

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Burbank
275 E. Olive Avenue
P.O. Box 6459
Burbank, CA 91510-6459
Attn: City Clerk

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pursuant to Government Code Sections 27383 and 6103

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BURBANK
AND
CROWN FAIRFIELD ASSOCIATES, LLC**

PLANNED DEVELOPMENT NO. 2004-64

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BURBANK
AND CROWN FAIRFIELD ASSOCIATES, LLC
(PLANNED DEVELOPMENT NO. 2004-64)**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2005, by and between the CITY OF BURBANK, a charter city and municipal corporation (the "City") and CROWN FAIRFIELD ASSOCIATES, LLC, a Delaware limited liability company (the "Developer"). The City and Developer are from time to time hereinafter referred to individually as a "party" and collectively as the "parties."

R E C I T A L S

A. Developer is the owner, or has an equitable interest, in that certain real property located at 1935 Buena Vista Street, comprised of approximately 7.35 acres, and bounded generally by Empire Avenue on the north, Buena Vista Street on the east, a 12 foot wide concrete drainage channel and Southern Pacific right-of-way on the south, and a City park on the west, as more particularly described in Exhibit A attached hereto (the "Project Site").

B. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the "Development Agreement Statute"), which authorizes the City to enter into an agreement with any person or business entity having a legal or equitable interest in real property to establish certain development rights regarding the development of such property.

C. Pursuant to Government Code Section 65865, the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements. Such rules and regulations are codified at Section 31-1997 et.seq. of the Burbank Municipal Code (the "Development Agreement Ordinance"). This Development Agreement has been processed, considered and executed in accordance with the Development Agreement Ordinance.

D. The City has also adopted Sections 31-19118 et.seq. of the Burbank Municipal Code (the "Planned Development Ordinance"), establishing the procedures and requirements for the consideration of and establishment of a planned development. The Planned Development Ordinance requires that the approval of a planned development be subject to a developer's entering into a development agreement under the Development Agreement Ordinance. The Planned Development Ordinance sets forth the intent of the City Council in enacting the ordinance as an alternative process to accommodate major and unique developments, including those developments with combinations of uses and modified development standards, which would create a desirable, functional and community environment under the controlled conditions of a development plan.

E. It is the intent of the Developer to develop the Project Site as a planned development under the Planned Development Ordinance. As required by the Planned Development Ordinance, the development plan for the entire Project Site is set forth fully in the project report ("Project Report") and site plan ("Site Plan"), which are on file at the office of the City Planner. The Project Report, the Site Plan, and the Conditions of Approval collectively describe and govern the project to be developed.

F. At the time this Agreement is approved and executed by the City, the Developer will have secured various land use approvals, permits and other entitlements relating to the development of the Project and the Project Site. These approvals are defined in Article 2 of this Agreement and are collectively referred to in this Agreement as the "Project Approvals" and include without limitation the following:

(1) Planned Development Zoning. On November 1, 2005, following duly noticed public hearings and Planning Board review and recommendation, the City Council approved the Planned Development zone change for the Project Site, Planned Development No. 2004-64 ("PD Zoning"). The PD Zoning is consistent with the General Plan. The PD Zoning and this Agreement allow the development of (A) (1) an approximately 256 unit residential apartment/condominium complex, 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; and (2) approximately 44 townhomes (collectively, the "Housing Component"), (B) approximately 1,000 gross square feet of retail, ("Commercial Component"), (C) a parking structure to be constructed on a portion of the Project Site consisting of 631 parking spaces, and (D) an approximately 2000 square foot recreation building ("Recreation Component") (all of the foregoing, collectively, the "Project").

(2) Conditions of Approval. Certain Project Approvals were approved subject to "Conditions of Approval," which, for the purposes of this Agreement, shall also be considered included in any reference to the Project Approvals. The Conditions of Approval are attached hereto as Exhibit B, and incorporated herein by this reference.

G. Development of the Project and the Project Site in accordance with this Agreement shall provide for orderly growth consistent with the goals, policies, and other provisions of the General Plan. Developer desires to obtain the binding agreement of the City that the City, notwithstanding changes in City policy, ordinances, approval processes or the makeup of the City's governing body, will permit Developer to construct, develop, use and operate the Project as a Planned Development in accordance with the City's ordinances, rules, regulations and official policies governing permitted land uses, governing density and intensity of uses, dedications, and other exactions, and governing the design, improvement and construction standards and specifications, applicable to development of the Project, the Planned Development and the Project Site (the "Existing Development Regulations"), in force at the time of execution of this Agreement, and without requiring Developer to dedicate property, or construct public improvements or make financial contributions to the City in lieu of public improvements, except as expressly set forth in this Agreement.

H. On September 12, 2005, following a duly noticed public hearing, the Planning

Board adopted Resolution No. 2998, recommending that the City Council approve this Agreement.

I. On November 1, 2005, after a duly noticed public hearing, the City Council took the following actions: (1) determined that the Mitigated Negative Declaration ("MND") adequately addressed the environmental impacts under the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. and the regulations promulgated thereunder ("CEQA") of the Project and approved the MND; (2) made appropriate findings that the provisions of this Agreement are consistent with the General Plan; and (3) introduced Ordinance No. _____ approving and authorizing the execution of this Agreement. On _____, the City Council adopted Ordinance No. _____.

J. For the reasons recited herein, the Developer and the City have determined that the Project as a planned development is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project Site; ensure a desirable and functional community environment; provide for employment generating uses; provide affordable housing and provide other public benefits to the City and its residents by otherwise achieving the goals and purposes of the Development Agreement Statute, the Planned Development Ordinance, and the Development Agreement Ordinance.

K. In exchange for these benefits, together with the public benefits that will result from the development of the Project and the Project Site pursuant to this Agreement, the Developer desires to receive the assurance that it may proceed with the Project in accordance with the Existing Development Regulations (as defined below) of the City as they exist on the Effective Date, subject to the terms, conditions, and exceptions contained herein.

L. The parties agree that this Agreement will promote and encourage the development of the Project by providing the Developer and its lenders with a greater degree of certainty of the Developer's ability to expeditiously and economically complete the development effort, and that the consideration to be received by the City pursuant to this Agreement and the rights granted to Developer hereunder constitute sufficient consideration to support the covenants and agreements of the City and Developer. By entering into this Agreement, the City desires to vest in the Developer, to the fullest extent possible under the law, all possible development entitlements necessary for the completion of the Project.

M. The City Council has determined that the Planned Development is consistent with and satisfies the relevant provisions of the Code, including the goals and objectives of the City's General Plan. The City Council has found that the provisions of the Development Agreement are consistent with the relevant provisions of the Code and the City's General Plan.

N. All actions taken by the City with respect to the Project have been duly taken in accordance with all applicable legal requirements, including CEQA, and all other requirements for notice, public hearings, findings, votes and other procedural matters.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the parties agree as follows:

AGREEMENT

ARTICLE 1.

