

# *Borough of Mountain Lakes*

## *New Jersey*

### Accessory Apartment Policies and Procedures Manual

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# Mountain Lakes Borough Accessory Apartment Program Guidelines

## INTRODUCTION and PROGRAM OVERVIEW

Properties in Mountain Lakes’ Residential neighborhoods are currently zoned as single household residences. Although there are few exceptions, a second household unit within a residential property typically is not permitted. However, in January 2019, Mountain Lakes reached an Affordable Housing Plan Settlement agreement with New Jersey’s Fair Share Housing Center. This agreement creates a change to the single household residency standard.

The Settlement agreement is a roadmap that the Borough is using to meet its affordable housing obligations. Included in the agreement is a requirement that, by January 1, 2025, there be five (5) Affordable Accessory Apartments in Mountain Lakes’ residential neighborhoods.

According to N.J.A.C. 5:93-1.3 of the Substantive Rules of the New Jersey Council on Affordable Housing, an “Accessory apartment” is a self-contained residential dwelling with a kitchen, sanitary facilities, sleeping quarters, and a private entrance, which is within an existing home, or from the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building. For this sort of housing unit to be considered an Affordable unit, for a 10-year period it must be subject to affordability controls in marketing, rental cost, and tenant income qualifications.

This manual provides information for property owners interested in using an existing accessory apartment to obtain rental income through a Borough approved and recognized, legally permitted, apartment while supporting the community as a participant in the Borough’s Affordable Housing Program.

## 27 **Program Overview**

28 The Accessory Apartment program will comply with the rules found in N.J.A.C. 5:93-  
29 5.9(c). Of the Borough's five (5) affordable accessory apartments, one (1) must be made  
30 available to a very-low income household and the remaining four can be designated  
31 moderate, low, or very low income at the homeowner's discretion.

32 As identified in the settlement agreement with the Fair Share Housing Center (FSHC) the  
33 Borough will prioritize the conversion of existing accessory apartments to deed restricted  
34 affordable apartments. This manual is designed to address that priority. As per the  
35 Settlement Agreement, in the event that the Borough cannot secure five deed restricted  
36 accessory apartments under the terms described above and in the settlement agreement,  
37 the Borough would then move to its second priority and pursue the creation of new  
38 accessory apartments within existing structures.

39 Furthermore, as per the provisions of the Borough of Mountain Lakes' Accessory  
40 Apartment Ordinance, no additional accessory apartments shall be permitted after  
41 issuance of a certificate of occupancy for the fifth accessory apartment. A waiting list will be  
42 maintained so that interested property owners can be contacted if new Affordable Housing  
43 regulations call for additional accessory apartments within the Borough.

44 The administrative provisions of this manual shall remain in full force and effect until the  
45 last deed restriction expires.

46 The Accessory Apartment Program Guidelines ("Guidelines") as outlined in this document  
47 supplement the Borough of Mountain Lakes' Administration of Affordable Apartments  
48 Operating Manual. These guidelines focus specifically on the unique aspects of turning  
49 existing accessory apartments within the Borough into deed restricted apartments.  
50 Accordingly, for any topics or areas of concern not covered in this specialized manual (such  
51 as, but not limited to rental increases, marketing, income eligibility and much more), the  
52 reader should refer to the Borough's main manual entitled Mountain Lakes Administrative  
53 Agent Operating Manual. Furthermore, the Borough of Mountain Lakes' municipal code  
54 (Section 245-38) provides for penalties for violations of affordable housing regulations.  
55 The Manual will be considered an affordable housing regulation and the penalties provided  
56 for in Section 245-38 will apply.

57

58 **METHOD BY WHICH AN EXISTING ACCESSORY APARTMENT CAN**  
59 **BECOME AN AFFORDABLE ACCESSORY APARTMENT**

61 All accessory apartments shall be required to conform with the provisions of the Borough of  
62 Mountain Lakes' Accessory Apartment Ordinance, attached at Exhibit I of this manual.

- 63 1. A public notice will be placed on the Borough's website in several prominent locations to  
64 explain the Program. Potentially eligible homeowners will be encouraged to enter the  
65 program.
- 66 2. Homeowners wishing to explore converting an existing apartment into an affordable  
67 accessory apartment will be contacted promptly following their expression of interest in  
68 the program.
- 69 3. Interested homeowners will be provided with an application, and the owner(s) must  
70 agree to restrict the apartment to affordable households, follow program guidelines and  
71 file a deed restriction on the property for a period of at least ten (10) years.
- 72 4. While one apartment in the Borough must be designated for a very low income  
73 household, the remaining apartments may be designated as moderate, low, or very low  
74 income apartments. Interested homeowners will have an option as to whether they want  
75 to provide a moderate, low, or very-low income apartment on a first come, first served  
76 basis. For example, if the first four landlords all choose moderate income apartments,  
77 the last landlord must choose a very-low income apartment.
- 78 5. The Borough is willing to provide a one-time subsidy of \$5,000 for the conversion. This  
79 payment is to be used to offset any and all fees, or facility improvement costs that may  
80 be involved in the process of the existing apartment becoming an affordable accessory  
81 apartment. The costs covered by this subsidy also include current and future costs  
82 associated with contracting with the town's Administrative Agent to assist in  
83 affirmatively marketing the apartment. This subsidy offered by the Borough will only be  
84 paid one time in one payment when the property is formally dedicated and accepted as  
85 affordable housing.
- 86 6. If improvements are required on an existing apartment, homeowners will follow normal  
87 permitting, construction, and approval processes for all improvements and must receive  
88 a Certificate of Occupancy from the Municipality as a condition of receiving the one-  
89 time payment.

