

**FIRST AMENDED AND RESTATED BYLAWS  
OF  
DOWNEY PARK PROFESSIONAL  
CENTER OWNERS ASSOCIATION**

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**FIRST AMENDED AND RESTATED BYLAWS OF  
DOWNEY PARK PROFESSIONAL  
CENTER OWNERS ASSOCIATION,  
a California Nonprofit Mutual Benefit Corporation**

**ARTICLE 1  
GENERAL**

**1.1. Name.** The name of the Association shall be the Downey Park Professional Center Owners Association (“Association” herein). The Association is organized under the California Nonprofit Mutual Benefit Corporation Law.

**1.2. Principal Office.** The principal executive office of the Association is located at 1213 Coffee Road, Suite B, Modesto, California 95355, or at such place as the Board of Directors (“Board” or “Directors” or individually “Director”) may from time to time authorize within the Modesto area (“Principal Office”).

**1.3. Application.** These First Amended and Restated Bylaws of Downey Park Professional Center Owners Association (“First Amended Bylaws”) are applicable to the professional air space office condominium project known as DOWNEY PARK PROFESSIONAL CENTER located at 1213 Coffee Road, Modesto, Stanislaus County, California (“Downey Park Complex” or “Complex”).

**1.4. Definitions.** Unless otherwise specified in these First Amended Bylaws, the capitalized definitions set forth in the original Bylaws, and in Article 1 of the First Amended and Restated Declaration for Downey Park Professional Center (“Declaration”) recorded or to be recorded in the Office of the Recorder of Stanislaus County, California, shall apply to these First Amended Bylaws.

**1.4.1 Airspace Unit.** “Airspace Unit” shall mean each Owner’s Suite or Unit as defined and described in the Declaration and the Company’s Operating Agreement.

**1.4.2 Association.** The term “Association” herein shall be synonymous with “Association” as used in the Declaration.

**1.4.3 Board.** “Board” shall mean the Association’s Board of Directors.

**1.4.4 Company.** “Company” shall mean the Downey Park Professional Center Limited Liability Company or “DPPC” formerly known as the Downey Park Professional Center Partnership. References to the “Executive Committee” and the “Executive Secretary” shall be the individuals who serve in the same similar capacity as members of the Company’s Executive Committee.

**1.4.5 Declaration.** “Declaration” means the Original Declaration and as amended by the First Amended and Restated Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Commercial Condominiums.

**1.4.6 Director.** “Director” shall mean a member and Officer of the Association’s Board of Directors.

**1.4.7 DPPCOA.** “DPPCOA” means the Association.

**1.4.8 Governing Documents.** “Governing Documents” means these Bylaws, the Declaration, the Articles, Operating Agreement, Design Guidelines, Rules and Regulations, and any Supplemental Declarations.

**1.4.9 Majority in Interest.** “Majority in Interest” or “Majority” means fifty-one percent (51%) of the Owner’s Percentage Interests or greater, but not exceeding sixty-six and two-thirds percent (66 2/3%).

**1.4.10 Owner or Owners.** “Owner” or “Owners” shall mean the owners of the Airspace Units located in the Downey Park Complex who are also members of the Association and the Company.

**1.4.11 Percentage Interest.** “Percentage Interest” of ownership means a number or ratio expressed as a fraction of one hundred (100) representing the Airspace Unit Owner’s share of percentage ownership of the Company and also utilized for determining such Owner’s Association voting and other rights, privileges, duties, liabilities and as follows:

(a) Each Owner’s Percentage Interest shall be the same for determining such Owner’s pro rata share of the Owner’s DPPC and DPPCOA Interests and expenses. Subject to complying with the requirements of the Governing Documents, an approved sale and/or permitted transfer of an Owner’s Airspace Unit will automatically trigger at the same time the transfer of such Owner’s same exact Percentage Interest whether such Suite is transferred to a buyer or permitted transferee such as the Owner’s trust estate; and

(b) The Owner’s net asset valuation, including the Airspace Unit and the Owner’s pro rata Percentage Interest in the DPPCOA and DPPC are based solely on the Square Foot Formula described in Recital D of the Declaration and Recital G of the Operating Agreement that may float or fluctuate from time to time if Owners’ modify or expand their Unit’s square footage and boundary line of their respective Airspace Unit in accordance with the requirements of the Governing Documents.

