

RECORDING REQUESTED BY:
PEPPER TOWNEHOMES ASSOCIATION

AND WHEN RECORDED RETURN TO:

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NOTE: This copy of the Second Amendment has been annotated to highlight the proposed changes that the Association is seeking to make to the CC&Rs.

**SECOND AMENDMENT TO THE
DECLARATION OF RESTRICTIONS FOR
PEPPER TOWNEHOMES ASSOCIATION
(2022)**

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.

**SECOND AMENDMENT TO THE
DECLARATION OF RESTRICTIONS
FOR PEPPER TOWNEHOMES ASSOCIATION**

THIS SECOND AMENDMENT to the Declaration of Restrictions for Pepper Townehomes Association ("Association") is made this ____ day of _____, 2022, by the members of the Association.

WHEREAS, the Association was officially incorporated on or around January 10, 1972, in the office of the Secretary of State of California; and

WHEREAS, the Association is generally located at 7819 Rancho Fanita Dr., Santee, California, 92071, more particularly described as follows:

Lots 1, 2 and 3 of Pepper Hill Townehomes in the County of San Diego, State of California, according to Map No. 7198, filed in the Office of the County Recorder of San Diego County, California, on February 8, 1972.

WHEREAS, the Association's original Declaration of Restrictions was recorded on June 9, 1972, as File Page No. 147241, Book 1972 in the Office of the Recorder for San Diego County (hereinafter referred to as the "Original Declaration").

WHEREAS, the Association amended the Original Declaration with the First Amendments to the Declaration of Restrictions recorded on February 18, 1977, as Document No. 77-062591, in the Office of the Recorder for San Diego County (hereinafter referred to as the "First Amendment").

WHEREAS, Section 16 of the Original Declaration provides that the Declaration may be amended by a vote or written assent of at least 75% of all members of the Association.

WHEREAS, the members of the Association deem it is in the best interest of the Association to amend the Original Declaration and have duly approved this revision hereinafter set forth by the requisite vote.

NOW THEREFORE, the Original Declaration and First Amendment are amended as follows:

1. Current Section 7(e) is deleted in its entirety and shall now read as follows:

7(e). Any assessment not paid within thirty (30) days after the due date, shall bear interest annually at the maximum rate allowed per law from the assessment due date until paid in full. Also, any delinquent assessment shall accrue late fees as permitted by applicable law.

Commented [JF1]: Current section 7 (e) sets interest for delinquent assessments at 6%. This is out of synch with current law. As such, section 7 (e) was revised to state that delinquencies will be charged interest at the max rate allowed per law (12%) and that late fees shall also be applied per current law (10%). We did not state the precise percentage amount for each as that may change over time.

2. Delete Section 9 of the Original Declaration in its entirety and replace as follows:

9. Extension of Restrictions. The Declaration and any amendments thereto will run with and bind the land as an equitable servitude for a term of twenty (20) years from the date of recording this Second Amendment to the Declaration and shall automatically be extended for successive periods of ten (10) years, unless seventy-five percent (75%) of the total voting power of the Association has voted for and recorded a written instrument in which it is agreed that this Declaration shall terminate.

Commented [JF2]: At present the CC&Rs expire and completely go away on 12/31/24 unless the owners approve an extension. In order to keep the CC&Rs in place the Board has proposed to extend them indefinitely via revised section 9.

3. Delete Section 16 of the Original Declaration in its entirety and replace as follows:

16. Amendments. The Declaration, and any amendments thereto, may be amended at any time and from time to time by the vote or written consent of fifty percent plus one (50% + 1) of the total voting power of the Association. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Office of the San Diego County Recorder.

Commented [JF3]: At present amendments to the CC&Rs require the approval of 75% of the membership. This is a VERY difficult vote to achieve given vote apathy within Pepper. The Civil Code requires that amendments only need majority approval (50% + 1). Revised section 16 proposes to synch up with the Civil Code and lower the percentage from 75% to 50% + 1 in order to make it easier to pass future amendments.

