

9192877

9192877
10/07/2004 03:26 PM \$49.00
Book - 9046 Pg - 5424-5432
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
METRO NATIONAL TITLE
BY: SEM, DEPUTY - WI 9 P.

FOURTH AMENDMENT TO CONDOMINIUM DECLARATION
FOR MONTE LUCA CONDOMINIUMS

THIS FOURTH AMENDMENT TO THE CONDOMINIUM DECLARATION FOR MONTE LUCA CONDOMINIUMS (hereinafter referred to as this "Amendment") is made and executed this 16th day of June, 2004 by the undersigned members of the Board of Trustees or Management Committee of the Monte Luca Homeowners Association, Inc.

WITNESSETH:

WHEREAS, a certain Condominium Declaration for Monte Luca Condominiums was executed on August 7, 2001 and recorded in the office of the County Recorder of Salt Lake County, State of Utah, as Entry No. 7976985, in Book 8490, Pages 849 to 898, as subsequently amended (hereinafter referred to as the "Declaration");

WHEREAS, a certain Record of Survey Map of Monte Luca Condominium Project was executed on August 15, 2001 and recorded in the office of the County Recorder of Salt Lake County, State of Utah, as Entry No. 7976984 and Map Filing No. 2001P-228 as subsequently amended and supplemented (hereinafter referred to as the "Map");

WHEREAS, the Declaration and Map created the Monte Luca Condominiums consisting of Units 1-19, 27-29 and 41-43 together with their respective undivided interests in the common areas and facilities as more particularly described in the Declaration;

WHEREAS, the Monte Luca Condominiums have been developed upon and include the following described land located in Salt Lake County, Utah and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, this Amendment has been approved by the affirmative vote or approval and consent of Owners having ownership of one hundred percent (100%) of the undivided interest in the Common Areas and Facilities of the Monte Luca Condominiums (hereinafter referred to as the "Project"), and by the affirmative vote and approval of not less than fifty-one (51%) of those mortgage holders holding first mortgage obligations on the Condominium Units in the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Declaration is hereby amended as follows:

1. Paragraph 2(p) of Article II of the Declaration is hereby amended so as to delete said Paragraph 1 as it presently appears and to substitute therefore the following:

(p) The words "Limited Common Area" shall mean and refer to those portions of the Common Areas and Facilities reserved for the exclusive use of certain Unit Owners, as specified herein. The Limited Common Areas shall include the roof, rain gutters and downspouts, driveway, walk, patios, decks, porches, and rear and side yards adjacent to each Unit, all as more particularly shown on the Map. The use and occupancy of the Limited Common Areas shall be reserved to its associated Unit, and each Unit Owner is hereby granted an irrevocable

license to use and occupy the same so long as such Owner owns the Unit associated with such Limited Common Area.

2. Paragraph 2 of Article V of the Declaration is hereby amended so as to delete said Paragraph 2 as it presently appears and to substitute therefore the following:

2. Description of Improvements. The Project has been constructed in accordance with the information contained in the Map. The buildings in the Project are of stucco and stone construction and contain a total of twenty-five (25) units as of the date hereof. The Project may eventually include as many as forty-four (44) units in the event that all of the additional land is added to the Project as contemplated in Article VI of this Declaration. Electricity and gas are separately metered to each Unit. Each Unit has a separate furnace and water heater, standard kitchen appliances, microwave oven and carpet. The Project will be subject to the easements that are reserved through the Project and as required for utility services.

3. Paragraph 2 of Article VI of the Declaration is hereby amended so as to delete said Paragraph 2 as it presently appears and to substitute therefore the following:

2. Expandable Project. The Project is expandable. The right of the Declarant to expand the project shall begin with the filing for record of this Declaration and end at the expiration of seven (7) years from that date. The consent of the unit owners for the expansion is not required. The expansion, which may be done in one or more phases at the sole option of the Declarant, is to be composed of residential units and amenities to support the development. All residential units and amenities will be compatible with the buildings and amenities in the current project. The maximum number of residential units that Declarant may construct on the additional land is nineteen (19) units. If the maximum number of residential units is constructed on the additional land, then the Project will consist of a total of forty-four (44) units. The additional land which is located in Salt Lake County, Utah is more fully and completely described on Exhibit "D" attached hereto and incorporated by this reference as though fully set forth herein.