**1.4.12 Supermajority.** “Supermajority” or “Supermajority Vote” means the affirmative vote of sixty-six and two-thirds percent (66 2/3%) or more of the Owner’s Percentage Interests.

**1.5. Membership Rights.** The qualification for Association membership as set forth in Section 4.4 of the Declaration are hereby incorporated by reference.

**1.6. Purposes.** The purposes for which this Association is formed are to further the interests of the Association, preserve the integrity of the Downey Park Complex on behalf of the Owners, and to undertake any reasonable activities which in the opinion of the Board will be beneficial to the Complex, and to otherwise engage in any lawful act or activity that an association formed for such purposes may reasonably undertake, including maintaining the

common area, enforcing the Declaration and other rules adopted from time to time by the Board, collect assessments, and otherwise discharge such lawful duties and responsibilities required or permitted by the Governing Documents and the Commercial and Industrial Common Interest Development Act of California as set forth in Sections 6500-6876 of the California Civil Code.

## **ARTICLE 2 TAX EXEMPT STATUS**

**2.1. Tax Exempt Status.** Despite operating as a non-profit corporation, there is no guarantee or assurances that the Association will be deemed exempt from federal and state income taxes. Irrespective, the Association shall use reasonable efforts to conduct the affairs of the Association without profit to the Owners.

## **ARTICLE 3 MEETINGS AND VOTING RIGHTS**

**3.1. Owners' Meetings.** Owners' meetings shall be held concurrently with Company meetings.

**3.1.1 Place of Meetings.** Meetings of Owners of the Association shall be held at the Principal Office or such other location as described in **Section 1.2** above.

**3.1.2 Annual Meeting.** The Owners' Annual Meeting shall be held on or near the first Tuesday of August ("Annual Meeting") which shall coincide with the annual Company meeting. The Executive Secretary shall provide not less than ten (10) days or more than thirty (30) days' notice to the Owners of the Annual Meeting. At the Annual Meeting, the Directors shall be elected and any other business may be transacted which may properly come before the meeting.

**3.1.3 Special Association Meetings.** Owners holding collectively twenty-five percent (25%) or more of the Owner's Interests may call a Special Association Meeting ("Special Association Meeting") of the Owners as follows:

(a) First request to meet with the Board at its next regular monthly meeting to discuss the reason for the Special Association Meeting;

(b) If the requesting Owner and the Board are unable to resolve the matter at the next regularly scheduled Board meeting, the Executive Secretary shall, on behalf of the Board and the Owners requesting such a Special Association Meeting, promptly provide notice of the Special Association Meeting that shall be held not less than ten (10) days or more than thirty (30) days from the date of such notice;

(c) Owners may vote in person or by proxy at the Special Association Meeting; or

(d) If such notice is not given within ten (10) days after receipt of such request, the Owners requesting the Special Association Meeting may give notice of such meeting.



**3.1.4 Conduct of Owners' Meeting.** Meetings shall be conducted as follows:

- (a) By the President in accordance with Roberts Rules of Order; and
- (b) With the Owners attending in person, or at the Board's discretion held, in whole or in part, by electronic transmission or video screen communication provided reasonable measures are implemented to provide Owners (in person or by proxy) the opportunity to participate in the meeting and to vote on matters submitted to the Owners, including the ability for Owners to read or hear the proceedings and a record of that vote or action is maintained by the Association.

**3.1.5 Voting.**

(a) Except as otherwise expressly provided in these First Amended Bylaws or the Governing Documents, matters shall be decided by the vote of a Majority in Interest of the Owners', determined by each Owners' Suite Square Footage Formula;

(b) If the Owners of a Percentage Interest is, for example, a married couple, domestic partner, or otherwise comprise more than one (1) individual, they shall nevertheless collectively have only one (1) vote per such Percentage Interest. They shall select among themselves one (1) individual to speak and vote on their behalf at meetings and/or upon matters being voted upon. This prohibition of one (1) vote per Percentage Interest shall not preclude any member, spouse, or partner of such Percentage Ownership from having access to all information and records of the Association as any Owner would be entitled to;

(c) Cumulative voting is prohibited; and

(d) Whenever the vote or consent of Owners is permitted or required under these First Amended Bylaws, such vote or consent may be given at the meeting or may be given without a meeting in accordance with the procedure prescribed in **Section 3.1.7** below.

