RESOLUTION NO 27,989

A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK APPROVING A FIRST AMENDMENT TO AFFORDABLE HOUSING AGREEMENT BETWEEN THE CITY, THE REDEVELOPMENT AGENCY OF THE CITY OF BURBANK, AND THE BURBANK HOUSING CORPORATION (2406 NORTH NAOMI STREET). 1104-1

THE COUNCIL OF THE CITY OF BURBANK FINDS:

A. The City of Burbank ("City"), the Redevelopment Agency of the City of Burbank ("Agency") and the Burbank Housing Corporation ("BHC") entered into an Affordable Housing Agreement dated November 20, 2008 (the "Agreement"), pursuant to which the City and Agency agreed to provide financial assistance in order that BHC may acquire and rehabilitate a 4-unit residential property located at 2406 N. Naomi Street, in the City of Burbank (the "Property"). BHC agreed to acquire and rehabilitate the Property with such financial assistance, and to restrict occupancy to households of very low and extremely low income.

B. BHC subsequently acquired the Property and has completed the rehabilitation of the Property.

C. BHC now wishes to convert the use of one of the four income-restricted rental units for use as an activity center for the residents of the Property, as well as other persons and households who require transitional housing assistance. This change in the intended use of the Property requires the following amendments to the Agreement and other supporting documents:

1. The provisions concerning operation of housing must be amended to reduce the required number of housing units to three and to permit an activity center use in the fourth housing unit. This amendment requires corresponding changes in the Regulatory Agreement recorded against the Property.

2 The financial assistance provided by the City through the HOME Investment Partnership Act of the United States, 42 U.S.C. §12701. *et seq.*, must be reduced by $170,000.00. This amendment also requires a change in the BHC's promissory note to the City.

3. The financial assistance provided by the Agency needs to be increased by $170,000 00. This amendment also requires a change in the BHC's promissory note to the Agency

D. The amendments are set forth in the First Amendment to Affordable Housing Agreement attached hereto as Exhibit A (the "First Amendment").

E. The acquisition, rehabilitation and operation of the Property pursuant to the Agreement and this First Amendment are in the vital and best interest of the City and the health, safety and welfare of the residents of the City, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

F. The Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301, Existing Facilities, of the CEQA Guidelines (14 CCR 15301).

G. Pursuant to the Federal National Environmental Policy Act ("NEPA"), the project is exempt under the U.S. Department of Housing and Urban Development ("HUD') regulation Section 24 CFR 58.

THE COUNCIL OF THE CITY OF BURBANK RESOLVES:

1. The City Council hereby approves the First Amendment to Affordable Housing Agreement and all documents attached thereto, and authorizes and directs the City Manager or its designee to execute the First Amendment to Affordable Housing Agreement on behalf of the City. The City Manager or its designee are further authorized to implement the First Amendment to Affordable Housing Agreement on behalf of the City and take all further actions and execute all documents necessary or appropriate to carry out the First Amendment to Affordable Housing Agreement.

PASSED AND ADOPTED this 29th day of September, 2009.

Gary Bric
Mayor of the City of Burbank

Attest

Josephine Wilson, Deputy City Clerk

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

By: _____
Joseph H. McDougall
Senior Assistant City Attorney

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

I, Josephine Wilson, Deputy City Clerk of the City of Burbank, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the 29th day of September 2009, by the following vote:

AYES: Council Members Golonski, Reinke, Talamantes and Bric.

NOES: Council Member Gordon.

ABSENT: Council Members None.

_____
Josephine Wilson, Deputy City Clerk

EXHIBIT "A"

FIRST AMENDMENT TO AFFORDABLE HOUSING AGREEMENT

FIRST AMENDMENT TO
AFFORDABLE HOUSING AGREEMENT

THIS FIRST AMENDMENT TO AFFORDABLE HOUSING AGREEMENT (the "Amendment") is entered into this ____ day of _____, 2009 by and among the **CITY OF BURBANK**, a California municipal corporation (the "City"), the **REDEVELOPMENT AGENCY OF THE CITY OF BURBANK**, a public body, corporate and politic (the "Agency"), and **BURBANK HOUSING CORPORATION**, a California nonprofit corporation (the "Developer").

