

# **AFFORDABLE HOUSING LOAN AGREEMENT**

**THIS AFFORDABLE HOUSING LOAN AGREEMENT** (the "Agreement") is made as of \_\_\_\_\_, 2005, by and between \_\_\_\_\_ ("Participant") and the **THE CITY OF BURBANK**, a municipal corporation (the "City").

## **RECITALS**

A. Participant has entered into an agreement (the "Purchase Agreement") to purchase a condominium unit located at \_\_\_\_\_, Burbank, California, and as such real property is more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property"). The Property has been constructed pursuant to a "Development Agreement" between the City and Crown Fairfield Associates, LLC, (the "Developer" or "Seller").

B. Participant is a person or family of moderate income who currently earns less than 120% of the current annual median income for the Los Angeles County area, adjusted for family size ("Moderate Income Household"), as those terms are defined by California Health and Safety Code Section 50093.

C. Participant has represented to City that Participant and Participant's immediate family currently intend to reside in the Property as the family's principal residence at all times throughout the term of this Agreement.

D. The Development Agreement requires the Developer to sell the Property at a price which is affordable to Moderate Income Households, and thus substantially less than the fair market value of the Property. The "Purchase Price" of the Property is \$\_\_\_\_\_. The Purchase Price represents the fair market value of the Property and the price agreed to by the Developer and the Participant. In order to make the Property affordable to the Participant, the Developer will credit \$\_\_\_\_\_(the "Affordability Gap") to the Participant at the close of escrow. Participant will agree to pay the City the Affordability Gap, which represents the difference between the fair market value or Purchase Price of the Property and the sales proceeds paid to Developer (downpayment plus primary home loan proceeds), upon certain events as defined herein (the "City Loan").

**NOW, THEREFORE**, for good and valuable consideration the parties agree as follows:

**1. City Loan.** The Developer hereby provides a credit to Participant the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "City Loan"), subject to the conditions and restrictions set forth herein and those set forth in the Promissory Notes, Deed of Trust, and the Disclosure Statement (as those terms are hereinafter defined). Participant acknowledges that the entire amount of the City Loan will not actually be paid in cash to the Participant or the Developer, but represents the Affordability Gap, the difference between the fair market value of the Property and the price paid to the Developer. Participant shall execute, as maker, and deliver to City a promissory note in favor of City, as holder, which shall total the City Loan. The promissory note, in the principal amount of the City Loan, shall be substantially in the form of Exhibit "B" attached hereto and incorporated herein by this reference (the "Note" or "Promissory Note 1"). The

amount of the City Loan is hereafter the “Note Amount”. No interest shall accrue on the Note Amount. As set forth in Section 3 hereof, the Note Amount shall become earlier due and payable upon the sale, transfer or refinancing of the Property or upon default of this Agreement. Any remaining amounts of the Note Amount which have not earlier become due and payable shall be forgiven in full upon the forty-fifth (45<sup>th</sup>) anniversary of the Note. Participant shall also execute and deliver to City the Deed of Trust, in the form of Exhibit “C” attached hereto and incorporated herein by this reference.

**2. Notice to City and City’s Right to Purchase Units.** Participant (or Participant’s heirs following the death of Participant) agrees to notify City not less than thirty (30) days prior to, (i) the transfer, other than a sale, but including, without limitation, lease, exchange or other disposition of any interest in the Property, (ii) any refinancing of the lien of the Deed of Trust or any lien to which the lien of the Deed of Trust is subordinate (the “First Lien”), or (iii) the close of Participant’s probate estate. In the event Participant desires to sell the Property, then Participant shall comply with this section, which among other things, provides the City with the right of first refusal to purchase such Property.

In the event Participant desires to sell the Property, Participant (or Participant’s heirs following the death of Participant) agrees to notify City (“First Notice”) in accordance with Section 24, as soon as reasonably practicable and before any offers are accepted or agreements related to a transfer (including real estate agent or broker’s agreement), have been entered into, that it intends to sell the Property. City shall have the first right to purchase the Property, and City shall have thirty (30) days after receipt of notice to determine whether or not to purchase said Property at an Affordable Housing Cost for a Moderate Income Household as defined in Section 5 hereof (“First Right of Refusal”). If City passes on its First Right of Refusal or fails to provide notice of such to Participant after the termination of the thirty (30) days, then Participant shall for a minimum of thirty (30) days use its best efforts to market the property to a Moderate Income Household as required under the Agreement (“Marketing Period”). If Participant secures a Moderate Income Household as the purchaser, then the remaining provisions of this section, the City’s Second Right to Repurchase, shall no longer apply.

During the Marketing Period, Participant shall obtain from City, if available, a list of Moderate Income Households that have expressed interest in acquiring affordable units. In the event after the termination of that thirty (30) day Marketing Period, Participant still remains unable to secure a buyer who meets the Moderate Income Household definition as defined in Recital B hereof, then before entering into any agreements relating to a transfer (including real estate agent or broker’s agreement), Participant shall provide notice to City that (1) it is unable to secure a Moderate Income Household buyer, and (2) it desires to offer the Property to City to purchase at an Affordable Housing Cost for a Moderate Income Household as defined in Section 5 hereof (“Second Right to Repurchase”). City shall respond to the Second Right to Repurchase within thirty (30) days of receipt of such notice. In the event City passes on the Second Right to Repurchase or fails to provide notice within the thirty (30) day period, Participant then may sell the Property on the open market provided it repays the City the amount of the Affordable Housing Loan and the Equity Share in accordance with Section 3.

**3. Repayment of Promissory Note Upon Sale, Transfer, Refinancing, Failure to Occupy or Default.** Except as provided in Section 5 with respect to the sale of the Property to an Eligible Person or Family at an Affordable Housing Cost, the City Loan shall become due and immediately payable upon the occurrence of any one of the following events of acceleration: (i) the sale or transfer of the Property, including, without limitation, lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except a sale or transfer which

under federal law, would not, by itself, permit City to exercise a due on sale or due on encumbrance clause, (ii) the refinancing of the First Lien for a loan amount in excess of that amount allowed herein, (iii) at such time if or when Participant is no longer an occupant of the Property pursuant to Section 7 of this Agreement or is in default of any other obligation under this Agreement, (iv) violation or breach of Participant's obligations under that certain Agreement Containing Covenants Affecting Real Property (Housing Component) (hereinafter the "Covenants Agreement") executed by and between City and Developer, and recorded in the Official Records of Los Angeles County as Instrument No. \_\_\_\_\_, and assumed by Participant. Participant understands and agrees that, notwithstanding anything herein to the contrary (excepting a permitted transfer to a surviving spouse), the Covenant Agreement prohibits the resale of the Property by the Participant to any person or family other than an Eligible Person or Family, as defined herein. Notwithstanding the above, however, the transfer of the Property solely as a result of the marriage, divorce, incompetency or death of one or more individuals constituting the Participant shall not accelerate the Note or cause the City Loan to become due and payable, so long as the transferee(s) give notice to City of such event within thirty (30) days of its occurrence and the transferee(s) assume the Participant's obligations under this Agreement, by execution of an assignment and assumption agreement to be provided by City. At the request of Participant, City may, in its sole and absolute discretion, waive in writing some or all of the requirements of this Section 3 and defer repayment and/or extend the term of the City Loan.

The Participant may refinance any purchase money first trust deed or mortgage encumbering the Affordable Unit on the condition that the interest, terms and conditions are reasonable at the time the refinancing takes place (in the reasonable opinion of the City). The new principal amount of the first trust deed shall not exceed the lesser of:

- (1) an amount which when combined with the principal of all subordinate mortgage loans (i.e., the total of the principal of the new first mortgage loan plus the principal of all subordinate mortgage loans) does not exceed seventy percent (70%) of the appraised value of the property as evidenced by an appraisal from a qualified appraiser, or based on other evidence acceptable to the City's Community Development Director or authorized designee in his/her sole and absolute discretion; or
- (2) the maximum amount the owner/borrower may borrow as the new first mortgage loan without the owner exceeding "affordable housing cost" in accordance with California Health and Safety Code Section 50052.5, as amended, or successor statute; or
- (3) an amount equal to the sum of (x) the outstanding principal balance, at the time of the refinance, of the then-current first mortgage loan that is being refinanced, plus (y) usual and customary closing costs paid by the borrower but excluding loan origination points or loan origination fees, plus (z) twenty-five thousand dollars (\$25,000.00).

