

OFFICIAL BUSINESS

No Fee Required

(Gov. Code §§ 6103 & 27383)

RECORDED AT THE REQUEST OF:

City of San Buenaventura, a California
charter municipal corporation

WHEN RECORDED MAIL TO:

The City of San Buenaventura
Community Development Director
501 Poli Street, P.O. Box 99
Ventura, CA 93002

APN: 073-0-046-080



20150914-00137476-0 1/27

Ventura County Clerk and Recorder
MARK A. LUNN

09/14/2015 09:01:27 AM
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(Above for Recorder's Use Only)

HOUSING DECLARATION AND AFFORDABILITY AGREEMENT

BETWEEN

THE CITY OF SAN BUENAVENTURA

AND

DARLING DWELLINGS, LLC

THIS HOUSING DECLARATION AND AFFORDABILITY AGREEMENT ("Agreement") is entered into by and between the CITY OF SAN BUENAVENTURA, a California charter city ("City"), and Darling Dwellings, LLC, a California limited liability company ("Developer") as the fee owner of that certain real property ("Property") located in the City of San Buenaventura, County of Ventura, State of California, commonly known as "Hearthside" (APN: 073-0-046-080) and legally described in Exhibit A attached hereto and incorporated herein by this reference.

WHEREAS, Developer has improved or intends to improve the Property by constructing forty-eight (48) residential condominium units, and related improvements (the "Project"), in accordance with the permits and approvals issued therefor (Tentative Tract Map No. S-5801 and Design Review Case No. ARB-PROJ-1857, collectively, "Discretionary Approvals"), on file with the City; and

WHEREAS, pursuant to Discretionary Approvals and City Council Resolution No. 2008-036, Developer must set aside five (5) of the condominium units developed on the Property for the sole use and occupancy of moderate income households, subject to the requirements of the "Interim Inclusionary Housing Program" ("IIHP") as set forth in Chapter 24R.240 of the San Buenaventura Municipal Code, as it may be amended from time to time, and consistent with the City's Affordable Housing Program ("City AHP"), as set forth by City Council Resolution No. 88-92, as it may be amended from time to time;

NOW THEREFORE, in consideration of the mutual covenants and representations herein contained, the parties hereto covenant, represent and agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. “Advisory Agency” means the Director of the Community Development Department of the City as described in the City’s Municipal Code.

Section 1.2. “Area Median Income” or “AMI” means the annually published median income for the Ventura County Statistical Area, as adjusted for household size, as published by the U.S. Department of Housing & Urban Development (HUD).

Section 1.3. “Buyer” means the purchaser of an Income Restricted Unit.

Section 1.4. “Certificate of Compliance” means a certificate issued by the City or its designee verifying that both the seller and the prospective Buyer of an Income Restricted Unit have complied with all applicable requirements of the City’s Affordable Housing Program, this Agreement and the Implementation Plan prior to the consummation of a proposed sale of such Income Restricted Unit.

Section 1.5. “City” means the City of San Buenaventura or its designee.

Section 1.6. “City Council” means the City Council of the City.

Section 1.7. Section 1.7. “Commercially Reasonable Efforts” means all marketing efforts that are typical customary practice and expected for the sale of real estate in the County of Ventura, as more fully described in the City’s Inclusionary Housing Implementation Plan (as defined in Section 1.11 below), and as memorialized in a Resale Restriction and Affordability Agreement Secured by Deed of Trust that is or shall be recorded for each Income Restricted Unit prior to the sale of that Income Restricted Unit.

Section 1.8. “Declarant” means Developer and each and every of its successors and assigns.

Section 1.9. “Developer” means Darling Dwellings, LLC, and each of them and each and every of either of their successors and assigns.

Section 1.10. “Eligible Household” means a household whose income does not exceed one hundred ten percent (110%) of the Area Median Income, adjusted for family size.

Section 1.11. “Implementation Plan” means that certain plan for implementing the sale and resale of Income Restricted Units in accordance with the IIHP and City AHP on file with the Advisory Agency, as it may be amended or revised from time to time.

Section 1.12. “Income Restricted Unit” means a condominium unit on the Property which is restricted as to its sale, rental or occupancy, or any combination of the foregoing, as further set forth in the terms of this Agreement. The Income Restricted Units are shown and described on **Exhibit B: Description and Location of Income Restricted Units** attached hereto. Except as may be further provided by this Agreement, each Income Restricted Unit indicated on Exhibit B as a “Moderate Income Unit” must be reserved for sale and occupancy to and by an Eligible Household.

Section 1.13. "Initial Sale" means the first sale of an Income Restricted Unit by Developer to an Eligible Household. The Initial Sale refers solely to the first sale by Developer, and not to any subsequent sale of such Income Restricted Unit.

Section 1.14. "Maximum Allowable Sales Price" means the highest price for which an Income Restricted Unit may be sold in a Subsequent Sale. The Maximum Allowable Sales Price will be determined by the City in accordance with the formula used by the City to establish the Initial Purchase Price for such Unit; provided, however, if the Maximum Allowable Sales Price is less than the purchase price paid by the seller of the Income Restricted Unit, then the purchase price paid by the seller of the Income Restrict Unit shall be deemed to be the Maximum Allowable Sales Price for which such Unit may be resold in such Subsequent Sale.

Section 1.15. "Maximum Initial Purchase Price" or "MIPP" shall mean the maximum purchase price which may be paid for an Income Restricted Unit in the Initial Sale, determined according to the following formula: based on a ten percent (10%) down payment, and the current 60-day interest rate established by FNMA for a thirty (30) year loan term, plus 0.125%, the Gross Monthly Housing Expense for the Moderate Income Restricted Unit shall not exceed thirty percent (30%) of one hundred ten percent (110%) of the then current Ventura County Statistical Area median income level ("AMI") as that AMI is determined annually by the U.S Department of Housing and Urban Development ("HUD"), and as further adjusted for unit size.

Section 1.16. "Moderate Income Restricted Unit" shall mean a unit that is reserved for sale to Eligible Households whose income does not exceed one hundred ten percent (110%) of the Area Median Income, adjusted for family size.