- 90 7. The Mountain Lakes Borough Construction Official must issue a Certificate of Approval  
91 confirming that the apartment meets the requirements of the Municipal code and New  
92 Jersey rehabilitation Subcode. This document shall be kept in the program participant's  
93 file.
- 94 8. The homeowner must schedule a closing for the execution of various program  
95 agreements and municipal subsidy documents. See below for documents required as  
96 part of this closing.
- 97 9. The Borough's Administrative Agent will affirmatively market the apartment as  
98 described in the Administrative Agent Manual to which these Accessory Apartment  
99 Guidelines are appended.
- 100 10. Once the apartment is created, it will be operated in accordance with the Administrative  
101 Agent Manual. Please refer to the Borough's Affordable Housing Administrative Agent  
102 Policies and Procedures manual for more information.
- 103

## 104 **PROTECTION FOR EXISTING TENANTS IN ACCESSORY** 105 **AFFORDABLE DWELLING APARTMENTS**

106 The Borough recognizes that, in some cases, apartments which qualify for this program are  
107 presently occupied by existing tenants. Some of these tenants may have leases and others,  
108 who are month to month tenants, may still qualify for protection from eviction under New  
109 Jersey law. In any event, as a matter of policy, a program designed to expand and protect  
110 affordable housing should not result in the displacement of existing tenants. Conversely,  
111 excluding apartments which are presently occupied by tenants from the program would  
112 significantly limit the available pool of potential apartments for inclusion in the program  
113 and prevent the Borough from adding to its stock of protected affordable apartments  
114 thereby guaranteeing the future availability of affordable housing in the community.

115 Therefore, an apartment with an existing tenant may be considered for inclusion in the  
116 accessory affordable housing program subject to the following guidelines:

- 117 1. The existence of a tenant must be disclosed as part of the application for inclusion in  
118 the program. The tenant must be identified, a copy of the lease (if any) shall be  
119 provided and if there is no written lease a certification indicating the current rental

120 amount and the date when the tenant first leased the property, and the tenant shall  
121 be advised of the application.

122  
123 2. If an apartment is accepted into the program, an existing tenant shall be given the  
124 first opportunity to enter into a regulated affordable apartment lease (at the  
125 regulated rental amount) provided that the following conditions are met:

- 126  
127 A. The tenant completes the necessary applications including income verification.  
128 B. The tenant is not the parent, grandparent, child, or grandchild of the owner.  
129 C. The tenant leased the apartment at least ninety days before the application was  
130 filed.

131  
132 3. The deed restriction period for the apartment will begin immediately, provided that  
133 the income qualifications are met by the current tenant and provided that the rental  
134 amount complies with the applicable limitations.

135  
136 4. If the current tenant does not meet the income qualifications and/or the rent  
137 charged does not comply with applicable limitations, the deed restriction period will  
138 begin on the date when the first income qualified tenant that goes through the usual  
139 affirmative marketing processes, and waiting list maintained by the Borough's  
140 Administrative Agent, gets certified and then takes possession of the apartment with  
141 a lease, and at a rental amount which complies with applicable limitations. During  
142 the interim, the Landlord will be required to annually submit evidence of occupancy  
143 via annual lease renewals, and notify the Administrative Agent (AA) immediately  
144 upon notification of an impending vacancy so that the AA can begin the re-rental  
145 process, as more fully explained in the Administrative Agent Operating Manual.

## 146 **DOCUMENTS AND VERIFICATIONS REQUIRED PRIOR TO CLOSING**

147 To schedule a closing for the execution of various program agreements and municipal  
148 subsidy documents, the following documents must be prepared and approved.

149

150 **For Execution at the Closing**

151 The Administrative Agent will oversee the execution of all necessary municipal agreements  
152 and municipal finance documents related to the accessory housing program. The  
153 Administrative Agent will be responsible for creating municipal lien documents, deed  
154 covenant and recording applicable instruments subject to municipal attorney review and  
155 approval.

156

157 **Construction Code Official Approval Letter**

158 Certificate of Approval for the project indicating project viability is required from the  
159 Borough's building inspection official.

