

92-229648

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

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

Attn: City Clerk

(Space above this line for Recorder's use)

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. Declarant is the owner of certain real property located in the City of San Buenaventura, County of Ventura, State of California, more particularly described as follows:

That portion of Lot 87 of the Rancho Santa Paula Y Saticoy, in the County of Ventura, State of California, as per map recorded in Book "A", page 290 of Miscellaneous Records, (transcribed records from Santa Barbara County), in the office of the County Recorder of said Ventura County and that portion of Lot 104 of Rancho Santa Clara Del Norte, in the County of Ventura, State of California, as per map recorded in Book 3, page 26 of Maps, in the office of the County Recorder of said County.

The property hereinabove described is also shown and described in preliminary Tentative Tract Map No. 4395 on file in the Office

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
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QUEST RECORDING WITHOUT FEE
CORDED FOR BENEFIT OF CITY OF
BENAVENTURA PURSUANT TO SEC.
GOVERNMENT CODE.

of the City Engineer of the City of San Buenaventura ("City"). For purposes of this Declaration, the real property described in this paragraph A shall hereinafter be referred to as the "Property."

B. Declarant proposes to develop the Property by constructing thereon a maximum of 153 single family detached houses and making certain public improvements (the "Project").

C. On or about July 31, 1991, Declarant and the City entered into a Development Agreement (the "Development Agreement"), by the terms of which Declarant agreed that the Project will meet the requirements of the City's Affordable Housing Program ("AHP") and will be consistent with the AHP as amended by City Resolution No. 88-92. In consideration of Declarant's contribution to the planning, processing, and construction of certain public improvements, and the provision of affordable housing in the City, the City agreed to issue Declarant sufficient Residential Growth Management Population (RGMP) allocations to permit development of the Project. The Development Agreement and the AHP are public records on file in the office of the City Clerk of the City and are by reference thereto incorporated herein as though fully set forth herein.

D. Among other things, the Development Agreement requires that Project housing be made subject to "Resale Controls" by means of deed restrictions, covenants, or other servitudes to ensure that all Project homes are sold, purchased, and used strictly in accordance with the terms of The Development Agreement and the City's Affordable Housing Program.

E. Development of the Project in accordance with the terms of the Development Agreement and the City's Affordable Housing Program will supply needed housing stock in the City by providing affordable housing and will serve the public interest in general,

and the health, safety and general welfare of City residents and prospective purchasers of Project housing, in particular.

F. The restrictions, limitations, and conditions contained in this Declaration are designed and intended to foster the City's and Declarant's goal of providing affordable housing; to achieve a stabilized community in the Project; to avoid artificial inflation of prices caused by resale by speculators; to prevent scarcity caused by vacant homes awaiting resale by speculators; and to otherwise implement and achieve the goals of the City's Affordable Housing Program.

G. Declarant intends by this document to impose upon the property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of lots and for the benefit of the community.

DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that all of the property described above (the "Property") shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved, and conveyed subject to the following declarations, limitations, restrictions, covenants, and conditions (hereinafter sometimes referred to collectively as the "restrictions"), which are imposed pursuant to a general plan for the development of the Property. The restrictions are for the benefit of the Property and every part thereof, and are covenants running with the land, and shall, in any event and without regard to technical classification or designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding on Declarant and its successors and assigns, and on all parties who now have or hereafter acquire any right, title or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the

benefit of, and be enforceable by, Declarant and the City of San Buenaventura and/or its designee, and each owner of the Property or any part thereof.

In amplification and not in restriction of the Declarations set forth hereinabove, it is intended and agreed that City shall be deemed a beneficiary of the agreements and covenants set forth in this Declaration both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. City and/or its designee shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

ARTICLE I - DEFINITIONS

As used in this Article I the following terms shall have the following respective meanings:

A. "Affordable Sales Price" shall mean that figure for which the Lots can be sold to an Eligible Purchaser and which is calculated in such a way that after a 10% down payment, the Gross Monthly Housing Expense does not exceed 30% of the Monthly Household Eligibility Income of the Eligible Purchaser. The procedure used to arrive at the Affordable Sales Price is further described in paragraph C of Article III of this Declaration.

