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RENAISSANCE OWNERS ASSOCIATION

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Jodi A. Konorti, Esq.  
EPSTEN GRINNELL & HOWELL, APC  
10200 Willow Creek Road, Suite 100  
San Diego, CA 92131

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For Recorder's Use

**2018 THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS**

**FOR**

**RENAISSANCE**

*A Residential Condominium Community*

**NOTICE**

**(Gov. Code § 12956.1)**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

TABLE OF CONTENTS

	<u>Page</u>
<b>RECITALS</b> .....	<b>1</b>
<b>ARTICLE 1 - DEFINITIONS</b> .....	<b>4</b>
1.1 "Annual Budget Report" .....	5
1.2 "Annual Policy Statement" .....	5
1.3 "Applicable Law" .....	5
1.4 "Architectural Committee" .....	5
1.5 "Architectural Rules" .....	5
1.6 "Articles" .....	5
1.7 "Association" .....	5
1.8 "Association Property" .....	5
1.9 "Board" .....	5
1.10 "Budgeted Gross Expenses" .....	5
1.11 "Building Common Area" .....	6
1.12 "Bylaws" .....	6
1.13 "Capital Expenditure" or "Capital Improvement" .....	6
1.14 "City" .....	6
1.15 "County" .....	6
1.16 "Commercial Condominium" .....	6
1.17 "Common Area" .....	6
1.18 "Common Expenses" .....	7
1.19 "Community" .....	7
1.20 "Condominium" .....	7
1.21 "Condominium Plan" .....	7
1.22 "Declaration" or "Restated Declaration" .....	7
1.23 "Director" or "Directors" .....	7
1.24 "Electronic Transmission" .....	7
1.25 "Eligible Insurer or Guarantor" .....	7
1.26 "Eligible Mortgage Holder" .....	8
1.27 "Encroachment Agreements" .....	8
1.28 "Encroachment Area" .....	8
1.29 "Exclusive Use Area" .....	8

1.30	"General Common Area" .....	9
1.31	"Governing Documents" .....	9
1.32	"Improvement" .....	9
1.33	"Joint Use Common Area" .....	10
1.34	"Living Unit" or "Commercial Unit" .....	10
1.35	"Member" .....	10
1.36	"Module" .....	10
1.37	"Mortgage" .....	10
1.38	"Mortgagee" .....	10
1.39	"Notice and Hearing" .....	10
1.40	"Officers" .....	11
1.41	"Owner" .....	11
1.42	"Phase" .....	11
1.43	"Phase 1" .....	11
1.44	"Phase 1 Condominium Plan" .....	11
1.45	"Phase 2" .....	11
1.46	"Redevelopment Agency" .....	12
1.47	"Residential Condominium" .....	12
1.48	"Retail Purchaser" .....	12
1.49	"Rules" .....	12
1.50	"Unit" .....	12
1.51	"Voting Power" .....	12

**ARTICLE 2 - PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA.....12**

2.1	Community Subject to Restated Declaration .....	12
2.2	Owners' Easements of Enjoyment .....	12
2.3	Delegation of Use .....	14
2.4	Power of Attorney to Correct Errors .....	14

**ARTICLE 3 - MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION .....14**

3.1	Each Owner is a Member.....	14
3.2	Classes of Voting Membership.....	15

**ARTICLE 4 - COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION .....15**

4.1	Covenant for Assessments .....	15
-----	--------------------------------	----

4.2	Purpose of Assessments .....	15
4.3	Maximum Regular and Special Assessments.....	16
4.4	Non-Lien Assessments (Compliance) .....	17
4.5	Schedule of Monetary Penalties.....	17
4.6	Rate of Regular and Special Assessments .....	17
4.7	Rate of Special Assessments for Repairs .....	20
4.8	Date of Commencement of Regular Assessments .....	20
4.9	Adjustment of Assessments; Due Dates .....	20
4.10	Effect of Non-Payment of Assessments; Remedies of the Association.....	21
4.11	Subordination of the Lien to First Deeds of Trust and First Mortgages .....	22
4.12	Estoppel Certificate.....	22
4.13	Non-Use of Association Property or Common Area.....	22
4.14	Taxation of Association.....	22
4.15	No Offsets.....	22
4.16	Assignment of Rent.....	23
<b>ARTICLE 5 - POWERS AND DUTIES OF ASSOCIATION.....</b>		<b>23</b>
<b>ARTICLE 6 - USE OF COMMERCIAL AND RESIDENTIAL CONDOMINIUMS.....</b>		<b>23</b>
6.1	Lease of Condominium .....	23
6.2	Use Not to Impair Insurance.....	24
6.3	Nuisance.....	25
6.4	No Owner Modification to Association Property or Common Areas .....	25
6.5	Removal of Trash.....	25
6.6	Owners Liable for Damage .....	25
6.7	Decorating by Owner .....	25
6.8	Outside Antennae .....	26
6.9	No Impairment of Structures .....	26
6.10	Exclusive Use Area.....	26
6.11	No Clothes Lines, Etc.....	26
6.12	Board Permitted to Expand Vertical Limits .....	26
6.13	Right of Access.....	26
6.14	Electric Vehicle Charging Stations .....	26
6.15	Harassment .....	26
6.16	Smoking.....	27

6.17	Noncompliance with Applicable Laws for Modifications to Property .....	27
6.18	Liability for Architectural Changes .....	27
6.19	Effect of Owner-Installed Improvements.....	27
6.20	Drones.....	29
6.21	Maintenance Standards .....	29
<b>ARTICLE 7 - USE OF COMMERCIAL CONDOMINIUMS.....</b>		<b>29</b>
7.1	Commercial Purposes.....	29
7.2	Advertising .....	29
7.3	Leasing of a Commercial Unit .....	30
7.4	Hazardous Materials .....	30
7.5	Customers, Guests and Lessees; Insurance.....	30
7.6	Restrictions on Commercial Units .....	30
7.7	Restaurant Use.....	30
7.8	Restrictions on Amendments .....	31
7.9	Use of Commercial Exclusive Use Areas .....	31
7.10	Hold Harmless and Indemnity .....	31
7.11	Restrictions Against Activities Which Impair Structure.....	31
7.12	Sign Control .....	31
7.13	Change in Commercial Status.....	31
<b>ARTICLE 8 - USE OF RESIDENTIAL CONDOMINIUMS .....</b>		<b>31</b>
8.1	Residential Purposes .....	31
8.2	Animals.....	32
8.3	Sign Control.....	32
8.4	Use of Exclusive Use Areas .....	32
8.5	Use of Association Property and Common Area .....	33
8.6	Parking Spaces.....	34
8.7	Handicap Parking Spaces.....	34
8.8	Window Coverings .....	35
<b>ARTICLE 9 - RESPONSIBILITIES OF MAINTENANCE.....</b>		<b>35</b>
9.1	Maintenance by Owners .....	35
9.2	Failure to Maintain .....	36
9.3	Maintenance by Association.....	36
9.4	Wood-Destroying Pests .....	37

9.5	Damage During Repairs.....	37
9.6	Damage Caused by Owner.....	38
9.7	Limitation of Liability.....	39
9.8	Damages to Unit; Water Intrusion Damage .....	39
9.9	Owner Notification to the Association .....	40
<b>ARTICLE 10 - SEPARATION OF INTERESTS AND PARTITION PROHIBITED .....</b>		<b>40</b>
10.1	No Separation of Interests.....	40
10.2	No Partition.....	40
10.3	Article XVII.....	41
10.4	Power of Attorney .....	41
<b>ARTICLE 11 - DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY .....</b>		<b>41</b>
11.1	Damage or Destruction .....	41
11.2	Cost of Repair.....	41
11.3	Repair Plans .....	41
11.4	Replacement of Less Than Entire Community. ....	42
11.5	Insurance Proceeds .....	42
11.6	Disbursements to Owners and Lenders .....	42
11.7	Certificates By Board .....	42
11.8	Certificates by Attorneys or Title Insurance Companies .....	43
11.9	Casualty Destruction of Unit.....	43
11.10	Condemnation .....	43
11.11	Insurance.....	43
11.12	Waiver of Subrogation.....	46
11.13	Separation of Insureds.....	46
11.14	Failure to Acquire Insurance .....	46
11.15	Insurance Policy Deductibles .....	47
11.16	Individual Property Insurance.....	47
11.17	Individual Liability Insurance .....	48
11.18	Mortgagee Approval.....	48
11.19	Article XVII.....	48
<b>ARTICLE 12 - DAMAGE, DESTRUCTION AND CONDEMNATION OF SEPARATE INTERESTS .....</b>		<b>48</b>
12.1	Damage or Destruction .....	48

12.2	Condemnation .....	48
12.3	Mortgagee Approval.....	48
<b>ARTICLE 13 - CONDEMNATION OF ASSOCIATION PROPERTY.....</b>		<b>49</b>
<b>ARTICLE 14 - ASSOCIATION'S RIGHT OF ENTRY .....</b>		<b>49</b>
<b>ARTICLE 15 - ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES.....</b>		<b>49</b>
15.1	Common Area Licenses.....	49
15.2	Association Property .....	49
<b>ARTICLE 16 - ENFORCEMENT .....</b>		<b>50</b>
16.1	Enforcement .....	50
16.2	No Waiver.....	50
16.3	Board Discretion Whether to Enforce .....	50
16.4	Nuisance.....	50
16.5	Violation of Applicable Law .....	50
16.6	Compliance with Applicable Law .....	50
16.7	Attorneys' Fees .....	50
<b>ARTICLE 17 - INTENTIONALLY OMITTED .....</b>		<b>51</b>
<b>ARTICLE 18 - ADDITIONAL PROVISIONS .....</b>		<b>51</b>
18.1	Severability .....	51
18.2	Amendments .....	51
18.3	Mortgagee Approval of Amendment.....	51
18.4	Extension of Declaration .....	52
18.5	Right to Combine Units .....	53
18.6	Reservation of Easements .....	53
18.7	Encroachment Easements .....	54
18.8	Application of Provisions .....	54
18.9	Owner's Compliance .....	54
18.10	Payments of Taxes or Premiums by First Mortgagees .....	54
18.11	Mortgagee Curing Defaults .....	54
18.12	Approval of First Mortgagees .....	55
18.13	Notice to Eligible Mortgagees.....	56
18.14	Documents to be Available to Mortgagees .....	56
18.15	Mortgagee Protection.....	57

18.16 Conflicts.....	57
18.17 Provisions of Civil Code Section 4760.....	57
18.18 Documents to be Provided to Prospective Purchasers.....	58
18.19 Conflict with Statutes.....	59
<b>EXHIBIT “A” – LEGAL DESCRIPTION.....</b>	<b>61</b>



**2018 THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS  
FOR  
RENAISSANCE**

THIS 2018 THIRD AMENDED AND RESTATED DECLARATION OF RESTRICTIONS FOR RENAISSANCE ("Declaration") is made on the day and year hereinafter written, by Renaissance Owners Association, a California nonprofit mutual benefit corporation ("Association"), with reference to the following Recitals:

**RECITALS**

A. The Association is a corporation whose Members are the Owners of all the Condominium Units within that certain real property in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof ("Community").

B. The Community was developed as a Condominium Project, as defined in section 4125 of the California Civil Code, and consists of two hundred twenty one (221) Living Units (Condominium Units), seven (7) Commercial Units, and related Common Areas. The development and sale of the Condominium Units occurred in two (2) phases, as follows: Phase 1 consisted of one hundred twenty one (121) Living Units (Condominium Units) and seven (7) Commercial Units, and Phase 2 consisted of one hundred (100) Living Units (Condominium Units).

C. **PHASE 1.** Phase 1 is a portion of the Property as shown on that certain Phase 1 Condominium Plan, recorded November 17, 2000, as Document No. 2000-0627433, in the Office of the San Diego County Recorder, which was amended and restated by the Renaissance Phase I Condominium Plan, recorded September 9, 2002, as Document No. 2002-0768197, in the Office of the San Diego County Recorder ("Phase 1 Condominium Plan").

D. **PHASE 2.** Phase 2 is a portion of the Property as shown on that certain Phase 2 Condominium Plan, recorded December 13, 2001, in the Office of the San Diego County Recorder, which was amended and restated by the Renaissance Phase 2 Condominium Plan, recorded April 11, 2003, as Document No. 2003-0411992, in the Office of the San Diego County Recorder ("Phase 2 Condominium Plan").

E. **CONDOMINIUMS.** Each Residential Unit and each Commercial Unit will consist of a separate interest to space within a building. Phase 2 shall also be deemed a Condominium consisting of a separate interest in the Phase 2 Module and an undivided 100/228 interest in the General Common Area.

**F. RESIDENTIAL CONDOMINIUM ELEMENTS.** The Owners of a Residential Condominium will receive:

- (i) A Living Unit airspace;
- (ii) The exclusive right to use and occupy any Exclusive Use Area which (a) the Applicable Condominium Plan shows as being appurtenant to the Living Unit or (b) are designated as appurtenant to such Living Unit in the initial condominium grant deed for the Living Unit or a later easement deed of such exclusive Use Area (the residential Exclusive Use Areas presently planned for the Community include Decks, Balconies, Storage Spaces and Parking Spaces);
- (iii) An undivided interest as tenant in common to the General Common Area;
- (iv) An undivided interests as tenant in common to the Building Common Area to the building in the particular Phase in which the Condominium is located;
- (v) Easements to use the Building Common Area in the other Phase. Such easements are subject to the reasonable Rules of the Association, provided such Rules are not inconsistent with this Declaration;
- (vi) Easements to use the Association Property, if any. (No Association Property is currently planned for the Community.) Such easements are subject to the reasonable Rules of the Association, provided such Rules are not inconsistent with this Declaration; and
- (vii) A membership in RENAISSANCE OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation.

**G. COMMERCIAL CONDOMINIUM ELEMENTS.** The Owners of a Commercial Condominium will receive:

- (i) A Commercial Unit airspace;
- (ii) The exclusive right to use and occupy any Commercial Exclusive Use Area which the applicable Condominium Plan shows as being appurtenant to the Commercial Unit;
- (iii) An undivided interest as tenant in common to the General Common Area; and
- (iv) A membership in RENAISSANCE OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation.

H. **THE GENERAL COMMON AREA.** The "General Common Area" is defined in Section 1.30 below. The General Common Area will generally consist of (i) the foundation system, basement, subsurface and structured parking areas, podium, and utility systems which are installed as a part of Phase 1 but intended to benefit the Property and (ii) the land underneath those improvements. Each Owner in Phase 1 will receive an undivided 1/228 interest in the General Common Area. An undivided 100/228 interest in the General Common Area shall be appurtenant to the Phase 2 Module and each Owner of a Condominium in Phase 2 will receive an equal portion of the undivided interest in the General Common Area which is appurtenant to the Phase 2 Module (i.e., the 100/228 interest in the General Common area appurtenant to the Phase 2 Module shall be divided evenly among the Owners of Condominiums in Phase 2).

