

JACOBS

REQUEST RECORDING WITHOUT FEE
RECORDED FOR BENEFIT OF CITY OF
SAN BUENAVENTURA PURSUANT TO
SEC. 6103 OF GOVERNMENT CODE.

94-171701

Rec Fee .00
A.R. .00

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

Recorded
Official Records
County of
Ventura
Richard D. Dean
Recorder
8:00am 24-Oct-94

City of San Buenaventura
501 Poli Street, P. O. Box 99
Ventura, CA 93002-0099

VENT CC 13

Attn: City Clerk

14002439 JE

(Space above this line for Recorder's use)

AMENDMENT TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Tract No. 4395

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration"), by AFFORDABLE COMMUNITIES, INC., a California Corporation ("Declarant"), is made with reference to the following facts:

RECITALS

A. On December 17, 1992, Declarant recorded at the office of the Ventura County Recorder, as Instrument No. 92-229668, a Declaration of Covenants, Conditions and Restrictions ("Declaration") affecting certain real property described in said Declaration.

B. Paragraph C of Article XI of the Declaration provides that the Declaration may not be amended without the written consent of the City of San Buenaventura ("City").

C. Declarant wishes to amend the Declaration in the particulars hereinafter set forth, and the City has expressed its willingness to consent to the proposed amendments.

NOW, THEREFORE, Declarant hereby amends the Declaration hereinabove referred to, as follows:

1. A new paragraph "N" is added to Article I of the Declaration (following paragraph "M" thereof) to read as follows:

"N. "Institutional Lender" shall mean any bank, savings and loan association, or any other lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property."

2. The letter designation of paragraphs "N" through "X," inclusive, of Article I of the Declaration are hereby changed by assigning to each such paragraph the next higher letter of the alphabet.

3. Subparagraph "(7)" of paragraph "F" of Article III of the Declaration is hereby amended to read as follows:

"(7) Declarant shall cause to be filed for record in the Office of the Recorder of the County of Ventura a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering any Lot pursuant to Section 2924b of the Civil Code of the State of California or any comparable successor provision of law. Such request shall specify that any such notice shall be mailed to:

Director of Community Development
City of San Buenaventura
501 Poli Street
P. O. Box 99
Ventura, CA 93002-0099

Any notice of sale given pursuant to Civil Code Section 2924f shall constitute a Notice of Proposed Sale to Non-eligible Purchaser, and the provisions of subparagraphs (2), (3), (4), (5), and (6), of paragraph F of Article III shall apply, and City or its designee or assignee may exercise its Preemptive Right prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of

foreclosure. If Declarant fails to file such request for notice, City's right to exercise its Preemptive Right shall run from the date City obtains actual knowledge of a sale or proposed sale. If City or its designee or assignee elects not to exercise its Preemptive Right upon default, any surplus to which Declarant may be entitled pursuant to Code of Civil Procedure Section 727 shall be paid as follows: That portion of surplus (after payment of encumbrances), if any, up to but not to exceed the net amount that Declarant would have received after payment of encumbrances had City exercised its Preemptive Right on the date of the foreclosure sale shall be paid to Declarant on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to City or its designee or assignee."

4. Paragraph "F" of Article IV of the Declaration is hereby amended to read as follows:

"F. Inability to Sell to Eligible Purchaser

"(1) If, after making a diligent effort to do so, an Owner is unable to sell a lot to an Eligible Purchaser within one hundred and eighty (180) days after offering the Lot for sale, and if, such Owner wishes to sell such Lot to a person who is not an Eligible Purchaser, the Owner shall notify City in writing of its intent to do so (hereinafter "Notice of Proposed Sale to Non-Eligible Purchaser"). Notwithstanding the foregoing, if the Owner, in writing and in good faith, requests a "hardship waiver" (for purposes herein, "hardship" shall mean job loss, death in the Owner's immediate family, divorce, or other event or circumstance which the City believes reasonably constitutes a hardship justifying a hardship waiver) from the obligation to offer the Lot for sale for the above-described one hundred and eighty (180) days, and if the City grants such hardship waiver, the City shall consider such request for a hardship waiver to be the Owner's Notice of Proposed Sale to Non-Eligible Purchaser, thereby

triggering the procedures described below (as modified by this subparagraph F(1) for the City's right to exercise its Preemptive Right to purchase the Lot or Lots in Question; provided; however, that if the request for a hardship waiver is considered to be the Notice of Proposed Sale to Non-Eligible Purchaser as provided above, then (i) City shall have 60 days after it receives such notice within which to exercise its preemptive right; and (ii) close of escrow shall be within 30 days of the opening of the escrow provided for in paragraph F(3) of this Declaration. The City shall be the sole judge as to whether a hardship which justifies a hardship waiver exists, and whether to grant such a waiver.