B. "AHP" shall mean City's Affordable Housing Program, adopted by Resolution No. 88-92, and attached as an exhibit to the Comprehensive Plan, and any modifications or amendments thereto.

C. "Buyer Eligibility Requirements" shall mean the eligibility standards that a prospective buyer of a Lot must meet in order to be eligible to buy a Lot. Those standards are set forth in the City's AHP and are the standards that a person or family must meet in order to be eligible to buy an affordable unit under the City's Affordable Housing Program. Among other things, the standards require that only First Time Home Buyers shall be eligible to purchase a Lot and that household income shall not exceed 110% of the County Median Income; provided, however, that if a particular Lot at an Initial Sale has not sold to a buyer qualified under the foregoing criteria within four (4) months after the particular Lot was offered for sale by Declarant, the City may increase the household income eligibility requirement to an amount that does not exceed 120% of the County Median Income, but any such increase shall not affect the Affordable Sales Price.

D. "City" and "city in which the project is located" shall mean and refer to the City of San Buenaventura located in the County of Ventura, State of California.

E. "County" and "county in which the project is located" shall mean and refer to the County of Ventura, State of California.

F. "County Median Income" shall mean the U.S. Department of Housing and Urban Development ("HUD") published estimate of median family income (for the applicable family size) for Ventura County published by HUD most recently before the determination by the City of income eligibility for a particular household, or in the absence of such HUD published estimate a comparable source.

G. "Declarant" shall mean and refer to Affordable Communities, Inc., a California corporation, its successors and assigns.

H. "Declaration" shall mean and refer to this Declaration, as amended or supplemented from time to time.

I. "Eligible Purchaser" shall mean a person who meets the City's Buyer Eligibility Requirements (including being a First Time Home Buyer).

J. "First Time Home Buyer" shall mean a person who has not purchased any home within three years prior to the purchase of a Lot.

K. "Gross Monthly Housing Expense" shall mean all costs of principal and interest on any note or notes secured by deed of trust or mortgages on a Lot, and taxes, insurance, and utilities and other housing expenses (using the maximum monthly amount when any such element is variable over time) paid by an Eligible Purchaser each month (after the payment of a down payment of 10% of the Lot Price) to acquire and occupy a Lot. For purposes of calculating the Affordable Sales Price, the Gross Monthly Housing Expense shall be deemed to be 30% of a prospective purchaser's monthly Household Eligibility Income.

L. "Household Eligibility Income" shall mean income to the entire household of the prospective purchaser, including and excluding such components of income and adjustments to income as used in determining adjusted gross income for Federal income tax purposes.

M. "Initial Sale" shall mean the sale of each Lot on the property according to the terms herein set forth from the Declarant

to the first Eligible Purchaser. The Initial Sale refers solely to the first sale and not to any subsequent sales of each Lot.

N. "Lot" shall mean and refer to any lot or plot of land, together with any Production Home (or Dwelling) or other improvements thereon, as such lot is shown on the Map. For purposes of this Declaration, the term "Lot" shall be synonymous with the term "Affordable Unit," as said term is used in the City's AHP.

O. "Lot Price" shall mean the price the Owner paid or agreed to pay for the Lot.

P. "Map" shall mean and refer to the Final Subdivision Map recorded with respect to the Property after recordation of this Declaration.

Q. "Model Home" shall mean a residence for which no permanent occupancy clearance has been issued and which is used (or intended for use) by Declarant for the purpose of selling Lots.

R. "Occupancy Clearance" shall mean the certificate or permit issued by City that authorizes occupancy of a building.

S. "Owner" shall mean any person or entity who holds all or any portion of the fee title to a Lot or any other present interest in a Lot (or any portion thereof), including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Owner does not include the Declarant prior to the Initial Sale of the applicable Lot.