Notwithstanding the foregoing, the Community Development Director shall have the authority, in his/her sole and absolute discretion, on behalf of the City to approve the following: (a) with respect to subparagraph (1) above, an increase from 70% to up to 80% in the maximum loan-to-value ratio, and (b) with respect to subparagraph (3) above, an increase from twenty-five thousand dollars (\$25,000) to up to fifty thousand dollars (\$50,000); provided, however, in both cases, the Participant shall have provided evidence satisfactory to the Community Development Director, in his/her sole and absolute discretion, that the additional amount is needed to remedy a specific and significant current or identifiable future adverse financial condition of the owner/borrower and the

Community Development Director determines, in his/her sole and absolute discretion, that such additional amount shall not jeopardize the continuation of the property as an affordable housing unit. In the event the Community Development Director modifies the amount in either subparagraphs (1) or (3) above, the new first mortgage loan principal shall not exceed the lesser of [a] the amount in subparagraph (1) above if and as modified, or [b] the amount in subparagraph (2) above, or [c] the amount in subparagraph (3) above if and as modified.

A Participant may seek subordination of this Agreement and the Covenant Agreement to the deed of trust of the new first mortgage loan (i.e., seek City approval of a cash-out refinancing) not more than once every three (3) years; provided, however, this restriction may be waived if the owner/borrower provides evidence satisfactory to the Community Development Director, in his/her sole and absolute discretion, that waiver of this restriction is needed to remedy a specific and significant current or identifiable future adverse financial condition of the Participant and the Community Development Director determines, in his/her sole and absolute discretion, that waiver of this requirement shall not jeopardize the continuation of the property as an affordable housing unit.

The Participant shall notify the City not less than thirty (30) days prior to the date proposed for the closing of the refinance loan and shall execute such documents, and shall cause the new first mortgage lender to execute such documents, as City reasonably requires to effect the City's subordination of this Agreement and any related recorded agreements if necessary to the deed of trust of the new first mortgage lender. City shall only approve a subordination of this Agreement (and related documents if necessary) to the deed of trust of the new first mortgage lender upon confirmation of the new first loan amount and review of the Participant's loan application and related material and documents.

**4. Equity Sharing Amount.** In the event that the City Loan becomes due and payable pursuant to Section 3 above, within forty-five (45) years from the date of the Promissory Note ("Equity Sharing Period"), Participant shall pay to City, together with the whole of the Note Amount, an amount equal to the "Equity Sharing Amount," as hereinafter defined.

The "Equity Sharing Amount" means an amount equal to a percentage share of the appreciation in the value of the Property determined by multiplying a percentage factor (the "Equity Sharing Percentage") by the difference between the Sales Price and the Purchase Price (as defined below): the "Equity Sharing Percentage" shall be calculated by dividing the amount of the City Loan by the Purchase Price.

For the purpose of determining the Equity Sharing Amount and the Equity Sharing Percentage, the "Purchase Price" is the original purchase price paid by the Participant to the Seller for Seller's interest in the Property, plus the amount of the City Loan. The Purchase Price shall also include the original cost of any capital improvements made to the Property by the Participant, with a minimum cost of Two Thousand Five Hundred Dollars (\$2,500) per item and a useful economic life of not less than five (5) years, as demonstrated by invoices and receipts which the Participant certifies to be true and correct.

The "Sales Price" is the price to be paid by the Buyer of the Property to Participant for Participant's interest in the Property.

For example, if Participant's down payment and first trust deed proceeds applied toward Participant's acquisition of the Property total \$185,000, and the amount of the City Loan is 80,000,

then the Purchase Price for the Property for the purpose of calculating the Equity Sharing Amount is \$265,000. If Participant subsequently sells the Property during the Equity Sharing Period for a Sales Price of \$315,000, and the amount of the City Loan is \$80,000 (\$10,000 direct cash loan and \$70,000 equal to the difference between the fair market value of the Property (\$265,000) and the amount paid to the Seller for the Property (\$195,000)), the Equity Sharing Amount would be calculated as follows:

$$\begin{array}{rclcl}
\text{(Sales Price - Purchase Price)} & \times & \text{Equity Sharing Percentage} & & \\
(\$315,000 - \$265,000) & \times & (\$80,000 / \$265,000) & & \\
\mathbf{\$50,000} & \times & \mathbf{30.2\%} & = & \mathbf{\$15,094.33}
\end{array}$$

In the event of a proposed sale of the Property and not more than thirty (30) days after City has received notice of the opening of escrow in connection therewith, City may elect to appoint a certified, independent appraiser to conduct an appraisal of the Property, at Participant’s expense (with the cost of the appraisal added to the Equity Share Amount), to assist City in determining if the Sales Price is at or near the fair market value of the Property at such time. If the Sales Price is determined by the appraisal to be three percent (3%) or more below the fair market value of the Property as estimated in such appraisal, then the “Sales Price” for purposes of determining the Equity Sharing Amount shall be the fair market value of the Property established in such appraisal.

In the event of unauthorized refinancing, failure to occupy the Property, or default or breach of any provision of this Agreement which causes the Note Amount to become immediately due and payable, the “Sales Price” for purposes of determining the Equity Sharing Amount shall be determined by an appraisal of the Property. In the event of refinancing by a reputable institutional lender, the Sales Price shall be determined by the appraisal performed by or on behalf of such lender, and in the event of refinancing by other than a reputable, institutional lender, failure to occupy the Property, or default or breach, City may appoint a certified independent appraiser to conduct an appraisal of the Property, at Participant’s expense.

PARTICIPANT ACKNOWLEDGES AND AGREES THAT UPON SALE, TRANSFER OR REFINANCING OF THE PROPERTY OR OTHER EVENT REQUIRING REPAYMENT OF THE CITY LOAN PRIOR TO THE TERMINATION OF THE EQUITY SHARING PERIOD, PARTICIPANT SHALL PAY TO CITY A EQUITY SHARING AMOUNT EQUAL TO A PERCENTAGE SHARE OF THE APPRECIATION OF THE PROPERTY AS CALCULATED PURSUANT TO THIS SECTION 4.

\_\_\_\_\_  
Participant

\_\_\_\_\_  
City

**5. Sale to Eligible Person or Family at Affordable Housing Cost.** Notwithstanding the provisions of Sections 3 and 4, if the Property is sold by the Participant to a Buyer who is an Eligible Person or Family, as defined herein, and such Buyer is approved in compliance with Section 22 hereof, and the Sales Price does not exceed an Affordable Housing Cost, as defined herein, to such Buyer, then no Equity Sharing Amount shall be due to City upon such sale, and the Note Amount shall not then be due and payable, provided the Eligible Person or Family assumes the obligations of this Agreement, the Note, and the Deed of Trust. In order to verify the Buyer’s

status as an Eligible Person or Family, Participant shall submit to City the identity of the proposed Buyer and adequate information evidencing the income of the proposed Buyer and Buyer's past real property interests. Such income information shall be submitted together with the notice of proposed sale pursuant to Section 2 hereof not less than fifteen (15) days prior to the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that City may determine and verify the household income of the proposed Buyer to determine whether the Buyer is an Eligible Person or Family and whether the Property is available to such Buyer at Affordable Housing Cost. City may request additional information reasonably required to verify the proposed Buyer's Status as an Eligible Person or Family. If City is unable to verify the Buyer's income as provided herein prior to the proposed sale, then the Buyer's income shall be deemed to exceed the maximum allowable income limit for Eligible Persons and Families and the Equity Sharing Amount shall be due and payable concurrent with the repayment of the City Loan.