"(2) If the Owner gives City a Notice of Proposed Sale to Non-Eligible Purchaser, at the time and in the manner hereinabove provided, City, its assignee or designee shall then have the right to exercise its Preemptive Right to purchase the Lot or Lots in question by giving written notice to the Owner that the City (or its designee or assignee), by giving such notice elects to exercise and does exercise its Preemptive Right. Such notices shall be given, if at all, within thirty (30) days after City receives the Owner's Notice of Proposed Sale to Non-Eligible Purchaser (or within 60 days after City receives such Notice, if a request for a hardship waiver is deemed to be a Notice of Proposed Sale to Non-Eligible Purchaser as provided in subparagraph F(1) above). If notice is given by City or its assignee or designee, as hereinabove provided, City (or its designee or assignee) shall be deemed to have exercised, and shall have exercised, its preemptive right as soon as such notice is given in accordance with the provisions of paragraph H of Article X of this Declaration.

"(3) If City or its designee or assignee exercises its Preemptive Right as hereinabove provided, City (or its assignee or designee) shall open an escrow to consummate the purchase. Close of escrow of said purchase shall be within forty-five (45) days of

the opening of such escrow by either party unless otherwise mutually agreed (except that if a request for a hardship waiver is deemed to be a Notice of Proposed Sale to Non-Eligible Purchaser as provided in subparagraph F(1) above, then close of escrow shall be within 30 days of the opening of such escrow, except as otherwise mutually agreed). Said escrow shall be opened within ten (10) days after City (or its assignee or designee) gives Owner of written notice of the exercise of the Preemptive Right. Closing costs and title insurance shall be paid pursuant to the custom and practice in the City of San Buenaventura at the time of the opening of such escrow. The Owner shall bear the expense of providing a current written report of an inspection by a licensed Structural Pest Control Operator. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the Owner. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the Owner, and such work shall be done only if requested by the City and then at the expense of the City. The seller shall be responsible for payment of any prepayment fees imposed by any lender by reason of the sale of the Lot. The purchase price, which shall be the price specified in subparagraph (4) below, shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of City or its assignee and the owner. At the closing the Declarant shall furnish the City an ALTA owner's residential title insurance policy, subject to its Exclusions from Coverage, special exceptions for current taxes and assessments not yet due, and such matters (other than taxes, assessments, and encumbrances created or suffered by the Declarant and all those claiming under Declarant) which were exceptions to title on the date of this Declaration. At the closing Declarant shall convey title to the City or the City's designee or assignee by grant deed,

or its equivalent which warrants title against matters created or suffered by the Declarant and those claiming under Declarant.

"(4) The purchase price of the Lot shall be the Affordable Sales Price for which an Eligible Purchaser could purchase the Lot at a Subsequent Sale (as provided in paragraph C of Article IV).

"(5) In no event shall City become in any way liable to any Owner, nor become obligated in any manner, by reason of the assignment of its Preemptive Right, nor shall City be in any way obligated or liable to any Owner for any failure of City's assignee to consummate a purchase of a Lot or to comply with the terms of any purchase and sale agreement.

"(6) If City abandons or fails to exercise its right to purchase the Lot in question within thirty (30) days after it receives Owners's Notice of Proposed Sale to Non-Eligible Purchaser (or within 60 days, if the request for hardship waiver is deemed to be a Notice of Proposed Sale to Non-Eligible Purchaser, as provided in subparagraph F(1) above), City will cause to be recorded in Ventura County a notice of intent not to exercise its right with respect to a Lot, and declaring that the provisions of this Declaration are no longer applicable to said Lot, and shall deliver a copy thereof to the Owner of said Lot. Said notice shall be mailed or otherwise delivered to the Ventura County Recorder's Office within fifteen (15) days of City's decision not to exercise its right, but no later than forty-five (45) days after City receives Owner's Notice of Proposed Sale to Non-Eligible Purchaser (or not later than 75 days after City receives Owner's Notice of Proposed Sale to Non-Eligible Purchaser, if the Owner's request for hardship waiver is deemed to be a Notice of Proposed Sale to Non-Eligible Purchaser, as provided in subparagraph F(1) above). Upon recordation of said notice, the provisions of this Declaration shall no longer be applicable to said Lot.