**3.1.6 Waiver of Notice of Consent.** The transaction of any meeting of Owners however called and noticed, and whenever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each individual entitled to vote, who was not present in person or by proxy, shall sign a written waiver of notice or a consent to a holding of the meeting, or an approval of the minutes. The waiver of notice or consent shall specify either the business to be transacted or the purpose of any Annual or Special Meeting of Owners. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting. Attendance by an individual at a meeting shall also constitute a waiver of notice of that meeting, except when the individual shall object, at the beginning of the meeting, to the transaction of any business because the meeting shall not have been lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the meeting.

**3.1.7 Owners Action by Written Consent Without a Meeting.** Any action which may be taken at any Annual or Special Meeting of Owners may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, is signed by Owners collectively holding Percentage Interests of votes not less than the minimum number that would be necessary to authorize or take that action at a meeting at which all Owners entitled to vote on that action were present and voted.

(a) All such consents shall be filed with the Executive Secretary and shall be maintained in the corporate records;

(b) Any Owner giving a written consent, the Owner's proxy holders, a permitted transferee of such Owner's interest in the Association, or a personal representative of the Owner or their respective proxy holders, may revoke such consent by a writing received by the Executive Secretary before written consents of the number of shares required to authorize the proposed action have been filed with the Executive Secretary; and

(c) If the consents of all Owners entitled to vote have not been solicited in writing, and if the unanimous written consent of all such Owners shall not have been received, the Executive Secretary shall give prompt notice of the corporate action approved by the Owners without a meeting. In the case of seeking approval of contracts of transfers in which a Director has a direct or indirect financial interest, pursuant to Section 310 of the California Corporations Code, the notice shall, pursuant to Section 603(b) of the Corporations Code, be given at least ten (10) days before the consummation of any action authorized by the Association.

**3.1.8 Record Date for Owner Notice, Voting and Giving Consents.** The record date for determining Owners entitled to notice of or to vote at a meeting of Owners shall be at the close of business on the business day next preceding the day on which notice is given, or if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

**3.1.9 Proxies.** Every Owner entitled to vote for Directors or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the Owner and filed with the Executive Secretary. A proxy shall be deemed signed if the Owner's name is placed on the proxy (whether by manual signature, typewritten, fax, electronic transmission, or otherwise) by the Owner or the Owner's attorney in fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless:

(a) Revoked by the Owner executing it, before the vote pursuant to that proxy, by a writing delivered to the Association stating that the proxy is revoked, or by a subsequent proxy executed by, or attendance at the meeting and voting in person by, the Owner executing the proxy; or

(b) Written notice of the death or incapacity of the maker of that proxy is received by the Association before the vote, pursuant to the proxy, is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of

the proxy, unless otherwise provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Sections 705(e) and 705(f) of the Corporations Code.

**3.1.10 Quorum.** The presence in person or by proxy of the holders of a Majority in Interest of the Owners' Percentage Interests entitled to vote thereat constitutes a quorum at all meetings of Owners. The Owners, at a duly called or held meeting at which a quorum exists, may continue to do business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a Majority of Percentage Interests required to constitute a quorum.

**3.1.11 Adjourned Meetings and Notice Thereof.** Any Owners' meeting, Annual or Special, whether or not a quorum is present, may be adjourned from time to time by the vote of a Majority of Owners' Percentage Interests who are either present in person or represented by proxy thereat, but in the absence of a quorum, no other business may be transacted at such meeting. Notice of an adjourned meeting need not be given if the meeting is adjourned for forty-five (45) days or less, the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken, and no new record date is fixed for the adjourned meeting. Otherwise, notice of the adjourned meeting shall be given as in the case of an original meeting.

#### **ARTICLE 4 BOARD OF DIRECTORS' POWERS, TERM & COMPOSITION**

**4.1. Powers.** Subject to the provisions of the law or any limitations in the Articles, these First Amended Bylaws, as to the action required to be approved by the Owners, all corporate powers shall be exercised, by or under the direction of the Board. The Board may delegate the management of the day-to-day operation for the business of the Association to a management company or other individual, or assume such duties itself, provided that the business and affairs of the Association shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

**4.2. Composition.** The Directors, with the exception of the Executive Secretary, shall be the same individuals who serve in the same capacities on the Company's Executive Committee.

