

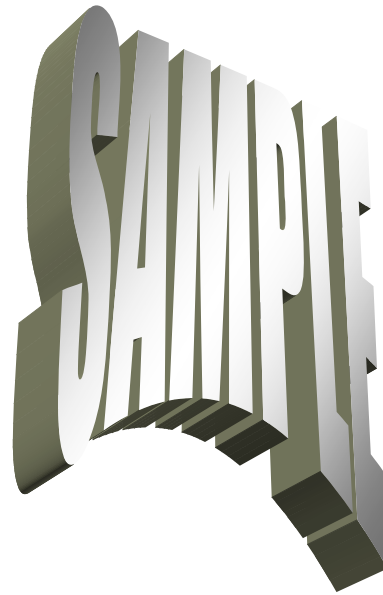
No fees per Government Code 6103

RECORDING REQUESTED BY:

Sonoma County Community }
Development Commission }

WHEN RECORDED MAIL TO:

Sonoma County Community }
Development Commission }
Attn: Executive Director }
Post Office Box 12025 }
Santa Rosa, California 95406 }



**SECOND DWELLING UNIT INCENTIVE PROGRAM
AFFORDABLE RENTAL HOUSING AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of _____, 200__, by and between the County of Sonoma (hereinafter referred to as "County") and _____, a private party (hereinafter referred to as "Owner").

WHEREAS, Owner is the owner of that _____ acres of real property commonly known as _____, in the unincorporated area of Sonoma County, and as Sonoma County Assessor's Parcel Number _____ (hereinafter referred to as "the Property") and is more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference; and

WHEREAS, the General Plan and County Code permit Owner to build a Second Dwelling Unit on the Property, subject to certain development standards; and

WHEREAS, the County General Plan and County Code provide certain incentives for allocation/designation of Second Dwelling Units to affordable housing; and

WHEREAS, the Sonoma County Community Development Commission (hereinafter referred to as "Commission") shall administer this Affordable Rental Housing Agreement (hereinafter referred to as "Agreement") on behalf of County and shall act for the County as provided herein; and

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WHEREAS, on _____, Owner submitted an application and related documentation to the County to build on the Property a Second Dwelling Unit; and

WHEREAS, on _____, in compliance with Sections 26-88-060 and 26C-325.1 of the County Code, the County ministerially approved the Owner's zoning permit application to build a Second Dwelling Unit on the Property; and

WHEREAS, the Owner has requested the following incentives set forth in Sections 26-88-060 and 26C-325.1 of the County Code for Second Dwelling Units (Indicate the provided incentives requiring this Agreement):

- the Property is located in a designated Class 1 or 2 Groundwater Availability Area and includes less than 2.0 acres but at least 1.5 acres; and
- the Property includes a gross lot area of at least 5,000 square feet and is served by public sewer and water
- the approved Second Dwelling Unit will include more than eight hundred forty (840) square feet of floor area but not more than one thousand (1,000) square feet of floor area
- the garage for the Second Dwelling Unit will include more than 400 square feet but not more than 500 square feet; and

WHEREAS, per Sections 26-88-060 and 26C-325.1 of the County Code, the granting of the specified incentives for Second Dwelling Units require the County and the Owner to execute this Agreement prescribing the rent and income limits with which the Owner shall comply in the renting and leasing of the Second Dwelling Unit on the Property during the term of this Agreement; and

WHEREAS, per Sections 26-88-060 and 26C-325.1 of the County Code, as consideration for the County's approval of the incentives described herein for Second Dwelling Units, the Owner has agreed to rent or lease the Second Dwelling Unit on the Property to low-income tenants during the term of this Agreement; and

WHEREAS, this Agreement satisfies the requirements found at Sections 26-88-060 and 26-89-100 of the County Code for an affordable housing agreement for a rental property; and

WHEREAS, in compliance with Sections 26-88-060 and 26C-325.1 of the County Code, the Commission shall record this Agreement on the Property, and the Agreement shall run with the land for a period of _____ years.

