

# Unofficial Document

## ***The Talon Group***

When Recorded Mail To:

MARISCAL, WEEKS, MCINTYRE  
& FRIEDLANDER, P.A.  
2901 North Central Avenue  
Suite 200  
Phoenix, Arizona 85012  
Attention: Donald E. Dyekman, Esq.

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### FIRST AMENDMENT TO AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR LA TIERRA CONDOMINIUMS

This First Amendment to Amended and Restated Condominium Declaration for La Tierra Condominiums (this "First Amendment") is made as of this 19th day of May, 2008, by La Tierra Apartments GP, Inc., an Arizona corporation (the "Declarant").

#### RECITALS

A. An Amended and Restated Condominium Declaration for La Tierra Condominiums (the "Declaration") was recorded on February 2, 2006 at Recording No. 2006-0154345, in the records of the County Recorder of Maricopa County, Arizona, submitting certain real property described in the Declaration to a condominium pursuant to the Arizona Condominium Act, ARS § 33-1201 et. seq.

B. Unless otherwise defined in this First Amendment, each capitalized term used in this First Amendment shall have the meaning given to such term in the Declaration.

C. Subsection 13.5.4 of the Declaration provides that during the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (b) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; or (c) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

D. The Period of Declarant Control has not yet expired, and the Declarant desires to amend the Declaration to comply with the rules and guidelines of the Department of Housing and Urban Development ("HUD") applicable to condominium projects so that the Declarant can obtain HUD approval of the Condominium.

**AMENDMENT**

**NOW, THEREFORE**, the Declaration is amended as follows:

1. The following sentence is added at the end of Subsection 3.4.5 of the Declaration:

The Declarant and its employees, agents, contractors and subcontractors shall not exercise the easement granted pursuant to this Subsection if access to the Common Elements and the Units for the purpose of completing any renovations, warranty work or modifications to the Common Elements or the Units is reasonably available across other property.

2. The following sentence is added at the end of Section 3.8 of the Declaration:

The Association shall be responsible for the repair of any damage to a Unit or the Common Elements caused by the Association's exercise of its rights under this Section.

3. Subsection 8.1.1(a) of the Declaration is amended in its entirety to read as follows:

(a) A special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the Common Elements. Such property insurance shall cover the interests of the Association, Unofficial Document the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Common Elements (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

4. Paragraph (vii) of Subsection 8.1.1(f) of the Declaration is amended in its entirety to read as follows:

(vii) A standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

5. The following Paragraph (ix) is added at the end of Subsection 8.1.1(f) of the Declaration:

(ix) An "Agreed Amount Endorsement" and "Inflation Guard Endorsement" if such endorsements are available and are commonly required by prudent institutional mortgage investors in the area in which the Condominium is located.

6. The following Subsection 8.1.7 is added at the end of Section 8.1 of the Declaration:

8.1.7 All insurance policies obtained by the Association pursuant to this Article 8 shall be obtained from generally acceptable insurance carriers.

7. The last sentence of Section 8.5 of the Declaration is amended in its entirety to read as follows:

The Association or any Trustee under an Insurance Trust Agreement executed pursuant to Subsection 8.1.4 shall hold any insurance proceeds in trust for the Unit Owners and lien holders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Condominium Act.

8. Subsection 12.2.1 of the Declaration is amended in its entirety to read as follows:

12.2.1 Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under Section 33-1220 of the Condominium Act, by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the approval of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of Common Elements;
- (d) Insurance or fidelity bonds;

- (e) Rights to use the Common Elements;
- (f) Responsibility for maintenance and repair of the several portions of the Condominium;
- (g) Expansion or contraction of the Condominium, or the addition, annexation of property to or from the Condominium;
- (h) Boundaries of any Unit;
- (i) The interests in the Common Elements or Limited Common Elements;
- (j) Convertibility of Units into Common Elements or of Common Elements into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit;
- (m) Establishment <sup>Unofficial Document</sup> of professional management by the Association where professional management had been required by an Eligible Mortgage Holder, the Department of Housing and Urban Development, the Department of Veterans Affairs or Fannie Mae ;
- (n) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (o) Any provisions that expressly benefit mortgage holders, insurers, or guarantors or that are of a material adverse nature to mortgagees.
- (p) The purposes to which any Unit or the Common Elements are restricted.

9. Subsection 12.2.2 of the Declaration is amended in its entirety to read as follows:

12.2.2 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Eligible Mortgage Holders holding mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the

Association allocated to Unit Owners of all Units subject to First Mortgages. Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs must be agreed to by the Eligible Mortgage Holders or Eligible Insurers Or Guarantors that represent at least fifty-one percent (51%) of the votes of Units subject to First Mortgages held or insured by Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

10. Subsection 12.2.3 of the Declaration is amended in its entirety to read as follows:

12.2.3 Any Eligible Mortgage Holder or Eligible Insurer or Guarantor who receives a written proposal for an amendment to the Condominium Documents who fails to submit a response to the proposal within thirty (30) days after the Mortgagee receives proper notice of the proposal shall be deemed to have approved the proposed amendment, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

11. The following Sections 12.6 and 12.7 are added at the end Article 12 of the Declaration:

12.6 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor or any other lender or insurer of a First Mortgage on any Unit will, upon written request, be entitled to: (a) inspect the Unofficial Document current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (b) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. The Association, upon request, shall make available for inspection during normal business hours to prospective purchasers of a Unit, copies of the Condominium Documents and the most recent annual audited financial statement, if one has been prepared. Upon written request from any agency or corporation which has an interest or prospective interest in the Condominium, the Association shall prepare and furnish with any reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

12.7 Restoration or Repair of Condominium. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially restored or repaired in accordance with this Declaration and the original plans

and specifications unless the approval of Eligible Mortgage Holders holding mortgages on Units to which at least fifty-one percent (51%) of the votes in the Association allocated to Units subject to First Mortgages held by Eligible Mortgage Holders is obtained.

12. Except as amended by this First Amendment, the Declaration shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions of this First Amendment and the Declaration, this First Amendment shall control.

LA TIERRA APARTMENTS GP, INC., an Arizona corporation

By: [Signature]

Its: PRESIDENT

PROVINCE  
~~STATE OF~~ ONTARIO )  
 ) ss.  
County of YORK )

The foregoing instrument was acknowledged <sup>Unofficial Document</sup> before me this 21<sup>ST</sup> day of MAY, 2008, by LEWIS MARTIN, the PRESIDENT of La Tierra Apartments GP, Inc., an Arizona corporation, on behalf of the corporation.

[Signature]  
Notary Public

My Commission Expires:  
Sept. 4, 2010

CATHERINE MARY PATRICIA DAY, a Commissioner,  
etc., Regional Municipality of York, for  
Datile Property Management Ltd.  
Expires September 4, 2010.