"(7) Each Owner of a Lot shall cause to be filed for record in the Office of the Recorder of the County of Ventura a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said lot pursuant to Section 2924b of the Civil Code of the State of California or any comparable successor provision of law. Such request shall specify that any such notice shall be mailed to:

Director of Community Development
City of San Buenaventura
501 Poli Street
P. O. Box 99
Ventura, CA 93002-0099

Any notice of sale given pursuant to Civil Code Section 2924f shall constitute a Notice of Proposed Sale to Non-Eligible Purchaser, and the provisions of subparagraphs (2), (3), (4), (5), and (6), of paragraph F of Article III shall apply, and City or its designee or assignee may exercise its Preemptive Right prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure. If Owner fails to file such request for notice, City's right to exercise its Preemptive Right shall run from the date City obtains actual knowledge of a sale or proposed sale. If City elects not to exercise its Preemptive Right upon default, any surplus to which Owner may be entitled pursuant to Code of Civil Procedure Section 727 shall be paid as follows: That portion of surplus (after payment of encumbrances), if any, up to but not to exceed the net amount that Owner would have received after payment of encumbrances had City exercised its right to purchase the property on the date of the foreclosure sale shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to City or its designee or assignee. If City its designee or assignee elects not to exercise its Preemptive Right in connection with any notice of default or notice of sale pursuant to the provisions of this subparagraph (7), such election

shall not be or be deemed to be a waiver of City's or its designee's or assignee's right to exercise its Preemptive Right in connection with any subsequent default or notice of sale pursuant to the provisions of this subparagraph (7). Further, if City elects not to exercise its Preemptive Right pursuant to the provisions of this subparagraph (7), Lenders and Purchasers who acquire title as a result of a foreclosure sale or deed in lieu of foreclosure sale shall be subject to and shall comply with the provisions of Article VIII of this Declaration."

5. Article VI of the Declaration is hereby amended to read as follows:

"ARTICLE VI. CONSENT TO TRANSFER REQUIRED

"During the period that this Declaration is in effect, each Lot on the Property and any interest in title thereto shall not be sold, transferred, conveyed or assigned (including rent or lease) to any person or entity except with the express written consent of City, which consent shall be granted if such sale, transfer, conveyance or assignment complies with the covenants, conditions and restrictions set forth in this Declaration. Any sale, transfer, conveyance or assignment (including rent or lease) which has not been consented to by City SHALL BE VOID."

6. Article VIII of the Declaration is amended to read as follows:

"ARTICLE VIII. FORECLOSURE

"A. This Declaration is subordinate to any deed of trust or mortgage on the Property, which deed of trust or mortgage is senior in recording priority to all other deeds of trust recorded against the Property (such senior deed of trust or mortgage shall be referred to herein as "the First Mortgage"), and is likewise

subordinate to any mortgage or deed of trust which is given in connection with any refinancing of the First Mortgage, provided the loan amount of such refinancing does not exceed the then outstanding balance (plus refinancing and closing costs) of the existing First Mortgage. Any party, and its successors and assigns, receiving title to the Property through a trustee's sale, judicial foreclosure sale, or (subject to the conditions set forth below) by deed in lieu of foreclosure of the First Mortgage, including a deed of trust or mortgage which is given in connection with such refinancing as hereinabove provided, and any conveyance or transfer thereafter, shall receive title free and clear of the provisions of this Declaration; provided, however, that not less than 30 days before Declarant or any Owner of a Production Unit executes a deed in lieu of foreclosure which would convey the Property or any part thereof to the holder of the First Mortgage or its assignee or designee, Declarant or the Owner of the Production Unit, as the case may be, shall give City written notice of intent to execute such deed in lieu of foreclosure. Such Notice shall constitute a Notice of Proposed Sale to Non-Eligible Purchaser within the meaning of paragraph F(1) of Article IV of this Declaration, and City may then exercise its option to purchase the Property according to the procedure set forth in paragraph F of Article IV of this Declaration. If Declarant or the Owner of a Production Unit, as the case may be, gives City the Notice provided for in this paragraph A, and if City does not exercise its Option to Purchase within 30 days of such Notice, Declarant or the Owner of the Production Unit shall be able to execute a deed in lieu of foreclosure such that the holder of the First Mortgage or its assignee or designee acquires title free and clear of this Declaration. ANY DEED IN LIEU OF FORECLOSURE THAT IS EXECUTED, DELIVERED OR ACCEPTED IN VIOLATION OF THE PROVISIONS OF THIS PARAGRAPH A SHALL BE NULL AND VOID.