RECITALS

A. The City, the Agency and the Developer entered into an Affordable Housing Agreement dated November 20, 2008 (the "Agreement"), pursuant to which the City and Agency agreed to provide financial assistance in order that Developer may acquire and rehabilitate a 4-unit residential property located at 2406 N. Naomi Street, in the City of Burbank, which is more particularly described in the legal description attached hereto as Exhibit A (the "Property"). Developer agreed to acquire and rehabilitate the Property with such financial assistance, and to restrict occupancy to households of very low and extremely low income.

B. Developer subsequently acquired the Property and has completed the rehabilitation of the Property.

C. Developer now wishes to convert the use of one of the four income-restricted rental units for use as an activity center for the residents of the Property, as well as other persons and households who require transitional housing assistance. This change in the intended use of the Property requires the following amendments to the Agreement and other supporting documents:

1. The provisions concerning operation of housing must be amended to reduce the required number of housing units to three and to permit an activity center use in the fourth housing unit. This amendment requires corresponding changes in the Regulatory Agreement recorded against the Property.

2. The financial assistance provided by the City through the HOME Investment Partnership Act of the United States, 42 U.S.C. §12701, *et seq.*, must be reduced by $170,000 00. This amendment also requires a change in the Developer's promissory note to the City.

3. The financial assistance provided by the Agency needs to be increased by $170,000.00. This amendment also requires a change in the Developer's promissory note to the Agency.

D. The acquisition, rehabilitation and operation of the Property pursuant to the Agreement and this First Amendment are in the vital and best interest of the City and the health, safety and welfare of the residents of the City, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, the parties hereto agree as follows:

1. Section 101 of the Agreement, entitled Agency Loan, is hereby amended to read as follows:

"The Agency agrees to loan to the Developer and the Developer hereby agrees to borrow from the Agency the amount of Nine Hundred Thirty-Six Thousand, One Hundred Dollars ($936,100.00) (the "Agency Loan"), subject to the terms and conditions set forth in this Agreement, the Loan Agreement, as amended, and the promissory notes attached hereto as Exhibit B, and amended deed of trust in substantially the form set forth as Exhibit C, and the "Regulatory Agreement," as amended, in substantially the form set forth in Exhibit D. The Agency Loan shall be disbursed to or on behalf of the Developer for the acquisition and rehabilitation of the Property, and other related expenses (escrow, title insurance, taxes, closing costs, permit fees, construction management fee, and a 22% contingency amount). The Agency Loan shall be disbursed to or on behalf of the Developer upon the satisfaction of the conditions set forth in Section 104 hereof. The Agency Loan shall be used for the following:

Acquisition	$475,000
Rehabilitation	$271,100
Developer Fee	$190,000
Totals	**$936,100**

"The Developer Fee approved herein can only be used to further Developer's mission and goals, and for no other purposes. The Developer Fee shall be disbursed, in Agency's discretion over five year period. Each January 1, the parties shall meet to assist Agency in its sole determination of the Developer Fee to be released, which release shall occur shortly thereafter. The obligation to pay this Developer Fee is subject to compliance with the conditions set forth in Section 104 hereof."

