

RECORDING REQUESTED BY  
AND WHEN RECORDED,  
MAIL TO:

City of Burbank  
P.O. Box 6459  
Burbank CA 91510

Exempt from recording fee pursuant to Government Code Section 27383

## **AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY**

**THIS AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY** ("Covenant Agreement") is entered into as of \_\_\_\_\_, 200\_, by and between **CROWN FAIRFIELD ASSOCIATES, LLC**, a California limited liability company (the "Owner") and **THE CITY OF BURBANK, CALIFORNIA**, a municipal corporation (the "City").

A. As of the recordation of this Covenant Agreement, Owner is the owner of fee title to that certain real property (the "Site") located in the City of Burbank more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. Owner proposes to construct approximately 300 housing units, comprised of an approximately 256 unit residential building and 44 townhomes (the "Housing Units") thirty (30) of which shall be sold exclusively to persons and/or families of moderate income ("Moderate Income Households") at an Affordable Housing Cost (the "Affordable Units") for a period of forty-five (45) years, together with approximately 1,000 square feet of retail uses, a 2,500 square foot recreation building, and associated parking facilities on the Property (hereinafter the "Project").

C. In connection with the Project, Owner has also received the following discretionary approval(s) from City: Planned Development No. 2004-64, Development Review, a General Plan Amendment, Tentative Tract Map No. 61361, collectively referred to as Project Number 2004-64 and the "Project Approvals."

D. Owner has requested approval of a Development Agreement pursuant to Burbank Municipal Code Section 31-1997 et.seq., to vest Owner with the Project Approvals for a period of seven (7) years.

E. Among the expressed goals of the City are to: (i) Provide housing opportunities for all income groups without discrimination on the basis of race, religion, ethnicity, sex, age, marital status, sexual orientation or household composition; (ii) Promote development of a housing stock that varies sufficiently in cost and tenure to meet the economic and physical needs of existing and future Burbank residents; and (iii) Promote housing opportunities at

prices affordable to all economic segments of the community. (Section IX, Housing Element, City of Burbank General Plan.)

F. The development of affordable housing on the Property pursuant to this Covenant Agreement is in the vital and best interest of the City and the health, safety and welfare of the residents of the City, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

G. In consideration of the approval of the Planned Development zoning and vesting of the Project Approvals conferred through the Development Agreement dated \_\_\_\_\_, 2005, City and Owner desire to enter into this Covenant Agreement for the construction of thirty (30) affordable housing units within the Project.

H. This Covenant Agreement supersedes any recorded or unrecorded version of this Covenant Agreement dated prior to the date of recordation of this version of the Agreement.

NOW, THEREFORE, CITY AND OWNER COVENANT AND AGREE AS FOLLOWS:

1. Term of Agreement. The Term of this Covenant Agreement, shall commence upon recordation hereof, and shall continue thereto as to each Affordable Unit until the date that is forty-five (45) years after the date the grant deed for the first sale of the Affordable Unit is recorded in the Official Records of Los Angeles County ("Term"). Nothing in this Section 1 of this Covenant Agreement shall be construed to limit the rights of Owner pursuant to Sections 4 and 5 herein.

2. Definitions. The following terms, as used herein, shall have the following definitions. Any capitalized term not defined herein shall have the meaning as set forth for that term in the DDA.

**"Affordable Housing Cost"** shall mean a monthly housing cost for an Affordable Unit 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 Affordable Unit, 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 Los Angeles County median income.

**"Affordable Purchase Price"** shall mean that purchase price of an Affordable Unit that is calculated so that the monthly housing cost does not exceed the Affordable Housing Cost."

**"Affordable Units"** are defined in Recital B above.

**"Market Rate Housing Unit"** means any Housing Unit that is not an Affordable Unit pursuant to Recital B above and not subject to the income eligibility and affordable housing cost requirements of that section. Two hundred and seventy (270) of the Three Hundred (300) Housing Units in the Project will be Market Rate Units.

**"Moderate Income Household"** shall mean a household earning not greater than one hundred twenty percent (120%) of Los Angeles County median income, as determined by the United States Department of Housing and Urban Development and as set forth by regulation of the California Department of Housing and Community Development, pursuant to Health and Safety Code Section 50093.

**"Owner"** means both the party identified as "Owner" in the first paragraph of this Covenant Agreement, and any successor in interest to the Owner as to any part of the Site defined as an Affordable Unit, except where a provision of this Covenant Agreement expressly excludes such party from the definition of Owner and may include the Purchaser as the case or context may require.

**"Purchaser"** means a Moderate Income Household that is purchasing as Affordable Unit from Owner.

3. Restriction on Transfer.

a. The Owner covenants and agrees that the Affordable Units, which shall be Units \_\_\_\_\_ of the Project, shall be sold only to Moderate Income Households at not more than the Affordable Purchase Price. Owner shall require each Purchaser to execute an Affordable Housing Loan Agreement in conformance with Exhibit D to Development Agreement. The Owner shall not sell, convey, transfer, lease, sublease, assign, encumber, mortgage, or hypothecate any Affordable Unit, or enter into agreements to sell, convey, lease, assign, transfer, encumber, mortgage, or hypothecate any of the Affordable Units except in compliance with the terms of this Covenant Agreement.

b. Any violation or breach of the provisions hereof is prohibited and any sale or transfer, in violation hereof shall be null, void and unenforceable.

