

OFFICIAL BUSINESS
Exempt from Recording Fees
Pursuant to Government Code § 6103

When Recorded Mail to:

City of Oakley
Planning Division
Attn: Kenneth Strelo
3231 Main Street
Oakley, California 94561

Address: _____
APN: _____

SPACE ABOVE THIS LINE RESERVED FOR RECORDER’S USE

**AGREEMENT AND COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING
REAL PROPERTY INCLUDING OWNER - OCCUPANCY RESTRICTIONS**

[California Housing Opportunity and More Efficiency Act (“HOME Act”)]

THIS AGREEMENT AND COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING REAL PROPERTY INCLUDING OWNER - OCCUPANCY RESTRICTIONS (“Agreement”) is entered into this _____ (the “Effective Date”) by and between the CITY OF OAKLEY, a municipal corporation (“City”), and _____ (“Owner”), with reference to the following facts:

RECITALS

A. The California Housing Opportunity and More Efficiency Act (“HOME Act”) (California Government Code §§ 65852.21, 66411.7, 66452.6) requires that cities ministerially approve the construction of two residential units on qualifying lots in single-family zoning districts (“Two Unit Residential Development”), subject to the requirements of the HOME Act and local regulations.

B. Owner is the owner of the certain real property known as _____, Assessor’s Parcel Number _____ (the “Property”), which is described on Exhibit A, attached hereto and incorporated herein by reference.

C. The Property is zoned for single family residential use, and pursuant to Section 9.1.1133 of the Oakley Municipal Code (“OMC”), Owner has applied for the construction of a Two Unit Residential Development on the Property (“Project”).

D. The HOME Act limits the use of the Property to residential use and prohibits units on the Property from being rented for a term shorter than thirty (30) days (“Short-Term Rental”).

E. Section 9.1.1133(d)(5) of the OMC requires that the Owner record a deed restriction on the Property ensuring that the owner of the Property occupies one of the units of the Project as the owner’s principal residence.

NOW, THEREFORE, in consideration of the promises contained below and other good and sufficient consideration, the receipt of which is hereby acknowledged, the City and Owner agree that the Property against which these covenants, conditions and restrictions are recorded shall be held, sold and conveyed subject to the following covenants, conditions and restrictions.

1. Recitals. The foregoing recitals are true and correct.
2. Covenant Running with Land. In consideration of the approval of the Project, Owner does hereby covenant and agree to restrict, and does by this instrument intend to restrict, the future use of the Property as set forth below, by the establishment of this covenant running with the land and binding upon the Owner’s heirs and assigns and upon any parties subsequently acquiring any right, title, or interest. For purposes of this Agreement, all obligations of and restrictions on Owner shall be obligations and restrictions on any future owners and parties subsequently acquiring any right, title, or interest in the Property.
3. Owner - Occupancy. Owner shall occupy one the units in the Project as his/her/their primary residence.
4. Short-Term Rentals Prohibited. Owner shall not use the Property, Project, or any units or portions of units contained therein, as a Short-Term Rental.
5. Residential Use. The Property shall be used for residential purposes, only, as defined in the OMC.
6. Disclosure Requirements. Prior to the execution of a purchase and sale agreement between Owner and any subsequent purchaser of the Property, and prior to the execution of a purchase and sale agreement between any subsequent owner of the Property and any subsequent purchasers, Owner or subsequent owner (as may be applicable) shall disclose, in writing, to each purchaser the fact that the Project is subject to the HOME Act and that the requirements in this Agreement will remain in effect until terminated.
7. Nuisance. The result of every act or omission whereby the covenants contained in this Agreement are violated in whole or in part is hereby declared to be and constitutes a nuisance. Every remedy allowable at law or equity, against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the City without derogation of the City’s rights under law.
8. Remedies for Breach. Upon breach of any of the covenants, conditions or restrictions set forth in this Agreement, the City may exercise any and all remedies available to it

at law or equity. These remedies include, without limitation, an action for injunctive relief or specific performance. The City shall be entitled to recover its costs of remedying the conditions creating the breach, including, without limitation, administrative, overhead, and engineering costs. Such costs shall become a lien upon the Property pursuant to Civil Code § 2881, immediately due and payable, and the City may collect such costs through the appropriate civil proceedings. The provisions of this Section 7 are supplemental to all other legal rights and remedies available to the City. Nothing in this Agreement shall modify, limit or circumscribe any other rights, remedies and powers available to the City.

9. Nonwaiver. The failure of City to enforce any one or more of the covenants, conditions or restrictions contained in this Agreement on any one or more occasions shall not constitute a waiver of the City's right to enforce the covenants, conditions and restrictions in the future.

10. Entire Agreement. This document contains the entire Agreement between the City and Owner with respect to those matters contained herein. This Agreement may be modified only by a writing, duly executed by both the City and Owner, and recorded against the Property.

11. Attorney's Fees. In the event the City or Owner, or any successor in interest of Owner, brings an action or begins any other proceeding to contest the validity of this Agreement or to enforce any of the covenants, conditions or restrictions in this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the other party its reasonable costs and expenses associated with such action or proceeding. These costs and expenses shall include, but shall not be limited to, the costs of arbitration, reasonable attorneys' fees, expenses associated with the action or proceeding, and the costs of all administrative proceedings and hearings. If payable by Owner or his/her/their successors in interest, such costs and expenses shall become a lien upon the Property pursuant to Civil Code § 2881, immediately due and payable, and that lien may be enforced by the City through the appropriate civil proceedings.

12. Severability. If any term, provision, or section of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the City and Owner agree that invalid portion or section may be severed from the remainder of this Agreement and the remainder of the Agreement may be enforced in its entirety.

13. Notices. All notices required to be given by this agreement shall be in writing and shall be personally delivered or mailed by first class registered and certified mail. All notices given by mail shall be deemed delivered seventy-two (72) hours after the date and time of deposit, as shown on a receipt issued by the United States Postal Service. All notices to Owner shall be addressed to the Property. All notices to the City shall be addressed to City of Oakley, 3231 Main Street, Oakley, California 94561.

14. Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Owner each represent and warrant that they have the legal power, right and actual authority to bind Owner to the terms and conditions hereof and thereof.

IN WITNESS WHEREOF, the City and Owner have signed this Agreement as of the date set opposite their signatures.

CITY OF OAKLEY

OWNER:

By: _____
City Manager

By: _____

ATTEST:

By: _____
City Clerk

By: _____

APPROVED AS TO FORM:

By: _____
City Attorney