**4.3. Term.** Each Director's term shall be for one (1) year and shall automatically renew unless such Directors resign or are removed from the Board and Executive Committee by Supermajority Vote of the Owners taken at the Annual Meeting or a duly called Special Meeting of the Owners (with the Director or Executive Committee Owner whose term is being considered for removal abstaining from the vote). No more than two (2) Directors or Executive Committee Owners can be removed annually. Upon an Owner's voluntary resignation, or inability to serve on the Board or Executive Committee due to such Owner death or incapacity, the Board and the Executive Committee shall promptly select another Owner with reasonably similar qualifications to fill such vacancy for the remainder of such individual's term.

**4.4. Board Meetings.** Regular meetings of the Board shall be held at the Association's Principal Office or at any other nearby location reasonably convenient to the Board Members and shall coincide with the meeting of the Company's Executive Committee or at such other regular intervals as may be decided by a Majority in Interest of the Board members.

**4.5. Special Board Meetings.** Special Meetings of the Board to be held at the Association's Principal Office or at any other nearby location may be called by any Director or Owners holding collectively twenty-five percent (25%) of the Association's Members by notifying the Executive Secretary of such request. Notice shall be given to the Directors at least one (1) business day prior to the meeting and shall include the time of the meeting and a general description of the meeting's purpose, and include any documents or information provided with the Owner or Director's notice and shall request an immediate reply in order to determine whether a Director plans to attend the meeting in person or by phone, and whether a quorum will be available.

**4.5.1 Waiver of Notice Requirements.** A Director can waive the above notice requirements in writing. However, the attendance of all Directors at the meeting shall constitute a valid meeting without requiring such a waiver, and any action taken upon the written consent of all Directors shall be valid and binding on the Association as though authorized at a duly called Board Meeting.

**4.5.2 Voting.** Unless otherwise provided in these First Amended Bylaws, all decisions of the Board shall be made by a Majority in Interest of the Board members, with two-thirds (2/3rds) of the Directors having the right to override any Board or Owner's decision or action. Cumulative voting is not permitted. Irrespective of the Director's Percentage Interest of the Association, each Owner of the Board shall have one (1) vote which may be given to another Owner by lawful proxy, in person, or by telephone, email, or other reasonable method of communication at the time the vote is called for.

**4.5.3 Resignation.** Any Director may resign by giving written notice to the Chairman of the Board, the President, the Secretary or the Board. Such resignation shall be effective when given unless the notice specifies a later time. The resignation shall be effective regardless of whether it is accepted by the Association.

## **ARTICLE 5 OFFICERS**

**5.1. Selection.** The Board shall select among themselves the following officers:

**5.1.1 President.** The President shall also be the same individual who serves in the same capacity as Chairperson of the Executive Committee and preside at all meetings. For the purposes of more efficiently conducting Association business, the Board can create other executive positions and/or assign a specific Owner to chair particular assignments or projects on an advisory basis. The President shall be the general manager and chief executive officer of the Association and shall have general supervision and control over the business and affairs of the Association. The President shall preside at all meetings of the Board and Owners shall exercise

and perform such other powers and duties as may be assigned from time to time by the Board or prescribed by these First Amended Bylaws.

(a) The President shall retain the services of the same accounting (“Accounting Firm”) and Executive Secretary to serve in the capacity and provide similar services as they provide for the Company.

**5.1.2 Vice President.** The Vice President shall be the individual who serves in the same capacity on the Company’s Executive Committee. In the absence or disability of the President, in the event of a vacancy in the office of President, or in the event such officer refuses to act, the Vice President shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to, all the restrictions on the President. The Vice President shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

**5.1.3 Secretary.** The Secretary for the Association shall be the individual who serves in the same capacity on the Company’s Executive Committee and whose role is different than the Executive Secretary. The Secretary shall review each draft of the Board and Owners’ meeting minutes with the President and Executive Secretary and support communications as directed by the Board.

**5.1.4 Treasurer.** The Treasurer for the Association shall assist the Board in the management of the budgets, accounts receivable and payables.

**5.2. Executive Secretary.** The Executive Secretary shall be the individual serving in the same capacity on the Company’s Executive Committee. The Executive Secretary shall keep, or cause to be kept at the Accounting Manager’s office, minutes of all meetings of the Association’s Owners, Board, and committees, if any, and exercise such powers and perform such duties as are usually vested in the office of secretary of an Association, and exercise such other powers and perform such other duties as may be prescribed from time to time by the Board or these First Amended Bylaws.

