

RECORDING REQUESTED BY:
CITY OF VISTA

AFTER RECORDING, PLEASE
MAIL THIS INSTRUMENT TO:

**CITY OF VISTA
200 CIVIC CENTER DRIVE
VISTA, CA 92084
ATTN: CITY CLERK**

APN: 171-220-21-00

DTT: \$0.00; R&TC § 11922, Conveyance to Government Agency; Signed: _____

**COVENANT AGREEMENT RESTRICTING OCCUPANCY
AND RENTS FOR AN ACCESSORY DWELLING UNIT**

This Covenant Agreement Restricting Occupancy and Rents for an Accessory Dwelling Unit (“Agreement”) is made and entered in to as of _____ (“Reference Date”), by and between the **City of Vista**, a chartered municipal corporation (“City”), and _____, _____ the owner of that certain real property (“Property”) located at _____, Vista, CA (“Owner”).

RECITALS

- A. Owner owns the Property which is currently developed with, or will be developed with, a single family residence. Owner wishes to develop on the Property an accessory dwelling unit (“ADU”) as that term is defined in Chapter 18.31 of the Vista Development Code (“ADU Code”).
- B. Ordinarily certain fees, known as development impact fees are charged to an Owner as a condition to the development of an ADU, exclusive of fees described in VMC § 18.31.090 (“Impact Fees”). Under the ADU Code, the Owner may be excused of paying Impact Fees if the Owner, for a period of ten (10) years agrees to limit occupancy of the ADU and to limit the rents charged for the ADU as provided in this Agreement.
- C. Owner has reviewed the terms of this Agreement and wishes to execute and comply with this Agreement in order to obtain authorization to development an ADU on Owner’s Property without being required to pay the Impact Fees.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the parties hereto agree as follows:

1. AMOUNT OF WAIVED IMPACT FEES. The amount of Impact Fees be waived pursuant to this Agreement, in total, equal \$_____ (“Waived Impact Fees”).

2. EXECUTION AND RECORDATION OF AGREEMENT. Before the City agrees to issue building permits for the ADU without requiring Owner to pay Impact Fees, the Owner must execute and notarize this Agreement. Following Owner’s execution and notarization of this Agreement, the City will promptly countersign and record the Agreement against the Property legally described in Exhibit A.

3. TERM OF AGREEMENT. The Agreement shall have a term of ten years commencing on the date the City issues a certificate of occupancy for the ADU (“Commencement Date”) and ending on the tenth anniversary of the Commencement Date, unless the Parties hereto mutually terminate the Agreement earlier as provided in Section 8 (“Term”).

4. ADU OCCUPANCY LIMITED TO CAREGIVER AND LOWER-INCOME HOUSEHOLDS

(A) During the Term of the Agreement, the ADU may only be rented to a “Caregiver Household” or a “Lower-Income Household,” as defined in paragraphs B and C (collectively, an “Eligible Household”).

(B) A “Caregiver Household” is a family member or caregiver providing regular care to an owner or occupant of the primary unit in need of that care, and members of that caregiver’s household.

(C) A “Lower-Income Household” is a household which: (i) immediately before occupancy of the ADU has gross annual income not exceeding eighty percent (80%) of the San Diego County median, adjusted by household size; and (ii) annually thereafter has a gross annual income not exceeding one hundred percent (100%) of the San Diego County median, adjusted by household size.

(D) For reference and use by the Owner, the City will annually post to its website and provide to the Owner a chart presenting the amount of gross annual income that, respectively, represents eighty (80%) and one hundred percent (100%) of the San Diego County median, adjusted by household size (“Income and Rent Qualification Sheet”). An Income and Rent Qualification Sheet, in effect on the Reference Date, is attached hereto as Exhibit B for informative purposes. The Parties acknowledge that the data and figures presented in the attached Income and Rent Qualification Sheet are dependent on the County median incomes which will change from year to year. As a result, the Owner understands that income qualification of prospective Lower-Income Households and the rents that may be charged to those households will vary from the figures contained in Exhibit B, which is valid only for the one-year period identified set forth in that Exhibit.