GENERAL PROVISIONS

Section 1.01. Incorporation. The preamble, the Recitals, and all defined terms set forth therein, are hereby incorporated into this Agreement as if set forth herein in full.

Section 1.02. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site and the burdens and benefits thereof shall bind and inure to the benefit of each of the parties hereto and any successors or assigns of City, and to any "Successor Interests," as that term is defined in Article 2 of this Agreement, of Developer.

Section 1.03. Effective Date. This Agreement shall become effective upon the thirty first (31st) day following the publication of the City Attorney Synopsis of the Ordinance that approves this Agreement (the "Effective Date").

Section 1.04. Term. The term of this Agreement shall commence upon the Effective Date and shall extend for seven (7) years from the Effective Date.

ARTICLE 2.

DEFINITIONS

"Agreement" shall mean this Development Agreement.

"CEQA" shall have that meaning set forth in Recital I of this Agreement.

"City" shall mean the City of Burbank, a charter city and municipal corporation.

"City Council" shall mean the City Council of the City of Burbank, or its designee.

"City General Plan" or "General Plan" shall mean the applicable General Plan of the City of Burbank.

"Development Agreement Statue" shall mean Government Code Sections 65864 through 65869.5.

"Director" shall mean the Community Development Director of the City of Burbank, or his or her designee.

"Effective Date" shall have that meaning set forth in Section 1.03 of this Agreement.

"Existing Development Regulations" shall mean the 1) City laws, ordinances, rules, regulations, policies, motions, directives, the mitigation measures set forth as the Developer's responsibility in the MND, conditions, standards, specifications, dedications, other exactions and impositions of the City, whether enacted or adopted by the City or its electorate through the initiative or referendum process, in effect as of the Effective Date, establishing or regulating the design, density, permitted land uses, occupancy, improvement, construction standards, impact fees, dedications and exactions applicable to the Project Approvals, except as otherwise expressly set forth in this Agreement; and 2) the Project Approvals, this Agreement, and the Conditions of Approval.

"New Law" shall mean any law which becomes operative or effective subsequent to the Effective Date and shall include any City laws, ordinances, resolutions, rules, or regulations

"Project Approvals" shall mean 1) Ordinance No. _____ approving the Planned Development Zone and this Agreement; 2) Resolution No. _____, approving the MND; 3) Development Review No. _____; 4) Resolution No. _____ approving Tentative Tract Map No. 61361; and (5) all other approvals and entitlements required for the development of the planned development project, including but not limited to, zone variances, conditional use permits, sign permits, grading permits, building permits, lot line adjustments, parcel maps, subdivision improvement agreements, and vacations that will accomplish the goals, objectives, policies and plans referenced, described, implied and shown on the Project Report and Site Plan and this Agreement.

"Subsequent Applications" shall mean applications for other land use approvals, entitlements and permits not necessary to the development of the Project and the Project Site, but desired by Developer subsequent to the Effective Date. The Subsequent Applications may include without limitation amendment of any of the Project Approvals.

ARTICLE 3.

OBLIGATIONS OF DEVELOPER AND CITY

Section 3.01. Obligations of Developer. In consideration of the City's entering into this Agreement, Developer agrees that it will comply with this Agreement, the Project Approvals whether granted in conjunction with this Agreement or at a later date, and the Agreement Containing Covenants Affecting Real Property ("Covenant Agreement") attached hereto as Exhibit C and incorporated by this reference. This obligation expressly includes Developer's obligation to construct thirty (30) Affordable Units for sale to Moderate Income Households for a period of forty-five (45) years and Developer's obligation to require each purchaser to enter into an Affordable Housing Loan Agreement in substantial conformance with the sample attached hereto as Exhibit D. The parties acknowledge that the execution of this Agreement by City is a material

consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement, the Covenant Agreement, and the Project Approvals.

Section 3.02. Obligations of City. In consideration of the Developer's entering into this Agreement, City agrees that it shall comply with this Agreement, the Covenant Agreement and the Project Approvals, and that it shall act on all Project Approvals requested after the approval of this Agreement as provided in this Agreement, and pursuant to Existing Development Regulations, subject to the terms, conditions and exceptions contained herein.

ARTICLE 4.

DEVELOPMENT OF PROJECT AND PROJECT SITE

Section 4.01. Vested Right to Develop. Subject to the terms and conditions stated herein, Developer shall have the vested right to develop the Project and the Project Site as a planned development in accordance with the Existing Development Regulations as of the Effective Date. The City shall use good faith and reasonable efforts to cause all development permits and other approvals which may be required to develop the Project, to the greatest extent permitted by law, and except as herein provided, to be free of: (a) all discretionary acts or review of the City or any body or agency thereof, it being understood that any subsequent review shall be ministerial, as further provided herein; and (b) the application of any subsequent building moratoria or restrictions on development which are inconsistent with this Agreement, including, but not limited to, those related to or affecting the rate, timing, phasing or sequencing of the construction of the Project.

Section 4.02. Existing Development Regulations.

(a) General Rule and Exception.

(1) In accordance with the provisions of Government Code Section 65866, the City and the Developer, each to the extent legally permissible, agree that during the term of the Agreement, the Existing Development Regulations shall govern the Project with respect to, by way of example, but not limitation, design, density, grading, construction, remodeling, and reconstruction. Except as otherwise provided for herein, no amendment to, revision of, or addition to any Existing Development Regulation, without the Developer's written approval, whether adopted or approved by the City Council or any office, board, or other agency of the City, or by the people of the City through referendum or initiative measure, shall be effective or enforceable by the City with respect to the Project, except as expressly provided below.

(2) Notwithstanding the foregoing, the City has the absolute right to apply the following new rules, regulations, ordinances, and official policies which may conflict with the Existing Development Regulations to the Project and the Project Site:

a) Current Uniform Building Code and other uniform construction codes to the Project and Project Site throughout the term of this Agreement, provided that:

(i) Such uniform codes shall apply to the Project and Project Site only to the extent that the applicable code (and the applicable version or revision of the code) has been adopted by City and is in effect on a Citywide basis;

(ii) Such uniform codes shall be interpreted and applied to the Project and Project Site in a manner consistent with the express provisions and limits in the particular uniform code provision(s) adopted by City;

(iii) Provision(s) of such uniform codes shall be interpreted and applied to the Project and Project Site in a manner consistent with the generally prevailing interpretation of such provision(s) under the State Building Standards Code; and

(iv) Such uniform codes shall apply only at the time of construction of the particular improvements constituting the Project, and the Developer shall not be obligated retroactively during the term of this Agreement to upgrade or modify any improvements previously constructed on account of modification to uniform building codes.

b) Changes in Federal Law pursuant to Section 4.03 (d);

c) Changes under health and safety laws to the extent they are found by the City, based upon substantial evidence in the record, to be necessary to stop an imminent threat to the health and safety of the public, as it relates to the Project Site and as are generally applicable to all properties in the City.