T. "Person" shall mean a natural person and his or her family who are members of the same household.

U. "Production Home" or "Dwelling" shall mean a residence constructed on an individual Lot for the sole purpose of sale to qualified members of the public. A Model Home shall become a Production Home or Dwelling at such time as it is offered for sale pursuant to the eligibility and sale provisions of this Declaration.

V. "Project" shall mean the 153 unit single family residential development and associated amenities, including, without limitation, on-site and off-site improvements, as the same may be further defined, enhanced or modified pursuant to the provisions of the Development Agreement.

W. "Property" shall mean and refer to the real property described in paragraph A of the Recitals to this Declaration and all improvements erected or to be erected thereon.

X. "Subsequent Sale" shall mean any sale of each Lot after the Initial Sale, regardless of whether the sale is by the Declarant, the City, or a subsequent Owner.

ARTICLE II - RIGHT OF FIRST REFUSAL

A. Right of First Refusal

City shall have, and Declarant hereby grants to City, a qualified preemptive right (hereinafter sometimes referred to as the "Preemptive Right" or "Right of First Refusal") to purchase the Property and any Lot (together with any dwelling and any improvements thereon) at the time and in the manner set forth in paragraph F of Article III and paragraph F of Article IV of this Declaration.

City may designate a governmental or non-profit organization to exercise its Right of First Refusal. City or its designee may assign the Right of First Refusal to an individual private buyer who meets the City's Buyer Eligibility Requirements. After the exercise of said Preemptive Right by City, its assignee or designee in the manner hereinafter prescribed, City, its assignee or designee may assign said Preemptive Right to any substitute individual private buyer who meets the City's Buyer Eligibility Requirements and is approved by the City; provided, however, that such subsequent assignment shall not extend any time limits contained herein.

ARTICLE III. INITIAL SALES

A. Prescreening by City

Each prospective purchaser desiring to acquire a Lot from the Declarant as an Initial Sale shall be prescreened by the City or its designee, and the City shall determine whether the prospective purchaser is an Eligible Purchaser. The Declarant shall notify the City at the address set forth in Paragraph H of Article X of Declarant's request for a prescreening ("Notice of Initial Sale") in writing and shall include the address of the Lot or Dwelling. The City may identify prospects for acquisition of Lots on its own initiative and/or by reference from the Declarant. Except as provided in paragraph F of Article III, the Declarant may only sell Lots to prospective purchasers that City determines are Eligible Purchasers. The City shall not be required to seek Eligible Purchasers, but may do so at its election. A determination by the City that a prospective purchaser is an Eligible Purchaser is not a determination with regard to the credit worthiness of such purchaser.

The Declarant shall notify the City in writing within five (5) days after escrow is opened for the Initial Sale of each Lot and shall provide the following information so that the City can determine the eligibility of the purchaser and affordability of the Lot:

- (1) The name of the potential purchaser and his current address; and
- (2) The Gross Monthly Housing Expense and each component thereof to be paid by the prospective purchaser and any necessary supporting documents or information requested by the City; and
- (3) The number of bedrooms in the dwelling on the lot; and
- (4) The escrow agent, if any; and
- (5) The date scheduled for close of escrow.

Each prospective purchaser shall provide the City within ten (10) days after escrow is opened for the sale of each Lot, the household income of the prospective purchaser and any necessary supporting documents or information requested by the City.

B. Household Eligibility Income

Each Person acquiring a Lot at Initial Sale shall have a Household Eligibility Income that does not exceed one hundred and ten percent (110%) of the County Median Income for the applicable family size; provided, however, that if a Lot or Lots are sold to persons of moderate income as provided in paragraph C of Article III of this Declaration, then the person acquiring a Lot at Initial Sale shall have a Household eligibility Income that does not exceed

one hundred and twenty percent (120%) of the County Median Income for the applicable family size.

A Person who purchases the Lot shall be required to meet the Household Eligibility Income limit as described herein only at the time of opening of escrow for the applicable Lot. Such income status may change after acquisition without affecting the validity of the acquisition.