I. **THE BUILDING COMMON AREA.** There shall be separate Building Common Area for each Phase. The definition of the Building Common Area is set forth in Section 1.11 below. Generally, the Building Common Area in a Phase will consist of structural portions of the building which lie above the General Common Area. Each Owner of a Residential Condominium in Phase 1 will receive an equal undivided 1/121 interest in the Phase 1 Building Common Area. Each Owner of a Residential Condominium in Phase 2 will receive an equal undivided 1/100 interest in the Phase 2 Building Common Area.

J. **THE ASSOCIATION PROPERTY.** The "Association Property" is defined in Section 1.8 below.

K. Ownership of the Units is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the Second Amended and Restated Declaration of Restrictions for Renaissance, recorded September 9, 2002 as File/Page No. 2002-0768196; and

1. The Second Amendment to Declaration of Restrictions of Renaissance Owners Association, recorded May 6, 2003 as File/Page No. 2003-0528089;

all in the Official Records of the County Recorder of San Diego County, and are hereinafter referred to together as "Original Declaration," unless the context clearly indicates otherwise.

L. The Association now desires to amend and restate the Original Declaration in its entirety by recording this Restated Declaration. The Association further desires that, upon recordation of this Restated Declaration, the Community shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the Original Declaration. The Original Declaration, in Article XVIII, Section 18.3, provides that it may be amended by the affirmative vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association.

M. The Original Declaration, in Article XVIII, Section 18.5, provides that in addition to approval of sixty-seven percent (67%) of the Voting Power, material amendments, as defined, require the approval of fifty-one percent (51%) of the Eligible Mortgage Holders. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, there are no Eligible Mortgage Holders.

N. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of the Voting Power has been obtained.

O. Under California Civil Code section 4270, an amendment is effective after (1) approval of the percentage of Owners required by the Governing Documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the Association President if no Officer has been designated in the Original Declaration for such purpose, and (3) the writing has been recorded in the County in which the Community is located.

NOW, THEREFORE, the Association hereby declares that all of the Community is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Restated Declaration, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Community. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Community, and shall be binding on and for the benefit of all of the Community and all parties having or acquiring any right, title, or interest in all or any part of the Community, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Condominium.

**DECLARATION**

**ARTICLE 1 - DEFINITIONS**

***In General.*** Unless otherwise defined herein, capitalized terms or words used in this Restated Declaration shall have the definitions in this Article, or in the Davis-Stirling Common Interest Development Act (California Civil Code section 4000 et seq., hereafter "Act") or in the California Nonprofit Corporation Law (California Corporations Code section 5002 et seq.). Words not defined in this Restated Declaration, the Act or in the Corporations Code shall be understood in their ordinary and popular sense, as determined by the context in which they are used, unless the context indicates that the term or word is a defined term which was inadvertently not capitalized.

1.1 **"Annual Budget Report"** [Civ. Code § 5300] means the report to be distributed annually which contains the operating budget and other financial information as more fully described in Applicable Law.

1.2 **"Annual Policy Statement"** Civ. Code § 5310] means the information about Association policies to be distributed annually as more fully described in Applicable Law.

1.3 **"Applicable Law"** means statutes, public laws, ordinances, regulations and rulings of administrative agencies, and court rulings having value as precedent and any other requirements having the force of law that are in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Documents provision in question. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document, and are not intended to apply to the Community if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more statutes or ordinances.

1.4 **"Architectural Committee"** shall mean and refer to the person or persons which may be from time to time appointed by the Board to serve as the Architectural Committee. The members of the Architectural Committee need not be members of the Board or the Association. Each member of the Architectural Committee shall serve until he or she resigns or is removed by the Board.

1.5 **"Architectural Rules"** means the Rules regulating modifications and alterations to the Units and Common Area adopted by the Board.

1.6 **"Articles"** means the Articles of Incorporation of Renaissance Owners Association, filed in the Office of the Secretary of State of the State of California on July 26, 2001 as File No. 2283937, and any amendments thereto now existing or hereafter adopted.

1.7 **"Association"** shall mean and refer to RENAISSANCE OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, created for the purpose of managing a common interest development.

1.8 **"Association Property"** shall mean all real property, easements and other property interests (e.g., licenses) owned by the Association, if any, from time to time for the common use and enjoyment of the Owners.

1.9 **"Board"** shall mean and refer to the Board of Directors of the Association.

1.10 **"Budgeted Gross Expenses"** means all expenses identified on the annual operating budget for the fiscal year, including all operating expenses and amounts to be deposited into the reserve accounts, but excluding any amounts budgeted to be expended from the reserve accounts for that fiscal year.

1.11 **"Building Common Area"** in Phase 1 shall mean and refer to the area so described in the Condominium Plan for Phase 1. The Phase 2 Building Common Area will be described in the Condominium Plan for Phase 2. Any pipes, wires or other utility installations which are located in a Phase and serve more than one Living Unit or Commercial Unit but which are not owned and maintained by the City or a public utility or are not within the General Common Area will also be Building Common Area in the Phase. Television cable and related equipment may be owned by the cable supplier. It is intended that the Building Common Area of a Phase include all portions of the building improvements in the Phase not located in the General Common Area, the Association Property (if any), the Living Units or Commercial Units. The Building Common Area of a Phase shall include, but not be limited to, the roof, any chimneys, vents, balconies, foundations, overhangs, columns and other appurtenances regardless of whether any such items lie outside the boundary lines shown on the applicable Condominium Plan. In interpreting deeds and plans, the then existing physical boundaries of a building, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

1.12 **"Bylaws"** shall mean and refer to the Restated Bylaws of the Association as they may from time to time be amended, which are incorporated herein by reference.

1.13 **"Capital Expenditure" or "Capital Improvement"** means the use of Association funds to construct or build an addition to the Community, where such use of funds is optional under the Governing Documents, rather than mandatory, and is not otherwise required by Applicable Law, and/or repairs or replacements necessary or recommended due to construction defects. For purposes of the Governing Documents, the maintenance, repair or replacement of Improvements within the Community which the Association is obligated to maintain, using materials of similar kind, or using materials which are needed due to changes in building or fire codes or due to discontinued fabrication or unavailability, or using materials that have substantially similar cost over the useful life of the material shall not be considered a Capital Expenditure or Capital Improvement, notwithstanding that such expenditure or Improvement may be considered a Capital Expenditure or Capital Improvement for tax purposes.

1.14 **"City"** shall mean and refer to the City of San Diego, California.

1.15 **"County"** shall mean and refer to the County of San Diego, California.

1.16 **"Commercial Condominium"** shall mean and refer to each Condominium which includes a Commercial Unit as an ownership element.

1.17 **"Common Area"** shall mean and refer to the General Common Area, the Phase 1 Building Common Area and the Phase 2 Building Common Area unless the context implies otherwise. "Common Area" shall also include the portions of the

Community which encroach into the Encroachment Area, unless the context implies otherwise.

1.18 **"Common Expenses"** means and includes the actual and estimated expenses of operating the Community and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the Governing Documents.

1.19 **"Community"** means the common interest development which is a condominium project as described herein and on the Condominium Plan, including all Improvements thereon.

1.20 **"Condominium"** shall mean and refer to a fee simple estate in a Phase of the Community and shall consist of the applicable elements described in Recitals F and G above.

1.21 **"Condominium Plan"** shall collectively mean those certain condominium plans covering any Phase of the Property, currently as follows:

1.21.1 The Amended and Restated Renaissance Phase I Condominium Plan, recorded September 9, 2002 as File/Page No. 2002-0768197; and

1.21.2 The Amended and Restated Renaissance Phase 2 Condominium Plan, recorded April 11, 2003 as File/Page No. 2003-0411992;

all of the above documents are of Official Records of the County Recorder of San Diego County. Condominium Plan shall include any amendments to the above documents.

1.22 **"Declaration" or "Restated Declaration"** shall mean and refer to this Restated Declaration of Restrictions, as it may from time to time be amended.

1.23 **"Director" or "Directors"** [Corp. Code § 5047] means one or more members of the Board of Directors.

1.24 **"Electronic Transmission"** [Corp. Code §§ 20 & 21] means a communication delivered by facsimile, electronic mail or other means of electronic communication as more fully described in California Corporations Code sections 20 and 21.

1.25 **"Eligible Insurer or Guarantor"** shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

1.26 **“Eligible Mortgage Holder”** shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest. SAN DIEGO NATIONAL BANK, a national banking association, shall be an Eligible Mortgage Holder for so long as it has a Mortgage.

1.27 **“Encroachment Agreements”** means such agreements as have been or may be entered into between Declarant and the City (or the Redevelopment Agency) granting permission for portions of the Community to encroach into the Encroachment Area, as such agreements may be amended or supplemented from time to time as contemplated by Section 1.28 below. As of the date of recording this Declaration, Declarant and the City have entered into an Encroachment Agreement recorded July 24, 2001 as Document No. 2001-0514535 in the Office of the County Recorder of San Diego County, California, which among other things permits the encroachment of the underground parking structure into the public right-of-way adjacent to the Property.

1.28 **“Encroachment Area”** means the areas immediately adjacent to the Property shown and designated on the Condominium Plan as “Encroachment Area.” It is anticipated that the Encroachment Area will be owned by the City or the Redevelopment Agency. Underground portions of the General Common Area, including portions of certain Parking Space and Storage Space Exclusive Use Areas, and portions of certain Balcony Exclusive Use Areas, encroach into the Encroachment Area, as shown on the Applicable Condominium Plan. The Owner of the Condominium to which the encroaching Exclusive Use Area is appurtenant (a) will have such rights (such as a license) as are granted in the applicable Encroachment Agreement(s) over the portion of the Exclusive Use Area situated within the Encroachment Area, subject to the terms of the applicable Encroachment Agreement(s), and (b) will have an exclusive easement over the balance of the Exclusive Use Area. Notwithstanding the foregoing, if the City (or Redevelopment Agency, as applicable) agrees to grant an easement or other rights of use over the Encroachment Area, then the Owner shall have an easement of such other rights of use over such areas, and Declarant may record a supplementary declaration to evidence such easement or such other rights of use, but the failure of Declarant to record a supplementary declaration shall not impair any easement rights or such other rights of use which may be granted.

1.29 **“Exclusive Use Area”** shall mean and refer to those portions of the Association Property, if any, or Common area shown and described on the applicable Condominium Plan covering a Phase to which an exclusive right to use is or may be granted to an Owner. Exclusive Use Areas shall consist of the following, which are designed to serve a Unit, but are located outside the boundary of the Unit:

1.29.1 “Balcony,” “Deck,” “Parking Space,” “Storage Space” and “Commercial” Exclusive Use Areas,



- 1.29.2 Exterior doors, door frames, screens, and door hardware,
- 1.29.3 Windows, screens, and window hardware,
- 1.29.4 Other fixtures that exclusively serve a single Unit, and
- 1.29.5 Internal and external telephone and cable wiring.

However, a Condominium Plan may or may not show each such area and a Condominium Plan may show different or additional Exclusive Use Areas. The Units to which Balcony and Deck Exclusive Use Areas are appurtenant, and the Commercial Unit to which Commercial Exclusive Use Areas are appurtenant, are shown on applicable Condominium Plan. The Units to which Parking Space and Storage Space Exclusive Use Areas are appurtenant will be designated in the initial Condominium grant deed to the Residential Condominium or in later easement deeds of any Parking Space and Storage Space Exclusive Use Areas not previously conveyed in a Condominium grant deed.

1.30 **"General Common Area"** shall mean the Property excluding (i) the Phase 2 Module, (ii) the Phase 1 Building Common Area, (iii) the Living Units and Commercial Units in Phase 1, and (iv) the Association Property, if any. Any pipes, wires or other utility installations which serve both Phase 1 and Phase 2, but which are not owned and maintained by the City or a public utility will also be General Common Area. Television Cable and related equipment may be owned by the cable supplier. It is intended that the General Common Area include all portions of the Property not located in the Phase 2 Module, the Phase 1 Building Common Area, the Association Property (if any), the Phase 1 Living Units or the Phase 1 Commercial Units. The General Common Area shall include, but not be limited to, any of the following if they serve both Phases: any chimneys, vents or foundations, overhangs, columns and other appurtenances regardless of whether any such items lie outside the boundary lines shown on the applicable Condominium Plan. In interpreting deeds and plans, the then existing physical boundaries of any such improvement, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the improvements.

1.31 **"Governing Documents"** [Civ. Code § 4150] means this Restated Declaration and any other documents such as the Articles, Bylaws, Condominium Plan, Rules, or Architectural Rules which govern the operation of the Association.

1.32 **"Improvement"** means any structure or appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, swimming pools, the spa, barbecues, driveways, parking areas, the garage, fences, screening walls, block walls, brick walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, planted trees and shrubs, poles, and signs.

1.33 **“Joint Use Common Area”** shall mean and refer to the area so described in the Condominium Plan for Phase 1. The use of the Joint Use Common area shall be shared by the Owners of Living Units and the Owners of Commercial Units.

1.34 **“Living Unit” or “Commercial Unit”** shall mean and refer to a separate interest in space as defined in Civil Code section 4125 and as shown and described as such on the Condominium Plan. The following are Common Area (either Building Common Area or General Common Area, as described on the Condominium Plan and in this Declaration) and not a part of any Living Unit or Commercial Unit: bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Living Unit or Commercial Unit. Each Living Unit and Commercial Unit shall include any door or window within a perimeter wall, the interior undecorated surfaces of bearing walls and perimeter walls, floors and ceilings, the outlets of all utility installations in the Living Unit or Commercial Unit, including the fire box of any fireplace located in the Living Unit or Commercial Unit, including the fire box of any fireplace located in the Living Unit. In interpreting deeds and plans, the then existing physical boundaries of a Living Unit or Commercial Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

1.35 **“Member”** shall mean and refer to a person or entity entitled to membership in the Association as provided in this Declaration and the Bylaws.

1.36 **“Module”** shall mean and refer to a three-dimensional portion or portions of the Property, shown on a Condominium Plan and established pursuant to Government Code section 66427. The Condominium Plan for Phase 1 shall describe the Phase 1 Module and the Living Units, Commercial Units, Building Common Area and Association Property (if any) within Phase 1. The Phase 2 Condominium Plan will describe the Living Units, Commercial Units (if any; no Commercial Units are currently planned for Phase 2), Building Common Area and Association Property (if any) within Phase 2.

1.37 **“Mortgage”** shall mean and refer to a mortgage or deed of trust which encumbers a Condominium. “First Mortgage” means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Community.

1.38 **“Mortgagee”** shall mean and refer to a beneficiary under a deed of trust which encumbers a Condominium as well as a mortgagee under a Mortgage.

1.39 **“Notice and Hearing”** [Civ. Code § 5855; Corp. Code § 7341] means notice to an Owner and an opportunity for the Owner to be heard, prior to the imposition of any fine, penalty or other disciplinary measure, in the manner set forth in the Bylaws or other Governing Documents and in compliance with any Applicable Law.

1.40 **"Officers"** means the Officers of the Association appointed by the Board of Directors pursuant to the Bylaws.

1.41 **"Owner"** means:

1.41.1 Any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Unit, as evidenced by a deed recorded in the San Diego County Recorder's Office, including the Association, and any contract sellers under recorded contracts of sale.

