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The Kohn Law Firm
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Tucson, Arizona 85715

**COURTESY RECORDING
NO TITLE LIABILITY**

**FIRST AMENDMENT TO
CONDOMINIUM DECLARATION
FOR
COSTA DEL SOL CONDOMINIUMS**

THIS FIRST AMENDMENT is hereby made to that certain Condominium Declaration for Costa Del Sol Condominiums, recorded on June 30, 2006, in Docket 12837 at page 6420, Records of Pima County, Arizona (the "Declaration"), originally made by WGA North Euclid Avenue, L.P., a California limited partnership, whose Declarant's interests and rights thereunder were subsequently assigned to 931 Euclid, LLC, a Delaware limited liability company ("Declarant") by Assignment of Declarant's Rights recorded September 18, 2006, in Docket 12891 at page 2575, Records of Pima County, Arizona, with Declarant now being the owner of one hundred percent (100%) of the Units and all voting rights related thereto.

Declarant hereby publishes and declares that the Declaration is amended as follows:

1. **Disclosures.** Every Owner of a Unit shall take title subject to, and each Invitee, Lessee and Occupant shall be deemed to have been provided with full and complete notice of, the following matters:

1.1 **Security.** The Declarant and/or the Association may, but shall not be required, from time to time, to provide measures or take actions which directly or indirectly improve safety on the Condominium; however, each Unit Owner and each Invitee, Lessee or Occupant of a Unit acknowledges and agrees that neither Declarant nor the Association is a provider of security and shall have no duty to provide security on the Condominium.

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Furthermore, the Condominium abuts an alley, which can pose security issues for the Condominium and the ground-floor Units as long as the alley remains. It shall be the responsibility of each Unit Owner, Invitee, Lessee or Occupant of a Unit to protect his or her person and property and all responsibility to provide such security shall solely with any such Unit Owner, Invitee, Lessee and/or Occupant of a Unit. Neither Declarant nor the Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken. Each Unit Owner, Invitee, Lessee and Occupant of a Unit acknowledges that until such time that all Units within the Condominium have been sold, Declarant may conduct open houses at the Condominium, and may keep Condominium's gates open during normal business hours. It is incumbent upon each Unit Owner, Invitee, Lessee or Occupant of a Unit to maintain the security for their own Unit and property by keeping the doors and windows locked and maintaining such other security precautions as deemed necessary under the circumstances.

1.2 **Concrete Slabs.** Caution should be observed in attempting to drill, penetrate or otherwise tamper with the concrete or other structural components of the Condominium ("Concrete Slab"). Portions of these Concrete Slab areas may have been constructed with a post-tensioned system, which involved the placing of steel cables under high tension in the concrete slab. Any penetration or tampering will cause structural damage to such areas and may result in personal injury. By accepting a deed to a the Unit, each Unit Owner understands, acknowledge and agrees that: (i) there will be no cutting or otherwise tampering with the Concrete Slab; (ii) Unit Owner will not knowingly permit or allow any person to cut into or tamper with the Concrete Slab; (iii) Unit Owner will disclose the existence of the Concrete Slab and these prohibitions to any Lessee, Invitee, Occupant or subsequent Purchaser of the Unit; and (iv) Unit Owner will indemnify, protect, defend and hold Declarant, the Association, and their respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

1.3 **Mold.** In conjunction with the sale of Units to Purchasers, Declarant may have investigated the existence of mold and undertaken remediation thereof in certain of the Units. However, Declarant has not or will not undertake any such mold investigation or remediation in every one of the Units. All Purchasers are solely responsible for investigating and remediating the existence of any mold in the Condominium or their Unit. Each Purchaser, whether a buyer from Declarant or any subsequent Purchaser, acknowledges that they have received or otherwise will obtain that certain Environmental Protection Agency ("EPA") publication entitled "A Brief Guide to Mold, Moisture, and Your Home", which is available through the EPA's website, and that he/she will have read and understood the publication. Neither Declarant nor the Association shall have any liability to any Unit Owner, Invitee, Lessee or Occupant arising as a result of the occurrence or existence of any mold in any Unit or the Condominium.

