

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

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

This document is exempt from the payment of a recording fee pursuant to Government Code Sections 27383 and 6103

## **RESTRICTIVE COVENANT AND DENSITY BONUS AGREEMENT**

This Restrictive Covenant and Density Bonus Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the CITY OF BURBANK, a California municipal corporation ("City"), and CHEYENNE MISSION TRUST ("Owner"), as follows:

### **RECITALS**

A. Owner is the owner of certain real properties located within the City of Burbank, County of Los Angeles, State of California, commonly known as 1241, 1245, 1301, and 1305 North Hollywood Way (collectively the "Property"), and legally described in Exhibit "A" attached hereto and incorporated herein by reference.

B. Section 31-645 of the Burbank Municipal Code (the "Density Bonus Regulation" for the R-4 residential zone), provides that the City shall, in accordance with Government Code Section 65915 as amended, grant a density bonus and other incentives or concessions when a developer seeks and agrees to construct a minimum number of housing units that are affordable to lower or moderate income households.

C. Government Code § 65915 was recently amended to require a minimum density bonus of twenty-percent (20%) for projects which provide at least ten-percent (10%) of the total housing units at rents which are affordable to lower income households.

D. Owner proposes to build an apartment building on the Property and make at least ten-percent (10%) of the total units available to lower income households (the "Residential Development"), and is therefore entitled to a density bonus of at least twenty-percent (20%).

E. In connection with the Residential Development, Owner has also received approval from the City of Project Number 2005-67 Development Review, to construct a thirty-

five (35) unit apartment building comprised of twenty-nine (29) base units with three (3) lower income affordable units, plus a six (6) unit density bonus (the “Project”).

F. City and Owner desire to enter into this Agreement pursuant to the Density Bonus Regulation.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

### **AGREEMENT**

1. Recitals. The Recitals set forth above are true and accurate, and incorporated herein.

2. Definitions. For purposes of this Agreement, the terms listed below shall have the meanings thereafter specified:

(a) “Adjusted for Household Size Appropriate for the Unit” means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(b) “Affordable Rent” means a rent that, when added to the Utility Allowance, does not exceed a specified fraction of the gross monthly income, Adjusted for Household Size Appropriate for the Unit, as follows:

(i) Very Low Income Households: thirty (30) percent of fifty (50) percent of the Los Angeles County median income.

(ii) Lower Income Households: thirty (30) percent of sixty (60) percent of the Los Angeles County median income.

(c) “Director” means City’s Community Development Director, or his or her designee.

(d) “Affordable Unit” means a dwelling unit that will be offered for rent exclusively to an Income Eligible Household at an Affordable Rent pursuant to this Agreement.

(e) “Income Eligible Household” shall mean a Very Low or Lower Income Household, which is eligible to rent a particular Affordable Unit.

(f) “Lower Income Households” means households whose gross income does not exceed eighty (80%) percent of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

(g) “Lower Income Units” mean Affordable Units restricted to occupancy by Lower Income Households at the applicable Affordable Rent.

(h) “Non-Affordable Units” means those dwelling units in the Residential Development that are not Affordable Units.

(i) “Original Unit” shall have the meaning defined in Section 9(b).

(j) “Owner” means the person or entity defined as such in the introductory paragraph of this Agreement, and includes all successors and assigns of that person or entity.

(k) “Property” shall have the meaning defined in Recital “A”.

(l) “Residential Development” shall have the meaning ascribed in Recital “D”.

(m) “Utility Allowance” means an amount designated by the City as a reasonable estimate of the cost of utilities for an Income Eligible Household, for purposes of calculating the applicable Affordable Rent. The Utility Allowances in effect as of the date of this Agreement are set forth in Exhibit “C” to this Agreement.

(n) “Very Low Income Households” means households whose gross income is equal to fifty (50%) percent or less of the median income for Los Angeles County as determined annually by the U.S. Department of Housing and Urban Development.

3. Project Approvals. The Project shall be developed in accordance with Development Review No. 2005-67, all zoning codes in effect on July 15, 2005, as modified by the twenty-percent (20%) density bonus granted pursuant to Burbank Municipal Code Section 31-645 and Government Code Section 65915, and reduced parking pursuant to Government Code Section 65915. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

4. Affordable Units.

(a) Owner hereby agrees that three (3) units in the Project shall be rented exclusively to Lower Income Households, at an Affordable Rent.

(b) Owner may permit Very Low Income Households to occupy Lower Income Units at the Applicable Affordable Rent.

(c) The Affordable Units shall be those depicted on Exhibit “B” attached hereto and incorporated herein by this reference. The location of the Affordable Units shall not be changed without the prior written approval of the Director, or its designee.

