

COUNTY OF EL DORADO
COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC IMPROVEMENTS IN SUPPORT OF AFFORDABLE
HOUSING NEW CONSTRUCTION PROGRAM
FORGIVABLE LOAN AGREEMENT

(SUNSET LANE APARTMENTS)

THIS LOAN AGREEMENT (“Agreement”) is made as of the ____ day of _____, 2012, by and between the County of El Dorado, a political subdivision of the State of California (“County”) and Mercy Housing California 55, a California Limited Partnership (“Borrower”).

RECITALS

- A. Borrower is a California Limited Partnership whose general partner, Sunset Lane Apartments LLC, sole member of 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 June 15, 2010, the El Dorado County Board of Supervisors authorized submittal of a Community Development Block Grant (CDBG) General Allocation Application to the California Department of Housing and Community Development (HCD). Included in the application was a request for funding to provide infrastructure in support of the Sunset Lane Apartments. The project was selected for up to Four Hundred Eighty Three Thousand Dollars (\$483,000) in PIHNC funding.
- D. The Borrower is the owner of, or holder of a fee or leasehold estate in, the real property located at Sunset Lane and Becken Lane, Shingle Springs, California, (Assessor’s Parcel Numbers 090-430-21-100 and 090-430-22-100), County of El Dorado (the "Real Property"), more fully described in Exhibit A attached hereto and made a part hereof, 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 financing to the Development. Rents will be affordable to households with incomes of no more than sixty percent (60%) of the area median income.
- E. The Borrower has applied to the County for a loan (“Loan”) to assist the Borrower in the completion of required off-site infrastructure improvements in support of the Project and the Borrower and County acknowledge and agree that the commitment of Loan funds by the County shall be solely and exclusively from and contingent upon receipt of grant funds by the County pursuant to that certain Standard Agreement Number

10-STBG-6711, dated March 15, 2011, between the County and the State of California, by and through HCD (“Standard Agreement”) (Exhibit B).

F. The Loan will be provided by the County in accordance with federal and State regulations governing the CDBG Program as set forth in 24 CFR 570, Subpart I, of the federal regulations governing the CDBG Program. The Loan and this Agreement are intended to fully comply with CDBG Program requirements. To the extent this Agreement is inconsistent with CDBG Program requirements, the CDBG Program requirements will govern.

G. Pursuant to this Agreement, the County shall loan Four Hundred Eighty Three Thousand Dollars (\$483,000) in CDBG Program funds (“Funds”) to the Borrower, which is the minimum amount required for the Project’s feasibility.

H. As a condition of the Loan, the Borrower will execute a regulatory agreement (“Regulatory Agreement”) to be recorded against the Project. The Regulatory Agreement will regulate thirty-nine (39) residential units of the Project to ensure that the units are occupied by and affordable to low and very low-income persons for the term of this Agreement.

I. The Loan will be evidenced by a Promissory Note and secured by a Deed of Trust With Assignment of Rents and Security Agreement on the Real Property of even date herewith.

ARTICLE 1 LOAN TERMS

1.1 Loan Agreement. The County agrees to loan and the Borrower agrees to borrow an amount not to exceed Four Hundred Eighty Three Thousand Dollars (\$483,000) in CDBG Program funds, subject to the conditions and terms of this Agreement. The Loan shall be evidenced by an interest-free Promissory Note (“Note”) with a term of fifty-five (55) years following the date of termination of June 30, 2013 of the Standard Agreement (Exhibit B), and executed by Borrower and secured by a Deed of Trust With Assignment of Rents and Security Agreement (“Deed of Trust”) a that will be recorded against the Project prior to any disbursements hereunder.

1.2 Term of Agreement and Expenditure Milestones. The term of this Agreement shall commence upon the date first set forth above and remain in full force and effect and shall apply to the Project through June 30, 2068, the date which is fifty-five (55) years following the date of termination of June 30, 2013 of the Standard Agreement (Exhibit B), unless terminated earlier pursuant to the terms of this Agreement.

The Borrower agrees to meet project expenditure milestones set as follows:

25% by	06/30/2012
50% by	12/31/2012

75% by 03/31/2013
100% by 06/30/2013

All requests for funds must be submitted to County within fifteen (15) days after the termination date of the Standard Agreement (Exhibit B).

