



CONTRA COSTA Co Recorder Office
 STEPHEN L. WEIR, Clerk-Recorder
DOC- 2011-0276186-00

RECORDING REQUESTED BY:
 AND
 WHEN RECORDED MAIL TO:
 FOSTORIA TERRACE
 ASSOCIATION
 c/o Berding & Weil, LLP
 3240 Stone Valley Road West
 Alamo, CA 94507

Check Number
 Monday, DEC 19, 2011 11:59:11
 MOD \$9.00:REC \$19.00:FTC \$8.00
 RED \$1.00:ERD \$1.00:
 Ttl Pd \$38.00 Rcpt # 0001124857
 rrc/R9/1-9

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**AMENDMENT TO
 DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS OF
 FOSTORIA TERRACE CONDOMINIUMS**

This Amendment to Declaration of Covenants, Conditions and Restrictions of Fostoria Terrace Condominiums is made on the date hereinafter set forth by Fostoria Terrace Association, a California nonprofit mutual benefit corporation, (hereinafter referred to as the "Association").

WHEREAS, the Association is the successor in interest to Fostoria Associates, Ltd., a California limited partnership, which as Declarant executed that certain Declaration of Covenants, Conditions and Restrictions of Fostoria Terrace Condominiums recorded on December 20, 1989, in Book 15552, Page 98, as Document No. 89-257441 in the Official Records of the County Recorder of Contra Costa County, California (hereinafter referred to as the "1989 Declaration"); and

WHEREAS, this Amendment is made in reference to and amends the aforementioned 1989 Declaration and any amendments and declarations of annexation thereto which have heretofore been recorded (collectively, the "Declaration"); and

WHEREAS, the Declaration governs that certain improved real property located in the Town of Danville, County of Contra Costa, California, described as follows:

Subdivision 6806 as shown on the map entitled "Subdivision 6806, Danville Place," filed of record on January 28, 1988, in Book 319 of Maps, Page 3, in the Office of the Recorder of Contra Costa County, California;

and

WHEREAS, the Members of the Association, constituting at least sixty-seven percent (67%) of a quorum of the Members ("approval of the Members" as defined in Section 4.3.1

and Section 4.3.2(b) the Bylaws of the Association) desire to amend the Declaration pursuant to Section 10.1.2(j) of the Declaration; and

WHEREAS, there are no "Eligible Holders" as defined in Section 2.15 of the Declaration;

NOW, THEREFORE, it is hereby declared that the Declaration shall be, and it is hereby, AMENDED as follows:

1. Section 4.2 RENTAL OF UNITS is deleted in its entirety.
2. The following new ARTICLE XIV RENTING OR LEASING is added:

ARTICLE XIV RENTING OR LEASING

14.1 Requirements for Renting.

14.1.1 Written Lease. An Owner renting his or her Unit shall do so pursuant to a written lease or rental agreement. The lease or rental agreement shall expressly provide:

(i) for an initial term of at least one year; provided however, that the initial term and each renewal term shall not exceed one year;

(iii) that its terms are subject to all of the provisions of the Project Documents;

(iv) that failure of the tenant, members of the tenant's household, invitees, or guests to comply with applicable provisions of the Project Documents shall constitute a default under the terms of such lease or rental agreement; and

(v) that in the event of any such default, the Association shall be entitled to maintain an eviction action against the tenant to the same extent as the Owner of the Unit, the Association being deemed to be a third party beneficiary under such lease or rental agreement as provided in Section 14.6 ("Association as Third Party Beneficiary").

14.1.2 Copy of Lease. An Owner renting his or her Unit shall file a copy of the signed lease or rental agreement with the Board. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy provided to the Board.

14.1.3 Provide Project Documents to Tenant. An Owner renting his or her Unit shall provide the tenant(s) with a copy of the Project Documents, and any subsequent changes thereto.