(d) The maximum number of persons that may occupy or reside in an Affordable Unit shall not exceed the following limits based on unit size:

<u>Unit Size</u>	<u>Maximum number of persons occupying unit</u>
1 bedroom	3 persons
2 bedrooms	5 persons

(e) City approval and an amendment to this Agreement shall be required for the conversion of the Project to condominiums. Affordable Units so converted may be subject to certain restrictions including but not limited to: occupancy, income, purchase price, and resale. In the event the Project is converted to condominiums, the Project shall comply with the requirements of Government Code Section 65915(g)(2) in exchange for the twenty percent (20%) density bonus conferred through this Agreement and Design Review 2005-67; that is, Owner shall sell a minimum of twenty-five percent (25%) of base units (i.e., seven (7) units) at a price affordable to moderate income households as specified in California Health & Safety Code Section 50052.5 and Title 25, California Code of Regulations Section 6920. Upon resale, the City shall receive a proportionate share of the appreciation in value of the Affordable Units equal to the percentage by which the initial sale price to the moderate income household was less than the fair market value of the home at the time of initial sale.

5. Income Limits and Affordable Rents. The applicable income limits and Affordable Rents for Affordable Units, including Utility Allowances, shall be those established in Title 25, California Code of Regulations, Section 6932, and California Health & Safety Code Section 50053, respectively, as may be amended from time to time. The income limits and Affordable Rents (including Utility Allowances) in effect as of the date of this Agreement are attached hereto as Exhibit "C" and incorporated herein by this reference. It shall be the obligation of Owner to annually obtain from City the applicable income limits and Affordable Rents, as they may be adjusted from time to time.

6. Publication and Notification of Availability of Affordable Units.

(a) Upon the request of the Director, whenever an Affordable Unit(s) becomes available, Owner shall publish notices of the availability of Affordable Units in newspapers circulated widely in the City of Burbank, including newspapers that reach minority communities. At least one notice shall be published in a Spanish language newspaper of general circulation. Examples of appropriate newspapers include the Daily News, Burbank Leader, Glendale News Press and La Opinion. The notice should briefly explain what inclusionary housing is, state the applicable income requirements, indicate where applications are available, state when the application period opens and closes, and provide a telephone number for questions. Owner shall submit proof of publication to the Director.

(b) Owner shall notify City in writing of a vacancy in an Affordable Unit at least thirty (30) days prior to the effective date of the vacancy. If the tenant gives Owner less than thirty (30) days notice of his or her intent to vacate an Affordable Unit, Owner shall notify City immediately upon receipt of tenant's notice of intent to vacate.

7. City Referrals. City may refer to Owner person(s) or households who meet the eligibility requirements set forth in this Agreement. Owner agrees to accept tenants for Affordable Units whose applications are submitted by City to Owner, so long as such tenants are Income Eligible Households. Owner shall not be required to accept a tenant referred by City pursuant to this Agreement if Owner can demonstrate a good faith reason, based on industry

standards, for rejecting the applicant. These industry standards include, but are not limited to, negative references from prior owners, employers, poor credit or applicants owning pets. In the event a rental application is rejected, Owner shall deliver to City written notice stating the reasons therefor within five (5) days following receipt by Owner of the application.

8. Tenant Qualification for Rental Units.

(a) Owner agrees to rent the Affordable Units solely to Income Eligible Households, at not more than the applicable Affordable Rent.

(b) The following individuals, by virtue of their position or relationship, are ineligible to rent or purchase an Affordable Unit:

(i) All employees and officials of the City or its agencies, authorities, or commission who have, by virtue of their position, policy-making authority or influence over the implementation of the Density Bonus program, as well as the immediate relatives of such employees or officials, including spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister in-law and brother-in-law.

(ii) The immediate relatives of Owner, including spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister in-law and brother-in-law.

(c) Owner must take reasonable steps to certify the income level of prospective occupants of an Affordable Unit, at the time of the initial rental, and annually thereafter. Owner may request an income certification from the proposed occupant of the Affordable Unit in one or more of the following methods:

(i) Obtain two (2) paycheck stubs from the proposed occupant's two (2) most recent pay periods;

(ii) Obtain a true copy of an income tax return from the proposed occupant for the most recent tax year in which return was filed;

(iii) Obtain an income verification certification from the employer of the proposed occupant;

(iv) Obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the proposed buyer receives assistance from such agencies; or

(v) Obtain an alternate form of income verification acceptable to the Director.

(d) Owner shall apply the same rental terms and conditions to tenants of Affordable Units as are applied to all other tenants, except as otherwise required to comply with

this Agreement (i.e., rent levels, occupancy restrictions and income requirements) and/or government subsidy programs. Discrimination based on subsidies received by the prospective tenant is prohibited.

