .
To the Agency:	California Housing Finance Agency Attn: HELP Program
Mail-	PO Box 4034 Sacramento, CA 95812-4034
Delivery-	1121 L Street, 7 <sup>th</sup> Floor Sacramento, CA 95814

16. Successors and Assigns. The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no assignment of the Borrower's rights hereunder shall be made, voluntarily or by operation of law, without the prior written consent of the Agency. The Borrower is the only entity which the Agency intends to benefit by this Agreement.

17. Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

18. Integration. This Agreement, together with the exhibits hereto, incorporating references herein, and enclosures herewith, sets forth all of the promises, agreements and understandings to date among the parties hereto with respect to the Project and HELP Loan, and there are no other promises, agreements or understandings, oral or written, express or implied.

19. 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 Agency against any damages, costs or attorneys fees incurred by the Agency as a result of any such noncompliance.

20. Amendment. This Agreement shall not be amended except by a written agreement signed by the parties hereto.

21. Remedies, Waiver.

(a) If the Borrower fails to comply with the terms of this Agreement, the Agency may, at its election, terminate its obligation to make any further loan disbursements hereunder. No remedy herein contained or conferred upon the Agency is intended to be exclusive of any other remedy or remedies afforded by law, by equity or by the terms hereof to the Agency but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No exercise of any right or remedy by the Agency hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay by the Agency in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any breach hereunder.

No waiver by the Agency of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach thereof or default hereunder.

22. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

23. Attorneys Fees, Costs. In any action to enforce or relating to this Agreement, the prevailing party shall be entitled to recover from the other party, its costs and expenses including attorney fees. The term "costs and expenses" as used herein shall include all costs and expenses actually and reasonably incurred. Such costs and expenses shall be recoverable whether the services were rendered by a salaried employee of the party or by an independent contractor.

24. Representations and Warranties. The persons who are executing this Agreement on behalf of the Borrower and the Borrower represent and warrant to the Agency as follows:

(a) The Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted. The copies of the documents evidencing the organization of the Borrower delivered to the Agency are true and current copies of the originals including any amendments.

(b) The Borrower has the full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been and will continue to be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Borrower and all actions required under the Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered or to be executed and delivered, pursuant to this Agreement, have been and will continue to be duly taken.

(d) This Agreement and all other documents or instruments which have been executed and delivered pursuant to this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**CALIFORNIA HOUSING  
FINANCE AGENCY**

**EL DORADO COUNTY  
PUBLIC HOUSING AUTHORITY**

By: \_\_\_\_\_  
Theresa A. Parker  
Executive Director

By: \_\_\_\_\_  
Doug Nowka  
Executive Director

**EXHIBIT:**

**Exhibit A:** Project Specific Terms and Conditions

## Project Specific Terms and Conditions

Borrower: El Dorado County Public  
Housing Authority  
937 Spring Street  
Placerville, CA 95667

Attn: Executive Director

CalHFA Loan No.: HELP--022607-02

### HELP Loan Terms:

Principal Amount: \$1,500,000  
Interest Rate: 3.5% simple per annum  
Interest to be charged only on funds disbursed  
Term: 10 years from date of this Agreement  
Payment: Deferred for term of HELP Loan

Loan is subject to the following conditions:

1. Authorizing Resolution. Prior to the disbursement of any HELP Loan funds, the Borrower shall issue a resolution that authorizes the signor, on behalf of the Borrower, to execute this Agreement, incur the HELP Loan indebtedness, commit specific resources to implement the Project, and take any other actions necessary to facilitate the Project.
2. Project Purpose. Pursuant to the terms of the application package submitted by the Borrower to the Agency and dated April 20, 2007, which is incorporated herein in its entirety, the Borrower shall use the HELP Loan funds exclusively for a revolving loan fund program that will provide short-term financing for the development of multifamily rental housing projects (the "Project"). The interest rate for a loan made under the Project shall not exceed 3.5% compounded per annum.

For a minimum of 10 years, the Borrower shall ensure that all units in each rental development under this Project are restricted to occupancy such that each unit shall be restricted to and affordable to households earning at or below 60% of the area median income (the "AMI) as defined in California Health and Safety Code Section 50079.5.

The Borrower shall ensure that reasonable support services for the residents of this Project are provided, such as, but not limited to, after-school programs, employment development, computer training, and health screening services.

3. Funds Repaid or Returned. HELP Loan funds which are repaid to the Borrower (by the Borrower's borrower), and are not re-lent within six (6) months of said repayment or which are not utilized within 30 days of their disbursement by the Agency shall be returned to the Agency immediately. With the Agency's consent, in its sole discretion, and upon such conditions as the Agency may impose, and subject to the limitations of paragraphs 5. and 6. below, the funds so returned shall be available for re-distribution to Borrower, upon written application, for Borrower's use in accordance with this Agreement.
4. Interest Accrual on Repaid or Returned Funds. Should the Agency elect to accept a return of funds from the Borrower for re-distribution at a later date, interest shall accrue on the sums being returned for the period said funds were held by Borrower, but interest shall cease to accrue on said sums until the funds are re-distributed to Borrower. Notwithstanding any other provision of this Agreement, any accrued interest shall not be due until the end of the HELP Loan period.
5. Timely Use of Funds (1 Year and 6 Months Requirement). If the Borrower does not draw any funds within 1 year and 6 months from the date of this Agreement, then the Agency shall have the option, in its sole discretion, to cancel the Borrower's right to receive future draws from the undisbursed HELP Loan funds.
6. Timely Use of Funds (4 Year Requirement). The Borrower shall draw and utilize its entire allocation of HELP Loan funds within 4 years from the date of this Agreement. Any disbursed HELP Loan funds which are not utilized within this period, at the Agency's option, in its sole discretion, shall be immediately repaid and the Borrower's right to receive future draws from the undisbursed HELP Loan funds shall terminate.
7. Draw Procedure. The Borrower shall request draws from the undisbursed HELP Loan proceeds by submitting a certification to the Agency which represents that the Borrower intends to use the funds within 30 days of the draw. The Borrower shall provide the following information in its certification:
  - 1) the HELP Loan Agreement number;
  - 2) the property location where the funds will be used;
  - 3) the specific dollar amount of the draw requested;
  - 4) the specific proposed use of the draw;
  - 5) the date (allow for a minimum of 10 working days) on which the Agency is requested to disburse the draw either by wired funds (provide wiring instructions) or check; and
  - 6) the name and title of the individual making the draw request. If the requestor is someone other than the individual identified in the resolution required by paragraph 1. of this Exhibit A, the certification must be



accompanied by a delegation letter or other evidence of authority to execute the certification.

8. Semi-annual Report. The Borrower shall provide a semi-annual report of the status of the Project, in accordance with the requirements of the Agency, commencing on the date which is 6 months from the date of this Agreement and continuing thereafter at 6-month intervals.