4. Paragraph 2(c) of Article VII of the Declaration is hereby amended so as to delete said Paragraph 2(c) as it presently appears and to substitute therefore the following:

(c) No Owner shall cause or permit anything (including, without limitation, any radio or television aerial, antenna or satellite dish, and no shades, awnings, canopy, reflective window film, window guards, shutters, storm or screen door, ventilators, fans or air conditioning devices) to be displayed, be visible from, installed or used in or about the Common Areas and Facilities, or decks, porches or patios except such as shall have been approved in writing by the Board of Trustees or Management Committee. If an Owner fails to keep any such device or installation in good order, repair and appearance, the Board of Trustees or Management Committee may remove such device, charging the cost of removal and restoration to the Owner, and the device shall not be replaced until it has been put in proper condition, and only with the further written consent of the Board of Trustees. No sign of any kind shall be displayed to the public view on or from any Unit or the Common Areas and Facilities unless it is for the common benefit of all Owners or specifically approved in writing by the Board of Trustees or Management Committee.

5. Article VIII of the Declaration is hereby amended so as to delete said Article VIII as it presently appears and to substitute therefore the following:

ARTICLE VIII

PERSON TO RECEIVE SERVICE OF PROCESS

The Person to receive service of process in the cases provided herein or in the Act is Dave Gough, 8271 S. St. Tropez Cove, Sandy, Utah 84093.

5. Paragraph 1 of Article IX of the Declaration is hereby amended so as to delete said Paragraph 1 of Article IX as it presently appears and to substitute therefore the following:

1. Ownership of a Unit. Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit and to the ownership of the undivided interest in the Common Areas and Facilities set forth on Exhibit "C" hereto. Each of the undivided interests in the Common Areas and Facilities appurtenant to the Units in the Project set forth on Exhibit "C" are equal and the same. Exercise of Declarant's option to expand shall result in a change in the undivided interest appurtenant to each Unit.

6. Paragraph 2 of Article IX of the Declaration is hereby amended so as to delete said Paragraph 2 of Article IX as it presently appears and to substitute therefore the following:

2. Nature of and Restriction on Ownership and Use. Each Unit Owner shall have and enjoy the rights and privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own Units, it being intended that they may and shall be owned as any other property rights by persons, or joint tenancy so long as no Unit is owned by more than six persons or entities. The Unit Owners may lease or rent their Units with their appurtenant rights subject to terms and conditions chosen solely by the Unit Owner and his lessee, except that (a) all Unit Owners, their tenants and other occupants or users of the Project, shall be subject to the Act, this Declaration, the Bylaws, and all rules and regulations of the Project, (b) the term of any such lease shall be for not less than six (6) months, (c) occupancy in each Unit shall not be greater than six people per Unit, and (d) any lease of a Unit must be in writing and must state that the lease and the lessee will be subject to the terms and conditions of all rules and regulations of the Project, this Declaration and the Bylaws.

7. Paragraph 1 of Article XVIII of the Declaration is hereby amended so as to delete said Paragraph 1 as it presently appears and to substitute therefore the following:

1. Hazard Insurance. The Board of Trustees or Management Committee or Association of Unit Owners shall at all times maintain, in force, hazard insurance meeting the following requirements:

(a) A multi-peril type policy covering the entire Condominium Project (both Units and Common Areas and Facilities) shall be maintained. Without limiting the foregoing, coverage under this policy shall include any items permanently attached to the Units such as, but not limited to, cabinets, beams, light fixtures, carpets installed over unfinished floors, and finished wall surfaces. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the special extended coverage endorsement including debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to condominium projects similar to the Project in construction, location and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than one hundred percent (100%) of the full insurable value of the Project (based upon replacement cost). Such policy shall include an "Agreed Amount Endorsement" or its equivalent, and, if necessary and appropriate, an

"Increased Cost of Construction Endorsement" or its equivalent. Coverage under this policy to include any items permanently attached to the Unit such as, but not limited to, cabinets, beams, light fixtures, carpets over unfinished floors, and finished wall surfaces.

