

THIS INSTRUMENT PREPARED
BY AND RETURN TO:

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INSTR # 2005216894

O BK 15028 PG 0308

Pgs 0308 - 316 (9pgs)

RECORDED 05/20/2005 11:21:14 AM

CLERK OF COURT
HILLSBOROUGH COUNTY

DEPUTY CLERK G Thompson

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF VICTORIA PARK SOHO HOMEOWNERS ASSOCIATION, INC.**

This Second Amendment ("Second Amendment") is made and entered into as of this 3rd day of MAY, 2005, by **COURIER CITY DEVELOPMENT, LLC**, a Florida limited liability company, hereinafter referred to as the "Declarant".

BACKGROUND FACTS:

A. Declarant is the owner of certain real property located in Hillsborough County, Florida which is more particularly described in Exhibit "A," attached hereto and made a part hereof (the "Property").

B. Declarant established that certain Declaration of Covenants, Conditions, and Restrictions of Victoria Park SoHo Homeowners Association, Inc., recorded in Official Records Book 13297, Page 0999, Public Records of Hillsborough County, Florida, as amended ("Declaration"), which Declaration encumbers the Property.

C. Pursuant to the Declaration, the Declaration may be amended by a vote of 2/3 of the members able to cast votes at any regular or special meeting of the members. The Declarant is the owner of all Lots which are subject to the Declaration, and, as a result, the Declarant is also the sole member and has the right to modify and amend the Declaration in its sole discretion.

NOW, THEREFORE, Declarant hereby modifies and amends the Declaration as more specifically set forth below:

1. Background Facts. The Declarant acknowledges and agrees that the background facts set forth above are true and correct to the best of its knowledge and are incorporated herein by this reference.

2. Community Pool. There shall be located on the Property, in the location more specifically identified in the Plat, one (1) non-heated swimming pool, deck, pool equipment and related appurtenances (collectively, the "Community Pool") constructed for the use and benefit of all Property Owners, as well as for the use and benefit of all owners of that certain adjacent land development to be or now known as Kensington Park SoHo Townhomes ("Kensington Park"). The

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Community Pool shall be deemed a Common Area of the Property. Sixty-two percent (62%) of any cost and/or expense associated with the Community Pool as determined in the reasonable discretion of the Board of Directors of the Association, including, without limitation, the cost and expense of any and all upkeep, maintenance, repair and/or replacement of the Community Pool, shall be included in Annual Assessment levied by the Association. The remaining thirty-eight percent (38%) of any cost and/or expense associated with the Community Pool, as determined in the reasonable discretion of the Board of Directors of the Association, including, without limitation, the cost and expense of any and all upkeep, maintenance, repair and/or replacement of the Community Pool, shall be levied against and paid by the owners of Kensington Park ("Kensington Park Assessment"). The Board of Directors of the Association shall prepare and deliver an invoice to the Kensington Park association for payment of the Kensington Park Assessment at the time that each annual budget for the Property is created. All annual Kensington Park Assessments shall be owed and immediately paid to the Association upon Kensington Park's receipt of the invoice, and shall be collected by the board of directors of the Kensington Park association, for and on behalf of the Association. Notwithstanding the foregoing, the Association shall be responsible for one hundred percent (100%) of the cost and/or expense associated with the Community Pool, as determined in the reasonable discretion of the Board of Directors of the Association, including, without limitation, the cost and expense of any and all upkeep, maintenance, repair and/or replacement of the Community Pool, until such time as the developer of Kensington Park has turned over ("Turnover") the Kensington Park association to the then existing unit owners of the development in accordance with the governing Kensington Park homeowners association documentation, at which time and upon such event the then existing unit owners shall be responsible for the Kensington Park Assessment. Under no circumstances shall any Kensington Park Assessment accrue or be collected by the Association until the Turnover of Kensington Park development.

3. Insurance, Repair and Rebuilding

- a. Insurance. The insurance, other than title insurance, which shall be carried upon the Property and the property of the Owners shall be governed by the provisions hereinafter set forth.
- b. Authority to Purchase; Named Insured. The Association shall have the following responsibilities:
 - i. The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association Property, and the Common Area required to be insured by applicable law. A copy of each policy of insurance in effect shall be made available for inspection by the Owners at all reasonable times.
 - ii. All hazard policies issued to protect the Dwellings shall provide that the word "building" wherever used in the policy shall include, but shall not necessarily be limited to, installations or additions comprising that part of the Dwelling within the interior walls and ceilings of the individual Dwellings (excluding any walls or ceilings both sides of which

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are located entirely within a Dwelling) extending outwardly to and including any exterior wall of the Dwelling which constitutes the outside shell of the building or roof/attic space of a building, and shall include but not be limited to the foundations of any Dwelling, any studs, joists, utility lines and conduits up to the point the same connect to fixtures within the Dwelling all as initially installed, or replacements thereof of like or quality in accordance with the original plans and specifications, or as existed at the time the Dwelling was initially conveyed if the original plans and specification are not available. The word "building" shall only include the interior structural components of any wall or ceiling not excluded as set forth above and shall not include the drywall, wallboard, floor coverings, wall coverings or ceiling coverings on any of the walls or ceilings within the interior of any Dwelling. With respect to the coverage provided for by this paragraph, the Owners shall be considered additional insureds under the policy.