"Affordable Housing Cost" for the purposes of this Agreement shall be that purchase price which would result in a Monthly Housing Cost which is not less than twenty-eight percent (28%) of the gross income of the purchaser and does not exceed the greater of (a) the product of thirty-five percent (35%) times one hundred ten percent (110%) of Los Angeles County median income adjusted for family size appropriate for the Property, or (b) the product of thirty-five percent (35%) of the actual gross income of the household for Moderate Income purchasers earning greater than one hundred ten percent (110%) and not more than one hundred twenty percent (120%) of the Los Angeles County median income.

"Eligible Person or Family" shall mean a Moderate Income Household.

"Monthly Housing Cost" shall include all of the following associated with the Property, estimated or known as of the date of the proposed sale of the Property:

- (1) Principal and interest payments on a mortgage loan including any rehabilitation loans and any loan insurance fees associated therewith.
- (2) Property taxes and assessments.
- (3) Fire and casualty insurance covering replacement value of property improvements.
- (4) Any homeowner association fees.
- (5) A reasonable utility allowance.

Monthly Housing Cost of a purchaser shall be an average of estimated costs for the next twelve (12) months.

**6. Maintenance of Property.** Participant shall maintain the improvements on the Property in a manner consistent with community standards and in a manner such that the value of the Property is not decreased due to maintenance issues, in accordance with the Burbank Municipal Code, and in accordance with the covenants, conditions and restrictions which are recorded with respect to the Property.

**7. Occupancy Standards.** The Property shall be used as the principal residence of Participant and Participant's family and for no other purpose. Participant shall not enter into an agreement for the rental or lease of the Property. City may grant a temporary waiver of the above requirements for good cause, in City's sole and absolute discretion. To the extent that it is legally permissible, the maximum occupancy of the Property shall not exceed the maximum occupancy allowed by the stricter of applicable state law or covenants affecting the property. Participant shall, upon demand by City, submit to City an affidavit of occupancy verifying Participant's compliance with this Section 7. Such affidavit may be required by City on an annual basis.

**8. Income Information.** Participant has submitted an application and additional information verifying income eligibility to City prior to execution of this Agreement. Participant represents, warrants and declares under penalty of perjury to City that all information Participant has provided and will provide in the future to City is and will be true, correct and complete. Participant acknowledges that City is relying upon Participant's representations that Participant is an Eligible Person or Family, and City would not have entered into this Agreement if Participant did not so qualify.

**9. Loan Servicing.** City may contract with a private lender or other person or entity (the "Administrator") to originate and service the City Loan, and to carry out City's obligations under this Agreement.

**10. Participant Financing.** As a condition to City's obligation to make the City Loan, Participant shall obtain first trust deed financing for the purchase of the Property from a reputable institutional lender (the "Lender"). In addition, Participant must make a down payment of not less than five percent (5%) of the Purchase Price. Participant must provide at least a three percent (3%) down payment from Participant's own funds, and may provide up to a two percent (2%) down payment in the form of a gift from a relative or a grant or unsecured loan from a nonprofit organization, public entity or the Administrator. Nothing in this Agreement shall be construed as a promise or guaranty by City that the Participant will qualify for or receive such first trust deed financing.

**11. Title Insurance.** As a condition to disbursement of the City Loan, Participant, at no cost to City, shall obtain and cause to be delivered to City a standard form CLTA Lender's policy of Title Insurance, issued by a title company approved by City, insuring the priority of the Deed of Trust against all monetary liens and encumbrances against the Property, including but not limited to, mechanic's liens claims and excepting only (i) the lien of any non-delinquent property taxes; (ii) the deed of trust securing the First Lien; (iii) liens and encumbrances recorded against the Property existing as of the date and time of recordation of the Covenants Agreement; and (iv) other encumbrances and exceptions to title as may be approved by City in City's sole and absolute discretion.

**12. Subordination.** The provisions of this Agreement, the Promissory Note, and the Deed of Trust shall be subordinate to any First Lien on the Property held by the Lender and shall not impair the rights of Lender, or Lender's assignee or successor in interest, to exercise its remedies under the First Lien in the event of default under the First Lien by Participant. Such remedies under the First Lien include the right of foreclosure, acceptance of a deed or assignment in lieu of foreclosure, or assignment of the mortgage to the Secretary of the United States Housing and Urban Development ("HUD"). Thus, any party, its successors and assigns, receiving title to the Property through a trustee's sale, judicial foreclosure sale, deed in lieu of foreclosure or

assignment to HUD, and any conveyance or transfer thereafter, shall receive title free and clear of this Agreement, the Promissory Note, and the Deed of Trust. In the event of refinancing of the First Lien, the City shall subordinate this Agreement, the Promissory Note, and the Deed of Trust to the new First Lien if the First Lien is in compliant with Section 3 herein.

**13. Indemnification.** Participant shall defend, indemnify and hold harmless City and its respective officers, officials, agents, employees, representatives, and volunteers from and against any loss, liability, claim, or judgment relating in any manner to the Property or this Agreement. The Participant shall remain fully obligated for the payment of taxes, liens and assessments related to the Property. There shall be no reduction in taxes for Participant, nor any transfer of responsibility to City to make such payments, by virtue of the City Loan.

**14. Insurance.** Participant shall maintain, during the term of the City Loan, an all-risk property insurance policy insuring the Property in an amount equal to the full replacement value of the structures on the Property. The policy shall name City as loss payee and shall contain a statement of obligation on behalf of the carrier to notify City of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Participant shall transmit a copy of the certificate of insurance and loss payee endorsement to City within thirty (30) days of the effective date of this Agreement, and Participant shall annually transmit to City a copy of the certificate of insurance and a loss payee endorsement, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. Any certificate of insurance must be in a form, content and with companies approved by City. The copy of the certificate of insurance and loss payee endorsement shall be transmitted to City at the address set forth in Section 24 hereof.

**15. Defaults.** Failure or delay by either party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Agreement; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

**16. Non-Waiver.** Failure to exercise any right City may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.

**17. Documents.** Participant is aware that City has prepared certain documents to implement this Agreement and secure repayment of the City Loan. Participant has reviewed and agrees to execute the following documents in substantially the form as attached hereto prior to receiving the City Loan, and any other documents reasonably required by City or a participating entity to complete the transaction contemplated herein:

- a. Promissory Note (Exhibit "B");
- b. Deed of Trust (Exhibit "C");



c. Disclosure Statement and Notice of Rescission (Exhibit "D").

Participant agrees and acknowledges that the Deed of Trust shall be recorded as an encumbrance to the Property with the County Recorder of the County of Los Angeles and shall appear of record with respect to the Property.

**18. Further Assurances.** The Participant shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form, as City shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement and making the City Loan.

**19. Governing Law.** The Participant hereby agrees to comply with all ordinances, rules and regulations of the City. Nothing in this Agreement is intended to be, nor shall it be deemed to be, a waiver of any City ordinance, rule or regulation. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Los Angeles, State of California, in an appropriate municipal court in that county or in the Federal District Court in the District of California in which Los Angeles County is located.

**20. Amendment of Agreement.** No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by the Participant and City.

**21. City May Assign.** City may, at its option, assign its right to receive repayment of the City Loan proceeds to a nonprofit entity (including the Redevelopment Agency of the City of Burbank) without obtaining the consent of the Participant or the holder of the First Lien, or to a profit-making entity with the prior written consent of the holder of the First Lien.

**22. Participant Assignment Prohibited Without City Approval.** In no event shall Participant assign or transfer any portion of this Agreement without the prior express written consent of City, which consent shall be given by City only in the event that City determines that the assignee or transferee is an Eligible Person or Family, that the assignee's or transferee's monthly housing payments are at an Affordable Housing Cost, and that the assignee or transferee has expressly assumed this Agreement by execution of a written assignment document to be provided by City. This section shall not affect or diminish City's right to assign all or any portion of its rights to the proceeds of the City Loan hereunder.

