

RECORDING REQUESTED BY:

CITY OF BENICIA

When Recorded Mail To:

City Clerk
City of Benicia
250 East L Street
Benicia, CA 94510

Fee Waived per GC 27383

Space above this line for Recorder's use

**ACCESSORY DWELLING UNIT REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

Owner: _____
Property Address: _____ Benicia, California, 94510
APN: _____
Name of Development: Rose Estates

This Accessory Dwelling Unit Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____ ("**Effective Date**") by and between the City of Benicia, a municipal corporation ("**City**") and WCHB Development, LLC. (the "**Owner**"). City and Owner are hereinafter collectively referred to as the "**Parties**."

Recitals

A. Owner is the owner of certain real property that contains an accessory dwelling unit, which is located in the City of Benicia, County of Solano, State of California and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "**Property**"). The Property is located within a residential development project area (the "**Project**") that was subject to the City's Inclusionary Housing Ordinance prescribed within Benicia Municipal Code ("BMC") Section 17.70.320, which requires an agreement to provide an affordable housing component into the project.

B. The developer of the Project chose to satisfy its Inclusionary Housing obligations through, among other things, the construction of _____ accessory dwelling units on some of the residential lots in the Project, including on the Property, and requiring the purchasers to enter into regulatory agreements restricting the rent charges for the accessory units to affordable rents.

C. The Parties have agreed to enter into and record this Agreement in order to satisfy the requirements described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Property's Restricted Unit (defined below) for the benefit of the occupants. The covenants in this Agreement are intended to run with the land and be binding on Owner and its successors and assigns for the full term of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Parties hereby agree as follows:

Section 1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"Applicable Income Level" means the annual gross income level specified at Area Median Income.

"Area Median Income" or "AMI" means the area median income for Solano County, California, adjusted for household size, published periodically by the California Department of Housing and Community Development ("**HCD**") in Section 6932 of Title 25 of the California Code of Regulations ("**Regulations**") or successor provision published.

"Eligible Household" means a household whose gross income does not exceed the Applicable Income Level and that is otherwise eligible to rent a Restricted Unit.

"Qualifying Rent" means a monthly rent which does not exceed one-twelfth of thirty percent (30%) of the Applicable Income Level adjusted for household size, less a utility allowance, if any, specified by any specified Housing Authority.

"Restricted Unit" means the accessory dwelling unit on the Property that is depicted in Exhibit B and that is reserved for occupancy at a Qualifying Rent in accordance with and as set forth in Section 2. The Restricted Unit is attached and is accessory to the primary residence on site and has complete independent and permanent living facilities for one or more persons. The Restricted Unit is to be utilized for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary dwelling. The Restricted Unit shall contain an efficient kitchen, as defined by the California Building Code, and separate sanitation facilities from the primary residence.

Section 2. Use and Affordability Restrictions. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and

Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Affordability Requirements. The Restricted Unit, if it is rented, shall be rented at not more than Qualifying Rent and occupied by Eligible Households. Owner shall ensure that language is contained in all leases and contracts with tenants of the Restricted Unit executed by Owner that prohibits subleasing of the Restricted Unit.

2.2 Rents for Restricted Units. Rent charged to, and paid by, a tenant for Restricted Units shall be not more than the Qualifying Rent. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of the Restricted Unit because, after admission, such tenant's adjusted income increases to exceed the qualifying limit for such Restricted Unit. Nothing herein is intended to restrict the rent charged for the Property should the Property owner elect to lease the Property, and not just the Restricted Unit.

2.3 Non-Discrimination; Compliance with Fair Housing Laws. Owner shall not discriminate against persons or groups of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry or national origin in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. Owner shall each ensure that language prohibiting such discrimination shall be included in all deeds, leases and contracts executed by Owner or its successors and assigns with respect to the Property. Owner shall comply with state and federal fair housing laws in the marketing and rental of the accessory dwelling units in the Property.

Section 3. Term of Agreement.

3.1 Term of Restrictions. This Agreement shall remain in effect in perpetuity.

3.2 Effectiveness Succeeds Conveyance of Property. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Property, unless this Agreement is terminated earlier by City in a recorded writing.

3.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

Section 4. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the

land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property or any part thereof or interest therein. Each reference in this Agreement to a specifically named party shall be deemed to mean a reference to the successor of each such Party. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property (other than the tenants of the accessory dwelling units within the Property) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property in favor of City.

Section 5. Property Management; Repair and Maintenance; Marketing.

5.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Restricted Unit, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, and collection of rents and deposits. Except as City may otherwise agree in writing, City shall have no responsibility for management or maintenance of the Property. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties.

Section 6. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Contra Costa County. Owner hereby represents, warrants and covenants that with the exception of easements and restrictions of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Property in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section, and to provide such evidence thereof as City may reasonably request.

Section 7. Default and Remedies.

7.1 Events of Default. Owner's failure to cure any default in performance of Owner's obligations under this Agreement within thirty (30) days following City's delivery of a notice of default shall constitute an Event of Default hereunder and shall entitle the City to proceed with any of the remedies described below. Notwithstanding the foregoing, if the default is such that it is not reasonably capable of being cured within thirty (30) days, an Event of Default shall not arise hereunder if Owner commences to cure the default within 30 days and thereafter prosecutes the curing of such default to completion with due diligence and in good faith, but in no event later than ninety (90) days after receipt of City's notice of default or such longer period as City may agree to in writing.