160

161 **Deed**

162 A copy of the recorded deed for the property.

163

164 **Property Tax Verification**

165 A certificate from the Borough tax collector indicating that tax payments are up to date.

166

167 **Outstanding Mortgages & Liens**

168 Disclosure and copies of all mortgages and liens.

169

170 **Resolution from the Borough Council**

171 A resolution from the Borough Council that approves the municipal subsidy will be drafted  
172 for approval by Council following a letter from the Administrative Agent stating that the  
173 applicant has met all the necessary requirements.

174

175 **APPROVAL OF APPLICANT VERIFICATION DOCUMENTS BY THE**  
176 **BOROUGH ATTORNEY**

177 After the Administrative Agent has obtained a resolution from the Borough Council  
178 approving an accessory apartment, the Administrative Agent shall forward relevant  
179 documents (deed restriction, and an Agreement between the town and the owner) to the  
180 Borough's attorney for review.

181 When the Borough attorney has approved the documents, the Administrative Agent will  
182 contact the applicant and schedule document signing.

183 **PROMISSORY NOTES AND MORTGAGES**

184 For apartments created from existing nonconforming uses, only a deed restriction and an  
185 Agreement between the Borough and the owner is required. The form and content of these  
186 documents must be satisfactory to the Borough attorney. The deed restriction document  
187 will clearly specify the ten year term of the agreement, as well as the apartment address,  
188 number of bedrooms, and the income level selected by the Landlord to be served (very low,  
189 low or moderate income households).

190 A copy of the deed restriction and Agreement shall be provided for the homeowner or their  
191 attorney for review in advance of closing. The Administrative Agent shall advise the  
192 homeowner to have his or her attorney approve the documents before they are executed.

193 At a mutually-agreed upon time, date, and place the homeowner and the Administrative  
194 Agent shall meet for the execution of the instruments. It can also be done via mail.

195 The fully executed deed covenant is to be recorded with the County Clerk by the Borough,  
196 with assistance from the Administrative Agent. All executed and recorded legal instruments  
197 shall be maintained by the Borough Clerk. The Agreement will be maintained by CGP&H in  
198 the Owner's file and CGP&H will also have a copy of the recorded deed restriction. The  
199 homeowner(s) shall be given copies of their fully executed documents. Copies of the  
200 Owner's complete file, including but not limited to the Agreement and deed covenant shall  
201 be maintained by the Administrative Agent and transferred to the Borough at the  
202 completion of the Borough's contractual relationship with the Administrative Agent.

203 **Schedule for Accessory Apartment**

204 Only currently existing apartments will be permitted to apply to become affordable  
205 accessory apartments. If initial interest is more than five apartments, a lottery will be held.  
206 Otherwise, commitments will be made to Owners on a first come first served basis. In either  
207 case, the Owner's place in line will only be held for 120 days. After which time, it could be  
208 given to another owner if the legal documents have not been executed within that time  
209 period. Unforeseen causes of delay shall be communicated by the Homeowner to the  
210 Administrative Agent immediately.

211 **File Closing**

212 The Administrative Agent will close the homeowner's file after the Deed Restriction is  
213 returned from the County with recorded date, book and page. A program letter will be sent  
214 to the Homeowner, congratulating them for completing this work, and kicking off  
215 marketing of the rental apartment in accordance with the Borough's Administrative Agent  
216 Manual.

217 **MARKETING OF THE ACCESSORY APARTMENT PROGRAM**

218 As necessary, the Administrative Agent will advertise the accessory apartment program  
219 within Mountain Lakes to property owners via the Borough's website, and through the  
220 distribution of fliers. Other methods of advertising to existing homeowners, such as  
221 including flyers in tax bills or other official municipal communications will also be utilized  
222 when appropriate.

223 Additional, creative marketing prospects - Per suggestions from the Mountain Lakes  
224 Affordable Housing Committee, additional marketing initiatives may include but not be  
225 limited to the following additional activities:

- 226 1. Education: Educating the public, including but not limited to prospective owner  
227 participants is key to the success of this program. Therefore, in coordination with  
228 the Borough and its affordable housing advisory committee, CGP&H, if asked by the  
229 committee, will prepare and then offer an education event for all interested parties,  
230 whether virtual or in person. Proper marketing via letters from the Mayor, press  
231 releases and various other forms of noticing will be utilized whenever appropriate.

232 Emphasis will include explaining how the program works; the subsidy being offered;  
233 the rental income projections; the ability to rely on the Borough's Administrative  
234 Agent instead of paying a realtor; helping the Borough meet its affordable obligation  
235 via least impact on density, neighborhoods, services, schools, etc.

236 2. When marketing, ensure that we target all existing accessory apartments.

237 3. Protection of historic properties

238 This entire guidebook is geared towards turning existing accessory apartments into deed  
239 restricted affordable apartments. Nothing in this document is focused on the ultimate end  
240 user (tenants), as those processes are the same as for all other tenant based projects, the  
241 procedures of which are carefully laid out in the Borough's companion document entitled,  
242 Mountain Lakes' Administrative Agent Operating Manual.