2. Section 102 of the Agreement, entitled City Loan, is hereby amended to read as follows:

"Subject to the receipt of HUD approval, the City agrees to loan to the Developer and the Developer hereby agrees to borrow from the City the amount of Five Hundred Ten Thousand Dollar ($510,000.00) (the "City Loan"), subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the documents and instruments executed by the Developer in connection with this transaction, including the note and deed of trust attached hereto as Exhibit "B" and "C" and the "Regulatory Agreement," as amended, in substantially the form set forth in Exhibit D and subject to the Master Loan Agreement. No interest shall accrue on the City Note, the term of which shall be fifty-five years from the date the City Loan Promissory Note is executed (the "Note Term"). Developer shall have no obligation to repay the City Loan or City Loan Promissory Note, or make any installment payments thereon, unless and until Developer commits a material default of this Agreement, the City Loan Promissory Note, City Loan Deed of Trust, or Regulatory Agreement, and fails to cure said default within the time periods provided in those documents, if any. Upon the occurrence of any uncured material default by the Developer, the City Loan shall be immediately repaid to the City. At the end of the Note Term, provided Developer has not committed or caused the occurrence of a material default of this Agreement, the City Loan Promissory Note, Deed of Trust, or the Regulatory Agreement, the City Loan shall be forgiven in its entirety and the City shall, upon the request by Developer, execute and record a partial reconveyance deed removing the portion of the deed of trust attributable to the City Loan from title. The City Loan shall be disbursed to or on behalf of the Developer for (a) the remaining portion of the cost of the

acquisition of the Property and (b) the cost of the Rehabilitation of the Property. If there are any remaining proceeds of the City Loan after the completion of the Rehabilitation, such proceeds shall be paid to the Agency in repayment of a portion of the Agency Loan. The City Loan shall be disbursed to or on behalf of the Developer upon the satisfaction of the conditions set forth in Section 104 hereof. The City Loan shall be junior in priority to and subordinate to the Agency Loan."

3. Section 103, entitled Rent Subsidy Fund, is hereby amended to read as follows:

"**Rent Subsidy Fund.** Pursuant to Section 33334.2 of the California Health and Safety Code, the Agency intends to establish a Rent Subsidy Fund to assist tenants of the Property with incomes below the threshold for Very Low Income Households that are in need of transitional housing and supportive services. It is envisioned that the Rent Subsidy Fund will be funded through a future appropriation of Fifty-Five Thousand Dollars ($55,000.00) from Agency's Housing Fund. The funds may be expended at a rate of Eleven Thousand Dollars ($11,000.00) per year for a period of five (5) years commencing on the date a Notice of Completion is recorded for all work set forth in the rehabilitation Scope of Work attached hereto as Exhibit E. Subsidies shall be disbursed in the form of grants to tenants. The Agency Executive Director or its designee shall develop a program for administering the Rent Subsidy Fund."

4. The first paragraph of Section 301 of the Agreement, entitled Affordable Units, is hereby amended to read as follows:

"The Developer agrees to make available, restrict occupancy to, and lease three (3) housing units within the Property to households with incomes that do not exceed the stricter of: i) the qualifying limits for very- low income households as established and amended from time to time by the United States Department of Housing and Urban Development (HUD) or ii) the limits defined under California Health and Safety Code Section 50105 for very-low income households and Section 50106 for extremely low income households, all at an Affordable Rent (all of the four units are hereafter the "Affordable Units"). If after the tenant's initial occupancy of an Affordable Unit designated for very-low income households, the tenant's income increases to greater than the qualifying limits for very low income households, the Monthly Rent charged by Developer may be increased to the maximum rent set forth in Section 302 hereof. The Developer shall comply with the terms set forth below and in the Regulatory Agreement which is attached hereto as Exhibit D and incorporated herein by reference. Notwithstanding the above, Developer agrees to use its best efforts to make available, restrict occupancy to, and lease two (2) of the three (3) Affordable Units to extremely low income households."

5. Section 301.5, entitled Activity Center, is hereby incorporated into the Agreement to read as follows:

"**301.5. Activity Center.** Developer may convert one of the four (4) existing housing units for use as an activity center for the residents of the Property, as well as other persons and households who require housing assistance, subject to the following requirements:

a. The activity center shall be operated as a fundamental component of the onsite housing units and the services provided in the activity center shall directly benefit the residents of the Property;

b. Residents of the Property shall be given priority access to the facilities and services provided in the activity center;

c. Access to the facilities and services provided in the activity center shall be granted in strict compliance with the non-discrimination covenants set forth in Section 311 of this Agreement.

