

## ATTACHMENT B

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

County of Santa Barbara  
Housing and Community Development  
Department  
105 East Anapamu Street, Suite 105  
Santa Barbara, CA 93101  
Attn: Housing Finance Division Manager

NO FEE FOR RECORDING PURSUANT TO  
GOVERNMENT CODE SECTION 27383

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### **REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS**

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of September \_\_\_\_, 2007, by and between the County of Santa Barbara, a political subdivision of the State of California, and Surf Development Company, a California nonprofit public benefit corporation.

#### **RECITALS**

A. These Recitals utilize certain capitalized terms that are defined in Article 1 of this Agreement. The parties intend to refer to those definitions in connection with their use in these Recitals.

B. The County wishes to promote the development of more affordable rental housing in neighborhoods in need of revitalization in the Santa Barbara County community and provide a greater choice of housing opportunities for persons and families of low income.

C. The Borrower proposes to acquire a newly constructed two-story building located at 575 and 595 Avenue of the Flags in Buellton, Santa Barbara County, California, as more particularly described in Exhibit A, containing six (6) one-bedroom residential units and approximately one thousand three hundred and forty (1340) square feet of commercial space.

D. The County has agreed to loan funds to the Borrower on the condition that the residential units in the Project be maintained and operated as affordable housing in accordance with the restrictions concerning affordability, operation, and maintenance of the Project, as specified in this Agreement.

E. In consideration of receipt of the Loan and other assistance granted to the Project by the County and Borrower have further agreed to observe all the terms and conditions set forth below.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, Borrower and County hereby agree as follows:

ARTICLE 1.  
DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(b) "Adjusted Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with standards, policies and procedures currently in place and as amended from time-to-time, pursuant to the federal Department of Housing and Urban Development's Section 8 rental assistance program as established under the United States Housing Act of 1937.

(c) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) "Area Median Income" shall mean the median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development ("HUD") pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

(e) "Assumed Household Size" shall have the meaning set forth in Section 2.2(b).

(f) "Borrower" shall mean Surf Development Company, a California nonprofit public benefit corporation and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

(g) "County" shall mean the County of Santa Barbara, political subdivision of the State of California.

(h) "Deed of Trust" shall mean the deed of trust executed by the Borrower in favor of the County and recorded against the Borrower's interest in the Property which secures repayment of the Loan and performance of this Agreement.

(i) "Loan" shall mean all funds loaned to Borrower by the County pursuant to the Loan Agreement.

(j) "Loan Agreement" means this loan agreement entered into between the County and the Borrower.

(k) "Note" shall mean the promissory note from the Borrower to the County evidencing all or any part of the Loan.

(l) "Project" shall mean means the acquisition of the Property upon which is located two-story building located at 575 and 595 Avenue of the Flags in Buellton, Santa Barbara County, California, as more particularly described in Exhibit A, containing six (6) one-bedroom residential units and approximately one thousand three hundred and forty (1,340) square feet of commercial space.

(m) "Property" shall mean that certain real property and improvements consisting of a two-story building located at 575 and 595 Avenue of the Flags in Buellton, Santa Barbara County, California, as more particularly described in Exhibit A, which is incorporated into this Agreement by this reference.

(n) "Rent" shall mean the total of monthly payments by the tenants of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Borrower which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, including (to the extent paid for by the tenant) garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service.

(o) "Tenant" shall mean a household occupying a Unit.

(p) "Term" shall mean the period of time beginning on the date of this Agreement and ending thirty (30) years following the date this Agreement is recorded.

(q) "Unit" shall mean one of the six (6) rental units on the Property.

(r) "Very Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for very low income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by the State of California Department of Housing and Community Development.

(s) "Very Low Income Units" shall mean the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Very Low Income Households.

## ARTICLE 2. AFFORDABILITY COVENANTS

### 2.1 Occupancy Requirements.

(a) Very Low Income Units. Six (6) Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

## 2.2 Allowable Rent.

(a) Very Low Income Rent. Subject to the provisions of Section 2.2(c) below, the rent charged to Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size and any other HUD adjustment.

(b) Assumed Household Size. In calculating the allowable Rent for the Very Low Income Units, the Assumed Household Size for a one-bedroom unit shall be two persons.

2.3 Lease Provisions. Borrower shall include in leases for all Units provisions which authorize Borrower to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a Very Low Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the limits for a Very Low Income Household, such household's Rent may be subject to increase. Borrower shall also include in leases for all Units a provision which terminates the tenancy of households whose incomes are found to exceed the maximum income to qualify as a Very Low Income Household upon Income Certification as set forth below. In such event, the household that no longer qualifies shall be given 90 days to relocate which time may be extended upon the written approval of the County Housing and Community Development Director if the household has not been able to locate a suitable replacement dwelling.. **Tom: the above language is really a placeholder until we here back from the housing authority.**

2.4 Condominium Conversion. The Borrower shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

## ARTICLE 3. INCOME CERTIFICATION AND REPORTING

3.1 Income Certification. The Borrower will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Very Low Income Units in conformance with standards, policies and procedures currently in place and as amended from time-to-time, pursuant to the federal Department of Housing and Urban Development's Section 8 rental assistance program as established under the United States Housing Act of 1937. Notwithstanding the above, in the event that the County adopts income certification procedures ("New Certification Procedures") and notifies Borrower of the New Certification Procedures, Borrower shall comply with the Certification Procedures. Copies of tenant income certifications shall be available to the County upon request and from time to time as determined by County for purposes of annual monitoring and evaluation of County-funded projects.

