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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

BURKE SYCAMORE BUSINESS CENTER (Phases II & III) VISTA, CALIFORNIA

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 24th day of AUGUST, 2004 by BURKE VISTA PARTNERS, L.P., a California limited partnership (the "Declarant"). All terms used in this Declaration shall mean the same as such terms are hereinafter defined in this Declaration unless the context clearly indicates otherwise.

RECITALS

A. Declarant is the fee owner of certain real property (the "Project") located in the City of Vista, County of San Diego, State of California, and described as follows:

Parcels A, B, C, D, E and F of Parcel Map No. 019640, in the City of Vista, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, JANUARY 20, 2005, as File No. 05-0052502 of the Official Records.

B. It is the desire and intention of Declarant to create a Common Interest Development pursuant to Section 1350 et seq. of the California Civil Code (the "Davis-Stirling Common Interest Development Act") as a Planned Development by subdividing the Project into parcels (each, a "Parcel") and to establish covenants, conditions, restrictions, rights, easements, liens and charges which will constitute a general scheme for the management, use, occupancy and enjoyment of the Project, all running with the Project for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and enhancing the quality of life within the Project.

C. Declarant also intends that a portion of the Project be developed as an industrial condominium project to be known as Burke Sycamore Business Center (Phases II & III) to

consist of forty-two (42) condominium industrial building units ("Units"), together with the real property comprising such portion of the Project and all parking areas, drive aisles and driveways, utilities, landscaping and other improvements from time to time situated within such portion of the Project to service the Units (collectively, the "Common Facilities"), all as more particularly provided herein. Parcels E & F are not included as a portion of the condominium portion of the Project and are addressed in Article XVI below.

D. Declarant deems it desirable to set aside the Common Facilities for the collective, in common, use of the Owners (as hereinafter defined), and to create a nonprofit corporation to which shall be delegated and assigned the powers of collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to, and administering and enforcing these covenants, conditions and restrictions.

E. Burke Vista Business Center Association, a nonprofit mutual benefit corporation, will be incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid. All Owners of a Unit within the Project shall automatically become Members of said Association and shall be subject to its powers and jurisdiction.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Project shall be held and conveyed subject to the following covenants, conditions, restrictions, rights, easements, liens and charges which are hereby declared to be for the benefit of said interests and shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners in accordance with California Civil Code Section 1354 and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each Owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

ARTICLE I DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1.1 Access Area. "Access Area" shall mean the portions of the Nonexclusive Use Common Area other than Landscape Maintenance Areas that are designated from time to time by the Board for pedestrian and vehicular access and parking by the Permittees.

Section 1.2 Affiliate. "Affiliate" shall mean a Person who directly or indirectly (a) owns or controls Declarant, (b) is owned or controlled by Declarant, (c) is under the common control with Declarant, (d) is a member of Declarant, (e) owns or controls a member of Declarant, (f) is owned or controlled by a member of Declarant, or (g) is under common control with a member of Declarant.

Section 1.3 Allowable Charges. "Allowable Charges" shall mean the costs, late charges and interest which may be collected by the Association when any Assessment becomes delinquent. Any Owner who is delinquent in the payment of any installment of Regular Assessment, Special Assessment or Reimbursement Assessment shall be obligated to pay to the Association its reasonable costs incurred in collecting such delinquent installment thereof

(including reasonable attorneys' fees), a late charge equal to ten percent (10%) of such delinquent installment, and interest on such delinquent installment, such reasonable costs of collection and such late charges at the annual rate of twelve percent (12%) commencing thirty (30) days after the delinquent installment became due.

Section 1.4 Architectural Committee. "Architectural Committee" shall mean the committee or committees provided for in the Article hereof entitled "Architectural Control."

Section 1.5 Architectural Guidelines. "Architectural Guidelines" shall mean the architectural and design guidelines, rules, regulations, limitations and restrictions adopted pursuant to the provisions of this Declaration for the construction, reconstruction, modification, alteration and maintenance of Improvements within the Project. The Architectural Guidelines, as initially adopted by the Declarant, are attached to this Declaration as Exhibit A.

Section 1.6 Articles and Bylaws. "Articles" and "Bylaws" shall mean the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended.