- iii. All insurance policies upon the Common Areas shall be purchased by the Association and the named insured shall be the Association, individually, and for the use and benefit of the Owners, naming them and their mortgagees as their interests may appear. Provisions shall be made for the issuance of mortgage endorsements and memoranda of insurance to the mortgagees of Owners.
- c. Mortgagee Approval. So long as an Institutional first Mortgagee shall hold a mortgage upon at least a majority of the Dwellings, such Mortgagee shall have the right to approve the insurer on all insurance policies covering the Common Area, and the Association shall submit to the Mortgagee proof of payment of the annual premiums on all such insurance policies purchased by the Association. If the Association fails to procure any of the requisite insurance coverages hereunder and to pay the premiums therefor, the Institutional Lender will have the right to order and pay for the policies and be subrogated to the assessment and lien rights of the Association with respect to such payment. This subparagraph shall be construed as a covenant for the benefit of, and may be endorsed by, any such Institutional First Mortgagee.
- d. Casualty. All of the facilities located within the Project, including all Dwellings and improvements and all personal property belonging to the Association or a part of the Common Elements, shall be insured in an amount equal to the full insurable value or 100% of their then current replacement cost excluding land, foundations, excavations and other items that are usually excluded from such insurance coverage, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

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- i. Loss or damage by fire, all other hazards normally covered by the standard extended coverage endorsement, including windstorm, and all other perils customarily covered in similar types of projects, including those covered by the standard "all risk" endorsement.
- ii. "Master" or "blanket" policy of flood insurance if the Dwellings or any portion thereof is located in a special flood hazard area, as defined by the Federal Emergency Management Agency or its successors, in an amount not less than the lesser of (i) the maximum coverage available at subsidized rates under the National Flood Insurance Program for all Buildings and other insurable property within the Project located within the special flood hazard area, or, (ii) 100% of current replacement cost thereof, if available.
- iii. Such other risks as from time to time shall be customarily covered with respect to Buildings similar in construction, location and use as the Buildings on the land, including, but not limited to, vandalism and malicious mischief.

The casualty policy shall contain a waiver of the right of subrogation against Owners individually, a provision that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of the Owners collectively and a provision that the policy is primary in the event the Owner has other insurance covering the same loss.

- e. Public Liability. A comprehensive general liability insurance policy shall be carried on the Common Areas and all other areas under the supervision of the Association in an amount of at least \$1,000,000 for bodily injury, death and property damage for any single occurrence, with excess coverage of at least \$5,000,000. The liability insurance shall provide coverage for death, bodily injury and property damage that results from the operation, maintenance or use of the Common Areas and any liability related to employment contracts to which the Association is a party. Additional public liability insurance shall be determined by the Board of Administration of the Association, including, but not limited to, hired automobile and non-owned automobile coverages and with a cross liability endorsement to cover liabilities of the Owners as a group.
- f. Workers' Compensation. Workers' Compensation insurance shall be carried to meet the requirements of the law.
- g. Other Insurance and Special Endorsements. The Association shall carry such other insurance and special endorsements (i) the FHA, VA, FNMA and/or the FHLMC may require as a condition to continued Project approval so long as

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any such organization holds or insures a mortgage in the Project, and (ii) the Board of Administration shall determine from time to time to be desirable.

- h. Notice of Cancellation or Changes; Premium. All insurance policies purchased by the Association shall require the insurer to give the Association and each holder of a first mortgage on a Dwelling prior written notice before it cancels or substantially changes the coverage for the Dwelling. All premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.
- i. Association as Agent. The Association is irrevocably appointed agent for each Owner and for each owner of a mortgage or other lien upon a Dwelling and for each owner of any other interest in the Property, to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims.
- j. Reconstruction and Repair. If any part of the Common Area shall be damaged by casualty, it shall be reconstructed or repaired immediately unless it is determined in the manner elsewhere provided that the Project shall be terminated. Notwithstanding anything herein contained or implied to the contrary, if the Project or any part thereof is damaged by fire or other casualty, such damage shall be restored and repaired according to the original plans and specifications to the extent possible with the available insurance proceeds.
- k. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, or if not, then according to plans and specification approved by the Board of Administration of the Association.
- l. Responsibility. If the damage is only to those parts of a Dwelling for which the responsibility of maintenance and repair is that of the Owner, the then Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility for reconstruction and repair after casualty or other damage shall be that of the Association. Insurance proceeds shall be applied to such reconstruction and repair, except for damage or destruction caused by the intentional or negligent act or omission of an Owner which shall be the responsibility of that Owner to the extent not covered by insurance.
- m. Estimates of Cost. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

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n. **Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, the funds for the payment of the costs thereof are insufficient, the Association shall pay over sufficient amounts to provide funds to pay the estimated costs, which amount shall be part of the Common Expenses and/or a part of any Special Assessment of the Association levied against the Owners.