9. Changes in Tenant Income.

(a) If the income of a tenant occupying an Affordable Unit decreases below the category for which the tenant originally qualified, the tenant shall continue to have the right to reside in the Affordable Unit, provided the tenant pays the rent and performs his other obligations to Owner.

(b) If after moving into an Affordable Unit the tenant's income eventually exceeds the income limit for that unit, the tenant may remain in the unit (the "Original Unit") as long as the tenant's income does not exceed 140% of the income limit for the Original Unit. In that event, the Applicable Affordable Rent shall be that charged to a tenant whose income does not exceed the income limit for the Original Unit.

(c) If after moving into an Affordable Unit the tenant's income eventually exceeds 140% of the income limit for the Original Unit, the following shall apply:

(i) If the tenant's income does not exceed the income limits of other Affordable Units in the Residential Development, the Owner may, at the Owner's sole option, allow the tenant to remain in the Original Unit at the tenant's new Applicable Affordable Rent, as long as the next vacant unit is re-designated for the income category previously applicable to the Original Unit.

(ii) If the Owner does not want to re-designate the next vacant unit pursuant to subparagraph (i) of this paragraph (c), the tenant shall be given one year's notice to vacate the unit.

(iii) If during that year, an Affordable Unit becomes available and the tenant meets the income eligibility for that unit, the Owner shall provide the tenant with the opportunity to submit an application for that unit. If during that year, a Non-Affordable Unit in the Residential Development is vacated, the Owner may, at the Owner's option, allow the tenant to remain in the Original Unit and raise the tenant's rent to market rate and designate the newly vacated unit for the income category previously applicable to the Original Unit. Except as otherwise approved by the Director, the newly vacated unit must be comparable in size (i.e. number of bedrooms, bathrooms, square-footage, etc.) and location (i.e. same floor, same view, etc.) as the Original Unit.

(d) Units may be redesignated per paragraph (c) by entering into and recording an amendment to this Agreement, revising Exhibit "B" hereto.

(e) So long as the Owner complies with the procedures set forth in this Paragraph 9, Owner shall not be in violation of this Agreement due to a tenant's income eventually exceeding the income limit for the Affordable Unit occupied by that tenant.

10. Utilization of Affordable Rental Units. All Affordable Units required by this Agreement shall be leased or rented and fully utilized in accordance with this Agreement; no Affordable Unit shall be withdrawn from the market or otherwise held vacant.

11. No Sublease. A tenant occupying an Affordable Unit may not sublet the unit without the written permission of both Owner and City. The City shall not grant permission to lease, rent, or sublet the unit if it finds that the prospective tenant or occupant is not an Income Eligible Household. Any individual who subleases an Affordable Unit in violation of the provisions of this Agreement shall be required to forfeit to City all monetary amounts so obtained.

12. Lease Agreement. The lease agreement between Owner or its agent and the tenant of any Affordable Unit must include provisions providing for the implementation of Section 8 of this Agreement. The lease agreement shall also include a provision substantially as follows: "Tenant is hereby advised that the unit is an Affordable Unit. Landlord has entered into a Restrictive Covenant and Density Bonus Agreement with the City of Burbank. A copy of that agreement is attached to this Lease (or rental agreement). Tenant is encouraged to review the agreement, and in particular Sections 5 (income and rent limits) and 8 (changes in tenant income). Any questions regarding the agreement can be directed to the City of Burbank Community Development Director, Burbank City Hall, 275 East Olive Avenue, Burbank, CA 91502, telephone number (818) 238-5176." A fully executed copy of each lease agreement for an Affordable Unit shall be delivered to City within ten (10) days after the date of its execution.

13. Maintenance of Units. Owner shall (a) maintain and operate all units on the Property so as to provide decent, safe and sanitary housing consistent with federal housing quality standards; (b) make any required repairs or provide any required cleanup and (c) provide the Affordable Units with the same levels of services and maintenance as are provided to the other dwelling units on the Property.

14. Administration Fee. Owner agrees to pay such fees and deposits as the City Council may adopt by resolution to offset the administrative cost of performing the duties and responsibilities described in this Agreement, provided such fee does not exceed a total of One Hundred Dollars (\$100) per calendar year.

15. Federal and State Laws. Notwithstanding the above provisions, nothing contained herein shall require Owner or City to do anything contrary to or refrain from doing anything required by Federal and State laws and regulations promulgated there under applicable to the construction, management, maintenance, and rental of Low and Moderate-income housing units in the City of Burbank.