1.4 **Asbestos.** Declarant has disclosed to all Purchasers of Units that the Units contain asbestos in the walls, ceilings and potentially elsewhere in each Unit and/or the Condominium. Except to the extent a Purchaser has contracted directly with Declarant for an upgrade package that would include scraping the ceiling of its Unit, no abatement or remediation

of the asbestos from the walls or elsewhere in any Unit, or otherwise anywhere else in the Project, will be or has been undertaken by Declarant or the Association. Except for Purchasers who have directly contracted with Declarant for the abatement of asbestos in the ceiling through the thereof in the Unit, each Purchaser of a Unit is solely responsible for determining the existence of asbestos in the Unit and abating or remediating the asbestos therefrom at its sole cost and expense. Declarant makes no representation or warranties of any kind, express or implied, about the presence or effect of asbestos in any Unit or the Condominium, or in proximity to any Unit, and expressly disclaims any liability for any damages that may be caused to any Purchaser and/or the Condominium as a result of the presence of asbestos. Each Unit Owner, Occupant, and their respective Invitees and Lessees, expressly forever release Declarant from and against any and all liability that may arise as a result of the existence of asbestos in any Unit or the Condominium. The Association shall adopt and implement an operations and maintenance program ("O&M Program") as part of the Rules whereby Owners shall be required to follow the mandates of the O&M Programs for the management of asbestos in their Units.

2. **Declarant.** The Second 1.17 definition of "Declarant" is hereby amended, in its entirety, to provide as follows:

1.7 "**Declarant**" means (a) 931 Euclid Avenue, LLC, a Delaware limited liability company (the "Original Declarant"); (b) any holder of a First Mortgage who succeeds to Original Declarant's interest in all or part of the Parcel by foreclosure or deed in lieu of foreclosure (a "First Mortgagee Successor"); and (c) any successor or assignee of the special rights, preferences and privileges conferred on Original Declarant in the Declaration (including all special Declarant Rights), who is designated by Original Declarant or any First Mortgagee Successor to succeed to such special rights, preferences and privileges in, and who acquires an interest in the Parcel pursuant to, a Recorded instrument.

3. **First Mortgage.** The Section 1.23 definition of "First Mortgage" is hereby amended to provide that such definition shall include, but not be limited to, that certain (i) Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement recorded in Docket 12891 at page 2578, Records of Pima County, Arizona, wherein Imperial Capital Bank is the designated beneficiary, and (ii) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded in Docket 12891 at page 2666, Records of Pima County, Arizona, wherein MKA Real Estate Opportunity Fund I, LLC is the designated beneficiary.

4. **First Mortgagee.** The Section 1.24 definition of "First Mortgagee" is hereby amended to provide that such definition shall include, but not be limited to (i) Imperial Capital Bank, and (ii) MKA Real Estate Opportunity Fund I, LLC.

5. **Mortgage Protection Clause.** The following Section 12.9 is hereby added to and made a part of the Declaration:

"12.9 **Mortgage Protection Clause.** No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Unit, but all of said covenants, conditions and restrictions shall

be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise."

6. **Section 13.5.6.** Section 13.5.6 of the Declaration is hereby amended to provide that any amendment to the Declaration must be approved in writing by the Beneficiary under the (i) Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement recorded in Docket 12891 at page 2578, Records of Pima County, Arizona, and (ii) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded in Docket 12891 at page 2666, Records of Pima County, Arizona, as long as such Deed(s) of Trust encumbers one or more Units.

7. **No Amendment.** The provisions of the First Amendment may not be amended without the written consent of Declarant, which may withheld in its sole and absolute discretion.

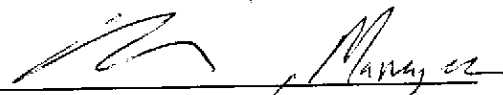
8. **Miscellaneous.** All terms used herein shall have the same meaning as set forth in the Declaration. To the extent that this First Amendment alters, varies or contradicts the written terms of the Declaration, then the terms and conditions of this First Amendment shall control. Except to the extent this First Amendment alters, varies or contradicts the written terms of the Declaration, the terms and conditions of the Declaration are hereby ratified and shall continue in full force and effect.

EXECUTED as of the year and date first written above.