8. Paragraph 1 of Article XIX of the Declaration is hereby amended so as to delete said Paragraph 1 of Article XIX as it presently appears and to substitute therefore the following:

1. Each Unit Owner shall pay the Board of Trustees or Management Committee his allocated portion of assessments made by Monte Luca Homeowners Association and his allocated portion of the cash requirement to manage and operate the Condominium Project, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Board of Trustees or Management Committee or Association. If the Unit Owner shall fail to pay any installment within ten (10) days of the time when the same becomes due, the Owner shall pay interest thereon at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof. The funds collected pursuant to this Article shall be segregated and held in a separate fund for the purposes set out herein. In addition, if any installment or any part thereof is not received by the tenth day of the month or if any other charge is not received within ten days of the due date, a late charge equal to the greater of fifty dollars (\$50.00) or ten (10%) of the amount not received may be imposed without further notice or warning to the delinquent Unit Owner.

9. Article XXII of the Declaration is hereby amended so as to delete said Article XXII as it presently appears and to substitute therefore the following:

ARTICLE XXII

MAINTENANCE & REPLACEMENT

1. Each Owner of a Unit at his own expense shall keep the interior of such Unit and its equipment and appurtenances in good order, condition and repair and in a safe and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance of such Unit. Except to the extent that the Board of Trustees or Management Committee on behalf of all Unit Owners is protected by insurance against such injury, the Unit Owner shall repair all injury or damages to the Unit, building or buildings caused by the act, negligence or carelessness of the Unit Owner or that of any tenant or subtenant or any member of the Unit Owner's family or of the family of any tenant or subtenant or any agent, employee or guest of the Owner or his or his tenant or subtenant and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work. In addition to decorating and keeping the interior of the Unit in good repair, the Unit Owner shall be responsible for the maintenance or replacement of any heating equipment, hot water equipment or plumbing fixtures that may be used exclusively by the Unit. Each Unit Owner shall be entitled to the exclusive use and possession of the Limited Common Areas appurtenant to his Unit; provided, however, that without the written permission of the Board of Trustees or Management Committee first had and obtained, a Unit Owner shall not make or permit to be made any structural alteration in or to the Unit or in or to the exterior of the building, and shall not paint or decorate any portion of the exterior of the Unit or of the building in which the Unit is located. Each Unit Owner at his own expense shall be responsible for the replacement of the Limited Common Area roof, rain gutters and downspouts, deck, and patio appurtenant to his Unit, and all landscaping (including, without limitation, trees, bushes, landscaping rocks, and

ground cover) located in the Limited Common Areas appurtenant to his Unit. The determination of the time for the replacement of such roofs, rain gutters and downspouts, decks, patios and landscaping shall be determined by the Board of Trustees or Management Committee, which for the roofs is expected to be twenty-five years from the date they were initially installed. Any Limited Common Area roof, rain gutters and downspouts, deck, patio or landscaping replacement that an Owner is obligated to complete shall meet the architectural, structural, durability, quality and landscaping standards established by the Board of Trustees or Management Committee and shall be compatible in appearance with other roofs, rain gutters and downspouts, decks, patios and landscaping in the Project.

2. Except as otherwise herein provided, the Board of Trustees or Management Committee shall provide for such maintenance, operation and replacement of the Common Areas and Facilities, including exterior maintenance of all buildings and improvements, as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Board of Trustees or Management Committee shall have no obligation regarding maintenance or care of Units or replacement of the Limited Common Area roofs, rain gutters and downspouts, decks, patios or landscaping.

