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SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 37.00

Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, CA 92101
Attn: Nancy T. Scull, Esq.



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**FIRST AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
HORIZONS- MARINA DISTRICT**

This First Amendment to Declaration of Covenants, Conditions and Restrictions of Horizons-Marina District ("Amendment") is made and entered into as of April 5, 2001, by Bosa Development California, Inc., a California corporation ("Declarant"), with reference to the matters set forth below.

RECITALS

A. Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions of Horizons-Marina District on July 14, 2000 as File No. 2000-0373203 in the Official Records of San Diego County, California ("Declaration"), against the real property described therein.

B. Under Section 15.1 of the Declaration, before the close of the first sale of a Residential Unit to a purchaser other than Declarant, the Declaration may be amended in any respect by the execution by Declarant of an instrument amending the Declaration.

C. Declarant desires to amend the Declaration to revise certain provisions as set forth below.

NOW, THEREFORE, the Declaration is hereby amended as set forth below.

Bosa/Marina
Amendment to CC&Rs
26343-2/1621175.1

4/5/01

AMENDMENT

1. Defined Terms. Except as the context otherwise requires, all terms contained herein shall have the same meaning as set forth in the Declaration.

2. Unsegregated Real Property Taxes. The following is hereby added to the Declaration as Section 4.4.1 (a):

"4.4.1 (a) Unsegregated Real Property Taxes. Each Owner shall be responsible for the payment of all real and personal property taxes and assessments levied upon the Owner's Condominium. To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if all of the Condominiums are taxed under a blanket tax bill, each Owner shall pay his or her proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated among the Owners and their Condominiums, based upon the value of the Condominium to the total assessed value of the Project as reasonably determined by the Association with, if necessary, input and consultation with Declarant. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his or her proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his proportionate share. The Association shall add to the Regular Assessment of a delinquent Owner, as a special allocation, the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his proportionate share of the taxes. Until the Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Project, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Declarant."

3. Handicap Parking Spaces. The following is hereby added to the Declaration as Section 7.3.21:

"7.3.21 Handicap Parking Spaces. Certain parking spaces in the Parking Garage will be designated for use by handicapped persons ("Handicap Parking

Spaces") and may be designated as such on the Condominium Plan. Such Handicap Parking Spaces may be assigned by Declarant to the Owners of particular Units upon the initial sale of such Units. Declarant shall, upon assigning a Handicap Parking Space to an Owner, designate such assignment in the records of the Association. The Owners who are assigned Handicap Parking Spaces shall be subject to the rights of the Association to re-assign such parking spaces as provided herein. If any Handicap Parking Spaces remain unassigned after the sale of all the Units in the Project, the Association shall have the right to assign and manage such spaces. The Association, upon reasonable notice to the Owner who is an assignee of a Handicap Parking Space who is not, himself or herself, handicapped ("Non-Handicapped Owner"), shall have the right to assign to the Owner or occupant of another Unit in the Project who is or becomes handicapped for an extended and continuous period (regardless whether the handicapped Owner is a new Owner) ("Handicapped Owner"), the exclusive right to use such Handicap Parking Space; provided that the Handicapped Owner grants to such Non-Handicapped Owner the exclusive right of use of the Exclusive Use Parking Space appurtenant to the Handicapped Owner's Unit. Such grant of such Exclusive Use Parking Space shall be properly recorded in the Office of the Recorder of San Diego County, along with all necessary consents of Mortgagees. 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 assignment and exchange of parking spaces in the Parking Garage pursuant to this Section and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an Owner or occupant become handicapped and wish to use a Handicap Parking Space, forms and methods of notice to be given to the Association and Owner, and procedures for review of the required evidence of handicap status. The Association shall maintain appropriate records of such assignment and exchanges, including a copy of the evidence provided. Any reassignment of parking spaces pursuant to this Section shall not constitute a severance from an Owner's Unit as set forth in Section 13.5. In no event shall the Declarant or the Association be held liable if the Declarant or the Association is unable to assign a Handicap Parking Space to a Handicapped Owner because all designated handicap Parking Spaces have previously been assigned to other Handicapped Owners."

4. **DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE (DECLARANT DISPUTES); WAIVERS.** Section 17.4 of the Declaration is hereby deleted in its entirety and replaced with Section 17.4 attached hereto and incorporated herein:

"17.4 DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE (DECLARANT DISPUTES); WAIVERS. Notwithstanding any provision of this Declaration to the contrary, any action or claim by, between or among the Declarant,

as the builder of the Project or any director, officer, partner, member, employee or agent of the Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "Declarant Parties") and either the Association or any Owner, relating to or arising out of the Project, this Declaration or other governing documents for the Association, any other agreements between the Declarant Parties and an Owner or the Association (unless any such agreement specifies another form of dispute resolution), the sale of the Property, the use or condition of the Property or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the condition of the Property or Project where the amount in controversy is greater than \$25,000 or in which non-monetary relief is sought that cannot be granted by a Municipal Court in the State of California as of January 1, 1998 (collectively, "Dispute(s)"), shall be subject to the provisions set forth below.