1.41.2 "Owner" shall not include any persons or entities that hold an interest in a Condominium merely as security for performance of an obligation.

1.41.3 For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other legal entity, any Director, Officer, employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. For Units held in trust, the trustee may exercise the membership rights attributable to the trust.

1.41.4 A person or entity is not an Owner due to: (1) community property or other marital rights where the person asserting such rights is not shown on the recorded title as an Owner; (2) rights of adverse possession not adjudicated and shown on the recorded title as an Owner; or (3) other equitable rights where the person asserting such rights is not shown on the recorded title as an Owner.

1.42 **"Phase"** shall mean and refer to Phase 1 and/or Phase 2, as determined by the context in which the term "Phase" is used.

1.43 **"Phase 1"** shall mean and refer to all portions of the Property other than Phase 2 as shown and defined on the Phase 1 Condominium Plan.

1.44 **"Phase 1 Condominium Plan"** shall mean and refer to that certain Condominium Plan entitled "Amended and Restated Renaissance Phase 1 Condominium Plan" which was recorded September 9, 2002 as File/Page No. 2002-0768197 in the Office of the County Recorder of San Diego County, California, as it may from time to time be amended.

1.45 **"Phase 2"** shall mean and refer to the phase 2 Module and the undivided 100/228 interest in the General Common Area appurtenant to the Phase 2 Module.

1.46 **"Redevelopment Agency"** shall mean and refer to the Redevelopment Agency of the City of San Diego.

1.47 **"Residential Condominium"** shall mean and refer to each Condominium which includes a Living Unit as an ownership element.

1.48 **"Retail Purchaser"** shall mean and refer to anyone other than a successive Declarant who purchases a Condominium from Declarant through authority of a Final Subdivision Public Report issued by the California Department of Real Estate.

1.49 **"Rules"** [Civ. Code § 4340] means any Rules, including the Architectural Rules, for the Association regulating the use of the Units, Exclusive Use Areas, Common Areas, the Community and any facilities located thereon adopted by the Board.

1.50 **"Unit"** may refer to Living Unit and Commercial Unit collectively.

1.51 **"Voting Power"** [Corp. Code §5078 means the total number of votes eligible to be cast in the Association based on one vote per Unit, less the votes of any Unit where voting rights have been suspended.

## **ARTICLE 2 - PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA**

2.1 **Community Subject to Restated Declaration.** The entire Community shall be subject to this Restated Declaration.

2.2 **Owners' Easements of Enjoyment.** Every Owner of a Condominium shall have a right and easement of ingress and egress of enjoyment in and to the General Common Area, the Building Common Area and the Association Property. The rights and easements of Phase 1 Owners to use the Phase 2 Building Common Area and the rights and easements of Phase 2 Owners to use the Phase 1 Building Common Area are subject to the conveyance of a Condominium in each Phase. These rights and an Owner's undivided interest in the General Common Area and Building Common Area shall be appurtenant to and shall pass with the title of each Condominium, subject to the following provisions:

2.2.1 The right of the Board to make Rules relating to the operation and use of the Association Property and Common Area, including the right of the Board to restrict use of the recreational facilities to those in possession of Living Units, to control the hours of such use and to determine whether such facilities may be used by guests. The Association shall have no right to restrict reasonable access to a Condominium by the persons who have the right to possession of the Condominium.

2.2.2 Unless the Board resolves otherwise, ownership of a Commercial Condominium shall not allow its Owner, occupant or customers to use any recreational, parking or other facilities located in the

General Common Area, Building Common Area or Association Property other than the Joint Use Common Area.

- 2.2.3 The right of the Board to suspend the membership rights of an Owner, including but not limited to, their voting rights, right to run as a candidate for election to the Board, right to use the Common Area facilities by the Owner and occupants of a Condominium, and/or the right to suspend proximity sensor devices, including but not limited to, fobs and garage door openers:
- (a) During the period of time any Association assessment against the Condominium remains delinquent; and/or
  - (b) For any infraction of the Board's published Rules after reasonable written Notice and Hearing before the Board which satisfies the minimum requirements of California Corporations Code section 7341 as set forth in the Bylaws.
- 2.2.4 The right of the Board, subject to the limitations stated in the Section below entitled "Approval of First Mortgagees" and subject to the restrictions stated in California Corporations Code section 8724, to transfer less than substantially all of the Association Property. It is specifically intended that the Board have the right to cooperate with any Owner in adjusting the boundaries of portions of the Community (e.g., boundaries of Exclusive Use Areas or boundaries between a Living Unit or Commercial Unit and the Common Area).
- 2.2.5 The sole and exclusive right of the Association, acting through the Board, to operate, maintain and control the Association Property and Common Area except as otherwise stated in this Declaration.
- 2.2.6 The right of the Board to grant or dedicate to third parties permits, licenses (which may be irrevocable when required by the utility), and easements over the Common Area or the Association Property (if any) for utilities, roads and other purposes necessary for the proper operation of the Community; and the right of the Board to convey portions of the Common Area or the Association Property to others in connection with a boundary adjustment requested by an adjacent property owner or public entity.
- 2.2.7 The right of the Board to grant easements and licenses over the Association Property and the Common Area pursuant to the Article below entitled "ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES."

2.2.8 The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Association Property and to hypothecate any or all real and personal property owned by the Association.

2.2.9 The right of access, ingress and egress over the Association Property and Common Area and the right of installation and use of utilities on the Association Property and Common Area for the benefit of the Condominiums.

2.3 **Delegation of Use.** Subject to the restrictions stated in this Declaration, the Bylaws and the Rules, the Owner's right of enjoyment to the Association Property and Common Area and facilities shall be delegated to the occupants of the Owner's condominium (e.g., tenants or contract purchasers who reside in the applicable Living Unit). Each Owner shall be responsible to the Association for any damage to the Association Property and Common Area caused by such Owner or persons to whom Common Area or Association Property rights have been delegated.

2.4 **Power of Attorney to Correct Errors.** The Association is hereby given a power of attorney to act on behalf of the Owners and their Mortgagees to correct errors in any Condominium Plan by executing on behalf of the affected Owners and Mortgagees an amendment to the applicable Condominium Plan and an instrument to effect any conveyances or partial reconveyances necessary to correct such errors. The power hereby given to the Association is limited as follows:

2.4.1 The power may be exercised only to correct errors in a Condominium Plan as evidenced by a written statement which described the error(s) and which is signed by the engineer who prepared the Condominium Plan. The power hereby given may not be utilized for any other purpose.

2.4.2 Should correction of such shall error cause a Living Unit or Commercial Unit to become reduced in area, the applicable Owner and his or her Mortgagee must consent in writing to the recording of the instrument of correction, which consent shall not be unreasonably withheld or unreasonably delayed.

The power hereby given is coupled with an interest and may not be revoked by an Owner or a Mortgagee.

### **ARTICLE 3 - MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

3.1 **Each Owner is a Member.** Each Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration and the Bylaws and the rules and regulations adopted from time to time by the Board and officers of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way,

except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or reuse to transfer the membership registered in the Owner's name to the purchaser of his Condominium, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

**3.2 Classes of Voting Membership.** The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. On matters presented to the membership for a vote, each Condominium shall be assigned one vote, subject to the provisions of the Bylaws.

3.2.1 When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

**ARTICLE 4 - COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**

**4.1 Covenant for Assessments.** Each Owner of any Condominium by acceptance of a deed to the Condominium, whether or not so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) regular assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Association Property and Common Area, (ii) special assessments, and (iii) those other assessments provided for in this Article. The regular and special assessments, together with interest, costs, late charges and reasonable attorney's fees, shall, except as stated in the Sections below entitled "Non-Lien Assessments (Compliance)", be a charge and continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Condominium. Co-owners of a Unit shall be jointly and severally liable for all charges levied by the Association on that Unit.

**4.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Community and for the improvement and maintenance of the Association Property and Common Area for the common good of the Community, to reimburse the Association for the costs incurred in bringing an Owner into compliance with Governing Documents, and for those other purposes described in this Declaration. The regular assessments shall be determined at least annually by the Board to meet the

expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in the section below entitled "Non-Lien Assessments (Compliance)."

**4.3 Maximum Regular and Special Assessments.** The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in this Declaration and the Bylaws. However, the Board shall not increase the assessments during any fiscal year unless the Board has complied with the requirements of Civil Code section 5300, or obtained the approval of a majority of a quorum of Members at a meeting or election.

Except for assessment increases necessary for emergency situations, the Board may not, without the approval of Members constituting a majority of the votes when a quorum of the Owners is established, impose annual increases in regular assessments that are in aggregate more than twenty percent (20%) greater than the regular assessments for the Association's preceding fiscal year, or special assessments which in the aggregate exceed five percent (5%) of the Budgeted Gross Expense of the Association for the fiscal year. For purposes of this Section 4.3, "quorum" means more than 50% of the Owners of the Association. An emergency situation is any of the following:

- 4.3.1 An extraordinary expense required by an order of a court;
- 4.3.2 An extraordinary expense necessary to repair or maintain the Community or any part of it for which the Association is responsible where a threat to personal safety in the Community is discovered;
- 4.3.3 An extraordinary expense necessary to repair or maintain the Community or any part of it for which the association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under section 5300 of the California Civil Code. However, prior to the imposition or collection of an assessment under this Subsection 4.3.3, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members of the Association with the notice of assessment.



Notwithstanding the above stated limitation against increases in regular or special assessments:

- 4.3.4 The Board may increase regular assessments more than twenty percent (20%) if such increase is allowed by California law; and
- 4.3.5 Sums assessed against Owners pursuant to the Section below entitled "Non-Lien Assessments (Compliance)" shall not be considered in calculating the increases in assessments.

The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Condominium have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

**4.4 Non-Lien Assessments (Compliance).** The Association may also impose a special assessment against any Owner to reimburse the Association for costs incurred in bringing an Owner and the Owner's Condominium into compliance with the provisions of the Declaration, the Bylaws and Association rules and regulations, or as a penalty imposed as a disciplinary measure for failure of an Owner or occupants of the Owner's Condominium to comply with such provisions. Such special assessment maybe imposed upon the vote of the Board after Notice and an opportunity for a Hearing which satisfy the requirements of section 7341 of the California Corporations Code, and the Bylaws. Except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner who is or was in non-compliance. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

**4.5 Schedule of Monetary Penalties.** If the Association adopts a policy a imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the Rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery, Electronic Transmission, or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

**4.6 Rate of Regular and Special Assessments.** Regular and special assessments shall be levied upon the Condominiums based on a combination of four assessment components, as described below.

4.6.1 Assessment Components.

- (a) Commercial Condominiums. The regular and special assessment levied upon Commercial Condominiums shall consist of two (2) components: (a) a “General Equal Amount,” and (b) a “General Prorated Amount,” determined as described below.
- (b) Residential Condominiums. The regular and special assessments levied upon Residential Condominiums shall consist of four (4) components: (a) a “General Equal Amount,” (b) a “General Prorated Amount,” (c) a “Residential Equal Amount,” and (d) a “Residential Prorated Amount,” determined as described below.

4.6.2 General Common Expenses and Residential Common Expenses. The budget of the Association shall divide expenses into two (2) main categories: “General Common Expenses” and “Residential Common Expenses.” Residential Common Expenses include those expenses which are solely for the benefit of the Living units, such as maintenance of the Building Common Areas, the parking areas and any recreation areas within the Community. All other expenses of the Association shall be considered General Common Expenses.

4.6.3 Prorated and Equal Expenses. Within each of the categories of General Common Expenses and Residential Common Expenses, expenses will be further divided into “Prorated Expenses” and “Equal Expenses.” It is assumed that larger units, because of their size, receive a greater benefit from certain types of expenses; those types of expenses will be called “Prorated Expenses.” Prorated Expenses will be weighted for purposes of regular and special assessments based on the approximate square footage of floor area of the Living Unit or Commercial Unit to be assessed. Equal Expenses are those expenses that will not be weighted for purpose of assessment. As a result of this further division, four (4) categories of expenses will be established: General Equal Expenses, General Prorated Expenses, Residential Equal Expenses, and Residential Prorated Expenses.

4.6.4 General and Residential Assessment Interests. For each Condominium, there shall be a “General Assessment Interest” determined by the ratio of (a) the approximate square footage of floor area of the Living Unit or Commercial Unit to be assessed to (b) the approximate square footage of floor area of all the Living Units and Commercial Units which are subject to assessment. In

addition, for each Residential Condominium, there shall be a "Residential Assessment Interest" determined by the ratio of (a) the approximate square footage of floor area of the Living Unit to be assessed to (b) the approximate square footage of floor area of all the Living Units which are subject to assessment.

4.6.5 Calculation of Assessment Components.

- (a) "General Equal Amount." General Equal Expenses shall be divided equally among all Condominiums subject to assessment, resulting in a "General Equal Amount" to be assessed against all Condominiums.
- (b) "General Prorated Amount." General Prorated Expenses shall be prorated among all Condominiums subject to assessment, multiplying each Condominium's General Assessment Interest by the General Prorated Expenses, resulting in a "General Prorated amount" for each Condominium.
- (c) "Residential Equal Amount." Residential Equal Expenses shall be divided equally among all Residential Condominiums subject to assessment, resulting in a "Residential Equal Amount" to be assessed against all Residential Condominiums.
- (d) "Residential Prorated Amount." Residential Prorated Expenses shall be prorated among all Residential Condominiums subject to assessment multiplying each Condominium's Residential Assessment Interest by the Residential Prorated Expenses, resulting in a "Residential Prorated Amount" for each Residential Condominium.

4.6.6 Prorated Expense Items. It is intended that the following specific items shall be prorated:

- (a) Insurance premiums for insurance policies obtained by the Association;
- (b) Window washing;
- (c) Expenses of utilities which are billed to the Association because they are not separately metered or sub-metered but are supplied to all of the Living Unit and Commercial Units; and

- (d) Reserves for building exteriors (e.g., waterproofing, repair, stucco and paint), mechanical systems (water), and roofing systems.

4.6.7 Adjustments by Board. The Board may from time to time reallocate items between General Common Expenses and Residential Common Expenses and between Equal Expenses and Prorated Expenses (in each category) as it may in its reasonable discretion determine appropriate and consistent with the methodology described above.

4.6.8 In the event one or more utilities are not separately metered or sub-metered and therefore billed to the Association, but do not supply all of the Living Units or Commercial Units, the expenses of such utilities will be weighted amongst only the Living Units and Commercial Units which are supplied by such utility(ies), based on the ratio of the approximate square footage of floor area of each Living Unit or Commercial Unit so supplied to the total square footage of floor area of all Living Units or Commercial Units so supplied.

4.6.9 This Section 4.6 does not apply to the sums payable by reason of the Section above entitled "Non-Lien Assessments (Compliance)" or the Sections below entitled "Rate of Special Assessments for Repairs" or "Model Homes."