3.2 Annual Report to County. Each year Borrower shall submit an annual report to the County, in a form approved by the County. The annual report shall include for each Very Low Income Unit covered by this Agreement, the Rent and the income and household size of the household occupying the Very Low Income Unit. The report shall also state the date the tenancy commenced for each rental Unit and such other information as the County may be required by law to obtain.

3.3 Additional Information. Borrower shall provide any additional information reasonably requested by the County with respect to the Borrower's compliance with the terms of this Agreement. The County shall have the right to examine and make copies of all books, records or other documents of Borrower which pertain to any Very Low Income Unit to determine compliance with this Agreement.

3.4 Records. The Borrower shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the County to inspect records, including records pertaining to income and household size of Tenants in Very Low Income Households. All household lists, applications and waiting lists relating to Very Low Income Units shall at all times be kept separate and identifiable from any other business of the Borrower and shall be maintained as required by the County, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. The Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Very Low Income Units for a period of at least five (5) years. Records shall be maintained in a fashion so as to reasonably insure confidentiality and privacy of household's protected information, such as Social Security numbers and relevant financial information from access by third parties without prior consent by household of Assisted Unit.

#### ARTICLE 4. OPERATION OF THE DEVELOPMENT

4.1 Taxes and Assessments. The Borrower shall pay when due all real property taxes and assessments assessed and levied on the Property and the Project, and shall remove any levy or attachment made on the Property or the Project. The Borrower may, however, contest the validity or amount of any tax, assessment, or lien on the Property and the Project.

4.2 Nondiscrimination. The Borrower covenants by and for themselves and their successors and assigns that, except to the extent that Units are required to be rented to Very Low Income Households, there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or employees in the Property or the Project. The foregoing covenant shall run with the land and shall remain in effect in perpetuity.

ARTICLE 5.  
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. The Borrower is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Project.

5.2 Property Maintenance. The Borrower shall cause the Property and the Project to be maintained and repaired consistent with requirements and in a condition reasonably acceptable to the County during the Term, including but not limited to cleaning, painting, plumbing, carpentry, grounds care and such other maintenance and repairs as may be necessary. If there arises a condition in contravention of this Section 5.2, and if the Borrower has not cured such condition within thirty (30) days after receiving an County notice of such a condition or such longer period of time as is reasonably necessary in the reasonable discretion of the County, then the County shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property, subject to the rights of any senior lenders.

ARTICLE 6.  
MISCELLANEOUS

6.1 Term. The provisions of this Agreement shall apply to the Property for the entire Term even if the entire Loan is paid in full prior to the end of the Term; provided, however, that the provisions of Section 4.2 of this Agreement shall run with the Property and shall remain in effect in perpetuity. This Agreement shall bind any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County makes the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.2 Covenants to Run With the Land. The County and Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.3 Enforcement by the County. If Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified the Borrower in writing of the default or, if the default cannot be cured within thirty (30) days,

failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure, the County shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Calling the Loan. The County may declare a default under the Note and exercise any rights or remedies permitted under the Note and the Deed of Trust.

(b) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel Borrower's performance of its obligations under this Agreement, and/or for damages.

6.4 Remedies Provided Under Loan Agreement. The County may exercise any other remedy provided under the Loan Agreement.

6.5 Recording and Filing. The County and Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Santa Barbara.

6.6 Governing Law. This Agreement shall be governed by the laws of the State of California.

6.7 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Barbara, California.

6.8 Notices, Demands and Communications. Formal notices, demands, and communications among the County and the Borrower shall be sufficiently given if, and shall not be deemed given unless, secured personally, or dispatched by certified mail, return receipt requested, or by facsimile transmission or reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the County and the Borrower as follows:

COUNTY: County of Santa Barbara  
105 E Anapamu Street, Room105  
Santa Barbara, CA 93101-2065  
Attn: Housing and Community Development Director

With a copy to:

Office of the County Counsel  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101-2065

BORROWER: Surf Development Company  
815 W. Ocean Avenue  
Lompoc, CA 93436  
Attn: Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 6.8. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

6.9 Capitalized Terms. Any capitalized terms not defined herein shall have the meaning attributed to them in the Loan Agreement.

6.10 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.



IN WITNESS WHEREOF, the County and Borrower have executed this Agreement by duly authorized representatives, all on the date first written above.

**APPROVED AS TO FORM:**

STEPHEN SHANE STARK  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

**COUNTY:**

County of Santa Barbara, a political  
subdivision of the State of California

By: \_\_\_\_\_  
Its: Chairman of the Board of Supervisors

**ATTEST:**

MICHAEL F. BROWN  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

**BORROWER**

Surf Development Company, a California  
nonprofit public benefit corporation

By: \_\_\_\_\_  
Its: Executive Director  
(signature must be notarized)

**APPROVED AS TO FORM:**

BOB GEIS  
AUDITOR CONTROLLER

By: \_\_\_\_\_  
Senior Financial Analyst

And  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(signature must be notarized)

EXHIBIT A  
Property Description