**23. Relationship of Participant and City.** The relationship of Participant and City pursuant to this Agreement is that of debtor and creditor and shall not be or be construed to be a joint venture, equity venture, partnership, or other relationship.

**24. Notices.** Any notices, requests or approvals given under this Agreement from one party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, registered or certified mail, return receipt requested to the following address:

To Participant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To City: City of Burbank  
275 East Olive Avenue  
P.O. Box 6459  
Burbank, California 91510-6459  
Attention: Community Development Director

Either party may change its address for notice by giving written notice thereof to the other party.

**25. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment or performance under this Agreement, the parties agree the non-prevailing party shall be responsible for and shall pay all costs and all attorneys' fees incurred by such prevailing party in enforcing this Agreement.

**26. Nondiscrimination.** Participant covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Participant itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

Participant, its successors and assigns, shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or

occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

c. In contracts pertaining to realty: “There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees of the premises.”

Notwithstanding the foregoing, the Participant acknowledges and agrees that during the term of the Agreement, the Promissory Note and Deed of Trust executed pursuant thereto, Participant shall occupy the Property as Participant’s principal residence and shall not rent or lease the Property.

**27. Entire Agreement.** This Agreement, together with all attachments hereto, constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between City and the Participant concerning all or any part of the subject matter of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date set forth above.

**PARTICIPANT:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

**CITY:**

**THE CITY OF BURBANK**, a municipal corporation

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

***DRAFT***

Margarita Campos, City Clerk

Approved as to Form and Legal Content  
Dennis A. Barlow, City Attorney

By: \_\_\_\_\_  
Joseph H. McDougall, Asst. City Attorney

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

[To Be Inserted]

**EXHIBIT "B"**

**PROMISSORY NOTE**

**NOTICE TO MAKER: EQUITY SHARING AMOUNT SHALL BE DUE AND PAYABLE IF CERTAIN EVENTS OCCUR.**

\$ \_\_\_\_\_

Burbank, California

\_\_\_\_\_, 200\_\_

Property Address: \_\_\_\_\_

**FOR VALUE RECEIVED**, the undersigned (the "Maker") promises to pay to the City of Burbank, or order ("Holder"), at 275 East Olive Avenue, Burbank, California 91510-6459, or at such other address as Holder may direct from time to time in writing, \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Note Amount"), together with interest thereon as hereafter set forth. All sums hereunder shall be payable in lawful money of the United States of America. This Note is secured by a Deed of Trust (the "Deed of Trust"). Concurrently herewith Maker has executed that certain Promissory Note 2. The Deed of Trust also secures the Note 2 Amount. The two Notes are collectively referred to as the Loan Amount under the Deed of Trust.

**1. Affordable Housing Loan Agreement.** This Promissory Note (the "Promissory Note" or "Note") is made and delivered pursuant to and in implementation of the Affordable Housing Loan Agreement entered by and between the Holder and the Maker dated \_\_\_\_\_, 200\_\_ (the "Agreement"), a copy of which is on file as a public record with the Holder and is incorporated herein by reference. The Maker acknowledges that but for the execution of this Promissory Note, the Holder would not have entered into the Agreement or make the loan contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

**2. Interest Rate.** The Note Amount shall not accrue interest; provided that the Note Amount shall accrue the Equity Sharing Amount in a manner and in an amount provided for in Section 5 and subject to the exception set forth in Section 6 herein.

**3. Time of Payment.** Except as provided in Section 6 with respect to the sale of the Property to an Eligible Person or Family at an Affordable Housing Cost, the whole of the Note Amount and all other payments due hereunder and under the Agreement shall become due and be immediately payable to the Holder by the Maker upon the occurrence of any one of the following events of acceleration:

- a. Maker sells or transfers the Property, including, without limitation, lease, exchange or other disposition of the Property or any interest therein, whether voluntary or

involuntary, except a sale or transfer which under federal law would not, by itself, permit the Holder to exercise a due on sale or due on encumbrance clause;

b. Maker refinances the lien of the Deed of Trust or any lien or encumbrance to which the Deed of Trust is subordinate for a loan amount greater than that amount provided for in Section 3 of the Agreement, and as set forth below. The Maker may refinance any purchase money first trust deed or mortgage encumbering the Affordable Unit on the condition that the interest, terms and conditions are reasonable at the time the refinancing takes place (in the reasonable opinion of the City). The new principal amount of the first trust deed shall not exceed the lesser of:

(1) an amount which when combined with the principal of all subordinate mortgage loans (i.e., the total of the principal of the new first mortgage loan plus the principal of all subordinate mortgage loans) does not exceed seventy percent (70%) of the appraised value of the property as evidenced by an appraisal from a qualified appraiser, or based on other evidence acceptable to the City's Community Development Director or authorized designee in his/her sole and absolute discretion; or

(2) the maximum amount the Maker may borrow as the new first mortgage loan without the owner exceeding "affordable housing cost" in accordance with California Health and Safety Code Section 50052.5, as amended, or successor statute; or

(3) an amount equal to the sum of (x) the outstanding principal balance, at the time of the refinance, of the then-current first mortgage loan that is being refinanced, plus (y) usual and customary closing costs paid by the Maker but excluding loan origination points or loan origination fees, plus (z) twenty-five thousand dollars (\$25,000.00).

Notwithstanding the foregoing, the Community Development Director shall have the authority, in his/her sole and absolute discretion, on behalf of the City to approve the following: (a) with respect to subparagraph (1) above, an increase from 70% to up to 80% in the maximum loan-to-value ratio, and (b) with respect to subparagraph (3) above, an increase from twenty-five thousand dollars (\$25,000) to up to fifty thousand dollars (\$50,000); provided, however, in both cases, the Maker shall have provided evidence satisfactory to the Community Development Director, in his/her sole and absolute discretion, that the additional amount is needed to remedy a specific and significant current or identifiable future adverse financial condition of the Maker and the Community Development Director determines, in his/her sole and absolute discretion, that such additional amount shall not jeopardize the continuation of the property as an affordable housing unit. In the event the Executive Director modifies the amount in either subparagraphs (1) or (3) above, the new first mortgage loan principal shall not exceed the lesser of [a] the amount in subparagraph (1) above if and as modified, or [b] the amount in subparagraph (2) above, or [c] the amount in subparagraph (3) above if and as modified.

Maker may seek subordination of this Covenant Agreement to the deed of trust of the new first mortgage loan (i.e., seek City approval of a cash-out refinancing) not more than once every three (3) years; provided, however, this restriction may be waived if the Maker provides evidence satisfactory to the Community Development Director, in

his/her sole and absolute discretion, that waiver of this restriction is needed to remedy a specific and significant current or identifiable future adverse financial condition of the Maker and the Community Development Director determines, in his/her sole and absolute discretion, that waiver of this requirement shall not jeopardize the continuation of the property as an affordable housing unit.

Maker shall notify the City not less than thirty (30) days prior to the date proposed for the closing of the refinance loan and shall execute such documents, and shall cause the new first mortgage lender to execute such documents, as City reasonably requires to effect the City's subordination of the Agreement and any related recorded agreements if necessary to the deed of trust of the new first mortgage lender. City shall only approve a subordination of the Agreement (and related documents if necessary) to the deed of trust of the new first mortgage lender upon confirmation of the new first loan amount and review of the owner's/borrower's loan application and related material and documents.

c. Maker fails to occupy the Property as Maker's principal residence pursuant to Section 7 of the Agreement or is in default of any other obligation under the Agreement.

d. A violation or breach of Maker's obligations under that certain Agreement Containing Covenants Affecting Real Property (Housing Component) recorded in the Official Records of Los Angeles County as Instrument No. \_\_\_\_\_, ("Covenant Agreement") executed by and between Holder and Developer, and assumed by Maker. Maker understands and agrees that, notwithstanding anything herein to the contrary (excepting transfers to surviving spouses), the Covenant Agreement prohibits the resale or transfer of the Property by the Maker to any person or family other than an Eligible Person or Family, as defined herein, within the first forty-five (45) years after the date of this Note.