**5.3. Signing Documents.** With the exception of signing checks or handling funds as described in **Section 6.1** below, any two (2) Officers of the Board, as authorized by the Board, shall sign and execute, in the name of the Association, any instrument authorized by the Board, except when the signing and execution thereof shall have been expressly delegated by the Board or by these First Amended Bylaws to some other officer or agent of the Association. The President shall have all the general powers and duties of management usually vested in the president of an association, and shall have such other powers and duties as may be prescribed from time to time by the Board or these First Amended Bylaws. The President shall have discretion to prescribe the duties of other officers and employees of the Association in a manner not inconsistent with the provisions of these First Amended Bylaws and the directions of the Board.

#### **5.4. Compensation and Reimbursement.**

**5.4.1 Compensation.** The Officers shall be compensated for their services as reasonably determined by a Majority in Interest of the Owners. In making such determination, the compensation paid to the President and Executive Secretary shall be higher than that received by the other Officers.

**5.4.2 Reimbursement.** Any Owner, subject to approval of the Board, may charge the Association, and shall be reimbursed, for any reasonable direct expenses incurred in connection with the Association's business.

### **ARTICLE 6 HANDLING FUNDS; ASSESSMENTS**

#### **6.1. Handling Funds.**

**6.1.1 Banking.** All funds of the Association shall be deposited in the Association's name by the Accounting Firm in such account or accounts insured by the FDIC as may be approved by the Board, provided, however, that the Board may elect to deposit all or a portion of the funds standing in the Association reserves in separate interest bearing accounts with, or apply such funds to purchase short term interest bearing investments issued or guaranteed as to payment by, such banks or other financial institutions that are members of the FDIC or the United States (or its agencies or instrumentalities). Withdrawal of funds from Association accounts shall be made on such signature of any member of the Board by signing checks prepared by the Accounting Manager for a specific verifiable event or invoice provided by the President or other member of the Board.

**6.1.2 Check Signing.** All checks shall be prepared by the Accounting Firm and transmitted to the Executive Secretary who will obtain the signature from any Board member. Thereafter, the check register will be reviewed by the Board at their next regular meeting.

#### **6.2. Assessments.**

**6.2.1 Owner's Obligation.** As more fully provided in Article 7 of the Declaration, each Owner is obligated to pay to the Association annual and special assessments to be collected as therein set forth, all of the provisions of which Sections are hereby incorporated by reference herein as if set forth in full.

**6.2.2 Procedure for Discipline of Owners.** Any action by the Association to discipline an Owner as provided in the Declaration for his or her failure to comply with the Declaration, Articles, Bylaws, or Association Rules, must be accomplished in accordance with the following procedures:

(a) When the Board is to meet to consider or impose discipline on an Owner, the Board shall notify the Owner in writing, by either personal delivery or first-class mail, at least ten (10) days before the meeting. The notice shall contain, at a minimum, the date, time, and place of the Board meeting, the nature of the alleged violation for which an Owner may be disciplined, and a statement that the Owner has a right to attend and may address the

Board at the meeting. The Board shall meet in executive session if requested by the Owner being disciplined and the Owner shall be entitled to attend the executive session of the Board and may be represented by counsel;

(b) If the Board imposes discipline on an Owner, the Board shall provide the Owner a written notification of the disciplinary action, by either personal delivery or first-class mail, within fifteen (15) days following the action; and

(c) If applicable, the minimum requirements of California Corporations Code Section 7341 shall otherwise be complied with.

## ARTICLE 7

### OWNER'S ASSIGNMENT OR WITHDRAWAL

**7.1. General Prohibition.** Each Airspace Unit Owner will not assign, hypothecate, or in any way alienate ("Assign" or "Assignment") all or any part of such Owner's ownership common interest in the Association ("Ownership Interest"), whether directly to a third party or otherwise deal with his or her Ownership Interest in a way that would cause a default under these First Amended Bylaws or any agreement to which the Association is bound. Any such attempted Assignment of an Ownership Interest, or any part thereof not in compliance with this **Section 7.1**, shall be null and void, and as such, will not relieve such Owner of any of its/his/her obligations under these First Amended Bylaws. The assignee ("Assignee") of such an attempted invalid Assignment will not be considered an Owner with all rights, including the right to vote, and as otherwise specified in these First Amended Bylaws ("Substituted Owner").