(b) Police Power. The City, through the exercise of its police power, shall not establish, enact, increase, or impose any laws, ordinances, rules, regulations, or official policies applicable to the Project and/or Project Site which conflict with the Existing Development Regulations, except as authorized herein.

(c) Mitigation Measures Pursuant to CEQA. In connection with the City's approval of any other Project Approval which is subject to CEQA, and to the extent permitted or required by CEQA, the City shall promptly commence and diligently process any and all initial studies and assessments required by CEQA and, to the extent permitted or required by CEQA, the City shall use and adopt the MND, and other existing environmental reports and studies as adequately addressing the environmental impacts of such matter or matters without requiring new or supplemental environmental documentation including requests for amendments to the PD Zoning or this Agreement. The City agrees that no additional CEQA review is required for the PD Zoning, this Agreement, the Project Approvals, and the Conditions of Approval, as well as the Project and the development of the Project Site provided the Project and development of the Project Site is implemented within the scope of the MND, it being agreed and acknowledged that the MND has adequately disclosed and analyzed the environmental impacts of the Project as reflected in those Project Approvals, including appropriate mitigation measures.

The City shall not impose on the Developer any mitigation measures to decrease environmental impacts of the Project other than those referenced in the Conditions of Approval and this Agreement as the Developer's responsibility.

(d) New Laws. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the City or the voters in the City, by subsequent action, from enacting or imposing any "New Law" that does not conflict with the Existing Development Regulations (the "Non-Conflicting New Law"). Illustrative of some Non-Conflicting New Law(s) are the following: 1) imposition of new or increased taxes, or city or area-wide assessments; 2) New Laws that are found by the City, based upon substantial evidence in the record, to be necessary to the health and safety of the public, and are generally applicable to all properties in the City; and (3) zoning ordinances which regulate the manner in which business activities may be conducted or which prohibit a particular type of business activity on a city-wide basis, as long as such ordinances or regulations do not conflict with the uses of the Project on the date of enactment of such ordinances or regulations. To the extent such conflicts do occur, the Project shall be deemed a legal nonconforming use.

All City actions in applying any New Law to the Project and Project Site must be consistent with this Agreement and the Existing Development Regulations. If the City denies any Project Approval on the basis that it does not comply with a New Law that is consistent with this Agreement, the City shall follow the procedures set forth in Section 4.03 of this Agreement.

(e) Processing Fees. Pursuant to law, including without limitation, Government Code sections 66005, 66013, 66014 and 66016 (or their successor section(s)), the City shall charge Developer only those application and processing fees which represent the reasonable costs to the City of processing any application for Project Approvals (the "Processing Fees"). The City may charge the Developer the Processing Fees that are in effect on a Citywide basis at the time an application is submitted for a Project Approval.

(f) Impact Fees. Except as otherwise set forth in this Section 4.02(f), the Developer shall pay City development impact fees that are in effect at the time of issuance of each building permit for the Project. Said fees shall be payable at the time of building permit issuance. The city shall not impose any new categories of impact fees during the term of this Agreement. In addition, the City shall not require any exactions or fees, or impose any further conditions, reservations, dedications, or public improvements other than as set forth or required herein. The Project is eligible for participation in the demolition credit program pursuant to Code Section 31-2211. The Developer and City shall comply with the requirements of Section 31-2211(a) in the application for and determination of amount, respectively, of said demolition credit.

(g) Utility Fees. Except as otherwise stated in this Section 4.02(f), the Developer shall pay to the City standard and non-discriminatory utility fees (the "Standard Fees") and other related utility rates including, but not limited to, hook-up charges and aid-in-construction fees, in accordance with the applicable electrical or water rates and rules in effect at the time of application for service or as otherwise set forth in a separate agreement between the Developer and the City.

(h) Dedications. The City shall not require dedication by the Developer of any real property other than the dedications set forth in the Conditions of Approval, if any, or required through the Map approval process, if any. Prior to the recordation of the Final Map, the Developer and the City shall jointly determine and agree, and in accordance with this Agreement, on the legal description of any property to be dedicated to the City or for public use pursuant to this Agreement.

(i) Insurance. Before beginning construction on the Project Site, and when actual work on the Project is being performed by the Developer, its contractors, and subcontractors, the Developer shall obtain and shall keep in force the insurance described in the following sections (j)1 and (j)2 below. The City (including its respective directors, officers and employees), to the extent such parties have insurable interests, shall be included as an additional insured under all of the policies set forth below. The endorsement shall further provide that the insurer shall provide thirty (30) days written notice to the City prior to any cancellation or reduction in coverage. Said insurance shall include:

(1) Workers' Compensation and Employer's Liability Insurance for all persons employed by the Developer at the Project Site. The Developer shall require its general contractor and each subcontractor to maintain Workers' Compensation and Employer's Liability Insurance for all employees employed by the general contractor or subcontractor at the Project Site. The Developer agrees to indemnify the City and its officers, agents, employees and representatives, for any damage resulting from failure to obtain and maintain such insurance.

(2) General Commercial Liability Insurance having a combined single limit of Five Million Dollars (\$5,000,000) per occurrence, providing coverage for comprehensive general liability (bodily injury and property damage), automobile liability, including owned, hired and non-owned vehicles, blanket contractual liability, and personal injury.

The requirement to provide the insurance as set forth in this Section shall terminate as of the date of City sign-off on the last final inspection of the Project improvements.

Section 4.03. Cooperation/Implementation

(a) City Efforts.

(1) To the maximum extent permitted by law, the City shall use good faith and reasonable efforts to prevent any New Law from invalidating all or any part of this Agreement. The City agrees to use good faith and reasonable efforts with the Developer to keep this Agreement in full force and effect.

(2) The Developer reserves the right to challenge any New Law should it become necessary to protect the development rights vested in the Project and Project Site pursuant to the Existing Development regulations and this Agreement.

(b) Covenant of Good Faith and Fair Dealing. The City and the Developer shall use good faith and reasonable efforts and shall take and employ all necessary actions to ensure that Developer's vested rights to develop the Project and Project Site, secured by Developer through this

Agreement, can be enjoyed, and that Developer's financial and other obligations which benefit the City can occur.

(c) Life of Project Approvals. The term of the Project Approvals (including the Tentative Map, and Development Review [but not including permits issued for the construction of the Project]) shall automatically be extended for the longer of: (1) the term of this Agreement (2) the term normally given the approval under controlling law.