4. Covenant to Maintain Affordability; Resale Restriction.

a. Owner agrees that during the Term the Affordable Units shall remain available, and may only be sold, at an Affordable Purchase Price to Moderate Income Households. In addition, if, without Agency's consent, any Affordable Units fail to be owner-occupied for a period of 90 calendar days, cumulatively, in any calendar year, then Owner shall be in breach of this Covenant Agreement.

b. The Affordable Units may only be resold during the Term to Moderate Income Households at an Affordable Purchase Price.

5. Permitted Transfers and Mortgages.

a. Conveyances to Moderate Income Households. The Owner may convey an Affordable Unit to a Moderate Income Household, on the condition that (i) the Owner complies with the requirements of Section 6 hereof, (ii) the successor Purchaser covenants to occupy the Affordable Unit as such party's principal residence, or rents (if any) of the Affordable Units shall be limited to Affordable Rents and (iii) the purchase price does not exceed the Affordable Purchase Price for the Unit. Any permitted transferee shall acquire the Affordable Unit subject to the terms and conditions hereof. Any permitted transferee shall execute in recordable form an assumption agreement in a form provided by the City.

b. Other Permitted Conveyances. The following transfers of title shall not be breaches of this instrument: the transfer of an Affordable Unit solely as a result of the marriage, divorce, incompetency or death of one or more individuals constituting the Purchaser, 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 Purchaser's obligations under this Covenant Agreement, by execution of an assignment and assumption agreement to be provided by City.

c. Prior Encumbrances. An approved Moderate Income Household that purchases an Affordable Unit may encumber the Affordable Unit with a deed of trust or mortgage securing a purchase money loan, and Agency agrees to subordinate this Covenant Agreement to the deed of trust securing such purchase money loan pursuant to a subordination agreement reasonably acceptable to City.

d. Refinancing of First Trust Deed. The Purchaser 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 owner/borrower 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.

An owner/borrower 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 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 owner/borrower 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 owner/borrower 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 subordination of this Covenant 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 Covenant 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.

## 6. Resale Price Controls and Procedures.

a. For the purpose of confirming with the City that a proposed purchaser is a Moderate Income Household that will be paying a purchase price that is in compliance with the terms hereof, Owner shall notify the City in writing at least 30 days prior to the scheduled closing date of any offer from a prospective purchaser which Owner intends to accept, disclosing the identity of such prospective purchaser and providing the City with such financial, credit and other information on such prospective purchaser as required by the City, including but not limited to the following:

- i. Name and address of the purchaser.
- ii. Number of persons comprising the purchaser's household and their names and ages.
- iii. Proposed purchase price of the Affordable Unit, and any other consideration for the purchase of the Affordable Unit.
- iv. Downpayment.
- v. Terms of any loan that will be used by the purchaser to finance the purchase of the Affordable Unit, including, but not limited to, principal, interest rate, term, and loan fees.
- vi. Closing date.
- vii. Aggregate annual income of the purchaser's household.
- viii. Federal and state income tax returns of the purchaser and all other members of the purchaser's household for the preceding two (2) calendar years, and verification of the proposed purchaser's salary or wages from the purchaser's employer or from current pay stubs showing year to date as well as period payroll for the preceding two (2) calendar years.
- ix. Copy of any proposed purchase and sale agreement, escrow instructions, loan application, or other agreements between the buyer and seller of the Affordable Unit or relating to the sale of the Affordable Unit.
- x. A written statement signed by the proposed purchaser that the Affordable Unit will be occupied by the purchaser and used as his or her primary residence.

b. City shall have fifteen (15) days to review the information ("Review Period"), which Review Period shall not commence until City has received a complete submittal of the items set forth in Subsection (a) of this Section 6. City may require the purchaser to submit other written documentation reasonably requested by City to verify the information set forth herein and to determine that the Affordable Housing Cost restrictions of this instrument shall be satisfied. If City receives all such prospective purchaser information requested by City, City shall determine whether the prospective purchaser is a Moderate

Income Household, and shall thereafter immediately notify Owner in writing that the prospective sale is authorized and approved, or that the prospective purchaser does not qualify to purchase the Affordable Unit. City hereby designates the City's Community Development Director to make the evaluations, reviews, and determinations set forth in this Section.

7. Repayment of the Equity Sharing Amounts. Upon any resale of any Affordable Unit by Purchaser, the applicable Equity Sharing Amounts due under the Promissory Note, and subject to City rights of refusal as set forth in the Note, shall be paid to City unless the resale of the Affordable Unit is to another eligible Moderate Income Household, and such purchaser assumes in writing the obligations of this Covenant Agreement.