4. Add new Sections 19.1-19.9 to the Original Declaration as follows:

19.1 Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of common funds, the following types of insurance, if and to the extent such insurance, with the scope of coverages described below, is available and obtainable at a reasonable premium cost as determined by the Board of Directors:

Commented [JF4]: The entire Section 19 is new and did not previously exist. The intent of Section 19 is to shift the insurance burden for fire and casualty coverage from the HOA to the owners. The owners would then obtain a "townhome" type policy to cover the entire unit and the portion of the building that it occupies.

(a) Fire and Casualty Insurance. The intent of this Second Amendment is to shift responsibility for most fire and casualty insurance coverage from the Association to the individual Owners. The Association shall only insure those portions of the Common Area outside of the residential buildings. The term "residential building" is defined to include any building in which a Living Unit is located and does not include any building that has no Living Units. The individual Owners shall each purchase their own Fire and Casualty Insurance covering the Living Unit and the portions of the residential building in which the Living Unit is located. The Association shall obtain and maintain fire and casualty insurance for the Common Area improvements, but not including the Living Units and Common Area portions of the residential buildings in which the Living Units are located. The Association insurance shall name as party insured the Association and contain the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost as determined annually by the insurance carrier, for or against the following:

Commented [JF5]: This drives home the point of how owners are to insure their units should the amendment pass.

- (i) Loss or damage by fire or other risks covered by the standard extended coverage endorsements;
- (ii) Loss or damage from theft, vandalism or malicious mischief; and

Commented [JF6]: The Association will NOT cover the residential buildings, but it will cover the other common area portions of the community (including the pools, detached garages, detached carports, and pool buildings).

- (iii) Such other risks, perils or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of this Declaration or any amendments thereto as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Area.

(b) *Public Liability and Property Damage Insurance.* To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association's Board of Directors, any manager, the Owners and occupants of Living Units, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association owned or maintained real or personal property and including, if obtainable, a cross liability or severability of interest endorsement insuring each insured against liability to each other insured. The aggregate limits of such insurance shall not be less than \$2,000,000.00 covering all claims for death, personal injury and property damage. Such insurance may include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

Commented [JF7]: The Association will still carry standard liability coverage for the common areas to protect against things like personal injury in the common areas.

(c) *Directors and Officers Liability Insurance.* The Board shall purchase and maintain a policy of directors and officers liability insurance naming as parties insured the Association, each member of the Board of Directors, each officer of the Association, any manager and any other person as the Board may determine.

(d) *Fidelity Insurance.* The Board shall purchase and maintain a fidelity bond or policy of fidelity insurance covering loss due to wrongful acts or misappropriation by officers, directors, managing agents, or employees.

(e) *Workers' Compensation Insurance.* The Board shall purchase and maintain a policy of workers' compensation insurance in such amounts as the Board shall determine.

(f) *Umbrella Policy.* The Board may purchase and maintain an umbrella policy of liability insurance providing coverage supplemental to that provided by the general liability and directors and officers liability policies.

19.2. Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with common funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without

limiting the generality of this Section, demolition insurance, flood insurance and earthquake insurance.

19.3. Responsibility for Deductible Amounts. The full insurance deductible and any liability shall be paid by the party at whose Living Unit the acts or omissions are responsible for any damage that results in a property damage claim filed under the Association's insurance policy. If the acts or omissions are those of an Owner or the Owner's guest or occupant, the Owner shall be responsible for paying the deductible. If it is impossible to determine whose acts or omissions were responsible for the loss, the deductible shall be paid by the parties on a pro-rata basis based upon the amount of insurance proceeds received by each party divided by the total amount of insurance funds paid out.

Commented [JF8]: This clarifies how deductibles under the Association policies of insurance will be handled if a claim is made.

19.4. Coverage Not Available or Cost Prohibitive. In the event any insurance policy, or any endorsement thereof, required by Section 19 is for any reason not available or is reasonably determined to be cost prohibitive by the Board, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify, via individual notice, the Owners of any material adverse changes in the Association's insurance coverage.