**7.2. Failure to Disclose.** If an Owner conceals or refuses to disclose or misrepresents pertinent facts regarding any attempted Assignment to the Board, the Board may institute and maintain an equitable proceeding to compel specific performance of these First Amended Bylaws by such defaulting Owner and/or to invalidate such an attempted Assignment.

**7.3. Permitted Assignments.** Notwithstanding anything to the contrary in **Section 7.1** above, the following Assignments are permitted upon written notice to the Board (each, a "Permitted Assignment" and together, the "Permitted Assignments"):

**7.3.1 Owner's Entity.** An Assignment by an Owner to a partnership, association, or limited liability company of which the assigning Owner is a partner, shareholder or member, and such entity is controlled by such Owner (the term "controlled" shall mean such Owner holds or owns more than ninety percent (90%) of the voting and equity interest in such entity).

**7.3.2 Trusts.** An Assignment to a revocable inter vivos trust of which the Owner is a settlor, the Owner is a trustee and the only other trustee, if any, and the primary beneficiary, if any, is the Owner's spouse.

**7.3.3 Death or Disability.** An Assignment to an Owner's lawful heir, trustee, or personal representative as a result of such Owner's death or disability.

**7.3.4 Sale of Owner Suite.** An Assignment to a bona fide purchaser of an Owner's Suite, providing such selling or Assignor Suite Owner concurrently assigns the Suite's exact pro-rata share Percentage Interest and pro-rata common interest in Lot 1 to such purchaser.

**7.4. Assignment of Economic Interest.** Without the approval of the Owners, and notwithstanding the provisions of **Section 7.1**, an Owner may assign his or her economic or equitable interest ("Economic Interest") in the Owner's Suite to such Owner's Percentage Interest and pro-rata common interest in Lot 1; for example, to a lender as security for a loan. Any Assignment of such an Economic Interest will not entitle such Assignee to vote, participate in the management and affairs of the Association or become or exercise any rights of an Owner. Upon the Assignment of all or part of an Economic Interest, the assignor Owner must provide the Association with the name and address of the Assignee. The Assignment of an Economic Interest does not release the assignor Owner from such Owner's liability as an Owner of the Association.

**7.5. Basic Assignment Requirements.** Any Permitted Assignment shall be in a form and substance satisfactory to the Board, and at the minimum, contain an expression of willingness by the Assignee to accept the Assignment agreement to adopt and be fully bound by all of the terms and provisions of these First Amended Bylaws, as the same may have been amended, and provide for the payment by the assignor Owner of all reasonable expenses incurred by the Association in connection with such assignment, including, without limitation, preparation by legal counsel of the necessary amendments to these First Amended Bylaws and the Declaration to reflect such Assignment.

**7.6. No Dissolution.** In no event will the Association dissolve or terminate upon the admission of any Owner to the Association or upon any Permitted Assignment of an Association interest in the Association by any Owner. Each Owner hereby waives such Owner's right to dissolve, liquidate or otherwise terminate the Association in such event.

**7.7. Release of Assignor Owner.** Upon completion of an Assignment in compliance with these First Amended Bylaws, the assignor Owner will be released from all future obligations arising to third parties after the date of such Assignment provided the Assignee becomes a Substituted Owner and agrees to assume all Assignor Owner's third party liabilities. However, the assignor Owner will remain liable for liabilities to third parties occurring on or prior to the date of such Assignment unless otherwise released for his or her obligations by a vote of a Majority of the Board and the Owners.

## **ARTICLE 8 INSPECTION OF CORPORATE RECORDS**

**8.1. Receipt and Inspection.** Every Owner regularly receives in the monthly minutes copies of the Association's budget updates in detail, including the status of all Association accounts. Irrespective, every Director or Owner shall have the absolute right, at such Owner's sole cost, at any reasonable time to inspect and copy all books, records, and documents of every kind of the Association and any of its subsidiaries and to inspect and copy all books, records, and documents of every kind of the Association and any of its subsidiaries and to inspect the physical properties of the Association and any of its subsidiaries. Such records are kept at the Accounting



Firm's offices. Accordingly, the Director or Owner requesting inspection shall provide the Executive Secretary and a principal of the Accounting Firm at least fifteen (15) days prior notice and specify the records requested. The inspection shall be conducted at a location reasonably convenient to all parties. Such inspection may be made by the Director in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts. All said information shall remain confidential unless required to be disclosed by law.