Section 1.17. "Owner" means each person or entity holding fee title to an Income Restricted Unit, other than Developer.

Section 1.18. "Subsequent Sale" means any sale of an Income Restricted Unit after the Initial Sale.

Section 1.19. "Term" means 45 years.

ARTICLE 2 SALES RESTRICTIONS

Section 2.1. Initial Sales. No initial sale of an Income Restricted Unit may take place except as provided for in this Agreement. Moderate Income Restricted Units may be sold in Initial Sales only to Eligible Households. Developer may only charge a sales price consistent with the MIPP for that Income Restricted Unit. As such, in the event of a sale of the Moderate Income Unit, the MIPP would be the price that could be charged to an Eligible Moderate Income Household.

Section 2.2. Subsequent Sales. Developer shall cause a Resale Restriction and Affordability Agreement Secured by Deed of Trust (hereafter "Resale Restriction Agreement"), in substantially the same form as shown on **Exhibit C** attached hereto, to be prepared and recorded against each Income Restricted Unit sold by Developer at or before the time the Initial Sale is completed. For each Income Restricted Unit designated on **Exhibit B** as a Moderate Income Unit, a Resale Restriction Agreement reserving that unit for sale and occupancy to and by an Eligible Household

for the Term of the restriction must be recorded. After a valid Initial Sale of an Income Restricted Unit to an Eligible Household is accomplished, the City or its designee, and not Developer, is responsible for monitoring and enforcing compliance with the Resale Restriction Agreement for such Unit for the Term of the resale restriction.

Section 2.3. Changes in Title. Title in an Income Restricted Unit may change due to circumstances, including death, marriage, and divorce. Except as otherwise provided in this Agreement, if a change in title is occasioned by events that change the financial situation of the Eligible Household so that it is no longer an Eligible Household, then the Unit must be sold to an Eligible Household within 180 days. Upon death of one of multiple owners, title in the Unit may transfer to the surviving joint tenant without respect to the income-eligibility of the Household. Upon the death of the sole owner or all owners and inheritance of the Unit by a non-income eligible child or stepchild of one or more owners, there will be a one year compassion period between the time when the estate is settled and the time when the Unit must be sold to an income eligible household. Inheritance of an Income Restricted Unit by any other person whose Household is not income-eligible shall require resale of the unit to an Eligible Household as soon as is feasible but not more than 180 days from when the estate is settled.

Section 2.4. Non-Discrimination. Developer shall not discriminate against any person on the grounds of age, race, color, creed, national origin, religion, sex, ancestry, disability, marital status, sexual orientation, or medical condition in the selection or approval of prospective buyers or Eligible Households, in effectuating the terms of this agreement.

Section 2.5. Failure to Sell. If, subsequent to City's issuance of a Certificate of Occupancy for such Unit, Developer is unable to effect a sale of an Income Restricted Unit to an Eligible Household within six (6) months after issuance of a Certificate of Occupancy, and during which six (6) months Developer shall continuously make all Commercially Reasonable Efforts to first offer such Unit for sale in accordance with this Agreement and the Implementation Plan, Developer shall notify City in writing (the "Failure to Sell Notice"). Upon receipt of a Failure to Sell Notice, and such documentation as City may request evidencing Developer's efforts to sell the Unit to an Eligible Household, City may elect, in its sole and absolute discretion, to (i) purchase such Income Restricted Unit at the MIPP (the "City Purchase Option"), (ii) locate a potential Eligible Household to purchase such Income Restricted Unit at the MIPP (the "City Assignment Option"), or (iii) grant permission for Developer to rent such income-restricted units under terms and conditions as specified by the City.

Section 2.6. City's Rights Upon Notification. Within three (3) months of receiving a Failure to Sell Notice, City shall notify Developer in writing whether City intends to exercise the City Purchase Option or the City Assignment Option.

- (a) If City elects the City Assignment Option, City shall provide Developer with the name and contact information of the prospective Buyer who has previously been determined by City to be income-qualified, and the Income Restricted Unit shall be sold to such prospective Buyer in accordance with the procedures set forth in the Implementation Plan and Article 3 of this Agreement.
- (b) If City elects the City Purchase Option, City and Developer shall promptly enter into escrow at an escrow holder selected by the City, with escrow to close within

thirty (30) days. All fees and costs of escrow, including transfer tax, recording costs and title insurance, shall be allocated and paid in accordance with the customary practice in Ventura County.

- (c) If City notifies Developer in writing that City does not intend to exercise either the City Purchase Option or the City Assignment Option, or within three (3) months of receiving a Failure to Sell Notice, City fails to make an election, then (and only then) and notwithstanding any provision of this Agreement or the Housing Declaration to the contrary, Developer may offer the Income Restricted Unit for sale to a purchaser that is not an Eligible Household, but only for the Maximum Initial Purchase Price. Provided, however, subsequent transfers of the Income Restricted Unit during the Term must be to Eligible Households, and title to the Income Restricted Unit shall be subject to all the conditions, limitations and restrictions provided for in this Agreement.

ARTICLE 3 GENERAL OBLIGATIONS

Section 3.1. Maintenance. Developer and any successors in interest in control of any Income Restricted Unit(s) shall keep and maintain the Income Restricted Unit(s) in good condition and repair in compliance with all applicable City codes prior to conveying an Income Restricted Unit.

Section 3.2. Inspection Rights. The City may inspect any Income Restricted Unit and any documents or records relating thereto, at any reasonable time, to determine compliance with this Agreement. The City shall have the right, but not the duty, to inspect any Income Restricted Unit prior to close of escrow for the sale of such Unit to an Eligible Household to determine whether the Unit is in a decent, safe and sanitary condition.

Section 3.3. Qualification of Eligible Households. In accordance with the Implementation Plan, Developer shall preliminarily determine whether the household income of a prospective Buyer may qualify them as an Eligible Household. Upon completion of this preliminary qualification by Developer, all documentation relating to the preliminary determination of income eligibility shall be forwarded to the City by Developer so that City may formally determine if the prospective Eligible Household is income-qualified, and so that these documents may be used by a lender of Buyer's choice in qualifying the prospective Eligible Household for financing.