The methodology for determination of Household Eligibility Income by the City may include the following, or any other method practiced by the City to determine income under its housing programs:

(1) As the preferred method, use the mean average of last three years adjusted gross income as shown on income tax returns or other documentation reasonably acceptable to City; or

(2) Use a third party written verification form (sent through the mail). Project the verified income of the prospective purchaser current as of the date of the verification for a twelve month period to determine Household Eligibility Income;

C. Affordability of Lot; Calculations

(1) Each Lot sold at an Initial Sale shall be sold to an Eligible Purchaser at an Affordable Sales Price, as determined by City. The Affordable Sales Price of a Lot shall be calculated so that after an assumed down payment of 10 percent of the Initial Sale Price, the Gross Monthly Housing Expense required to be paid by the buyer to purchase and occupy the Lot shall not exceed an amount equal to thirty percent (30%) of the monthly Household Eligibility Income of a family with a monthly income equal to one hundred and ten percent (110%) of the County Median Income for the

size of household appropriate for the dwelling on the applicable Lot as determined by the City in accordance with the AHP and this Declaration. If Lots made available for sale have not been sold initially within four (4) months after the particular Lots were made available for sale, the City may authorize persons of moderate income to purchase such Lots, and the household income eligibility requirement shall be increased to an amount that does not exceed 120% of the County Median Income, but the Affordable Sales Price shall not be increased for this purpose.

(2) In determining the Affordable sales price of a Lot, as provided above, the City shall either use the following equation or use a financial calculator or mortgage payment table which incorporates and applies the following equation:

$$PV = (P) \left(\frac{1 - (1 + \text{MonthlyInterest})^{-N}}{\text{MonthlyInterest}} \right)$$

Where,

PV = 90% of the Affordable Sales Price

P = The principal and interest component of the maximum Gross Monthly Housing Expense, based on current HUD median income limits, adjusted for family size. This (P) shall be deemed to be 25% of the Monthly Household Eligibility Income.

N = The total number of months over which the loan is payable.

Monthly

Interest = 1/12th of the actual or imputed annual interest rate to be used to calculate the Affordable Sales Price. For Lots purchased with loans financed with City of San Buenaventura Single Family Mortgage Revenue Bonds, Series 1991 issue, the annual interest rate is 7.75%. For lots purchased with loans not financed with the Mortgage Revenue Bonds referred to above, the imputed annual interest rate shall be a rate equal to the interest rate charged on Federal National Mortgage Association (FNMA) 60-day mortgage commitments for standard conventional fixed rate mortgages at the time the HUD median income data is updated, plus an additional 0.125%. If the required FNMA information is not available, the City may use another source at its discretion.

The Affordable Sales Price (ASP) is the quotient arrived at by dividing the amount represented by "PV" (as derived by solving for "PV" in the equation referred to above) by the decimal number ".9".

The equation is $ASP = \frac{PV}{.9}$

D. Compliance Certificate

The City shall, prior to the date scheduled for close of escrow, but not less than thirty-five (35) days after notification that escrow is opened pursuant to paragraph A of Article III

execute a Certificate certifying compliance with the covenants, conditions and restrictions set forth in this Article III, (the "Certificate of Compliance") if such be the fact, and if not, specifying the reasons for failing to execute the Certificate and certify conformance herewith. A Lot shall not be sold, and escrow shall not close, unless and until City executes and deposits into escrow a Certificate of Compliance with respect to a particular Lot proposed to be sold.

E. Report on Close of Escrow

Within five (5) days after close of escrow with respect to the sale of each Lot, the escrow agent for such sale, or if none, then the purchaser, shall notify the City in writing that such escrow has closed and the name and address of the purchaser, and the Initial Sale Lot Price.

F. Inability to Sell to Eligible Purchaser

(1) If, after making a diligent effort to do so, Declarant 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 Declarant wishes to sell such Lot to a person who is not an Eligible Purchaser, Declarant shall notify City in writing of its intent to do so (hereinafter "Notice of Proposed Sale to Non-Eligible Purchaser").