- o. **Construction Funds.** The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance and funds collected by the Association from assessments against Owners, shall be disbursed in payment of such costs in the manner required by the Board of Administration of the Association. The first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds, and if there is a balance in the construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be distributed to the Association as Common Surplus.
- p. **Institutional Lender's Right to Advance Premiums.** Should the Association fail to pay such premiums when due, or should the Association fail to comply with other insurance requirements of the Institutional lender holding the greatest dollar volume of mortgages, such Institutional Lender(s) shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance, and to the extent of the money so advanced, the mortgagee(s) shall be subrogated to the assessment and lien rights of the Association against the individual Owners for the payment of such item of Common Expense.
- q. **Personal Insurance.** Each individual Owner shall be responsible for purchasing, at his, her, or it's own expense, liability insurance to cover accidents occurring within the Dwelling or on that Dwelling's Limited Common Elements, insurance coverage for all personal property, and insurance coverage for all policies issued to individual Owners shall provide that the coverage afforded by such policies is excess over the amount recoverable under any other policy covering the same property without rights of subrogation against the Association.
- r. **General Requirements.** If available, and where applicable, the Association shall endeavor to obtain policies which provide that the insurer waives its rights of subrogation as to any claims against Owners, the Association, their respective servants, agents and guests. Insurance companies authorized to do business in the State of Florida shall be affirmatively presumed to be good and responsible companies and the Board of Administration of the Association shall not be responsible for the quality or financial responsibility

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of the insurance companies, provided they are licensed to do business in the State of Florida.

s. Equitable Relief. Any Owner and any Institutional Lender owning and holding a mortgage encumbering a Dwelling in this Project shall have the right to petition a court having equity jurisdiction in and for equitable relief relating to the provisions, rights and obligations of this Article.

t. Damage by Owner. In the event any damage not covered by insurance is caused to any Dwelling and/or the Common Areas by an Owner or a tenant, occupant, guest, licensee or invitee thereof or any pet of the foregoing, such damage shall be repaired at the cost and expense of the Owner.

4. Roof-top Terraces. Each Dwelling located on Property shall have a roof-top terrace ("Roof-top Terrace"), as more particularly shown and identified on the Plat. Each such Roof-top Terrace shall not be considered part of the Common Area of the Property, but rather shall be deemed a limited common element appurtenant to the Dwelling that it is attached to or shall otherwise service. Each Roof-top Terrace shall be reserved for the exclusive use of the Owner who shall own the Dwelling wherein such Roof-top Terrace is located. The cost and expense of maintaining, repairing, servicing and replacing each such Roof-top Terrace, together with all such related structural and/or non-structural components thereof, shall be the sole responsibility of the Owner of the Dwelling wherein such Roof-top Terrace is located. Notwithstanding the foregoing, or anything else to the contrary contained within this Declaration, the Association shall maintain, repair, service and replace all other parts of the roof servicing the Common Area or any other Dwelling other than such Roof-top Terraces, the cost and expense of which shall be a Common Expense of the Property.

Except as modified and amended herein, the terms and provisions of the Declaration as originally executed, and subsequently amended, shall remain in full force and effect, the terms and provisions of which are incorporated herein by this reference. In the event of a conflict between any of the terms and provisions of the Declaration, and any of the terms and provisions of this Second Amendment, the terms and provisions of this Second Amendment shall prevail.

IN WITNESS WHEREOF, the undersigned, being Declarant, has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered
in our presence:

Jill Bender
Print Name: Jill Bender
David L. Kramer
Print Name: DAVID L. KRAMER

DECLARANT:

COURIER CITY DEVELOPMENT, LLC, a
Florida limited liability company

By: Paul Paluzzi
Paul Paluzzi, as its Managing Member

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COUNTY OF HILLSBOROUGH
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The foregoing instrument was acknowledged before me this 30th day of MAY, 2005, by Paul Paluzzi as Managing Member of COURIER CITY DEVELOPMENT, LLC, a Florida limited liability company, for and on behalf of said entity and who is personally known to me or produced as identification.

D.L. KRAMER
Notary Public, State of Florida
My Comm Expires Feb 13, 2009
No 00395839

D. L. Kramer
Notary Public
D. L. KRAMER
Print name of Notary Public

My Commission Expires: FEB. 13, 2009

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Parcel 1:

Lots, 1, 2, 11 and 12 and the North 45.58 feet of Lots 3 and 10, Block 24 of Courier City, according to map or plat thereof as recorded in Plat Book 2, Page 13, of the Public Records of Hillsborough County, Florida; together with that part of closed alley lying between said lots.

Parcel 2:

Lots 9 through 12, inclusive, Block 23 of Courier City, according to map or plat thereof as recorded in Plat Book 2, Page 13, of the Public Records of Hillsborough County, Florida; together with the West ½ of closed alley abutting on the East side thereof.

Parcel 3:

Lot 7, Block 10 of Courier City, according to map or plat thereof as recorded in Plat Book 2, Page 13, of the Public Records of Hillsborough County, Florida; together with the West ½ of closed alley abutting on the East side thereof.