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MONTGOMERY FIELD BUSINESS
7 CONDOMINIUM OWNERS ASSOCIATION

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/03/2017 at 01:25:00 PM
Clerk of the Superior Court
By Cody Newlan, Deputy Clerk

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO- CENTRAL DIVISION**

11
12 MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION, a
13 California Nonprofit Mutual Benefit
Corporation,

14 Plaintiff,

15 vs.

16 BALBOA AVE COOPERATIVE, a
California corporation; SAN DIEGO
17 UNITED HOLDINGS GROUPS, LLC, a
California limited liability company;
18 NINUS MALAN, an individual; RAZUKI
INVESTMENTS, LLC, a California
19 limited liability company; SALAM
RAZUKI, an individual; and DOES 1
20 through 25, inclusive;

21 Defendants.
22
23
24

CASE NO. 37-2017-00019384-CU-CO-CTL

ASSIGNED TO JUDGE: HONORABLE
RONALD L. STYN

**DECLARATION OF PETER MICHELET
IN SUPPORT OF DEFENDANTS BALBOA
AVE COOPERATIVE AND SAN DIEGO
UNITED HOLDINGS GROUP, LLC'S EX
PARTE APPLICATION TO DISSOLVE
TEMPORARY RESTRAINING ORDER
AND COMPEL PLAINTIFF TO PROVIDE
ACCESS TO RECORDS**

[IMAGED FILE]

DATE: August 4, 2017
TIME: 2:00 p.m.
DEPT: C-62

25 I, Peter Michelet, declare:

26 1. I am a former member of the Board of Directors for the Montgomery Field
27 Business Condominiums Association ("Association"). In addition to my role as a Board member,
28 I was also the Secretary of the Association.

1 2. I served as the Secretary and Board member beginning in 2010 and resigned from
2 both positions effective June 3, 2017.

3 3. As per the Association CC&Rs, a copy of each amendment shall be certified by at
4 least two officers of the Association.

5 4. An amendment to the CC&Rs, executed February 26, 2015, was signed by Dan
6 Burakowski and Ed Quinn, as President and Secretary, respectively. (See Exhibit A - 2015
7 Amendment to Declaration of Covenants, Conditions and Restrictions for Montgomery Field
8 Business Condominiums Association) Mr. Quinn was not the Secretary at the time, as I was five
9 years into my role as Secretary. I do not know why Mr. Burakowski allowed Mr. Quinn to sign as
10 Secretary, knowing that I was the serving Secretary.

11 5. The Certificate of Board President and Secretary of the Association was also
12 signed and certified by Dan Burakowski, as President, and Ed Quinn, as Secretary. (See Exhibit B
13 – Certificate of Board President and Secretary of Montgomery Filed Business Condominiums
14 Association) I do not know why Mr. Burakowski allowed Mr. Quinn to sign as Secretary,
15 knowing that I was the serving Secretary.

16 6. I did not receive notice, as required by the Association’s Bylaws, of any special
17 meeting of the Board of Directors to discuss, or vote to authorize the filing, of the Montgomery
18 Field Business Condominiums Association vs. Balboa Ave Cooperative, et al. lawsuit. I did not
19 vote for such authorization. Nor did I give my written authorization in lieu of a meeting of the
20 Board of Directors, for this lawsuit to be filed. I also have not voted on any authorization to pay
21 any legal fees for any lawsuit.

22 I declare under penalty of perjury under California state law that the foregoing is true and
23 correct. Executed on August 3, 2017 in San Diego, California.

24
25
26 _____
Peter Michelet

EXHIBIT A

DOC# 2015-0093872



Mar 02, 2015 01:34 PM

OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$35.00

Recording Requested By:

MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION

When Recorded, Return To:

772
1012

MONTGOMERY FIELD BUSINESS
CONDOMINIUMS ASSOCIATION
c/o Epstein Grinnell & Howell APC
10200 Willow Creek Rd., Suite 100
San Diego, California 92131

**2015 AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION**

**NOTICE
(Govt. 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.**

THIS AMENDMENT is made on this 13th day of February, 2015, by MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), with reference to the following:

RECITALS

A. The Association is a corporation whose Members are the Owners of all the Office Units and Industrial 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 (hereinafter "Property").

B. The Property was developed in part as a "Commercial or Industrial Common Interest Development" as defined in section 6531 of the California Civil Code, and as a "Condominium Project" as defined in section 6542 of the California Civil Code, and currently consists of Office Units, Industrial Units and Exclusive Use Areas as shown on the "Condominium Plan" recorded July 31, 1981 as Document No. 81-242888 in the San Diego County Recorder's Office.

C. The Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the "Declaration of Covenants, Conditions and Restrictions for Montgomery Field Business Condominiums" recorded on July 31, 1981 in the Official Records of the San Diego County Recorder as Document No. 81-242889 ("Declaration"), and all amendment thereto, including but not limited to the First Amendment to Declaration recorded September 14, 1989 as Document No. 1989-495903, and the Second Amendment to Declaration recorded on August 24, 1999, as Document No. 1999-0582901.

D. The Association and its Members desire to amend the Declaration as set forth below. By this 2015 Amendment, members representing at least seventy-five percent (75%) of the total voting power of the Association desire to amend certain provisions of the Declaration.

E. Article XIII, Section 2 of the Declaration provides that the Declaration may be amended from time to time by an instrument signed by members representing at least seventy-five percent (75%) of the total voting power of the Association.

F. The undersigned President and Secretary of the Association certify that at the time the ballots were counted the number of members in good standing and entitled to vote on matters related to the Association at the Special Meeting was 740. 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 Association Members has been obtained. The vote was 660 in favor of approval and 40 disapprovals, a total of 700 ballots were submitted out of total possible 740 eligible voters;

F. Each of the definitions contained in this 2015 Amendment shall be the same as those set forth in the Declaration except where such term is specifically deleted, amended or modified herein.