Notwithstanding the above, however, the transfer of the Property solely as a result of the marriage, divorce, incompetency or death of one or more individuals constituting the Holder shall not accelerate the term of this Promissory Note or cause the Note Amount to become due and payable, so long as the transferee(s) give notice to the Holder of such event within thirty (30) days of its occurrence and the transferee(s) assume the Maker's obligations under this Promissory Note, by execution of an assignment and assumption agreement to be provided by the Holder. At the request of Maker, the Holder may, in its sole and absolute discretion, in writing waive the requirements of this Section 3 and defer repayment and/or extend the term of the Note Amount.

**4. Loan Forgiveness.** Any remaining amounts of the Note Amount which have not earlier become due and payable shall be forgiven in full upon the forty-fifth (45<sup>th</sup>) anniversary of this Note.

**5. Equity Sharing Amount.** In the event that this Note becomes due and payable pursuant to Section 3 above prior to the forty-fifth (45<sup>th</sup>) anniversary of this Note (the "Equity Sharing Period"), Maker shall pay to Holder, together with the whole of the Note Amount, an amount equal to the "Equity Sharing Amount," as hereinafter defined.

The "Equity Sharing Amount" means an amount equal to a percentage share of the appreciation in the value of the Property determined by multiplying a percentage factor (the "Equity Sharing Percentage") by the difference between the Sales Price and the Purchase Price (as defined below).



The "Equity Sharing Percentage" shall be calculated by dividing the Note Amount by the Purchase Price.

For the purpose of determining the Equity Sharing Amount and the Equity Sharing Percentage, the "Purchase Price" is \_\_\_\_\_ plus the original cost of any capital improvements made to the Property by the Maker, with a minimum cost of Two Thousand Five Hundred Dollars (\$2,500) per item and a useful economic life of not less than five (5) years, as demonstrated by invoices and receipts which the Maker certifies to be true and correct.

The "Sales Price" is the price to be paid by the Buyer of the Property to Maker for Maker's interest in the Property.

For example, assume the Purchase Price for the Property for the purpose of calculating the Equity Sharing Amount is \$265,000. If Maker subsequently sells the Property during the Equity Sharing Period for a Sales Price of \$315,000, and the amount of the City Loan is \$80,000, the Equity Sharing Amount would be calculated as follows:

$$\begin{array}{rclcl} \text{(Sales Price - Purchase Price)} & \times & \text{Equity Sharing Percentage} & & \\ (\$315,000 - \$265,000) & \times & (\$80,000 / \$265,000) & & \\ \mathbf{\$50,000} & \mathbf{x} & \mathbf{30.2\%} & = & \mathbf{\$15,094.33} \end{array}$$

In the event of a proposed sale of the Property and not more than thirty (30) days after Holder has received notice of the opening of escrow in connection therewith, Holder may elect to appoint a certified, independent appraiser to conduct an appraisal of the Property, at Maker's expense (with the cost of the appraisal added to the Equity Share Amount), to assist Holder in determining if the Sales Price is at or near the fair market value of the Property at such time. If the Sales Price is determined by the appraisal to be three percent (3%) or more below the fair market value of the Property as estimated in such appraisal, then the "Sales Price" for purposes of determining the Equity Sharing Amount shall be the fair market value of the Property established in such appraisal.

In the event of a refinancing not permitted by this Note, failure to occupy the Property, or default or breach of any provision of this Note which causes the Note Amount to become immediately due and payable, the "Sales Price" for purposes of determining the Equity Sharing Amount shall be determined by an appraisal of the Property. In the event of refinancing by a reputable institutional lender, the Sales Price shall be determined by the appraisal performed by or on behalf of such lender, and in the event of refinancing by other than a reputable, institutional lender, failure to occupy the Property, or default or breach, Holder may appoint a certified independent appraiser to conduct an appraisal of the Property, at Maker's expense.

MAKER ACKNOWLEDGES AND AGREES THAT UPON SALE, TRANSFER OR REFINANCING OF THE PROPERTY OR OTHER EVENT REQUIRING REPAYMENT OF THIS NOTE PRIOR TO THE TERMINATION OF THE EQUITY SHARING PERIOD, MAKER SHALL PAY TO HOLDER A EQUITY SHARING AMOUNT EQUAL TO A PERCENTAGE SHARE OF THE APPRECIATION OF THE PROPERTY AS CALCULATED PURSUANT TO THIS SECTION 5.

\_\_\_\_\_  
Maker's Initials

\_\_\_\_\_  
Maker's Initials

**6. Sale to Eligible Person or Family at Affordable Housing Cost.** Notwithstanding the provisions of Sections 3 and 5, if the Property is sold by the Maker to a Buyer who is an Eligible Person or Family, as defined herein, such Buyer is approved in compliance with Section 10 hereof, and the Sales Price does not exceed an Affordable Housing Cost, as defined herein, to such Buyer, then no Equity Sharing Amount is due to Holder upon such sale, and the Note Amount shall not then be due and payable, provided the Eligible Person or Family assumes the obligations of the Agreement, this Note and Deed of Trust. In order to verify the Buyer's status as an Eligible Person or Family, Maker shall submit to Holder the identity of the proposed Buyer and adequate information evidencing the income of the proposed Buyer and the Buyer's past real property interests. Said income information shall be submitted together with the notice of proposed sale pursuant to Section 2 of the Agreement not less than fifteen (15) days prior to the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that Holder may determine and verify the household income of the proposed Buyer to determine Eligible Person or Family status and whether the Property is available to such Buyer at Affordable Housing Cost. Holder may request additional information reasonably required to verify the proposed Buyer's Status as an Eligible Person or Family. If Holder is unable to verify the Buyer's income as provided herein prior to the proposed sale, then the Buyer's income shall be deemed to exceed the maximum allowable income limit for Eligible Persons and Families and the Equity Sharing Amount shall be due and payable concurrent with the repayment of this Note.

"Affordable Housing Cost" for the purposes of this Note shall be that purchase price which would result in a Monthly Housing Cost which is not less than twenty-eight percent (28%) of the gross income of the purchaser and does not exceed the greater of (a) the product of thirty-five percent (35%) times one hundred ten percent (110%) of Los Angeles County median income adjusted for family size appropriate for the Property, or (b) the product of thirty-five percent (35%) of the actual gross income of the household for moderate income purchasers earning greater than one hundred ten percent (110%) and not more than one hundred twenty percent (120%) of the Los Angeles County median income.

"Eligible Person or Family" shall mean a Moderate Income Household.

"Monthly Housing Cost" shall include all of the following associated with the Property, estimated or known as of the date of the proposed sale of the Property:

- (1) Principal and interest payments on a mortgage loan including any rehabilitation loans, and any loan insurance fees associated therewith.
- (2) Property taxes and assessments.
- (3) Fire and casualty insurance covering replacement value of property improvements.
- (4) Any homeowner association fees.
- (5) A reasonable utility allowance.

Monthly Housing Cost of a purchaser shall be an average of estimated costs for the next twelve (12) months.

