

COMMUNITY DEVELOPMENT LOAN AGREEMENT

THIS AGREEMENT, made and entered into this first day of July, 2019, by and between the County of Buncombe (hereinafter referred to as the "County"), a body politic and corporate under the laws of the State of North Carolina, and Mountain Housing Opportunities, Inc., a North Carolina non-profit corporation organized under the laws of the State of North Carolina, (hereinafter referred to as "MHO") and East Haven Apartments, LLC, a North Carolina limited liability corporation organized under the laws of the State of North Carolina, (hereinafter referred to as "East Haven").

WITNESSETH:

WHEREAS, affordable housing is a strategic priority for the County and the County invests in suitable projects; and

WHEREAS, East Haven is the owner of certain property as set forth in Deed Book 5702, Page 768 Buncombe County Registry (herein "Property"); and

WHEREAS, MHO is in the process of developing the aforementioned property as described in Attachment A (herein "East Haven Project") and has applied to the Buncombe County Board of Commissioners for funding; and

WHEREAS, on February 5, 2019, the Board of Commissioners approved MHO's proposal for an interest free loan totaling \$2,200,000 to MHO to support the development of affordable housing within the County; and

WHEREAS, pursuant to the request, MHO shall use the funds for the construction of affordable housing units in the East Haven Project subject to the terms of this Agreement.

NOW, THEREFORE, for valuable consideration and mutual promises set forth herein between the parties hereto, it is agreed as follows:

1. Terms and Conditions

- (a) Uses of funds pursuant to this Agreement are limited for the construction of affordable housing units in the East Haven Project up to a maximum amount of Two Million Two Hundred Thousand dollars (\$2,200,000.00). MHO shall receive a loan in the amount of \$2,200,000.
- (b) MHO shall allow the County to carry out monitoring and evaluation activities as determined necessary by the County.

- (c) The terms of this loan is as follows:
1. principal amount of \$2,200,000;
 2. Interest Rate of 0%;
 3. the term of the loan shall be 20 years;
 4. zero draw at closing; and
 5. Repayment of the loan as follows:
 - a. Years 1-10, MHO shall make an annual payment by June 30 of each year in the amount of \$10,000. The first payment is due by June 30, 2020.
 - b. In years 11-15, the annual payment shall be \$7,500 payable by June 30 of each year.
 - c. In years 16-20, the annual payment shall be \$5,000 payable by June 30 of each year.
 - d. A balloon payment of \$2,037,500 at the end of the 20 year term but no later than June 30, 2039.

(d) The County will disperse the loan based on the following schedule:

1. \$500,000 at the start of construction but no sooner than July 1, 2019.
2. \$425,000 when the project is 50% completed
3. \$425,000 when the project is 100% completed but no sooner than July 1, 2020.
4. \$850,000 when MHO has the permanent loan closing after construction is completed but no sooner than July 1, 2021.

In order for MHO to draw the funds, the project architect must certify the percentage of completion along with concurrence from the Director of Permits and Inspections Department and Planning Director.

- (e) The loan can be prepaid at any time without penalty.
- (f) As a condition of the loan MHO, East Haven, any corporation, limited liability company or partnership to which each entity owns an interest in or is a member of agrees that no entity shall ever apply for any property tax exemption with Buncombe County or the State of North Carolina regarding property associated with the East Haven Project. In the event that MHO, East Haven or associated entity applies for any property tax exemption for the property associated with the East Haven Project, the filing of said application shall be considered a breach of this Agreement, Deed of Trust and the corresponding Note thereby giving the County the right to foreclose on the Property.
- (g) East Haven and MHO shall sign a Note in the original amount of \$2,200,000.00 as a future advance loan, East Haven shall execute a deed of trust using the Property

as security, and the County lien priority on the Property shall never be lower than fourth position.