3. If the Board of Trustees or Management Committee determines that (i) any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of the Common Areas and Facilities for which he is responsible hereunder; or (ii) that the need for maintenance, repair, or replacement that is in the Common Areas and Facilities is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Board of Trustees or Management Committee may, but is not obligated to, provide such maintenance repair or replacement at the Owner's sole cost and expense. Such costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Owner's Unit, as hereinafter provided. Except in an emergency situation, the Board of Trustees or Management Committee shall give the Owner written notice of the Board of Trustees or Management Committee's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Trustees or Management Committee. In the case of (i) above, when the Owner has not discharged his responsibility, unless the Board of Trustees or Management Committee determines that an emergency exists, the owner shall have ten (10) days within which to complete maintenance, repair or replacement or if the maintenance, repair or replacement is not capable of completion with such time period, to commence said maintenance, repair or replacement within ten (10) days. If the Board of Trustees or Management Committee determines that an emergency exists, that an Owner has not complied with the demand given by the Board of Trustees or Management Committee as herein provided, or that the need for maintenance, repair or replacement is in the Common Areas and Facilities as in (ii) above, then the Board of Trustees or Management Committee may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above. The Association or its agents or employees shall have a right of entry upon or into the Unit or Limited Common Areas and Facilities as necessary to perform such work and shall not be liable for trespass for such entry or work.

4. If maintenance is required as a result of an insured loss, the amount of the

deductible shall be considered a maintenance expense to be paid by the person or persons (including the Association) who would be responsible for such repair in the absence of insurance, as specified hereinabove. If the loss affects more than one Unit or a Unit and the Common Areas and Facilities, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. Notwithstanding the above, should the Association obtain a per Unit/per occurrence deductible, each Owner shall be responsible for any deductible applicable to his Unit.

5. The Association shall have the right to enter into Units for emergency and safety purposes where there is a serious threat of injury or loss to person or property, which right may be exercised by the Association's Board of Trustees or Management Committee, officers, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. To the extent practicable in light of the emergency and safety nature of such threat, entry shall be during reasonable hours and after reasonable notice to the Owner or occupant of the Unit. This right of entry shall include the right of the Association to enter a Unit to cure any condition that may significantly increase the possibility of a fire or other safety hazard in the Project in the event an Owner fails or refuses to cure the condition after a request has been made to the Owner by the Board of Trustees or Management Committee to cure the condition.

10. Article XXVII of the Declaration is hereby amended so as to delete said Article XXVII as it presently appears and to substitute therefore the following:

ARTICLE XXVII

AMENDMENT

In addition to the amendment provisions contained in Article VI hereof, and subject to the terms of Article XX, this Declaration and/or Map may be amended upon the affirmative vote or approval and consent of owners having ownership of not less than sixty-seven (67%) of the undivided interest in the common areas and facilities. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Board of Trustees or management Committee. In said instrument the Committee shall certify that the vote or consent required by this Article XXVII has occurred. Notwithstanding any other provision contained herein, until occurrence of either of the events referred to in Article XXIX hereof, no amendment to the Map or to any provision of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection or control given to Declarant (in its capacity as Declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

11. Article XXXVII of the Declaration is hereby amended so as to delete said Article XXXVII as it presently appears and to substitute therefore the following:

ARTICLE XXXVII

ENFORCEMENT

1. **Enforcement.** This Declaration and the Bylaws may be enforced by the Board of Trustees or Management Committee and any Owner as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach, as well as noncompliance with decisions of the Board of Trustees or Management Committee, may be enjoined, abated or remedied by appropriate legal proceedings by an aggrieved Owner, by the Board of Trustees or Management Committee, or by any successor-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Board of Trustees or Management Committee, or by the Association's successors-in-interest.

(c) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Board of Trustees or Management Committee to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any bona fide first Mortgage or Deed of Trust made in good faith and for value on any Condominium Unit, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

12. Amendment to CCRs That certain Amendment to CCRs For Monte Luca Condominiums Landscaping Parameters which was recorded in the office of the County Recorder of Salt Lake County, Utah on or about October 24, 2002 as Entry Number 8377071, in Book 8661, at Pages 551-554, is hereby amended so as to delete said Amendment to CCRs as it presently appears in its entirety.