5. CERTIFICATION THAT OCCUPANT OF ADU QUALIFIES AS A CAREGIVER OR LOWER-INCOME HOUSEHOLD

(A) Owner shall permit the ADU to be occupied only an Eligible Household certified pursuant to this Section (“Occupancy Certification”), and who has executed a Lease Addendum in the form of Exhibit C. The Owner shall not permit a household to occupy the ADU in violation of the terms of the Lease Addendum.

(B) Using forms provided by the City (“Occupancy Certification Forms”), the Owner shall undertake an Occupancy Certification. The Occupancy Certification shall be performed by the Owner on the date a household commences occupancy of the ADU and on each anniversary of that date (“Certification Dates”).

(C) The Occupancy Certification Forms shall require information and documentation from the Owner and an intended occupant of the ADU needed or useful in verifying that an intended or existing occupant qualifies as an Eligible Household. The Owner and the head of the household must sign the Form under the penalty of perjury confirming that all information provided, and all documentation attached to the Form, is true, complete and accurate to the signer's best knowledge. For informative purposes, the Occupancy Certification Forms shall include, as an attachment, a copy of the then-current Income and Rent Qualification Sheet.

(D) Once the Occupancy Certification Forms are completed, Owner shall determine if the household qualifies as an Eligible Household, which assessment shall include a comparison of the gross income reported for the household against the City's Income and Rent Qualification Sheet for any household seeking to qualify as a Lower-Income Household. If the Owner cannot certify that the household qualifies as an Eligible Household, the Owner will: (1) not execute an initial rental agreement; (2) will not renew an existing lease for the ADU; and (3) if the household is currently occupying the ADU under a lease, terminate the lease in a lawful manner based on the terms of Lease Addendum. Notwithstanding the foregoing, an Owner may permit an existing Tenant to occupy an ADU for up to a maximum of ninety (90) days after the Landlord determines that the Tenant has ceased to be an Eligible Household.

6. DELIVERY OF OCCUPANCY CERTIFICATION FORMS AND LEASE MATERIALS TO CITY; ADDITIONAL REPORTS

(A) Within ten calendar days of the date a new household commences occupancy of an ADU, the Owner shall provide the City the following: (1) the fully-executed Lease with a fully-executed Lease Addendum; and (2) the complete Occupancy Certification Forms executed by the Owner and household, along with any certification documentation provided in conjunction with those Forms.

(B) Within ten calendar days of a Certification Date following an initial occupancy, the Owner shall provide the City with the following: (1) if a new lease for the ADU has been executed, a copy of that newly-executed lease along with a newly-executed Lease Addendum; and (2) the complete Occupancy Certification Forms executed by the Owner and household, along with any certification documentation provided in conjunction with those Forms.

(C) In order to protect privacy rights, the City shall keep the Occupancy Certification Forms in confidence to the fullest extent permitted by law.

7. MAXIMUM RENTS CHARGEABLE TO LOWER-INCOME HOUSEHOLDS

(A) Monthly rents for an ADU may not exceed an affordable rent as set annual by the United States Department of Housing and Urban Development, adjusted for household size appropriate for the unit.

(B) For informational purposes, the Income and Rent Qualification Sheet attached hereto as Exhibit B presents affordable rents (and reasonable utility allowances) for lower-income households which are in effect as of the Reference Date, adjusted by household size. The Parties acknowledge that the data and figures presented in the attached Income and Rent Qualification Sheet are dependent on the County median incomes which will change from year to year.

8. EARLY TERMINATION OF THIS AGREEMENT

(A) Owner may terminate this Agreement at any time by providing a signed termination notice to the City and a termination fee in an amount representing: (1) ten percent (10%) of the Waived Impact Fees; and (2) an additional ten percent (10%) of the Waived Impact Fees for each full or incomplete year left in the Term ("Termination Fee").

(B) The following example illustrates the operation of the preceding paragraph where the Waived Impact Fees total \$15,000, and Owner terminates the Agreement with two and one-half years left in the original ten-year Term (three complete or incomplete years). In that event the Termination Fee would be \$6,000 consisting of: (1) \$1,500 representing 10% of the Waived Impact Fees; and (2) \$4,500 representing: (i) 10% of the Waived Impact Fees; multiplied by three full or incomplete years left on the original ten-year Term.