14.1.4 Owner's Contact Information. An Owner renting his or her Unit shall provide the Association with contact information for the Owner or a representative of the Owner with authority to act on behalf of the Owner with respect to the Unit and the tenants, including telephone number, email address, mailing address, and such other contact information as the Association may require.

14.1.5 Affidavit of Tenants. Upon request of the Association, an Owner renting his or her Unit shall cause all tenants and occupants to execute and submit to the Association an affidavit or certificate in a form prescribed by the Association, which includes the following and such other matters as are reasonably required by the Association: (i) that he/she/they has/have received copies of the Project Documents, (ii) that he/she/they understand that the lease is expressly subject to all the provisions of the Project Documents, and (iii) that he/she/they understand that the breach of any provision of the Project Documents shall constitute a default under the lease.

14.2 Limitation on Number of Permitted Rentals.

14.2.1 Permitted Number of Rentals. Except as otherwise provided in Section 14.2.2 ("Grandfathered Units") or Section 14.2.3 ("Hardship Waivers"), the maximum number of Units being rented within the Project shall not exceed the percentage necessary to comply with the current Owner occupancy requirement for projects similar to the Project as established from time to time by (i) the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD), (ii) the Federal Home Loan Mortgage Corporation (FHLMC), and/or (iii) the Federal National Mortgage Association (FNMA) or any other or successor institution(s) serving the same or similar function. If FHA, FHLMC, and/or FNMA or successor institutions have conflicting owner occupancy requirements, the highest owner-occupancy requirement then in effect and its corresponding lowest rental limit shall apply. For purposes of this Section 14.2.1, "rented" shall mean leased or rented or occupied by anyone other than an Owner together with members of his or her household or temporary guests. For purposes of this Section 14.2.1, a resident who is a beneficiary under a trust shall be deemed to be an Owner-occupant if legal title to the Unit is in the name of the trustee(s) of the trust.

14.2.2 Grandfathered Units. The limitation on the number of permitted rentals as set forth in Section 14.2.1 ("Limitation on the Number of Permitted Rentals") shall not apply to any Unit that is being rented on the date this amendment to the Declaration is recorded, but shall apply to any such Unit if legal title to the Unit is sold or transferred subsequent to the date this Declaration is recorded, such that if the number of Units being rented at the time of such transfer is more than the number permitted pursuant to Section 14.2.1, the Unit shall be transferred for Owner-occupancy and not for rental. For purposes of this Section 14.2.2, a conveyance shall not be deemed a "sale or transfer" if it meets at least one of the following conditions: (i) pursuant to Section 62 or Section 480.3 of the Revenue and Taxation Code the transfer is exempt for purposes of reassessment by the county tax assessor; (ii) pursuant to subdivision (b) of Section 1102.2 of the Civil Code solely with respect to probate transfers, or pursuant to subdivision (e), (f), or (g) of Section 1102.2 of the Civil Code, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement as set forth in Section 1102.6 of the Civil Code. If the permitted number of rentals is decreased as a result of a change in owner-occupancy standards of FHA, FHLMC, and/or FNMA or successor institutions, Owners of Units being rented at the time of the reduction in the number of permitted rentals shall be grandfathered in the same manner until legal title to the Unit is sold or transferred subsequent to the date of such reduction in the permitted number of rentals, such that if the number of Units being rented at the time of such sale or transfer is more than the number permitted pursuant to Section 14.1, the Unit shall be sold or transferred for Owner-occupancy and not for rental.

14.2.3 Notice of Change in Owner-Occupancy Requirements. The Board shall exercise reasonable diligence to remain informed of the applicable owner-occupancy requirements of FHA, FHLMC, and/or FNMA or successor institutions and shall notify the Owners in writing in the event of a fluctuation in the permitted number of rentals. There shall be no requirement to amend the Declaration due to any such fluctuation.