**4.7 Rate of Special Assessments for Repairs.** Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural Common Area or Association Property shall be levied against each Condominium in the Community. Such special assessments shall be levied upon the basis of the ratio of the square footage of the approximate floor area of the Living Unit or Commercial Unit of the Condominium to be assessed to the total approximate square footage of the aggregate floor area of the Living Units or Commercial Units in all Condominiums to be assessed.

**4.8 Date of Commencement of Regular Assessments.** The regular assessments shall commence as to all Condominiums in a particular phase of the Community on the first day of the month following the conveyance of the first Condominium to a Retail Purchaser in that Phase.

**4.9 Adjustment of Assessments; Due Dates.** The Board shall fix the amount of the regular assessments against each Condominium at least thirty (30) days in advance of each fiscal year but may change the assessment amount on any subsequent occasion. Although the amount of regular assessments (other than special assessments) shall be determined at least annually, commencement of regular assessments against an additional Phase during the marketing period may cause the regular assessment amounts to change. Unless otherwise determined by the Board, regular assessments shall be due and payable in monthly installments on the first day of each calendar month.

No notice of regular assessments shall be required except for notices of changes in assessment amount or changes in due dates. Written notice of changes in the regular assessments or of any special assessment shall be sent by first class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the change in assessments or the special assessment becoming due.

**4.10 Effect of Non-Payment of Assessments; Remedies of the Association.**

Any assessment made in accordance with this Declaration (including lien and non-lien assessments) shall be a debt of the Owner of a Condominium from the time the assessment is due. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid in full. The Association shall have the right to impose a late charge on unpaid assessments in an amount not exceeding the greater of Ten Dollars (\$10.00) or ten percent (10%) of each assessment which is fifteen (15) days delinquent. At any time after any assessments (other than non-lien assessments) levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the County Recorder of the County a notice of delinquency as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorneys' fees), interest and late charges which have accrued thereon, the amount of any assessment relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien by sale. Such notice shall be signed by an Officer of the Association or its authorized agent.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorneys' fees), late charges and interest accruing thereon, shall (except as provided in the Section above entitled "Non-Lien Assessments (Compliance)") be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorneys' fees), late charges and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorneys' fees), late charge and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to sections 2924, 2924(b), 2924(c) and 5705 et seq. of the California Civil Code, and all other applicable statutes, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien.

**4.11 Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the assessments, interest, costs, attorneys' fees and late charges shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure or deed in lieu of foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. However, the Association may treat as Common Expenses, assessable against all the Condominiums, any unpaid assessments for which lien rights have terminated. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

**4.12 Estoppel Certificate.** The Association shall furnish, upon demand by any person, a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

**4.13 Non-Use of Association Property or Common Area.** No Owner shall be exempt from personal liability for assessments levied by the Association, nor shall any Condominium be released from the liens and charges of assessments because of the non-use of the Association Property or Common Area nor because of abandonment of the Condominium.

**4.14 Taxation of Association.** In the event that any taxes are assessed against the Common Area, Association Property or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**4.15 No Offsets** All assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

**4.16 *Assignment of Rent.* [Civ. Code § 2938]**

- 4.16.1 This assignment is for the purpose of collecting all Assessments, late charges, interest, fines, monetary penalties, and costs of collection, including attorneys' fees due to the Association pursuant to this Restated Declaration which are in default. This assignment applies to any lease or rental agreement now existing or hereinafter made.
- 4.16.2 Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or rental agreement or otherwise for the use or occupation of any or all parts of any Unit owned by the Owner. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or rental agreement as they become due and payable, provided that the Association, at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessments due. Upon revocation of such authority, the Association may collect and retain such rental monies, whether past due and unpaid or current.
- 4.16.3 The Association's rights under this Section are in addition to and not in place of, the rights described above to file a lien and foreclose upon a lien. The Association's rights shall be subordinate to the rights of any First Mortgagee.
- 4.16.4 The Association shall only exercise its rights to collect rental monies in compliance with California Civil Code section 2938, as amended from time to time, or any successor statute. Further, the Association shall only exercise this right after filing the lien described above and after providing the Owner with Notice and a Hearing pursuant to any Applicable Laws and the Bylaws.
- 4.16.5 By recordation of this Restated Declaration, each Owner expressly consents to and is bound by this assignment of rents to the Association.

**ARTICLE 5 - POWERS AND DUTIES OF ASSOCIATION**

The Association shall have those powers and duties set forth in the Bylaws.

**ARTICLE 6 - USE OF COMMERCIAL AND RESIDENTIAL CONDOMINIUMS**

6.1 ***Lease of Condominium.*** Each Owner of a Condominium shall have the right to lease the Owner's Condominium provided that such lease is in writing. All leases

and rental agreements must be for the entire Unit and not merely parts thereof, unless the Owner remains in occupancy. All leases and rental agreements shall be subject in all respects to the Governing Documents, and each tenant shall be bound by and obligated to the provisions of the Governing Documents. A tenant's failure to comply with the Governing Documents shall be deemed a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association. The Rules may require a tenant to deliver to the Association a security deposit, in an amount established by the Board from time to time, as security for the cost of cleaning or repairing damage to the Common Area.

No Owner shall lease a Condominium for transient or hotel purposes and no Condominium shall be leased, or advertised or solicited as available for lease, for a term less than six (6) months. Should the Board so request an Owner to do so, the Owner shall forward an executed copy of a lease to the Owner's Condominium to the Board together with the telephone number and address of the Owner. Other than as provided in this Section, there shall be no restriction on the right of any Owner to lease a Condominium.

If any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances to preserve the quiet enjoyment of other Owners and residents of the Community. Without limitation, the Association's actions in response to a tenant's violation of the Governing Documents may include the imposition of fines and penalties against the Owner-lessor of the Unit and/or eviction as described below.

In the event a tenant or lessee of a Unit fails to comply with the provisions of the Governing Documents then, in addition to all other remedies which it may have, the Association may notify the Owner of such violation(s) and demand that it be remedied through the Owner's efforts within sixty (60) days of such notice. If such violation(s) is not permanently remedied within that sixty (60) day period, then the Owner shall immediately, at his or her own cost and expense, institute and diligently prosecute an eviction action (unlawful detainer) against his tenant or lessee on account of such violation(s). In the event the Owner fails to commence the foregoing obligation within fifteen (15) days of being required to do so, or commences the action but fails to diligently prosecute the action, then the Board shall have the right, but not the duty, to notify the Owner that the Association will prosecute such action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees incurred. Upon notification to Owner of the Association's intent to prosecute the action, the right to possession of Owner's Unit shall pass to the Association until such time as the tenant or lessee has vacated the Unit. The Owner shall cooperate with the Association in the prosecution of the eviction action. All costs and attorneys' fees not collected from the tenant or lessee shall be paid by the Owner and failure to pay may be the basis for imposing a reimbursement assessment for the fees and costs.

**6.2 Use Not to Impair Insurance.** No Condominium shall be occupied, improved or used for any purpose or in any manner which shall cause such Condominium



or any Condominium to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof or to increase the premium therefor.

6.3 **Nuisance.** No Condominium shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any portion of the Community. Neither ordinary and usual commercial uses of the Commercial Units allowed by zoning nor ordinary and usual techniques of construction of improvements permitted hereunder shall be deemed a nuisance. Any violation of the Section entitled "Animals" of the Article below entitled "USE OF RESIDENTIAL CONDOMINIUMS" or ordinances or regulations of the City is hereby declared to be a nuisance. No one may engage in any illegal, noxious or offensive activity in any part of the Community, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Community.

6.4 **No Owner Modification to Association Property or Common Areas.** Except as otherwise specifically provided in this Declaration, no Owner shall have the right to alter, paint, decorate, remodel, landscape or adorn any part of the Association Property or Common Area without the written consent of the Board.

6.5 **Removal of Trash.** All rubbish, trash or garbage shall be regularly removed from each Condominium and shall not be allowed to accumulate in the Community.

6.6 **Owners Liable for Damage.** Each Owner shall be liable to the Association for all damages to the Community, including but not limited to, the buildings, recreational facilities and landscaping because of the negligence, misconduct, or unauthorized or improper installation, repair or maintenance of any Improvement by the Owner, such Owner's guests, customers (or other licensees) or any occupant of such Owner's Living Unit or Commercial Unit. The Association may repair the damage and assess the cost of the work to the Owner as a special assessment. In the case of joint ownership of a Condominium, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability. Each Owner shall be responsible for compliance with the provisions of the Governing Documents by such Owner's licensees and occupants of such Owner's Condominium.

6.7 **Decorating by Owner.** Each Owner shall have the right, at the Owner's sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Owner's Living Unit or Commercial Unit, and the surface of the bearing walls and partitions located within the Living Unit or Commercial Unit. Such Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his Living Unit or Commercial Unit. Each Owner shall comply with any acoustical standards for flooring, ceiling and other surface materials installed within a Living Unit or Commercial Unit as provided in the Rules. No Owner shall

penetrate the ceiling of the Owner's Living Unit for any purpose (including, e.g., installation of window coverings) without the prior written approval of the Board.

6.8 **Outside Antennae.** Except as permitted by Applicable Law, there shall be no outside television or radio antennae, masts, satellite dishes, transmitter tower or facility, poles or flag poles (other than poles or flag poles) installed or maintained in the Community without prior approval of the Board.

6.9 **No Impairment of Structures.** No Owner shall make any change to his or her Condominium which would adversely affect the structural integrity of the building.

6.10 **Exclusive Use Area.** Each Exclusive Use Area shall be appurtenant to the Living Unit or Commercial Unit it serves. Conveyance of a Living Unit or Commercial Unit will automatically convey all appurtenant Exclusive Use Areas.

6.11 **No Clothes Lines, Etc.** No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes in an Exclusive Use Area or other portion of the Association Property or on the Common Area except in areas (if any) which may be approved by the Board. No Exclusive Use Areas shall be used for storage except for those areas designated as Storage Space Exclusive Use Areas on the Condominium Plan. No bicycles or unsightly articles shall be kept on any Deck or Balcony. No barbeques or any other type of grill shall be kept or used on any Balcony or Deck.

6.12 **Board Permitted to Expand Vertical Limits.** The Board shall have the right to allow Owners to exclusively use portions of the Association Property or Common Area above or below the vertical limits of any Exclusive Use Area.

6.13 **Right of Access.** Each Owner shall have the right of reasonable access for egress and ingress to and from such Owner's Living Unit or Commercial Unit and Exclusive Use Areas.

6.14 **Electric Vehicle Charging Stations.** [Civ. Code § 4745] No electric vehicle charging station ("EVCS") may be installed by any person in any part of the Community without the prior written approval of the Board and compliance with the Electric Vehicle Charging Station Policy. The Owner must sign, before a notary, and return the original signature(s) and notary acknowledgement page, an Electric Vehicle Charging Station Agreement to be recorded with the County of San Diego.

6.15 **Harassment.** No one may engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Association representatives, management representatives, Board members and/or vendors working in the Community. No person shall attempt to engage Association or management representatives or vendors on any private business of such person, or to otherwise direct, supervise or in any manner attempt to assert control over such Association or management representative or vendor during the hours that such Association or management representative or vendor is working on behalf of the Association

**6.16 Smoking.** Due to the scientific evidence of the dangers of secondhand smoke, the offensive odor and nuisance created by smoke, the increased risk of fire, and increased maintenance and cleaning costs, the smoking of any substance is prohibited in the Common Area and/or the Exclusive Use Areas of each Unit (e.g., balconies, patios and decks). "Smoking" shall include the inhaling, exhaling, burning or carrying of any lighted or burning substance in any form, including, but not limited to, tobacco and marijuana products. In addition, the Board may require Owners (and/or residents) to take appropriate measures to abate any nuisance that may be caused from within a Unit by smoking including, but not limited to, requiring the use of smokeless ashtrays; requiring the installation of weatherstripping, filtration systems, and/or caulking; and/or entirely prohibiting smoking with a particular Unit.

**6.17 Noncompliance with Applicable Laws for Modifications to Property.** Neither the Association, the Board, nor any Architectural Committee shall be responsible for any noncompliance with any Applicable Law of any Improvement erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

**6.18 Liability for Architectural Changes.** Neither the Board, any Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, or (3) the development of any property within the Community; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her

**6.19 Effect of Owner-Installed Improvements.** This Section shall apply to all Improvements installed on any Unit or elsewhere in the Community, either by a current or former Owner or by that Owner's family members, agents, tenants, or anyone exercising the Owner's powers, and without regard to whether the Owner first complied with the requirements of this Article, including without limitation, the requirement for seeking and obtaining prior written approval before installing any such Improvements.

Owner shall pay all costs and expenses incurred in the construction and installation of any such Improvements, and shall be fully responsible for the maintenance, repair and replacement of such Improvements. Each Owner shall be responsible for any damages to persons, property or otherwise which result from the construction, maintenance, use or continued existence of such Improvements and shall hold the Association free and harmless from any and all costs and expenses attributable to the construction, installation, maintenance, repair, or replacement of such Improvements or to their continued existence or use. The Association shall have no responsibility either for securing or maintaining insurance for any such Improvements.

Each Owner covenants and agrees that any such Improvements shall be constructed in strict compliance with the plans and specifications and in the exact location approved by the Association, if so approved, and shall be maintained in good condition and repair in accordance with generally accepted construction, maintenance and repair practices, and shall comply with all Applicable Laws. Owner shall be obligated to obtain any necessary building permits and inspections and to verify compliance with all requirements imposed by Applicable Law. The Association's approval of any such Improvements, if given, is limited to an approval based solely on the criteria contained in the Governing Documents and does not include a review for compliance with Applicable Laws.

All such Improvements shall be subject to the jurisdiction of the Association, acting through the Board, and to the Governing Documents; and shall be subject to an easement in favor of the Association to perform its duties under the Governing Documents. As such, each Owner shall pay all costs and expenses incurred in removing and replacing the Improvements, if such removal is required by the Association, in its sole discretion, to perform its maintenance and repair responsibilities under the Governing Documents. The Association shall exercise such discretion reasonably and not arbitrarily.

Owner shall defend, indemnify and hold harmless the Association, its Members, Board, Officers, agents, general manager and employees from and against any and all injuries, damages, causes of action or claims which may exist or be instituted against any or all of said parties because of, or in any manner arising from or connected with, the granting of written confirmation of approval for any Improvements, the power to grant and confirm such approval in writing, or the construction, maintenance, repair, replacement, existence or use of any such Improvements.

Each Owner releases the Association, its Members, Board, Officers, agents and employees from any duty or obligation to pay, or otherwise be responsible, for the cost of construction, maintenance, repair or replacement of any such Improvements, and releases said parties from any and all claims, injuries, damages and causes of action which may arise as a result of the construction, maintenance, repair or replacement of the Improvements or the continued existence or use of the Improvements.

If any Owner fails to construct, maintain or use such Improvements in accordance with any architectural approval granted by the Association and according to the terms of this Article, the Association shall have the power, at Owner's expense, either to maintain, repair or replace the Improvements or to remove the Improvements, in the Association's sole discretion.

The Association shall have the power, but not the obligation, unilaterally to record a document against the title to Owner's Unit identifying the nature, description and location of any Improvements installed by Owner, whether installed with or without the Association's approval, to put subsequent Owners on notice of their duties and obligations with respect to such Improvements under this Article.