(2) If Declarant 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 Declarant that the City (or its designee or assignee), by giving such notice, elects to exercise and does exercise its Preemptive Right. Such notice shall

be given, if at all, within thirty (30) days after City receives the Declarant's Notice of Proposed Sale to Non-Eligible Purchaser. 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 assignee or designee 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 escrow shall be within forty-five (45) days of the opening of such escrow by City or Declarant unless otherwise mutually agreed. Said escrow shall be opened within ten (10) days after City (or its assignee or designee) gives Declarant 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 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 Declarant. 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 which City shall pay for the Lot shall be the Affordable Sales Price for which an Eligible Purchaser could purchase a Lot at an Initial Sale.

(5) In no event shall City become in any way liable to Declarant 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 Declarant 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 Declarant's Notice of Proposed Sale to Non-Eligible Purchaser, 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 Declarant. 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 Declarant's Notice of Proposed Sale to Non-Eligible Purchaser. Upon recordation of said notice, the provisions of this Declaration shall no longer be applicable to said Lot.

(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), and (5), but not the provisions of subparagraph (6), of paragraph F of Article III shall apply, and City or City's 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. 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.

ARTICLE IV. SUBSEQUENT SALES

A. Prescreening by City

(1) Each Owner of a Lot who desires to sell such Lot as a Subsequent Sale shall notify the City at the address set forth in paragraph H of Article X of his request for a prescreening ("Notice of Subsequent Sale") in writing and include the following:

(a) The address of the Lot or Dwelling; and

(b) The Affordable Sales Price at which the Owner purchased the Lot; and

(c) The date upon which escrow closed and conveyance took place at which the Owner acquired his interest in the Lot; and

(d) Copies of any information reasonably requested by City and helpful to the City's determination of the accuracy of any of the above.

(2) Within fifteen (15) calendar days after receipt of the Owner's Notice of Subsequent Sale, the City shall inform such Owner in writing of the following:

(a) The then current maximum income limits of prospective purchasers by size of household applicable to purchasers of the Lot; and

(b) The Affordable Sales Price for which the Lot may be sold.

(3) The Owner of each Lot shall notify the City in writing within five (5) days after escrow is opened for the sale of each such Lot and shall provide the following information so that the City can determine the eligibility of the purchaser and affordability of the Lot:

(a) The name of the potential purchaser and his current address; and

(b) The agreed upon price for the Lot (which shall not exceed the permitted Subsequent Sale Lot Price); and

(c) The number of bedrooms in the dwelling on the Lot; and

(d) The escrow agent, if any; and

(e) The date scheduled for close of escrow.

Each prospective purchaser shall provide the City within ten (10) days after escrow is opened for the sale of each Lot, a statement of the household income of the prospective purchaser and any necessary supporting documents or information requested by the City.

B. Household Eligibility Income

Each Person acquiring a Lot at a Subsequent Sale shall have a Household Eligibility Income that does not exceed one hundred and ten percent (110%) of the County Median Income for the applicable family size.

A person who purchases the Lot at a Subsequent Sale shall be required to meet the income limit as described herein only at the time of opening of escrow for the applicable Lot. Such income status may change after acquisition without affecting the validity of the acquisition.

The methodology for determination of Household Eligibility Income by the City may include the following, or any other method practiced by the City to determine income under its housing programs:

(1) As the preferred method, use the mean average of last three years adjusted gross income as shown on income tax returns or other documentation reasonably acceptable to City; or

(2) Use a third party written verification form (sent through the mail). Project the verified income of the prospective purchaser current as of the date of the verification for a twelve month period to determine Household Eligibility Income.

C. Determination of Subsequent Sale Lot Price.

A Lot sold at a Subsequent Sale shall be sold an Affordable Sales Price calculated in the same manner that the Affordable Sales Price is calculated for an Initial Sale, as provided in paragraph B of Article III of this Declaration; provided, however, that if the Affordable Sales Price calculated as hereinabove provided is less than the Lot Price paid by the Owner who proposes to sell the Lot, then the Lot Price paid by the Owner shall be deemed to be the Affordable Sales Price for which the Lot may be sold at the Subsequent Sale.