NOW, THEREFORE, in consideration of the foregoing and of the

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mutual terms and covenants hereinafter set forth, the parties hereto agree as follows:

1. *Satisfaction of County Code Requirements.* County hereby agrees that execution, recordation, performance of and compliance with this Agreement shall constitute satisfaction of the requirement for an Affordable Housing Agreement as set forth in Sections 26-88-060 and 26C-325.1 of the County Code related to Second Dwelling Units and shall be sufficient in that respect to permit the issuance of building permits for the construction of a Second Dwelling Unit on the Property, subject to satisfaction of all other applicable conditions and compliance with all provisions of the law. Owner acknowledges and agrees that, during the 30-year term of this Agreement, Owner shall comply with the provisions of this Agreement and of the County Code in the renting and leasing of the Second Dwelling Unit on the Property.

2. *Rental of Housing Units.* Pursuant to and in consideration of Sections 26-88-060 and 26C-325.1 of the County Code, Owner hereby agrees that it shall actively market the Second Dwelling Unit on the Property when the Second Dwelling Unit is or is about to become vacant, in accordance with Section 26-89-100 of the County Code, and shall rent the Second Dwelling Unit to a tenant that is a low-income household, as defined at Section 1.6 of the Housing Element of the Sonoma County General Plan, as it may hereafter be amended. For purposes of implementing and enforcing this Agreement, the term, “tenant”, shall mean each household that occupies the Second Dwelling Unit, regardless of each household’s relationship to the Owner, including those households that pay the Owner no rent to occupy the Second Dwelling Unit. Each tenant shall meet the income requirements of this Section.

Owner shall comply with the following tenant selection requirements prior to allowing a tenant to occupy the Second Dwelling Unit for the first time and at each subsequent change in occupancy:

- A. Owner of record, Owner’s spouse or domestic partner, Owner’s minor children, and Owner’s children who are full-time students and are listed on Owner’s Federal Income Tax Return as dependents, shall not occupy the Second Dwelling Unit during the term of this Agreement.
- B. Owner shall select tenants and manage the Second Dwelling Unit in accordance with applicable state and local fair housing laws and regulations.
- C. Before offering the Second Dwelling Unit to a prospective tenant, Owner shall verify that the prospective tenant has an income that falls within the income limits specified by this Agreement. The Owner shall use one of the

following methods to verify the income of the prospective tenant, at the prospective tenant's option:

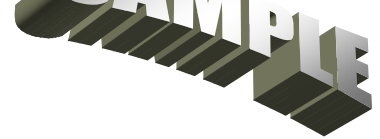
- 1) Owner shall obtain from prospective tenant's federal income tax return for the latest reporting year the "Adjusted Gross Income" figure to establish the prospective tenant's income; or
- 2) Owner shall obtain from the prospective tenant information, on a form provided by Commission, sufficient for Owner to establish the "Adjusted Gross Income" of prospective tenant.

Tenant's "Adjusted Gross Income" as determined by one of these methods shall be used as the tenant's income for purposes of determining whether the tenant's income falls within the income limits specified by this Agreement.

3. Rent Amounts. Annually, when the U.S. Department of Housing and Urban Development issues annual updates of the income limits for Sonoma County, adjusted by household size, the Commission shall provide Owner the new gross rent limits for the Second Dwelling Unit for the following calendar year. Commission shall calculate gross rent limits consistent with the definition of "affordable rental housing" found at Section 26-02-140 of the County Code, using the income limits for the imputed household size appropriate to the size of each Affordable Housing Unit. The imputed household size shall be equal to the number of bedrooms plus one. For example, Commission shall calculate gross rent for a two-bedroom unit using the appropriate income limit for a three-person household.

The monthly gross rent limit shall be equal to one-twelfth ($1/12^{\text{th}}$) of the product of 30% of 60% of the median income for the household size imputed for that unit.