(d) Changes in the State and Federal Law. Pursuant to Government Code section 65869.5, and notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application to the Project or Project Site of any new law that is required by changes in state or federal laws or regulations ("Changes in the Law"), the terms of which are specifically required to be applied to developments such as the Project. The City shall not apply to the Project any such law or regulation that is inconsistent with this Agreement until the Director makes a finding that such law or regulation is necessary to comply with such Changes in the Law. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with the Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement.

(e) Timing of Project Construction and Completion. The Developer generally anticipates developing the Project in one phase by 2009. However, nothing in this Agreement shall be construed as requiring the Developer to develop the Project or any phase thereof, and any failure to develop the Project or any phase thereof shall not be deemed a default by the Developer of the obligations set forth in this Agreement.

(f) Processing.

(1) Upon submission by the Developer of all appropriate applications and processing fees for any Project Approval (such applications and processing fees are collectively referred to herein as the "Application"), the City shall promptly commence and diligently complete all steps necessary to act on the Application, including without limitation: (a) the notice and holding of all required public hearings (if such notice and hearings are required pursuant to Existing Development Regulations or this Agreement); and (b) the approval of the Application to the extent that it complies with this Agreement and the Existing Development Regulations.

(2) The City may deny an Application only if the Application does not comply with this Agreement and the Existing Development Regulations. The City, upon satisfactory completion by the Developer of all required administrative procedures, actions and payments of appropriate processing fees, if any, shall, in a timely fashion, proceed to complete all required steps necessary for the implementation of this Agreement and the development by the Developer of the Project Site. Prior to each request for a building permit, the Developer shall provide the City with a compliance certificate ("Certificate") in a form created by the Developer and approved by the City, which shall describe the Application's consistency with the Project Approvals. The Certificate shall be distributed to relevant City departments for review. The City

shall use its best efforts to complete this review within thirty (30) days of a completed Certificate and completed application for building permit.

(3) If the City denies any such Application for a Project Approval on the basis that it does not comply with a New Law, such New Law must be consistent with this Agreement and the Existing Development Regulations, and the City agrees to specify in writing the basis of its decision. The City and the Developer shall, with due diligence and in good faith, cooperate to require modifications rather than denying any Applications for Project Approvals whenever reasonably possible. Article 5 of this Agreement provides further processing guidelines.

(4) The Developer shall provide the City, in a timely manner, all documents, applications, plans, payments of appropriate processing fees, if any, and other information necessary for the City to carry out its obligations hereunder and shall cause Developer's planners, engineers, and all other consultants to submit, in a timely manner, all required materials and documents therefor. It is the express intent of the Developer and the City to cooperate and diligently work to implement any Applications for Project Approvals that are necessary in connection with the development of the Project and Project Site.

(g) Other Governmental Permits. The Developer shall apply in a timely manner for such other permits, approvals, grants, agreements and other entitlements ("Other Governmental Permits") as may be required by other agencies having jurisdiction over, or in connection with the development of, or provision of services to, the Project and Project Site. The City shall cooperate with the Developer relative to such entitlements.

Section 4.04 General Permitted Uses. The permitted uses, density and intensity of use, maximum height and size of proposed buildings, other development standards and provisions for reservation or dedication of land and other terms and conditions of development applicable to the Project, shall be substantially as set forth in the Project Approvals, the Project Report, and the Site Plan, except as otherwise provided on Exhibit B, or otherwise modified by the terms and conditions of this Agreement.

Section 4.05 Project Approvals Independent. All Project Approvals which may be granted pursuant to this Agreement, and all land use entitlements or approvals generally which have been issued or will be granted by the City with respect to the Project Site, constitute independent actions and approvals by the City. If any provision of this Agreement, or the application of any provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid or unenforceable, or if this Agreement terminates for any reason, then such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any such Project Approvals or other land use approvals and entitlements. In such cases, such approvals and entitlements will remain in effect pursuant to their own terms, provisions, and Conditions of Approval. The Developer shall have the right to file such new entitlement applications on portions of the Project where such previously approved approvals and entitlements have expired. Except where this Agreement is terminated, any such new applications filed for the Project shall be reviewed in accordance with the Existing Development Regulations. To the extent not expressly held invalid or unenforceable, this Section 4.05 shall survive the termination of this Agreement.

ARTICLE 5.

AMENDMENT

Section 5.01. Amendment of Project Approvals. The Project Approvals, including the Affordable Housing Loan Agreement and all exhibits thereto, from time to time, may be amended or modified in the following manner:

(a) Administrative Amendments. Upon the written request of the Developer, the Community Development Director or his or her designee (the "Community Development Director") shall determine: (1) whether the requested amendment or modification (the "Project Approval Amendment") is minor, as determined by the Community Development Director in his or her sole discretion; and (2) whether the requested Project Approval Amendment is consistent with this Agreement. If the Community Development Director finds that the Project Approval Amendment is both minor and consistent with this Agreement, the Project Approval Amendment shall be determined to be an "Administrative Amendment," and the Community Development Director shall approve the Administrative Amendment without notice or public hearing, and this Agreement and its pertinent exhibits shall be automatically amended without further action by the parties.

(b) Non-Administrative Amendments. Any written request by the Developer for an amendment that is determined by the Community Development Director to be either: (1) not minor, or (2) inconsistent with this Agreement, shall be determined not to be an Administrative Amendment, shall be subject to review, consideration and action pursuant to the Existing Development Regulations and this Agreement, and shall be reflected in an amendment to this Agreement and/or its pertinent exhibits pursuant to Section 5.02 of this Agreement.

(c) Changes to Plans; Appeals. If the Community Development Director determines that a proposed revision to the approved Site Plan is minor, if such revisions do not result in any new, significant, or potentially significant environmental impacts not studied in the MND, and the Community Development Director determines that the proposed revision to the Site Plan is in substantial conformance with the provisions of the Planned Development, the general intent of the approved Site Plan and consistent with this Agreement, the revised plan shall be approved by the Community Development Director without submittal to the Planning Board for review and approval. The decision of the Community Development Director shall be final unless appealed to the Planning Board within ten (10) days from the date of such decision. If the Community Development Director determines that the proposed revision is not in substantial conformance with the approved Site Plan, then the revised plan shall be submitted to the Planning Board for review and action pursuant to this Subsection. Notwithstanding the foregoing, the Community Development Director shall have the discretion to refer consideration of the revised plan to the Planning Board as a report and recommendation item. If the Planning Board determines that the proposed revision is in substantial conformance with the provisions of the Planned Development and the general intent of the approved Site Plan, the revised plan shall be approved by the Planning Board. The decision of the Planning Board shall be final unless appealed to the City Council within ten (10) days from the date of such decision. Before any decision by the

Community Development Director is final under this subsection, notice shall be provided by publication at least five days prior to the end of the appeal period.

Section 5.02. Amendment Of This Agreement.

(a) Generally. This Agreement may be amended from time to time in whole or in part by mutual consent of the original parties or their successors in interest, in accordance with this Agreement and Sections 65867, 65867.5, and 65868, of the Government Code.