**8.1.1 Retention and Inspection of Bylaws.** The original or a copy of these First Amended Bylaws shall be kept at the Association's Principal Office and the Association's website, and shall be open to inspection by the Owners at all reasonable times during office hours.

## **ARTICLE 9 INDEMNIFICATION**

**9.1. Definitions.** For the purposes of this **Article 9**:

**9.1.1 Agent.** "Agent" means any individual who currently or was serving in the past at the request of the Association.

**9.1.2 Proceeding.** "Proceeding" means any threatened, pending, or completed civil, criminal, administrative, or investigative action or proceeding.

**9.1.3 Expenses.** "Expenses" includes reasonable attorneys' fees and other costs or expenses incurred by such individual as part of the claim for indemnification under this **Article 9**.

**9.2. Indemnification in Actions by Third Parties.** The Association shall have power to indemnify any individual who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Association to procure a judgment in its favor, an action against such party brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, by reason of the fact that the individual is or was an agent of the Association, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if the individual acted in good faith and in a manner the individual reasonably believed to be in the best interests of the Association and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such individual was unlawful.

**9.3. Exception.** No indemnification shall be made under this **Article 9** with respect of any claim, issue, or matter as to which the individual shall have been adjudged to be liable to the Association in the performance of the individual's duty to the Association.

**9.4. Prerequisites.** With the exception of **Section 9.3**, an indemnitee shall be entitled to indemnification to the extent that:

**9.4.1 Court Approval.** The court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the individual is fairly and reasonably entitled to indemnity for the expenses which the court shall determine.

**9.4.2 Without Court Approval.** For amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval, of expenses incurred in defending a threatened or pending action that is settled or otherwise disposed of without court approval.

**9.5. Advance of Expenses.** Expenses incurred in defending any proceeding may be advanced by the Association before the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay the amount advanced unless it shall be determined unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this **Article 9**.

**9.6. Insurance.** The Association shall have power to purchase and maintain insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as such whether or not the Association would have the power to indemnify the agent against that liability under the provisions of this **Article 9**, including but not limited to, insurance as contemplated by Section 5047.5 of the California Corporations Code.

**9.7. No Applicability to Fiduciaries of Employee Benefit Plans.** This **Article 9** does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that individual's capacity as such, even though that individual may also be an agent of the Association as defined in **Section 9.1**.

**9.8. Federal and State Agent Exculpatory Laws.** Nothing in this **Article 9** shall limit or otherwise adversely affect the rights of qualifying agents or volunteer who contributes services or goods under the Federal Volunteer Protection Act of 1997, as amended, Section 5047.5 of the California Corporations Code or similar provisions of other laws or public policies limiting such liability, as now in effect or as any thereof may be amended for such individuals volunteering such services.

## **ARTICLE 10 EMERGENCY PROVISION**

**10.1. Emergency Defined.** During any emergency as defined in Corporations Code Section 7140, including a natural catastrophe, an attack on this state or nation, an act of terrorism or other manmade disaster, or a state of emergency proclaimed by the governor or by the president, as a result of which a quorum of the Board, if any, cannot readily be convened for action, a meeting of the Board may be called by any officer or Director. Notice of a meeting so called need be given only to such of the Directors or Owners of the committee, as the case may be, as it may be reasonably feasible to reach at the time and by such means as at the time including, without limitation, publication, radio, e-mailing, phone or text.

**10.2. Attendance.** The Director or Directors in attendance at the emergency meeting of the Board so called, if any, in attendance at the meeting of the committee so called, shall constitute a quorum. If none is present, the officers or other individuals designated on a list approved by the Board before the emergency, all in the order of priority and subject to conditions and for the period of time (not longer than reasonably necessary after the termination of the

emergency) as provided in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the Board, be deemed Directors, as the case may be, for that meeting.

**10.3. Succession Modification.** The Board, either before or during any such emergency, may provide, or from time to time modify, lines of succession in the event that during the emergency any or all officers or agents of the Association shall for any reason be rendered incapable of discharging their duties. The Board, either before or during any emergency, may, effective in the emergency, change the Principal Office or designate several alternative offices.

## **ARTICLE 11 MISCELLANEOUS**

**11.1. Fiscal Year.** Unless otherwise fixed by resolution of the Board, the fiscal year of the Association shall be the calendar year.

