

8426085

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Redevelopment Agency of Salt Lake City
Room 418, City and County Building
451 South State Street
Salt Lake City, Utah 84111
ATTN: Executive Director

8426085
11/19/2002 10:40 AM NO FEE
Book - 8686 Pg - 6814-6825
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SALT LAKE REDEVELOPMENT AGENCY
BY: ZJM, DEPUTY - WI 12 P.

(Above space for recorder's use only)

HOUSING COVENANTS

~~October~~ ^{NOVEMBER} THIS HOUSING COVENANTS (this "Agreement") is made this 7th day of ~~October~~, 2002 by and between REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public agency ("Agency"), and CITY FRONT PARTNERS, LLC, a Utah limited liability company ("Owner"), collectively referred to as the "Parties" and individually as a "Party".

RECITALS:

A. This Agreement relates to Owner's use of certain real property legally described on Exhibit A attached hereto and incorporated herein by reference (the "Property"). The Property is located within what is known as the "Depot District Redevelopment Project Area" which generally includes an area between North Temple Street and 400 South Street and 400 West Street and I-15.

~~October~~ ^{NOVEMBER} B. Pursuant to the terms of a Participation and Reimbursement Agreement dated as of 7th, 2002 among Agency, Salt Lake Neighborhood Housing Services, Inc., a Utah nonprofit corporation ("Developer") and Owner (the "Reimbursement Agreement"), Owner has agreed to construct on the Property certain housing and parking improvements as more fully described herein.

C. Pursuant to the Reimbursement Agreement, in partial consideration for Agency's agreement to make a loan to Developer in order to fund a loan to Owner which will be used to finance certain of Owner's costs associated with the Required Improvements, Owner has also agreed to develop a portion of the Required Improvements as affordable housing, and to grant the covenants, conditions and restrictions hereinafter set forth.

D. Agency believes that the fulfillment of this Agreement and the intentions herein are in the vital and best interests of Salt Lake City (the "City") and the health, safety, morals and welfare of its residents, and in accord with the public purposes.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS

The capitalized terms used in this Agreement shall have the definitions set forth in the Recitals or in this Article I.

1.1 “Adjusted Income” means the anticipated total annual income of the family or individual for the certification year, determined in accordance with the criteria prescribed by the Secretary of Housing and Urban Development under 42 USC Sec. 1437a(b)(4), as amended, for purposes of determining whether a family is a lower-income family within the meaning of 42 USC Sec. 1437a(b)(2). The “certification year” means the 12-month period which begins on the date on which the person first occupies the Housing Unit on a rental basis, or signs a lease with respect to the Housing Unit, whichever occurs first or an anniversary thereof, as applicable.

1.2 “Certificate of Occupancy” shall have the meaning set forth in Section 2.1 of this Agreement.

1.3 “City” means Salt Lake City Corporation, a municipal corporation.

1.4 “Event of Force Majeure” means any of the following events or circumstances beyond Owner’s reasonable control which delays the performance by Owner of its obligations under this Agreement including: (i) strikes; (ii) lock-outs; (iii) fire or other casualty; (iii) inclement weather or the elements; (iv) acts of God; (v) moratoria, refusal, delays, or failure of governmental authorities (other than Agency) to grant necessary approvals and permits for the construction of the Required Improvements (Owner agreeing to use reasonable diligence to procure the same) or other governmental action delaying the performance of any work, such as limiting access to the Property due to road construction on roads adjacent to the Project; (vi) general economic conditions prevailing in financial markets (not to exceed for this item only, an aggregate delay of nine (9) months); (vii) war, riot or insurrections; (viii) shortages of or inability to obtain essential construction materials or the transportation thereof; provided, an Event of Force Majeure shall not be deemed to commence more than thirty (30) days before Owner notifies Agency in writing of the occurrence of an Event of Force Majeure; and provided further, an Event of Force Majeure shall not include any delay attributable to the failure of Owner to commit equity capital in connection with the construction of the Required Improvements in such amounts as is customary in the real estate development business for projects of the type and scope contemplated by this Agreement.

1.5 "Housing Units" shall have the meaning set forth in Section 2.1 of this Agreement.

1.6 "Median Income for the Area" means, as of any date, the median income for Salt Lake County as recently determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, Median Income for Salt Lake County determined under the method used by the Secretary prior to such termination.

1.7 "Occupant" shall mean any person or entity, including, but not limited to, any Owner, tenant or lessee occupying all or part of the Property.

1.8 "Official Records" means the records of the Salt Lake County Recorder's Office.

1.9 "Owner" shall mean any person or entity that owns fee title to all or any part of the Property.