- (h) MHO and East Haven shall comply at all terms regarding the scope of the project as set forth in Attachment A of this Agreement
- (i) MHO and East Haven shall comply with all federal, state and local laws relating to the East Haven Project.
- (j) MHO shall convene a regular OAC meeting (Owner, Architect & Contractor) for the purpose of project updates and communication. The County's Director of Permits and Inspections and Planning Director and/or their designees shall be invited to attend.
- (k) MHO and East Haven shall insure that the apartment unit rents shall not exceed the income targeting percentage of the Average Median Income (herein "AMI") as set forth in Attachment A for a period of fifty (50) years starting from the date of completion of construction of the East Haven Apartments (herein "Affordability Term").
- (l) This liquidated damages clause is intended to cover losses suffered by the County if MHO and/or East Haven fail to maintain the affordability of the apartments as set forth in Attachment A of this Agreement during the Affordability Term. Furthermore, it is difficult for both parties to assess the damage when an apartment fails to meet the affordability guidelines. Both parties agree that the damages set forth below are reasonable.
 - (1) If any unit's rent exceeds the income targeting percentage of the AMI as set forth in Attachment A during the Affordability Term, MHO and East Haven shall be liable to the County for \$1,000, adjusted each year for inflation, for each unit that is out of compliance as of March 1 of each calendar year. For purposes of this Agreement, to determine AMI both Parties shall use the HUD guidelines as the guidelines apply to Buncombe County.

2. **Records and Reports**

- (a) MHO shall maintain and shall make available at reasonable times and places to the County such records and accounts, including property, personnel, and financial records, as are deemed necessary to assure a proper accounting for all project funds.
- (b) MHO shall provide any authorized representative of the County, at all reasonable times, access to and the right to inspect, copy, monitor and examine all of the

books, papers, records, and other documents relating to the affordable housing funds and the fulfillment of this Agreement for a period of three years following the completion of all close-out procedures respecting the affordable housing funds, and the final settlement and conclusion of all issues arising out of the affordable housing funds loan.

- (c) MHO shall complete and submit an Annual Performance Report to the County due at the time of the payment, which notes accomplishments, beneficiaries, problems encountered, changes in work schedules, unit mix and income targets, and any other information as required.
- (d) MHO shall provide an Annual Audit Report performed in compliance with applicable County Budget circular requirements.
- (e) MHO shall establish and maintain fiscal and accounting procedures in accordance with generally accepted accounting principles and practices.
- (f) MHO shall not commingle accounts to an extent that prevents the accounting and auditing of the funds hereunder; provided however, MHO may supplement the funds provided hereunder from other funding sources.
- (g) Funds provided hereunder are exclusively for the purposes of this Agreement under the terms and conditions of this Agreement and MHO shall not temporarily or permanently shift such funds to other programs or for other purposes for any reason.
- (h) In addition to the above, MHO will provide certification regarding the expenditure of leveraged funds as described herein.
- (i) MHO agrees to provide appropriate support documentation for all expenditures for the housing activities.
- (j) Any and all alterations in the approved use of budgeted funds shall be subject to prior review and approval by the County.

3. **Insurance and Liability**

- (a) MHO's chief financial officer or insurer shall provide the County with a Statement assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount consistent with sound fiscal practice.
- (b) Work to be performed as provided herein shall be done by MHO or its agent or

assign as an Independent Contractor. The County shall not be liable for claims for damages or losses arising out of the performance of this Agreement by MHO, its employees, officers or agents, and MHO shall indemnify and hold harmless the County, its officers, agents and employees from all such claims arising under this Agreement.

4. **Publicity.**

- (a) MHO shall make every effort in its publicity and in other ways to fully inform the public concerning the project. When publicity is given to the project, Buncombe County should be recognized as a contributing entity.

5. **Interests of MHO**

- (a) MHO covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement. MHO further covenants that in the performance of this Agreement, no person having such interest shall knowingly be employed by MHO.
- (b) None of the following or their immediate family members, during the tenure of the subject person or for one year thereafter, shall have any direct or indirect financial interest in any contract, subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this Agreement: employees, agents, or officials of MHO, including members of its Board of Directors, who exercise any function or responsibility with respect to the program. The same prohibition shall be incorporated in all such contracts and subcontracts.
- (c) The assistance provided under this Agreement shall not be used by MHO to pay a third party to lobby the State of North Carolina for funding approval, approval of applications for additional assistance, or any other approval or concurrence of the Department required under this Agreement.

6. **Suspension or Termination**

- (a) The County, upon written notice to MHO, may suspend or terminate payment of any project funds to MHO in whole or in part for cause that shall include, but not be limited to, the following:
 - (1) Ineffective or improper use of loan funds;
 - (2) Failure to comply with the terms and conditions of this Agreement; or
 - (3) Submission of reports, which are incorrect or incomplete in any material respect.