"In the event Developer or its agent cease to operate the activity center, or fail to operate the activity center in accordance with the requirements of this Section 301.5, any other term or condition set forth in this Agreement, or any other permit, code or legal requirement, the activity center shall be converted back to use as an income-restricted housing unit within 180 days of either (i) the cessation of services in the center, or (ii) written notice by the Agency that Developer has failed to meet the minimum requirements for operation of the activity center. Thereafter, Developer shall have an obligation to lease all four (4) housing units on the Property in accordance with the requirements of Section 301 of this Agreement for the remainder of the Affordability Period set forth in Section 306.

"The Developer shall submit all leases for operation of the activity center to the Agency for its review and approval prior to execution."

5. GENERAL PROVISIONS

5.1. **Time.** Time is of the essence in this First Amendment.

5.2. **Notices.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this First Amendment must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

Developer: Burbank Housing Corporation
1819 Grismer Avenue
Burbank, California 91504
Attn: Executive Director

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

Agency: Redevelopment Agency of the City of Burbank
275 East Olive Avenue
P.O. Box 6459
Burbank, California 91510-6459
Attention: Assistant Executive Director

Such addresses may be changed by notice to the other party given in the same manner as provided above.

5.3. **No Third Parties Benefited.** This First Amendment is made and entered into for the sole protection and benefit of the City, the Agency and Developer and their permitted successors and assigns, and no other person or persons shall have any right of action hereon.

5.4. **Partial Invalidity.** If any provision of this First Amendment shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

5.5. **Governing Law.** This First Amendment and all other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

5.6. **Amendment.** All other provisions of the Agreement, not inconsistent, with this First Amendment shall remain in full force and effect. Further, this First Amendment may not be changed orally, but only by agreement in writing signed by Developer, City and Agency.

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

DEVELOPER:

BURBANK HOUSING CORPORATION, a California nonprofit corporation

By: _____
Its: _____

CITY:

CITY OF BURBANK, a California municipal corporation

By: _____
Michael S. Flad, City Manager

ATTEST:

_____
Margarita Campos, CMC, City Clerk

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

_____
By: Joseph H. McDougall, Sr. Asst. City Attorney

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF BURBANK, a public body, corporate and politic

By: _____
Michael S. Flad, Executive Director

ATTEST:

_____
Margarita Campos, CMC, Agency Secretary

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

_____
By: Joseph H. McDougall, Sr. Asst. City Attorney

EXHIBIT A

LEGAL DESCRIPTION

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

LEGAL DESCRIPTION OF 2406 NORTH NAOMI STREET, BURBANK, CALIFORNIA.

LOT 72 OF TRACT NO. 4615 IN THE CITY OF BURBANK, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 91, PAGES 13-14 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, EXCEPT THE SOUTHWESTERLY ONE-HALF THEREOF.

EXHIBIT B

PROMISSORY NOTES

[See the pages that follow]

PROMISSORY NOTE
(AGENCY)

(2406 North Naomi Street, Burbank, California)

$936,100.00

_____, 2009
Burbank, California

FOR VALUE RECEIVED, BURBANK HOUSING CORPORATION, a California nonprofit corporation ("Borrower"), promises to pay to the **REDEVELOPMENT AGENCY OF THE CITY OF BURBANK,** a public body, corporate and politic (the "Agency"), or order, at the Agency's office at 275 East Olive Avenue, Burbank, California 91510-6459, or such other place as the Agency may designate in writing, the principal sum of **Nine Hundred, Thirty-Six Thousand and One Hundred Dollars ($936,100.00)** (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. Agreement. This Promissory Note (the "Note") is given in accordance with that certain Affordable Housing Agreement executed by the Agency, the City of Burbank and the Borrower, dated as of _____, 2008 (the "Agreement") and the Master Loan Agreement dated November __, 2008, each of which is incorporated herein by this reference. The rights and obligations of the Borrower and the Agency under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any conflict, the Master Loan Agreement prevails, then the Affordable Housing Agreement, then the Promissory Note.

2. Interest. The Note Amount shall accrue interest at the rate of three percent (3%) simple interest over fifty-five (55) years. Any balance of the Note shall be due in full on the anniversary date in the 55th year.