1.10 "Punch List Items" means, with respect to specified improvements, uncompleted items and defective work which are minor and which do not materially impair Owner's ability to use the specified improvements as a whole for their intended purpose.

1.11 "Qualifying Tenants" means individuals or families whose Adjusted Income is 60% or less of the Median Income for the Area. Determinations under the preceding sentence shall include adjustments for family size. Notwithstanding the foregoing, the occupants of a Housing Unit shall not be considered to be Qualifying Tenants if all the occupants are students (as defined in Section 151(c)(4) of the Internal Revenue Code), no one of whom is entitled to file a joint return under Section 6013 of the Internal Revenue Code. For purposes of determining Qualifying Tenants, the combined Adjusted Income of all occupants of a Housing Unit, whether or not legally related, shall be utilized.

1.12 "Required Improvements" shall have the meaning set forth in Section 2.1 of this Agreement.

ARTICLE II

HOUSING COVENANTS

2.1 Use of Property. The Owner shall construct on the Property at least the following (the "Required Improvements"): (a) 155 residential housing units to be located in the area depicted as "Housing Units" on the Site Plan ("Housing Units") and (b) a structured parking stall for each Housing Unit; provided, only fifty percent (50%) of such stalls shall be made available for shared use with users other than Occupants of the Housing Units. The Required Improvements shall be substantially completed in accordance with this Agreement and the requirements of all

governmental authorities, except for "Punch List Items," and a certificate of occupancy (the "Certificate of Occupancy") shall have been issued by City, by June 1, 2003, as such date may be extended by Events of Force Majeure.

2.2 Affordable Housing Restriction. Subject to the provisions of Section 2.3 below, for a period of fifteen (15) years after the Certificate of Occupancy for the Housing Units has been issued, Owner covenants as follows:

(a) At least 40% of the Housing Units (including both occupied and vacant Housing Units) in the Project shall be occupied by or held for occupancy for Qualifying Tenants; provided that for purposes of satisfying such requirement, the following general principles shall apply:

(i) The determination of whether the income of a resident of a Housing Unit in the Project exceeds the applicable income limit shall be made at least annually on the basis of the current income of such resident. If the income of a resident of a Housing Unit in the Project did not exceed the applicable income limit upon commencement of such resident's occupancy of such Housing Unit (or, as of any prior determination under the preceding sentence) the income of such resident shall be treated as continuing to not exceed the applicable income limit; however, the preceding sentence shall cease to apply to any resident whose income as of the most recent annual determination exceeds 140% of the applicable limit if after such determination, but before the next determination, any Housing Unit of comparable or smaller size in the Project is occupied by any resident whose income exceeds the applicable income limit.

(ii) A Housing Unit which was occupied by a Qualifying Tenant shall be treated as occupied by a Qualifying Tenant until reoccupied, other than for a temporary period of not to exceed 31 days, at which time the character of the Housing Unit shall be redetermined.

(b) If necessary, Owner shall refrain from renting Housing Units to persons other than Qualifying Tenants in order to avoid violating the covenant set forth in Section 2.2(a) above.

(c) Owner shall obtain and maintain on file a sworn income certification in the form approved by Agency (such approval not to be unreasonably withheld) with respect to the occupants of a sufficient number of Housing Units in the Project to satisfy the covenant set forth in Section 2.2(a) above. Owner shall promptly deliver to Agency, upon request, a copy of each such certification together with such additional certifications as Agency may reasonably require with respect thereto. Owner shall verify that the income provided by an applicant is accurate

by taking the following steps as a part of the verification process: (1) obtain a federal income tax return for the most recent tax year, (2) obtain a written verification of income and employment from applicant's current employer, or (3) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income satisfactory to Agency.

2.3 Reports and Notices. Owner shall deliver to the Agency a copy of each annual report it is required to deliver to Utah Housing Corporation pursuant to Section 42 of the Internal Revenue Code at the same time as it is delivered to Utah Housing Corporation. Owner shall promptly deliver to the Agency a copy of any notice of violation it receives from Utah Housing Corporation.

2.4 Early Termination. In the event that the Property is acquired by foreclosure (or instrument in lieu of foreclosure) prior to the end of the fifteen (15) year term specified in Section 2.2 above, the covenants in Section 2.2 shall terminate on the date of such foreclosure (or the date such instrument is recorded), unless such acquisition is part of an arrangement of Owner (or those in control of Owner) a purpose of which is to evade this Agreement; provided, however, that notwithstanding the termination of such covenants pursuant to the provisions of this Section 2.3, the Owner shall not evict or terminate the tenancy (other than for good cause) of an existing Qualifying Tenant or increase the gross rent with respect to a Housing Unit before the close of the three year period following the date of such termination, unless such increase in rent would be permitted under the conditions described in Section 42 of the Internal Revenue Code and the regulations promulgated pursuant thereto.