- 7. Security for Note.** This Promissory Note is secured by a second Deed of Trust of even date herewith, executed by Maker as Trustor in favor of Holder as Trustee.
- 8. Prepayment of Note.** Maker may prepay this Note to Holder at any time, provided that any prepayment must be in full and not in part.
- 9. Holder May Assign.** Maker may, at its option, assign its right to receive repayment of the proceeds of this Promissory Note to a nonprofit entity (including the Redevelopment Agency of the City of Burbank) without obtaining the consent of the Maker or the holder of the First Lien, or to a profit-making entity with the prior written consent of the holder of the First Lien.
- 10. Maker Assignment.** In no event shall Maker assign or transfer any portion of this Promissory Note without the prior express written consent of the Holder, which consent shall be given by the Holder only in the event that the Holder determines that the assignee or transferee is an Eligible Person or Family, that the assignee's or transferee's monthly housing payments are at an Affordable Housing Cost, and that the assignee or transferee has expressly assumed this Promissory Note and the Agreement by execution of a written assignment document to be provided by the Holder. This section shall not affect or diminish the Holder's right to assign all or any portion of its rights to the proceeds of this Note hereunder.
- 11. Joint and Several.** The undersigned, if more than one, shall be jointly and severally liable hereunder.
- 12. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment under this Promissory Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys' fees incurred in enforcing this Note.
- 13. Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.
- 14. Maker's Waivers.** Maker waives any rights to require the Holder to: (a) demand payment of amounts due (known as "presentment"), (b) give notice that amounts due have not been paid (known as "notice of dishonor"), and (c) obtain an official certification of nonpayment (known as "protest").
- 15. Notice.** Any notice that must be given to Maker under this Note shall be given by personal delivery or by mailing it by certified mail addressed to Maker at the Property address above or such other address as Maker shall direct from time to time in writing. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment. Any notice to Holder shall be given by certified mail at Holder's address stated in the preamble to this Note.
- 16. Successors Bound.** This Promissory Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.
- 17. Subordination.** The provisions of this Promissory Note and the Deed of Trust shall be subordinate to any First Lien on the Property held by the Lender and shall not impair the rights of Lender, or Lender's assignee or successor in interest, to exercise its remedies under the First Lien in the event of default under the First Lien by Participant. Such remedies under the First Lien include the right of foreclosure, acceptance of a deed or assignment in lieu of foreclosure, or

assignment of the mortgage to the Secretary of the United States Housing and Urban Development (“HUD”). Thus, any party, its successors and assigns, receiving title to the Property through a trustee’s sale, judicial foreclosure sale, deed in lieu of foreclosure or assignment to HUD, and any conveyance or transfer thereafter, shall receive title free and clear of this Promissory Note and the Deed of Trust. In the event of refinancing of the First Lien, the City shall subordinate the Agreement, the Promissory Note, and the Deed of Trust to the new First Lien if the First Lien is in compliant with the Agreement, Section 3.

**IN WITNESS WHEREOF**, Maker has executed this Promissory Note as of the date set forth above.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

**EXHIBIT "C"**

RECORDING REQUESTED BY AND )  
When Recorded Mail To: )  
)  
City of Burbank )  
275 East Olive Avenue )  
P.O. Box 6459 )  
Burbank, CA 91510-6459 )  
Attn: City Clerk )  
)

Exempt from recording fee pursuant to Government Code Section 27383

**SUBORDINATED DEED OF TRUST WITH ASSIGNMENT OF RENTS**  
**(SHORT FORM)**

**WITH RIDER ATTACHED**

**NOTICE: THIS DEED OF TRUST CONTAINS A SUBORDINATION CLAUSE WHICH MAY RESULT IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

This **DEED OF TRUST WITH ASSIGNMENT OF RENTS** (this "Deed of Trust"), is made as of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ ("Trustor"), whose address is \_\_\_\_\_, to \_\_\_\_\_ (and in such capacity herein called the "Trustee"), for the benefit of **THE CITY OF BURBANK**, a municipal corporation (and in such capacity herein called the "Beneficiary"), having an office located at 275 East Olive Avenue, Burbank, California 91510-6459.

WITNESSETH: that Trustor grants to Trustee in Trust, with Power of Sale, that property in the City of Burbank, County of Los Angeles, State of California, described as:

See attached Exhibit A, incorporated herein

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the purpose of securing (1) payment of indebtedness in the principal amount of \$\_\_\_\_\_, according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, and (2) the performance of each agreement of Trustor incorporated by reference or contained herein (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his

successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in **Orange County August 17, 1964**, in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Placer	1028	379
Alpine	3	130-31	Plumas	166	1307
Amador	133	438	Riverside	3778	347
Butte	1330	513	Sacramento	5039	124
Calaveras	185	338	San Benito	300	405
Colusa	323	391	Los Angeles	6213	768
Contra Costa	4684	1	San Francisco	A-804	596
Del Norte	101	549	San Joaquin	2855	283
El Dorado	704	635	San Louis Obispo	1311	137
Fresno	5052	623	San Mateo	4778	175
Glenn	469	76	Santa Barbara	2065	881
Humboldt	801	83	Santa Clara	6626	664
Imperial	1189	701	Santa Cruz	1638	607
Inyo	165	672	Shasta	800	633
Kern	3756	690	San Diego SERIES 5		
			Book 1964, Page 149774		
Kings	858	713	Sierra	38	187
Lake	437	110	Siskiyou	506	762
Lassen	192	367	Solano	1287	621
Los Angeles	T-3878	874	Sonoma	2067	427
Madera	911	136	Stanislaus	1970	56
Marin	1849	122	Sutter	655	585
Mariposa	90	453	Tehama	457	183
Mendocino	667	99	Trinity	108	595
Merced	1660	753	Tulare	2530	108
Modoc	191	93	Tuolumne	177	160
Mono	69	302	Ventura	2607	237
Monterey	357	239	Yolo	769	16
Napa	704	742	Yuba	398	693
Nevada	363	94			
Orange	7182	18			

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivision A and B, (identical in all counties), are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for

all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefore does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth. The Deed of Trust Rider executed by Trustor is attached hereto, marked as Exhibit B, and made part of this Deed of Trust.

Signature of Trustor:

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**EXHIBIT "A"**

**LEGAL DESCRIPTION**

That real property located in the State of California, County of Los Angeles, City of Burbank, and described as follows:

[To Be Inserted]



## EXHIBIT B

### RIDER TO DEED OF TRUST

This Rider to Deed of Trust is subject to the terms and conditions of that certain Affordable Housing Loan Agreement dated \_\_\_\_\_, 200\_\_ (the "Loan Agreement") and incorporated herein by reference, pursuant to which Beneficiary has agreed to loan Trustor the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Loan Amount"). All terms in this Rider to Deed of Trust, if not separately defined herein, shall have the meanings as defined in the Loan Agreement.

#### **1. Acceleration of Payment; Equity Sharing Amount.**

**a. Events of Acceleration.** Except as provided in Section 5 of the Loan Agreement with respect to the sale of the Property to an Eligible Person or Family at an Affordable Housing Cost, the City Loan shall become due and immediately payable upon the occurrence of any one of the following events of acceleration: (i) sale or transfer of the Property, including, without limitation, lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except a sale or transfer which under federal law, would not, by itself, permit Beneficiary to exercise a due on sale or due on encumbrance clause, (ii) the refinancing of the First Lien for a loan amount in excess of the then-current loan balance secured by the First Lien, plus customary and reasonable costs of refinancing which are actually included in the new loan, (iii) such time if or when Trustor is no longer an occupant of the Property pursuant to Section 7 of the Loan Agreement or is in default of any other obligation under the Loan Agreement, or (iv) a violation or breach of Trustor's obligations under that certain Agreement Containing Covenants Affecting Real Property ("Covenant Agreement") executed by and between Beneficiary and Crown Fairfield Associates, LLC, and recorded in the Official Records of Los Angeles County as Instrument No. \_\_\_\_\_, and assumed by Trustor.

Notwithstanding the above, however, the transfer of the Property solely as a result of the marriage, divorce, incompetency or death of one or more individuals constituting the Trustor shall not accelerate the Note Period or cause the City Loan to become due and payable, so long as the transferee(s) give notice to Beneficiary of such event within thirty (30) days of its occurrence and the transferee(s) assume the Trustor's obligations under this Agreement, by execution of an assignment and assumption agreement to be provided by Beneficiary. At the request of Trustor, Beneficiary may, in its sole and absolute discretion, in writing waive some or all of the requirements of this Section 1 and defer repayment and/or extend the term of the City Loan. Notwithstanding the foregoing, Trustor may upon written approval by Beneficiary refinance the First Lien for a loan amount equal to or less than the then current loan balance secured by the First Lien, plus customary and reasonable costs of refinancing.

