

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

City of San José Permit Center
Attn: Supervising Planner
200 East Santa Clara Street, 1st Floor
San José, CA 95113

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PLEASE FILL OUT THE DOCUMENT IN INK, WET SIGNATURES ARE REQUIRED

**OCCUPANCY, LAND USE, AND DEVELOPMENT RESTRICTION
AGREEMENT FOR JUNIOR ACCESSORY DWELLING UNIT**

This OCCUPANCY, LAND USE, AND DEVELOPMENT RESTRICTION AGREEMENT FOR JUNIOR ACCESSORY DWELLING UNIT (the "Agreement") is entered as by and between the City of San José, a chartered municipal corporation (the "City") and _____ ("Property Owner").

RECITALS

WHEREAS, Property Owner is the present owner of that certain real property located at _____ in the City of San José, County of Santa Clara, State of California, which is more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, Section 20.80.178 of Chapter 20.80 of Title 20 (Zoning) of the San José Municipal Code sets forth certain conditions on the establishment, occupancy and use of junior accessory dwelling units authorized by California Government Code Section 65852.22, and requires the recordation of a deed restriction with respect to said conditions prior to issuance of a building permit; and

WHEREAS, the Property Owner submitted an application for approval to convert a portion of the single-family residence (also referred to herein as the "Primary Dwelling Unit") on the Property to a Junior Accessory Dwelling Unit, subject to the terms and conditions of Section 20.80.178 of Title 20 (Zoning) of the San José Municipal Code (the "Approval"); and

WHEREAS, this Agreement is the deed restriction recorded to satisfy the requirements of Section 20.80.178 of the Zoning Ordinance of the City of San José.

NOW, THEREFORE, in consideration of the benefits received by the Property Owner and the public purposes served by Section 20.80.178 of the Zoning Ordinance of the City of San José, the Property Owner and the City agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated into this Agreement by reference and made part of this Agreement.
2. Notice to Successors-in-Interest. Property Owner shall provide notice to all future buyers and successors-in-interest of all conditions which apply to the approved junior accessory dwelling unit on the Property, which has been authorized as a "Junior Accessory Dwelling Unit" pursuant to the provisions of the San José Municipal Code.
3. No Separate Sale. The Junior Accessory Dwelling Unit shall not be sold separately from the Primary Dwelling Unit on the Property.
4. Property Owner Occupancy Requirement. The Property Owner shall occupy the Property (either the Primary Dwelling Unit or the Junior Accessory Dwelling Unit) as the Property Owner's principal place of residence. The Property Owner shall be considered as occupying the Property as the Property Owner's principal place of residence if Property Owner is living in either the Primary Dwelling Unit or the Junior Accessory Dwelling Unit during each entire calendar year, maintains a valid homeowner's property tax exemption, and provides reasonable requested documentation to verify occupancy as the City may request from time to time. If the Property Owner is a legal entity or trust, the following persons shall be considered an eligible owner-occupant under this provision: (a) for a trust, the trustees and beneficiaries, (b) for a corporation, the corporate officers, (c) for a limited liability company, the members, and (d) for a partnership, the partners. This Section shall not apply if the Property Owner is a governmental agency, land trust or housing organization.
5. Conformance with San José Municipal Code. The junior accessory dwelling unit shall conform to the requirements of Section 20.80.178 of the San José Municipal Code, as of the date of the Approval, including but not limited to the maximum size established therein. Because the restrictions contained in this Agreement memorialize a land use approval pursuant to Section 20.80.178 of the San José Municipal Code, the Approval conditions shall continue to apply to the Property, even if this Agreement is terminated or removed from title following a foreclosure.
6. Cooperation Required. The Property Owner agrees to fully cooperate with the City in immediately providing all information requested by the City to assist the City in monitoring Property Owner's compliance with this Agreement.
7. Rights Appurtenant. The City and the Property Owner hereby declare their express intent that the covenants and restrictions of this Agreement shall run with the land, and shall pass to and be binding upon all parties having any interest in the Property,

including all successors, assignees, transferees, or otherwise in title to the Property. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract have actual knowledge of this Agreement.

8. Enforcement. Any violation of this deed restriction may result in the imposition of fines or other enforcement action under the San José Municipal Code or applicable law. The City may enforce the provisions hereof through any proceedings at law or in equity.
9. No Waiver. No delay or omission in the exercise of any right or remedy of City upon any default by Property Owner shall impair such right or remedy or be construed as a waiver. The City's failure to insist in any one or more instance upon the strict observance of the terms of this Agreement shall not be considered a waiver of the City's right thereafter to enforce the provisions of the Agreement. The City shall not waive its rights to enforce any provision of this Agreement unless it does so in writing, signed by an authorized agent of the City.
10. Amendments. This Agreement may be modified only by a written amendment executed by the parties.
11. City Approval. The City Manager or his or her designee is authorized on behalf of the City to deliver any approvals or consents that this Agreement requires unless City Council approval is required.
12. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara County Superior Court or if applicable, the United States District Court, Northern District of California (San José).
13. Notice. All notices required under this Agreement shall be sent by certified mail, return receipt requested, express delivery service with a delivery receipt, or personal delivery with a delivery receipt and shall be deemed to be effective as of the date received, the date delivery was refused, or the date returned as undeliverable as indicated on the return receipt as follows:

To the Property Owner:

To the City:

City of San José Permit Center
Attn: Supervising Planner
200 East Santa Clara Street, 1st Floor Tower
San José, CA 95113

14. The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.
15. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

CITY:

CITY OF SAN JOSE, a chartered
municipal corporation

By: _____

Name: _____

Title: _____

Approved as to Form (City Attorney):

[Sr.] Deputy City Attorney

PROPERTY OWNER:

Print Name

By: _____

Sign as appears on deed

Print Name

By: _____

Sign as appears on deed

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____

County of _____

On the _____ before me, _____ a Notary Public, personally appeared _____ who 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.

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: _____

Name: _____
(Typed or Printed)

(Seal)

EXHIBIT A

Legal Description of the Property