## 243 REMOVING AFFORDABILITY CONTROLS

244 After the 10 year affordability period has passed, the affordability controls may be removed  
245 by the Borough Council. The landlord must request to the Administrative Agent in writing  
246 that he/she would like the Borough to release the unit from the requirements of the deed  
247 restriction. This request must include the street address where the unit is located and a  
248 copy of any lease that is currently in effect for any tenant that lives on the property.

249 If the unit is not vacant at the time of the request, the affordability controls shall remain in  
250 effect until the unit becomes vacant, provided the occupant continues to earn a gross  
251 annual income of less than 80% of the applicable median income. If, at that time, a rental  
252 household's income is found to exceed 80 percent of the regional median income, the rental  
253 rate restriction shall expire at the later of either the next scheduled lease renewal or 60  
254 days. If the landlord wishes to re-income certify the tenant following the end of the ten year  
255 deed restriction, the tenant must cooperate with the re-certification process or forgo the  
256 potential for retaining their deed restricted rent. If the Landlord chooses to exercise the  
257 recertification option, there shall be an income certification charge to the landlord of \$800  
258 for each annual recertification, payable to the Township's Administrative Agent, regardless  
259 of the ultimate findings for each income certification. Please note, recertification requests  
260 are optional, and at the Landlord's request, but no more than one recertification can occur  
261 during each annual leasing period.

262

263 Furthermore, as per N.J.A.C. 5:80-26.11(e):

- 264 • the municipal election to release the unit from the requirements of [this subchapter]  
265 is made pursuant to a municipal ordinance authorizing such elections with respect to  
266 units located either in areas specifically identified in the Housing Element of the  
267 municipal Master Plan or throughout the entire municipality; and The  
268 administrative agent shall, within 60 days of the municipal election shall [sic],  
269 execute a release, in the form set forth in Appendix F to this subchapter  
270 ([https://www.nj.gov/dca/divisions/lps/hss/admin\\_files/uhac/f.doc](https://www.nj.gov/dca/divisions/lps/hss/admin_files/uhac/f.doc)), incorporated  
271 herein by reference, of all restriction instruments with respect to the unit(s). The  
272 owner of the restricted unit(s) is responsible for recording the release instruments  
273 and returning the recorded originals promptly to the administrative agent. Upon the  
274 expiration of the control period for a restricted rental unit established in this section,  
275 the owner of the unit shall be entitled to lease it to any tenant at the fair market rent.

**Exhibit I – Affordable Accessory Apartment Ordinance**

ARTICLE VII  
**Affordable Accessory Apartments**  
**[Added 5-29-2019 by Ord. No. 6-19<sup>1</sup>]**

**§ 245-39. Applicability and purpose.**

- A. Applicability. This article applies to the establishment of accessory apartments in the Borough, in any Residential District and in the A Business District. Until passage of this article, only single-family housing has been allowed in Residential Districts.
- B. Purpose. It is the purpose of this program to help meet a portion of the Borough's fair share housing obligation and provide a realistic opportunity for the development of affordable housing through creation of up to five accessory apartments for occupancy by very-low-income, low-income, or moderate-income households.

**§ 245-40. Definitions.**

Definitions pertaining to affordable housing not found below are the same as those definitions that appear in the rules and regulations adopted by the Council on Affordable Housing in N.J.A.C. 5:93-1 et seq. as used in this chapter.

APPLICANT — The person or persons applying to establish an accessory apartment in accordance with the provisions of this chapter.

CONTRIBUTING DWELLING — One of the dwellings covered under Borough Ordinance Chapter 40, Article VI, Historic Preservation, that was constructed on or before December 31, 1938, is listed as "contributing buildings" within the Mountain Lakes Historic District in the National Register of Historic Places Registration Form for the Mountain Lakes Historic District, and has not been demolished; and such other structures as are designated as "contributing dwellings" by ordinance upon the recommendation of the Mountain Lakes Historic Preservation Committee or successor entities and the Planning Board.

**§ 245-41. Minimum standards.**

- A. An accessory apartment shall be permitted in an existing structure on a property which is in conformity with the regulations of the zoning district in which it is located, including

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1. Editor's Note: This article also repealed former Art. VII, Municipal Housing Liaison.

minimum required lot area, lot frontage, lot width, lot depth, maximum floor area ratio (FAR), maximum impervious lot coverage (ILC) and all setback and other bulk requirements. An accessory apartment shall also be permitted in a preexisting nonconforming property as long as it does not require an additional bulk variance.