1.3 Borrower's Power to Have the Loan Forgiven. Borrower shall have the power to have the Loan forgiven in whole or in part upon completion of the required off-site infrastructure improvements in support of the Project and compliance with the Regulatory Agreement which shall regulate thirty-nine (39) residential units of the Project to ensure that the units are occupied by and affordable to persons of low and very low-income for the term of this Agreement. This term shall be known as the "affordability period" as set forth in 24 CFR 570.505 of the CDBG regulations.

1.4 Compliance with Program Requirements. The Borrower agrees that at all times its acts regarding the Project and the use of funds provided herein shall be in conformity with all provisions of the CDBG Program including the statutes, rules and regulations and such policies and procedures of HCD pertaining to the CDBG Program. The Borrower acknowledges that it is familiar with such applicable provisions and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to fully comply with such provisions. The Borrower and County further acknowledge that this Agreement is intended to capture all provisions of the Standard Agreement (Exhibit B) and should any conflicts exist between this Agreement and the Standard Agreement, the provisions of the Standard Agreement shall govern.

1.5 Use of Funds.

(a) The Borrower shall use the Funds for the reimbursement of eligible public improvement-related costs under the State CDBG Program Regulations. Cost for public improvements shall only be for work approved by the County at the time of project set-up under the CDBG Program or as later approved in writing by the County if a modification of the scope of work is necessary. Any expenditure that is not authorized by this Agreement or is found to be ineligible under the CDBG Program Regulations, as determined by the State CDBG Program, shall be disallowed, and funds must be returned to the County within thirty (30) days of discovery by the County or the Borrower unless the State CDBG Program approves in writing an alternative plan for the County to address the concern.

(b) The Borrower agrees that it will not use the Funds pursuant to this Agreement, either directly or indirectly, as a contribution in order to obtain any other federal funds under any other federal program without prior written approval of the County.

1.6 Scope of Work. The Borrower agrees to complete the required off-site infrastructure improvements in support of the Project in accordance with the scope of

work approved by the County and attached hereto as Exhibit C and pursuant to the Standard Agreement (Exhibit B).

1.7 Regulatory Agreement. The Borrower shall execute a Regulatory Agreement that shall regulate thirty-nine (39) units of the Project to ensure that the units are occupied by and affordable to persons of low and very low-income for the term of this Agreement.

1.8 Disbursement of Funds.

(a) During the term of this Agreement, the County shall disburse Funds to reimburse the Borrower for public improvement costs of the Project (“Disbursements”). The Borrower shall submit to the County an invoice with back-up documentation of the expenditures that verifies the cost has been incurred by the Borrower. All requests for final reimbursement must be submitted within fifteen (15) days after the termination date of June 30, 2013 of the Standard Agreement (Exhibit B). County shall make Disbursements of Funds to the Borrower only to the extent that: (a) Funds are available from the CDBG Program; and, (b) the uses of the Funds are eligible in accordance with the CDBG Program Regulations. If for any reason the Funds are not available from the CDBG Program, or any of the Borrower’s uses of Funds are deemed ineligible uses under the CDBG Program Regulations, then the County shall not have an obligation to make Disbursements of Funds requested by the Borrower. The aggregate of the Disbursements of the Funds provided to the Borrower under this Agreement shall not exceed the amount of the Loan.

1.9 Subordination. The County agrees to subordinate the Deed of Trust and the Regulatory Agreement to the loans from the primary construction lender (Citibank), the El Dorado County Public Housing Authority for the California Housing Finance Agency (CalHFA) HELP loan, the State of California HOME Investment Partnerships (HOME) funding administered through the County and the Mental Health Services Act (MHSA) funding from the County administered through CalHFA. Any other request for subordination must be approved in writing in advance by the County. Such approval shall not be unreasonably withheld.

ARTICLE 2 GENERAL REQUIREMENTS

2.1 Rental Agreement.

(a) Leases of CDBG-assisted units must comply with 24 CFR 570.505, the CDBG regulations, and the Standard Agreement (Exhibit B). The Real Property must be used to meet the low-income benefit as specified in the Standard Agreement (Exhibit B) for the term of this Agreement. The Borrower shall prepare a lease or rent limitation agreement with the tenants of such Real Property to assure the continuing benefit.

2.2 Property Management. The Borrower must maintain the Project in compliance with all applicable housing quality standards and local code requirements for the duration of this Agreement.

2.3 Hazard and Liability Insurance. The Borrower shall at all times cause the Project to be insured against loss by fire, and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the State and the County. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the County. Property insurance policies shall name the County as an additional insured, as approved by the County.