The gross rents shall be subject to deduction of a utility allowance, approved and issued by Commission, and shall be consistent with the definitions of rent referenced in this paragraph 3. When the Sonoma County Housing Authority issues updated utility allowance schedules, the Commission shall provide the Owner a copy of the schedule. The utility allowance schedule includes monthly figures for utility expenses that the tenant is required to pay in addition to the rent, including the costs associated with cooking, space heating, water heating, lights, other electrical, water, sewer, garbage, and the tenant's mandatory provision of a stove and/or refrigerator. Within two weeks of receipt of the utility allowance schedule from the Commission, the Owner shall calculate and submit to the Commission for approval the utility allowance for the Second Dwelling Unit. Owner shall not charge its tenants more than the net rent resulting from the deduction from the gross rent limit of any utility allowance approved by the



Commission under this paragraph.

4. Term. This Agreement shall be effective on the date of its recordation and shall remain in force for a period of not less than thirty (30) years from the date that the County issues the Certificate of Occupancy for the Second Dwelling Unit.

5. Assurance of Continued Affordability. The County's approval of the Owner's application to build a Second Dwelling Unit on the Property utilizing the specified affordable housing incentives, as cited in the Recitals to this Agreement, constitutes a concession made by the County to the Owner as an incentive for affordable housing. In order for County to meet the requirement of Sections 26-88-060 and 26C-325.1 of the County Code that the Second Dwelling Unit identified by this Agreement shall remain affordable to low-income households for the term of this Agreement, Owner shall not rent the Second Dwelling Unit at rents exceeding those established pursuant to this Agreement. Owner shall not rent to households with incomes exceeding the income limits.

Owner shall submit to Commission, on a schedule that the Commission selects, but not more often than semi-annually (every six months), on forms that the Commission provides or approves, a compliance report reporting the name, household size, income and rent of the tenant occupying the Second Dwelling Unit and certifying that Owner has complied with the affordability and other requirements of this Agreement and the County's County Code during the period that the compliance report shall cover. Upon request of Commission, Owner shall further certify annually the income of each tenant occupying the Second Dwelling Unit and to submit to Commission the certifications on forms that the Commission provides or approves and copies of leases in effect for each tenant residing in the Second Dwelling Unit.

At Commission's request, Owner shall permit the Commission to visit the Second Dwelling Unit and make available for the Commission's review the tenant records that Owner shall maintain for each tenant.

6. Maintenance Standards. During the term of this Agreement, Owner shall maintain the Second Dwelling Unit subject to this Agreement in a condition that satisfies the more stringent of (a) the requirements of the applicable local building codes or (b) the United States Department of Housing and Urban Development's Housing Quality Standards (HQS). The Commission shall have the right to inspect the Second Dwelling Unit subject to this Agreement and the Property prior to initial occupancy and periodically during the term of this

Agreement, upon three business days' notice to Owner. The Commission shall have the right to disclose the results of those inspections to the appropriate enforcement authority. Failure to maintain the Second Dwelling Unit in compliance with this section shall constitute a breach of this Agreement and subject the Owner to damages as set forth in Section 16 of this Agreement.

7. Reconciliation of Program Requirements. In the event of differences between provisions of the County's County Code and other local or State regulations or laws, the most restrictive requirement shall prevail

8. Interpretation and Construction. To the extent that this Agreement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that meets the public policy goals of the Housing Element of the Sonoma County General Plan, the County Code, and other County programs relevant to the County's Second Dwelling Unit program. If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement and the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby. Nothing contained herein shall be deemed compliance with or waiver of any provision of law or conditions of approval except as expressly stated herein.

9. Agreement Binding on Successors. The terms, covenants and conditions of this Agreement shall apply to, and shall bind the parties hereto and any successors or assignees during the 30-year term of this Agreement. Owner's obligations under this Agreement are to be considered as covenants and/or equitable servitudes, as those terms are used in Revenue & Taxation Code Section 3712(d), running with and appurtenant to the Property and for the benefit of County and Commission. Any sale or conveyance of the Property shall be made subject to this Agreement.

10. Waiver. The waiver by any party of any breach or violation of any term, covenant or condition of this Agreement or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law.