17.4.1 Notice. Any person with a claim defined as a Dispute, above ("Claimant"), shall notify each applicable Declarant Party in writing of the claim, which writing shall describe the nature of such claim and any proposed remedy (the "Claim Notice").

17.4.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant (and any applicable Declarant Parties) and the Claimant(s) shall meet at a mutually-acceptable place within or near the Project to discuss the Dispute claim. At such meeting or at such other mutually-agreeable time, the Declarant (and any applicable Declarant Parties) and their respective representatives shall have full access to the property that is subject to the Dispute claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant (and any applicable Declarant Parties), which rights shall continue until such time as the Dispute is resolved as provided in this Section 17.4. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, the Declarant (and any applicable Declarant Parties) and their respective representatives and agents shall be provided full access to the Project to take and complete corrective action.

17.4.3 Civil Code Sections 1368.4 and 1375. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code

Section 1368.4. If the claim is subject to the provisions of Civil Code Section 1375 as it may be amended from time to time, compliance with the procedures of Civil Code Sections 1375 (b), (d) and (e) shall satisfy the requirements of Sections 17.4.1 and 17.4.2.

17.4.4 Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Subsection 17.4.3 above (including, if applicable, Civil Code Section 1375 procedures), the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Section 17.4.4) or any successor thereto or to any other entity offering mediation services that is mutually acceptable to such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Except as provided in Section 17.4.8 below, the Association and each Owner covenants that each shall not commence any litigation against the Declarant Parties without complying with the procedures described in this Section 17.4.4.

(a) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project are located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.

(b) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute participating in the mediation agree and assume the

expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties to the Dispute participating in the mediation.

(c) Exclusion Agreement. Prior to the commencement of the mediation session, the mediator and all parties to Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code Section 1115 et seq. or successor statutes or laws in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code Section 1115 et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

The provisions of California Evidence Code Sections 1115 through 1128 shall also be applicable to such mediation process.

(d) Persons Permitted at Sessions. Persons other than the parties to the Dispute participating in the mediation, their representatives and the mediator may attend mediation sessions only with the permission of the parties to the Dispute participating in the mediation and the consent of the mediator; provided, however, that such permission and consent shall not be required to allow participation of such parties' insurer in the mediation to the extent required under the such parties' liability insurance policy. Confidential information disclosed to a mediator by the parties to the Dispute participating in the mediation or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(e) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the Declarant Parties to the Dispute participating in the mediation unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

17.4.5 Judicial Reference. Should mediation pursuant to Section 17.4.4 above not be successful in resolving any Dispute, such Dispute shall be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, or any successor statutes thereto, and as modified or as otherwise provided in this Section 17.4.5. Subject to the limitations set forth in this Section 17.4.5, the judicial referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The judicial referee shall be the only trier of fact or law in the reference proceeding and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.

(a) Participation by Declarant Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding if (i) all parties against whom Declarant would have necessary or permissive cross-claims or counterclaims cannot be joined in the judicial reference proceeding, including, but not limited to, the Declarant Parties, or (ii) the enforcement of the provisions of this Section 17.4.5 would impair the insurance coverage of a Declarant Party for any claim arising out of the Dispute. Prior to commencement of any action under this procedure, Claimant(s) will allow Declarant a reasonable time in which to determine if the parties described in subsection (i) above can be joined in the judicial reference proceeding, to seek the consent of its liability insurance carrier to the judicial reference proceeding and to contact each applicable Declarant Party with respect to any consent required by their insurance carriers. If Declarant determines that it cannot join all of the parties set forth in subsection (i) above or that Declarant's insurance coverage would be impaired with respect to the Dispute, or if Declarant is advised by a Declarant Party that it contends its insurance coverage will be impaired by enforcement of this Section 17.4.5, Declarant may either elect not to participate in the judicial reference proceeding, or, in the case of the impairment of a Declarant Party's insurance coverage, seek enforcement of its right to have such Declarant Party participate in the judicial reference proceeding by motion or other application pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1 or any successor statutes thereto. If Declarant elects not to participate in the judicial reference proceeding, Declarant will provide notice to Claimant(s) that the Dispute will not be resolved by judicial reference. If Declarant is unsuccessful in its attempt to compel any Declarant Party to participate in the judicial reference proceeding, Declarant will provide notice to Claimant(s) that such Declarant Party will not participate in the judicial reference proceeding and whether or not Declarant will participate in such proceeding. Upon receipt by Claimant(s) of notice from Declarant that the Dispute will not be resolved by judicial reference, Claimant(s) may proceed with an action