The Borrower agrees to furnish satisfactory evidence of the required insurance coverage to the County and, upon request, to the State. Insurance coverage will not be canceled or changed unless written notice is sent to the County five (5) days prior to the effective date of action. The County reserves the right to waive or modify these insurance coverage requirements upon demonstration of cause satisfactory to the County, and the State providing evidence of an alternative to conventional insurance sufficient to provide equivalent protection. Nothing in this paragraph shall be deemed to modify or supersede the requirement of other provisions dealing with insurance in this Agreement or the Standard Agreement.

2.6 Hold Harmless. The Borrower and its successors in interest agree to indemnify, defend, and hold harmless the County and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorneys' fees) arising from or in connection with the Borrower's management, maintenance or operation of the Project; provided however, the Borrower's obligations to indemnify and hold harmless shall not apply in the event of the County's gross negligence or willful misconduct.

2.7 Records and Reporting. The Borrower shall file with the County an annual report, as required by 24 CFR 570.505, no later than 120 days following the end of each of Borrower's fiscal years. The report shall contain a certification by the Borrower as to such information as the County may then require, including, but not limited to, the following:

- (a) The occupancy of the Project with respect to the 39 CDBG-assisted units:
 - (1) the verified income of each current household; and
 - (2) the current rent charged each household and whether these rents include utilities.

- (b) A summary of the information received from the recertification of tenants' incomes.

(c) Other information reasonably required by the County, State, HCD or HUD. The Borrower shall ensure that the Project, Project financial program administration, and federal requirements records are maintained as specified in the Standard Agreement (Exhibit B).

Commencing with the effective date of the Agreement and continuing through the satisfactory completion of grant closeout requirements, the Borrower shall provide, on forms approved by County, such information as requested by the Administrative Subcontractor and/or County to satisfy project-related reporting requirements specified in the CDBG Standard Agreement (Exhibit B). Such reports may include, but are not limited to monthly project status reports, quarterly performance reports, project completion report, semi-annual reports, annual reports and grant closeout reports.

2.8 County Review and Inspections.

(a) Upon not less than 48 hours notice to the Borrower, the County, HCD and/or HUD may at any time during the term of this Agreement enter and inspect the physical premises and inspect all accounting records pertaining to the development or operation of the Project. Upon request by the County, HCD or HUD, the Borrower shall notify occupants of upcoming inspections of their units in accordance with State law. These inspections may occur annually.

(b) The County may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.

(c) The Borrower shall ensure that the work has been performed in accordance with the applicable federal, State and/or local requirements, the construction contract, and the Agreement. The Borrower agrees to require that all work found by inspections not to conform to the applicable requirements be corrected, and to withhold payment to the construction contractor or subcontractor until it is so corrected.

(d) The Borrower shall ensure that the State has the right to inspect the Real Property at any time during the period of construction and throughout the period of affordability.

2.9 Restrictions on Sale, Encumbrance, and other Acts.

(a) The Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or any of its interest therein without the prior written approval of the County.

(b) The Borrower shall not permit the use of the Project for any purpose other than that permitted by this Agreement without the prior written approval of the County.

(c) The County may approve a sale, transfer or conveyance provided that all of the following conditions are met:

(1) the existing Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Agreement;

(2) the successor-in-interest to the Borrower agrees to assume all obligations of the existing Borrower pursuant to this Agreement and the CDBG Program;

(3) the successor-in-interest demonstrates to the County's satisfaction that it can own and operate the Project in full compliance with all CDBG Program requirements; and

(4) any terms of the sale, transfer or conveyance shall not threaten the County's security or the successor's ability to comply with all CDBG Program requirements.

(d) The County may grant any approval for a sale, transfer or conveyance subject only to such terms and conditions as may be necessary to ensure compliance with CDBG Program requirements.

2.10 Assignment of County Rights. The County retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the County may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

ARTICLE 3 DEFAULTS AND REMEDIES

3.1 Event of Default. Any of the following items shall be considered an Event of Default under this Agreement and/or Promissory Note of even date herewith:

- a. Borrower uses these funds for purposes not approved by the County; or
- b. Borrower's 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
- c. 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
- d. 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); or

- e. 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); or
- f. Borrower ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement and/or attached Promissory Note; or
- g. Borrower transfers a majority ownership interest in or control of the business to a third party; or
- h. Any material misrepresentation with respect to the Borrower's warranties and representations under this Agreement or the Loan Application; or
- i. Borrower fails to maintain and pay insurance, taxes and/or assessments when due; or
- j. The occurrence of any other event (whether termed default, event of default or otherwise) which under the terms of this 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 before any acceleration of the unpaid balance. No notice of default shall be required if the County has previously notified the Borrower of the same breach on a prior occasion. In the event that the Borrower uses disbursed Loan funds for a purpose which is not authorized or approved under this Agreement, or otherwise by the County in writing, the County may demand and the Borrower shall immediately repay such funds to the County.