Section 3.4. Requirement for Certificate of Compliance. Following City's determination that a prospective Buyer is income-qualified and City's receipt and approval of all other documentation required by the Implementation Plan, and after qualification by a lending institution, the prospective Buyer shall be deemed to be an Eligible Household. Upon City's determination that the prospective Eligible Household is an Eligible Household in accordance with the Implementation Plan, City or its designee shall issue a Certificate of Compliance and forward it to the escrow company. No escrow for the sale of an Income Restricted Unit shall close until a Certificate of Compliance is issued by City.

Section 3.5. Reporting. Beginning on the date the first sales contract is executed by Developer for an Income Restricted Unit and continuing until the last Income Restricted Unit is sold as an Initial Sale to an Eligible Household, Developer shall submit to the City monthly reports on the

current sales status of all Income Restricted Units, as provided in the Implementation Plan. The City may periodically monitor/audit Developer's records concerning the Income Restricted Units and qualification of Eligible Households.

Section 3.6. Review of Agreements and Disclosure. Prior to executing a binding sales contract for an Income Restricted Unit, Developer shall disclose, provide copies of and fully explain to the potential Buyer, the provisions of this Agreement and the Resale Restriction Agreement and obtain written acknowledgment thereof from that potential Buyer.

Section 3.7. Covenants Running. The provisions of this Agreement shall constitute covenants that shall run with the land and shall be binding upon Developer and its successors, transferees and assignees, and all parties having or acquiring any right, title, or interest in any Income Restricted Unit. Any attempt to transfer title to, or any interest in, an Income Restricted Unit in violation of this Agreement shall be void.

Section 3.8. Replacement of Units. If for any reason prior to the Initial Sale of an Income Restricted Unit, such Unit becomes unavailable for use for moderate income residential purposes, it shall be replaced in kind prior to issuance of any building permit for which application is made relating to the Project.

Section 3.9. Implementation Plan. Developer, on behalf of itself and its heirs, successors, transferees and assignees, and all parties having or acquiring any right, title, or interest in any Income Restricted Unit, expressly acknowledges and agrees that the Implementation Plan may be amended by the City from time to time in the sole discretion of the City as the City determines to be necessary or desirable to promote or achieve consistency with the City's Affordable Housing Program, the Housing Element of the City's General Plan, and applicable laws in effect.

ARTICLE 4 REMEDIES

Section 4.1. Default. If Developer breaches this Agreement, Developer shall have thirty (30) days after service upon it of written notice of such default or breach in which to cure such breach; provided, however, that for any such breach resulting from circumstances beyond Developer's control which cannot reasonably be remedied within thirty (30) days, Developer shall commence performance within thirty (30) days after service of written notice and diligently work thereafter to render full and complete performance.

Section 4.2. Enforcement. Developer or the City may enforce any of the terms, covenants or conditions contained in this Agreement through any proceedings at law or in equity. The parties may commence and maintain actions for damages or specific performance, or to restrain and enjoin any actual or threatened breach of any provision of this Agreement.

Section 4.3. Cumulative Remedies. Any remedy provided for herein shall not be exclusive or preclude Developer or the City from exercising any other remedy available under this Agreement, or under provisions of law or equity, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties.

Section 4.4. No Waiver. It is understood and agreed that no waiver of a breach of any of the provisions of this Agreement, the Implementation Plan, or the AHP shall be construed as a waiver of any other breach; nor shall failure to enforce any portion of this Agreement, the Implementation Plan, or the AHP be construed as a waiver of any of the conditions thereof.

ARTICLE 5 MISCELLANEOUS PROVISIONS

Section 5.1. Headings. Headings used in this Agreement are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Agreement.

Section 5.2. Severability. The provisions of this Agreement are independent and severable, and the invalidity or partial invalidity, or unenforceability of any provision or provisions shall not invalidate any other provision.

Section 5.3. Construction. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The singular shall include the plural and the plural the singular, unless the context requires the contrary. The masculine, feminine and neuter shall each include the genders not used.

Section 5.4. No Warranty. The City does not in any manner warrant that the Income Restricted Units meet the requirements of the City's Municipal Code.

Section 5.5. Notices.

- (a) All notices to be given to the City shall be in writing, and personally delivered or mailed first-class postage prepaid to the following address:

City of San Buenaventura
Attn: Community Development Director
501 Poli Street, P.O. Box 99
Ventura, CA 93002

With a copy to:
City Attorney
City of San Buenaventura
501 Poli Street, P.O. Box 99
Ventura, CA 93002

- (b) All notices to be given to Developer shall be in writing and delivered personally or mailed first-class postage prepaid to the following address:

Darling Dwellings, LLC
Attn: Donald M. Jensen
1672 Donlon Street
Ventura, CA 93003

Section 5.6. Inconsistencies. If there is an inconsistency between any of the provisions of this Agreement and any exhibits hereto, the inconsistency shall be resolved by giving precedence to this Agreement.

Section 5.7 Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

Section 5.8 Amendment. This Agreement may be modified only by a writing signed by City and Developer. City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Manager or his/her duly authorized representative. The City Manager shall have the authority to make approvals, issue interpretations, execute documents, and/or enter into certain amendments of this Agreement, on behalf of City so long as such actions do not materially or substantially change the uses or development permitted on the Property, or add to the costs incurred or to be incurred by City. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

Section 5.9 Governing Law. This Agreement 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. Should litigation occur, venue shall be in the Ventura County Superior Court.

Section 5.10 Representations and Warranties of Developer. Developer hereby represents and warrants to City that Developer is a California limited liability company duly organized, validly existing, formed, and in good standing under the laws of the State of California that has the power and authority to own property and carry on business as is now being conducted.

Section 5.11 Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and the successors and assigns of Developer. Whenever the term "Developer" is used in this Agreement, such term shall include any of Developer's assignee(s) or transferee(s), and any other successors and assigns as herein provided.