(b) Administrative Amendments. Notwithstanding subdivision (a) of this Section, any amendment to this Agreement which does not relate to the term, uses other than those permitted by the Planned Development, provisions for reservation and dedication of land, or conditions, terms, restrictions, and requirements relating to subsequent discretionary actions, monetary contributions agreed to by Developer pursuant to this Agreement, or changes to any condition set forth in the Conditions of Approval may be determined by the Community Development Director to be an Administrative Amendment and if so, shall be processed pursuant to Section 5.01(a). A memorandum shall be recorded to reflect such Administrative Amendment.

ARTICLE 6.

COOPERATION IN THE EVENT OF LEGAL CHALLENGE

In the event of any administrative or legal action, or other proceeding instituted by a third party, including another governmental entity or official challenging the validity of any of the Project Approvals (a "Challenge"), the parties shall cooperate in defending the Challenge. The City shall tender the complete defense of the action to the Developer (the "Tender") and upon the Developer's acceptance of the Tender, the Developer shall indemnify and hold harmless the City from all costs and liabilities arising from such an action or proceeding and shall control the defense including selecting the legal counsel to defend the Challenge. The Developer shall be responsible for only the attorneys' fees owing to its legal counsel. Should the Developer refuse to accept the Tender by City, the City may defend such Challenge and if City so defends, the City shall control the defense including selecting the legal counsel to defend the Challenge. The Developer shall indemnify and hold City harmless from all reasonable attorneys' fees related to such defense.

ARTICLE 7.

DEFAULT; REMEDIES; TERMINATION

Section 7.01. General Provisions.

(a) Failure or unreasonable delay by the Developer or City to perform any term, provision, or condition of this Agreement which it is obligated to perform, for a period of sixty (60) days after written notice thereof from the alleging party, shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. The time of notice shall be measured from the date of certified mailing. Said notice shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said default may be

satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 60-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) During any period of curing, the Developer or City, as applicable, shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action.

(c) Subject to the foregoing, after notice and expiration of the 60-day period without cure or commencement of cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and may give notice of intent to terminate this Agreement pursuant to Government Code section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the Planning Board and City Council in the manner set forth in Government Code sections 65865, 65867, and 65868, and Burbank Municipal Code Sections 31-19115 and 31-19116.

(d) Following consideration of the evidence presented in said review before the City Council, if the City Council determines to terminate this Agreement, the City shall give written notice of termination of this Agreement to the Developer by certified mail. Written notice of termination of this Agreement shall be effective immediately upon certified mailing to the defaulting party.

(e) Evidence of the Developer's default may also arise in the course of the regularly scheduled Annual Review of this Agreement as described in Section 7.02 of this Agreement.

(f) If the City does not accept, process, or render a decision on the Project Approvals in a timely manner, in accordance with the terms of this Agreement, or the City otherwise defaults under the provisions of this Agreement, Developer, upon a reasonable determination by Developer that the City remains in default after the cure period has elapsed, shall be entitled to exercise its remedies hereunder including, without limitation, the right to terminate or modify this Agreement.

In addition to any other remedies of Developer, Developer may, at its option, terminate or modify the terms of the Agreement to remedy the effect of City's default. If Developer desires to terminate or modify the terms of this Agreement, it shall request a processing of such modification pursuant to Government Code Section 65868 and City staff shall be required to present such requested modifications thereof to the City's Planning Board and the City Council at the earliest available public meeting thereof

Section 7.02 Annual Review.

(a) On or before the first anniversary of the Effective Date, and on or before each anniversary date during the term of this Agreement thereafter, the City shall review the good faith compliance by the Developer with the terms of this Agreement. This review shall be conducted by the Director and shall be limited in scope to compliance with the terms of this

Agreement pursuant to California Government Code (a) Section 65865.1, provided that, if the City Council imposes a mitigation monitoring or reporting program pursuant to CEQA which is to be completed simultaneously with the annual review of this Agreement, then the scope of the annual review may include implementation of ongoing mitigation measures that are the Developer's responsibility pursuant to the MND.

(b) During this review, the Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. At the conclusion of this review, the Director shall in writing make findings and determinations, on the basis of substantial evidence in the record, whether or not the Developer has complied in good faith with the terms and conditions of this Agreement. If the Director finds and determines that the Developer has not complied with such terms and conditions, then the Director shall deliver to the Developer a notice of a public hearing before the Planning Board in accordance with Burbank Municipal Code Sections 31-19114 and 31-19115, and if applicable, before the City Council in accordance with Burbank Municipal Code Sections 31-19115 and 31-19116.

(c) The City shall deliver to the Developer a copy of all staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning the Developer's performance hereunder, at least ten (10) days prior to any such periodic review. The Developer shall be permitted to respond, orally at the public hearing and by a written statement, to the City's evaluation of the Developer's performance.

(d) In the event that the City fails to either (1) conduct the annual review or (2) notify the Developer in writing (following the time during which the review is to be conducted) of the City's determination as to compliance or noncompliance with the terms of this Agreement and such failure remains uncured as of sixty (60) days following the anniversary of the Effective Date in any year during the term of this Agreement, such failure shall not affect the validity of this Agreement and shall be deemed an approval by the City of the Developer's compliance with the terms of this Agreement for that Annual Review period.

(e) With respect to any year for which an Annual Review of compliance with this Agreement is conducted and compliance is approved, or with respect to any year in which the City is deemed to approve of the Developer's compliance with this Agreement pursuant to the preceding paragraph, the City, upon request of the Developer, shall provide Developer with a written Notice of Compliance, pursuant to this Agreement.

Section 7.03. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement pertaining to extensions of time, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, terrorism, insurrection, strikes, walk-outs, inability to obtain labor and/or supplies, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities (other than the Project Approvals), enactment of conflicting state or federal laws or regulations, or similar bases for excused performance which are not within the reasonable control of the party to be excused. An administrative or legal/equitable challenge or proceeding addressing the validity of this Agreement, any other Project Approvals, or any permit, approval, agreement or other entitlement or action of a governmental agency necessary or desirable for the development of

the Project Site pursuant to this Agreement shall be deemed to create an excusable delay as to the Developer. Upon the request of either party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 7.04. Remedies. In the event that one of the parties defaults under the terms and conditions of this Agreement, the other party shall have all legal rights, including the right to institute a legal action to cure, correct, or remedy any default, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation thereof, to recover damages for any default, to enforce by specific performance the obligations and rights of the parties hereto, or to obtain any other remedies consistent with the purpose of this Agreement, subject to the dispute resolution provisions herein if a dispute as to an interpretation of this Agreement is in issue. In addition, both City and Developer shall have the right to terminate this Agreement in accordance with Section 7.01(c) and 7.01(f) respectively.