## 6.20 **Drones**

- 6.20.1 A “drone” is defined as an unmanned aircraft without a human pilot on board, including model airplanes, helicopters and similar aircraft. The Board may adopt Rules to revise or expand this definition to address any type of aircraft.
- 6.20.2 The Board may establish Rules to prohibit or regulate the operation of any drones in the Community.
- 6.20.3 No resident, guest or invitee may enter into the airspace above another resident’s balcony, patio or yard with a drone.
- 6.20.4 No resident, guest or invitee may operate or authorize the operation of a drone in the airspace above any portion of the Community in such a way as to invade the privacy of Association members, guests, residents or vendors, whether equipped with a camera or otherwise.
- 6.20.5 No resident, guest or invitee may operate or authorize the operation of a drone in the airspace above any portion of the Common Area.

6.21 **Maintenance Standards.** Each Owner of a Residential or Commercial Unit covenants and agrees that the interior and visible exterior of their Unit shall at all times be clean, swept, kept and maintained in a good and safe condition and repair, and in an aesthetically pleasing manner. Litter and damaged or dilapidated personal property shall be kept out of view from the Common Area and other Units at all times.

## ARTICLE 7 - USE OF COMMERCIAL CONDOMINIUMS

7.1 **Commercial Purposes.** A Commercial Unit shall not be occupied and used except for commercial purposes by the Owner or his or her lessee. For purposes of this Article, “commercial purposes” shall include retail sales and businesses, offices, service and/or sales, and with respect to a particular Commercial Unit, the use allowed pursuant to the Section below entitled “Restaurant Use.” All uses must comply with applicable federal, state and local laws and regulations. The Owner of a Commercial Unit shall not employ more than one (1) employee for each two hundred (200) square feet of usable floor space of the Commercial Unit.

7.2 **Advertising.** Except as provided in the next sentence, no Owner or lessee shall employ an advertising medium which can be heard or experienced outside of the Commercial Unit, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, compact disk players, radios or television. The Board may in its discretion permit the use of one or more of such advertising media in connection with the opening of a new business in a Commercial Unit, subject to such restrictions as the Board may in its discretion impose on the time, place and manner of the use of such advertising media. Identification and other signage shall be governed by

Section 7.12 below. No Owner, or his lessee, shall distribute, or cause to be distributed, any handbill or other advertising device in the Common Area or on the public sidewalks or streets adjacent to the Community.

**7.3 Leasing of a Commercial Unit.** Except for the restrictions contained in this Section, there shall be no restriction on the right of an Owner to lease his or her Commercial Unit. An Owner may lease his or her Commercial Unit for the uses allowed by this Article. Any lease shall provide that it is subject, in all respects, to the provisions of the Governing Documents.

**7.4 Hazardous Materials.** An Owner shall not use or keep in a Commercial Unit or the Common Area any kerosene, gasoline or other inflammable or combustible fluid or material or other hazardous materials, other than those required or necessary to operate the business for which the Commercial Unit is used and for normal cleaning and landscaping work.

**7.5 Customers, Guests and Lessees; Insurance.** An Owner of a Commercial Unit shall be responsible for compliance by his customers, guests and lessees, and his lessees' customers and guests, with the provisions of the Governing Documents. The Owner of a Commercial Unit or such Owner's lessee shall maintain a policy or policies of public liability insurance in an amount which is reasonable for the use, and shall demonstrate proof of such insurance to the Board upon request.

**7.6 Restrictions on Commercial Units.** Except as stated in Section 7.11 below, the Board may not restrict the reasonable use of a Commercial Unit as provided for herein. All uses shall be in conformity with the zoning ordinances of the City. Commercial uses by their nature create a variety of impacts that would not occur, or would occur to a lesser degree, in a development with only residential uses. Such impacts include, without limitation, vehicular and pedestrian traffic, light, noise, odors and pests. The benefits of living in a mixed-use development with commercial uses are deemed to outweigh the additional impacts from such uses. The Board shall have the right to sub-meter any utilities to a Commercial Unit which are not separately metered and assess the Owner thereof its share of the cost of such utilities.

**7.7 Restaurant Use.** Restaurant use shall be permitted only for Commercial Unit 103C as shown on the Phase 1 Condominium Plan, and such use shall be subject to the following restrictions:

- 7.7.1 Noise and odors caused from the operation of the restaurant shall be sufficiently controlled such that neither would cause an unreasonable nuisance to the other Owners or occupants, or unreasonably disturb any occupant's right to the quiet enjoyment of their premises, subject to Section 7.6 above.
- 7.7.2 All utilities serving the restaurant shall be provided independent from the Community utilities, except for the sprinkler system and life-safety systems.

7.7.3 The Unit and Exclusive Use Area for the Unit shall at all times be kept and maintained in a safe, clean and sanitary condition and shall be maintained in accordance with any maintenance policies adopted by the Board.

7.8 **Restrictions on Amendments.** No amendments to this Declaration which further restrict the use of a Commercial Unit, disproportionately increase the obligations of a Commercial Unit Owner, move expenses from "Residential Common Expenses" to "General Common Expenses" or increase the rate of assessments on a Commercial Unit shall be effective unless the Owner of such Commercial Unit has given its written consent to such amendment.

7.9 **Use of Commercial Exclusive Use Areas.** Each Owner of a Commercial Condominium shall be entitled to use and improve any Commercial Exclusive Use Area appurtenant to the Owner's Commercial Unit for usual and ordinary commercial purposes for which such area was designed.

7.10 **Hold Harmless and Indemnity.** Each Owner of a Commercial Condominium assumes all risks which may result from improvements he or she makes to his or her Commercial Unit or Commercial Exclusive Use Area and each Owner indemnifies and holds harmless the Association and each other Owner from any claim, demands, liabilities, judgments, attorneys' fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of improvements.

7.11 **Restrictions Against Activities Which Impair Structure.** The Board shall have the right to restrict those activities and improvements which it believes would have adverse structural impacts to the Community.

7.12 **Sign Control.** Identification and other signs may be placed or displayed by Owners or tenants of Commercial Condominiums on or in such Condominium only in accordance with all applicable federal, state and local laws and regulations. All identification and other signs for Commercial Condominiums (and any changes thereto) are subject to the prior written approval of the Board. Notwithstanding the foregoing, an Owner of a Commercial Condominium may place one (1) sign of reasonable and customary dimensions in the place designated by the Board to advertise the Condominium for sale or rent. The Board may adopt Rules regarding the size and location of "for sale" and "for rent" signs.

7.13 **Change in Commercial Status.** No change in the commercial status of a Commercial Unit shall be effective unless approved by a unanimous vote of all Owners of Commercial Units and permitted by all applicable federal, state and local laws and regulations.

## ARTICLE 8 - USE OF RESIDENTIAL CONDOMINIUMS

8.1 **Residential Purposes.** Each Residential Condominium shall be improved, used and occupied for private, single-family dwelling purposes only, and shall not be used

for any commercial purposes other than home businesses which are allowed by City zoning ordinances.

**8.2 Animals.** No animals of any kind shall be raised, bred or kept in any portion of the Community except that a reasonable number of dogs, cats or other household pets may be kept within Residential Units, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Declaration, and provided, that no Owner or other occupant of a Unit may keep any pet which interferes with, or has a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Unit to the peaceful and quiet enjoyment of the Unit. In the event the Board determines that any pet or other animal creates an unreasonable annoyance or nuisance to any Owner or other occupant of a Unit, the keeping thereof shall be discontinued within a reasonable time after such determination. A "reasonable number" as used in this Section shall ordinarily include no more than an aggregate of two (2) dogs and cats per household; provided, however, a reasonable number in any instance may be more or less depending on whether the pets constitute a nuisance to other Owners. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Community must be kept within the Owner's Residential Unit, or on a leash being held by an individual capable of controlling the animal, or in an appropriate carrier from which the animal cannot escape. Each Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Community by the Owner or by members of his or her family, his or her tenants or his or her guests; and it shall be the duty and responsibility of each Owner to immediately clean up any waste from his or her animals. The Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person in the Community, for any damage or injury to persons or property caused by any pet, absent any gross negligence on the part of the Association, or its Board, Officers, employees and agents.

**8.3 Sign Control.** An Owner of a Residential Condominium may place one (1) sign of reasonable and customary dimensions in the place designated by the Board to advertise the Condominium for sale or rent. The Board may adopt Rules regarding the size and location of "for sale" and "for rent" signs. No other signs may be placed anywhere in the Community without the prior written permission of the Board. All signs must conform with applicable federal, state and local laws and regulations.

**8.4 Use of Exclusive Use Areas.** Each Owner shall be entitled to use any Exclusive Use Area appurtenant to the Owner's Living Unit for usual and ordinary residential purposes for which such area was designed.

8.4.1 Each Owner shall be entitled to use the Balcony Exclusive Use Area or Deck, if any, which is appurtenant to the Owner's Living Unit for balcony or deck purposes. Should potted plants be placed on a Balcony or Deck, the Owner must take adequate steps to capture water from such potted plants and to prevent any damage to the Common Area or unsightly conditions. The



Board shall have the right to restrict pots or other items from being placed on top of any fence or railing, or to disallow the potted plants to grow on the exterior of a Balcony or Deck or other portions of the building. Each Owner shall be responsible to pay for the repairs of any damage which may be caused by the placing of potted plants on the Balcony or Deck.

8.4.2 No Owner of a Residential Condominium shall make any improvements to his or her Exclusive Use Area unless and until the Architectural Committee has approved plans of such improvements showing such detail as the Architectural Committee or its consultant deems appropriate. Any such approval may be conditional. The Architectural Committee shall have sixty (60) days to approve or disapprove such plans from the date the plans, in form required by the Architectural Committee, are received by the Architectural Committee. Failure of the Architectural Committee to approve or disapprove the plans within such sixty (60) day period shall be deemed an approval. The Architectural Committee shall have the right to hire a civil engineer, landscape architect or other expert consultant as the Architectural Committee deems appropriate to evaluate plans and inspect the improvements. The Owner shall be required to pay the cost of such consultant. The Architectural Committee may require an Owner to deposit the estimated cost of such consultant at the time plans are submitted for Architectural Committee approval.

8.4.3 Each Owner assumes all risks which may result from improvements he or she makes to his or her Residential Condominium and each Owner indemnifies and holds harmless the Association, the Architectural Committee, and each other Owner from any claim, demands, liabilities, judgments, attorneys' fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of improvements.

8.4.4 The Board or Architectural Committee shall have the right to restrict those activities and Improvements of Owners or occupants of Residential Condominiums which it believes would have adverse structural, drainage or maintenance impacts or adverse visual or noise impacts on other Owners.

8.5 ***Use of Association Property and Common Area.*** Except as otherwise provided in this Declaration, the Association Property and Common Area shall be improved and used only for the following purposes:

- 8.5.1 Affording vehicular passage and pedestrian movement within the Community, including access to the Condominiums;
- 8.5.2 Recreational use by the Owners and occupants of Residential Condominiums and their guests, subject to Rules established by the Board;
- 8.5.3 Beautification of the Community and providing privacy to the residents of the Community through landscaping and such other means as the Board shall deem appropriate;
- 8.5.4 Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; the Rules may be enforced by the Board, which shall have the right and power to remove vehicles from the Community at the cost of the vehicle owner and to levy monetary penalties as provided in this Declaration;
- 8.5.5 As Exclusive Use Areas to be used in the manner described in this Declaration or a Declaration of Annexation; and
- 8.5.6 Those additional purposes which may be allowed by the Board.

No Owner shall use or interfere with use of the Common Areas or Association Property in any manner which shall result in cancellation of insurance or making insurance unavailable.

8.6 **Parking Spaces.** Each Owner of a Parking Space Exclusive Use Area shall have the right to use the parking space ("Parking Space") for parking of automotive vehicle(s) and the storage of non-hazardous materials in storage areas provided therefor. No Owner shall rent or otherwise allow the use of a Parking Space by anyone other than an Owner or occupant of a Living Unit and their guests, unless the Board allows an Owner to do so. Unless the Board agrees otherwise, no Owner shall convert a Parking Space to any use which prevents its use for vehicular parking. Declarant may have granted easements over the Parking Space Exclusive Use Areas, including all of the handicap and regular Parking Spaces, at the time title to the Living Units is conveyed to the original purchasers. Owners of Living Units may transfer easements over Parking Space Exclusive Use Areas among themselves by deeds recorded in the Official Records of the County; however, easements over Parking Space Exclusive Use Areas may not be transferred to or owned by anyone other than an Owner of a Living Unit, and any attempt to do so shall be null and void. Upon any transfer of an easement over a Parking Space Exclusive Use Area, the transferee Owner shall notify the Board of the transfer.

8.7 **Handicap Parking Spaces.** The Community will contain handicap parking spaces (which may be designated on the Condominium Plan), easements for the exclusive use of which may be granted by Association to the Owners of particular Living Units.

The Owner of a Parking Space Exclusive Use Area which was designed as a handicap parking space and who is not, himself, handicapped shall assign to the Owner or occupant of another Living Unit in the Community who is or becomes handicapped for an extended and continuous period (regardless whether the handicapped Owner is a new Owner) the exclusive right to use such handicap parking space; provided such handicapped person makes available to such Owner the exclusive use of the Parking Space Exclusive Use Area the handicapped person would otherwise be entitled to use, as set forth in the deed for such other Living Unit. Such rights to use the handicap Parking Space shall terminate when such person ceases to be handicapped. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles.

The Association shall have the authority and be responsible for coordinating the exchange of Parking Spaces pursuant to this Section and shall adopt Rules within respect thereto, including the procedure to be followed should an Owner or occupant be handicapped and wish to use a handicap parking Space, notice to be given to the Association and Owner, and review of the required evidence of handicap. The Association shall maintain appropriate records of such exchanges, including a copy of the evidence provided. There is no guarantee that there will be sufficient handicapped Parking Spaces to meet the needs of all Owners, and the Association shall not have any liability if the Association is unable to assign a handicap Parking Space to a handicapped Owner because all handicapped Parking Spaces have been assigned to handicapped Owners.

**8.8 Window Coverings.** Each Owner of a Residential Condominium shall, within thirty (30) days after close of escrow for his or her Condominium, install and maintain window coverings on all windows of his Living Unit which are visible from any public or private street. The exterior appearance of such window coverings must be neutral, black or white in color and otherwise consistent with any requirements promulgated by the Architectural Committee. Window tinting shall not be allowed. No flashing lights or other window lights which are visible from any public or private street or any other Condominium shall be permitted.

## **ARTICLE 9 - RESPONSIBILITIES OF MAINTENANCE**

**9.1 Maintenance by Owners.** Each Owner of a Condominium shall be responsible for the maintenance and repair of:

- 9.1.1 The windows and the interior surfaces of doors enclosing the Living Unit or Commercial Unit, including the metal frames, tracks and exterior screens of glass doors and windows. Commercial Unit Owners shall be obligated to maintain, repair and replace their store windows.
- 9.1.2 The interior of the Living Unit or Commercial Unit and all appliances, whether "built-in" or freestanding, within the Living Unit or Commercial Unit.