Section 5.12 Relationship between City and Developer. It is hereby acknowledged and agreed that the relationship between City and Developer is not that of a partnership, joint venture or other investor partner and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project.

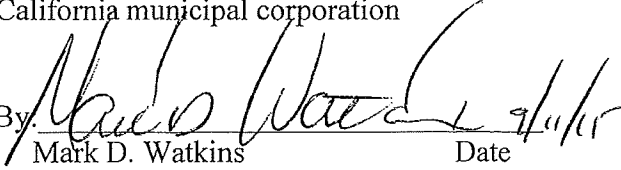
Section 5.13 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the City and Developer and their successors and assigns, and no other person or persons shall have any right of action hereon.

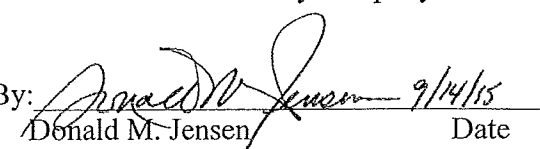
IN WITNESS WHEREOF, the City of San Buenaventura and the Developer have caused this Agreement to be executed by their duly authorized representatives.

[SIGNATURES MUST BE NOTARIZED]

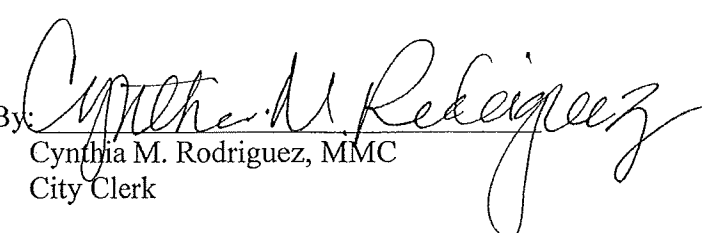
CITY OF SAN BUENAVENTURA, a
California municipal corporation

DARLING DWELLINGS, LLC, a
California limited liability company

By: 
Mark D. Watkins Date
City Manager

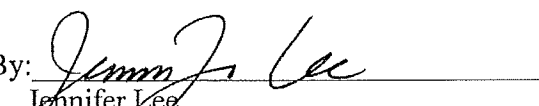
By:  9/14/15
Donald M. Jensen Date
Managing Member

ATTEST

By: 
Cynthia M. Rodriguez, MMC
City Clerk

APPROVED AS TO FORM

Gregory G. Diaz, City Attorney

By: 
Jennifer Lee
Assistant City Attorney

ATTACHMENTS

- Exhibit A – Legal Description of Real Property
- Exhibit B – (1) Description and (2) Location of Income Restricted Units
- Exhibit C – Resale Restriction & Affordability Agreement Secured by Deed of Trust

A notary public or other officer completing this Certificate verifies only the identity of the Individual who signed the document to which this Certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California

County of Ventura

On 9-11-15 before me, Ann Forney, Notary Public
(here insert name and title of officer)

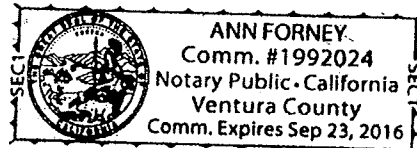
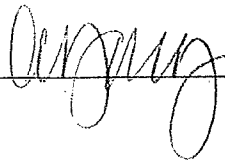
personally appeared Mark D. Watkins

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of Ventura)

On 9/14/15, before me, Derek Uyemori,
Notary Public, personally appeared Donald M. Jensen, Managing Member for Darling Dwellings, LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Derek Uyemori
Signature

(Affix Seal)

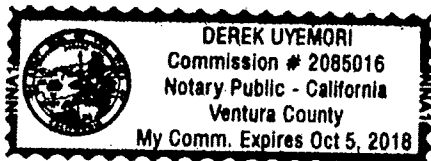


EXHIBIT A
LEGAL DESCRIPTION OF REAL PROPERTY
"HEARTHSIDE"

The land referred to herein is situated in the State of California, County of Ventura, and described as follows:

LOTS 1-7 AND LOT 9, INCLUSIVE, TRACT NO 5801 IN THE CITY OF SAN BUENAVENTURA, STATE OF CALIFORNIA, RECORDED JULY 31, 2014, IN BOOK 161, AT PAGE 54 OF MISCELLANEOUS RECORDS (MAPS) IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. TOGETHER WITH LOT 10 (REMAINING) IN THE CITY OF SAN BUENAVENTURA, STATE OF CALIFORNIA, RECORDED NOVEMBER 13, 2014 IN INSTRUMENT NO. 20141113-00143390-0 OF THE OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 073-0-046-080

EXHIBIT B-1
INCOME-RESTRICTED UNITS
"Hearthside"

PROJECT – Final Map No. S -5801

MODERATE INCOME UNITS:

Unit Nos. 3, 4, 16, 27, and 28, as shown and described in the Condominium Plan recorded by the Developer prior to occupancy. Said units being within Lots 1, 3, and 5, of Tract 5801 in the City of San Buenaventura, State of California, recorded July 31, 2014, in Book 161, at page 54 of Miscellaneous Records (maps) in the Office of the County recorder of said County.