in an appropriate court of law against Declarant and/or any applicable Declarant Party. Upon receipt by Claimant(s) of notice from Declarant that any Declarant Party will not participate in the judicial reference, the judicial reference shall proceed as to all parties except such Declarant Party and upon receipt of such notice Claimant(s) may pursue legal proceedings against such Declarant Party in an appropriate court of law. In the event that Claimant(s) are permitted to commence legal proceedings as provided herein, subsections (b) through (f) and (h) through (n) of this Section 17.4.5 will not apply in such legal proceeding, provided that the legal proceeding shall be tried by a judge and not a jury and Claimant(s) and any applicable Declarant Party shall waive their rights to a jury (unless all parties to such proceeding mutually consent otherwise).

(b) Place. The judicial reference proceedings shall be heard in the county in which the Project is located.

(c) Referee. The referee shall be an attorney or retired judge with experience in relevant real estate matters. The referee shall not have any relationship to the parties to the Dispute or interest in the Project. The parties to the Dispute participating in the judicial reference proceeding shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of the County in which the Project is located, who shall select the referee.

(d) Commencement and Timing of Proceeding. The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(e) Pre-hearing Conferences. The referee may require one or more pre-hearing conferences.

(f) Discovery. The parties to the judicial reference proceeding shall be entitled to seek an order from the referee that certain discovery not be taken on grounds its expense is not justified by its likelihood of developing admissible evidence. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(g) Motions. The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the

same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of the County in which the Project is located.

(h) Rules of Law. The referee shall apply the laws of the State of California except as expressly provided herein including the rules of evidence, unless expressly waived by all parties to the judicial reference proceeding.

(i) Record. A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(j) Statement of Decision. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(k) Post-hearing Motions. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(l) Appeals. The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(m) Expenses. The fees and costs of any judicial reference proceeding hereunder shall be paid by the Declarant Parties involved in the Dispute participating in the proceeding. Each party to the judicial reference proceeding shall bear its own costs, expenses and attorney's fees in connection with such proceeding. Notwithstanding the foregoing, if the Seller Parties prevail in the Dispute, the referee may award to them some or all of their expenses that would be reasonable costs under the California Code of Civil Procedure and fees of the referee to the extent the referee finds that the Claimants asserted claims in the Dispute without reasonable justification and if the Claimants prevail in the Dispute, the referee may award them some or all of their expenses that would be reasonable costs under the California Code of Civil Procedure.

17.4.6 AGREEMENT TO DISPUTE RESOLUTION; WAIVER OF JURY TRIAL. DECLARANT AND BY ACCEPTING A DEED FOR THE COMMON AREA AND THE ASSOCIATION PROPERTY OR A CONDOMINIUM, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 17.4 AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 17.4. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 17.4, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY, THEREBY GIVING UP ANY RIGHTS SUCH PARTIES MAY POSSESS TO A JURY. THIS SECTION 17.4 SHALL NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

17.4.7 Application of Award. Any proceeds arising from any Dispute by settlement, award or otherwise shall be applied in accordance with Section 4.4.7 of this Declaration.

17.4.8 Exceptions to Mediation and Reference; Statutes of Limitation. The procedures set forth in this Section 17.4 shall apply only to Disputes and shall not apply to any action taken by the Association against Declarant or any Owner for delinquent assessments, which shall be covered by Article 6, or in any action involving any bond covered by the provisions of Article 11 of the Bylaws. Furthermore, nothing in this Section 17.4 shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Declarant Parties, the Association or any Owner shall be entitled to commence a legal action which in the good faith determination of any Declarant Party, the Association or Owner is necessary to preserve the Declarant Parties', the Association's or Owner's rights, under any applicable statute of limitations, provided that the Declarant Party, Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in Sections 17.4.4 and 17.4.5."

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5. Affirmation. Except as amended or modified herein or to the extent inconsistent with this Amendment, the Declaration therein remains in full force and effect.

6. Counterpart. This Amendment may be executed in counterparts, all of which when taken together, shall constitute one complete original hereof.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT:

BOSA DEVELOPMENT CALIFORNIA, INC, a California corporation

By: _____
Name: Ryan Bosa
Title: President

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

On 4-12-01 before me, PATRICIA RIVAS, personally appeared Ryan Bosa personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name(s) are/is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, 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.

WITNESS my hand and official seal.

Signature Patricia Rivas

(SEAL)