- 9.1.3 The plumbing, electrical, cable television, water heating systems, heating systems and air conditioning systems (if any), and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. An easement is reserved to allow such systems to be located within the Association Property and Common area in those locations where installed by the developer.
- 9.1.4 The maintenance and repair of the interior surfaces and drainage systems of any Balcony or Deck which the Owner has the exclusive right to use. For example, the Owner shall be responsible for re-surfacing his or her Balcony or Deck, but the structure of the Balcony or Deck would be the responsibility of the Association. All drainage systems for a Balcony or Deck shall be in good working condition at all times. The Association shall be responsible to paint and maintain both the exterior and interior surfaces of any open railing such as iron or tubular steel railings.
- 9.1.5 The routine maintenance (for example, sweeping and cleaning) of any Balcony or Deck Exclusive Use Area appurtenant to the Condominium and the removal of any oil stains within the Parking Space, if any, including the removal of any oil stains on any Balcony which the Owner has the exclusive right to use. An Owner shall also be responsible to maintain, repair and replace when appropriate any improvements which the Owner makes to his or her Exclusive Use Area.
- 9.1.6 The interior of any fences which separate the Owner's Deck from another Deck or other portion of the Community. The Association shall be responsible to maintain the exterior of building walls, and "fences" does not refer to the exterior building walls.

9.2 **Failure to Maintain.** In the event an Owner defaults in his or her maintenance or repair obligations to the standards set by the Board, the Board may give written notice of such default, stating with particularity the work of maintenance or repair the Board finds to be required and requesting the same be completed in a reasonable period of time as specified in the notice. In the event the Owner fails to complete such maintenance or repair within the period specified in the notice, the Board may, after Notice and Hearing, cause such work to be completed and assess the Owner the cost thereof as a special assessment. The Association shall have an easement over the Units and Exclusive Use Area for the purpose of performing the work described herein.

9.3 **Maintenance by Association.** The Association shall maintain the Association Property, if any, and Common Area (except for those items of maintenance

which the Owner is required to perform pursuant to the Section above entitled "Maintenance by Owners"); provided, however, the Association shall have the obligation to maintain the Building Common Area within Phase 2 only upon commencement of its regular assessments against Phase 2. Each Owner shall reimburse the Association for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Exclusive Use Area or other portions of the Common Area or Association Property.

**9.4 Wood-Destroying Pests.** The Association shall be responsible for the repair and maintenance of the Association Property and Common Area occasioned by the presence of wood-destroying pests or organisms; provided, however, it shall be the responsibility of each Owner to maintain and repair any improvements which may have been added by such Owner to the Owner's Living Unit, Commercial Unit and/or Exclusive Use Area. The Association shall have the power to temporarily remove any occupant of the Community for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation, including lost rental income, during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association.

Neither the Association, the Board, Officers, agents nor employees shall have any liability, absent gross negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.

The Association shall give notice of the need to temporarily vacate a residence to the occupants and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

- 9.4.1 Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association; or
- 9.4.2 By sending a copy of the notice to the occupants at the residence address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

**9.5 Damage During Repairs.** In the course of carrying out the maintenance and repair responsibilities of the Association, it may be necessary for agents or representatives of the Association to remove floor or wall coverings, appliances, fixtures or other similar items within a Unit. In this event, the Association's agents or representatives shall use care to cause as little damage as possible. The Association shall restore the structural floor, ceiling or wall. The Owner of the Unit shall be

responsible to paint and to repair or replace any such floor or wall coverings, appliances, fixtures or other similar items which might be damaged during such repair or replacement by the Association's representatives or agents; provided, however, the Association will compensate the Owner of the Unit the amount necessary, as reasonably determined by the Board, to restore the Unit to its original developer-installed construction using the originally-installed materials and finishes of the Unit as described in the Renaissance Owner's Manual, prepared by Roel Construction Company, on file with Association management, unless the damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

**9.6 Damage Caused by Owner. [Civ. Code § 5725]**

- 9.6.1 Should any damage to the Common Area or any Unit result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, the cost of all repairs shall be borne solely by the responsible Owner.
- 9.6.2 The Association shall be responsible for performing the repair of any damage to the Common Area or Improvements over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her Unit for which such Owner has control. The Owner of any other Unit which sustained damage shall perform the repair of any such damage, and may charge the cost of repairs and any relocation costs to the responsible Owner.
- 9.6.3 If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association or the Owner of any other Unit which sustained damage, the Association, after Notice and Hearing, may charge the cost of those repairs to such Owner as an Individual Assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the responsible Owner shall be responsible for the total cost of repair.
- 9.6.4 All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform to any

applicable building codes in effect at the time the damage is repaired.

9.7 **Limitation of Liability.** The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any property, or the cost of repair or replacement of any damaged property or portions of such Owners' Unit or Exclusive Use Area, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

9.8 **Damages to Unit; Water Intrusion Damage.**

9.8.1 Each Owner shall be solely responsible for the repair of any damage to any and all interior items of his or her Unit, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items such as landscaping, caused by any Common Area component or Improvement or any other component or Improvement maintained by the Association, including water intrusion from any Common Area source. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property, or the cost of repair or replacement of damaged Improvements for which such Owner is responsible.

9.8.2 The Association shall not be liable for damage to property in the Community resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, agents or employees.

9.8.3 Owners shall cause notice to be given to the Association of any water within, or water intrusion into, their Unit immediately upon discovery of such leak or water intrusion. Within twenty-four hours or sooner of the discovery of a leak or water intrusion, Owner shall cause all water to be extracted, and the Unit cleaned. If Owner has not had water extraction and cleaning performed within forty-eight hours of discovery of the leak or water intrusion, the Association may cause such work to be done and assess the cost of the work to the Owner as a special assessment.

9.8.4 The Association is authorized to enter the Unit to perform water extraction and related repairs on an emergency basis.

9.8.5 If repairs are required to a Unit following a leak or water intrusion, Owner shall cause all work to be performed by a licensed

contractor experienced in water extraction and mold remediation. Containment procedures designed to prevent contamination of the affected Units, other Units and the Common Areas shall be utilized.

- 9.8.6 Owner and his or her tenants, guests, invitees, agents and employees shall hold the Association harmless for any claim for property damage or personal injury alleged to arise from the presence of mold or fungi in his or her Unit unless the damages or injuries were caused by the gross negligence of the Association, its Board, Officers, agents or employees

9.9 **Owner Notification to the Association.** If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area or in any Unit, including, but not limited to, water entry, water damage or mold, that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Community, the Owner shall notify the Association representatives of the condition as soon as possible.

#### **ARTICLE 10 - SEPARATION OF INTERESTS AND PARTITION PROHIBITED**

10.1 **No Separation of Interests.** No Owner may sell, assign, lease or convey any portion of his or her Condominium separate and apart from the entire Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any portion of his or her Condominium separate or apart from the entire Condominium shall be void.

10.2 **No Partition.** There shall be no termination of the Community and the Common Area of the Community shall remain undivided with no judicial partition thereof except:

- 10.2.1 With the approval, after substantial destruction or condemnation of the Community occurs, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or
- 10.2.2 With the approval, for reasons other than substantial destruction or condemnation of the Community, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or
- 10.2.3 As allowed by California law, including Civil Code section 4610, as the same may be amended from time to time.



An Eligible Mortgage Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail within "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a co-tenancy in a Condominium.

10.3 **Article XVII.** Article XVII of this Declaration sets forth the rights of the Owner(s) of the Phase 2 Module to cast votes of the purposes stated in this Article X.

10.4 **Power of Attorney.** The Association is hereby granted an irrevocable power of attorney to sell the Community for the benefit of all the Owners thereof when partition of the Owners' interests in the Community may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners who own at least fifty percent (50%) of the Condominiums in the Community. Such power of attorney may be exercised by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of the County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

## **ARTICLE 11 - DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY**

### **11.1 *Damage or Destruction.***

11.1.1 **Duty to Restore.** [Civ. Code § 4775] Any portion of the Common Area that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

11.1.2 The Community is terminated.

11.1.3 Repair or replacement would be illegal under an Applicable Law.

11.1.4 Eighty percent of Owners, including each Owner of a Unit or Exclusive Use Common Area that will not be rebuilt, vote not to rebuild.

11.2 **Cost of Repair.** Any cost of repair or replacement of the Common Area in excess of any insurance proceeds and reserves shall be a common expense, levied against Condominiums in the same proportion as regular assessments are levied.

11.3 **Repair Plans.** The Common Area and/or Association Property, if any, must be repaired and restored in accordance with either (1) the original plans and specifications, updated as required to reflect applicable building codes, or (2) other plans and specifications which have been approved in writing by the Board, a majority of Owners, and at least fifty-one percent of Eligible Mortgage Holders holding Mortgages on Units subject to the repair.

**11.4 Replacement of Less Than Entire Community.**

- 11.4.1 Any insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Community.
- 11.4.2 Except to the extent that other persons or entities will be distributees:
- (a) Any insurance proceeds attributable to a Unit and Exclusive Use Common Area that are not rebuilt must be distributed to the Owner of that Unit and the Owner of the Unit to which the Exclusive Use Common Area is appurtenant, or to Lenders, as their interests may appear.
  - (b) The remainder of any proceeds must be distributed equally to the Owners of each Unit which will remain or to Lenders, as their interests may appear.
- 11.4.3 If the Owners vote not to rebuild a Unit, the common interest portions of the Unit shall be reallocated among all other Units, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocations.

**11.5 Insurance Proceeds.** An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and Lenders. Subject to the provisions of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged Common Area. The Association, Owners and Lenders are not entitled to receive payment of any portion of the excess proceeds unless there is a surplus after the Common Area and/or Association Property has been completely repaired or restored, or unless the Community is terminated.

**11.6 Disbursements to Owners and Lenders.** If the Community is terminated, any insurance proceeds distributed to Owners and Lenders of Units shall be distributed in proportion to the amount of the insured loss on each Owner's Unit as determined by an independent insurance adjuster. That determination shall be performed by an independent insurance adjuster who shall be selected by the Board and who shall either be a member of, and apply the standards of, a nationally recognized insurance adjusting organization or shall have at least fifteen years of experience in adjusting residential insurance claims.

**11.7 Certificates By Board.** The trustee, if any, may rely on the following certifications in writing made by the Board:

- 11.7.1 Whether or not damaged or destroyed property is to be repaired or restored.

11.7.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

11.8 **Certificates by Attorneys or Title Insurance Companies.** If payments are to be made to Owners or Lenders, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the Lenders.

11.9 **Casualty Destruction of Unit.** In the event of damage or destruction to any Unit, and unless the Owners vote not to rebuild the Common Area or Association Property surrounding the Unit, the Owner thereof shall reconstruct the Unit as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board pursuant to the architectural review requirements of the Governing Documents, reconstruct or repair the same pursuant to new or changed plans and specifications.

11.10 **Condemnation.** If any portion of the Common Area in any Phase is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners in all Phases of the Community, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to Subsection 11.4.2(b) above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

11.11 **Insurance.**

11.11.1 The Association shall obtain and continue in effect at least the following insurance:

- (a) A master fire and casualty insurance policy with glass coverage for one hundred percent (100%) of the current replacement cost of all of the Common Area and Association Property, if any, Exclusive Use Common Area, and improvements within the Community for which the Association is responsible pursuant to the Governing Documents, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The Association may obtain, but is not required to obtain, insurance that will insure components that this

Section does not require. The Association shall have no obligation to insure improvements or fixtures in the Living Units or Exclusive Use Common Areas, i.e., those built-in appliances, free-standing appliances, cabinets, mirrors, utility fixtures, floor or wall coverings and/or other improvements located within the Living Units or Exclusive Use Common Areas. Nor will appliances or improvements in Commercial Units be covered by the master policy, other than doors and interior bearing walls. The maximum deductible amount shall be the lesser of \$10,000 or one percent (1%) of the policy face amount. The form and content of such policy must satisfy the requirements of the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") and shall contain the following endorsements:

- (i) An Inflation Guard Endorsement, when it can be obtained.
  - (ii) A construction code endorsement, if there is a construction code provision that would require changes to undamaged portions of the building(s) even when only part of a building is destroyed by an insured hazard (typical endorsements including Demolition Cost Endorsements, Contingent Liability From Operation of Building Laws Endorsement and Increased Cost of Construction Endorsement).
  - (iii) A Special Condominium Endorsement which states the policy shall provide that any insurance trust agreement will be recognized; the right of subrogation against Owners will be waived; the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association; and the policy will be primary, even if an Owner has other insurance that covers the same loss.
- (b) A comprehensive general liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, Directors, Officers, any manager and employees, and the Owners against liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Association Property and Common Area. The limits of such insurance shall not be less than \$3 million covering all claims for wrongful death, personal

injury and property damage arising out of a single occurrence, or such other minimum amount which meets the requirements of Civil Code section 5805. The form and content of the comprehensive general liability policy must satisfy the requirements of FNMA and FHLMC.

- (c) A policy insuring the Association's Officers and Directors against liability for their negligent acts or omissions while acting in their capacity as Officers and Directors. The limits of such insurance shall not be less than \$1 million or all claims arising out of a single occurrence or such other minimum amount which meets the requirements of Civil Code section 5800.
- (d) Section 5800 of the California Civil Code provides for a partial limitation on the liability of volunteer Officers and Directors of the Association who reside in a Living Unit, provided that certain requirements, as set forth in the Code section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of Officers and Directors for negligent acts or omissions be carried by the Association in specified amounts. The Association shall maintain general liability insurance and insurance covering individual liability of Officers and Directors for negligent acts or omissions in amounts which satisfy the requirements of the Code to limit the liability of volunteer Officers and Directors of the Association.
- (e) A fidelity bond covering members of the Board, Officers and employees of the Association and employees of any manager or managing agent, and any person or entity handling funds for the Association, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment. The Association's coverage may be in the form of a separate bond, a separate policy (e.g., crime policy), or may be added by endorsement to the general policies carried by the Association.
- (f) Workers' compensation insurance covering any employees of the Association, as required by law.

- (g) A policy covering all cost to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association, insurance proceeds for improvements in the Association Property and personalty owned by the Association shall be payable to the Association.
- 11.11.2 Insurance premiums for the master policy and other insurance obtained by the Association (other than the cost of endorsements which cover only particular Owners) shall be a Common Expense to be included in the regular assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his Condominium as described below.
- 11.11.3 All insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association and the servicer of each first Mortgage which requests such notice.
- 11.11.4 The Association shall maintain such insurance coverage as may be required by FNMA or FHLMC so long as either FNMA or FHLMC, respectively, holds a Mortgage on or owns any Condominium.
- 11.11.5 Nothing herein stated shall prevent the Association from obtaining additional amounts of insurance or from adding to the items covered by a master policy. The Association may purchase such other insurance the Board considers necessary or advisable, including earthquake insurance coverage.

11.12 **Waiver of Subrogation.** The Association and the Owners covenant and agree that all casualty insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, Officers and Owners and their respective family members.

