

Recording Requested by:

Downey Park Professional Center

When Recorded, Return to:

Downey Park Professional Center  
1213 Coffee Road, Suite B  
Modesto, CA 95355

## **FIRST AMENDED AND RESTATED DECLARATION OF PROTECTIVE RESTRICTIONS**

**NOTE: CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, SHALL BE SUBMITTED TO JUDICIAL REFERENCE OR ARBITRATION IN ACCORDANCE WITH SECTION 12.4 HERETO, WHICH ARE FORMS OF ALTERNATIVE DISPUTE RESOLUTIONS.**

### **PREAMBLE**

This First Amended and Restated Declaration of Protective Restrictions (“First Amended Declaration”) is made by **Downey Park Professional Center**, a California limited liability company (“Declarant”, “Downey Park Professional Center”, or “DPPC”) and successor in interest to Downey Park Professional Center, a California General Partnership (“Partnership” herein), and is made this 11th day of November, 2017 (“Effective Date”), with reference to the following Recitals:

### **RECITALS**

**A.** On September 20, 1993, the original Declaration of Protective Restrictions (“Original Declaration”) dated September 16, 1993, was recorded as document number 93-0096837-00 in the Stanislaus County Recorder’s Office (the “Condominium Plan”) with the Parcel Map on the real property.

**B.** The Real Property located at 1213 Coffee Road, Modesto, California (hereinafter “Real Property”), was originally acquired by the Partnership in 1969 and thereafter developed as a planned development also known as “PD-32”, a medical/dental professional office complex consisting of seventeen (17) professional offices (“Suites” or individually “Suite”), separated by landscaped grounds and parking areas (the “Complex”).

**C.** The 1993 condominium plan resulted in converting the Suites into seventeen (17) separate Airspace Units. The Owner of each Unit or Suite also owns an undivided interest in the Common Area as part of Parcel One. Parcel One and the Airspace Units excepted therefrom are more particularly described as follows:

**Parcel One:** Lot 1 in Block 1111 of the Downey Park Professional Center Condominium (“Lot 1”) as per Parcel Map recorded September 20, 1993 in Book 46 of Parcel Maps, Page 17, Stanislaus County Record, excepting therefrom, all Airspace Units referred to as Lots A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map referred to above and on the legal description of each such Airspace Unit attached hereto collectively as **Exhibit A** (“Airspace Units Legal Descriptions”), with the remaining interest of Lot 1 being Common Areas.

**D.** The 1993 condominium conversion, by converting each Owner’s Suite to an individually owned Airspace Unit, enabled each such Owner to pay off his or her share of the Partnership’s construction loan (“Partnership Loan”) with either personal funds or by borrowing funds from an Owner’s lender secured by the Owner’s Unit and such Owner’s Common Area Interest. Accordingly, the Partnership Loan was paid off and retired in 1993. The Condominium Plan’s Parcel Map resulted in clearly defining each Airspace Unit’s legal description as separate and apart from the Common Area.

**E.** In 1996, an Owner’s Interest was no longer based on such Owner’s cost to construct the Owner’s Suite, but instead determined by dividing the square footage of the Owner’s Unit by the total square footage of all of the Owner’s Suites (“Square Footage Formula”).

**F.** The adoption and use of the Square Footage Formula has resulted in equitably adjusting each Owner’s Percentage Interest. For example, when an Owner obtains approval to remodel such Owner’s Suite that will result in increasing the square footage of the Suite’s floor area or encroaching beyond the Suite’s boundary line into the Common Area, such Owner’s Percentage Interest will increase, resulting in that Owner paying a greater share of monthly Common Area Expenses (“CAM” or “CAMs”) and simultaneously reducing the non-expanding Owners’ Percentage Interest and respective share of CAM charges.

**G.** The Declaration designated the Association as the administrative authority, acting through its Board of Directors (“Board”) to collect assessments from each Owner and enforce the Declaration with respect to each Owner’s use of their respective Suite and the Common Area. The Board is comprised of the same Persons who are also members of the Company’s Executive Committee.

**H.** As of the Effective Date, each Owner’s Percentage Interest is described on the “Percentage Interest Schedule” attached hereto **Exhibit B**.

**I.** On November 27, 2017, the Partnership converted to a California limited liability company (“LLC”).

**J.** As of the Effective Date, the LLC owns those real property interests located directly north of the DPPC, including a closed alleyway, parking lot (“Parking Lot”), and a right of refusal in the so-called “Martino Parcel” (collectively “North Area” or “North Area Interests”).

