

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of San Diego  
Development Services Department  
550 W C Street, 13<sup>th</sup> Floor  
San Diego, CA 92101

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

APN: \_\_\_\_\_

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR REPLACEMENT OF DWELLING UNITS**

This Declaration of Covenants, Conditions and Restrictions for replacement of *dwelling units* ("Declaration") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between the CITY OF SAN DIEGO, a California municipal corporation ("City"), and \_\_\_\_\_, ("Owner"), (collectively the "parties") as follows:

**RECITALS**

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

A. Owner owns the real property within the City of San Diego, County of San Diego, State of California, located on the \_\_\_\_\_ square-foot ("SF") *premises* on the \_\_\_\_\_

and more particularly described as \_\_\_\_\_  
(the "Property").

B. The purpose of the Dwelling Unit Protection Regulations (Chapter 14, Article 3, Division 12) of the San Diego Municipal Code ("SDMC") is to specify when and how a *development* that proposes demolition of existing *dwelling units* must replace those *dwelling units*.

C. Owner has [obtained approval for \_\_\_\_] **or** [submitted an application for \_\_\_\_] a demolition permit ("Demolition Permit") for the demolition of \_\_\_\_\_ ("Project") in accordance with the procedures set forth in the SDMC.

D. In accordance with Section 143.1210 of the SDMC, the demolition of existing *dwelling units* requires any future *development*, as identified in Section 143.1203 of the SDMC, on the Property to include at least as many *dwelling units* as the most recently permitted *development* on the Property.

E. Owner agrees to 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 Demolition 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. *Dwelling unit* means a room or suite of rooms in a building or portion thereof, used, intended or designed to be used or occupied for living purposes by one family, and containing only one kitchen
3. *Premises* means an area of land with its structures that, because of its unity of use, is regarded as the smallest conveyable unit.

### ARTICLE II OWNER'S OBLIGATIONS TO REPLACE DWELLING UNITS

1. Replacement of Dwelling Units. Owner shall construct at least \_\_\_\_\_ *dwelling units* in any future *development*, as identified in Section 143.1203 of the SDMC, on the Property as a condition precedent to obtaining a certificate of occupancy from the City's Building Official or, for a *development* that does not require a certificate of occupancy in accordance with Section 129.0113 of the SDMC, completing final inspection.

### 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 a *development* on the Property with a greater number of *dwelling units* than specified in Article II. Section 1. obtains a certificate of occupancy from the City's Building Official or, for a *development* that does not require a certificate of occupancy in accordance with Section 129.0113 of the SDMC, completes final inspection.

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 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:

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 replacement *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:

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)