EXHIBIT B-2

SHEET 1 OF 1

HEARTHSTONE

SITE PLAN OF INCOME - RESTRICTED UNITS

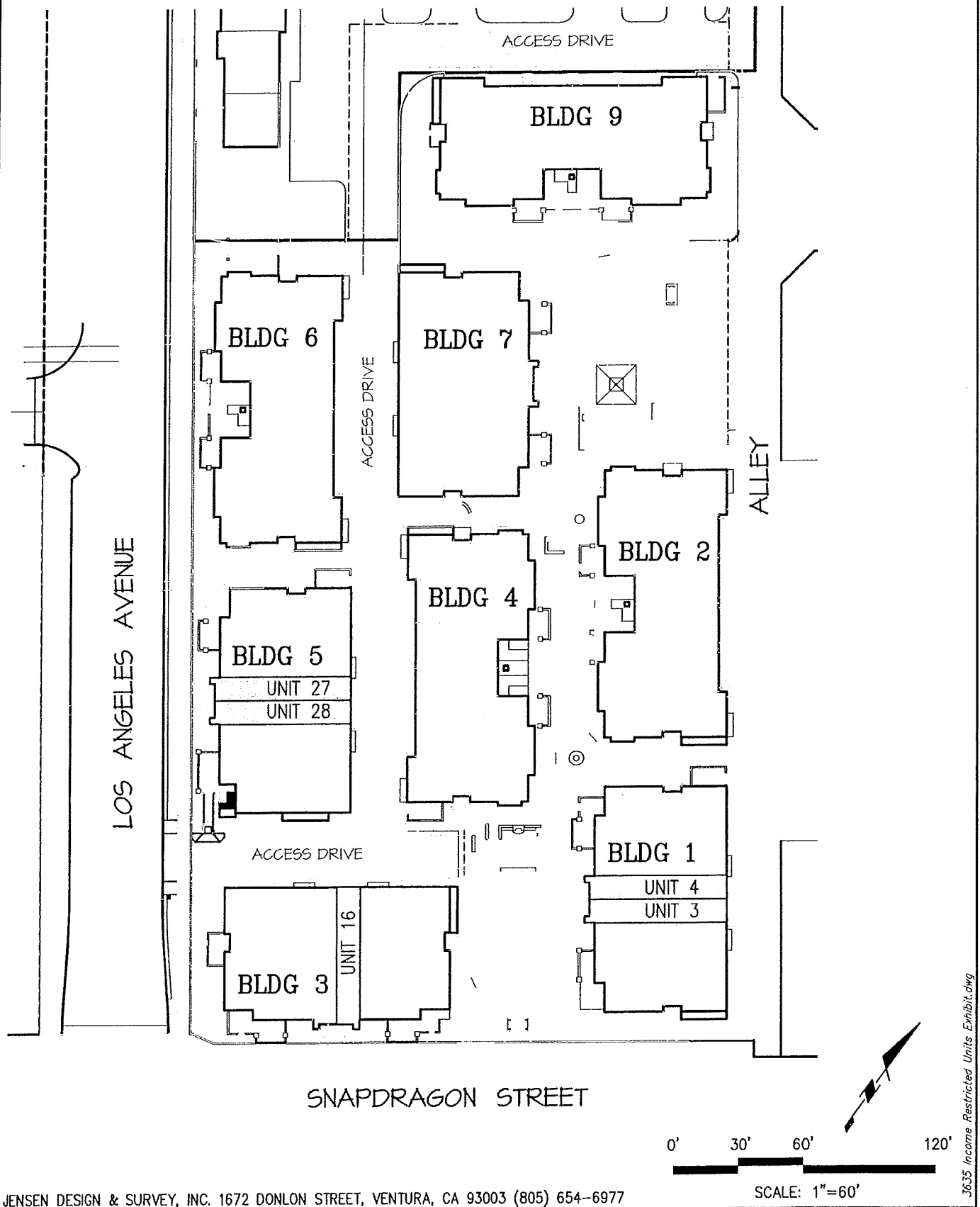


EXHIBIT C

OFFICIAL BUSINESS

No Fee Required

(Gov. Code §§ 6103 & 27383)

RECORDED AT THE REQUEST OF:

City of San Buenaventura, a California
charter municipal corporation

WHEN RECORDED MAIL TO:

The City of San Buenaventura
Community Development Director
501 Poli Street, P.O. Box 99
Ventura, CA 93002

APN: 073-0-046-080

(Above for Recorder's Use Only)

RESALE RESTRICTION AND AFFORDABILITY AGREEMENT

SECURED BY DEED OF TRUST

(Moderate Income Unit No. ____)

THIS RESALE RESTRICTION AGREEMENT ("Agreement") is entered into this ____ day of _____, 20____, between the City of San Buenaventura, a California charter city ("City"), and _____ ("Owner").

RECITALS

WHEREAS, Owner is concurrently herewith acquiring that certain real property (the "Property") located in the City of San Buenaventura, County of Ventura, California, described as Unit ____ of the Hearthside development (Tract Map No. S-5801) ("Project"), more particularly described in Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, to increase the supply of affordable housing in the City, the City has attached conditions to the development of the Project setting aside certain of the condominium units for the sole use and occupancy of moderate income households, in compliance with the requirements of the City's Affordable Housing Program.

WHEREAS, five (5) of the condominium units in the Project have been set aside for the sole use and occupancy of moderate income households, consistent with City Council Resolution No. 2008-036, the City's Interim Inclusionary Housing Program ("IIHP") as set forth in Chapter 24R.240 of the San Buenaventura Municipal Code and a "Housing Declaration and Affordability Agreement Between the City Of San Buenaventura And Darling Dwellings, LLC" (hereafter, the

“Declaration”), which has been recorded to restrict ownership of such units to moderate income households.

WHEREAS, the Property is one of the five (5) condominium units in the Project set aside for the sole use and occupancy of Moderate Income households.

WHEREAS, Owner has represented that Owner’s household qualifies as an “Eligible Household,” as defined below.

NOW THEREFORE, in consideration of the mutual covenants and representations herein contained, the parties hereto covenant, represent and agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. “Advisory Agency” means the Director of the Community Development Department of the City as described in the City’s Municipal Code.

Section 1.2. “Area Median Income” or “AMI” means the annually published median income for the Ventura County Statistical Area as adjusted for household size, as published by the U.S. Department of Housing & Urban Development (HUD).

Section 1.3. “Buyer” means the purchaser of an Income Restricted Unit.

Section 1.4. “Certificate of Compliance” means a certificate issued by City or its designee verifying that both the Seller and the prospective Buyer of an Income Restricted Unit have complied with all applicable requirements of the City’s Affordable Housing Program, this Agreement, and the Implementation Plan, prior to a proposed sale of such Income Restricted Unit.

Section 1.5. “City” means the City of San Buenaventura or its designee.

