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CDC of Escondido
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Escondido, CA 92025

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2004-1122024

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REGULATORY AGREEMENT
Low and Moderate Income Housing Set-Aside Funds
338 Brotherton Road, Escondido, CA.

This Regulatory Agreement (hereinafter the "Agreement"), is made on this 10th day of November, 2004, and entered into by and between the City of Escondido Community Development Commission (hereinafter "CDC"), and Trinity Housing Group 1, LLC, a California Limited Liability Company, (hereinafter the "Borrower") with offices located at P.O. Box 2946, Del Mar, California 92014.

RECITALS

Borrower has applied to the CDC for a loan for the acquisition and improvement of property located at 338 Brotherton Road, City of Escondido, County of San Diego, California (hereinafter the "Development"), the assisted units of which are to be occupied by persons of Low- and Moderate-Income. Said Loan (the "CDC Loan") will be provided by the CDC under the Low and Moderate Income Housing Set-Aside Fund as set forth in Section 33334.2 of the California Health and Safety Code. The Borrower agrees to be bound by and to abide by all applicable statutes and rules and regulations with respect to operation of the Development and the terms of the financial assistance provided by the CDC.

Borrower and the CDC have entered into a Loan Agreement dated November 10, 2004, regarding the Development and the financial assistance to be provided therefor. Borrower agrees to abide by all provisions of the Loan Agreement with respect to the Development. Borrower has also agreed to enter into this Agreement as an inducement to the CDC to provide the financial assistance specified in the Loan Agreement, and has agreed to be regulated and restricted as provided herein.

Borrower shall also execute a promissory note evidencing its obligation to repay the Program funds, including interest, advanced by the CDC for acquisition and construction of the Development. The promissory note will be secured by a deed of trust naming the CDC as beneficiary. Borrower agrees to be bound by all terms and conditions of the promissory note and deed of trust.

The Development consists of a minimum of twenty-two (22) dwelling units. All of the units are being subsidized with Low and Moderate Income Housing Set-Aside Funds. Borrower is developing this property for affordable owner-occupied housing, which is governed by the Community Redevelopment Law of the State of California as set forth in California Health and Safety Code Section 33000 et seq. Under this plan of development, the Property will be operated as an owner-occupied affordable housing project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.

2. Property. Borrower has agreed to acquire and construct the Units, and the CDC has made a commitment of loan funds for the acquisition of the Property described in Exhibit A, attached hereto and incorporated herein.

3. Definitions. Unless the context requires otherwise, the terms used in this Agreement shall be governed by the definitions of the Community Redevelopment Law of the State of California as set forth in California Health and Safety Code Section 33000 et seq. ("California Redevelopment Law").

   For the purposes of this Regulatory Agreement the following additional definitions shall apply:

   a. "Assisted Unit" shall mean each of the minimum twenty-two (22) dwelling units, the development of which is assisted with funds provided through the Low and Moderate Income Housing Set-Aside Fund.

   b. "Eligible Households" shall mean Low- and Moderate-Income Households as defined below.

   c. "Household" shall mean one or more persons occupying a housing unit.

   d. "Moderate-Income Household" shall mean a family whose annual income does not exceed one hundred and twenty percent (120%) of the median income for the area as determined by the United States Department of Housing and Urban Development (HUD) and the State of California, Department of Housing and Community Development (HCD) with adjustments for smaller and larger families; except that HUD may establish income ceilings higher or lower than one hundred twenty percent (120%) of the median for the area on the basis of HUD findings that such variations are necessary because of the prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

e. "Low-Income Household" shall mean a family whose annual income does not exceed eighty percent (80%) of the median income for the area as determined by HUD and HCD with adjustments for smaller and larger families; except that HUD may establish income ceilings higher or lower than eighty percent (80%) of the median for the area on the basis of HUD findings that such variations are necessary because of the prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

f. "Principal Place of Residence" shall mean the principal dwelling place a person uses as his/her usual place of return and occupancy. If a person fails to reside in and return to, at least four (4) days per week, the property for a period of at least nine (9) months out of any twelve (12) month period, it will be presumed that the property is not the Principal Place of Residence of that person.