9. VIOLATIONS AND REMEDIES

(A) The Parties agree that each remedy allowed by this Agreement and the Vista Municipal Code is a cumulative remedy and is not exclusive of any other remedy available pursuant to this Agreement, the Vista Municipal Code or other legal authority.

(B) Owner agrees that: (1) a violation of this Agreement constitutes both a permit violation and a Municipal Code violation for purposes of Chapter 1.13 of the Vista Municipal Code; and (2) any violation of this Agreement may be enforced through the issuance of administrative citations in accordance with Chapter 1.13.

(C) For purposes of this paragraph an "Event of Default" occurs if the City notifies the Owner of a violation of this Agreement and the Owner does not fully cure the violation within ten (10) calendar days following the date of the notice, or if such a cure cannot be accomplished with diligent action within ten (10) days, within no more than sixty (60) days. If an Event of Default occurs, the City may provide written notice to the Owner that the City is terminating the Agreement and requiring the Owner to pay the City the full termination fee provided in Section 8, with a penalty of ten percent (10%) of the Waived Impact Fees ("Termination Fee and Penalty"). Until the Termination Fee and Penalty are fully paid, no residential use or nighttime use of the ADU may occur. (Nighttime use means any use of the ADU, of any sort between one hour after sunset until sunrise, except as expressly authorized by the City in writing.) Each day on which a residential use or nighttime use of the ADU is made, prior to payment of the Termination Fee and Penalty shall constitute both a permit violation and a code violation for purposes of Chapter 1.13 of the Vista Municipal Code.

10. ADDITIONAL TERMS

(A) The Owner shall not permit the Eligible Household to sublet the ADU.

(B) The Owner shall not permit a household to occupy the ADU which would produce an overcrowded condition as determined by the Building Code.

(C) The Owner shall assure that any occupancy of the ADU occurs in a manner that satisfies all applicable laws.

(D) Any notices pursuant to this Agreement shall be in writing and sent (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, (iii) by United States post first class mail, postage prepaid; or (iv) by certified or registered mail, postage prepaid, return receipt requested, to the following addresses:

COVENANT AGREEMENT RESTRICTING OCCUPANCY AND RENTS FOR ACCESSORY DWELLING UNIT

APN: _____

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To City: CITY OF VISTA
200 Civic Center Drive
Vista, California 92084
Attention: Housing Division Manager

To Owner:

(E) City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to the covenants and restrictions contained in this Agreement whether such covenants or restrictions are set forth in such contract, deed, or other instrument.

(F) No waiver or failure to object to any breach or violation of the terms and conditions hereof by either Party shall be deemed a waiver of such or any future breach or violation.

(G) The following Exhibits are attached and incorporated herein by this reference:

- | | |
|-----------|-------------------------------------|
| Exhibit A | Legal Description of Property |
| Exhibit B | Income and Rent Qualification Sheet |
| Exhibit C | Lease Addendum |

“CITY”

“OWNER”

CITY OF VISTA, a chartered municipal corporation

_____ **NAME** _____, _____

By: _____
PATRICK JOHNSON, CITY MANAGER

By: _____
_____, _____

BY: _____
_____, _____

NOTE: A CALIFORNIA ALL PURPOSE NOTARY ACKNOWLEDGMENT MUST BE ATTACHED FOR ALL SIGNATURES ABOVE

COVENANT AGREEMENT RESTRICTING OCCUPANCY AND RENTS FOR ACCESSORY DWELLING UNIT

APN: _____

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ATTEST:

KATHY VALDEZ, CITY CLERK

By: _____

APPROVED AS TO FORM:

DAROLD PIEPER, CITY ATTORNEY

By: _____

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

APN:
ADDRESS:

Insert legal description here.

EXHIBIT B
INCOME AND RENT QUALIFICATION SHEET
(in effect on Reference Date)



OCCUPANCY CERTIFICATION FORMS

ACCESSORY DWELLING UNIT (ADU)

This form will need to be completed on an annual basis for ten years from the date of occupancy. Income and rent restrictions are revised annually. For additional information regarding the affordability criteria, please contact the Housing Division at 760.639.6191.

