

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

CITY OF [REDACTED]
[REDACTED]

Property:

APN:

Exempt from Recording Fees per Gov. Code 27283

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

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

THIS AGREEMENT AND COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING REAL PROPERTY INCLUDING OWNER OCCUPANCY REQUIREMENTS (“**Covenant**”) is entered into this ____ day of _____, _____, by and between the **CITY OF** _____ California charter city and municipal corporation, (“**City**”) and (“**Owner**”), whom are sometimes referred to in this Covenant individually as a “**Party**” and collectively as the “**Parties**,” in connection with the real property located _____, California _____, Assessor’s Parcel No. (legally described on the attached Exhibit A) (“**Subject Property**”), with reference to the following facts:

RECITALS

- A. Owner is acquiring fee title to the Subject Property concurrently with the recordation of this Covenant. The events set forth in Recital B occurred prior to the Owner’s acquisition of the Subject Property.
- B. Prior to Owner’s acquisition of the Subject Property, numerous citations were issued over the last three years by the City regarding code violations at the Subject Property, including abatement warrants and the imposition of administrative penalties and costs (“**Administrative Penalties and Costs**”) against the Subject Property.
- C. The Owner is purchasing the Subject Property in accordance with an order of the _____ County Superior Court in Case No. _____ Under the purchase agreement governing the Owner’s purchase of the Subject Property, the Owner is required to repair and rehabilitate the Subject Property as provided and within the period set forth in the purchase agreement.

D. The City has an interest in eliminating blight, facilitating owner occupancy of residential housing stock, abating problem properties, and securing the rehabilitation of problem properties in compliance with [redacted] Municipal Code [redacted] and state law.

E. The Owner desires to remove the existing public assessment lien (or unpaid Administrative Penalties and Costs owed to the City) and the City is willing to grant this relief in exchange for the Owner's agreements set forth in this Covenant.

F. In consideration of the City's reduction of the public assessment lien (or unpaid Administrative Penalties and Costs owed to the City) as provided in the preceding Recital, Owner agrees to record the covenants, conditions and restrictions contained in this Covenant against the Subject Property.

NOW, THEREFORE, in consideration of the promises contained below and other good and sufficient consideration, the receipt of which is hereby acknowledged, the Parties agree that the Subject Property will be held, sold, encumbered and conveyed subject to the following covenants, conditions and restrictions.

1. Recitals, Effective Date. The Parties acknowledge that the Recitals in this Covenant are true and correct and incorporate those recitals into the agreement. This Covenant will become effective on the date ("**Effective Date**") it is recorded with the [redacted] County Recorder.

2. Comprehensive Resolution. The Parties acknowledge that this Covenant constitutes a comprehensive resolution of all current administrative code enforcement actions relating to the Subject Property and, further, that the Parties intend to resolve all issues related thereto by means of this Covenant.

3. Owner-Occupancy Covenant.

(a) The Owner and the Owner's successors and assigns to all or any part of the Subject Property must occupy the Subject Property as their primary residence. The Owner's attempt to rent or actual rental of the Subject Property for any purpose will be a material breach of this Covenant and will entitle City to exercise any and all available legal and equitable remedies.

(b) The Subject Property may only be used and maintained as an owner-occupied single family residence. The Owner, her heirs, executors, administrators, successor and assigns, are prohibited from and will not rent, lease, or sublease the Subject Property (including any improvement or fixture thereto), or otherwise transfer or attempt to transfer a tenancy or leasehold interest in the Subject Property (including any improvement or fixture thereto) or any part thereof.

(c) The Parties acknowledge that this owner-occupancy covenant is a condition to and consideration for a reduction in the amount of unpaid Administrative Penalties and Costs. The City is implementing the objective of increasing the ratio of decent, safe and sanitary owner-occupied single-family residences to rental property throughout the City. In furtherance of this public purpose, the Owner for herself and her successors and assigns, also agrees not to rent, lease, license or otherwise permit a non-owner of the Subject Property to take possession and control thereof. The Owner for herself, her heirs, executors, administrators, successors and assigns, agree and consent that this owner-occupancy restriction may be enforced by the City through an action for specific performance.