(a) Dispute Resolution; Issuance of Interpretations by the Director. Should a dispute arise between the parties concerning the proper interpretation of this Agreement, the City's Director of Community Development shall issue a written interpretation of the disputed provision of this Agreement within thirty (30) days of receipt of a written request by the Developer, but only after consultation with the City Attorney, any affected City department, the Developer and counsel for the Developer.

(b) Appeals of Interpretations. The Developer may appeal any interpretation issued by the Director, or the failure to timely issue an interpretation, to the Planning Board, which shall act within thirty (30) days of receipt of a written appeal. The Developer may appeal any interpretation adopted by the Planning Board, or the failure of the Planning Board to timely adopt an interpretation, to the City Council, which shall act within thirty (30) days of receipt of a written appeal.

(c) Litigation. If the City Council fails to timely render an interpretation within thirty (30) days after a written appeal is filed with the City Council by the Developer, or if the Developer contests the interpretation adopted by the City Council, the Developer may institute legal action, including, but not limited to, an action for declaratory relief pursuant to Code of Civil Procedure Section 1060 et seq, to interpret this Agreement after complying with the administrative procedures of this subsection.

Section 7.05. California Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs. If a legal action is brought by a third party, Article 6 of this Agreement shall apply.

ARTICLE 8.

MORTGAGEE PROTECTIONS

Section 8.01. Encumbrance of Developer's Interest.

The Developer shall have the absolute right to encumber and/or collaterally assign or grant a security interest in the Developer's right, title and interest in, to and under this Agreement and the Project Site pursuant to one or more mortgages (each a "Mortgage"). The City acknowledges that a mortgagee may require certain modifications to this Agreement, and the City agrees, upon request, from time to time, to meet with Developer and/or representatives of any such mortgagee to negotiate in good faith any such request for modification. The City further agrees that it will not unreasonably withhold its consent to any such requested modification to this Agreement provided such modifications are processed in accordance with Subsection 8.02 related to procedures for amendment of this Agreement. Any mortgagee and its successors and assigns shall be entitled to the rights and privileges set forth in this section.

Section 8.02. Mortgagee Protections.

Provided that any mortgagee or beneficiary under a Mortgage (each, a "Mortgagee") provides the City with a statement on certificate from each Mortgagee that contains the name and address, the City hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Mortgage:

(a) No Termination. No action by the Developer, or the City to cancel, surrender, or materially modify the terms of this Agreement or the provisions of this Article 8 shall be binding upon a Mortgagee without its prior written consent.

(b) Notices. If the City shall give any Notice of Default to the Developer hereunder, the City shall simultaneously give a copy of such Notice of Default to the Mortgagee at the address theretofore designated by it. No Notice of Default given by the City to the Developer shall be binding upon or affect said Mortgagee unless a copy of said Notice shall be given to Mortgagee pursuant to this Section. In the case of an assignment of such Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to City, may change the address to which such copies of Notices are to be sent. City shall not be bound to recognize any assignment of such Mortgage unless and until the City shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with respect to the Mortgage being assigned. If such Mortgage is held by more than one person, corporation or other entity, no provision of this Agreement requiring the City to give notices or copies thereof to said Mortgagee shall be binding upon the City unless and until all of said holders shall designate in writing one of their number to receive all such notices and copies thereof and shall have given to the City an original executed counterpart of such designation.

(c) Performance of Covenants. The Mortgagee shall have the right to perform any term, covenant or condition and to remedy any default by the Developer hereunder within the time periods specified herein, and the City shall accept such performance with the same force and effect as if furnished by the Developer; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of the City.

(d) Default by the Developer. In the event of a default by the Developer which has not been cured by the Developer or as to which there is no Cure Period hereunder, the City agrees not to terminate this Agreement (1) unless and until the City provides written notice of such default to any Mortgagee and such Mortgagee shall have failed to cure such Default within ninety (90) business days after the later of delivery of such notice or expiration of any applicable Developer cure period, and (2) as long as:

(1) In the case of a default which cannot practicably be cured by the Mortgagee without taking possession of the Property (which defaults shall not include defaults "not susceptible of being cured" as defined below), (a) the Mortgagee has delivered to the City, prior to the date on which the City shall be entitled to give notice of termination, a written instrument wherein the Mortgagee unconditionally agrees that (subject to such delays as may be incident to obtaining a relief from stay in the case of a bankruptcy/dissolution event) it will commence and diligently pursue cure of such default promptly following its obtaining possession and; (b) said Mortgagee shall proceed diligently to obtain possession of the Property (including possession by receiver) (subject to such delays as may be incident to obtaining a relief from stay in the case of a bankruptcy/dissolution event) and, upon obtaining such possession, shall proceed diligently to cure such default; and

(2) In the case of a default which is not susceptible to being cured by the Mortgagee, the Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (subject to such delays as may be incident to obtaining a relief from stay in the case of a bankruptcy/dissolution event) (unless in the meantime it shall acquire the Developer's right, title and interest hereunder, either in its own name or through a nominee, or by assignment in lieu of foreclosure) and upon such completion of acquisition or foreclosure such default shall be deemed to have been cured.

The Mortgagee shall not be required to obtain possession or to continue in possession as Mortgagee of the Property pursuant to Subsection 8.02(d)(1) above, or to continue to prosecute foreclosure proceedings pursuant to Subsection 8.02(d)(2) above, if and when such default shall be cured. Nothing herein shall preclude the City from exercising any of its rights or remedies with respect to any other default by the Developer during any period of such forbearance, but in such event the Mortgagee shall have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, shall acquire title to the Developer's right, title and interest hereunder and shall cure all defaults which are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior Defaults which are not susceptible to being cured by the Mortgagee or by said purchaser shall no longer be deemed defaults hereunder.

References herein to defaults which are "not susceptible of being cured" by a Mortgagee or purchaser (or similar language) shall not, except as provided below, be deemed to refer to any default which the Mortgagee or purchaser is not able to cure because of the cost or difficulty of curing such default, but rather shall be deemed to refer only to defaults specifically relating to the identity of the Developer which by their nature can be cured only by the Developer (such as the owner's bankruptcy/dissolution event or a owner control change).