Please check the appropriate boxes:

Tenant Type:

- Caregiver
- Low Income

Certification Type:

- Initial Certification
- Annual Recertification

ADU Address: _____ Number of Bedrooms in ADU: _____

Owner Name(s): _____

Owner Email Address: _____ Property Owner Phone # _____

ADU Tenant Household Composition:

Tenant Name(s): _____

Household Size: _____ (number of people) Annual Income of Household: \$ _____

Income Verification Method Used (must select two forms of verification):

- Two paycheck stubs from most recent pay periods
- Income Tax Return from the most recent year
- Employer income verification certification
- Income verification certification from the Social Security Administration and/or California Dept. of Social Services, if tenant(s) receives this assistance

Caregiver Verification:

Per City Ordinance 2019-11, a "Caregiver Household" is defined as a family member or caregiver providing regular care to an owner or occupant of the primary unit in need of that care, and members of that caregiver's household.

To qualify as a Caregiver Household, the ADU Owner must, in addition to this form, complete the attached Live-In Aide Request form annually.



2019

**MAXIMUM ALLOWABLE RENTS BY UNIT
HOUSEHOLD AND INCOME LEVEL**

**PER VISTA MUNICIPAL CODE 18.31.030 REQUIREMENTS FOR AN
ACCESSORY DWELLING UNIT**

BASED ON HUD INCOME LIMITS EFFECTIVE APRIL 24, 2019

STEP 1 Determine household size	1 PERSON STUDIO	2 PERSON 1-BEDROOM	3 PERSON 2-BEDROOM
STEP 2 Determine Maximum Allowable Household Gross Annual Income per HUD Annual Income Standards	\$ 59,950	\$ 68,500	\$ 77,050
STEP 3 Divide Step 2 by 12 Maximum Allowable Monthly Income	\$ 4,996	\$ 5,708	\$6,421
STEP 4 Multiply Step 3 by 30% Maximum Allowable Monthly Rent	\$1,499	\$ 1,712	\$1,926

ADU tenant Annual Income: \$ _____ ADU tenant Monthly Rent: \$ _____

ADU Household Size: _____ Number of Bedrooms in ADU: _____

I/We certify that the ADU tenant qualifies as low-income and/or is a caregiver as defined in the Covenant Agreement. I further certify that the ADU tenants rent does not exceed the maximum allowable rent.

Certified By: _____ Date: _____

Live-In Aide Request for Verification
(California Tax Credit Properties)

Date: _____

Household Member's Name: _____

To: _____

From: _____

The household member named above has applied for or is currently residing in a unit that is part of the Low Income Housing Tax Credit program under IRS Section 42. The household member has indicated that he/she is disabled and requires a live-in aide in order to have equal access to housing the same as if he or she was not disabled. The LIHTC program has specific verification requirements for all households indicating a need for a live-in aide, including, but not limited to: (1) the aide is there for the sole purpose of providing supportive services essential to the member's care and well being; and (2) the aide would not otherwise be occupying the unit except to provide the necessary supportive services.

The household member named above has indicated that you are a third-party professional competent to verify the disability and the need for the requested accommodation. We ask that you provide the following general information to determine if a live-in care attendant is required to provide necessary supportive services in order for the member to use and enjoy the dwelling.

Please Note: The information provided should respond to the general questions and not disclose any confidential information regarding the nature of the disability of the household member.

I hereby authorize the release of the information on this verification form:

Household Member's Signature

Date

Information Requested:

1. Is the household member disabled as defined below? Yes No
2. In your professional opinion, and with knowledge of the member's disability, does the member require the services of a live-in care attendant in order to use and enjoy the dwelling? Yes No
3. Is the household member's disability permanent and/or without the potential for improvement such that the household member would continue to need the services of a live-in care attendant? Yes No
(CTCAC will require that any "No" response be verified annually)
4. Does the member require more than one aide to occupy the unit? Yes No

Number of Aides needed: _____

Under applicable law, an individual is disabled if he/she has, is regarded as having or perceived as having a physical or mental impairment that limits a major life activity such as caring for one's self, performing manual tasks, participating in social activities, walking, seeing, hearing, speaking, breathing, learning and working, and includes, but is not limited to, conditions such as cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, Human Immunodeficiency Virus Infection, mental retardation, and emotional illness. This definition does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

Printed name of Person supplying information: _____

Title of Person supplying information: _____

Firm/Organization: _____

Phone Number: _____

Fax: _____

Signature of Person supplying information: _____ **Date:** _____

By signing above, I certify, under penalty of perjury, that the information presented in this Verification is true and accurate to the best of my knowledge and belief. I further understand that providing false representations herein constitutes an act of fraud.