2.5 No Discrimination. Owner shall not discriminate against or with respect to any person or group of persons on any unlawful basis in the construction, sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or any part thereof.

ARTICLE III

ENFORCEMENT

3.1 Default. In the event of a violation or threatened violation of any term, covenant or condition of this Agreement by Owner, Agency or City shall have all remedies at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation and by decree to compel specific performance of any terms, covenants or conditions of this Agreement, it being agreed that the remedy at law for any breach of any such term, covenant or condition is not adequate.

3.2 Breach Shall Not Permit Termination. No breach of this Agreement shall entitle Owner to cancel, rescind or otherwise terminate this Agreement.

3.3 No Limitation of Remedies. The various rights and remedies herein contained, except as otherwise provided in this Agreement shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute.

3.4 Attorneys' Fees. In any legal or equitable proceeding for the enforcement of, or to restrain the violation of, or otherwise pertaining to a dispute concerning this Agreement or any provision hereof, by reference or otherwise, the prevailing Party shall be entitled to an award of reasonable attorneys' fees in such amount as may be fixed by the court in such proceedings. All remedies provided herein at law or in equity shall be cumulative and not exclusive.

3.5 Failure to Enforce Not a Waiver of Rights. The delay or failure of Agency or City to enforce any covenant, condition or restriction contained in this Agreement shall not be deemed a waiver of the right to do so thereafter, nor of the right to enforce any other covenant, condition or restriction.

ARTICLE IV

GENERAL PROVISIONS

4.1 Nonliability of Agency and City. Neither Agency nor City, nor any of their respective appointees, agents, employees, partners, officers, or directors shall be liable to Owner for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, omission, error, negligence or the like by Agency or City.

4.2 Constructive Notice and Acceptance. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in the Property.

4.3 Term of Agreement. This Agreement shall remain in effect for fifteen (15) years from the date upon which the Certificate of Occupancy is issued.

4.4 Article and Paragraph Headings. The article and paragraph headings used herein are inserted for convenience only and are not intended to be a part of this Agreement or in any way to define, limit or describe the scope and intent of the respective articles and sections to which they refer.

4.5 Effect of Invalidation. If any provision (by reference or otherwise) of this Agreement is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

4.6 Amendments. All negotiations and oral agreements acceptable to the Parties have been incorporated herein. This Agreement may not be modified or rescinded, in whole or in part, except by a writing executed by Owner or Agency and recorded against the Property in the Official Records.

4.7 Notices. Any notices, demands or requests pursuant to this Agreement shall be made in writing and shall be delivered personally or by reliable, receipted courier service, overnight mail service, facsimile transmission, certified mail (with postage prepaid, return receipt requested), or another commercially recognized means of delivery. Notice shall be deemed given when actually received.

4.8 No Relationship of Principal and Agent. Nothing contained in this Agreement, nor any acts of any Parties shall be deemed or construed to create the relationship of principal and agent or of limited or general partnership or of joint venture or of any other similar association between Agency, its successors or assigns, or Owner or any Occupant.

4.9 Binding Effect. It is intended and agreed that the agreements and covenants set forth in this Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding to the fullest extent permitted by law and equity for the benefit of Agency and City against Owner, its successors and assigns in the ownership of the Property, any part thereof, or any interest therein. Owner hereby covenants and declares that the Property shall hereafter be held, transferred, sold, leased, conveyed, developed, used and occupied subject to this Agreement, each and all of which is and are for, and shall inure to the benefit of and pass with, each and every portion of or interest in the Property and shall apply to Owner and every tenant, lessee, and Occupant and their successors and assigns.

4.10 Assignment by Agency. Agency may assign its rights under this Agreement to any person, entity, or governmental body, at any time after the Certificate of Occupancy is issued.

4.11 No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party.

4.12 Representation Regarding Ethical Standards. Owner represents that it has not (a) provided an illegal gift or payoff to an Agency or a City officer or employee or former Agency or City officer or employee, or his or her relative or business entity; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (c) knowingly breached any of the ethical standards set forth in City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, an Agency or a City officer or employee or former Agency or City officer or employee to breach any of the ethical standards set forth in Salt Lake City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

4.13 Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

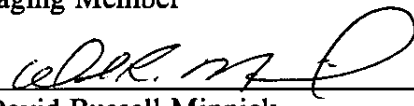
CITY FRONT PARTNERS, LLC,
a Utah limited liability company