(e) Foreclosure. Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in a Mortgage, or any conveyance of the Project from the Developer to a Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of the City or constitute a breach of any provision of or a default under this Agreement, and upon such foreclosure, sale or conveyance, the City shall recognize the purchaser or other transferee in connection therewith as the Developer hereunder provided that such purchaser or transferee assumes, subject to the terms of Section 8.02(d) above, each and all of the obligations of the Developer hereunder pursuant to an assumption agreement satisfactory to the City. If any Mortgagee or its nominee or assignee shall acquire the Developer's right, title and interest hereunder as a result of a judicial or nonjudicial foreclosure under any Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee shall thereafter have the right to assign or transfer the Developer's right, title and interest hereunder to an assignee upon obtaining the City's consent with respect thereto, which consent shall not be unreasonably withheld or delayed. Upon such acquisition of the Developer's right, title and interest hereunder as described in the preceding sentence by either Mortgagee, or the assignee or nominee of Mortgagee, or the purchaser from Mortgagee, assignee or nominee, the City shall immediately execute and deliver a new agreement or amend this Agreement with such party. Subject to the terms of Section 8.02(d) above, such new agreement or amended Agreement shall be substantially the same in form and content to the provisions of this Agreement, except with respect to the parties thereto, and the elimination of any requirements which have been fulfilled by the Developer prior thereto, and said agreement shall have priority equal to the priority of this Agreement. Upon execution and delivery of such new agreement or amended Agreement, the City shall cooperate with the new Developer, at the sole expense of said new Developer, in taking such action as may be necessary to cancel and discharge this Agreement and to remove the Developer named herein from the Property.

(f) New Agreement. The City agrees that in the event of termination of this Agreement by reason of any default by the Developer, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for the Developer or its property, the City will enter into a new agreement with the most senior Mortgagee holding a Permitted Mortgage requesting a new agreement, effective as of the date of such termination, in substantially the same form and content as this Agreement, provided:

(1) The senior Mortgagee shall make written request upon the City for the new agreement within ninety (90) days after the date it receives notice of such termination:

(2) The senior Mortgagee shall pay to the City at the time of the execution and delivery of the new agreement any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Agreement but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees (but excluding City staff time and overhead), to which the City shall have been subjected by reason of the event of default;

(3) The senior Mortgagee shall perform and observe all covenants herein contained on the Developer's part to be performed which are susceptible to being performed by the

senior Mortgagee, and shall further remedy any other conditions which the Developer under the terminated Agreement was obligated to perform under its terms, to the extent the same are curable or may be performed by the senior Mortgagee;

(4) Notwithstanding anything to the contrary expressed or implied elsewhere in this Agreement, any new agreement made pursuant to this Section 8.02(f), shall be prior to any Mortgage or other collateral assignment, pledge, lien, charge or encumbrance on the Developer's interest in this Agreement, to the same extent as the terminated Agreement. The rights granted any Mortgagee to a new agreement shall survive any termination of this Agreement; and

(5) Unless and until the City has received notice from all Mortgagees that the Mortgagees elect not to demand a new agreement as provided in Section 8.03(e) or this 8.02(f), or until the period therefor has expired, the City shall not enter into any new agreement regarding the development of the Property without the prior written consent of any Mortgagee.

(g) No Obligation to Cure. Except as set forth herein, nothing herein contained shall require any Mortgagee to cure any default of the Developer referred to above or to construct or complete the construction of the Project, or to guarantee such construction or completion.

(h) Separate Agreement. The City shall, upon request, execute, acknowledge and deliver to each Permitted Mortgagee, an agreement prepared at the sole cost and expense of the Developer, in form satisfactory to each Mortgagee, between the City, the Developer and the Permitted Mortgagees, agreeing to all of the provisions hereof.

(i) Form of Notice. Any Mortgagee under a Mortgage shall be entitled to receive the notices required to be delivered to it hereunder provided that such Mortgagee shall have delivered to each party a notice substantially in the following form:

The undersigned, whose address is _____, does hereby certify that it is the Mortgagee (as such term is defined in that certain Development Agreement dated as of _____, 2005 between the City of Burbank and Crown Fairfield Associates, LLC [the "Development Agreement"]) of the parcel of land described on Exhibit "A" attached hereto, which parcel is owned by Crown Fairfield Associates, LLC. In the event that any notice shall be given of a default of a party to the Development Agreement (a "Party"), a copy thereof shall be delivered to the undersigned who shall have the rights of a Mortgagee to cure the same, as specified in the Development Agreement. Failure to deliver a copy of such notice shall in no way affect the validity of the notice to the Party, but no such notice shall be effective as it relates to the rights of the undersigned under the Development Agreement with respect to the Mortgage, including the commencement of any cure periods applicable to the undersigned, until actually received by the undersigned.

(j) Estoppel Certificate. The City shall execute an estoppel certificate in form and substance reasonably satisfactory to the Mortgagee at the time of the initial advances in

connection with construction, permanent and equity financing and from time to time thereafter, upon the reasonable request of the Mortgagee. This estoppel certificate can be administratively issued by the Director within the time period provided for delivery thereof set forth in Section 12.01 (a) if it is in the form required by Section 12.01 (a).

(k) Limitation of Liability. Upon acquiring title to the Property, the Mortgagee shall have no obligation or liability to the City beyond the Mortgagee's interest, if any, in the Project Site and the City shall look exclusively to such interest in the Project Site for payment and discharge of any obligations imposed upon the Mortgagee under this Agreement or any other document entered into in connection therewith. Mortgagee shall be released and relieved of any liability under the Agreement and under any other document entered into in connection therewith upon the assignment of Mortgagee's rights upon or subsequent to foreclosure of its collateral or acquisition in lieu of foreclosure.

(l) Further Assurances. The City and the Developer agree to cooperate in including in this Agreement, by suitable amendment, any provision which may be reasonably requested by the Mortgagee or any proposed Mortgagee for the purpose of (i) more fully or particularly implementing the Mortgagee protection provisions contained herein, (ii) adding mortgagee protections consistent with those contained herein and which are otherwise commercially reasonable, and (iii) allowing such Mortgagee reasonable means to protect or preserve the security interest of the Mortgagee in the collateral, including its lien on the Project Site and the collateral assignment of this Agreement; provided, however, in no event shall the City be obligated to modify any of the Developer's obligations or the City's rights under this Agreement in any manner not already contemplated in this Article 8.

ARTICLE 9.

MISCELLANEOUS

Section 9.01. No Agency, Joint Venture or Partnership. It is specifically understood and agreed by and between the parties hereto that the Project and Project Site development is a private development, and that the Developer shall have full power over and exclusive control of the Project and Project Site, subject only to the obligations of the Developer under this Agreement. The City and the Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and the Developer.

Section 9.02. Severability. If any term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

Section 9.03. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this

Agreement and other Project Approvals in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 9.04. Construction. Each reference in this Agreement, the Covenant Agreement and in the Project Approvals shall be deemed to refer to the named document or plan as such document or plan may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 9.05. Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signers' obligations are joint and several.

Section 9.06. Covenants, No Dedication or Lien. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Project Site for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the parties hereto and all successors in interest to the parties hereto for the term of this Agreement. Nothing herein shall be construed as a dedication or transfer of any right of interest in, or as creating a lien with respect to, the title to the Project Site, other than those dedications required herein.

Section 9.07. Cooperation in Carrying Out Agreement. Each party shall take such actions and execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 9.08 Binding Effect. This Agreement, and all of the terms and conditions hereof, shall be binding upon and inure to the benefit of the parties, any subsequent owner of all or a portion of the Project or the Project Site, and their respective assigns, heirs, or successors-in-interest.