- (b) The County, upon written notice to MHO, may also withhold payment of any unearned portion of the loan if MHO is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by state or federal regulations.
- (c) If the County withholds payment, it shall advise MHO in writing what action must be taken as a condition precedent to the resumption of payments.
- (d) This Agreement shall be considered breached if MHO materially fails to comply with any term in this Agreement, and shall result in the termination of this Agreement with written notice to MHO of such termination thirty (30) days before such effective date. During the thirty-day notification period, MHO shall have the opportunity to remedy any failures or violations to avoid termination of the Agreement.
- (e) Upon termination, MHO shall remit any unexpended balance of advanced payments on account of the loan as well as such other portions of such payments previously received as determined by the County to be due, and the action of the County in accepting any such amount shall not constitute a waiver of any claim which the County may otherwise have.

7. **Assignability**

- (a) MHO shall not assign any interest in this Agreement, and shall not transfer any interest in the same whether by assignment or substitution, without the prior written consent of the County, or unless specifically contained in the Scope of Services attached hereto. Any work or services subcontracted hereunder shall be specified by written contract or agreement.

8. **Documents of Incorporation.**

- (a) This Agreement is expressly made subject to all attachments hereto and to all of the attachments, provisions, requirements, federal, state, and local laws, rules and regulations. All of the foregoing are incorporated herein by this reference thereto as if fully set forth herein. MHO hereby agrees to be bound in writing to applicable provisions of these documents.

9. **Miscellaneous Provisions**

- (a) **Notices.** Any notice permitted or required under this Agreement from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service) or sent by facsimile, or

(b) three days after having been deposited in the United States mail, if sent by certified mail, return receipt request, in each case to the respective addresses of MHO, East Haven and the County listed below, or those other addresses of which either party gives the other party written notice:

County of Buncombe

Nathan Pennington, Director
Buncombe County Planning and Development
46 Valley Street
Asheville, NC 28801

Mountain Housing Opportunities

Mr. Scott Dedman, Executive Director
64 Clingman Ave., Suite 101
Asheville, NC 28801

East Haven Apartments, LLC

c/o Mountain Housing Opportunities
Mr. Scott Dedman, Executive Director
64 Clingman Ave., Suite 101
Asheville, NC 28801

- (b) **Mediation.** Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter.
- (1) The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.
- (c) **Legal Proceedings**
- Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.
- (d) **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall inure to the benefit and be binding upon the County, MHO, and

their respective successors and assigns.

- (e) **Entire Agreement.** This agreement contains the entire agreement between the parties hereto and may not be amended unless in writing and executed by the parties hereto.
- (f) **Severability.** Each provision in this Agreement is severable. If any provision of this Agreement will be determined to be invalid or unenforceable by a court of competent jurisdiction, then: (a) such determination will not invalidate or render unenforceable any other provision of this Agreement; (b) such provision will be construed as closely as possible to the parties' original intent in order to render such provision valid or enforceable, as applicable; and (c) the remaining terms of this Agreement, together with such reconstructed provision, will constitute the parties' entire agreement.
- (g) **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same instrument. Except as expressly provided in this Agreement, there are no third party beneficiaries of this Agreement. All **Exhibits** attached to this Agreement are incorporated into this Agreement by reference. The term "including" in this Agreement will not be construed to be limiting. **Paragraphs 1(l), 2(a),(c),(e)(f), 4, and 7(e)** will survive the termination of this Agreement for any reason. This Agreement may not be amended except by a written amendment both parties sign. This Agreement is the entire agreement of the parties regarding the subject matter and supersedes all prior and contemporaneous understandings.

IN WITNESS WHEREOF, the County has caused this Agreement to be duly executed on its behalf; and MHO has caused the same to be duly executed on its behalf.

COUNTY OF BUNCOMBE

Brownie Newman, Chairman
Buncombe County Board of Commissioners

ATTEST:

Lamar Joyner, Clerk to the Board

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Don Warn, Finance Officer.

MOUNTAIN HOUSING OPPORTUNITIES, INC.

(Seal)
BY: R. Scott Dedman, Executive Director

EAST HAVEN APARTMENTS, LLC
By: Mountain Housing Opportunities, Inc.,
Member/Manager

(Seal)
BY: R. Scott Dedman, President

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Lamar Joyner, and hereby certifies that Lamar Joyner, Clerk to the Board, personally appeared before me this day and acknowledged that he is Clerk to the Board of Commissioners of County of Buncombe and that Brownie Newman is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by himself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the ___ day of _____, 2019.