8. Uses Consistent with PD 2004-64. The Owner covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof) that the Owner, such successors, and such assigns shall devote the Site (or any part thereof), to the uses specified therefor in the Planned Development No. 2004-64, the plans approved pursuant to the Planned Development and this Covenant Agreement.

9. Nondiscrimination Covenants. By Owner's acceptance hereof, Owner covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, age, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site nor shall the Owner 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 owners or vendees of the Site.

The Owner shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Site (or any part thereof) on the basis of race, color, creed, religion, sex, marital status, national origin, age, or ancestry. All such deeds, leases or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein 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, creed, religion, sex, marital status, national origin, age, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee 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 land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and

accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, age, or ancestry, in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leases, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, or occupancy of tenants, lessees, sublessees, tenants, or vendees in the land herein leased."

c. In contracts pertaining to the realty: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, age, or ancestry, in the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee 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 of the land."

10. Maintenance of the Site/Prohibition Against Waste. Owner shall not commit waste upon the Site. Owner shall not remove or demolish the improvements on the Site except pursuant to a validly issued demolition permit from the City. Owner shall, through the Term hereof, keep and maintain the Site and the improvements thereon in good condition and repair. If Owner at any time fails to so keep and maintain the Site in good condition and repair, after 30 days notice from City, City shall have a right to enter onto the Site and perform such deferred maintenance, and Owner shall promptly reimburse City for all cost incurred by City in performing such maintenance.

11. City Beneficiary of Covenants. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that City shall be deemed a beneficiary of the covenants and agreements provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall run with the land and shall be binding for the benefit of City, and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is an owner of any land or interest herein to which such covenants relate. City shall have the right, in the event of breach of any such covenant or agreement, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenant or agreement. Notwithstanding the foregoing, however, Owner and the successors in interest to Owner named herein (namely the successor Purchasers) shall be liable for performance hereof only during their respective period of ownership of the portion or portions of the Site, including any Affordable Unit; provided that transferee Owners have, in writing, assumed and agreed to perform the transferor Owner's obligations hereunder.

12. No Impairment of Security. No violation or breach of the covenants, conditions, restrictions, provisions, or limitations contained in this Covenant Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by the Agreement, provided, however, that any subsequent



owner of the Site shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

13. Default. If Owner defaults with regard to any of the provisions of this Covenant Agreement, City shall serve written notice of such default upon Owner. If the default is not cured by Owner within (30) days after service of the notice of default, or if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly within a reasonable period of time after commencement, City shall have the right to do any or all of the following: to seek specific performance of Owner's obligations hereunder and to pursue any other remedies available to City by law.

14. Further Assurances and Recordations. Owner covenants that upon request of City, Owner, or its successors or assigns, will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and agreements and do such further acts as may be necessary, desirable or proper to carry more effectively the purpose of this instrument. At the expiration of the Term, City agrees to provide to Owner and instrument in recordable form that has the effect of confirming the termination of the affordable housing requirements of this instrument.

15. Miscellaneous.

a. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Covenant Agreement, unless expressly stated otherwise.

b. Interpretation. As used in this Covenant Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Covenant Agreement shall be interpreted as though prepared jointly by both parties.

c. No Waiver. A waiver by either party of a breach of any of the covenants, condition or agreements under this Covenant Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

d. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

e. Severability. If any term, provision, condition or covenant of this Covenant Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Covenant Agreement, or the application

of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

16. Partial Termination. This Covenant Agreement shall be terminated in its entirety as to the Market Rate Housing Units (means any Housing Unit that is not an Affordable Unit pursuant to Section 2 above and not subject to the income eligibility and affordable housing cost requirements of this Covenant Agreement) upon the earlier of (i) the approval of a subdivision map for the Housing Units and the identification by Owner, subject to Agency's approval which shall not be unreasonably withheld, conditioned, or delayed, of the legal descriptions of the thirty (30) Affordable Units and the legal descriptions of the approximately two hundred seventy (270) Market Rate Units, or (ii) as to a particular Market Rate unit if after approval of the foregoing described subdivision map the Owner has not designated specific units as the Affordable Units, the sale of that particular Market Rate Unit. City and Owner covenant and agree to execute and record one or more termination agreements in a form acceptable to the title company to remove this Covenant Agreement as a cloud on title with respect to the Market Rate Units.

17. Counterparts. This Covenant Agreement may be executed in counterparts, so that not all parties' signatures may appear on one copy hereof, but all of such copies so signed shall constitute and be construed as one and the same agreement.

IN WITNESS WHEREOF, the City and the Owner have executed this Agreement Containing Covenants.

"City"

"Owner"

THE CITY OF BURBANK, a municipal corporation

CROWN FAIRFIELD ASSOCIATES, LLC, a California limited liability company

By: \_\_\_\_\_  
Mary J. Alvord  
City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

---

Margarita Campos, City Clerk

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

By: \_\_\_\_\_  
Joseph H. McDougall  
Assistant City Attorney

**Exhibit A**  
**Legal Description**