Section 9.09 Agreement Not To Benefit Third Parties. This Agreement is made for the sole benefit of the parties and their respective assigns, heirs, or successors-in-interest, and no other person shall be deemed to have any privity of contract under this Agreement, nor any right to rely on this Agreement to any extent for any purpose whatsoever, nor have any right of action of any kind on this Agreement nor be deemed a third party beneficiary, express or implied, under this Agreement.

Section 9.10 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, to the extent that the invalidity or unenforceability does not impair the application of this Agreement as intended by the parties.

ARTICLE 10.

NOTICES

Section 10.01. Method of Notice.

(a) Any notice or communication (hereafter, a "Notice") required hereunder by the City or the Developer must be in writing, and may be given either personally, or by registered or certified mail (return receipt requested). If given by registered or certified mail, a Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as a party to whom Notices are to be sent, or (ii) five (5) days after the registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. A courtesy copy of the Notice may be sent by facsimile transmission. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Such notices shall be given to the parties at their addresses set forth below:

If to City to:

City of Burbank
275 E. Olive Avenue
Burbank, CA 91502
Attention: Community Development Director

With a Copy to:

Office of City Attorney
City of Burbank
275 E. Olive Avenue
Burbank, CA 91502
Attention: City Attorney

If to Developer, to:

Fairfield Residential/Crown Realty
5510 Morehouse Drive, Suite 200
San Diego, CA 92121

With a Copy to:

Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Attn: Richard P. Sims

ARTICLE 11.

ASSIGNMENT

Section 11.01. Limitation; Permitted Transfers; Transfer Approvals.

(a) The qualifications and identity of the Developer are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Developer. Accordingly, for the period commencing upon the Effective Date until a Certificate of Occupancy for the improvements comprising the Project has been issued, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement (“Transfer”) without the prior written approval of the City, except as expressly set forth herein.

(b) Notwithstanding subsection (a) above, City approval of a Transfer shall not be required in connection with any Transfer of the Developer’s interests, rights and obligations under this Agreement to an Affiliate. In the event of a Transfer by Developer under this subsection (b) not requiring the City’s prior approval, Developer nevertheless agrees that at least fifteen (15) days prior to such Transfer it shall give written notice to City of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement as required by subsection (d) below. In addition, a Mortgage as defined in Article 8 hereof is not a Transfer as defined in this Article 11.

(c) The City agrees that it will give reasonable consideration to approving a request for approval of a Transfer in accordance for the standards of such approval set forth below, provided the Developer delivers written notice to the City requesting such approval. Such notice shall be accompanied by evidence regarding the proposed transferee’s development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 11.01 and as reasonably determined by the City. The City may, in considering any such request, take into consideration such factors as (i) the quality of any new and/or replacement developer (ii) the transferee’s past performance and experience as developer of high-quality mixed-use residential and retail developments (iii) the current financial condition of the transferee, and similar factors.

(d) No voluntary or involuntary successor in interest of the Developer’s rights or obligations under this Agreement (“Transferee”) shall acquire any rights or powers under this Agreement (“Transfer”) without the provision of an assignment and assumption agreement to the City in a form reasonably required by this City Attorney. Developer shall provide the assignment and assumption agreement, signed by both Developer and Transferee, to City at least fifteen (15) days prior to the effective date of the Transfer.

(e) If all or any portion of this Agreement is transferred by the Developer to a Transferee, the Transferee shall succeed to all of the Developer's Rights under this Agreement

regarding the Transferred Property. The Assignment may contain, if appropriate, an allocation of rights and obligations under the Agreement between the Developer and the Transferee. Thereafter, a default under this Agreement by the Developer regarding that portion of the Project Site other than the Transferred Property (the "Remaining Property") shall not be considered or acted upon by City as a default by the Transferee regarding the Transferred Property and shall not affect the Transferee's Rights regarding the Transferred Property. Likewise, a default by a Transferee relating to the Transferred Property shall not be considered or acted upon by the City as a default by the Developer regarding the Remaining Property and shall not affect the Developer's Rights regarding the Remaining Property.

ARTICLE 12.

NOTICE OF COMPLIANCE

Section 12.01. Generally.

(a) Within thirty (30) days following any written request that the Developer may make from time to time, the City shall execute and deliver to the Developer a "Notice of Compliance," in recordable form, duly executed and acknowledged by the City, that certifies:

(1) That this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification;

(2) That there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default.

(b) The failure of the City to deliver such a Notice of Compliance within such time shall constitute a conclusive presumption against the City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. The Developer shall have the right, at Developer's sole discretion, to record the Notice of Compliance.

Section 12.02. City Request.

(a) The City may request that the Developer provide a Notice of Compliance to City pursuant to Section 12.01 of this Agreement. If so requested, the Developer shall follow the procedures prescribed for the City in Section 12.01 (a) of this Agreement.

ARTICLE 13.

ENTIRE AGREEMENT, COUNTERPARTS' EXHIBITS, RECORDING

Section 13.01. Generally. This Agreement consists of _____ (___) pages and ___ (___) exhibits, constitutes the final and exclusive understanding and agreement of the parties, and

supersedes all negotiations and any previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 13.02. Waivers. All waivers of the provisions of this Agreement shall be in writing and signed by the parties. No delay or omission by either party in exercising any right or power pertaining to any failure to perform by the other party shall impair any such right or power or be construed as a waiver thereof, except as may otherwise be provided in this Agreement. No waiver by either party of any failure to perform by the other party shall be construed as a waiver of any succeeding breach or nonperformance of the same or other obligation under this Agreement.

Section 13.03. Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

- Exhibit A - Project Site Legal Description
- Exhibit B - Conditions of Approval
- Exhibit C - Agreement Containing Covenants Affecting Real Property

Section 13.04. Recordation of Agreement. No later than ten (10) days after the Effective Date, the City Clerk shall record (at the Developer's expense to the extent of any recordation fee incurred) an executed original of this Agreement in the Official Records of the County of Los Angeles.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

"CITY"

"DEVELOPER"

CITY OF BURBANK

CROWN FAIRFIELD ASSOCIATES, LLC

Mary J. Alvord
City Manager

By: _____
Its: _____

ATTEST:

Margarita Campos, City Clerk

APPROVED AS TO FORM FOR CITY
Dennis A. Barlow, City Attorney

By: Joseph H. McDougall
Assistant City Attorney

**EXHIBIT A
PROJECT SITE
LEGAL DESCRIPTION**

[attached]

**EXHIBIT B
CONDITIONS OF APPROVAL**

[attached]

EXHIBIT C
AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

[attached]

**EXHIBIT D
AFFORDABLE HOUSING LOAN AGREEMENT**

[attached]