

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of San Diego
Development Services Department
7650 Mission Valley Road
San Diego, CA 92108

Document tax due: \$0.00
Government Code Sections 27383 and 6103

APN: []

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SALE OR CONVEYANCE OF ACCESSORY DWELLING UNITS**

This Declaration of Covenants, Conditions and Restrictions (“Declaration”) for the sale or conveyance of *accessory dwelling units* (“ADUs”) is entered into as of this ____ day of _____, 20__, by and between the CITY OF SAN DIEGO, a California municipal corporation (“City”), and [list all owners and how they hold title] (“Owner”), (collectively the “parties”) as follows:

RECITALS

This Declaration is made in contemplation of the following facts and circumstances:

A. Owner is the *record owner* of the real property within the City of San Diego, County of San Diego, State of California, located at [street address] on the [lot size] square-foot (“SF”) *lot* containing one or more ADUs on the [block bounded by OR X side of X street between X street and X street], Assessor’s Parcel Number [XXX-XXX-XX], and more particularly described as [legal description] (the “Property”).

B. The purpose of the Sale or Conveyance of ADUs Regulations, Section 141.0302(f) of the San Diego Municipal Code (“SDMC”), is to specify when and how a condominium *development* may sell or convey one or more ADUs separately from the primary residence.

C. Owner has [obtained approval for] [or] [submitted an application for] a condominium subdivision (“Subdivision Permit”) to establish [# of proposed for sale ADUs] ADU(s) as condominiums on the Property (“Project”) in accordance with the procedures set forth in Chapter 12, Article 5 of the SDMC.

D. In accordance with Section 141.0302(f)(6) of the SDMC, for a minimum period of 30 days from the date an ADU is first listed for sale, the *record owner* shall offer the ADU through at least two publicly accessible real estate websites or databases with a disclosure stating that the ADU is being offered for at least 30 days to buyers intending to use the ADU as their primary residence.

E. Owner agrees to perform all terms of this Declaration as required by the SDMC.

F. This Declaration shall be recorded concurrently with, or prior to, the issuance of the Subdivision Permit for the Project by the City's Development Services Department.

In consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and City agree as set forth below.

AGREEMENT

ARTICLE I DEFINITIONS

1. *Development* means the act, process, or result of dividing a parcel of land into two or more parcels; of erecting, placing, constructing, reconstructing, converting, establishing, altering, maintaining, relocating, demolishing, using, or enlarging any building, structure, improvement, *lot*, or *premises*; of clearing, grubbing, excavating, embanking, filling, managing brush, or agricultural clearing on public or private property including the construction of slopes and facilities incidental to such work; or of disturbing any existing vegetation.
2. *Accessory dwelling unit* or ADU means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and is located on a *lot* with a proposed or existing single dwelling unit or multiple dwelling unit.
3. *Lot* means a parcel, tract, or area of land established by plat, subdivision, or other legal means to be owned, used, or developed.
3. *Premises* means an area of land with its structures that, because of its unity of use, is regarded as the smallest conveyable unit.
4. *Record owner* means the owner of real property as shown on the latest equalized property tax assessment rolls of the San Diego County Assessor.

ARTICLE II OWNER'S OBLIGATIONS TO OFFER THE ADU(S) TO SPECIFIED BUYERS

1. Offer to Specified Buyers. For a minimum period of 30 days from the date each ADU condominium is first listed for sale following the completion of the subdivision process, including satisfaction of all permit conditions and requirements of SDMC section 141.0302(f), Owner shall offer each for-sale ADU through at least two publicly accessible real estate websites or databases with a disclosure stating that each ADU is being offered for at least 30 days to buyers intending to use the ADU as their primary residence.

ARTICLE III
GENERAL TERMS

1. Effect and Duration of Covenants. The terms established in this Declaration and any amendments hereto duly approved by the parties hereto shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City and its respective successors and assigns. All the terms of this Declaration shall remain in effect until the Owner or its respective successors, assigns and grantees, and all parties having or acquiring any right, title or interest in, or to any part or subdivision of, the Property have complied with Article II, section 1. Offer to Specified Buyers of this Declaration and the 30-day offer period specified in SDMC Section 141.0302(f)(6) is complete.

2. Beneficiary of Covenants. The City is deemed the beneficiary of the terms of this Declaration, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Declaration and the terms running with the land have been provided. The City shall have the right, if the terms are breached, to exercise all available rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled.

3. Covenants Run with the Land. Owner hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to this Declaration, which shall constitute enforceable equitable servitudes, covenants and easements which shall run with the land and shall be binding upon Owner and its respective successors, assigns and grantees, and all parties having or acquiring any right, title or interest in, or to any part or subdivision of, the Property.

4. Enforcement. If a violation of any of the terms of this Declaration, the City, without regard to whether City is an owner of any land or interest therein to which these terms relate, may, after the expiration of any applicable cure periods and thirty days' notice to Owner at the address noted below, institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Owner of their obligations hereunder. Owner may change its notice address by written notice to the City. No delay in enforcing the terms hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the terms hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time. Owner's address is:

[List each owner's address]

5. Counterparts. This Declaration may be executed in duplicate originals, each of which is deemed to be an original.

6. Waivers. All waivers of the terms of this Declaration must be in writing and signed by the appropriate authorities of the City or the Owner, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Owner.
7. Further Assurances. The parties hereto agree to cooperate with each other to execute any documents reasonably necessary to carry out the intent and purpose of this Declaration.
8. Severability. The invalidity or unenforceability of any term of this Declaration shall in no way affect, impair or invalidate any other terms hereof, and such other terms shall remain valid and in full force and effect to the fullest extent permitted by law.
9. Entire Agreement. This Declaration contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into and superseded by this Declaration.
10. Governing Law. This Declaration will be governed by and construed in accordance with the laws of the State of California
11. Inspection of Books and Records. The City shall have the right at all reasonable times to inspect, audit and copy, at no cost to the City, the books and records of Owner pertaining to the sale or conveyance of *accessory dwelling units* as pertinent to the purposes of this Declaration.
12. Indemnification. The Owner shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to this Declaration including, but not limited to, any action to attack, set aside, void, challenge, or annul this Declaration. The City will promptly notify Owner of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner shall not be required to pay or perform any settlement unless such settlement is approved by Owner.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City and the Owner have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, as of the date first set forth hereinabove.

Dated this _____ day of _____, 20__.

OWNER
Business Name

By:

[Name]
[Title]

OWNER
Business Name

By:

[Name]
[Title]

OWNER
Business Name

By:

[Name]
[Title]

OWNER
Business Name

By:

[Name]
[Title]

Dated this _____ day of _____, 20__.

CITY OF SAN DIEGO
DEVELOPMENT SERVICES
DEPARTMENT

By:

[Name]
[Title]

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.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____
(insert name and title of the officer) 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 _____(Seal)