**K.** The Association, by license from the LLC, has the right to use the Parking Lot by paying all costs to maintain the North Area, including, but not limited to, landscaping, hardscape and property taxes.

**L.** At the time of the recording of the Original Declaration, the Complex was governed by the Davis-Stirling Act. Effective January 1, 2014, commercial and industrial CIDs became subject thereafter to the Commercial and Industrial Common Interest Development Act (“Commercial CID Act”) found in *California Civil Code* §6500, et seq.

**M.** It is the intention of the Declarant to amend the Original Declaration to incorporate applicable provisions of the Commercial CID Act and to effectuate the purpose of the Original Declaration to create a uniform plan for creating, operating and maintaining the Complex, and if necessary, to amend the Condominium Plan from time to time to change the footprint of the Complex and/or the individual Suites.

## **AGREEMENT**

**NOW, THEREFORE**, in furtherance of the aforementioned Recitals, the undersigned Declarants as Airspace Unit Owners, hereby declare, covenant and agree that all of the Airspace Units within the Complex shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions contained in this First Amended Declaration.

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

**1.1. Definitions.** Unless otherwise expressly provided, the following words and phrases when used in this First Amended Declaration have the following meanings:

**1.1.1 Airspace Unit.** “Airspace Unit” or “Suite” means a separate Condominium interest as defined in §§4185(a)(2), 4125(b)) of the *Civil Code*. Each Airspace Unit is an airspace freehold estate, as separately shown, numbered and designated in the Condominium Plan. The boundaries of each Airspace Unit are approximately shown in the Condominium Plan. In interpreting deeds, this First Amended Declaration and the Condominium Plan, the actual boundaries of each Airspace Unit shall be deemed only to extend to the interior unfinished Airspace Unit-facing surfaces of the walls, ceilings and floors located within the Airspace Unit, excluding everything located outside the boundary Airspace Unit, such as the roof, physical drywall, and heating/air conditioning (subfloor and the Airspace Unit’s foundation).

**1.1.2 Annual Assessment.** “Annual Assessment” means a charge against the Owners and their Condominiums representing their share of the Common Expenses. The Annual Assessment is a “Regular Assessment” as described in *Civil Code §6800* and paid monthly as CAMS.

**1.1.3 Approving Authority.** “Approving Authority” means the Association’s Board of Directors or specific committee authorized on its behalf such as the Architectural Review Committee described in **Section 5.2**.

**1.1.4 Articles.** “Articles” means the Articles of Incorporation of the Association currently in effect.

**1.1.5 Assessment.** “Assessment” means any regular Annual Assessment or Special Assessment.

**1.1.6 Association.** “Association” means Downey Park Professional Owners Association, a California Non-Profit Mutual Benefit Corporation formed in 1993 pursuant to the California Nonprofit Mutual Benefit Corporation Law, or successor statutes, and its successors-in-interest of which Airspace Unit Owner is a member. The Association, DPPCOA, is an “association” as defined in *Civil Code §6528*.

**1.1.7 Association Property.** “Association Property” means any real or personal property designated or acquired by the Board and therefore also subject to the restrictions on Association Property established in the Governing Documents. Any references in this First Amended Declaration to Association Property are references to the Association Property as a whole and to portions thereof and includes:

(a) Any storage shed or similar facility and related Improvements such as exterior lighting fixtures and utility cabinets on building exteriors and facilities for the delivery of utilities to the Complex (except for outlets that are located in the Airspace Unit);

(b) Such as monument Signs, parking areas, parking structure, private alleys, curbs, gutters, drainage facilities, sidewalks, landscaped and irrigated areas, walls, fences, drainage facilities, detention basins, and common area utilities; and

(c) Any easements described in the Governing Documents, or in the Map or in other recorded instruments and granted to the Association; provided, however, the Association shall only have the responsibility for maintenance of such easements where such maintenance responsibility is given to the Association in the License Agreement between DPPC and DPPCOA for the exclusive use of the so-called Northeast Parking Lot by DPPCOA.

**1.1.8 Board or Board of Directors.** “Board” or “Board of Directors” means the Association’s Board of Directors.

**1.1.9 Budget.** “Budget” means a written, itemized estimate of the Association’s income and Common Expenses prepared pursuant to the Bylaws.