Notary Public

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, Notary Public of the County and State aforesaid certify that R. Scott Dedman, personally appeared before me and acknowledged that he is the President of Mountain Housing Opportunities, Inc., a North Carolina Corporation, and that he as president, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and notarial seal this _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, Notary Public of the County and State aforesaid certify that R. Scott Dedman, personally appeared before me and acknowledged that he is President of Mountain Housing Opportunities, Inc., Member/Manager of East Haven Apartments, LLC, a

North Carolina Limited Liability Company, and that he as president of said Member/Manager, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company .

Witness my hand and notarial seal this _____day of _____, 2019.

Notary Public

My Commission Expires:_____

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Attachment A

**Mountain Housing Opportunities, Inc.
East Haven Apartments**

Scope of Services

1. Mountain Housing Opportunities, Inc. (MHO) will utilize \$2,200,000 of Buncombe County’s Loan funds for the construction of 95 rental housing units affordable to low- and moderate-income persons. The development site is called East Haven Apartments and will be located at 2244 US 70, Swannanoa, NC
2. The unit mix and income targeting for East Haven Apartments will be as follows:

# of Bedrooms	# of Units of this Size	Area Per Unit	Proposed Monthly Rent	Income Targeting
1	8	660	\$257	30% AMI
1	11	660	\$472	50% AMI
1	12	660	\$581	60% AMI
2	12	900	\$300	30% AMI
2	17	900	\$561	50% AMI
2	18	900	\$648	60% AMI
3	4	1,100	\$341	30% AMI
3	5	1,100	\$617	50% AMI
3	8	1,100	\$697	60% AMI
Total	95			

3. A budget of eligible costs is included as Attachment B.
4. MHO will adhere to the following time schedule:

Activity	Date
Tax Credit Award	8/10/2017
Secure Remaining Financing	4/1/2018
Secure Building Permits	5/31/2018
Acquire Land/Close Construction Loan and Equity	6/15/2018
Begin Construction	5/1/2019
Begin Lease-up	8/31/2020
Complete Construction	10/31/2020
Complete Lease-up	4/30/2021
Close Permanent Financing	7/31/2021

5. MHO will adhere to the planned outcomes and measurements outlined below:

Outcomes	Measurements
1. To increase the number of affordable rental housing units in Buncombe County by 95 units	Upon completion, East Haven Apartments will receive a Certificate of Occupancy that will verify the creation of new units.
2. To move 95 low- to moderate-income households into affordable housing	Each tenant household will submit an application that includes income verification. Only eligible households will be allowed to enter into a lease agreement. These documents will be used to tally the number of low- to moderate-income households that move into the development.

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Attachment B

**Mountain Housing Opportunities, Inc.
East Haven Apartments**

Project Budget

Sources	Amount
Equity from Low Income Housing Tax Credits	8,167,686
Permanent Loan	1,622,689
NCHFA RPP Loan	1,000,000
NCHFA WHLP Loan	250,000
HOME Loan	1,675,000
Buncombe County HOME Match	75,000
FHLB Loan	500,000
NCHFA ISHP Loan	1,350,000
Buncombe County Loan	2,200,000
Total Sources	16,840,375

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Development Costs	Amount
Land Cost	595,000
On Site Improvements & Demolition	1,164,212
Construction	11,960,018
Contingency	308,405
Architects Fees	250,000
Engineering Fees	225,000
Property/Liability Insurance	119,285
Construction Loan Origination Fees	20,000
Construction Loan Interest	400,000
Property Taxes	5,000
Water, Sewer and Impact Fees	83,715
Survey	18,000
Appraisal	8,000
Environmental Reports	2,500
Market Study	4,400
Permanent Loan Origination Fees	14,000
Legal Fees	95,000
Tax Credit Application Fees	2,640
Tax Credit Allocation Fee	171,000
NCHFA Loan Closing Fees	3,500
Cost Certification	15,000
Tax Credit Monitoring Fee	81,700
Furnishing and Equipment	28,000
Developer Fee	850,000
Rent Up Expense	28,500
Rent Up Reserve	28,500
Operating Reserve	251,000
ISHP Reserve	108,000
Total Development Costs	16,840,375