Section 1.6. “Commercially Reasonable Efforts” means all marketing efforts that are typical customary practice and expected for the sale of real estate in the County of Ventura. Evidence of commercially reasonable efforts include, but are not limited to, registering the affordable units with the Multiple Listing Service (MLS), newspaper and radio advertisements for no less than a 60 day period, a website marketing the affordable units in detail (size, location, price) and the criteria used to purchase them, having web based prequalification and interest forms used for the potential purchaser registration list, maintaining and implementing a potential purchaser registration list, on-site and off-site signs that market the affordable units, and allowing regularly scheduled walk-throughs of the affordable units.

Section 1.7. “Eligible Household” means a household whose income does not exceed one hundred and ten percent (110%) of the Area Median Income. A Buyer must be an Eligible Household only at the time of opening of escrow for the purchase of the Income Restricted Unit; an increase in income after opening of escrow shall not disqualify such Buyer.

Section 1.8. "Implementation Plan" means that certain plan for implementing the sale and resale of Income Restricted Units in accordance with the IIHP and City AHP on file with the Advisory Agency, as it may be modified from time to time.

Section 1.9. "Income Restricted Unit" means a condominium unit in the Project which is restricted as to its sale and occupancy to households of a certain income level.

Section 1.10. "Initial Sale" means the first sale of an Income Restricted Unit by Developer to an Eligible Household. The Initial Sale refers solely to the first sale by either Developer or the New Entity, other than Developer's transfer to the New Entity, and not to any subsequent sale of such Income Restricted Unit.

Section 1.11. "Maximum Allowable Sales Price" means the highest price for which an Income Restricted Unit may be sold in a Subsequent Sale. The Maximum Allowable Sales Price will be determined by the City in accordance with the formula used by the City to establish the Initial Purchase Price for such unit; provided however, if the Maximum Allowable Sales Price is less than the purchase price paid by the seller of the Income Restricted Unit, then the purchase price paid by the seller of the Income Restrict Unit shall be deemed to be the Maximum Allowable Sales Price for which such Unit may be resold in a Subsequent Sale.

Section 1.12. "Maximum Initial Purchase Price" or "MIPP" shall mean the maximum purchase price which may be paid for an Income Restricted Unit in the Initial Sale, determined according to the following formula: based on a ten percent (10%) down payment, and the current 60-day interest rate established by FNMA for a thirty (30) year loan term, plus 0.125%, the Gross Monthly Housing Expense for the Moderate Income Unit shall not exceed thirty percent (30%) of one hundred ten percent (110%), of the then current Ventura County Statistical Area median income level ("AMI") as that AMI is determined annually by the U.S Department of Housing and Urban Development ("HUD"), and as further adjusted for unit size.

Section 1.13. "Owner" means each person or entity holding fee title to an Income Restricted Unit, other than the Developer.

Section 1.14. "Seller" means an Owner making a Subsequent Sale of an Income Restricted Unit.

Section 1.15. "Subsequent Sale" means any sale of an Income Restricted Unit after the Initial Sale of the Unit.

Section 1.13. "Term" means 45 years.

ARTICLE 2 SALES RESTRICTIONS

Section 2.1. Subsequent Sales. Except as specifically provided in this Agreement, this Moderate Income Unit is reserved for sale and occupancy to and by an Eligible Moderate Income Household. Owner, by taking title to the Property, understands and acknowledges that the Property is an Income Restricted Unit, and that, except as specifically provided herein, the Property is restricted to sale and occupancy to and by Eligible Moderate Income Households only. Accordingly, Owner agrees not to sell the Property, or any interest therein, or enter into any

contract or agreement to transfer the Property or any interest therein, except in compliance with this Agreement, the Implementation Plan, the IIHP and the City's AHP, as any of the foregoing may be amended, revised or replaced without notice from time to time, and pursuant to the following general requirements:

(a) Prior to offering the Property for sale, the Owner shall notify the City's Community Development Director of Owner's intent to sell, in such form and accompanied by such information as is required by the Implementation Plan provided by the City.

(b) Upon receipt of written notification from the City to proceed (the "Notice to Proceed"), the Property shall be offered for sale at an amount no greater than the Maximum Allowable Sales Price established by the City pursuant to this Agreement, and only to prospective buyers who certify to Seller that they meet the eligibility requirements for an Eligible Household, and all sales agreements shall be contingent upon certification by City that the prospective Buyer qualifies as an Eligible Household in accordance with the Implementation Plan. Seller or listing agent shall disclose, provide copies of and fully explain to the prospective Buyer the provisions of this Resale Restriction Agreement and obtain written acknowledgment thereof from the prospective Buyer, including acknowledgment that such Buyer will be required to enter into a similar Resale Restriction Agreement and Deed of Trust upon close of escrow for purchase of the Property.

(c) Promptly after opening escrow with a prospective Buyer, the Buyer or the listing agent should contact City to determine the information and other documentation required by City to determine whether the prospective Buyer is income-qualified and qualified by a lending institution.

(d) Owner shall provide such information as is required in the Implementation Plan provided by the City to Owner, to enable the City to determine the eligibility of any prospective Buyer.

Section 2.2. Certification of Eligible Households. Upon City's determination that the prospective Buyer is qualified as an Eligible Household in accordance with this Agreement and the Implementation Plan, City or its designee shall issue a Certificate of Compliance and forward it, along with a Request for Notice of Delinquencies Form to be signed by such prospective Buyer, to the escrow company. No escrow for the sale of the Property shall close until a Certificate of Compliance is issued by City, or designee, and the City or its designee receives the signed Notice of Delinquencies Form signed by the Buyer.

Section 2.3. Non-Discrimination. Owner shall not discriminate against any person on the grounds of age, race, color, creed, religion, sex, national origin, ancestry, disability, marital status, sexual orientation, or medical condition in the selection or approval of prospective buyers or Eligible Households, in effectuating the terms of this agreement.