- B. Creation of any accessory apartment shall require a building permit prior to construction of additions and/or alterations and issuance of a certificate of occupancy prior to signing a lease with a tenant.
- C. An accessory apartment shall be created within the existing footprint of the existing dwelling or the existing footprint of the existing accessory structure (e.g., detached garage). A new entry door, landing, or covered porch, dormers and modifications to the roof-lines that are architecturally consistent with the details, materials, windows, massing and scale of the existing structure shall be permitted. All additions shall comply with the bulk requirements of the zone.
- D. An accessory apartment may be created within an existing contributing dwelling and shall be eligible for bulk incentives as specified in the latest adopted version of the Borough Ordinance 40-47, "Establishing a Historic Preservation Committee and Establishing Special Zoning Requirements for Contributing Dwelling." Any accessory apartment provided within a contributing dwelling shall utilize the Historic Mountain Lakes Restoration and Renovation Handbook Design standards.
- E. Accessory apartments shall have living/sleeping space, cooking facilities, a kitchen sink, and complete sanitary facilities for the exclusive use of its occupants. The accessory apartment shall have a private entrance. The ceiling height for habitable spaces shall be no less than seven feet.
- F. The potable water supply and sewage disposal system for the accessory apartment shall be adequate as evidenced by approval of the Borough Water and Sewer Utility.
- G. The creation of an accessory apartment shall not create a nonconforming condition on the site regarding applicable zoning requirements. An accessory apartment that is detached from the principal dwelling shall conform to all of the accessory building requirements of the zone.

- H. There shall be no more than one accessory apartment located on any lot unless the property is in the A Business Zone and has more than one preexisting apartment.
- I. Off-street parking shall be provided for the occupants of the affordable accessory apartment in conformance with Chapter 245: Zoning; Article IV, Use Regulations; § 245-15(L), Supplementary Use Regulations, and shall be depicted on the submitted sketch or site plan.
- J. Any renovation relative to the creation of an accessory apartment shall be architecturally consistent with the appearance of other structures on the same site. Accessory apartments shall be designed to blend and harmonize with the existing exterior architectural design of the original dwelling unit using similar materials, colors and details. The present exterior architectural design of the original dwelling unit shall be maintained to preserve the residential character of the neighborhood. Any accessory apartment provided within a contributing dwelling shall utilize the Historic Mountain Lakes Restoration and Renovation Handbook design standards.
- K. Any dwelling unit created or designated as an accessory apartment pursuant to this section shall be and shall remain permanently accessory to the primary use of the property, and shall in no way confer upon the property owner any future rights to subdivide the existing lot.
- L. In the case of an accessory apartment created without proper permits, which the property owner desires to designate as an accessory apartment under this program, all of the requirements of this article and all requirements of the U.C.C. shall apply.
- M. Any existing code deficiencies in the portion of the building to be devoted to the accessory apartment unit shall be corrected, and the unit shall be brought up to code standard. The standard for evaluating any rehabilitation activity on an existing dwelling unit shall be N.J.A.C. 5:23-2.4 and 5:23-2.5.
- N. Any accessory apartment created within an existing dwelling or an accessory structure (e.g. if provided above a detached garage) shall be fire-separated vertically and/or horizontally from the existing structure in accordance with the New Jersey Uniform Construction Code Rehabilitation Subcode, N.J.A.C. 5:23-6 6(e)12.

- O. The owner shall agree to rent the accessory apartment unit only to a moderate- low- or very-low-income tenant.
- P. The owner shall agree that prior to the issuance of a certificate of occupancy for the initial tenant of the accessory apartment, there shall be a recorded deed or declaration of covenants and restrictions applied to the property running with the land that maintains the affordability of the accessory apartment for the minimum ten-year period. A sample deed restriction and/or loan agreement prepared by the Borough Attorney shall be supplied to the applicant.
- Q. The accessory apartments shall adhere to all current building code requirements of the latest adopted editions of the International Residential Code New Jersey Edition and the New Jersey Uniform Construction Code.

**§ 245-42. Affordability controls.**

- A. Liens on property. An owner who receives financial assistance under the provisions of the accessory apartments program shall be required to place a lien on his or her property. The following requirement shall apply to such liens:
  - (1) The Borough shall be specified as the lienholder.
  - (2) The lien shall specify that the value of the lien equals the amount of the monetary benefits received by the applicant under the accessory apartments program.
  - (3) A record of the lien will be kept on the property tax record, in the County Clerk's files, in the administrative agent's records, and notification to the tax collector with the deed and with the insurance policy, as required by this program.
  - (4) The owner shall notify the administrative agent, in writing, of the intent to sell a property that has benefited from the accessory apartments program, if the accessory apartment is still under the affordability controls and restrictions required by this program.
  - (5) Each time the unit is rerented, the administrative agent will verify that the unit will continue to be occupied by a qualified moderate- low-income or very-low-income household and that the rent charged meets the affordability guidelines of the program.