**b. Equity Sharing Period.** In the event that the City Loan becomes due and payable pursuant to Section 1 above within forty-five (45) years from the date of the Promissory Note ("Equity Sharing Period"), Trustor shall pay to Beneficiary, together with the whole of the Note Amount, an amount equal to the "Equity Sharing Amount," as hereinafter defined.

**c. Equity Sharing Amount.** The "Equity Sharing Amount" means an amount equal to a percentage share of the appreciation in the value of the Property determined by multiplying a percentage factor (the "Equity Sharing Percentage") by the difference between the Sales Price and the Purchase Price (as defined below). The "Equity Sharing Percentage" shall be calculated by dividing the amount of the City Loan by the Purchase Price.

**d. Purchase Price.** For the purpose of determining the Equity Sharing Amount and the Equity Sharing Percentage, the "Purchase Price" is \_\_\_\_\_ plus the original cost of any capital improvements made to the Property by Trustor, with a minimum cost of Two Thousand Five Hundred Dollars (\$2,500) per item and a useful economic life of not less than five (5) years, as demonstrated by invoices and receipts which Trustor certifies to be true and correct.

**e. Sales Price.** The "Sales Price" is the price to be paid by the Buyer of the Property to Trustor for Trustor's interest in the Property.

**f. Appraisal.** In the event of a proposed sale of the Property and not more than thirty (30) days after Beneficiary has received notice of the opening of escrow in connection therewith, Beneficiary may elect to appoint a certified, independent appraiser to conduct an appraisal of the Property, at Trustor's expense (with the cost of the appraisal added to the Equity Share Amount) to assist Beneficiary in determining if the Sales Price is at or near the fair market value of the Property at such time. If the Sales Price is determined by the appraisal to be three percent (3%) or more below the fair market value of the Property as estimated in said appraisal, then the "Sales Price" for purposes of determining the Equity Sharing Amount shall be the fair market value of the Property established in said appraisal.

In the event of a refinancing not permitted under the Loan Agreement, failure to occupy the Property, or default or breach of any provision of this Agreement which causes the Note Amount to become immediately due and payable, the "Sales Price" for purposes of determining the Equity Sharing Amount shall be determined by an appraisal of the Property. In the event of refinancing by a reputable institutional lender, the Sales Price shall be determined by the appraisal performed by or on behalf of such lender, and in the event of refinancing by other than a reputable, institutional lender, failure to occupy the Property, or default or breach, Beneficiary may appoint a certified independent appraiser to conduct an appraisal of the Property, at Trustor's expense.

TRUSTOR ACKNOWLEDGES AND AGREES THAT UPON SALE, TRANSFER OR REFINANCING OF THE PROPERTY OR OTHER EVENT REQUIRING REPAYMENT OF THE CITY LOAN PRIOR TO THE TERMINATION OF THE EQUITY SHARING PERIOD, TRUSTOR SHALL PAY TO BENEFICIARY A EQUITY SHARING AMOUNT EQUAL TO A PERCENTAGE SHARE OF THE APPRECIATION OF THE PROPERTY AS CALCULATED PURSUANT TO THIS SECTION 1.

\_\_\_\_\_  
Trustor's Initials

\_\_\_\_\_  
Trustor's Initials

**g. Example.** For example, assume the Purchase Price for the Property for the purpose of calculating the Equity Sharing Amount is \$265,000. If Trustor subsequently sells the

Property during the Equity Sharing Period for a Sales Price of \$315,000, and the Loan Amount is \$80,000 the Equity Sharing Amount would be calculated as follows:

$$\begin{array}{r r r r r} \text{(Sales Price - Purchase Price)} & \times & \text{Equity Sharing Percentage} & & \\ (\$315,000 - \$265,000) & \times & (\$80,000 / \$265,000) & & \\ \mathbf{\$50,000} & \times & \mathbf{30.2\%} & = & \mathbf{\$15,094.33} \end{array}$$

**2. Sale to Eligible Person or Family at Affordable Housing Cost.** Notwithstanding the provisions of Section 1, if the Property is sold by the Trustor to a Buyer who is an Eligible Person or Family, as defined hereinabove, such Buyer is approved in compliance with Section 22 of the Loan Agreement, and the Sales Price does not exceed an Affordable Housing Cost, as defined herein, to such Buyer, then no Equity Sharing Amount is due to Beneficiary upon such sale, and the Note Amount shall not then be due and payable, provided the Eligible Person or Family assumes the obligations of the Agreement, the Note and this Deed of Trust. In order to verify the Buyer's status as an Eligible Person or Family, Trustor shall submit to Beneficiary the identity of the proposed Buyer and adequate information evidencing the income of the proposed Buyer and the Buyer's past real property interests. Said information shall be submitted together with the notice of proposed sale pursuant to Section 1 hereof not less than fifteen (15) days prior to the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that Beneficiary may determine and verify the household income of the proposed Buyer to determine Eligible Person or Family status and whether the Property is available to such Buyer at Affordable Housing Cost. Beneficiary may request additional information reasonably required to verify the proposed Buyer's Status as are Eligible Persons or Family. If Beneficiary is unable to verify the Buyer's income as provided herein prior to the proposed sale, then the Buyer's income shall be deemed to exceed the maximum allowable income limit for Eligible Persons and Families and the Equity Sharing Amount shall be due and payable concurrent with the repayment of the City Loan.

"Affordable Housing Cost" for the purposes of this Deed of Trust shall be that purchase price (inclusive of the City Loan) which would result in a Monthly Housing Cost which is not less than twenty-eight percent (28%) of the gross income of the purchaser and does not exceed the greater of (a) the product of thirty-five percent (35%) times one hundred ten percent (110%) of Los Angeles County median income adjusted for family size appropriate for the Property, or (b) the product of thirty-five percent (35%) of the actual gross income of the household for moderate income purchasers earning greater than one hundred ten percent (110%) and not more than one hundred twenty percent (120%) of the Los Angeles County median income.

"Eligible Person or Family" shall mean a Moderate Income Household.

"Monthly Housing Cost" shall include all of the following associated with the Property, estimated or known as of the date of the proposed sale of the Property:

- (1) Principal and interest payments on a mortgage loan including any rehabilitation loans and any loan insurance fees associated therewith.
- (2) Property taxes and assessments.

- (3) Fire and casualty insurance covering replacement value of property improvements.
- (4) Any homeowner association fees.
- (5) A reasonable utility allowance.

Monthly Housing Cost of a purchaser shall be an average of estimated costs for the next twelve (12) months.

**3. Covenants Do Not Impair Lien; Subordination.** The provisions of the Loan Agreement, the Promissory Note, and the Deed of Trust shall be subordinate to the First Lien on the Property held by the Lender and shall not impair the rights of Lender, or Lender's assignee or successor in interest, to exercise its remedies under the First Lien in the event of default under the First Lien by Trustor. Such remedies under the First Lien include the right of foreclosure, acceptance of a deed or assignment in lieu of foreclosure, or assignment of the mortgage to the Secretary of the United States Housing and Urban Development ("HUD"). Thus, any party, its successors and assigns, receiving title to the Property through a trustee's sale, judicial foreclosure sale, deed in lieu of foreclosure or assignment to HUD, and any conveyance or transfer thereafter, shall receive title free and clear of the Loan Agreement, the Promissory Note, and the Deed of Trust. In the event of refinancing of the First Lien, the City shall subordinate the Agreement, the Promissory Note, and the Deed of Trust to the new First Lien if the First Lien is in compliant with the Agreement, Section 3.