DECLARANT:

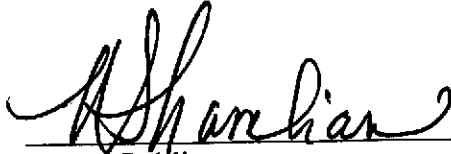
931 EUCLID AVENUE, LLC, a Delaware
limited liability company

By: Sand & Sea Equity Group, LLC, a
Delaware limited liability company,
its Sole Member

By: 
Malcolm Davies, Manager

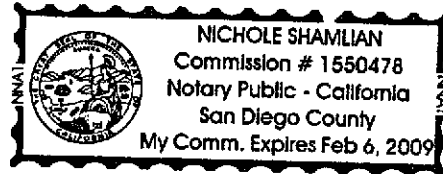
STATE OF CALIFORNIA)
County of San Diego) ss.

The foregoing instrument was acknowledged before me this 10 day of November, 2006, by Malcolm Davies, personally known to me (or proved to me on the basis of satisfactory evidence), in his capacity as Manager of Sand & Sea Equity Group, LLC, a Delaware limited liability company, the Sole Member of 931 EUCLID AVENUE, LLC, a Delaware limited liability company.



Notary Public

My Commission Expires:
02/06/2009



FIRST LENDER'S CONSENT

Imperial Capital Bank ("Beneficiary"), as beneficiary under that certain Deed of Trust affecting the Parcel Recorded in Docket 12891 at page 2578, Records of Pima County, Arizona (the "Deed of Trust"), hereby consents to the foregoing First Amendment to Condominium Declaration for Costa Del Sol Condominiums (the "First Amendment") executed by 931 Euclid, LLC, a Delaware limited liability company, to which this Consent is attached. Notwithstanding anything to the contrary contained in this Consent or the First Amendment, nothing contained in this Consent (a) constitutes or shall be construed as an agreement by Beneficiary to consent to any future modification or amendment to the Declaration (as such term is defined in the First Amendment) that requires Beneficiary's consent or approval under the express terms of the Declaration; and (b) shall be deemed to in any way affect the validity or priority of the Deed of Trust, except only the priority between the Deed of Trust and the First Amendment, as expressly set forth in this Consent.

IMPERIAL CAPITAL BANK,

a(n) _____

By: 

Its: Vice President

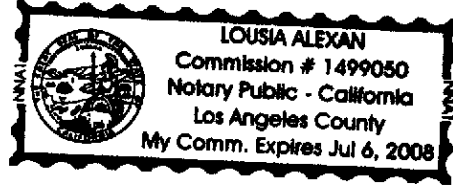
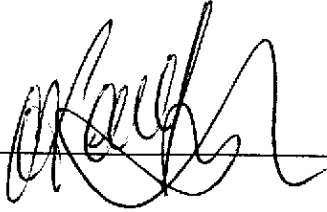
ALL PURPOSE ACKNOWLEDGMENT

STATE OF California }
COUNTY OF Los Angeles }

On **November 13, 2006** before me, **Lousia Alexan, Notary Public**, personally appeared **Bach Yen Ta**, personally known to me (or 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), an 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 _____



(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is **OPTIONAL**, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE **MUST** BE ATTACHED TO

Title of Document Type: First Lender's Consent

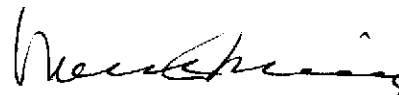
THE DOCUMENT DESCRIBED AT RIGHT.

Number of Pages _____ Date of Document 11/13/06
Signer(s) Other Than Named Above _____

SECOND LENDER'S CONSENT

The undersigned, being the holder of a Deed of Trust affecting the Parcel recorded in Docket 12891 at page 2666, Records of Pima County, Arizona, hereby consents to the foregoing First Amendment to Condominium Declaration for Costa Del Sol Condominiums.

**MKA REAL ESTATE OPPORTUNITY
FUND I, LLC**, a California limited liability
company



By: Robert Phillips

Its: EXECUTIVE VICE PRESIDENT

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN DIEGO)

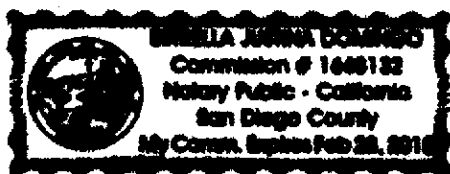
On November 10, 2006, before me, Estrella Justina Domingo, a Notary Public in and for said County and State, personally appeared Robert Phillips, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



NOTARY PUBLIC

My Commission Expires:



HONOLULU OAHU HI