Section 1.7 Assessments. "Assessments" shall mean each of the charges levied by the Board pursuant to the provisions of the Association Management Documents for the purposes indicated below:

(a) Capital Improvement Assessment. "Capital Improvement Assessment" shall mean a charge levied against an Owner and such Owner's Unit in any calendar year applicable to that year only to cover such Owner's Proportionate Share of the cost of any installation, construction or replacement of a described capital Improvement upon the Common Area, including the necessary fixtures and personal property related thereto;

(b) Penalty Assessment. "Penalty Assessment" shall mean a charge levied against an Owner and such Owner's Unit as a monetary penalty as a disciplinary measure for failure of such Owner to comply with the provisions of the Association Management Documents or bringing such Owner(s) and its/their Unit(s) into compliance with the provisions of the Association Management Documents;

(c) Reconstruction Assessment. "Reconstruction Assessment" shall mean a charge levied against an Owner and such Owner's Unit to cover such Owner's Proportionate Share of the cost to the Association for the repair, replacement or reconstruction of any portion or portions of the Insured Improvements pursuant to the provisions of the Article entitled "Destruction of Improvements" of this Declaration;

(d) Regular Assessment. "Regular Assessment" shall mean a charge levied against each Owner and such Owner's Unit for such Owner's Proportionate Share of the estimated Common Expenses for the forthcoming fiscal year;

(e) Reimbursement Assessment. "Reimbursement Assessment" shall mean a charge levied against an Owner and such Owner's Unit as a means of reimbursing the Association for costs incurred by the Association in the repair of damage for which the Owner

was allegedly responsible to Common Area and/or Common Facilities that is being maintained by the Association pursuant to the provisions of this Declaration; and

(f) Special Assessment. "Special Assessment" shall mean a charge levied against an Owner and such Owner's Unit to cover the cost of any action or undertaking on behalf of the Association which is not specifically covered under any other Assessment. In the event the Association undertakes to provide materials or services which benefit a particular Owner or such Owner's Unit, such Owner in accepting such materials and services agrees that the cost thereof shall also be a Special Assessment.

Section 1.8 Association. "Association" shall mean Burke Vista Business Center Association, a nonprofit mutual benefit corporation incorporated under the laws of the State of California, its successors and assigns, for the purpose of managing the Project.

Section 1.9 Association Management Documents. "Association Management Documents" shall mean the Articles, Bylaws, Architectural Guidelines, Declaration and the Association Rules, and any amendments to any of the foregoing.

Section 1.10 Association Rules. "Association Rules" shall mean rules adopted, amended and repealed from time to time by the Board pursuant to the Article entitled "Discipline of Members" of the Bylaws.

Section 1.11 Board. "Board" shall mean the Board of Directors of the Association.

Section 1.12 Budget. "Budget" shall mean the estimate of the Common Expenses and the revenue of the Association on an accrual basis determined by the Board from time to time as hereinafter set forth in this Declaration.

Section 1.13 Buena Sanitation District. "Buena Sanitation District" shall mean the Buena Sanitation District or a successor public provider of sewer services to the Project.

Section 1.14 Building. Subject to the terms of Article XVI hereof, "Building" shall mean and refer to any fully enclosed structure now or hereafter constructed within the Project which contains one or more Units including without limitation the foundation, floors, ceilings, walls and exterior canopies, exterior windows and doors, roof, loading docks, base building utility lines and equipment and other base building fixtures, including electrical switch gear/closets, fire monitoring equipment, transformers, meters and circuit breaker panels, heating and air conditioning equipment located thereon, but excluding, however, all Building Contents. Subject to the terms of Section 16(a) below, each Owner holding fee simple title to a Unit shall be the sole owner of the portion of the Building constituting such Unit and all components thereof.

Section 1.15 Building Contents. "Building Contents" shall mean and refer to all tenant improvements, trade fixtures, personal property and other contents owned by an Owner which may from time to time be located within or affixed to a Building.

Section 1.16 California Statutes. References in the Association Management Documents to any particular Section or Sections of the California Business and Professions

Code, California Civil Code, California Code of Civil Procedure, California Corporations Code, California Insurance Code or California Government Code shall mean such Section or Sections of such Codes of the State of California, and any amendments thereto or any successor statutes thereof.

Section 1.17 City. "City" shall mean the City of Vista, California, a municipal corporation of the State of California.

Section 1.18 Class A Members. "Class A Members" shall mean all Owners with the exception of Declarant until the Class B membership has been converted to Class A membership and after such conversion all Owners shall be Class A Members.

Section 1.19 Class B Member. "Class B Member" shall mean Declarant until such time as the Class B membership terminates and is converted to Class A membership.

Section 1.20 Class C Member. "Class C Member" shall mean BURKE SYCAMORE PARTNERS, L.P., a California limited partnership, its successors and assigns, until such time as the Class C membership terminates pursuant to the provisions of this Declaration.

Section 1.21 Close of Escrow. "Close of Escrow" shall mean the date of the recordation in the Official Records of the conveyance of a fee simple title interest in or to any Unit within the Project from Declarant.

Section 1.22 Common Area. Subject to the terms of Article XVI hereof, "Common Area" shall mean all portions of the Project located outside of (and excluding) the exterior walls and roof of the Units, including, without limitation, the Access Area and Landscape Maintenance Areas and all other portions of the Project upon which Common Facilities are situated. "Common Area" shall specifically exclude all Buildings and components thereof, and any portions of the Project that are being maintained by the Sycamore Vista Industrial Park Association pursuant to the provisions of the Sycamore Vista Industrial Park Declaration or a supplement thereto. With respect to the Non-Condo Parcels the "Common Area" shall mean all portions of the Project located upon the Non-Condo Parcels outside of (and excluding) the exterior walls and roof of the Buildings located thereon, including, without limitation, the Access Area and Landscape Maintenance Areas and all other portions of the Non-Condo Parcels upon which the Common Facilities are situated.

Section 1.23 Common Expenses. "Common Expenses" shall mean the actual and estimated costs or amounts established by the Board which are to be allocated to all of the Owners and the Units to be paid for:

- (a) management, operation and the Maintenance which the Association is obligated to perform pursuant to the provisions of the Association Management Documents;
- (b) unpaid Capital Improvement Assessments, Reconstruction Assessments, Regular Assessments, Reimbursement Assessments and Special Assessments;

(c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) to the extent not metered or billed to Owners and/or Units, utilities, trash pickup and disposal, gardening, fire monitoring and other services which generally benefit and enhance the value and desirability of the Project;

(e) premiums on all insurance maintained by the Association pursuant to the Article entitled "Insurance" of this Declaration;

(f) adequate reserves to cover the deductible amounts of any insurance policies maintained by the Association and for the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain pursuant to this Declaration, including reserves for replacements for structural elements and mechanical equipment or other facilities maintained by the Association;

(g) subject to the terms of Section 16.1(f), taxes paid by the Association;

(h) discharge of any lien or encumbrance levied against the Common Area, or portions thereof;

(i) expenses incurred by committees established by the Board;

(j) security systems or services installed by or contracted for by the Association; and

(k) other expenses incurred by the Association for any reason whatsoever in connection with the Common Area that is being maintained by the Association pursuant to the provisions of this Declaration or the costs of any other item or items designated by the Association Management Documents, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

Section 1.24 Common Facilities. "Common Facilities" shall mean the Improvements upon or within Common Area, other than an Exclusive Use Area, including without limitation the Private Sewer System.

Section 1.25 Conditions of Approval. "Conditions of Approval" shall mean the conditions of approval imposed by the City pursuant to City of Vista J3 Resolution No. 2004-02 (PC3-124).

Section 1.26 Condominium. "Condominium" shall mean a fractional undivided interest in common with the other Owners within the Project (excluding any Owner[s] of a Non-Condo Parcel) in the Common Area and Common Facilities within the Project, together with a separate interest in a Unit and all rights, title and interest appurtenant thereto. Such fractional undivided interest in common of each Owner shall be as described in the instrument conveying a Condominium to such Owner and shall not be changed except as provided in Section 10.10 hereof, entitled "Amendment of Condominium Plan" and Section 11.7 hereof, entitled "Change

of Condominium Interest". The Owners of Parcels E & F shall not have any ownership interest in any Common Facilities or in the Common Area except those located on their specific Non-Condo Parcel.

Section 1.27 Condominium Plan. "Condominium Plan" shall mean that certain condominium plan to be recorded by Declarant in the Office of the County Recorder of the County and any amendments thereto. In interpreting deeds, leases, declarations and plans, the physical boundaries of a Unit constructed in substantial accordance with the Condominium Plan shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, lease, declaration or plan, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries as shown on the plan or in the deed, lease, or declaration and those of the building as constructed.

Section 1.28 County. "County" shall mean the County of San Diego, State of California.

Section 1.29 Declarant. "Declarant" shall mean:

(a) BURKE SYCAMORE PARTNERS, L.P., a California partnership, its successors and assigns, by merger, consolidation or by purchase of all or substantially all of its assets; and

(b) any Person, his or its successors and assigns, to which the foregoing Declarant has assigned any or all of its rights and obligations by an assignment expressed in a recorded instrument including, without limitation, a deed, lease, option agreement, land sale contract or assignment as the case may be, transferring such interest if such assignee agrees in writing with Declarant to accept such assignment.

Section 1.30 Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions as it may be amended from time to time.

Section 1.31 Exclusive Use Area. "Exclusive Use Area" shall mean those portions of the Common Area, or other real property, the exclusive use of which, subject to the rights of the Association and Declarant, has been granted from time to time to a particular Owner or Owners by Declarant and which, when conveyed, shall be appurtenant to the Unit of any such Owner or Owners. The Exclusive Use Area shall be described in the document by which such exclusive easement is being granted and shall be (a) delineated by the physical boundaries, either in existence or to be constructed, such as walls, floors and ceilings of a structure or any portion thereof, (b) an entire structure containing Exclusive Use Area, or (c) any combination thereof. Exclusive Use Areas may include, without limitation, Loading Areas and Trash Receptacle Areas located within the Common Area, the use of which is granted to the Owner(s) of particular Units within a Building. Internal and external telephone wiring designed to serve a single Unit, but located within the boundaries of another Unit, shall be an Exclusive Use Area allocated exclusively to the Owner(s) of such Unit. Exclusive Use Areas shall not include any vehicle parking areas.

Section 1.32 Exclusive Use Improvements. "Exclusive Use Improvements" shall mean and refer to all Improvements constructed from time to time (as may be approved pursuant to

Article V hereof) within any Exclusive Use Areas which are to be maintained, repaired and replaced by any individual Owner(s).

Section 1.33 Exhibit. "Exhibit" shall mean any of the Exhibits designated herein and attached hereto each of which are by this reference incorporated in this Declaration. The following Exhibits are attached hereto:

- EXHIBIT A: Architectural Guidelines;
- EXHIBIT B: Unit Gross Floor Area; and
- EXHIBIT C: Storm Drain BMP Standards.

Section 1.34 Improvement. "Improvement" shall mean all:

- (a) structures and appurtenances thereto of every type and kind, including but not limited to, buildings (including any Units located therein), out buildings, the Private Sewer System, sewer drains, walkways, sprinkler and sewer pipes or lines, gazebos, kiosks, roads, driveways, parking areas, fences, screens, screening walls, retaining walls, awnings, patio and balcony covers, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, trees and shrubs, poles, signs, solar or windpowered energy systems or equipment, and water softener or heater or air conditioning and heating fixtures and equipment;
- (b) the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind;
- (c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed;
- (d) landscaping, planting, clearing, or removing of trees, shrubs, grass, or plants;
- (e) any change or alteration of any Improvement including any change of material, exterior appearance, color or texture; and
- (f) the processing and recordation of any lot line adjustment.

Section 1.35 Insured Improvements. "Insured Improvements" shall mean the Improvements within the Project that are insured under the fire and casualty insurance policy maintained by the Association.

Section 1.36 Landscaping Improvements. "Landscaping Improvements" shall mean the landscaping, irrigation systems appurtenant thereto, and any other Improvements within Landscape Maintenance Areas the Maintenance of which is being performed by the Association pursuant to the provisions of this Declaration.

Section 1.37 Landscape Maintenance Area. "Landscape Maintenance Area" shall mean any portion of the Project other than the Sycamore Vista Industrial Park Association Maintenance Areas designated on the Subdivision Map and/or Condominium Plan as the

easement for landscape and maintenance purposes upon which Declarant has installed Landscaping Improvements (including the light standards, but excepting trash enclosure areas and loading docks).

Section 1.38 Maintenance. "Maintenance" shall mean the maintenance, repair, replacement, restoration and reconstruction of Improvements within the Common Area required to be performed by the Association pursuant to the provisions of this Declaration.

Section 1.39 Manager. "Manager" shall mean the Person appointed by the Association or its agent and to whom is delegated certain duties, powers or functions of the Association

Section 1.40 Member. "Member" shall mean every Person who is an Owner including Declarant as long as Declarant continues to be an Owner.

Section 1.41 Mortgage and Mortgagee. "Mortgage" and "Mortgagee" shall mean any duly recorded mortgage or deed of trust encumbering a Unit or Common Area owned in fee, by easement or lease by the Association and the holder of the mortgagee's or beneficiary's interest under any such Mortgage, respectively. "First Mortgage" and "First Mortgagee" shall mean a Mortgage which has priority over all other Mortgages encumbering a specific Unit or portion of the Common Area and the holder of any such First Mortgage, respectively.

Section 1.42 Nonexclusive Use Area. "Nonexclusive Use Area" shall mean the Common Area, excepting therefrom any Exclusive Use Area and Association Common Area.

Section 1.43 Official Records. "Official Records" shall mean the Official Records in the Office of the County Recorder of the County.

Section 1.44 Owner. "Owner" shall mean each Person who alone or collectively are the record owner of a fee simple title to a Unit, including Declarant, excluding those having any such interest merely as security for the performance of an obligation. The term "Owner" includes a seller under an executory contract of sale. An Owner shall have the right to delegate all or any portion of such Owner's membership rights to a lessee or a contract purchaser under an agreement to purchase as hereinafter provided in Section 3.3 of this Declaration.

Section 1.45 Party Wall. "Party Wall" shall mean the fire wall constructed on the dividing line separating two adjoining Units and any other wall that is placed on the dividing line between two adjoining Units.

Section 1.46 Permittees. "Permittees" shall mean Declarant, any Owner or the occupant of a Building, and their respective partners, officers, directors, employees, agents, patrons, guests, invitees, contractors, visitors, lessees, licensees and representatives.

Section 1.47 Person. "Person" shall mean any individual, partnership, firm, district, corporation, limited liability company and any other form of business entity, and the singular shall include the plural.

Section 1.48 Private Sewer System. "Private Sewer System" shall mean that certain private sewer system benefiting the Project in a location and of the nature shown on the approved improvement plans on file with the City.

Section 1.49 Private Sewer System Easements. "Private Sewer System Easements" shall mean non-exclusive easements over the entire Project for a private sewer system in the location and of the nature necessary for the entire Project to use the Private Sewer System.

Section 1.50 Project. "Project" shall mean as such term is defined in Paragraph A of the Recitals. "Project" shall also be deemed to include any portion of a lot or parcel that by virtue of the recordation of a lot line adjustment and a quitclaim deed in the Official Records in favor of the Owner or the Association is comprised in part of real property that was specifically encumbered by the Declaration by the recordation of the Declaration and a portion of a contiguous lot that was not encumbered by the Declaration.

Section 1.51 Proportionate Share. "Proportionate Share" shall mean the percentage equal to the ratio that the Unit Gross Floor Area of a Unit within the Project bears to the sum of the total Unit Gross Floor Area of all Units within the Project; provided, however, to the extent any Building within the Project contains more than one Unit, the Proportionate Share allocable to each such Unit shall be equal to the Unit Gross Floor Area plus a "pro-rata share" of any area (a "shared area") within such Building utilized by all Owners of such Building (for example, any shared electrical room). For purposes of the foregoing sentence, an Owner's "pro-rata share" shall be determined by equally allocating the square footage of any shared area to each Owner of the Building. For example, if a Building contains three (3) Units, each Owner within such Building shall be allocated, and their Proportionate Share shall include, one third (1/3) of any shared area located within the Building. The Proportionate Share of each Unit within the Project shall be conclusively presumed to be the number shown and/or designated for the Unit as shown on the Unit Gross Floor Area Exhibit attached hereto as **Exhibit B** regardless of any errors or discrepancies contained therein and regardless of whether or not all of such Units have been constructed. However, Declarant, for as long as Declarant continues to own any portion of the Project, and thereafter the Association, shall have the right to revise the Unit Gross Floor Area Exhibit from time to time and to record a supplement or amendment to this Declaration in order to set forth more precisely the Proportionate Share of each Unit then existing upon completion of any alteration, modification, construction or reconstruction of any of the Units.

Section 1.52 Public Agency. "Public Agency" shall mean individually and/or collectively the City, the County, the State of California, and the United States of America, or any agency of any of the foregoing that has authority over all or any portion of the Project or which regulates or has the authority to regulate any of the uses thereon.

Section 1.53 Subdivision Map. "Subdivision Map" shall mean Parcel Map No. _____, or the most recently recorded final tract map or parcel map filed for record in the records of the County against the Project, or any portion thereof all of which are incorporated herein and by this reference made a part hereof.

Section 1.54 Sycamore Vista Industrial Park Association. "Sycamore Vista Industrial Park Association" shall mean Sycamore Vista Industrial Park Association, the nonprofit mutual