D. Compliance Certificate

The City shall, prior to the date scheduled for close of escrow, but not less than thirty-five (35) days after notification that escrow is opened pursuant to paragraph A of Article IV, execute a Certificate certifying compliance with the covenants, conditions and restrictions set forth in this Article IV (the "Certificate of Compliance"), if such be the fact, and if not, specifying the reasons for failing to execute the Certificate and certify conformance herewith. A Lot shall not be sold, and escrow shall not close, unless and until City executes and deposits into escrow a Certificate of Compliance with respect to a particular Lot proposed to be sold.

E. Report on Close of Escrow

Within five (5) days after close of escrow with respect to the sale of each Lot, the escrow agent for such sale, or if none, then the purchaser, shall notify the City in writing that such escrow has closed, the name and address of the purchaser, and the Lot Price of the sale.

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").

(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. 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. 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, 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. 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), and (5), but not the provisions of subparagraph (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 or its designee or assignee 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.

ARTICLE V. OWNER OCCUPANCY

A. Occupancy by Owner Required; Lease or Rental Prohibited

In order to achieve a stabilized community of owner-occupied Dwellings, to avoid artificial inflation of prices caused by resales by speculators and to prevent scarcity caused by vacant homes awaiting resale by speculators, the Property and each Lot and Dwelling thereon shall be subject to the following covenants, conditions and restrictions:

(1) Each Owner shall use and occupy the Dwelling on the applicable Lot as such Owner's principal place of residence upon close of escrow for the applicable Lot, and each such Owner shall not transfer any interest in the Lot, nor enter into any contract

for the sale of the Lot, prior to the close of escrow for the sale of the Lot to such Owner.

(2) Any transfer of any interest in the applicable Lot, and any contract for sale or other transfer of such Lot prior to the acquisition of title to the Lot by the applicable Owner, shall be void.

(3) Each Owner shall use and occupy the Dwelling on the applicable Lot as such Owner's principal place of residence immediately upon the close of escrow and shall continue to so use and occupy such Lot for the duration of ownership of the Lot. Each Owner must occupy the Dwelling on the applicable Lot for at least twelve months out of every 24 months. The Owner of each Dwelling on the applicable Lot shall not lease or rent the Lot or the Dwelling thereon at any time for any reason unless the City has approved such lease or rental in writing prior to the time the Lot or Dwelling is leased or rented. Any lot that is leased, rented, or occupied by someone other than the Owner, for a period of one year or more, whether consecutively or on a cumulative basis, shall be sold by the Owner in accordance with the procedures set forth in Article IV of this Declaration.

B. Prescreening by City; Certification of Occupancy

In connection with each prescreening by City pursuant to Article III or Article IV of this Declaration, each prospective purchaser at an Initial Sale or Subsequent Sale, as the case may be, shall certify to City within ten (10) days after escrow is opened for the sale of each Lot, by a statement made under penalty of perjury, that such prospective purchaser intends to occupy the Dwelling on the applicable Lot as its principal place of residence and that such Lot is not being purchased for speculation purposes.

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. This Article VI shall not prohibit encumbrances permitted pursuant to Article VIII hereinbelow, which shall be governed by Article VIII. Any sale, transfer, conveyance or assignment (including rent or lease) which has not been consented to by City SHALL BE VOID.

ARTICLE VII. PERMITTED TRANSFERS

The following transfers of title to a Lot shall not be subject to the covenants, conditions and restrictions contained in this Declaration: transfer by gift, devise, or inheritance to the Owner's spouse or issue; taking of title by surviving joint tenant; transfer of title to a spouse as a party to a divorce or dissolution proceedings; acquisition of title or interest therein in conjunction with marriage; provided, however, that the covenants, conditions and restrictions imposed by this Declaration shall continue to encumber and run with each such Lot following said transfer.