3. Repayment of Note Amount. Borrower shall make an annual payment equal to one hundred percent (100%) of the "Residual Receipts", as hereafter defined, unless payments are accelerated in accordance with the Note. The first residual receipt payment and compliance date shall be April 1, 2009, as set forth below, and continuing every year thereafter until payment has occurred in full.

4. Security. This Note shall be secured by the Deed of Trust recorded as Instrument No. 06 2369323 in Official Records of the Los Angeles County Recorders Office on October 25, 2006. A second Deed of Trust, which incorporated the initial deed of trust and which reflects the additional security shall be recorded on the property described in the Agreement. The underlying loan requires that the property act as security for all of the Notes provided to Agency and City by Borrower through a cross collateralization and cross default provision. A default of this Note could result in foreclosure of all projects identified in the October 25, 2006 Deed of Trust, plus the new properties identified in the supplemental Deed of Trust, and any future properties which secure future indebtedness.

5. **Waivers**

a. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the Agency's sole discretion and that the Agency may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Borrower.

b. No extension of time for payment of this Note made by agreement by the Agency with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

6. **Attorneys' Fees and Costs.** Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

7. **Deed of Trust Acceleration.** The Deed of Trust and the Agreement provide for acceleration of the payments due under this Note in the event of default under the Deed of Trust or Agreement.

8. **Amendments and Modifications.** This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the Agency.

9. **Terms.** Any terms not separately defined herein shall have the same meanings as set forth in the Agreement and the Master Loan Agreement.

BURBANK HOUSING CORPORATION, a California nonprofit corporation

By: _____

Name: _____

Title: _____

PROMISSORY NOTE
(CITY)

(2406 North Naomi Street, Burbank, California)

$510,000.00

_____, 2008
Burbank, California

FOR VALUE RECEIVED, BURBANK HOUSING CORPORATION, a California nonprofit corporation ("Borrower"), promises to pay to the **CITY OF BURBANK**, a California municipal corporation (the "City"), or order, at the City's office at 275 East Olive Avenue, Burbank, California 91510-6459, or such other place as the City may designate in writing, the principal sum of **Five Hundred Ten Thousand Dollars ($510,000.00)** (the "Note Amount") in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. **Agreement.** This Promissory Note (the "Note") is given in accordance with that certain Affordable Housing Agreement executed by the City and the Borrower, dated as of _____, 2008 (the "Agreement") and the Master Loan Agreement dated November ___, 2008, each of which is incorporated herein by this reference. The rights and obligations of the Borrower and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any conflict, the Master Loan Agreement prevails, then the Affordable Housing Agreement, then the Promissory Note.

2. **Interest.** No interest shall accrue on the Note Amount.

3. **Repayment of Note Amount.** The Note Amount shall be immediately due and payable in the event that one of the repayment conditions set forth herein, to wit: Borrower commits a material default of the Agreement, this Note, the Deed of Trust securing this Note, or the Regulatory Agreement, and fails to cure said default within the time periods provided in those documents, if any. Otherwise, Borrower shall have no obligation to pay this Note or make any installment payment thereon. At the fifty-fifth (55th) anniversary of the date this Note is executed, provided Borrower has not committed or caused the occurrence of a material default of the Agreement, this Note, the Deed of Trust securing this Note, or the Regulatory Agreement, the Note Amount stated above will be forgiven in its entirety. Notwithstanding the foregoing, the full Note Amount may be accelerated as set forth herein.

Notwithstanding the foregoing, however, the total amount of the principal, interest and any other amounts owing under this Note shall become immediately due and payable upon the earlier to occur of the following:

a. the sale, lease, exchange or other conveyance of the Property, as that term is defined in the Agreement (other than transfers approved or permitted pursuant to the Agreement); or

b. in the event of a default by the Borrower under the Agreement, the Deed of Trust securing this Note, the Regulatory Agreement, or this Note, which has not been cured within the period of time set forth in those documents.

Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due subsequently.