- (6) All properties shall be periodically checked for liens, and any suspected violations of the program shall be reported to the administrative agent for further investigation.
  - (7) At the termination of the affordability controls, the loan shall be forgiven and the lien shall be discharged by way of a notice of lien discharged filed with the County Clerk.
- B. Length of affordability. Owners who utilize the provisions of the accessory apartments program shall accept a deed restriction on the property. The deed restriction shall state that only a moderate, low income, or very-low-income tenant, as determined by the administrative agent, shall occupy the accessory apartment unit. The deed restriction shall be recorded with the County Clerk, and a copy of the recorded deed shall be forwarded to the administrative agent. The deed restriction shall go into effect as soon as a certificate of occupancy has been issued and shall apply for a period of at least 10 years.
- C. Pricing.
- (1) Gross rents, including a utility allowance consistent with the utility allowance approved by HUD for use in New Jersey, shall be set so as not to exceed 30% of the gross monthly income for the appropriate household size and income level. Maximum rents for each household size and income level shall be calculated based on the regional weighted average of the current uncapped Section 8 income limits published by HUD.
  - (2) Rents of accessory apartments shall be affordable to very-low, low-, or moderate-income households as per the FHA, COAH or its successor agency, and UHAC regulations.
  - (3) Annual indexed increases. The rents of the accessory apartment units may be increased annually in accordance with N.J.A.C. 5:93-9.15.

**§ 245-43. Program compliance.**

- A. The Borough shall designate an administrative agent to administer the accessory apartments program. The administration agent's responsibilities shall include advertising the accessory apartments, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing subsidies as applicable, securing certificates of occupancy, qualifying properties, handling application forms,

filing deed restrictions, monitoring reports, and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.

- B. The administrative agent shall only deny an application for an accessory apartment if the project is not in conformance with the requirements N.J.A.C. 5:93-1 et seq., and/or the provisions of this article. All denials shall be in writing with the reasons clearly stated.
- C. Violations, defaults, and remedies. In the event of a threatened breach of any of the regulations governing the affordable unit by an owner of an accessory apartment, the administrative agent shall have all the remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties that it will cause irreparable harm to the municipality, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of very-low-, low- and moderate-income housing.

**§ 245-44. Sunset clause.**

The provisions of this article permitting accessory apartments shall become null and void, having no further force or effect, upon the issuance of a certificate of occupancy for the fifth accessory apartment within the Borough of Mountain Lakes. The administrative provisions shall remain in full force and effect until the last deed restriction expires.

**Exhibit II: Deed Restriction and Sample Agreement**

APPENDIX E-2

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

Deed Restriction

**DEED-RESTRICTED AFFORDABLE HOUSING PROPERTY  
WITH RESTRICTIONS ON RESALE AND REFINANCING**

To Rental Property  
With Covenants Restricting Rentals, Conveyance and Improvements  
And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Community Grants, Planning & Housing (CGPH) ("Administrative Agent"), or its successor, acting on behalf of Mountain Lakes Borough, with offices at 400 Boulevard Mountain Lakes, NJ 07046, and \_\_\_\_\_ a New Jersey [Corporation / Partnership / Limited Partnership] having offices at \_\_\_\_\_ the developer/sponsor (the "Owner") of a residential very-low, low- or moderate-income rental project (the "Project"):

WITNESSETH

Article 1. Consideration

In consideration of benefits and/or right to develop received by the Owner from the Municipality regarding this rental Project, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and a portion of the improvements thereon, that is located in the municipality of Mountain Lakes Borough, County of Morris, State of New Jersey, and described more specifically as Block No. \_\_\_\_\_ Lot No. \_\_\_\_\_, and known by the street address:

\_\_\_\_\_  
\_\_\_\_\_

More specifically designated as:

(List specific units by address or apartment number, income level and number of bedrooms here.)

Article 3. Affordable Housing Covenants

The following covenants (the “Covenants”) shall run with the land for the period of time (the “Control Period”), determined separately with respect for each dwelling unit, commencing upon the earlier of the date hereof or the date on which the first certified household occupies the unit, and shall and expire as determined under the Uniform Controls, as defined below.

In accordance with N.J.A.C. 5:80-26.11, each restricted unit shall remain subject to the requirements of this subchapter, the “Control Period,” until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 10 years; provided, however, that:

2. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant or contract.
- A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*, the “Uniform Controls”).
  - B. The Property shall be used solely for the purpose of providing rental dwelling units for very-low, low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent.
  - C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Administrative Agent.
  - D. The Owner shall notify the Administrative Agent and the Municipality of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.
  - E. The Owner shall notify the Administrative Agent and the Municipality within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, to the Municipality and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of very-low, low and moderate-income housing.

- A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

IN WITNESS WHEREOF, the Administrative Agent and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

CGP&H

BY: \_\_\_\_\_  
Randy Gottesman  
 President

[THE OWNER]

BY: \_\_\_\_\_  
XXXXXXXXXXXXX  
 Title

APPROVED BY Mountain Lakes Borough

BY: \_\_\_\_\_  
David Shepherd  
 Mayor

*ACKNOWLEDGEMENTS*

On this the      day of      , 20      before me came Randy Gottesman, to me known and known to me to be the Administrative Agent for Mountain Lakes Borough, who states that (s)he has signed said Agreement on behalf of said Municipality for the purposes stated therein.

\_\_\_\_\_  
 NOTARY PUBLIC

On this the      day of      , 20      before me came \_\_\_\_\_, to me known and known to me to be \_\_\_\_\_, the Owner of the Property, who states that (s)he has signed said Agreement for the purposes stated therein.