ARTICLE VIII. PERMITTED ENCUMBRANCES

A. This Declaration shall not prohibit Declarant from encumbering the Property for the purpose of receiving financing to construct the Project, and shall not prohibit any Owner from encumbering his Lot for the purpose of securing financing for purposes of purchasing or improving the Lot and shall not supersede

or in any way reduce the security or affect the validity of any such deed of trust or mortgage; provided, however, that if any such Lot is acquired at a foreclosure sale under any deed of trust or mortgage encumbering the Lot, or by deed in lieu of foreclosure sale, title to the Lot shall be taken subject to the covenants, conditions and restrictions (including but not limited to the limitations with respect to affordability and sales price contained in Articles III and IV) set forth in this Declaration. Any permitted lender taking title to a Lot through foreclosure or deed in lieu of foreclosure shall not be subject to the Household Eligibility Income limits otherwise applicable to a purchaser of the Lot, but purchasers from such lender shall be subject to such limits; provided, however, such lender acquiring title by foreclosure or deed in lieu of foreclosure shall not occupy such Lot or any portion thereof. Any permitted lender taking title to a Lot through foreclosure or deed in lieu of foreclosure shall be entitled to use as its Base Price for purposes of determining affordability on resale pursuant to paragraph C of Article IV, the Base Price of the Owner from which such lender acquired title.

B. Notwithstanding the provisions of paragraph A of this Article VIII or any other provisions of this Declaration, if Wells Fargo Bank is the construction lender for the Project and Wells Fargo Bank forecloses on the lien of its Deed of Trust on the Property (which Deed of Trust is the security for the construction loan made by Wells Fargo Bank to the Developer), then in that event, and that event only, the provisions of this Declaration shall (except as hereinafter provided) not be applicable to the sale at such foreclosure or at any subsequent sale after such foreclosure of the Property, or any Lot therein, which is the subject of the foreclosure; provided, however, that notwithstanding any such foreclosure by Wells Fargo Bank as hereinabove provided, the provisions of paragraphs I and J of Article X and the last sentence of paragraph B of Article X of this Declaration (the

"Perpetual Conditions"), and all other terms, conditions, restrictions, covenants, and other provisions of this Declaration (including the declaration set forth on pages 3 and 4 of this Declaration) that are necessary or useful to enforce the Perpetual Conditions shall continue in full force and effect and shall continue to be applicable to the sale at such foreclosure and at any subsequent sale after such foreclosure of the Property and any Lot therein which is the subject of the foreclosure.

ARTICLE IX. CONDEMNATION PROCEEDS

In the event that a Lot or Dwelling on a Lot is acquired by condemnation (eminent domain) or the threat of condemnation, if proceeds thereof are distributed to Declarant or the Owner, any surplus of proceeds so distributed remaining after payment of any permitted encumbrances on such Dwelling or Lot shall be distributed as follows: (a) that portion of the surplus up to but not exceeding the net amount that Declarant or the Owner would have received as the Affordable Sales Price or the permitted Subsequent Sale Lot Price had he sold the property to an Eligible Purchaser shall be paid to the Owner; and (b) the balance of such surplus, if any, shall be paid to City.

ARTICLE X. GENERAL PROVISIONS

A. Transfers in Violation of this Declaration

ANY TRANSFER OR ATTEMPT TO TRANSFER ANY LOT OR ANY PART THEREOF (INCLUDING ANY DWELLING THEREON), IN VIOLATION OF THIS DECLARATION, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO CITY, SHALL BE VOID.

B. Irrevocability; Term of Declaration

This Declaration and the covenants, conditions and restrictions created hereby shall be irrevocable by the Declarant, its successors and assigns to the Property or any portion thereof, or any subsequent Owner of a Lot. Except as hereinafter provided, the provisions of this Declaration shall continue in effect with respect to each Lot for a period ending thirty (30) years after the Production Home on the applicable Lot has had a final building inspection by the City and is approved for occupancy. The provisions of paragraphs I and J of Article X shall continue in effect in perpetuity after the final Subdivision Map for the Property is recorded in the Office of the Ventura County Recorder.