16. Prohibition Against Discrimination. Owner shall not discriminate against any tenant or potential tenant on the basis of sex, color, race, religion, ancestry, national origin, age, pregnancy, marital status, family composition, sexual orientation, or the potential or actual occupancy of minor children. Owner further agrees to take affirmative action to ensure that no such person is discriminated against for any of the above mentioned reasons.

17. Indemnification. Owner shall defend, indemnify and hold harmless the City of Burbank and its officers, agents, employees, representatives and volunteers from and against any loss, liability, claim or judgment relating solely to this Agreement, including those Claims that arise out of either (a) a breach of this Agreement by Owner, (b) related in any manner to the Owners administration of this Agreement, or (c) arising out of the City's interest in this Agreement or Affordable Units. This indemnification shall not apply to Claims arising out of conduct of the City, its officers, agents, employees, representatives or volunteers independent of this Agreement or any conduct of the City, its officers, agents, employees, representatives, or volunteers that is willful or grossly negligent.

18. City's Right to Inspect Units and Documents. The City may inspect the Affordable Units (subject to the tenant's privacy rights) and any documents or records relating thereto, at any reasonable time to determine Owner's compliance with this Agreement.

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of City and Owner, and their respective successors, owners and assigns. City reserves the right to designate another public agency within the City or Redevelopment Agency of the City of Burbank to perform City's obligations or to exercise City's rights and options under this Agreement.

20. Burden to Run with Property. The covenants and conditions contained herein shall run with and burden the Property for a period of thirty (30) years from the date of the Certificate of Occupancy for the Project. Owner shall expressly make the conditions and covenants in this Agreement a part of any deed or other instrument conveying an interest in the Property.

21. Notices. All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as date received or the date delivery was refused as indicated on the return receipt, as follows.

To Owner: Cheyenne Mission Trust  
11043 Olinda Street  
Sun Valley CA 91352

To City: Community Development Director  
City of Burbank  
275 East Olive Avenue  
Burbank, California 91502

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 21.

22. Governing Law. The laws of the State of California shall govern this Agreement. Any legal action brought under this Agreement must be instituted in the Superior Court of the



County of Los Angeles, State of California, in an appropriate municipal court in that County, or in Federal District Court in the Central District of California.

23. Default. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of notice from the other party, constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not initiate proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

24. Remedies.

(a) Any individual who sells or rents (including subleasing) an Affordable Unit in violation of the provisions of this Agreement shall be required to forfeit to City all monetary amounts so obtained.

(b) City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to actions for injunctive relief or damages.

25. Attorney's Fees. In any action brought to declare the rights granted herein or to enforce or to interpret any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in an amount determined by the court.

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

27. Further Assurances and Recordation. Owner shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form and do such further acts as may be necessary, desirable or proper as City shall from time to time find necessary or appropriate to effectuate its purpose in entering into this Agreement.

28. Entire Agreement. The text herein, consisting of ten (10) pages and three (3) attachments, constitutes the entire agreement between the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statement or promise not contained in this Agreement shall not be valid or binding. This Agreement may be amended only by written instrument signed by both City and Owner.

29. 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, the Burbank Municipal Code and the State density bonus law.

(b) Administrative Amendments. Notwithstanding subdivision (a) of this Section, any amendment to this Agreement, whether requested by Owner or City, which does not relate to the term set forth in Section 20; the number, percentage or type of Affordable Units; or the number or type of any incentives or concessions given by the City, may be determined by the Community Development Director to be an Administrative Amendment and if so, the Community Development Director shall approve the Administrative Amendment without notice or hearing, and this Agreement and its pertinent exhibits shall be automatically amended without further action by the parties. A memorandum of the amendment shall be executed and recorded to reflect such Administrative Amendment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“CITY”

CITY OF BURBANK

By: \_\_\_\_\_  
Susan M. Georgino  
Community Development Director

“OWNER”

CHEYENNE MISSION TRUST

By: \_\_\_\_\_  
Name: Daniel T. Moore  
Title: Trustee

By: \_\_\_\_\_  
Name: Denise Sarquiz  
Title: Trustee

Attest:

By: \_\_\_\_\_  
Margarita Campos, CMC  
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 OF PROPERTY**

Lots 27, 28, 29, 30, 31, 32, 33 and 34 in Block 1, of Tract No. 9749 in the City of Burbank, County of Los Angeles, State of California, as per map recorded in book 137 pages 89 and 90 of maps, in the Office of the County Recorder of said county.

**EXHIBIT "B"**  
**LOCATION OF**  
**AFFORDABLE UNITS**

**[to be attached]**

**EXHIBIT “C”**  
**INCOME LIMITS/AFFORDABLE RENTS**

**[to be attached]**