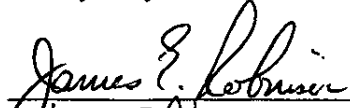
13. The undersigned member of the Board of Trustees or Management Committee hereby certify that this Amendment has been approved by (i) the affirmative vote or approval and consent of Owners having ownership of not less than one hundred percent (100%) of the undivided interest in the Common Areas and Facilities of the Monte Luca Condominiums, and (ii) the affirmative vote and approval of not less than fifty-one (51%) of those mortgage holders holding first mortgage obligations on the Condominium Units in the Project.

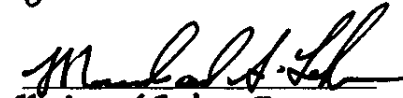
14. This Amendment may be executed in one or more counterparts, each of which, when executed and delivered, shall be an original and all of which shall together constitute one and the same instrument.

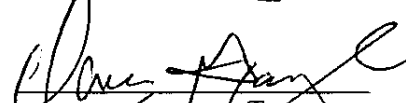
15. Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration shall have such defined meanings when used in this Amendment.

16. Except as herein modified, all other terms of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, constituting all of the members of the Board of Trustees of the Monte Luca Condominiums have set their hands this day and year first above written.

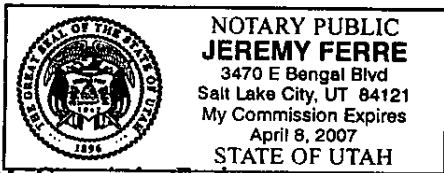

James E Robinson Trustee



Michael S. Lake Trustee


David Gough Trustee

STATE OF UTAH)
) :ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 16 day of June, 2004, by James E. Robinson, Michael S. Lake, + David Gough, a trustee of Monte Luca Homeowners Association, Inc.





NOTARY PUBLIC

My Commission Expires:

April 8, 2007

Residing at:

Salt Lake City, UT

EXHIBIT "A"
LEGAL DESCRIPTION OF LAND INCLUDED IN
MONTE LUCA CONDOMINIUMS

Phase 1

Beginning at a point 390.83 feet East and 1171.939 feet North from the South quarter corner of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 08°23'00" East a distance of 1.868 feet; thence North 31°21'00" East a distance of 191.250 feet; thence North 37°58'00" West a distance of 342.732 feet; thence North 56°57'42" East a distance of 131.149 feet; thence around a curve to the right through a central angle of 01°30'22" an arc distance of 17.086 feet, a chord bearing of South 26°43'30" East a distance of 17.086 feet, a chord bearing of South 26°43'30" East a distance of 17.085 feet; thence around a curve to the left through a central angle of 02°09'24" an arc distance of 24.466 feet, a chord bearing of South 27°03'01" East a distance of 24.465 feet; thence North 57°14'22" East a distance of 113.508 feet; thence North 32°13'08" West a distance of 45.682 feet; thence North 57°46'52" East a distance of 67.717 feet; thence South 21°22'40" East a distance of 45.066 feet; thence South 89°58'39" East a distance of 295.598 feet; thence South 25°59'44" East a distance of 27.825 feet; thence North 89°58'39" West a distance of 16.165 feet; thence South 05°33'16" East a distance of 237.565 feet; thence South 18°25'09" East a distance of 74.815 feet; thence South 71°34'27" West a distance of 244.609 feet; thence South a distance of 87.994 feet; thence West a distance of 100.109 feet; thence South 68°34'00" West a distance of 181.098 feet to the point of beginning.

Phase 2

Beginning at a point 1607.31' North and 279.76' East from the South Quarter corner of Section 35, Township 2 South, Range 1 East, Salt lake Base and Meridian; and running thence North 56°57'42" East a distance of 131.15'; thence around a curve to the left through a central angle of 11°11'19" an arc distance of 126.93' a chord bearing of North 33°04'20" West a distance of 126.73'; thence North 38°40'00" West a distance of 429.25'; thence North 80°36'00" East a distance of 74.76'; thence North 09°24'00" West a distance of 164.09'; thence South 72°02'00" West a distance of 101.92'; thence North 00°04'12" East a distance of 10.44'; thence South 76°27'00" West a distance of 229.94'; thence South 41°16'00" East a distance of 318.97'; thence South 37°58'00" East a distance of 472.27' to the point of beginning.