Section 2.4. Failure to Sell. If Owner is unable, after diligent, good faith and Commercially Reasonable Efforts, to obtain a Certificate of Compliance with respect to a prospective Buyer of the Property within six (6) months after Owner receives the Notice to Proceed from the City, Owner shall notify City in writing (the "Failure to Sell Notice"). Upon receipt of a Failure to Sell

Notice, and such documentation as City may request evidencing Owner's efforts to sell the Property to an Eligible Household, City may elect, in its sole and absolute discretion, to (i) purchase the Property at the Maximum Allowable Sale Price (the "City Purchase Option"), or (ii) locate a potential Eligible Household to purchase the Property at the Maximum Allowable Sales Price (the "City Assignment Option").

Section 2.5. City's Rights Upon Notification. Within three (3) months of receiving a Failure to Sell Notice, City shall notify Owner in writing whether City intends to exercise the City Purchase Option or the City Assignment Option.

(a) If City elects the City Assignment Option, City shall provide Owner with the name and contact information of the prospective Buyer who has previously been determined by City to be income-qualified, and the Income Restricted Unit shall be sold to such prospective Buyer in accordance with the procedures set forth in the Implementation Plan and this Agreement.

(b) If City elects the City Purchase Option, City and Owner shall promptly enter into escrow at an escrow holder selected by City, which escrow shall close within thirty (30) days. All fees and costs of escrow, including transfer tax, recording costs and title insurance, shall be allocated and paid in accordance with the customary practice in Ventura County.

(c) If City notifies Owner in writing that City does not intend to exercise either the City Purchase Option or the City Assignment Option, or within three (3) months of receiving a Failure to Sell Notice, City fails to make an election, then (and only then) and notwithstanding any provision of this Agreement or the Housing Declaration to the contrary, Owner may offer the Property for sale to a purchaser that is not an Eligible Household, but only for the Maximum Allowable Purchase Price. Provided, however, subsequent transfers of the Property during the Term must be to Eligible Households, and title to the Property shall be subject to all the conditions, limitations and restrictions provided for in this Agreement.

ARTICLE 3 OWNER OCCUPANCY

Section 3.1. Principal Residence. Owner shall use and occupy the Property as Owner's principal place of residence.

Section 3.2. Annual Certification. Continuing occupancy of the Property by the Owner (eligible household) shall be verified by Owner to the satisfaction of the City by means of a written report to the City certifying under penalty of perjury the continuing occupancy by an eligible household during the reporting period. Such report shall be submitted to the City annually on or about June 30th of each year. Owner shall not be deemed to be in default of this Agreement for any failure to deliver such annual report until thirty (30) days after receipt by Owner of written notice from City requesting such report. City shall have the option of establishing the type of form to be used for the report.

Section 3.3. No Rental. Owner is expressly prohibited from leasing or renting the Property unless the City has given its prior written consent to such lease or rental on the basis of a demonstrated hardship by the Owner or the Implementation Plan. In no instance shall the Property be leased, rented, or occupied by a household other than the Owner's household for a period of more than 12 consecutive months.

ARTICLE 4 GENERAL OBLIGATIONS

Section 4.1. Maintenance. Owner shall keep and maintain the Property in good condition and repair throughout the Term, in compliance with all applicable City codes.

Section 4.2. Inspection Rights. City may inspect the Property and any documents or records relating thereto, at any reasonable time, to determine Owner's compliance with this Agreement. City shall have the right, but not the duty, to inspect the Property, prior to close of escrow for the sale of the Property to an Eligible Household, to determine whether the Property is in a decent, safe and sanitary condition.

Section 4.3. Covenants Running. Except as provided by the terms herein, the provisions of this Agreement shall constitute covenants which will run with the land and shall be binding upon each Owner of the Property, and their heirs, executors, administrators, successors, transferees, assignees, and all parties having or acquiring any right, title, or interest in the Property. Any attempt to transfer title to, or any interest in, the Property in violation of this Agreement shall be void.

Section 4.4. No Modification of Units. Owner shall not make any structural changes or additions to the Property without City's prior written consent. City will not consent to any change if such change would impair the value of the Property, or adversely affect the use of the Property for Moderate-income residential purposes.

Section 4.5. Permitted Transfers. Title in an Income Restricted Unit may change due to circumstances, including death, marriage, and divorce. Except as otherwise provided in this Agreement, if a change in title is occasioned by events that change the financial situation of the Eligible Household so that it is no longer an Eligible Household, then the Unit must be sold to an Eligible Household within 180 days. Upon death of one of multiple owners, title in the Unit may transfer to the surviving joint tenant without respect to the income-eligibility of the Household. Upon the death of the sole owner or all owners and inheritance of the Unit by a non-income eligible child or stepchild of one or more owners, there will be a one year compassion period between the time when the estate is settled and the time when the Unit must be sold to an income eligible household. Inheritance of an Income Restricted Unit by any other person whose Household is not income-eligible shall require resale of the unit to an Eligible Household as soon as is feasible but not more than 180 days from when the estate is settled.

Section 4.6. Refinancing; Junior Trust Deeds.

- (a) Owner may refinance any first trust deed encumbering the Property if City determines that (i) the interest, terms and conditions of the refinance are reasonable at the time, (ii) the principal amount thereof does not exceed the original principal amount of the

loan secured by the first trust deed being refinanced (plus reasonable loan fees and costs), and (iii) the subordination provisions under Section 4.7 below are complied with.

(b) A loan to be secured by a junior trust deed encumbering the Property may be permitted by City if City determines that (i) the proceeds of the loan are only to be used to pay for repairs or the construction of improvements to the Property, (ii) the loan is sufficient to pay for all of the proposed repairs or improvements as well as loan fees and loan costs, (iii) the loan is made by an institutional lender, and (iv) the interest rate and payment terms thereon are reasonable and Owner is capable of meeting the monthly payments.

Section 4.7 Subordination; Foreclosure. If a deed of trust on the Property is foreclosed, the person or entity acquiring the Property through foreclosure of such deed of trust or by a deed in lieu of foreclosure need not be an Eligible Household. If the lender who is the holder of the deed of trust acquires the Property, such acquiring lender is not required to sell the Property to an Eligible Household, and the sales price for the Property shall be an amount not exceeding the greater of (i) the total unpaid amount secured by the lender's deed of trust when the lender acquired the Property, or (ii) the Maximum Allowable Sales Price. Except for other transfers permitted under Section 4.5 above, all subsequent transfers of the Property during the Term must be to Eligible Households, and otherwise in accordance with all the conditions, limitations and restrictions provided for in this Agreement.