**11.2. Bylaw Amendments.** Owners holding collectively twenty-five percent (25%) or more of the Owner's Percentage Interests may propose an amendment to the Bylaws by providing a copy of such proposed amendment to the Board. The Board will meet at their next monthly meeting with such Owners proposing the amendment, to consider the feasibility of and need for the amendment and seek resolution between them. If the Board or such Owners holding twenty-five percent (25%) or more of the Percentage Interest desire to pursue the amendment, then within ten (10) days thereafter, the President will instruct the Executive Secretary to provide notice of a Special Meeting of the Owners to be given not less than ten (10) days or more than thirty (30) days prior to the date of such meeting. The notice shall contain a copy of the proposed amendment and a written verbatim statement by the Owners requesting the meeting as to the reasons for adoption of the proposed amendment. In addition, the Executive Secretary shall include with the notice the Board's recommendation as to whether or not the Association should or should not adopt the proposed amendment. The amendment shall become effective only if adopted by a Supermajority Vote of the Owners taken at the Special Meeting.

**11.3. Construction and Definition.** Unless the context requires otherwise, the general provisions, rules of construction, and definitions contained in the California Corporations Code shall govern the construction of these First Amended Bylaws.

Without limiting the foregoing, "shall" is mandatory and "may" is permissive.

**11.4. References to the Code.** The section references appearing in brackets at the end of certain paragraphs of these First Amended Bylaws refer to the California Corporations Code unless otherwise identified. All material appearing in brackets at the end of certain paragraphs is intended solely for information and convenience of reference and is not to be construed as part of these First Amended Bylaws.

**11.5. Severability.** Each and every paragraph, sentence, term, and provision of this Article is separate and distinct so that if any paragraph, sentence, term, or provision shall be held to be invalid or unenforceable for any reason, its invalidity or unenforceability shall not affect the validity or enforceability of any other paragraph, sentence, term, or provision of this Article.

To the extent required, any paragraph, sentence, term, or provision of this Article may be modified by a court of competent jurisdiction to preserve its validity and to provide the claimant with, subject to the limitations set forth in this Article and any agreement between the Association and the claimant, the broadest possible indemnification permitted under applicable law.

**11.6. Conflicting Provisions.** In the case of any conflict between any provisions of the Declaration and these Bylaws, the conflicting provisions of the Declaration shall control.

**11.7. Proof of Ownership.** No person shall exercise the rights of Ownership in the Association until satisfactory proof thereof has been furnished to the Secretary. Such proof may consist of either a copy of a duly executed and acknowledged grant deed or title insurance policy showing said person to be an Owner entitling him or her to Ownership. Such deed or policy shall be deemed conclusive in the absence of a conflicting claim based on a later deed or policy.

**11.8. Reserves.** Any amounts collected by or paid to the Association in excess of operational needs shall be set aside as reserves for future financial needs in the manner set forth in the Declaration and shall be deposited into insured interest-bearing accounts. These sums may include amounts collected by Declarant from Owners through purchase escrows representing capital contribution by such Owners to the Association. The withdrawal of any money from the Association reserve accounts shall require the signatures of at least two (2) people who shall either be members of the Board or one (1) member of the Board and one (1) officer of the Association who is not a member of the Board. "Reserve accounts" mean money that the Board has identified in its annual budgets or financial statements to be used to defray the future repair of, replacement of, or additions to those major components of the development that the Association is obligated to maintain, repair, or replace under the Declaration.

**11.9. Notices.** Any notice, demand, or communication required or permitted to be given by any provision of these First Amended Bylaws must be in writing and will be deemed delivered, given and received for all purposes if delivered personally to the party to whom the same is directed; by reputable overnight courier (i.e., FedEx or UPS Overnight); or whether or not the same is actually received, if sent by registered or certified mail, postage and charges prepaid, at the address of the intended recipient. Any such notice will be deemed delivered, given and received as of the date so delivered, if delivered personally, or as of the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

**SECRETARY'S CERTIFICATE**

**This is to Certify:**

That I am the duly elected, qualified, and acting Secretary of Downey Park Professional Center Owners Association and that the above and foregoing First Amended Bylaws were adopted as the First Amended Bylaws of said Association as of \_\_\_\_\_, 2017.

**IN WITNESS WHEREOF**, I have hereunto set my hand as of \_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_, Secretary