3.2 County's Remedies. Should Borrower fail to satisfy or adhere to the terms of this Agreement or the attached Promissory Note, 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 Agreement and attached Promissory Note;
- c. County, under the Deed of Trust, may proceed by a suite or suites in equity or at law, whether for a foreclosure hereunder of (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 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 five percent (5%) of the principal disbursed, in addition to recovery of the benefit received;
- f. Any other means authorized under law.

3.3 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 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.

ARTICLE 4 CDBG PROGRAM REQUIREMENTS

4.1 CDBG Laws & Regulations. The Loan will be provided by the County in accordance with federal and State regulations governing the CDBG Program as set forth in 42 U.S.C. 5301 et seq., 24 CFR 570, Subpart I, and 25 CCR, 7050 et seq. all as amended from time to time and in effect, including (but not limited to) the requirements set forth in the CDBG Standard Agreement (Exhibit B). In the event of any conflict between this Agreement and applicable State and federal laws and regulations governing the CDBG Program and the use of the Loan proceeds, the applicable CDBG Program laws and regulations shall govern. The Borrower agrees to enter into any modification of this Agreement and/or the Regulatory Agreement reasonably required by the County to attain compliance with the requirements of the CDBG Program. The Borrower acknowledges and agrees that it has reviewed a copy of the regulations regarding the CDBG Program in effect as of the date of execution of this Agreement.

4.2 Specific Requirements. The laws and regulations governing the CDBG Program and the use of the CDBG Loan include (but are not limited to) the following:

(a) Uniform Administrative Requirements. The Borrower shall comply with the Federal Uniform Administrative Requirements set forth in 24 CFR 570.502, including cited Sections of 24 CFR 85.

(b) Section 504 Accessibility Requirements. Section 504 Regulations apply when Funds are used on a new construction housing or public facility project or when an existing public facility or housing project with fifteen (15) or more units is being purchased and/or “substantially” rehabilitated. Qualified CDBG assisted housing projects are required to have a certain percentage of the units designed for and accessible to persons with mobility and sensory impairments.

For a federally assisted new construction housing project, Section 504 requires five percent (5%) of the dwelling units, or at least one unit, whichever is greater, to meet Uniform Federal Accessibility Standards or a standard that is equivalent or stricter, for

persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities.

The Borrower shall provide documentation satisfactory to the State verifying that the required housing units or public facility described in the project comply with the accessibility standards. Funds will not be released until the necessary documentation is provided. All CDBG funded programs must, to the greatest degree possible, be conducted in buildings which meet Section 504 accessibility standards.

(c) Prohibition Against Discrimination of Persons with Disabilities.

Borrower assures the County that it and any contractors and subcontractors will comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), and federal regulations issued pursuant thereto (24 CFR 8), which prohibit discrimination against the disabled in any federally-assisted program.

(d) Americans with Disabilities Act of 1990.

Borrower assures the County that it and any contractors and subcontractors will comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

(e) Civil Rights, State and Age Discrimination Acts.

During the performance of this Agreement, the Borrower assures that it and any contractors and subcontractors will not exclude any otherwise qualified person from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, familial status, religion, or belief, under any program or activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. §§3601 et seq.) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations.

(f) Training Opportunities.

The requirements of Section 3 (12 U.S.C. 1701u) of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 et seq., requiring that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The Borrower agrees to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 (12 U.S.C. 1701u) of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 et seq. Section 3 requires that to the greatest extent feasible opportunities for training and

employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project."

Borrower assures County that it and any contractors and subcontractors will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135 et seq., and all applicable rules and orders of the State issued thereunder.

Borrower assures County that it and any contractors and subcontractors will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contracts or understanding, if any, a notice informing the said labor organization or worker's representative of the Borrower's and any contractor's and subcontractor's commitments under the Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

Borrower will include these Section 3 clauses in every contract and subcontract for work in connection with the project and will, at the direction of the State, take appropriate action pursuant to the contract upon a finding that the County or any contractor or subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR 135, and will not let any contract unless the County or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirement of these regulations.