Section 4.8 Request for Notice. Owner agrees to cause a request for notice of delinquencies, notice of default, and notice of sale under any deed of trust encumbering the Property, specifying that any such notice shall be provided to the City.

ARTICLE 5 REMEDIES

Section 5.1. Enforcement. Owner or the City may enforce any of the terms, covenants or conditions contained in this Agreement through any proceedings at law or in equity. The parties may commence and maintain actions for damages or specific performance, or to restrain and enjoin any actual or threatened breach of any provision of this Agreement.

Section 5.2. Cumulative Remedies. Any remedy provided for herein shall not be exclusive or preclude the Owner or City from exercising any other remedy available under this Agreement or any provision of law or equity, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties.

Section 5.3. No Waiver. It is understood and agreed that no waiver of a breach of any of the provisions of this Agreement shall be construed as a waiver of any other breach; nor shall failure to enforce any portion of this Agreement be construed as a waiver of any of the conditions of this Agreement.

ARTICLE 6
MISCELLANEOUS PROVISIONS

Section 6.1. Headings. Headings used in this Agreement are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Agreement.

Section 6.2. Severability. The provisions of this Agreement are independent and severable, and the invalidity or partial invalidity, or un-enforceability of any provision or provisions shall not invalidate any other provisions.

Section 6.3. Construction. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The singular shall include the plural and the plural the singular, unless the context requires the contrary. The masculine, feminine and neuter shall each include the genders not used.

Section 6.4. No Warranty. City does not in any manner warrant that the Property meets the requirements of the City's Municipal Code. Compliance with the requirements of the City's Municipal Code is the responsibility of the Developer/Owner.

Section 6.5. Notices.

All notices to be given to City shall be in writing, and personally delivered or mailed first-class postage prepaid to City at the following address:

City of San Buenaventura
Attn: Community Development Director
501 Poli Street, P.O. Box 99
Ventura, CA 93002

Section 6.6. Inconsistencies. If there is an inconsistency between any of the provisions of this Agreement and any exhibits hereto, the inconsistency shall be resolved by giving precedence to this Agreement; provided, however, the provisions of any Discretionary Approvals and the Interim Inclusionary Housing Program, as set forth in Chapter 24R.240 of the San Buenaventura Municipal Code as it may be amended from time to time, shall control over the provisions of this Agreement.

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IN WITNESS WHEREOF, the City of San Buenaventura and Owner have caused this Agreement to be executed by their duly authorized representatives.

[SIGNATURES MUST BE NOTARIZED]

CITY OF SAN BUENAVENTURA,
a California municipal corporation

By: _____
Mark D. Watkins
City Manager
Date _____

OWNER(S)

By: _____
[Name]
Date _____

By: _____
[Name]
Date _____

ATTACHMENT

Exhibit A – Legal Description of Moderate Income Unit

State of California)
) ss
County of Ventura)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature _____

(Affix Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
Notary Public, personally appeared _____,
_____ who
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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Affix Seal)

EXHIBIT A

(Legal Description of Moderate Income Unit)

Parcels 1 through 4, inclusive, are collectively referred to herein as the "Condominium Estate."

A condominium comprised of:

PARCEL 1 – Common Area

An undivided fractional fee interest in and to all of the property located in the City of San Buenaventura, County of Ventura, State of California, described and/or depicted as "Common Area" on that certain Condominium Plan for Phase 1 of Hearthside recorded on June 26, 2015, as Instrument No. 00097946-0, in the Official Records of Ventura County, California ("Condominium Plan").

PARCEL 2 - The Condominium Unit

Units 3, 4, 16, 27, and 28 of a portion of Lots 1, 3, and 5 of Tract No. 5801, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 161, Page 54 of Maps in the Office of the County Recorder of said County, as depicted and/or described on the Condominium Plan, and as defined in the "Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Hearthside" recorded on June 26, 2015, as Instrument No. 00097947-0, together with any amendments, modifications, or re-recordations thereto, as may occur from time to time, all in the Official Records of Ventura County, California (the "Declaration").

RESERVING THEREFROM UNTO THE GRANTOR, the right to enter the "Condominium Estate" (defined below) for ten years following the recordation date of this Grant Deed, to complete and repair any improvement or landscaping located thereon as determined necessary by Grantor, in its sole discretion, in order to correct any deficiencies in the construction, design, specifications, surveying, and planning, associated with the Condominium, and/or to comply with the requirements of applicable governmental agencies or requirements of law. The Condominium Estate is also subject to a right of entry by Grantor and its agents until the expiration of all applicable statutes of limitations for the filing of a complaint or suit or other legal remedies against Grantor in any way relating to or arising out of the development, construction, sale and/or transfer of the Condominium Estate by Grantor. Such entry by Grantor shall be preceded by reasonable notice to Grantee. If this reservation of right of entry is not complied with by Grantee, Grantor may enforce this right of entry in a court of law. Grantee shall be responsible for all damages arising out of said breach (e.g., refusing to allow entry) including attorneys' fees, costs, and expenses.

Parcel 3 - Easement For Exclusive Use Corporation Property

Exclusive Use Corporation Property easements appurtenant to the aforescribed Condominium Unit as more particularly described and/or depicted in the Condominium Plan and/or Declaration (e.g., patios, balconies, porches, etc.) - "Exclusive Use Corporation Property").

Parcel 4 - Nonexclusive Easements Over Corporation Property

Subject to the restrictions set forth in the Declaration, a nonexclusive easement appurtenant to the aforescribed Condominium Unit for ingress, egress, use, and enjoyment in, on, over, across, and through all portions of the Corporation Property of the Project (as defined in the Declaration), except therefrom those portions described therein as Exclusive Use Corporation Property, and across all portions of any Corporation Property subsequently annexed into the Project, if any, which are not described as Exclusive Use Corporation Property.