By: Salt Lake Neighborhood Housing Services,
Inc., a Utah nonprofit corporation
Managing Member

By: 


Maria Garciaz
Its: Executive Director

Bridge Development, LC.
a Utah limited liability company,
Managing Member

By: 

David Russell Minnick
Its: Manager

REDEVELOPMENT AGENCY OF SALT LAKE CITY

By: 


Ross C. Anderson
Its Chief Administrative Officer

By: 

David J. Oka
Its Executive Director

Approved as to legal form:

Jones, Waldo, Holbrook & McDonough

By: 

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

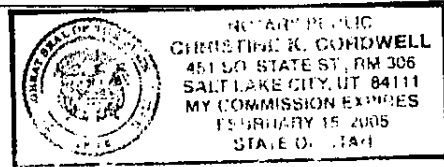
On the 7 day of ^{Nov}October, 2002, personally appeared before me Ross C. Anderson, who being by me duly sworn did say he is the Chief Administrative Officer of The Redevelopment Agency of Salt Lake City, and that the within and foregoing instrument was signed on behalf of said Agency.

Christine K. Cordwell

NOTARY PUBLIC

Residing at: _____

My Commission Expires:



STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 16th day of October, 2002, personally appeared before me David J. Oka, who being by me duly sworn did say he is the Executive Director of The Redevelopment Agency of Salt Lake City, and that the within and foregoing instrument was signed on behalf of said Agency.

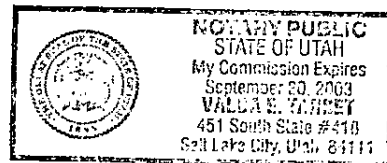
Valda E. Tarbet

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

9/20/03

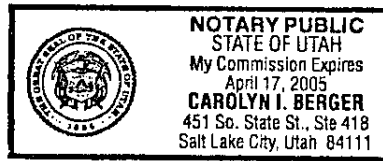


STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 14th day of October, 2002, personally appeared before me Maria Garciaz the signer of the foregoing instrument, who being by me duly sworn did say she is the Executive Director of Salt Lake Neighborhood Housing Services, a Utah nonprofit corporation and a Managing Member of City Front, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said entity.

Carolyn I. Berger
NOTARY PUBLIC
Residing at: SL County

My Commission Expires:
4/17/05

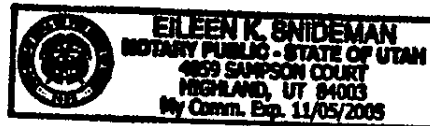


STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 11 day of October, 2002, personally appeared before me David Russell Minnick, the signer of the foregoing instrument, who being by me duly sworn did say he is the Manager of Bridge Development, L.C., a Utah limited liability company and a Managing Member of City Front, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said entity.

Eileen K. Snideman
NOTARY PUBLIC
Residing at: _____

My Commission Expires:



LEGAL DESCRIPTION OF THE PROPERTY

That certain property located in Salt Lake County, Utah and described as follows:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF NORTH TEMPLE STREET AND THE WEST RIGHT-OF-WAY LINE OF 600 WEST STREET, SAID POINT ALSO BEING THE NORTHEAST CORNER OF BLOCK 60, PLAT C, SALT LAKE CITY SURVEY, AND RUNNING THENCE SOUTH 89°58'06" WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE OF NORTH TEMPLE STREET 466.56 FEET TO THE WEST LINE OF UDOT PARCEL NO. 15-7;160;E OF OFFICIAL RECORDS; THENCE ALONG SAID WEST LINE THE FOLLOWING 4 COURSES: SOUTH 16°16'45" WEST 257.95 FEET AND SOUTH 89°58'57" WEST 9.67 FEET TO A POINT ON THE ARC OF A 3427.49 FOOT RADIUS CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 00°47'25" AND SOUTHERLY ALONG SAID ARC 47.27 FEET TO A POINT OF TANGENCY AND SOUTH 18°17'53" WEST 83.03 FEET; THENCE NORTH 89°58'06" EAST 233.85 FEET TO THE WEST SIDE OF A METAL BUILDING; THENCE NORTH 00°07'20" EAST ALONG SAID WEST LINE AND LINE EXTENDED 123.79 FEET; THENCE NORTH 89°58'06" EAST 190.03 FEET TO THE CENTER OF LOT 7 IN SAID BLOCK 60; THENCE NORTH 00°01'00" WEST 41.26 FEET; THENCE NORTH 89°58'06" EAST 165.09 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 600 WEST STREET; THENCE NORTH 00°01'00" WEST ALONG SAID RIGHT-OF-WAY LINE 206.28 FEET TO THE POINT OF BEGINNING.

08-36-353--018