(g) Compliance for Construction Contracts \$10,000 or More. The Borrower will assure compliance with CDBG requirements placed on construction contracts of \$10,000 or more. All solicitations for bids and all construction contracts and subcontracts of \$10,000 or more issued by the Borrower are required to have the following:

- Notice of requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246). The Borrower furthermore agrees to insert the appropriate Goals and Timetables issued by the US Department of Labor in such contracts and subcontracts as required by Executive Order 11246.
- The Standard Equal Opportunity Clause; and
- The Standard Equal Employment Opportunity Construction Contract Specifications.

(h) Environmental Requirements. The Borrower and any contractors and subcontractors shall comply with the provisions of the National Environmental Policy Act (NEPA) by following the procedure contained in 24 CFR Part 58.

(i) Displacement, Relocation, and Acquisition. The Borrower shall comply with the federal displacement, relocation, and real property acquisition rules

governing the CDBG Program, as contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655, 49 CFR Part 24, and applicable program regulations in 24 CFR 92.353), and similar State laws. If and to the extent that acquisition and rehabilitation of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, the Borrower shall comply with all applicable local, State and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. The Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

(j) Labor Standards – Federal Labor Standards Provisions. The Borrower and any contractors and subcontractors shall comply with the following Federal Labor Standards Provisions:

- “Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2000.
- ‘Anti-Kickback Act of 1986’ (41 U.S.C. 51-58) prohibits any person from (1) providing, attempting to provide, or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.
- Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3702) requires that workers receive “overtime” compensation at a rate of one to one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.”

(k) Lead-Based Paint. Activities performed with assistance provided under the Standard Agreement (Exhibit B) are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and 24 CFR Part 35 (Lead Disclosure).

(l) Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials. Pursuant to 24 CFR 570.611, no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBGT-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter.

(m) Conflict of Interest of Certain Federal Officials. No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

(n) Contractors and Subcontractors State Requirements. The Borrower shall not enter into any agreement, written or oral, with any construction contractor without the prior determination by the Borrower of the construction contractor's eligibility. A construction contractor or subcontractor is not eligible to receive CDBG funds if not licensed and in good standing in California, or is listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

An agreement between the Borrower and any contractor shall require the contractor and its subcontractors, if any, to:

- Perform the grant activities in accordance with federal, State and local housing and building codes as are applicable;
- Comply with the applicable State and federal Labor Standards described Exhibits D and E to the Standard Agreement (Exhibit B) which pertain to, among other things, labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace;
- Maintain at least the minimum State-required Worker's Compensation Insurance for those employees who will perform the grant activities or any part of it; and
- Maintain, if so required by law, unemployment insurance, disability insurance and liability insurance which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the contractor or any subcontractor in performing the grant activities or any part of it; and
- Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of five (5) years from date of termination of this Agreement, or five (5) years from the conclusion or resolution of any and all audits or litigation

relevant to this Agreement, and any amendments, whichever is later; and

- Permit the State, Federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

(o) Compliance with State and Federal Laws and Regulations. The Borrower assures that it and any contractors and subcontractors will comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Borrower or its contractors and subcontractors, and the grant activity, and any other State and federal provisions as set forth in Exhibits D and E to the Standard Agreement (Exhibit B).

(p) Prevailing Wages. Where funds provided in the Agreement are used for construction work, or in support of construction work, the Borrower shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

For the purposes of this requirement “construction work” includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the “construction contract”). Where the construction contract will be between the Borrower and a licensed building contractor, the Borrower shall serve as the “awarding body” as that term is defined in the Labor Code. Where the Borrower will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the “awarding body.” Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

(q) Clean Air and Water Acts. This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

(r) Bonus or Commission, Prohibition Against Payments of. The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- Obtaining the Department's approval of the application for such assistance; or
- The Department's approval of the applications for additional assistance; or
- Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

(s) Flood Disaster Protection.

- This Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said Act.
- The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.
- Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

(t) Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances. During the performance of this agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any grant activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

(u) Rehabilitation Act of 1973 and the "504 Coordinator." The Borrower further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR Part 8, including, but not limited to, for Grantees with fifteen (15) or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

(v) The Borrower shall comply with the procurement provisions in 24 CFR 85.36, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

4.3 Limitation in Use of Funds. The Borrower agrees that it will not use funds loaned pursuant to this Agreement, either directly or indirectly, as a contribution in order to obtain any federal funds under any federal programs without prior written approval of the County.

4.4 Certification Regarding Lobbying. The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No federally-appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally-appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard

Form-LLL. "Disclosure Form to Report Lobbying" in accordance with its instructions.