11.13 **Separation of Insureds.** Any liability policy obtained by the Association shall provide for a separation of insureds such that the insurance will apply as if each insured were the only insured.

11.14 **Failure to Acquire Insurance.** The Association, and its Directors and Officers, shall have no liability to any Owner or lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any lender entitled to notice that the specific insurance will not be obtained or renewed.

The Association, and its Directors and Officers, shall also have no liability to any Owner or lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may base its decision upon, among other things, a vote of the Owners

**11.15 Insurance Policy Deductibles.** Civ. Code § 5300] The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a covered claim under the Association's property policy, the responsibility for payment of any deductible shall be as follows:

- 11.15.1 Owners shall be responsible for the deductible, if the covered loss occurs only to the Owner's real or personal property, or other property the Owner is responsible for repairing or replacing ("Owner Property").
- 11.15.2 The Association shall be responsible for the deductible if the covered loss occurs only to any real or personal property owned by the Association, or other property the Association is responsible for repairing or replacing ("Association Property").
- 11.15.3 If the covered loss occurs to any Owner Property and any Association Property, or to more than one Owner's Property, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each party's insured loss to the total insured loss under that policy.
- 11.15.4 The foregoing notwithstanding, if the damage or loss is caused by the gross negligence of Association, or if the Board determines the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner or is the Owner's responsibility pursuant to Section 9.6, such Association or Owner, respectively, shall be liable for the full amount of the deductible.

**11.16 Individual Property Insurance.** All Owners shall obtain and maintain insurance, at their sole expense, to protect against any damage to, or loss of the Owner's real or personal property, and the cost of repair or replacement of damaged items, including, but not limited to, any Improvements made by an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which the Owner is responsible for maintenance, repair and replacement by the terms of this Restated Declaration, such as landscaping.

11.17 **Individual Liability Insurance.** An Owner may carry any personal liability and property damage liability insurance with respect to his or her ownership of a Unit that he or she or it desires

11.18 **Mortgagee Approval.** Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

11.19 **Article XVII.** Article XVII of this Declaration sets forth the rights of the Owner(s) of the Phase 2 Module to cast votes for the purposes stated in this Article XI.

## **ARTICLE 12 - DAMAGE, DESTRUCTION AND CONDEMNATION OF SEPARATE INTERESTS**

12.1 **Damage or Destruction.** In the event of damage or destruction to any Commercial Unit, Living Unit or Exclusive Use Area improvements which the Owner is obligated to maintain, the Owner shall reconstruct the same as soon as reasonably practicable (unless the Association is not required to repair surrounding damaged Association Property or Common Area pursuant to the terms of the Article above entitled "DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY"). The Owner shall be entitled to the benefit from an equitable distribution of the master policy of casualty insurance referred to in Article XI above to the extent the distribution covers the damage or destruction of elements of the Condominium which are the obligation of the Owner to repair as provided in this Section.

12.2 **Condemnation.** In the event of any taking of a Commercial Unit, Living Unit or Exclusive Use Area, the Owner of the Condominium (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking and after acceptance thereof, the Owner and Owner's Mortgagee shall be divested of all further interest in the Community and membership in the Association if such owner shall vacate the Condominium as a result of such taking of the Commercial Unit or Living Unit. In such event, the Owner shall grant the Owner's remaining interest in the Common Area appurtenant to the Commercial Unit or Living Unit so taken, if any, to the other Owners owning a fractional interest in the General Common Area and the other Owners owning a fractional interest in the same Building Common Area, such grant to be in proportion to the fractional interest in the General Common Area and Building Common Area then owned by each.

12.3 **Mortgagee Approval.** Any restoration or repair of the Community, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.



## ARTICLE 13 - CONDEMNATION OF ASSOCIATION PROPERTY

In the event the Association Property or any portion thereof shall be taken for public purposes of condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

## ARTICLE 14 - ASSOCIATION'S RIGHT OF ENTRY

For the purpose of performing the maintenance of the Association Property and Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents, contractors and/or employees shall have the right to enter any Commercial Unit, Living Unit, Exclusive Use Area or upon any portion of the Association Property and Common Area to effect repairs, improvements, replacements or maintenance as necessary; provided, however, except in case of an emergency, there shall be no entry into a Commercial Unit, Living Unit or Exclusive Use area without (i) a court order allowing such entry or (ii) the Owner's consent, which consent shall not unreasonably be withheld and shall be presumed if the Owner makes no objection to such entry within three (3) days after the Board delivers notice of its intent to enter. When there is an entrance into any Commercial Unit, Living Unit or Exclusive Use Area, such entrance shall be made with as little inconvenience to the Owner as possible.

## ARTICLE 15 - ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES

The Board shall have the right to grant the following additional easements and licenses:

**15.1 Common Area Licenses.** The Board shall have the right to grant revocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owner's Living Unit, Commercial Unit or Exclusive Use Area, provided that the granting of such licenses is nominal in area, adjacent to the Unit, would not materially and adversely affect any Owner's use of the Common Area, and such use does not unreasonably interfere with any other Owner's use or enjoyment of the Community unless that Owner consents to the use. The Board shall have the right to grant temporary licenses over portions of the Common Area to the Owners and tenants of Commercial Units in connection with the opening of new businesses in Commercial Units, subject to such restrictions as the Board may in its discretion impose, provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

**15.2 Association Property.** The Board shall have the right to grant easements for Owners to exclusively use portions of the Association Property, if any, adjoining the Owner's Living Unit, Commercial Unit or Exclusive Use Area, provided that the granting of such easements is nominal in area, adjacent to the Unit, would not materially and adversely affect any Owner's use of the Association Property, and such use does not

unreasonably interfere with any other Owner's use or enjoyment of the Community unless that Owner consents to the use.

## ARTICLE 16 - ENFORCEMENT

16.1 **Enforcement.** The Association and/or Any Owner shall have the right to enforce against one another, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Each remedy provided in this Article, this Restated Declaration and under Applicable Law shall be considered cumulative and not exclusive.

16.2 **No Waiver.** Failure by the Association, the City or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

16.3 **Board Discretion Whether to Enforce.** [Corp. Code § 7231] In deciding whether to take any action to enforce the restrictions, conditions, covenants, reservations, liens and changes in the Governing Documents, the Board may exercise its discretion using the business judgment rule of Corporations Code section 7231.

16.4 **Nuisance.** [Civ. Code § 3479] The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by Applicable Law or equity against a nuisance, either public or private, shall be applicable against every act or omission or incident resulting in a nuisance and may be exercised by any Owner and the Association.

16.5 **Violation of Applicable Law.** Any violation of any Applicable Law pertaining to the ownership, occupancy or use of any Condominium within the Community is declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures herein set forth.

16.6 **Compliance with Applicable Law.** [Civ. Code §§ 5850 et seq., 5900 et seq., 5925 et seq. & 5975; Corp. Code § 7231] All activities to enforce the provisions of the Governing Documents shall be conducted in accordance with all Applicable Laws. This Section shall apply to both the Association and to all Owners.

16.7 **Attorneys' Fees.** [Civ. Code § 5975] In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Unit which is enforceable as an Assessment pursuant to the Governing Documents. This Section shall also apply to actual attorneys' fees incurred to collect any post-judgment costs.

## ARTICLE 17 - INTENTIONALLY OMITTED

## ARTICLE 18 - ADDITIONAL PROVISIONS

18.1 **Severability.** Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

18.2 **Amendments.** This Restated Declaration may be amended by the vote of at least a majority of the Voting Power of the Association, and an instrument in writing signed by the President or Secretary of the Association certifying that the requisite approval was obtained. The percentage of Voting Power necessary to amend a specific clause or provision of this Declaration shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause. An amendment shall become effective upon the recording thereof by the Office of the County Recorder of the County.

In addition, the Board shall have the power to amend this Restated Declaration or the Bylaws, as the case may be, but only to correct any printing or grammatical error or omission in the Restated Declaration or Bylaws, and only upon a majority vote of the full Board. If the Board approves an amendment using this procedure, the amendment shall not be recorded until: (1) the Board first sends notice of such action to the Owners, which notice shall include the text of the proposed amendment. An amendment using this procedure shall be considered ratified, unless within thirty days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent of the votes in the Association sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a special meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the Voting Power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the special meeting.

18.3 **Mortgagee Approval of Amendment.** Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Community which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall normally be deemed "material to a Mortgagee":

18.3.1 Voting rights.

18.3.2 Assessment liens and the priority of assessments liens and the right of Eligible Mortgage Holders to approve increases in regular assessments of in aggregate more than twenty-five percent (25%) during any fiscal year from the regular assessments assessed during the previous fiscal year.

- 18.3.3 The right of Eligible Mortgage Holders to approve reductions in reserves for maintenance, repair and replacement of the Association Property and the Common Area.
- 18.3.4 Responsibility for maintenance and repairs.
- 18.3.5 Reallocation of interest in the Common Area or Association Property (including Exclusive Use Area) or rights to its use.
- 18.3.6 Redefinition of boundaries.
- 18.3.7 Convertibility of Living Units into Common Area or Association Property and vice versa.
- 18.3.8 Annexation and deannexation.
- 18.3.9 Hazard or fidelity insurance requirements.
- 18.3.10 Imposition of any restrictions on the leasing of Condominiums.
- 18.3.11 Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey the Owner's Condominium.
- 18.3.12 The Section below entitled "Approval of First Mortgagees."
- 18.3.13 Restoration or repair of the Community (after a hazard or partial condemnation) in a manner other than specified herein.
- 18.3.14 Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs.
- 18.3.15 Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specially confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested.

**18.4 Extension of Declaration.** Each and all of these covenants, conditions and restrictions shall terminate sixty (60) years following the recordation of this Declaration of Restrictions with the Office of the County Recorder of the County, after which date they shall automatically be extended for successive periods of ten (10) years unless all the Owners have executed and recorded at any time within six (6) months prior to said sixty (60) year period, or within six (6) months prior to the end of any such ten (10)

year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate at the end of said sixty (60) year period or at the end of any such ten (10) year period.

**18.5 *Right to Combine Units.*** One or more Living Units may be combined (and one or more Commercial Units maybe combined) to comprise a single unit provided the Owner wishing to do so gives written notice to the Association and the Association reasonably determines that the combination of units will not diminish the structural integrity of the Community. The combination of Living Units or Commercial Units shall not result in any reduction of regular assessments or voting rights which would have otherwise applied to the units so combined. The area from which a Common Area wall or portion of a Common Area wall is removed by reason the combining of Separate Interests shall be deemed a part of the combined Separate Interest after such removal..

**18.6 *Reservation of Easements.***

18.6.1 There are hereby reserved reciprocal cross-easements in and to the Association Property (other than Exclusive Use Areas) and Common Area (other than Exclusive Use Areas) in both Phases of the Community for the benefit of the Owners of Condominiums in each Phase of the Community. These cross-easements shall not benefit or burden a Phase until (i) such Phase has become subject to this Declaration and (ii) a Condominium has been conveyed to a Retail Purchaser on such Phase; provided, however, each Owner of a Condominium shall at all times be provided within ingress and egress to such Owner's Condominium.

18.6.2 This Restated Declaration reserves the right to use the systems of access and any private utilities within the Community for access (and connection of utilities) by future Owners of portions of the Property. The easements so reserved are appurtenant to the Property. Any Owner utilizing easements reserved hereby shall, pursuant to California Civil Code section 845, reimburse the Association for its costs and reserves to maintain, repair and replace such private streets and private utilities, if any, based proportionally to the use made of such easements by the Owners of portions of the Property not annexed hereto.

18.6.3 There are hereby reserved in favor of each Condominium, the Common Area and the Association Property in each Phase which is subject to this Declaration an appurtenant non-exclusive easement to use any drainage systems installed anywhere within the Property for the purposes of accepting drainage from such Association Property, Common Area or Condominium regardless of whether the drainage system is located within a Phase which has been annexed hereto.

**18.7 Encroachment Easements.** Easements are hereby reserved in favor of the Owner of each Condominium and the Association over all adjoining Condominiums, the Association Property and Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, repair, settlement or shifting of any building, or any other cause. There shall be easements of the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if the encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure in the Community is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Condominiums, Association Property or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

**18.8 Application of Provisions.** The provisions of this Declaration apply to the entire Community.

**18.9 Owner's Compliance.** Each Owner, tenant or occupant of a Condominium shall comply with the provisions of the Applicable Law, this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

**18.10 Payments of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their deeds of trust. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy of the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

**18.11 Mortgagee Curing Defaults.** A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

**18.12 Approval of First Mortgagees.** Unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

- 18.12.1 By act or omission seek to abandon or terminate the Community.
- 18.12.2 Change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Area. (This Subsection is not intended to require approval of First Mortgagees to the annexation of additional Phases to the Community or to the sale of Condominiums in such additional Phases.)
- 18.12.3 Partition or subdivide any Condominium.
- 18.12.4 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the association Property. The granting of easements for public utilities or for other public purposes and other easements allowed by this Declaration shall not be deemed a transfer within the meaning of this Subsection nor shall non-material boundary adjustments be deemed a transfer within the meaning of this Subsection.
- 18.12.5 Restoration of the Community (after hazard damage or partial condemnation) in such a manner other than specified in this Declaration. Any restoration or repair of the Association Property or Common Area after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by Eligible Mortgage Holders, Insurers or Guarantors which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors. When Owners are considering termination of the legal status of the Community for reasons other than substantial destruction or condemnation of the Community, Eligible Mortgage Holders, Insurers or Guarantors which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors must agree.
- 18.12.6 Use hazard insurance proceeds or proceeds from other third parties for losses to or claimed defects in any portion of the Association Property or Common Area for other than the repair, replacement or reconstruction of such Association Property or Common Area.

- 18.12.7 When professional management has been previously required by any Eligible Mortgage Holder, Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder, Insurer or Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Association and the approval of Eligible Holders, Insurers or Guarantors of Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors. This Paragraph 18.12.7 applies only if the Community contains 50 or more Living Units.

**18.13 Notice to Eligible Mortgagees.** Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder, Insurer or Guarantor and the Condominium number or address, any Eligible Mortgage Holder, Insurer or Guarantor will be entitled to timely written notice of:

- 18.13.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or any Condominium on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor.
- 18.13.2 Any delinquency in the payment of assessments or other default by an Owner subject to a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor which remains uncured for a period of sixty (60) days.
- 18.13.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- 18.13.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, Insurers or Guarantors as specified above.

**18.14 Documents to be Available to Mortgagees.** The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any Mortgage, current copies of this Declaration, the Bylaws, other Rules concerning the Community and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Association must provide an audited statement for the preceding fiscal year if an Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor of a first Mortgage submits a written request for it. Any such financial statement so requested shall be furnished within a reasonable time following such request.



18.15 **Mortgagee Protection.** A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrances of any first Mortgage made for value which may then exist on any Condominium; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Condominium in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

18.16 **Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

18.17 **Provisions of Civil Code Section 4760.** As of the date of this Declaration, section 4760 of the California Civil Code provides as follows:

(a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of a Living Unit are contained within a building, the owner of a Living Unit may do the following:

- (1) Make any improvements or alterations within the boundaries of his or her Living Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.
- (2) Modify a unit in a condominium community, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:
  - (A) The modifications shall be consistent with applicable building code requirements.
  - (B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

- (C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf or physically disabled.
- (D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the Association of the condominium community for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a Living Unit shall be in accordance with the governing documents and applicable provisions of law.