4. Term. This Covenant will run with the Subject Property for a period of twenty-five (25) years from the date of this Covenant's recordation with _____ County Recorder and will apply to the Owner, her heirs, executors, administrators, assigns and successors-in-interest. This Covenant cannot be terminated unless a written agreement to terminate is executed by the Owner, or her successor-in-interest, and the City, by its Community Development Director, and said document is duly recorded with the _____ County Recorder.

5. Statutory Liability. Nothing contained in this Covenant will be construed to alter the Parties' statutory and common law duties, rights and liabilities with respect to nuisance abatement, hazardous substance handling and remediation. Nothing contained in this Covenant will be construed to apportion liability for the cost of abating or remediating the occurrence of any nuisance or release of "hazardous substances" and "hazardous materials" as those terms may be defined by regulatory agencies.

6. Liability Waiver. The Owner hereby forever voluntarily releases, discharges, waives and relinquishes any and all actions or causes of action solely arising out of the City's enforcement activities occurring on or before the Effective Date of this Covenant, however the same may have occurred and for whatever period said activities may continue, and Owner does for herself, her heirs, executors, administrators, successors-in-interest and assigns hereby release, waive discharge and relinquish any action or causes of action which may hereafter arise for herself and her estate based on or arising out of the City's enforcement activities occurring on or before the Effective Date of this Covenant.

7. Acknowledgment. The Parties, and each of them, acknowledge that they have read this Covenant; that they had an opportunity to have the Covenant explained to them by counsel of their choice; that they are aware of the content and legal effect of the Covenant; and that they are not relying on any representation made by the other Party or any of the employees, agents, representatives, or attorneys of the other Party, or any of them.

8. Disclosure Requirements. Prior to the execution of a purchase and sale agreement between the Owner (as seller) and any purchaser of the Subject Property, and prior to the

execution of a purchase and sale agreement between any subsequent owner of the Subject Property and any subsequent purchasers, the then-current owner(s) will disclose, in writing, to each purchaser the fact that the Subject Property is burdened by this Covenant and that the requirements stated in this Covenant will remain in effect for the term described in Section 4.

9. Monitoring by the City. The City may take reasonable steps to investigate the Subject Property and confirm compliance with the requirements of this Covenant.

10. Binding on Successors in Interest. The Owner hereby covenants and agrees that her heirs, successors, executors, administrators and assigns, and every successor in interest to the Subject Property, or any part thereof, will comply with each and every term, covenant, condition and restriction contained herein. This Covenant will run with the land, any other provision of law notwithstanding, and will be enforceable by the City in an action for specific performance against the Owner and her successors and assigns; provided, however, that no person or entity will be liable for any cost or damage or subject to any other liability under this Covenant which is based upon facts, circumstances and events which did not occur during that person or entity's ownership of the Subject Property.

11. Maintenance of Subject Property.

(a) The Owner hereby agrees, for herself, her successors and assigns, to maintain the Subject Property, dwelling unit, improvements, landscaping and fixtures in good repair and to keep the Subject Property free from any accumulation of debris or waste materials, consistent with the customary practice and so as not to create a nuisance or violate any provision of the [REDACTED]. In particular, Owner agrees, for herself, her successors and assigns, to maintain the property in compliance with [REDACTED] Chapters 6.11 and 6.14, as they may be amended or replaced from time to time.

(b) All exterior painted surfaces will be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. Any such defacing marks will be cleaned or removed within the time as set forth in subparagraph (d) below.

(c) The Owner will at all times maintain the front exterior, visible side exteriors and yard in a clean, safe and presentable manner, free from defacing marks or any disrepair. The Owner will maintain and/or repair the front exterior or rear or visible side yard and exterior of the dwelling unit.

(d) All graffiti and defacement of any type, including marks, words and pictures, must be removed and any necessary painting or repair completed within one (1) week of their creation.