14.2.4 Hardship Waivers. The Board shall have the right but shall not be obligated to waive the limitation on the number of permitted rentals or the order of priority of requests to rent in cases of deserving and unusual hardship; provided (i) such waiver shall be for a limited term, not to exceed one (1) year, (ii) the Owner requesting the waiver shall deliver to the Board a signed statement representing that he or she will retake possession and occupancy of the Unit as a resident thereof upon the expiration of the specified limited term, and (iii) the waiver shall be subject to such other conditions as the Board may determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term.

14.2.5 List of Rented Units. The Board shall establish and maintain a list of all Owners currently leasing or renting a Unit. The list of rented Units shall include: (i) the Owner's name, (ii) the address of the rented Unit, (iii) the Owner's record date of ownership, and (iv) the term of the lease. The list of rented Units shall be made available to any Owner. Payment of a reasonable administrative charge to be set by the Board may be required.

14.2.6 Written Request to Rent. Any Owner desiring to rent his or her Unit shall submit to the Board a written request to rent, which shall state: (i) the Owner's name and mailing address, (ii) the Unit address, (iii) the Owner's record date of ownership, (iv) the proposed lease term and the number of tenants; and (v) such other information as the Board may reasonably require from time to time. The Owner shall have the right, upon written request delivered to the Association, to appear in person before the Board to discuss the request to lease or rent his or her Unit.

14.2.7 Priority of Requests to Rent. The Board shall establish and maintain a priority list of requests to rent, organized in the order of date received by the Board. The priority list shall include (i) the name of the requesting Owner, (ii) the address of the Unit in question, (iii) the Owner's record date of ownership, and (iv) the date the written request was received by the Board.

14.2.8 Review of Request to Rent. Within thirty (30) days after receipt, the Board shall review and shall approve or deny an Owner's request to rent. Written notice of the Board's decision shall be transmitted to the requesting Owner and if the request is denied, the notice shall specify the reason(s) for denial. The Board shall approve the application unless doing so will increase the number of Units leased or rented within the Project to more than the number permitted under Section 14.2.1, or will otherwise result in the violation of any provision of this Article XIV. When the number of Units leased or rented in the Project is less than the number permitted under Section 14.2.1, the Board shall authorize the Owner who submitted the earliest received application to lease or rent his or her Unit. When the number of Units leased or rented in the Project equals or exceeds the number permitted under Section 14.2.1, Owner requests to rent shall be added to the priority list maintained pursuant to Section 14.2.7.

14.2.9 Reconsideration of Denied Request. If a request to rent is denied, the requesting Owner shall have a right, upon written request, to reconsideration by the Board. Within fifteen (15) days after such reconsideration, the Board shall transmit its written determination to the requesting Owner.

14.2.10 Duration of Authorization to Rent, No Subletting. Except as to Units grandfathered pursuant to Section 14.2.2 ("Grandfathered Units") and except as otherwise provided in the case of a hardship waiver granted pursuant to Section 14.2.3 ("Hardship Waivers"), once an Owner obtains permission to lease or rent a Unit, that Owner shall have the right to continue renting that Unit to consecutive lessees or renters or for consecutive terms without having to submit or re-submit a request to rent; provided (i) the continuing lease or rental is otherwise in compliance with the provisions of this Article XIV, (ii) the lease or rental is without interruption of more than ninety (90) days, and (iii) during any interruption in rental the Owner shall not reoccupy the Unit for a period exceeding thirty (30) days. No subletting shall be permitted.

14.2.11 Decision of Board Conclusive. The decision of the Board in approving or denying a request to rent, made in accordance with the procedures set forth in this Section 14.2, shall be final and conclusive.

14.3 No Transient Rentals. No Owner shall be permitted to lease, rent, or otherwise operate his or her Unit for transient or hotel purposes, which shall include, but is not limited to, rental for any period less than thirty (30) days or any rental (even if the term is longer than thirty days) where the occupant of a Unit is provided customary hotel services such as room service for food and beverage, maid service, periodic furnishing of clean bed linen and towels, laundry service, and bellboy services. This Section 14.3 shall not be deemed to permit an initial lease or rental term shorter than one year as provided in Section 14.1.1(i).