Please attach a business card or stamp here:

EXHIBIT C
FORM OF LEASE ADDENDUM

ADDENDUM TO LEASE

Lease Date: _____ (Lease Date)

Accessory Dwelling Unit Address _____ (ADU)

Owner's Name: _____ (Landlord)

Tenant's Name: _____ (Tenant)

Termination Date for Special Occupancy Limitations: _____ (End Date)*

* Also see Section 6 below.

Landlord and Tenant (Parties) acknowledge that the City provided Landlord with financial assistance for construction of the ADU. In exchange, Landlord agreed through the End Date to rent the ADU on terms satisfying a City program limiting who may rent the ADU and the rents charged for the ADU ("City Program"). The Lease Addendum amends the Lease for the ADU and implements the City program, as indicated below.

- 1. **TENANT MUST BE A CAREGIVER OR LOWER-INCOME HOUSEHOLD** To rent the ADU, the Tenant must be a Caregiver. As of executing the Lease and this Addendum, the Tenant satisfies the category initialed below:

Caregiver: The Tenant is a caregiver providing regular care to an owner or occupant of the primary unit in need of that care. Initial if applicable:

Initials of Tenant Initials if Landlord

Lower Income Household: The Tenant's household: (i) has gross annual income not exceeding eighty percent (80%) of the San Diego County median, adjusted by household size; and (ii) after the first lease year, has gross annual income not exceeding one hundred percent (100%) of the San Diego County median, adjusted by household size. Initial if applicable:

Initials of Tenant Initials if Landlord

Landlord and Tenant have confirmed that Tenant is a Caregiver or a Lower-Income Household by completing Occupancy Certification Forms. The Forms will be provided to the City along with this Addendum.

- 2. **ANNUAL RE-CERTIFICATION THAT TENANT IS A CAREGIVER OR LOWER-INCOME HOUSEHOLD.** As of each anniversary (Anniversary Date) of the initial Lease for the ADU, the Landlord and Tenant shall file with the City new Occupancy Certification Forms establishing that: (a) the Tenant continues to be a Caregiver or Lower-Income Household; or (b) that the Tenant is no longer a Caregiver or Lower-Income Household.
- 3. **MANDATORY LEASE TERMINATION IF TENANT NO LONGER QUALIFIES AS A CAREGIVER OR LOWER-INCOME HOUSEHOLD.** Landlord shall terminate the Lease on a date not later than ninety

(90) days following the Anniversary Date, and Tenant is obligated to vacate the ADU by that date if: (a) that Tenant no longer qualifies as a Caregiver or Lower-Income Household based on Occupancy Certification Forms submitted to the City; or (b) the City is not provided with completed and Occupancy Certification Forms as of the Anniversary Date.

- 4. **MAXIMUM RENTS.** Monthly rents charged to Tenant for the ADU cannot exceed either: (1) the rental charges allowed by the Lease; or (2) an affordable rent as set annual by the United States Department of Housing and Urban Development, adjusted for household size appropriate for the unit.
- 5. **LEASE ADDENDUM SUPERSEDES LEASE.** If this Lease Addendum conflicts with any terms of the Lease, the terms of this Lease Addendum shall prevail.
- 6. **END DATE.** Under the terms of the City Program, the Landlord can make payments, and advance the End Date set forth above. In that event, Landlord will provide Tenant with at least sixty (60) days prior notice to Tenant, and upon occurrence of the End Date, this Addendum will terminate.

By their signatures below, Landlord and Tenant acknowledge that they have read the Lease Addendum, that they understand the Lease Addendum, and that they agree to fully comply with the Lease Addendum.

“LANDLORD”

“TENANT”

By: _____
SIGNATURE

By: _____
SIGNATURE

NAME: _____
PRINT

NAME: _____
PRINT

TITLE: _____
IF APPLICABLE