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

7.2 Remedies Cumulative. Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

Section 8. Indemnification. Owner shall defend (with counsel approved by City), indemnify and hold the City and its officials, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) arising from or in connection with or in any way related to: (i) Owner's performance or failure to perform any obligation required by this Agreement; or (ii) any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers related to the Property, except to the extent arising from the gross negligence or willful misconduct of such Indemnified Party. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 9. Miscellaneous.

9.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

9.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this

Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

9.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;
- (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City:

City of Benicia
250 East L Street
Benicia, CA 94510
Attention: City Manager

Owner:

At the address of the property

9.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

9.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

9.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council.

9.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

9.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

9.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

9.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

9.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

9.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

9.13 Entire Agreement; Exhibits. This Agreement contains the entire agreement of Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

9.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

OWNER

WCHB Development, LLC.

CITY OF BENICIA

By: _____
City Manager

Attest: _____
City Clerk

Approved as to form:

City Attorney

SIGNATURES MUST BE NOTARIZED

Exhibit A

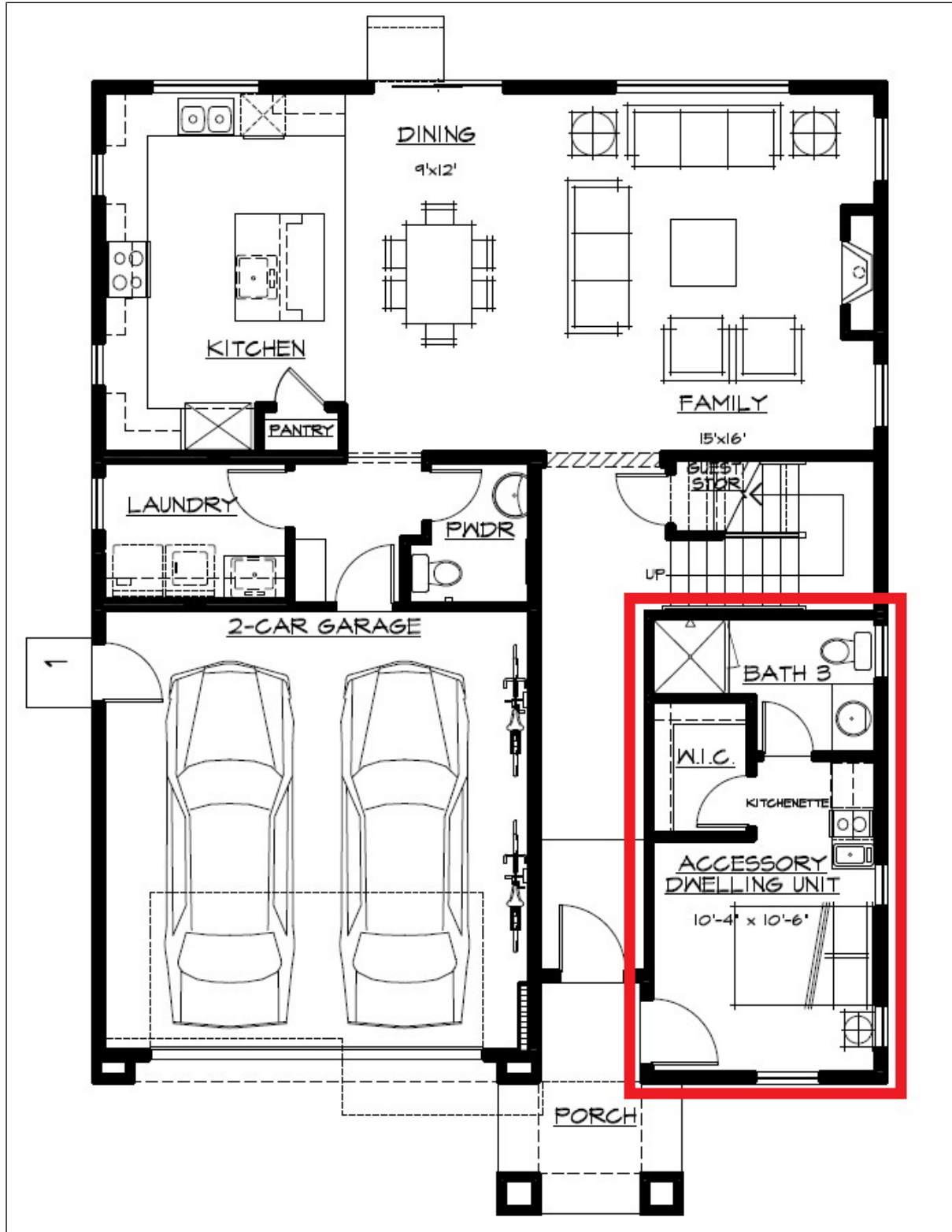
PROPERTY DESCRIPTION

(Attach legal description)

Exhibit B

DIAGRAM SHOWING LOCATION OF ACCESSORY DWELLING UNITS

SAMPLE



STATE OF CALIFORNIA)
)
COUNTY OF SOLANO)

On _____, 20__ before me, _____ ,
Notary Public, the undersigned, personally appeared

() personally known to me
() proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____