4. Compliance with Program Requirements

a. The Borrower agrees that at all times its acts regarding the Development and the use of funds provided herein for all of the units shall be in conformity with all provisions of the California Redevelopment Law creating and regulating the Low and Moderate Income Housing Set-Aside Fund. The Borrower acknowledges that it is familiar with such applicable provisions and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to fully comply with such provisions.

b. The financial assistance provided under the Low and Moderate Income Housing Set Aside Fund is governed by Community Redevelopment Law of the State of California as set forth in California Health and Safety Code Section 33000 et seq. Borrower agrees to comply with the directives of the CDC as necessary to ensure compliance with the obligations of the CDC as set forth in Community Redevelopment Law of the State of California.

c. The City acknowledges the Property may be subject to certain requirements of Section 42 of the Internal Revenue Code of 1986, as amended, including but not limited to Section 42(h)(6)(e)(ii).

5. Term of Agreement. The term of this Agreement shall commence upon recordation by the County Recorder of the County of San Diego and shall remain in full force and effect and shall apply to the Development through and including the date which is forty-five (45) years following the date of execution of the loan agreement, unless terminated earlier by the CDC pursuant to the terms of this Agreement or extended by the mutual consent of the parties.

6. Assisted Unit. Borrower shall make not less than five (5) Units or a minimum of not less than twenty percent (20%) of the total Units affordable to Low-Income Eligible Households and; no less than seventeen (17) Units available to Moderate Income Eligible Households.

7. Affordability. The funds advanced under the Low and Moderate Income Housing Set-Aside Fund are being used for all of the Units developed within the Development. During the forty-five (45) year term of this agreement, all of the Assisted Units must meet the following requirements:

   a. The Units shall be made available to and occupied by households that qualify as Low- and Moderate-Income households, whose incomes at time of initial occupancy do not exceed eighty percent (80%) and one-hundred-twenty percent (120%) respectively of the San Diego County area median income, using the latest available HUD and HCD median income data.

   b. As a lender of property acquisition funds for the Assisted Units, the CDC asserts that it is not in violation of Article XXXIV, Section 1 of the California Constitution. If ever a court of competent jurisdiction declares that the CDC has violated Article XXXIV by lending money for the Assisted Units, and only after all court appeals have been exhausted, assistance to the number of Assisted Units described in subparagraph "a" above will be proportionally reduced, or other amendments to this Agreement will be made, at the CDC's discretion, so that the CDC is in compliance with Article XXXIV. CDC and Borrower consent that all other provisions of this Agreement must remain valid.

8. Certification of Tenant Income and Household Size.

   a. Upon sale of an assisted Unit to Eligible Households and prior to occupancy, Borrower shall certify the income and household size of all households occupying Units.

9. Maximum Allowable Housing Costs.

   a. The maximum allowable monthly housing costs for Low-Income Eligible Households may not exceed thirty (30%) percent of monthly gross income. The maximum allowable housing costs for Moderate-Income Eligible Households may not exceed thirty-five percent (35%) of monthly gross income. Allowable housing costs will consist of mortgage (principal and interest) property taxes, property insurance, homeowner's association fees and utilities, except cable and telephone.

10. Violation of Regulatory Agreement by Borrower.

a. In the event of a breach or violation of the provisions of this Agreement, the CDC may give written notice to the Borrower thereof by certified mail or any express delivery service with a delivery receipt addressed to the Borrower at the address stated in this Agreement. If the breach or violation is not cured to the satisfaction of the CDC within the time period specified in the notice (which time period shall be not less than ten (10) days for monetary obligations and thirty (30) days for nonmonetary obligations), the CDC may declare a default and may seek legal remedies including the following:

(1) Take possession of the Development and bring any action necessary to enforce any rights of the Borrower growing out of the operation of the Development, and operate the Development in accordance with the terms of this Agreement until such time as the CDC, in its sole discretion, shall determine that the Borrower is again in a position to operate the Development in accordance with the terms of this Agreement.

(2) Apply to any court, State or federal, for specific performance of this Agreement or of the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement or for such other relief as may be appropriate. It is agreed by the Borrower that the injury to the CDC arising from a default under any of the terms of this Agreement would be irreparable and that the amount of compensation which would provide adequate relief to the CDC, in light of the purposes of the Program, would be impossible to ascertain.

(3) Accelerate all amounts, including outstanding principal and interest, due under the loan and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the CDC may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and State law regarding foreclosures.

However, in the event of a nonmonetary breach which cannot reasonably be cured within the time period set forth in such notice, the loan may not be accelerated hereunder if within said designated time period Borrower has given written notice to the CDC of Borrower's intention to cure said breach, has commenced to cure such breach and has diligently prosecuted and effected such cure which shall be completed no later than ninety (90) days from the date notice of such breach is given.