\_\_\_\_\_  
 NOTARY PUBLIC

On this the        day of        , 20    before me came David Shepherd known and known to me to be Mayor of Mountain lakes Borough, the Municipality identified as such in the foregoing Agreement, who states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein

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NOTARY PUBLIC

BOROUGH OF MOUNTAIN LAKES  
ACCESSORY APARTMENT PROGRAM  
GRANT AGREEMENT

THIS AGREEMENT made on the \_\_\_\_ day of \_\_\_\_\_, 2020 by and between **OWNER**, single/married, whose current address is \_\_\_\_\_, Mountain Lakes, NJ, 07046 ("**Owner[s]**"), and the Borough of Mountain Lakes, a municipal corporation of the State of New Jersey, whose principal offices are located at 400 Boulevard, Mountain Lakes, NJ 07046 ("**Borough**"). Collectively, the Owner and the Borough will be referred to as the "**Parties**".

WHEREAS, Owner[s] own \_\_\_\_\_, Mountain Lakes, NJ, 07046, described more specifically as Block No. \_\_\_\_\_, Lot No. \_\_\_\_\_ on the Mountain Lakes Borough Tax Map ("**Property**"); and

WHEREAS, said Owner[s] have submitted a full and complete application for their Property to be to be included in the Borough's Accessory Apartment Program; and

WHEREAS, the Borough's Administrative Agent having reviewed the application, including all additional supporting documentation as may be required, has approved said application; and

WHEREAS, the Borough is willing to extend a grant to Owner[s] in the amount of \_\_\_\_\_ **DOLLARS (\$\_\_\_\_\_)** as a onetime grant to subsidize the development of the Accessory Apartment ("**Grant**"); and

WHEREAS, the Parties wish to memorialize the agreement between them by way of this Accessory Apartment Program Grant Agreement ("**Agreement**");

NOW, THEREFORE, IT IS AGREED on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Parties as follows:

1. Owner[s] acknowledge that they are aware, and herein reaffirm their understanding, that upon its completion, the Accessory Apartment shall be governed by all applicable affordable housing rules, regulations and restrictions, including but not limited to the State of New Jersey affordable housing statutes and regulations, as well as Borough affordable housing ordinances, resolutions, plans, and program guidelines. Owner[s] additionally acknowledge that this Grant assistance is based solely upon the confirmation by the Borough, as required in Paragraph 10 below, that the required work was satisfactorily completed.

2. Owner[s] have applied to the Borough's Accessory Apartment Program for funds to subsidize the development of an Accessory Apartment and said funds have been provided through the Borough of Mountain Lakes' Affordable Housing Trust Fund ("**Program**").
3. The Borough, through its administrative agent, CGP&H, LLC ("**Administrative Agent**"), has reviewed Owner[s]' application to the Program and agrees to provide a grant of \$\_\_\_\_\_ ("**Program Grant**") to Owner[s] upon satisfactory completion of the required and eligible work and the recording with the Morris County Clerk of a 10-year deed restriction identifying the Accessory Apartment as affordable housing.
4. Owner[s] understand and expressly acknowledge that they are solely responsible for negotiating, obtaining estimates, and selecting a contractor to undertake any and all required construction for the completion of the Accessory Apartment and furthermore, once the contractor is selected and the work completed, Owner[s] are solely responsible for all payments to the contractor regarding its services and fees.
5. Owner[s] further understand and expressly acknowledge that neither the Borough nor its Administrative Agent is responsible for supervising or inspecting the Accessory Apartment (beyond statutory municipal obligations for code inspections, as may be required by any said statute), or for communicating with, inspecting, and/or paying the contractor for such work.
6. Owner[s] further understand and expressly acknowledge that neither the Borough, the Program nor the Administrative Agent, in any way warrant, certify or attest to the qualifications of the selected contractor and/or the quality or completeness of the Accessory Apartment.
7. In the event that Owner[s] disagree with the work performed by the contractor (in terms of either scope, performance, quality or warranties) and/or wish to dispute payment, Owner[s] understand and expressly acknowledge that they are solely responsible for pursuing their respective remedies at law or in equity and that neither the Borough, the Program, nor the Administrative Agent, has any obligation and/or responsibility to undertake or participate in such actions on behalf of the Owner[s].