C. Amendment of Declaration

Only the City, its successors and assigns, and the Declarant, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Declarant in and to the fee title to each Lot shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, conditions, and restrictions contained in this Declaration, or to subject any Lot to additional covenants, conditions or restrictions without the consent of any tenant, lessee, easement holder, licensee, or any other person or entity having an interest less than a fee in the Lot, except the holder of a permitted mortgage or deed of trust as provided in Article VIII of this Declaration. Neither the Declarant nor the heirs, legatees, devisees, administrators, executors, successors, or assigns of the Declarant, nor any owner, shall have the right to change or eliminate, in whole or in part, any of the covenants, conditions, or restrictions, without the written consent of the City.

D. Severability; Sole Recourse

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

In the event this Declaration shall be declared invalid, illegal or unenforceable, the sole recourse of the Declarant and/or any Owner of a Lot shall be to have the invalid, illegal or unenforceable provision released as an encumbrance to such Declarant's or Owner's title to the Lot. Without limiting the generality of the foregoing, the Declarant, its successors and assigns to the Property or any portion thereof, and each subsequent Owner of each Lot specifically waive any right to obtain from the City any damages in connection with the imposition or enforcement of this Declaration.

E. Interpretation

The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

F. Applicable Law

This Declaration and the covenants, conditions and restrictions created hereby shall be governed by and construed according to the laws of the State of California.

G. Number, Gender, and Headings

As used in this Declaration, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are

not a part hereof, and shall not affect the interpretation of any provision.

H. Notices

Any notice to the City pursuant to this Declaration shall be deemed given when delivered personally to the Director of Community Development or to the City Clerk of the City of San Buenaventura, or upon deposit in the U.S. mail postage prepaid, certified mail and return receipt requested, addressed to:

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

Any notice to the Declarant or an Owner pursuant to this Declaration shall be deemed given when delivered personally to the Declarant or Owner, or an officer thereof, or upon deposit in the U.S. mail postage prepaid, certified mail and return receipt requested, addressed as follows:

To Declarant: LYNN L JACOBS
260 MAPLE COURT #102
VENTURA, CA 93003

To an Owner: at the address of the applicable Lot or Dwelling, or at the address of the last known assessee of such Lot or Dwelling as shown on the last equalized assessment roll of Ventura County, or at the address of the record owner of such Lot or Dwelling as such ownership is shown on the records of the County Recorder on the date the notice is mailed, or at such other address

as has been designated to the City in a notice given pursuant to this paragraph H of Article X.

I. No Lot shown on the Final Subdivision Map for the Property shall be further divided or subdivided at any time after recordation of said Final Subdivision Map.

J. Neither the Declarant nor any owner of the Property or any Lot thereof shall bring or file any action to abate any agricultural practices (including but not limited to pesticide spraying, and the use of heaters or wind generators) on any property zoned for agricultural uses which may now or hereafter adjoin the Property or any portion thereof.

K. Each deed, contract of sale, and other document conveying, transferring, or agreeing to convey or transfer any interest in the Property or any Lot therein shall contain substantially the following provision:

"THIS DEED [OR OTHER DOCUMENT] IS MADE AND ACCEPTED UPON AND SUBJECT TO THE COVENANTS, CONDITIONS, RESTRICTIONS, AND OTHER MATTERS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS RECORDED 12-7-92, AS FILE NO. 12-7-92 OF OFFICIAL RECORDS OF VENTURA COUNTY AND ANY AMENDMENTS THERETO, ALL OF WHICH COVENANTS, CONDITIONS, RESTRICTIONS, AND OTHER MATTERS ARE INCORPORATED HEREIN BY REFERENCE TO SAID DECLARATION WITH THE SAME FORCE AND EFFECT AS THOUGH FULLY SET FORTH HEREIN."

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 28th day of October, 1992.

AFFORDABLE COMMUNITIES, INC.
A California Corporation

By _____, President

ACKNOWLEDGMENT

State of California
County of Ventura

On October 30, 1992 before me, LAUREL SPAWN,
personally appeared LYNN L. JACOB,
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 Laurel Spawn. (Seal)

[DECAFF5.1A]
8/11/92
8/28/92