11. Costs and Attorneys' Fees. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and witness, expert and attorneys' fees expended in connection with such an action from the other party.

12. Recordation. Owner shall execute this Agreement, cause the same to be acknowledged and deliver said executed and acknowledged document to Commission in such form as to permit its recordation in the Office of the County Recorder of the County of Sonoma. County shall not issue permits for construction of the unit prior to delivery and recordation of this Agreement.

13. Subordination. This Agreement may record subordinate to the financing that was secured against the Property prior to the Owner's submission of the application to construct the Second Dwelling Unit on the Property, to the construction and permanent financing that the Owner may obtain to finance the development of the Second Dwelling Unit and the appurtenant primary residence, and to acquisition financing that a subsequent Owner may obtain to finance purchase of the property. Subject to the review and approval of the Executive Director of the Commission, Commission may subordinate Sections 16 and 17 of this Agreement to any future loan secured by the Property, and may subordinate the entirety of this Agreement to any refinancing of an existing, construction, permanent, or acquisition loan if the loan amount of such refinancing does not exceed the then outstanding balance (plus refinancing and closing costs) of the existing senior loans except when additional funds included in an increased loan will be used to finance construction of repairs or improvements to the Property.

14. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856.

15. Ownership of the Property. Owner represents and warrants that it is the owner of the Property and has full authority to execute this Agreement.

16. Monitoring Expenses. In order to allow Commission its administrative expenses associated with this Agreement, Owner shall pay annually to Commission \$75.00 for the Second Dwelling Unit on the Property, or such other fee as the Commission may establish, from time to time, consistent with increases in the cost of living and administration of the Second Dwelling Unit program. The Owner shall pay the fee to Commission in advance before June 1st of each year of the thirty- (30) year term described in paragraph 1 of this Agreement.

17. Additional Damages. In addition to any other remedy available to the County and Commission by law, the Owner shall be liable for damages in the

event of the following circumstances:

- A) In the event that the Owner charges rent for the Second Dwelling Unit in excess of that allowed by this Agreement, it shall be liable to Commission for damages in the amount of the rent charged or collected, whichever is greater, in excess of the maximums allowed herein and interest compounded at the maximum rate allowable for judgments.
- B) In the event that the Owner rents or leases the Second Dwelling Unit to a tenant after completion of an income verification that determines the tenant to be ineligible to rent or lease the unit, Owner shall be liable to Commission for damages equal to the amount of the maximum monthly rent that Owner could charge an income-eligible tenant to rent or lease the unit until the earlier of the following events occurs: the ineligible tenant vacates the unit or the tenant's income falls within the income limit for the tenant's household size.
- C) In the event that the Owner fails to complete an income verification for a tenant before renting or leasing the Second Dwelling Unit to the tenant, Owner shall be liable to Commission for damages equal to the amount of the maximum monthly rent that Owner could charge an income-eligible tenant to rent or lease the unit until the earlier of the following events occurs: the tenant vacates the unit or the Owner submits an acceptable income verification confirming the income eligibility of the tenant to rent or lease the unit.

For any other breach of this Agreement, Owner shall be liable to Commission in the amount of \$100.00 per day until the breach is cured.

18. Risk of Market Conditions. Owner shall bear sole responsibility for developing, constructing and marketing the units covered by this Agreement, pursuant to the approvals that the County has issued for the Second Dwelling Unit on the Property and the requirements contained in this Agreement. The County and Commission shall have no obligation to amend this Agreement, and the Owner shall reimburse the County and Commission for all administrative costs associated with any modification of this Agreement, which shall require the approval the Board of Supervisors of Sonoma County.

SAMPLE

COUNTY OF SONOMA

Dated: _____

By: _____

Kathleen H. Kane
Executive Director
Sonoma County Community
Development Commission

OWNER:

Dated: _____

By: _____

Dated: _____

By: _____

Approved as to form by
County Counsel:

STEVEN S. SHUPE
Deputy County Counsel