8. It is Owner[s]' sole responsibility to negotiate and follow up with their contractor regarding all warranty issues and Owner[s] furthermore acknowledge that neither the Borough, the Program, nor the Administrative Agent, has any obligation and/or responsibility to undertake such actions for or on behalf of the Owner[s].
9. Given that the involvement of the Borough, the Program and the Administrative Agent under this Agreement is strictly limited to disbursement of funds, the Owner[s] release the Borough, the Program, and CGP&H as the Administrative Agent, including their respective employees, officers, agents and/or assigns, from liability whatsoever in connection with the Accessory Apartment under this Agreement and shall indemnify, defend and save harmless the Borough, the Program, and CGP&H as the Administrative Agent, and their respective employees, officers, agents and/or assigns, from liability for any injury or damages to any and all persons and/or property, resulting from the funding and development of the Accessory Apartment under this Agreement.
10. Upon completion of the Accessory Apartment, the Owner[s] shall make a request to the Borough for payment and shall provide the following documentation in its request for a Program Grant:
  - a) A copy of any permits that were required by the Borough, as well as the certificate of approval which demonstrates that the required and eligible permits were all properly closed out;
  - b) A copy of proof of payment to the contractor by the Owner[s], when applicable.
11. This Agreement shall be construed in accordance with the laws of the State of New Jersey. Any dispute or claim arising out of or relating to this Agreement or claim of breach hereof shall be brought exclusively in the Superior Court of New Jersey, Somerset County.
12. This Agreement constitutes the entire Agreement between the Parties. No amendments or modifications to this Agreement shall have any force or effect unless in writing and executed by both Parties.
13. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

14. This Agreement shall be binding upon and inure to the benefit of the Parties, their legal representatives, heirs, executors, administrators, successors and assigns.
15. All notices shall be provided to the Parties in writing at the addresses provided above and delivered by certified mail, overnight mail or hand delivery. Notice *via* email shall only be valid upon emailed confirmation by the intended receiver of the email that such email was received. Confirmation shall include either a reply email by the receiver to the sender and/or a “Read Receipt” acknowledgement by the receiver.

**IN WITNESS WHEREOF**, the Parties hereto have signed and executed this Grant Agreement as of the date indicated above.

**Attest:**

**Borough of Mountain Lakes**

\_\_\_\_\_

Mitchell Stern, Acting Clerk

\_\_\_\_\_

David Shepherd, Mayor

**Owner[s]/Applicant**

\_\_\_\_\_

, Witness

\_\_\_\_\_

NAME

STATE OF NEW JERSEY:

SS

COUNTY OF \_\_\_\_\_:

I CERTIFY that on \_\_\_\_\_, 2020, **[NAME OF OWNER[S]]**, personally came before me and acknowledged under oath, to my satisfaction, that he/she:

- (a) was the maker[s] of the attached instrument; and,
- (b) executed this instrument as his/her own act.

Signed and sworn to before me on \_\_\_\_\_, 2020

\_\_\_\_\_  
A Notary Public/Attorney of the State of New Jersey

STATE OF NEW JERSEY:

SS

COUNTY OF \_\_\_\_\_:

I CERTIFY that on \_\_\_\_\_, 2020, **[NAME OF CLERK]**, personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) she is the Clerk of the Borough of Mountain Lakes, the municipal corporation named in this document;
- (b) she is the attesting witness to the signing of this document by [NAME], Mayor of the Borough of Mountain Lakes;
- (c) this document was signed and delivered by the Borough of Mountain Lakes as its voluntary act duly authorized by a proper resolution of the Borough of Mountain Lakes;
- (d) she knows the proper seal of the Borough of Mountain Lakes which was affixed to this document; and
- (e) she signed this proof to attest to the truth of these facts.

Signed and sworn to before me on the date set above.

\_\_\_\_\_  
A Notary Public/Attorney of the State of New Jersey

### Exhibit III: Sample 2020 Rents under various scenarios

	Bedroom Size			
Income Level	Studio/ Efficiency	1-Bedroom	2-Bedroom	3-Bedroom*
<b>Very Low</b>	\$434 - \$554	\$436 - \$593	\$510 - \$712	\$572 - \$823
<b>Low</b>	\$803 - \$923	\$832 - \$989	\$985 - \$1,187	\$1,121 - \$1,372
<b>Moderate</b>	\$988 - \$1,108	\$1,030 - \$1,187	\$1,222 - \$1,424	\$1,395 - \$1,646

Utility Deduction Amounts						
	HEAT	COOKING	ELECTRIC	HOT WATER	WATER/SEWER/TRASH	Total
STUDIO	\$47	\$10	\$33	\$12	\$0	\$102
1BR	\$64	\$12	\$43	\$16	\$0	\$135
2BR	\$77	\$17	\$57	\$21	\$0	\$172
3BR	\$96	\$21	\$71	\$26	\$0	\$214

Rent range includes the following assumptions:

- Unit type is “Single Family Detached” as per available HUD descriptions
- All heat, cooking appliances, and hot water heater are electric
- Water, Sewer and Trash expenses were covered by the landlord (typical in our experience)
- For the low end range, no other utilities were included in the rent by the landlord (i.e. heat, electricity, etc.)
- For the high end range, all other utilities were included in the rent by the landlord

PLEASE NOTE: The rental ranges provided are indicative and the final permitted rent may be higher or lower than the numbers presented above, due to a variety of factors.

\* N.J.A.C. 5:97 3RD Round rules prohibit a municipal accessory apartment ordinance from restricting bedroom size for an accessory apartment – however it is noted that it is extremely unlikely that a 3-bedroom accessory apartment will be created.