**4. Protection of Beneficiary's Rights in the Property.** If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect Beneficiary's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Beneficiary may do and pay for whatever is necessary to protect the value of the Property and Beneficiary's rights in the Property. Beneficiary's actions may include paying any sums secured by a lien which has priority over this Deed of Trust, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Beneficiary may take action under this Section 4, Beneficiary does not have to do so.

Any amount disbursed by Beneficiary under this Section 4, shall become additional debt of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, these amounts shall bear interest from the date of disbursement at 9% per annum or the maximum legal rate, whichever is less, and shall be payable, with interest, upon notice from Beneficiary to Trustor requesting payment.

**IN WITNESS WHEREOF**, Trustor has executed this Rider to Deed of Trust as of the date set forth above.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_,

- personally known to me
- or-**
- proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature Of Notary

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)  Limited
- Attorney-In-Fact  General

- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Document

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_,

- personally known to me
- or-**
- proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature Of Notary

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\_\_\_\_\_  
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\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Document

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

## EXHIBIT D

### BORROWER DISCLOSURE STATEMENT

I/we \_\_\_\_\_ (“Participant”) are obtaining financial assistance (the “City Loan”) from the City of Burbank (the “City”) to assist me/us to purchase the above described property (the “Property”), pursuant to a program offered by City (the “Program”) related to affordable housing. I/we understand that the City Loan is conditional on a number of factors, including, but not limited to:

- I/we have signed or will sign an Affordable Housing Loan Agreement, Promissory Note, Deed of Trust and Declaration of Conditions, Covenants and Restrictions in connection with the City Loan. I/we have read or had explained to us the terms and conditions of all of those documents. I/we understand that all of those documents impose binding legal obligations on me/us.
- I/we understand that the full amount of a \$\_\_\_\_\_ loan will be due and payable if I sell or otherwise transfer this property to non-eligible persons, or if I fail to reside at this property.
- I/we understand that I am restricted to sell the unit to other moderate income households, and that appreciation on the units is restricted by the Affordable Housing Loan Agreement.
- If I/we ever decide to sell the unit and the City decides not to buy it at a moderate income household price, I/we understand that I may have to pay to the City of Burbank a portion of any equity appreciation that I realize on the sale.
- I/we understand that these obligations and restrictions are fully set forth in the following documents that are part of this sale and that this Borrower Disclosure Statement is a simple summary of some of the restrictions on this property:
  - Affordable Housing Loan Agreement: The Affordable Housing Loan Agreement explains the terms of the loan from the City of Burbank, the equity sharing which may be due upon the sale of the property, maintenance and occupancy requirements, and other requirements.
  - Promissory Note: An agreement to pay \$\_\_\_\_\_ to the City of Burbank.
  - Deed of Trust: Allows the City of Burbank to foreclose on the property if I do not repay the City loan when it is due.
- I/we must qualify for a home loan from a responsible lender.
- I/we must qualify as a “Moderate Income Household” under the guidelines of the Program.



- My/our monthly payments for housing expenses may not be less than \$\_\_\_\_\_ nor exceed \$\_\_\_\_\_, as more specifically defined by Health and Safety Code Section 50052.5 and the Affordable Housing Cost Worksheet available from City.
- During the term of the City Loan, I/we must continuously occupy the Property and I/we shall not rent or lease the Property.
- An appraisal fee may be payable by me/us upon the following: (i) the loan becomes due upon sale, (ii) the Property is refinanced, (iii) I/we no longer occupy the Property, or (iv) I/we are/am in default of any provision of the Promissory Note and Affordable Housing Loan Agreement.
- City shall not be held responsible for any costs associated with the home I/we purchase with such assistance including, but not limited to, any loan fees or charges, any charges for appraisals or any escrow costs or other costs relating to the transfer of the Property.
- City shall not be responsible for the competitiveness of the terms of the Program. I/we assume all responsibility for determining whether I/we will inform myself/ourselves as to the availability and terms of other public or private loans.
- The City financial assistance I/we receive under this Program may be considered to be income for purposes of federal or state income taxes and City shall not be held responsible for the payment of any taxes which I/we may incur by virtue of the receipt of such financial assistance.
- I/We have a right to cancel or rescind the City Loan at any time prior to midnight on the third business day after the Affordable Housing Loan Agreement is signed by sending a notice of my/our decision to rescind or cancel the City Loan to:

City of Burbank  
 275 East Olive Avenue  
 P.O. Box 6459  
 Burbank, California 91510-6459  
 Attention: Community Development Director

- I/We are responsible for payment of the cost of a title insurance policy insuring the Deed of Trust to be recorded against the Property to secure City's right to repayment of the City Loan.
- City cannot ensure that information provided by or on my/our behalf will be kept confidential.
- City shall not be responsible for the selection of a home or providing information concerning other public or private sources of loans.

- City shall not be charged with the knowledge of the contents of the documents of the lender.
- All loans and funding requests must be approved by the Community Development Director of City. Therefore, a minimum 30 day escrow may be necessary.

**NOTICE OF RIGHT OF RESCISSION**

**(Identification of Transaction)**

Notice To Customer Required By Federal Law:

You have entered into a transaction on \_\_\_\_\_, 200\_\_, which may result in a lien, mortgage or other security interest on your home. You have a legal right under federal law to cancel this transaction, if you desire to do so, without any penalty or obligation within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you. If you so cancel the transaction, any lien, mortgage or other security interest on your home arising for this transaction is automatically void. You are also entitled to receive a refund of any down payment or other consideration if you cancel. If you decide to cancel this transaction, you may do so by notifying

City of Burbank  
(Name of Creditor)

at 275 East Olive Avenue, Burbank, California 91510-6459  
(Address of Creditor's Place of Business)

by mail or telegram sent not later than midnight on \_\_\_\_\_, 200\_\_.  
(Date)

You may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby cancel this transaction.

\_\_\_\_\_  
(Date) (Owner's Signature)

**SEE NEXT PAGE FOR IMPORTANT INFORMATION ABOUT  
YOUR RIGHT OF RESCISSION**

**ACKNOWLEDGMENT OF RECEIPT OF TWO COPIES OF NOTICE**

Each of the undersigned hereby acknowledges receipt of two completed copies of the Notice of Right of Rescission.

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(Owner's Signature) (Date)

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(Owner's Signature) (Date)

EFFECT OF RESCISSION. When a customer exercises his right to rescind he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within ten (10) days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, down payment or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within ten (10) days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

**EXPIRATION OF RESCISSION PERIODS**

**Direct Loans  
(Truth in Lending - Real Estate and Home Improvement Loans)**

Owner's Name \$ \_\_\_\_\_  
Loan Amount

\_\_\_\_\_  
Address of Residence

In connection with the Agreement of the City of Burbank ("City") to make the loan described above, which will be secured by a deed of trust on the residence at the above address, each of the undersigned hereby represents as follows:

1. The undersigned understands the terms of this Agreement and its attachments.
2. The undersigned has been notified that it must inform City by today's date should any of them desire to rescind or terminate this transaction.
3. The undersigned acknowledges that this loan has not been funded for at least three days from the date of execution, in order to provide them with an opportunity to rescind should they so desire.
4. City agreed, subject only to the occurrence of certain conditions, to make the above described loan and delivered to each undersigned a Disclosure Statement setting forth terms of said loan and a Notice of Right of Rescission advising each undersigned of their right to rescind and cancel said transaction in accordance with the Truth in Lending Act on or before the date the undersigned executed this document.
5. Prior to the date shown above, no proceeds of said loan have been disbursed to or for the benefit of any of the undersigned.
6. None of the undersigned have canceled or rescinded the above described loan transaction nor have any of the undersigned notified said City of any intention to cancel or rescind said loan transaction.

The undersigned request the City of Burbank to proceed with the making of the above described loan in reliance upon the foregoing representations.

\_\_\_\_\_  
(Owner's Signature)      \_\_\_\_\_  
(Date)                      \_\_\_\_\_  
(Owner's Signature)      \_\_\_\_\_  
(Date)