(e) All driveways must be paved and maintained with impervious material in accordance with the [REDACTED]

12. City as Beneficiary. The City is a beneficiary of the terms and provisions of this Covenant, both for and in its own right, and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Covenant has been provided. The City will have the right, but not the obligation, to exercise all rights and remedies and to maintain any actions at law or in equity or any other proceedings to enforce this Covenant.

13. Notices. All notices required will be in writing and delivered by registered mail, postage prepaid. A Party may change its address by notice in writing to the other Party and thereafter notices will be addressed and transmitted to the new address. All notices will be deemed received three (3) business days after dispatch by regular mail, or one (1) business day after dispatch by a reputable overnight courier service (such as Federal Express).

Notices to the City will be addressed as follows:



Notices to the Owner will be addressed as follows:



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

15. Noncompliance/Attorney's Fees. In the event of noncompliance with any provision under this Covenant, the City may take any and all enforcement actions provided by any provision of the [REDACTED] or exercise any other remedy under law or in equity to which the City may be entitled. Should the City bring an action to enforce the terms of this Covenant, the prevailing party will be entitled to costs of suit, including reasonable attorneys' fees and litigation expenses, including fees and expenses on appeal.

16. Rights and Remedies are Cumulative. To the extent permitted by law and except with respect to rights and remedies expressly declared to be exclusive in this Covenant,

the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same event of default or any other event of default by the other Party.

17. Deemed Consent. Any person or entity who now or hereafter owns or acquires any right, title or interest in or to the Subject Property will be deemed to have consented and agreed to every covenant, condition and restriction contained herein whether or not any reference to this covenant is contained in the instrument by which such person or entity acquired an interest in the Subject Property.

18. Counterparts. This Covenant may be executed in two (2) or more identical counterparts. If so executed, each of such counterparts will, collectively, constitute one original Covenant. In making proof of this Covenant, it will not be necessary to produce or account for more than one such counterpart.

19. Venue. Any action at law or in equity brought by either of the Parties hereto for the purpose of enforcing a right or rights provided for by this Covenant will be tried in a court of competent jurisdiction in the County of _____, State of California, and the Parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

20. Severability. Should any of this Covenant be deemed unlawful, that provision will be severed, and the remaining terms will continue to be valid and fully enforceable.

21. Waiver. Failure of a Party to insist upon strict observance of, or compliance with, any term of this Covenant in one or more instances will not be deemed to be a waiver of that Party's right to insist upon such observance or compliance with that or any of the other terms of this Covenant.

22. Covenant Parameters. This Covenant constitutes the entire agreement between the Parties. No modification of this Covenant will be valid unless in writing signed by the Parties. The Parties will not be bound by any representation, warrant, promise, statement or information, unless it is specifically set forth in this Covenant.

23. Covenant Interpretation. This Covenant has been jointly negotiated and drafted. The language of this Covenant will be construed as a whole according to its fair meaning and not strictly for or against either Party.

24. Authority. The individuals executing this Covenant and the instruments referenced herein on behalf of the Owner each represent and warrant that he or she has the legal power, right and actual authority to bind Owner to the terms and conditions hereof and thereof.

IN WITNESS WHEREOF, the Parties have caused this Covenant to be executed as of the day and year first written above.

[Signature Page Follows]

**SIGNATURE PAGE
TO
AGREEMENT AND COVENANTS, CONDITIONS AND RESTRICTIONS
AFFECTING REAL PROPERTY INCLUDING
OWNER OCCUPANCY REQUIREMENTS**

CITY:

OWNER:

CITY OF _____
a California charter city and
municipal corporation

By: _____
City Manager

Attest:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

This notary acknowledgement is attached to a document entitled "Agreement and Covenants, Conditions and Restrictions Affecting Real Property Including Owner Occupancy Requirements".

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, _____, before me, _____,
Notary Public, personally appeared _____,
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 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 of Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, _____, before me, _____,
Notary Public, personally appeared _____,
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 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 of Notary Public

Exhibit "A"

Legal Description

The land referred to herein is situated in the State of California, County of [REDACTED], City of [REDACTED], and described as follows: