

INDEX TO
RESTATED AND AMENDED
DECLARATION OF RESTRICTIONS
FOR
PACIFIC BLUFFS MANAGEMENT CORPORATION NO. TWO

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CERTIFICATION OF ADOPTION 21

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RESTATED AND AMENDED
DECLARATION OF RESTRICTIONS
FOR
PACIFIC BLUFFS MANAGEMENT CORPORATION NO. TWO

This RESTATED AND AMENDED DECLARATION OF RESTRICTIONS FOR PACIFIC BLUFFS MANAGEMENT CORPORATION NO. TWO ("Declaration") shall be effective upon recordation with the San Diego County Recorder's Office, County of San Diego, State of California. This Declaration restates, amends and supersedes in their entirety that certain "DECLARATION OF RESTRICTIONS", executed by ASHTON & KIES COMPANY as Declarant, recorded on August 6, 1965 as Document 1965-141544 and the "FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS", executed by ASHTON & KIES COMPANY, as Declarant, recorded on September 2, 1965, as Document 1965-160575, and the "SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS" executed by PACIFIC BLUFFS MANAGEMENT CORPORATION NO. TWO, recorded on May 30, 1986 as Document 1986-215926, in the official records of the San Diego County Recorder's Office, County of San Diego, State of California, together with any other amendments thereto, if any.

This Declaration affects and concerns that certain real property (herein "Property"), in the County of San Diego, State of California, which is more particularly described as follows:

"Lot 2 of PACIFIC BLUFFS in the City of San Diego, County of San Diego, State of California, according to Map No. 5606 filed in the Office of the County Recorder of San Diego County on August 3, 1965."

The Owners of the Property hereby desire and intend that the Property shall be held, sold, conveyed and used subject to the covenants, conditions, restrictions, rights, reservations, limitations, easements, equitable servitudes set forth herein for the purpose of preserving and protecting the value and desirability of the Property pursuant to a general plan of condominium ownership for the benefit of the Owners of the Property, or any portion thereof, and their heirs, successors and assigns in accordance with the superseding provisions of this Declaration.

ARTICLE I: DEFINITIONS

Section 1.1. "Articles" means the Articles of Incorporation of the Pacific Bluffs Management Corporation No. Two, filed in the Office of the Secretary of State of the State of California on March 16, 1965, as the same may be amended from time to time.

Section 1.2. "Association" means the Pacific Bluffs Management Corporation No. Two, a California nonprofit mutual benefit corporation, and its successors and assigns.

Section 1.3. "Board" means the Board of Directors of the Association, as the same may be elected or appointed to serve from time to time.

Section 1.4. "Bylaws" means the Restated and Amended Bylaws of the Pacific Bluffs Management Corporation No. Two, as the same may be duly amended from time to time.

Section 1.5. "Common Area" means the Common Area as described and defined in the Condominium Plan and in this Declaration. The term "Exclusive Use Common Area" means those portions of the Common Area appurtenant to a Unit designated for the exclusive right and easement to use by the Unit Owner or owners of the adjoining patio or patios, the two-car carport or two-car enclosed carport and the second story balcony, if any, as described in the Condominium Plan and in this Declaration.

Section 1.6. "Condominium" means an estate in real property consisting of an undivided interest in common in the real property constituting the Project, together with a Separate Interest in space in a residential building situated on such property, and in other portions of the real property as defined in the Condominium Plan and this Declaration.

Section 1.7. "Condominium Plan" shall mean and refer to that certain Certificate Under California Civil Code (hereafter "Civil Code") Section 1351 recorded on August 9, 1965, as Document 1965-142509 in the Official records of the San Diego County Recorder's Office, County of San Diego, State of California.

Section 1.8. "Declaration" means the Restated and Amended Declaration of Restrictions for Pacific Bluffs Management Corporation No. Two, applicable to the Property comprising the Pacific Bluffs Management Corporation No. Two condominium Project recorded in the Office of the San Diego County Recorder's Office, State of California, including any amendments thereto as may be duly adopted and recorded from time to time.

Section 1.9. "Governing Documents" shall mean the Articles of Incorporation, Bylaws, Declaration and adopted rules and regulations which govern the operation of the Project and the affairs of the Association.

Section 1.10. "Member" means those Persons entitled to membership in the Association as provided in the Bylaws or this Declaration.

Section 1.11. "Mortgage" means a mortgage or deed of trust encumbering a Condominium or any other portion of the Property. "First Mortgage" means a Mortgage that has priority over all other Mortgages encumbering the same Condominium or other portion of the Property. "Mortgagee" means a person for whose benefit a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a Mortgage. "Mortgagor" means a person who mortgages his, her, or its property to another (i.e. the maker of a Mortgage), and shall include the trustor of a deed of trust.

Section 1.12. "Owner" means the record owner, whether one (1) or more Persons, of any Condominium as defined herein, including contract sellers and holders of fee simple title, a life estate or an estate for years but excluding Persons or entities having any interest merely as security for the performance of an obligation.

Section 1.13. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 1.14. "Property" means the real property described above in this Declaration. The Property is a Condominium Project.

Section 1.15. "Project" means the entire parcel of Property, including all structures and improvements erected thereon comprised of Separate Interests and Common Areas as described in this Declaration.

Section 1.16. "Separate Interest" means an individual Unit as defined in the Condominium Plan and in this Declaration.

Section 1.17. "Unit" means the elements of a Condominium which constitute the Separate Interest of each Owner of a Condominium as shown and described as a "Living Unit" on the Condominium Plan or in this Declaration

ARTICLE II: THE PROPERTY

Section 2.1 The Condominiums. The incidents of the condominiums include:

A. Units. Each of the Units as separately shown, numbered and described in the Condominium Plan consist of: the space bounded by the interior surfaces of the ceilings, floors, perimeter walls, windows and doors thereof as shown on the Condominium Plan. Each Unit has appurtenant thereto the exclusive right and easement to use the adjoining patio or patios, the two-car carport or two-car enclosed carport and the second story balcony, if any, as described in the Condominium Plan. The Unit does not include: foundations, perimeter floors, perimeter bearing walls, roofs, central heating and other central services, all pipes, ducts, conduits, wire, utility lines, etc. for gas, electricity, water, sewer, or other utility services for the common use of the building, except the outlets thereof located within the Unit, as described in the Condominium Plan .

B. Common Area. The Common Area includes all of the Property other than the Units as described in the Condominium Plan . The Common Areas are owned by the Owners of the Units as tenants in common, in equal shares, one for each Unit, as described in the Condominium Plan .

C. Exclusive Use Common Area. The Exclusive Use Common Areas include the adjoining patio or patios, the two-car carport or two-car enclosed carport and the second story balcony, if any, which are appurtenant to the Unit and allocated for the exclusive use of the Owner or Owners of the Unit as shown and described in the Condominium Plan .

Section 2.2 Restrictions on Partition. Except as provided in this section, the Common Area must remain undivided, and there may be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a Condominium.

The Owner of a Unit may maintain a partition action and obtain partition of the entire Property as if the Owners of all Units were tenants in common in the entire Property in the same proportion as their interest in the Common Area, only if:

(a) More than three years before the filing of the partition action, the Property was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the Property has not been rebuilt or repaired substantially to its state prior to the damage or destruction; or,

(b) Three-fourths or more of the Property is destroyed or substantially damaged and Owners holding in the aggregate more than a fifty percent (50%) interest in the Common Area oppose repair or restoration of the Property; or,

(c) The Property has been in existence more than fifty (50) years, is obsolete and uneconomic and Owners holding in the aggregate more than a fifty percent (50%) interest in the Common Area oppose repair and restoration of the Property; or,

(d) The conditions of sale set forth in Article VIII herein are satisfied.

Section 2.3 Presumption Regarding Boundaries of Units. In interpreting deeds, declarations and plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Property, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, or this Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between the boundaries as shown on the Condominium Plan or described in the deed or in this Declaration, and the boundaries of the building as constructed or reconstructed.

Section 2.4 Prohibition Against Severance of Elements. Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit includes all interests and appurtenances as shown in the original deed of conveyance, the Owner's tenancy-in-common interest in the Common Area and membership interest in the Association. Any transfer that attempts to sever those component element interests shall be null and void.

Section 2.5 Notice of Lease or Transfer. The Association or representative shall be notified in writing by the Owner upon the lease or rental of a Condominium.

In the event of a sale or other transfer of ownership of a Condominium, the new owner shall promptly notify the Association, in writing, specifying the name and address of the new Owner, the names and number of occupants, the vehicles and license numbers, a contact telephone number and emergency contact number together with such other information as may be reasonably requested by the Association. The Association may charge the Owner a reasonable fee to update its records regarding any such lease, rental or transfer of any Condominium.

Section 2.6 Encroachment Easements. The Owner of each Condominium is hereby granted an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction or any reconstruction, settlement or shifting of any structure, or any other cause. There shall be easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by such encroachments, settlement or shifting; provided, however, that in no event shall an easement for the encroachment be created in favor of an Owner if such encroachment occurred as a result of the willful misconduct or negligence of that Owner or the Owner's predecessor-in-interest in the Unit.

Section 2.7 Access Easements. The Association, together with its agents, employees, contractors or representatives shall have the right, after reasonable notice (not less than 24 hours except in emergencies) to the Owner thereof, to enter any Unit or any portion of the Owner's Exclusive Use Common Area, for the purpose of performing repairs, maintenance, restoration, reconstruction or similar activities within the responsibility of the Association for the benefit of the Common Area or for the benefit of the Owners in common regarding all or a portion of the Property. Any such entry shall be made with as little inconvenience to the Owner, or occupants of the Unit, as practicable and any damages or loss caused thereby shall be repaired or replaced at the expense of the Association.

Section 2.8 Easement To and From Lot 1. There is hereby reserved by these restrictions for the benefit of the owners and occupants of living units in Lots 3, 4 and 5 of Pacific Bluffs, their invitees and guests, an easement for ingress and egress to and from Lot 1 of said Pacific Bluffs solely for pedestrian and vehicular passage over and across all common walks and common driveways in the Property.

ARTICLE III: THE ASSOCIATION

Section 3.1 Membership. Every Owner, upon becoming an owner of a Condominium, automatically becomes a member of the Association. Ownership of a Condominium is the sole qualification for membership. Each Member has the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership automatically ceases when the Owner no longer holds an ownership interest in a Condominium. All memberships shall be appurtenant to the Condominium conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Condominium automatically transfers the appurtenant membership in the Association to the transferee.

Section 3.2 Powers and Duties. The Association's powers and duties shall be as set forth in its Articles and in its Bylaws, as the same may be amended from time to time, which are incorporated herein in full by this reference, or as otherwise expressly provided in this Declaration.

ARTICLE IV: ASSESSMENTS AND COLLECTION PROCEDURES

Section 4.1 Covenant to Pay Assessments. Each Owner by acceptance of a deed (or other conveyance) of one or more Condominiums (whether or not expressly stated in such deed or conveyance) thereby covenants and agrees to pay the Association regular assessments, special assessments and special monetary charges as shall be established pursuant to the provisions of this Declaration.

Section 4.2 Owner's Personal Obligation for Assessments. Regular assessments, special assessments and special monetary charges together with any late charges, interest, costs of collection, including attorney fees as provided in this Article, or as provided by statute or law, shall be a personal debt of the Owner of the Condominium at the time the assessment or other sums are levied, and each Owner promises to pay such amounts to the Association. The Owner may not waive or otherwise escape liability for these assessments, or other charges, by non-use of the Common Area or abandonment of the Owner's Condominium.

Section 4.3 Creation of Assessment Lien. All regular assessments, special assessments and special monetary charges together with late charges, interest, costs of collection, including attorney fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which the assessment or charge is made from and after the time the Association causes to be recorded a Notice of Delinquent Assessment (Lien) pursuant to the provisions of Civil Code §§ 1367 or 1367.1, or their comparable superseding statute.

Section 4.4 Assessment Roll. The Association shall maintain, and update as necessary, an assessment roll for every Condominium subject to assessment hereunder, reflecting the name and address of each Owner, together with all regular assessments, special assessments and special monetary charges levied against each Owner and his or her Condominium and the amount of such assessments or charges which have been paid or which remain unpaid.

Section 4.5 Amount and Purpose of Assessments. The Association shall levy regular and special assessments sufficient to perform its obligations, subject to the provisions of this Article or applicable law. The assessments levied by the Association shall be used exclusively to promote the operation, repair, replacement, improvement and maintenance of the Property and to discharge any other obligations of the Association as provided in the Governing Documents or by law.

Section 4.6 Regular Assessments. Regular assessments shall be established annually by the Board based on the pro forma operating budget and the reserve account(s) allocations and funding of the Association. Any increase or decrease in regular assessments shall be allocated equally (in the same dollar amount) to each Condominium. Each Owner is obligated to pay regular assessments in equal monthly installments on or before the first day of each month, unless the Board adopts an alternate method of payment.

Section 4.7 Special Assessments. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the expenses for the year because of the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount required, subject to membership approval, in accordance with the provisions of this Article IV.

Section 4.8 Limitation on Assessment Increases.

A. Increase Approvals. The Board shall not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year OR impose a special assessment which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners constituting a quorum, casting a majority of the votes at a meeting or election of the Association duly called for that purpose. The "quorum" for purposes of this section means more than fifty percent (50%) of the Owners of the Association. However, this section does not limit assessment increases for emergency situations. An "emergency situation" for purposes of this section means any of the following:

- 1) An extraordinary expense required by a court order; or
- 2) An extraordinary expense necessary to repair or maintain the Property or any part of it which the Association is responsible where a threat to personal safety on the Property is discovered; or
- 3) An extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing the pro forma operating budget under Civil Code Section 1365 (or its comparable superseding statute). However, prior to the imposition or collection of an assessment under this subdivision, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

B. Notice of Assessment Increases. The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessment, or of a special assessment, not less than thirty (30) days nor more than sixty (60) days prior to the date the increased assessment or special assessment shall become due.

C. Compliance with Financial Statement Requirements. Annual increases in regular assessments for any fiscal year shall not be imposed unless the Board has complied with the "Financial Documents" provisions of subdivision (a) of Civil Code Section 1365 (or its comparable superseding statute) with respect to that fiscal year OR has obtained the approval of a majority of a quorum of the Owners at a meeting or election of the Association conducted for that purpose in accordance with the Bylaws.

Section 4.9 Special Monetary Charges. The Board may impose a special monetary charge pursuant to Section 1367 (b) and 1367.1 (d) of the Civil Code (or their superseding statutes) against an Owner, provided the Owner has been afforded the notice and opportunity for hearing as specified in Article III, Section 3.3 of the Bylaws, for the following purposes:

1) Damage to Common Area. In the event that any damage to, or destruction of, any portion of the Common Area, including any other portion of the Property which the Association is obligated to maintain or repair is caused by the willful misconduct or negligent act or omission of any Member, or the Member's family, tenants, guests, employees, contractors, agents or invitees, the Board may cause the same to be repaired or replaced, and all costs and expenses, including attorney fees, incurred shall be assessed against such Member and against the Member's Condominium as a monetary charge collectable and enforceable in the same manner as assessments, including related costs of collection, as provided in this Article IV.

2) Expenses for Member Compliance. In the event that the Association incurs any costs or expenses, including attorney fees, to accomplish a) collection of delinquent assessments, or other authorized charges or fees; or b) to enforce the Owner's obligation to repair damage to the Common Area property; or c) to repair, maintain or replace of any portion of the Property (including the elements of the Owner's Unit) that the Owner is responsible to maintain under the Governing Documents which the Owner has failed to complete in a timely manner after demand to do so; then the amount incurred by the Association to enforce such compliance, together with all costs of collection or enforcement, including reasonable attorney fees shall be assessed and charged against the Owner and against the Owner's Condominium as a special monetary charge collectable and enforceable in the same manner as assessments as provided in this Article IV.

3) Expenses Required to Maintain Condominium. If any Condominium is maintained in such a manner that it requires needed maintenance or repair or constitutes a nuisance, fire or safety hazard, or any other similar reason, the Association shall have the right, in the discretion of the Board, to enter and perform necessary maintenance or repairs and/or to abate or correct the offensive or hazardous condition(s) and the costs and expense of any such required notice, performance of maintenance and repairs or enforcement action may be imposed against the offending Owner and against the Owner's Condominium as a monetary charge collectable and enforceable in the same manner as assessments as provided in this Article IV.

4) Limitation on Right to Lien. Monetary penalties imposed solely as a disciplinary measure for failure of a Member to comply with the Governing Documents (i.e. which are not special monetary charge to reimburse the Association for costs incurred to enforce or perform maintenance or repairs which are the responsibility of the owner under subsections (1), (2) or (3) above) may not be characterized or treated as an assessment that may become a lien against the Owner's Condominium or Separate Interest as provided in Section 1367.1 (e) of the Civil Code or its comparable or superseding statute.

Section 4.10 Enforcement of Assessments.

A. Delinquent Assessments, Late Charges, etc. Regular assessments, special assessments and monetary charges imposed pursuant to Section 4.9 (1) (2) and (3) above, shall be delinquent fifteen (15) days after they become due. If an assessment is delinquent the Association may recover all of the following:

1) Reasonable costs incurred in collecting the delinquent assessments or charges, including reasonable attorney's fees; and

2) A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater (a late charge shall be imposed only once for the same delinquent assessment); and

3) Interest on all sums imposed in accordance with this Article (including assessments, special monetary charges, late charges, costs of collection including attorney's fees) at an annual rate not to exceed twelve percent (12%) per annum [one percent (1%) per month] , commencing thirty (30) days after the assessment and other authorized amounts become due.

B. Notice of Delinquent Assessment (Lien). Before the Association may place a lien on the Separate Interest of an Owner to collect a debt which is past due the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the owner, including items on the statement to indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection.

The amount of regular or special assessments, plus any costs of collection, including attorney fees, late charges and interest assessed in accordance with this Article shall be a charge and continuing lien on the Owner's Condominium from and after the time the Association causes to be recorded in the Official Records of the San Diego County Recorder's Office a Notice of Delinquent Assessment (Lien) [also referred to herein as "assessment lien"], which shall state the name of the owner of record of the Condominium, the amount of the delinquent assessments including late charges and interest, plus costs of collection, including attorney fees, a legal description of the Condominium against which the charges have been levied, and, in order for the lien to be enforced by non judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale.

The Notice of Delinquent Assessment (Lien) shall be signed by the person designated by the Association for that purpose, or if no one is designated, by the president of the Association. A copy of the Notice of Delinquent Assessment (Lien) shall be mailed in the manner set forth in Civil Code Section 2924b (or its comparable superseding statute), to all record owners of the owner's interest in the common interest development not later than 10 calendar days after recordation. Within 21 days of payment of all sums specified in the Notice of Delinquent Assessment (Lien) the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien and provide a copy thereof to the owner. Payments by the Owner toward the debt owed shall be first applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

The lien created by the recordation of the Notice of Delinquent Assessment shall be prior to all other liens recorded subsequent thereto; except for (a) the lien or charge of any first Mortgage of record made in good faith and for value, provided that such subordination shall apply only to the assessments which have become due or payable prior to the transfer of such property pursuant to the exercise of a power of sale or judicial foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance, or (b) any taxes, bonds or other such levies which are made superior thereto by law.

C. Lien Enforcement Remedies. After the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment (Lien), the lien created by the recordation of a Notice of Delinquent Assessment (Lien) may be enforced in any manner permitted by law, including sale by the court (i.e. judicial enforcement), sale by the trustee designated in the Notice of Delinquent Assessment (Lien) [non judicial foreclosure] or sale by the trustee substituted pursuant to Section 2934a of the Civil Code (or its comparable superseding statute). Any sale by the trustee shall be conducted in accordance with the provisions of Civil Code Sections 2924, 2924b and 2924c (or their comparable superseding statutes) applicable to the exercise of powers of sale in mortgages and deeds of trust. Nothing in this Article, or subdivision (a) of Section 726 of the California Code of Civil Procedure shall prohibit an action against the Owner on the Owner's personal obligation to pay assessments to recover the sums for which a lien is created pursuant to Section 1367 of the Civil Code (or its comparable superseding statute) or shall prohibit the Association from taking a deed in lieu of foreclosure.

D. Enforcement of the Owner's Personal Obligation to Pay Assessments. The Association may initiate a legal action against the Owner personally obligated to pay the delinquent assessments or other authorized amounts owing to the Association as authorized in this Article in any manner permitted by law.

Section 4.11 Statement of Delinquent Assessment. The Association shall, upon written request by any Owner, provide the Owner with a statement specifying the amount of assessments or special monetary charges levied against the Owner's Condominium that are unpaid and delinquent on the date of the statement and the amount of late charges, interest, costs of collection including attorney's fees as of the date of the statement that are or may be made a lien on the Owner's Condominium. The Association may charge the Owner a reasonable fee to cover its costs to prepare and reproduce the statement required by this Section.

Section 4.12 Transfer of Condominium by Sale or Foreclosure. The following provisions shall govern the Association's rights to enforce its assessment collection remedies following the sale or foreclosure of a Condominium.

A. Except as provided in paragraph B below, the sale or transfer of any Condominium shall not affect any Notice of Delinquent Assessment (Lien) duly recorded with respect to that Condominium before the sale or transfer, and the Association can continue to enforce its lien by either judicial or nonjudicial foreclosure regardless of the change in ownership.

B. The Association's assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Condominium under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any first mortgage or other mortgage or deed of trust or lien recorded before the Association's assessment lien.

C. No sale or transfer of a Condominium as the result of a foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of that Condominium from liability for any assessments thereafter becoming due for that Condominium.