4. Security. This Note shall be secured by the Deed of Trust recorded as Instrument No. 06 2369323 in Official Records of the Los Angeles County Recorders Office on 10/25/06. A second Deed of Trust, which incorporated the initial deed of trust and which reflects the additional security shall be recorded on the property described in the Agreement. The underlying loan requires that the property act as security for all of the Notes provided to Agency and City by Borrower through a cross collectivization and cross default provision. A default of this Note could result in foreclosure of all projects identified in the 10/25/06 Deed of Trust, plus the new properties identified in the supplemental Deed of Trust, and any future properties which secure future indebtedness .

5. Waivers.

a. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Borrower.

b. No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

6. Attorneys' Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

7. Deed of Trust Acceleration. The Deed of Trust and the Agreement provide for acceleration of the payments due under this Note in the event of default under the Deed of Trust or Agreement.

8. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the City.

9. City May Assign. City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

10. Borrower Assignment Prohibited. Except in connection with transfers permitted pursuant to the Agreement, in no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of the City, which consent may be given or withheld in the City's sole discretion.

11. Terms. Any terms not separately defined herein shall have the same meanings as set forth in the Agreement and the Master Loan Agreement.

BURBANK HOUSING CORPORATION, a California nonprofit corporation

By: _____

Name: _____

Title: _____

EXHIBIT D

FIRST AMENDMENT TO REGULATORY AGREEMENT

[See the pages that follow]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Burbank
275 East Olive Avenue
P.O. Box 6459
Burbank, California 91519-6459
Attention: Redevelopment Director

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

FIRST AMENDMENT TO REGULATORY AGREEMENT

THIS FIRST AMENDMENT TO REGULATORY AGREEMENT ("Amendment No. 1") is entered into as of this ____ day of _____, 2009 by and among the **CITY OF BURBANK**, a California municipal corporation (the "City"), the **REDEVELOPMENT AGENCY OF THE CITY OF BURBANK**, a public body, corporate and politic (the "Agency"), and **BURBANK HOUSING CORPORATION**, a California nonprofit corporation (the "Developer").

RECITALS

A. The City, the Agency and the Developer entered into an Affordable Housing Agreement dated as of November 20, 2008 (the "Agreement"), pursuant to which the City and Agency agreed to provide financial assistance in order that Developer may acquire and rehabilitate a 4-unit residential property located at 2406 N. Naomi Street, in the City of Burbank (the "Property"). Developer agreed to acquire and rehabilitate the Property with such financial assistance, and to restrict occupancy to households of very low and extremely low income.

B. In accordance with the Agreement, the parties entered into a Regulatory Agreement as of November 20, 2008.

C. Developer subsequently acquired the Property and has completed the rehabilitation of the Property.

D. Developer now wishes to convert the use of one of the four income-restricted rental units for use as an activity center for the residents of the Property, as well as other persons and households who require transitional housing assistance. This change in the intended use of the Property requires amendments to the Affordable Housing Agreement, promissory notes and the Regulatory Agreement.

E. The execution and recording of this Amendment No.1 is a requirement of the City and Agency's agreement to permit the Developer to use one of the units as an activity center pursuant to the Affordable Housing Agreement, as amended by the First Amendment to Affordable Housing Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. The first paragraph of Section 4 of the Regulatory Agreement, entitled Affordable Units, is hereby amended to read as follows:

"The Developer agrees to make available, restrict occupancy to, and lease three (3) of the housing units within the Property to households with incomes that do not exceed the stricter of: i) the qualifying limits for very- low income households as established and amended from time to time by the United States Department of Housing and Urban Development (HUD) or ii) the limits defined under California Health and Safety Code Section 50105 for very-low income households and Section 50106 for extremely low income households, all at an Affordable Rent (all of the four units are hereafter the "Affordable Units"). Notwithstanding the above, Developer agrees to use its best efforts to make available, restrict occupancy to, and lease two (2) of the three (3) Affordable Units to extremely low income households. The Developer shall comply with the terms set forth below."