**18.18 Documents to be Provided to Prospective Purchasers.**

18.18.1 By Owners. Civil Code section 4525 requires that each Owner shall, as soon as practicable before transfer of title to his Condominium or execution of a real property sales contract therefor (as defined in Civil Code section 2985), provide to the prospective purchaser the following items:

- (a) A copy of this Declaration, the Association's Articles and Bylaws, and the Condominium Plan for the Phase which describes the Condominium offered for sale;
- (b) The statement required by Civil Code section 4525(a)(2), if applicable (i.e., if an age restriction becomes applicable);
- (c) A copy of the Association's most recent documents distributed pursuant to Civil Code Article 7, Chapter 6, commencing with section 5300;
- (d) A true statement, in writing, from an authorized representative of the Association, as to the respective amounts levied upon the Owner's Condominium which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Condominium pursuant to Civil Code section 5650.

- (e) A copy of the preliminary list of defects provided to each Owner pursuant to Civil Code section 6000, if that section requires the list to be provided.
- (f) A copy of the latest information regarding alleged defects provided for in Civil Code section 6100, if that section requires the information to be provided.
- (g) Any change in the Association's current regular and special assessments and fees which have been approved by the Board but have not become due and payable as of the date of the disclosure required by this Section.


18.18.2 By the Association. Civil Code section 4530 requires that, upon written request, the Association shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy of the requested Association items specified above. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

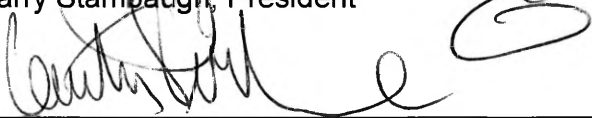
18.19 **Conflict with Statutes.** Provided any federal, state or local statute, law or ordinance is inconsistent with any provision or provisions of the Governing Documents, and compliance with that statute, law or ordinance is mandatory, neither the Association, the Board nor any member thereof shall have any liability for complying with the federal, state or local statute, law or ordinance and not with the inconsistent provision or provisions of the Governing Documents

IN WITNESS WHEREOF, the undersigned have executed this 2018 Third Amended and Restated Declaration of Restrictions this 2<sup>nd</sup> day of February, 2018.

ASSOCIATION: 

**RENAISSANCE OWNERS ASSOCIATION,**  
a California nonprofit mutual benefit corporation


By:   
Larry Stambaugh, President

By:   
Gentry Terhune, Secretary

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIV. CODE § 1189**

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 California			
County of	<u>San Diego</u>	On this	<u>2</u> Day of <u>February</u> 20 <u>18</u>
On	<u>February 2, 2018</u>	Before me,	<u>Roxana Villagrana Escogido, Notary Public</u>
	Date		Here Insert Name and Title of Officer
Personally appeared	<u>Larry Stambaugh and Gentry Terhune</u>		
	Name(s) of Signer(s)		
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) 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	<u>[Signature]</u>
		Signature of Notary Public	
Place Notary Seal Above			

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document of fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document:	<u>Declaration of Restrictions for Renaissance</u>	Document Date:	<u>02/02/2018</u>
Number of Pages:	<u>60 w/attach</u>	Signer(s) Other Than Named Above:	

**Capacity(ies) Claimed by Signer(s)**

<b>Signer's Name:</b> <input type="checkbox"/> Corporate Officer- <input type="checkbox"/> Partner <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer is Representing: _____	<b>Signer's Name:</b> <input type="checkbox"/> Corporate Officer- <input type="checkbox"/> Partner <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer is Representing: _____
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**EXHIBIT "A" – LEGAL DESCRIPTION**

**A CONDOMINIUM PROJECT LOCATED IN THE CITY OF SAN DIEGO CONSISTING OF:**

**CONDOMINIUM UNITS AS SHOWN ON THE CONDOMINIUM PLANS RECORDED AS DOCUMENT NUMBERS 2002-768197 AND 2003-411992, AND WHICH ARE LOCATED ON LOT 1 OF MARINA CENTER, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14071 FILED WITH THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, ON NOVEMBER 15, 2000; AND WHICH INCLUDES THE MODULES AND BUILDING COMMON AREAS, AS SHOWN ON THE ABOVE-REFERENCED CONDOMINIUM PLANS.**

**ASSESSOR'S PARCEL NUMBERS:**

**535-066-12-01 THROUGH 535-066-12-31; 535-066-13-01 THROUGH 535-066-13-049;**

**535-066-14-01 THROUGH 535-066-14-42; 535-066-15-01 THROUGH 535-066-15-049;**

**535-066-16-01 THROUGH 535-066-16-42; 535-066-17-01 THROUGH 535-066-17-06;**

**535-066-18-01 THROUGH 535-066-18-09.**

X  
7p

DOC# 2022-0292104



Jul 15, 2022 10:02 AM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$257.00 (SB2 Atkins: \$225.00)

Recording Requested By:

**Renaissance Owners Association**

When Recorded, Return To:

Renaissance Owners Association  
% Epsten APC  
10200 Willow Creek Road, Suite 100  
San Diego, CA 92131

PAGES: 7

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**2022 AMENDMENT TO THE  
2018 THIRD AMENDED AND RESTATED DECLARATION OF RESTRICTIONS  
FOR  
RENAISSANCE**

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**NOTICE**

**(Gov't Code §12956.1)**

**If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

**2022 AMENDMENT TO THE 2018 THIRD AMENDED AND RESTATED DECLARATION OF RESTRICTIONS FOR RENAISSANCE**

This 2022 Amendment ("Amendment") to the 2018 Third Amended and Restated Declaration of Restrictions for Renaissance is made by Renaissance Owners Association, a California nonprofit mutual benefit corporation ("Association"), with reference to the following facts:

**RECITALS**

A. The Association is a corporation that manages a mixed residential and commercial condominium community known as the Renaissance and its Members are the Owners of the Units within that certain real property located in the City of San Diego, California consisting of two hundred one (221) Living Units, seven (7) Commercial Units, related Common Areas and all of the improvements, appurtenances and facilities located thereon hereinafter collectively referred to as the "Community".

B. The Community was developed and sold in two phases as follows: Phase 1 consisted of one hundred twenty-one (121) Living Units and seven (7) Commercial Units and Phase 2 consisted of one hundred (100) Living Units. The Community is legally described in the attached Exhibit "A" which is incorporated herein by reference.

C. Ownership of the Units is currently subject to the 2018 Third Amended and Restated Declaration of Restrictions for Renaissance ("Declaration") recorded on February 5, 2018, as Document No. 2018-0045616 in the Official Records of the San Diego County Recorder's Office.

D. On January 1, 2021, a new law known as Assembly Bill 3182 ("AB 3182") went into effect. Among other things, AB 3182 amended Civil Code section 4740 and added a new section 4741 to the Civil Code, which provides that: "[a]n owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant."

E. Civil Code section 4741(c) provides that "[t]his section does not prohibit a common interest development from adopting and enforcing a provision in a governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less."

F. Civil Code section 4741(f) requires common interest developments to amend their governing documents to conform to the requirements of Section 4741 no later than July 1, 2022.

G. In furtherance of the foregoing, Section 4741(f) allows a common interest development board of directors to amend its community's declaration to delete or restate any restrictive covenant that violates the provisions of Civil Code section 4741 without the approval of the members so long as no other change to the declaration is made, the board provides general notice of the proposed amendment at least twenty-eight (28) days before approving the amendment, the notice must include the text of the amendment and a description of the purpose and effect of the amendment, and the board's decision regarding the amendment is made at a

board meeting, after consideration of any comments made by the association's members ("Section 4741 Amendment Procedures").

H. On or about January 27, 2022, the Board provided notice to the Members, in accordance with the Section 4741 Amendment Procedures. At its March 30, 2022 meeting, the Board voted to amend the Declaration to comply with Section 4741 after it considered comments made by the Members, if any, pursuant to the Section 4741 Amendment Procedures. Having met the requirements of the Section 4741 Amendment Procedures, the Board has the authority to adopt the following amendment to the Declaration without a vote of the Members.

I. Each of the definitions contained in this Amendment shall be the same as those set forth in the Declaration.

J. Notwithstanding any other provisions in the Declaration, the provisions of this Amendment shall apply and shall prevail in any inconsistency between this Amendment and the Declaration.

**NOW THEREFORE**, pursuant to and in accordance with the provisions of Civil Code section 4741, the Declaration is hereby amended as follows:

I. Article 6, Section 6.1 of the Declaration is amended to read as follows:

**6.1 Lease of Condominium.** Each Owner of a Condominium shall have the right to lease the Owner's Condominium provided that such lease is in writing. All leases and rental agreements must be for the entire Unit and not merely parts thereof, unless the Owner remains in occupancy. All leases and rental agreements shall be subject in all respects to the Governing Documents, and each tenant shall be bound by and obligated to the provisions of the Governing Documents. A tenant's failure to comply with the Governing Documents shall be deemed a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association. The Rules may require a tenant to deliver to the Association a security deposit, in an amount established by the Board from time to time, as security for the cost of cleaning or repairing damage to the Common Area.

No Owner shall lease a Condominium for transient or hotel purposes and no Condominium shall be leased, or advertised or solicited as available for lease, for a term less than thirty (30) days. Should the Board so request an Owner to do so, the Owner shall forward an executed copy of a lease to the Owner's Condominium to the Board together with the telephone number and address of the Owner. Other than as provided in this Section, there shall be no restriction on the right of any Owner to lease a Condominium.

II. Except as amended above, the rest of the Declaration remains unchanged and is hereby restated by reference as if set forth in its entirety in this Amendment.

//

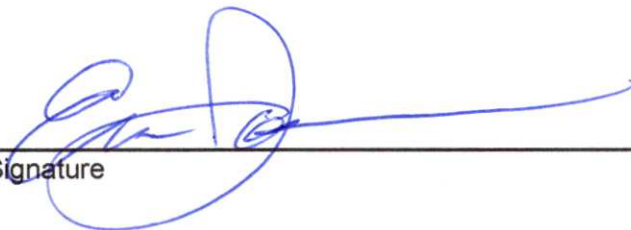


This 2022 Amendment is executed on 4-25, 2022 by the undersigned Directors of Renaissance Owners Association.

**Renaissance Owners Association,**  
a California nonprofit mutual benefit corporation

By:   
Signature

Wolf Bielas, President  
Print Name

By:   
Signature

ERIC JONES, Secretary  
Print Name

**All Purpose Acknowledgment**

**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 CALIFORNIA )  
 )  
COUNTY OF San Diego ) ss.

On April 25, 2021, before me, Roxana Escogido, a notary public, personally appeared Eric Jones, 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.

Roxana Escogido



My Commission Expires: August 20, 2024

Notary Commission No.: 2332029

Notary Phone: (619) 702 - 7522

*This area for official notarial seal.*

Principal Place of Business: County of San Diego

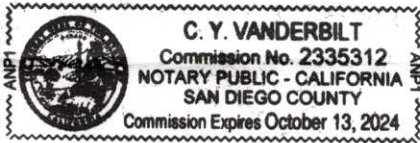
**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 California }  
County of San Diego }  
On APRIL 25, 2022 before me, Cy Vanderbilt  
Date Date Here Insert Name and Title of the Officer  
personally appeared Wolf Bielas  
Name(s) of Signer(s)

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.



Place Notary Seal and/or Stamp Above

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 Cy Vanderbilt  
Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

EXHIBIT "A" – LEGAL DESCRIPTION

A CONDOMINIUM PROJECT LOCATED IN THE CITY OF SAN DIEGO CONSISTING OF:

CONDOMINIUM UNITS AS SHOWN ON THE CONDOMINIUM PLANS RECORDED AS DOCUMENT NUMBERS 2002-768197 AND 2003-411992, AND WHICH ARE LOCATED ON LOT 1 OF MARINA CENTER, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14071 FILED WITH THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, ON NOVEMBER 15, 2000; AND WHICH INCLUDES THE MODULES AND BUILDING COMMON AREAS, AS SHOWN ON THE ABOVE-REFERENCED CONDOMINIUM PLANS.

ASSESSOR'S PARCEL NUMBERS:

535-066-12-01 THROUGH 535-066-12-31; 535-066-13-01 THROUGH 535-066-13-049;  
535-066-14-01 THROUGH 535-066-14-42; 535-066-15-01 THROUGH 535-066-15-049;  
535-066-16-01 THROUGH 535-066-16-42; 535-066-17-01 THROUGH 535-066-17-06;  
535-066-18-01 THROUGH 535-066-18-09.

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**NOTICE**  
**(Gov. Code §12956.1)**

**If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

## **RESTRICTIVE COVENANT MODIFICATION**

Under current state law, effective January 1, 2022, homeowners can request to modify property documents that contain unlawful discriminatory covenants. Government Code section 12956.2 allows anyone who believes the property is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification document to have the illegal language redacted. Unlawful restrictions include those restrictions based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in Government Code section 12955 subdivision (p), ancestry, or genetic information.

### **To Record a Restrictive Covenant Modification, you must:**

- Complete a Restrictive Covenant Modification document.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language redacted.
- Submit the above to the County Recorder.

Upon receipt, the Recorder's office will submit the above documents to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded.

Recording Requested By:

When Recorded, Return To:

For Recorder's Use ONLY

**RESTRICTIVE COVENANT MODIFICATION**  
(Government Code Section 12955)

**Unlawful restrictive language review requested by:**

- I(We) \_\_\_\_\_ have an ownership or are acquiring an interest in the property that is covered by the document described below.
- Title Company, Escrow Company, Real Estate Broker, Real Estate Agent, or other party \_\_\_\_\_  
Individual/Company Name
- \_\_\_\_\_ County Recorder.

The following referenced document contains a restrictive covenant based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in Section 12955, of the Government Code or ancestry that violates state and federal fair housing laws, and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of redacting and eliminating that restrictive covenant as shown on page(s) \_\_\_\_\_ of the document recorded on \_\_\_\_\_ in book \_\_\_\_\_ and page \_\_\_\_\_ or instrument number \_\_\_\_\_ of the official records of the County of \_\_\_\_\_, State of California.

Attached hereto is a true, correct, and complete copy of the document referenced above, with the unlawful restrictive covenant redacted.

This modification document shall be indexed in the same manner as the original document being modified, pursuant to subdivision (d) of section 12956 of the Government Code.

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

_____ Signature of submitting party	_____ Printed name of submitting party	_____ Date
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\_\_\_\_\_ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, hereby states that it has determined that the original document referenced above contains an unlawful restriction modification may be recorded.

OR

\_\_\_\_\_ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, finds that the original document does not contain an unlawful restriction, or the modification document contains modifications not authorized, and this modification may not be recorded.

County Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_

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 CALIFORNIA }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_ 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/their/her authorized capacity(ies), and that by his/her/their signatures(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* \_\_\_\_\_