"B. Except as provided in paragraph A of this Article VIII, the provisions of this Declaration shall not impair the right of an

Institutional Lender which is the maker of a loan secured by a mortgage or deed of trust recorded against the property in a priority other than First Mortgage priority (herein referred to as "the Second Mortgage"), or such Lender's assignee or successor in interest, to foreclose or take title to the Property pursuant to the remedies in the Second Mortgage, except that Declarant and any Owner of a Production Unit shall not execute or deliver, and the holder of a Second Mortgage shall not accept, a deed or assignment in lieu of foreclosure which would convey the Property or any part thereof or any Production Unit therein to any such holder or its designee or assignee; provided, however, that any such Second Mortgage shall be subordinate to the terms, covenants, conditions and restrictions contained in this Declaration; provided, further, that if the Property or any part thereof or any Production Unit therein is acquired at a foreclosure sale under any second Mortgage encumbering the Property, title to the Property or part thereof or any Production Unit therein so acquired shall be taken subject to the terms, covenants, conditions, and restrictions contained in this Declaration. ANY DEED IN LIEU OF FORECLOSURE THAT IS EXECUTED, DELIVERED OR ACCEPTED IN VIOLATION OF THE PROVISIONS OF THIS PARAGRAPH B SHALL BE NULL AND VOID.

"C. Developer covenants to cause to be filed for record in the office of the County Recorder of Ventura County a request for any copy of any notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Property, pursuant to Section 2924(b) of the Civil Code of the State of California. The request shall specify that any notice shall be mailed to the City of San Buenaventura Director of Community Development, 501 Poli Street, P.O. Box 99, Ventura, California 93002. Any notice of sale given pursuant to Civil Code Section 2924(f) or any service of summons or other papers in a judicial foreclosure shall constitute a Notice of Intent to Sell within the meaning of paragraph F(1) of Article IV of this

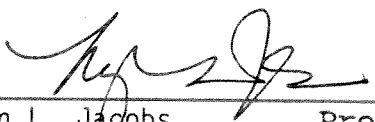
Declaration and the City may exercise its Option as set forth in paragraph F of Article IV.

"D. In the event that Declarant or any Owner of a Production Unit reacquires the Property at any time subsequent to a foreclosure, a deed in lieu of foreclosure or a trustee's sale of that Owner's interest in the Property or any Production Unit, the doctrine of after-acquired title shall apply, and the Property and the Production Unit and all owners thereof shall be subject to and shall comply with all of the terms, conditions, restrictions and limitations of this Declaration."

EXCEPT as amended by this Amendment to Declaration, the Declaration referred to above (Instrument No. 92-229665), and each Covenant, Condition and Restriction, and provision contained therein, shall continue unchanged and in full force and effect according to its terms.

IN WITNESS WHEREOF, the undersigned, being the Declarant in the Declaration referred to above, has executed this Amendment to Declaration this 7th day of October, 1994.

AFFORDABLE COMMUNITIES, INC.
A California Corporation

By 
Lynn L. Jacobs, President

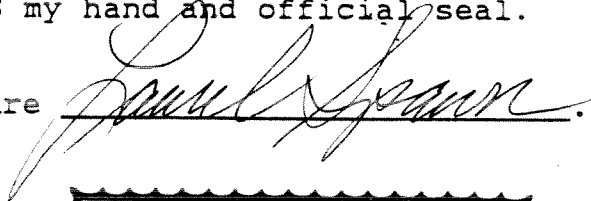
ACKNOWLEDGMENT

State of California
County of Ventura

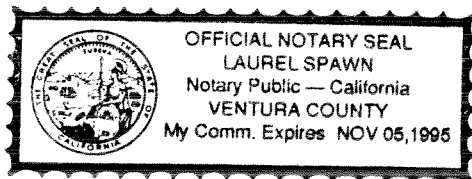
On OCTOBER 7, 1994 before me, LAUREL SPAWN,
personally appeared LYNN L JACOBS,
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose names(s) is/are
subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their 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.

WITNESS my hand and official seal.

Signature



(Seal)



CONSENT TO AMENDMENTS

The City of San Buenaventura, through its duly authorized representative, hereby consents to the amendments to the Declaration which are described above.

CITY OF SAN BUENAVENTURA

By 
RICHARD D. THOMAS, CITY MANAGER

ACKNOWLEDGMENT

State of California
County of Ventura

On OCTOBER 20, 1994 before me, TROY A. KUHLMAN, Notary Public,
personally appeared RICHARD D. THOMAS,
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose names(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.

WITNESS my hand and official seal.

Signature . (Seal)

[AMNDAFCO.RDC]
4/28/93