Borrower further certifies that it will require all of its contractors and their subcontractors to certify and disclose lobbying activity in accordance with the above certification and any other CDBG Program requirements.

ARTICLE 5
MISCELLANEOUS PROVISIONS

5.1 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 Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project either for themselves or for those with whom they have family or business ties, during their tenure or one year thereafter.

5.2 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.

5.3 Amendment. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

5.4 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
3057 Briw Road, Suite A
Placerville, CA 95667
Attn: Health and Human Services Agency/HCED

Borrower: Mercy Housing California 55
a California Limited Partnership
3120 Freeboard Drive
West Sacramento, CA 95691
Attn.: General Partner

with a copy to: Enterprise Community Investment, Inc.

10227 Wincopin Circle
Columbia, MD 21044
Attn: General Counsel

5.5 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.

5.6 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.

5.7 Titles and Headings. 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.

5.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.9 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.

5.10 Signs. If during the construction period, the Borrower places signs on the Real Property stating the CDBG Program is providing financing, the signs shall indicate in a typeface and size commensurate with its funds that HCD and the County are a source of financing through the CDBG Program.

IN WITNESS WHEREOF, the County and the Borrower have executed this Agreement as of the date first set forth above.

COUNTY

County of El Dorado

By:

Daniel Nielson, M.P.A.
Director, Health and Human
Services Agency

BORROWER

MERCY HOUSING CALIFORNIA 55,
A CALIFORNIA LIMITED PARTNERSHIP

By: Sunset Lane Apartments, LLC ,
its general partner

By: Mercy Housing Calwest,
member/manager)

By: _____
Its: _____

By: _____
Its: _____

DRAFT

EXHIBIT A
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,
COUNTY OF EL DORADO, UNINCORPORATED AREA, AND IS DESCRIBED AS
FOLLOWS:

A PORTION OF SECTION 1, TOWNSHIP 9 NORTH, RANGE 9 EAST,
M.D.B.&M. DESCRIBED AS FOLLOWS:

PARCELS A AND B, AS SHOWN ON THAT CERTAIN PARCEL MAP
FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF EL
DORADO, STATE OF CALIFORNIA ON SEPTEMBER 12, 1979 IN BOOK 25
OF PARCEL MAPS AT PAGE 32.

Assessor's Parcel No.: 090-430-21-100

Assessor's Parcel No.: 090-430-22-100

DRAFT

EXHIBIT B
CDBG STANDARD AGREEMENT

Attached on the subsequent pages.

DRAFT

EXHIBIT C
SCOPE OF WORK

Sunset Lane Apartments Project
Public Improvements Work to be Performed Utilizing
CDBG PIHNC Grant Funds

Activities to be performed utilizing CDBG grant funds may include but are not limited to the following. The Public Improvement work to be performed is as generally described below. Additional tasks may be necessitated in order to meet site requirements and must be approved by the County in writing.

Road Improvements – Sunset Lane

The Borrower shall provide a 60-foot total Right-of-Way (30-foot half width) along Sunset Lane frontage. The applicant shall construct a 28-foot wide paved roadway and Type 2 vertical curb and gutter with a 6-foot wide sidewalk along the Sunset Lane frontage consistent with Design Standard Plan 101B. The improvements shall be completed to the satisfaction of the Department of Transportation and the El Dorado County Transit Authority prior to issuance of a building permit.

Road Improvements – Becken Lane

The Borrower shall provide a 50-foot total Right-of-Way (25-foot half width) along Becken Lane frontage. The applicant shall construct a 28-foot wide paved roadway with Type 2 vertical curb and gutter and a 6-foot sidewalk in accordance with Design Standard Plan 101B. The improvements shall be completed to the satisfaction of the Department of Transportation and the El Dorado County Transit Authority prior to issuance of a building permit.

Bus Turnout

The Borrower shall construct a bus turnout along Sunset Lane in accordance with El Dorado County Transit Authority's standards. Exact location of turnout to be determined by Transit Authority. The improvements shall be completed to the satisfaction of the Department of Transportation and the El Dorado County Transit Authority prior to issuance of a building permit.

Encroachment Permit

The applicant must obtain an encroachment permit from DOT and construct the Becken Lane roadway encroachment onto Sunset Lane consistent with the provisions of county Design Std Plan 103G prior to issuance of a building permit. The improvements shall be completed to the satisfaction of the El Dorado County Department of Transportation.