(4) The CDC may seek such other remedies as may be available under law.

b. The remedies of the CDC hereunder and under any other instrument providing for or evidencing the financial assistance provided for the Development by the CDC are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the CDC of any one or more of its other remedies.

11. <u>Assignment of CDC Rights.</u>

The CDC retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of Borrower's duties and obligations hereunder. In addition, the CDC may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

12. <u>Amendment.</u>

This Agreement shall not be altered or amended except in writing, executed between or among all the parties.

13. <u>Partial Invalidity.</u>

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

14. <u>Binding on Successors.</u>

This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors in the office of interest, and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the CDC.

15. Recording Agreement.

This Agreement, and all amendments thereto, shall be executed by each of the parties. This Agreement, or memorandum thereof, shall be recorded against the subject Property in the official records of the county in which the Development is situated.

16. Hold Harmless.

Borrower agrees to indemnify, defend and hold harmless CDC, its agents and its employees from any and all liability or claim of liability, including attorney fees, arising by reason of personal injury, death, property damage, or dangerous condition of Property resulting from Borrower's negligent, reckless, or intentional acts, errors, or omissions in the performance of this Agreement or Borrower's authorized sub-contractors', agents' and employees' negligent, reckless, or intentional acts, errors or omissions.

17. Waiver.

No waiver by the CDC of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach thereto or default hereunder.

18. Captions.

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

19. Governing Law.

This Agreement will be construed in accordance with and governed by the laws of the State of California, with the place of venue being North San Diego County.

20. Notice.

Written notices and other written communications by and between the parties hereto shall be addressed as set forth below unless and until a party hereto has, in writing, communicated a different address to the other parties hereto.

CDC: Housing Manager
Community Development Commission
201 North Broadway
Escondido, California 92025

BORROWER: Trinity Housing Group 1, LLC
P.O. Box 2946
Del Mar, CA 92014

21. Attorneys Fees.

The prevailing party in any action to enforce this Agreement shall be entitled to reasonable attorney's fees as determined by the trier of fact in that forum.

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

Community Development Commission of the City of Escondido

Date: Nov. 16, 2004

Lori Holt Pfeiler, Chair
(signatures must be notarized)

Date: Nov. 16, 2004

Marsha Whalen, Secretary
(signatures must be notarized)

Trinity Housing Group 1, LLC
A California Limited Liability Company

Date: 11/10/04

By: __________
Name: STEPHEN L. KUPTZ
Its: AUTHORIZED SIGNATORY
(signatures must be notarized)

Date: __________

By: __________
Name: __________
Its: __________
(signatures must be notarized)

Approved As To Form:

Office of the City Attorney
JEFFREY R. EPP, City Attorney

By: __________
Steven J. Nelson, Legal Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On November 10, 2004, before me, Judy Weichers, Notary Public,
Date — Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Stephen L. Kurtz,
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

JUDY WEICHERS
Commission # 1332365
Notary Public - California
San Diego County
My Comm. Expires Nov 28, 2005

Place Notary Seal Above

WITNESS my hand and official seal.

Judy Weichers
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ______

Document Date: ______ Number of Pages: ______

Signer(s) Other Than Named Above: ______

Capacity(ies) Claimed by Signer

Signer's Name: ______

- ☐ Individual
- ☐ Corporate Officer — Title(s): ______
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: ______

Signer Is Representing: ______

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On Nov. 16, 2004 before me, Liane Lindgren, Notary Public
Date — Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Lori Holt Pfeiler and Marsha Whaler,
Name(s) of Signer(s)

☑ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

LIANE LINDGREN
Commission # 1446237
Notary Public - California
San Diego County
My Comm. Expires Oct 20, 2007

WITNESS my hand and official seal.

Liane Lindgren
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ______

Document Date: ______ Number of Pages: ______

Signer(s) Other Than Named Above: ______

Capacity(ies) Claimed by Signer

Signer's Name: ______

☐ Individual
☐ Corporate Officer — Title(s): ______
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ______

Signer Is Representing: ______

RIGHT THUMBPRINT OF SIGNER
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EXHIBIT A

Legal Description: All that certain real property situated in the County of San Diego, State of California, described as follows, Parcel "C" of Parcel Map No. 755, in the City of Escondido, County of San Diego, State of California, according to Map thereof on file in the Office of the County Recorder of San Diego County, being a division of a portion of Lot 2 Block 30 of Homeland Acres addition to Escondido No. 2 according to Map thereof No. 1241, filed in the office of the County Recorder of San Diego County.

ASSESSOR PARCEL NO.: 236-390-45-00