G. 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 Corporations Code Section 7513 and Article XIII, Section 2 of the Declaration, the Declaration is hereby amended as stated below:

Article VI, of the Declaration of Covenants, Conditions and Restrictions for Montgomery Field Business Condominiums, shall be amended to add the following language to the "Use Restrictions":

Section 20. Cultivation, Manufacture, Possession, Processing, Sale and/or Distribution of Marijuana Prohibited. The Association hereby implements a program to prohibit the use of Units for the consumption, cultivation, manufacture, processing, possession, sale and/or distribution of marijuana and/or cannabis-related or -containing products ("Marijuana Activities") and/or the operation of a medical marijuana collective, a medical marijuana cooperative, or a medical marijuana dispensary (collectively "Medical Marijuana Distributors"). The Association and its members have determined the following:

(a) Restrictive covenants pertaining to private land use (CC&Rs) are permitted to be more restrictive than public laws and zoning uses. *Mullaly v. Ojai Hotel Co.* (1968) 266 CA2d 9. To the extent such uses are permitted by law, the owners of this development have determined to make clear their desire to prevent uses which may otherwise be permissible at law. Accordingly, while Article VI, Sections 1 and 16, of this Declaration likely provide the Association with independent and adequate authority to restrict any and all activity related to marijuana, the threat posed by the possible presence of persons or businesses geared to Marijuana Activities or operations of Medical Marijuana Distributors, warrants additional clarity in this Declaration and the owners accordingly wish to prohibit all such activities to the greatest possible extent;

(b) Marijuana Manufacture, Cultivation, Possession and Distribution violates federal law. (21 USC Section 841(a)(1).)

(c) The presence of Marijuana Activities and/or operations of Medical Marijuana Distributors, would increase the likelihood of crime on the Property;

(d) The presence of a Marijuana Activities and/or the operation of Medical Marijuana Distributors would likely create parking and traffic flow problems for all Members;

(e) The carrier of the Association's master hazard insurance policy has informed the Members that the increased hazard presented by Marijuana Activities and/or the presence of Medical Marijuana Distributors due to high theft rates, break-ins, flammable products (i.e. THC methane wax extraction) and any manufacturing exposure could cause a claim to be denied and subject all Members of the Association to uncovered financial loss;

(f) The carrier of the Association's master hazard insurance policy has further informed the Members that associations whose units are involved in the sale or distribution of medical marijuana are ineligible for insurance coverage;

(g) The presence of Marijuana Activities and/or the presence of Medical Marijuana Distributors would likely decrease the property value of all Units;

(h) The California Supreme Court has concluded, "[N]either the [Compassionate Use Act of 1996 (Health & Safety Code § 11362.5) ("CUA")] nor the [Medical Marijuana Program (Health & Safety Code § 11362.7 et seq.) ("MMP")] expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions....[The CUA and the MMP]remove state-level criminal and civil sanctions from specified medical marijuana activities, but they do not establish a comprehensive state system of legalized medical marijuana; or grant a "right" of convenient access to marijuana for medicinal use; or override the zoning, licensing, and police powers of local jurisdictions; or mandate local accommodation of medical marijuana cooperatives, collectives, or dispensaries."(*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729, 762-763 (Cal. 2013).)

Therefore, notwithstanding anything in this Declaration to the contrary, the use of any Unit for consumption, cultivation, manufacture, processing, possession, sale and/or distribution of marijuana and/or cannabis-related or -

containing products ("Marijuana Activities") and/or the operation of a medical marijuana collective, a medical marijuana cooperative, or a medical marijuana dispensary (collectively "Medical Marijuana Distributors"), is prohibited.

IN WITNESS WHEREOF, the undersigned have executed this 2015 Amendment to Declaration of Covenants, Conditions and Restrictions for Montgomery Field Business Condominiums Association, on this 26, day of February, 2015.

MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION,
a California nonprofit mutual benefit corporation

By: Dan Burakowski
DAN BURAKOWSKI, President

By: Edward Quinn
Edward Quinn, Secretary

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 Feb. 26, 2015 before me, A. Caro DelCastillo, Notary Public, personally appeared Dan Burakowski and Edward Quinn, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons 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]
Notary Public



**EXHIBIT A
LEGAL DESCRIPTION**

The Southwesterly 219.55 feet of the Northeasterly 413.55 feet of Lot 9 in the City of San Diego Industrial Park Unit No. 2., in the City of San Diego, County of San Diego, State of California, according to map thereof No. 4113, filed in the Office of the County Recorder of San Diego County, March 12, 1959.

Assessor's Parcel Numbers: 369-150-13-01 through 369-150-13-46

EXHIBIT B

CERTIFICATE OF BOARD PRESIDENT AND SECRETARY

OF

MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION

A California Nonprofit Mutual Benefit Corporation

We, the undersigned, do hereby certify:

That we are the duly elected President and Secretary, respectively, of Montgomery Field Business Condominiums Association, a California non-profit, mutual benefit corporation.

That the foregoing 2015 Amendment to Article VI of the "Declaration of Covenants, Conditions and Restrictions for Montgomery Field Business Condominiums," recorded on July 31, 1981 in the Official Records of the San Diego County Recorder as Document No. 81-242889, was approved by a majority vote of the membership on February 13, 2015 and was recorded on NA, 2015 as Document No. 2015-NA in the Official Records of San Diego County, California, and affects the real property legally described in Exhibit A to the 2015 Amendment.

MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION
a California nonprofit mutual benefit corporation

By: Tom Burakowski
DAN BURAKOWSKI, President

By: Eduard Quinn
Eduard Quinn, Secretary