19.5. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

19.6. Owner's Insurance. An Owner shall obtain and maintain fire and casualty insurance at his or her sole expense, to protect against any damage to the Living Unit and the portion of the residential building in which the Living Unit is located, or loss of the Owner's personal property, and the cost of repair or replacement of damaged items, including, but not limited to, any upgrades to the Living Unit interior made by an Owner, any personal property, fixtures, wall and floor coverings and any exterior items. The Association will not maintain any fire and casualty insurance whatsoever covering any portion of the Living Unit or the residential building in which the Living Unit is located unless the Association later opts to do so per Section 19.8 and provides prior written notice to the Owners at least sixty (60) days in advance of any such change in coverage. The Owner's policy shall be the primary policy for any claims for damages to or loss of Owner's Living Unit, residential building and personal property. The Association shall not be liable to any Owner or his or her guests or others for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owner's Living Unit or residential building. Owners shall also obtain liability insurance in a reasonable amount for any liability type claims concerning their Living Unit for damage caused to the Common Area or other Living Units. Owners may, and are encouraged to also obtain loss assessment insurance coverage in a reasonable amount for assessments levied by the Association for damage, destruction, injury, or other liabilities sustained relating to Common Areas that exceed the Association's insurance policy limits, if any.

Commented [JF9]: This clarifies that the owners will be responsible for insuring the unit and the portion of the building in which the unit is located. The Association will NOT carry insurance for any portion of the residential buildings. The Association will only insure those portions of the common area outside of the residential buildings.

19.7. Water, Mold and Interior Damage. Notwithstanding any other provision in this Declaration, each Owner shall be solely responsible for the repair or replacement of any damage to his or her Living Unit, or Exclusive Use Area appurtenant to an Owner's Living Unit, and the

cost of such damage, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items in the Living Unit, caused by any Common Area component or improvement or any other component or improvement maintained by the Association, including water intrusion and mold from whatever source not covered by the Association's fire and casualty policy. An Owner shall obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of real or personal property due to water intrusion, or the cost of repair or replacement of damaged items for which such Owner is responsible. The Association shall not be liable for damage to a Living Unit or Exclusive Use Common Area appurtenant to an Owner's Living Unit resulting from water which may leak or flow 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.

19.8. Association May Elect to Provide Residential Building Coverage. This Second Amendment to the Declaration is intended to shift fire and casualty insurance coverage from the Association to the individual Owners for both the residential buildings and Living Units. Notwithstanding anything else to the contrary in the Declaration, the Association may at any time and upon at least sixty (60) days prior written notice to the Owners once again assume responsibility to insure the residential buildings in which the Living Units are located with fire and casualty coverage intended to replace any Owner coverage for the buildings.

19.9 Board Amendments to Sections 19.1-19.9. The Board shall at any time have the unilateral authority via unanimous vote of all directors to amend or repeal all or any portions of Sections 19.1-19.9 via a subsequent recorded amendment in order to correct any error or inconsistencies, or to address any requirements or concerns that an insurance carrier may have concerning this Second Amendment.

Commented [JF10]: Should the insurance market become more cost friendly to HOAs at some point, the Association reserves its right per Section 19.8 to go back to the old way of insuring the buildings where the Association gets fire and casualty coverage for all of the common areas including the residential buildings in which the units are located.

Commented [JF11]: Section 19.9 will permit the Board to further revise this new Section 19 in the event that changes are necessary in order to satisfy insurance carrier requirements.

* * * *Signature page to follow* * * *

CERTIFICATION

We, the undersigned, do hereby certify the following:

1. That we are the duly elected and acting President and Secretary of Pepper Townehomes Association.

2. That we have counted or obtained satisfactory confirmation from independent Inspector(s) of Elections who has or have counted the ballots cast in connection with the Association membership vote on the Second Amendment to the Original Declaration for Pepper Townehomes Association, and that such ballots conform with and are of the necessary number for amending the Original Declaration in accordance with the terms of the Original Declaration.

IN WITNESS WHEREOF, we have hereunto subscribed our names this _____ day of _____, 2022.

PEPPER TOWNEHOMES ASSOCIATION
A California Nonprofit Mutual Benefit Corporation

Name: _____

Signature: _____

Title: President

Name: _____

Signature: _____

Title: Secretary

CALIFORNIA ALL-PURPOSE 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) ss.

County of San Diego)

On _____, before me, _____,
Date Here Insert Name and Title of the Officer
personally appeared _____,
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.

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 _____
Signature of Notary Public

Notary Seal