2. Section 4.5, entitled Activity Center, is hereby incorporated into the Regulatory Agreement to read as follows:

"**4.5. Activity Center.** Developer may convert one of the four (4) existing housing units for use as an activity center for the residents of the Property, as well as other persons and households who require housing assistance, subject to the following requirements:

a. The activity center shall be operated as a fundamental component of the onsite housing units and the services provided in the activity center shall directly benefit the residents of the Property;

b. Residents of the Property shall be given priority access to the facilities and services provided in the activity center;

c. Access to the facilities and services provided in the activity center shall be granted in strict compliance with the non-discrimination covenants set forth in Section 311 of the Affordable Housing Agreement, as amended.

"In the event Developer or its agent cease to operate the activity center, or fail to operate the activity center in accordance with the requirements of this Section 4.5, any other term or condition set forth in the Agreement, the Affordable Housing Agreement, as amended, or any other permit, code or legal requirement, the activity center shall be converted back to use as an income-restricted housing unit within 180 days of either (i) the cessation of services in the center, or (ii) written notice by the Agency that Developer has failed to meet the minimum requirements for operation of the activity center. Thereafter, Developer shall have an obligation to lease all four (4) housing units on the Property in accordance with all relevant requirements of this Agreement and the Affordable Housing Agreement, as amended, for the remainder of the Affordability Period set forth in Section 306 of the Affordable Housing Agreement, as amended.

"The Developer shall submit all leases for operation of the activity center to the Agency for its review and approval prior to execution."

3. **Time.** Time is of the essence in this Amendment No. 1.

4. **Notices.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Amendment No. 1 must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

Developer: Burbank Housing Corporation
1819 Grismer Avenue
Burbank, California 91504
Attention: Judith S. Arandes, Executive Director

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

Agency: Redevelopment Agency of the City of Burbank
275 East Olive Avenue
P.O. Box 6459
Burbank, California 91510-6459
Attention: Assistant Executive Director

Such addresses may be changed by notice to the other party given in the same manner as provided above.

5. **Successors and Assigns.** This Agreement shall run with the land, and all of the terms, covenants and conditions of this Amendment No. 1 shall be binding upon the Developer, the City and the Agency and the permitted successors and assigns of the Developer and the Agency. Whenever the term "Developer," "Agency" or "City" is used in this Amendment No. 1, such term shall include any other successors and assigns as herein provided.

6. **No Third Parties Benefited.** This Amendment No. 1 is made and entered into for the sole protection and benefit of the City and its successors and assigns, the Agency and its successors and assigns, and Developer and its successors and assigns, and no other person or persons shall have any right of action hereon.

7. **Partial Invalidity.** If any provision of this Amendment No. 1 shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

8. **Governing Law.** This Amendment No. 1 and the Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

9. **Amendment.** All other provisions of the Agreement, not inconsistent, with this Amendment No. 1 shall remain in full force and effect. Further, this Amendment No. 1 may not be changed orally, but only by agreement in writing signed by Developer, the Agency and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Regulatory Agreement as of the date and year set forth above.

DEVELOPER:

BURBANK HOUSING CORPORATION, a California nonprofit corporation

By: _____
Its: _____

CITY:

CITY OF BURBANK, a California municipal corporation

By: _____
Michael S. Flad, City Manager

ATTEST:

_____
Margarita Campos, CMC, City Clerk

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

_____
By: Joseph H. McDougall
Senior Assistant City Attorney

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF BURBANK, a public body, corporate and politic

By:_____
Michael S. Flad, Executive Director

ATTEST:

_____
Margarita Campos, CMC, Agency Secretary

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

_____
By: Joseph H. McDougall
Senior Assistant City Attorney

EXHIBIT A

LEGAL DESCRIPTION

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

LEGAL DESCRIPTION OF 2406 NORTH NAOMI STREET, BURBANK, CALIFORNIA:

LOT 72 OF TRACT NO. 4615 IN THE CITY OF BURBANK, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 91, PAGES 13-14 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, EXCEPT THE SOUTHWESTERLY ONE-HALF THEREROF.