14.4 Rental of Entire Condominium. No Owner shall rent or lease less than the entire Condominium. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Project. No part of the Exclusive Use Common Area appurtenant to the Unit shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the Condominium. This section is not intended to prohibit a resident Owner from sharing his or her Condominium with a roommate or other person(s) with whom the Owner maintains a common household.

14.5 Implementation. Upon request from the Board, each Owner then renting or leasing a Unit shall provide to the Board such information as the Board may reasonably require in order to implement the provisions of this Article XIV, including but not limited to the names of the tenants and the members of the tenants' household and the duration of the lease and/or a copy of the signed lease.

14.6 Association As Third Party Beneficiary. Notwithstanding the failure of an Owner to comply with the requirements of Section 14.1 ("Requirements for Renting") and whether or not it is so stated in a written contract or other agreement between such Owner and such tenant, the Owner and the tenant of any Unit subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant; that failure of the tenant,

members of the tenant's household, tenant's invitees, or guests to comply with applicable provisions of the Project Documents shall constitute a breach of the terms of the contract between the Owner and the tenant; and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under this Declaration including but not limited to the rights granted pursuant to Section 14.7 ("Assignment of Rents as Security for Payment"), or under the law. This Section 14.6 shall apply to any tenancy commencing or extended or renewed after the date this Declaration is recorded. The power of the Association as provided in this Section 14.6 shall be exercised in good faith, in a reasonable and nondiscriminatory manner, and only after notice and opportunity for a hearing before the Board.

14.7 Assignment of Rents as Security for Payment. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Condominium, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Project Documents in payment of any indebtedness to the Association, to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may instruct the tenant to pay rent to the Association as and when such rents become due, or at any time, upon ten days written notice to such Owner, (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. The collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Project Documents or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this Section 14.7 shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any First Mortgage on any Condominium, or any part thereof, to do the same or similar acts.

14.8 Indemnification Regarding Tenant's Actions. Each Owner leasing or renting a Unit shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of the Project Documents. No provision of any lease or rental agreement shall relieve the Unit Owner of his or her obligations pursuant to the Project Documents. To the fullest extent permitted by law, every Owner of a Unit that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of the occupants of the Unit upon the Project, including but not limited to attorneys' fees (including attorney fees incurred to enforce the provisions of this Article XIV against the Owner of the Unit or any guest, tenant or other occupant of the Unit), any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Project Documents with respect to such occupants. Any amounts owed pursuant to this Section 14.8 may be assessed as a Reimbursement Assessment against the responsible Owner and his or her Unit.

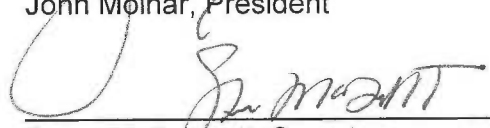
IN WITNESS WHEREOF, we, the Members of Association, constituting the requisite percentage, hereby affirm, approve, and adopt the foregoing Amendment in accordance with Section 10.1.2 and Section 10.1.4 of the Declaration, by means of the signatures of the President and the Secretary of the Association, which Amendment shall be recorded with the Recorder of Contra Costa County, California.

DATED: 12/19/11

FOSTORIA TERRACE ASSOCIATION, a
California nonprofit mutual benefit
corporation,



John Molnar, President



Steve McDermott, Secretary

555698.2

CERTIFICATE OF ACKNOWLEDGMENT

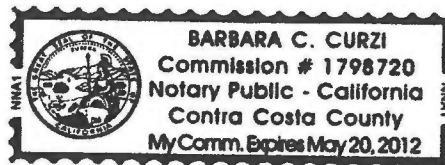
STATE OF CALIFORNIA)
) ss.
COUNTY OF CONTRA COSTA)

On Dec. 19, 2011 before me, Barbara C. Curzi, a Notary Public, personally appeared Steve McDermott, 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 Barbara C. Curzi (Seal)



555698