**1.1.10 Bylaws.** “Bylaws” mean the Bylaws of the Association as currently in effect.

**1.1.11 CAM or CAMs.** “CAM” or CAMs means each Owner’s pro rata share of the Common Expenses as defined in **Section 1.1.16** below that is or are subject to adjustment from time to time based on each Owner’s Percentage or “Percentage Interest”, without regard to the Owners of the Common Area Interest, as defined in **Section 1.1.47** below, and if needed, when the capital improvement expenditures exceed the amount allocated for the same in the annual Budget.

**1.1.12 Capital Improvement Assessment.** “Capital Improvement Assessment” means a charge against the Owners and their Condominiums representing their share of the Association’s cost for installing or constructing capital Improvements on the Association Property. Capital Improvement Assessments shall be levied in the same pro rata proportion as the Annual Assessments.

**1.1.13 CID.** “CID” means a “commercial or industrial common interest development” as defined in California *Civil Code* §6531 of the Commercial CID Act.

**1.1.14 City.** “City” means the City of Modesto, California, and its various departments, divisions, employees and representatives.

**1.1.15 Common Area.** “Common Area” means the areas, excluding the Airspace Unit, as described in the Condominium Plan, which is owned by the Owners in undivided interests in common. The Common Area constitutes the Real Property held in undivided interest as required under *Civil Code* §6542(b). The undivided interest allocated to each Airspace Unit is and shall be described in the grant deed conveying the Airspace Unit to an Owner.

**1.1.16 Common Expenses.** “Common Expenses” means CAMS as defined in **Section 1.1.11** above that each Owner is responsible for in proportion to their respective Percentage Interest as described in this First Amended Declaration. Common Expenses include the actual and estimated costs of, and reserves for, maintaining, managing and operating the Association Property and the Common Area as described in the Association’s and Company’s annual budget, including:

(a) The cost of all utilities (including sewer and water) and mechanical and electrical equipment serving the Association Property, and any other utility services provided by the Association under a master meter;

(b) The costs and fees attributable to managing and administering the Association, including compensating the accountants, attorneys and employees, all insurance covering the Complex and the Directors, officers and agents of the Association, and bonding the members of the Board;

(c) The cost of services such as trash removal from the Association Property, landscape maintenance, sweeping and cleaning of the parking areas, and other services benefiting the Association Property or the Owners, if the Association elects or is required to provide such services;

- (d) The cost of security services, systems or maintenance;
- (e) Unpaid Assessments;
- (f) Taxes paid, maintenance and Improvements as required by the License Agreement between DPPC and DPPCOA for the use of the Northeast Parking Lot;
- (g) Amounts advanced or paid by the Association for discharge of any lien or encumbrance levied against the Complex; and
- (h) All other expenses incurred by the Association for the Complex, for the common benefit of the Owners.

**1.1.17 Company.** “Company” mean Downey Park Professional Center, LLC.

**1.1.18 Company Property.** “Company Property” shall mean the North Area Interests.

**1.1.19 Complex.** “Complex”, also known as the “Downey Park Professional Office Condominiums”, means all of the CID and Improvements thereon as described in Recital A of this Declaration that are subject to the jurisdiction of the Association.

**1.1.20 Compliance Assessment.** “Compliance Assessment” means a monetary charge imposed against the Owner’s Condominium in accordance with *Civil Code §6824(a)* to recover costs incurred by the Association in the repair of damage to Association Property.

**1.1.21 Condominium.** “Condominium”, also known as an Airspace Unit, means the portion of Real Property within the Complex that is owned individually by each Owner as a separate interest pursuant to *Civil Code §§4185(a)(2), 4125(b)* consisting of the Airspace Unit as further defined by a survey and legal description and such Owner’s undivided Common Area Interest.

**1.1.22 Condominium Plan.** “Condominium Plan” or “Plan” means the recorded plan as currently in effect or as amended from time to time for the Complex consisting of:

(a) A description or Survey Reference Map of the Complex, which shall refer to or show monumentation on the ground;

(b) A three dimensional description of the Complex, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Association Property, Common Area and each Airspace Unit; and

(c) A certificate consenting to the recordation thereof signed and acknowledged by the record owner of fee title to the Complex, and by either the trustee or the Mortgagee of each recorded Mortgage encumbering the Complex or portion thereof.

**1.1.23 County.** “County” means Stanislaus County, California, and its various departments, divisions, employees and representatives.

**1.1.24 Declarant.** “Declarant” means the Downey Park Professional Center LLC or “DPPC”, the successor to the Partnership comprised of the Owners of the Airspace Unit, and its successor, and any Person to which it shall have assigned any of its rights as Declarant by an express written assignment.

**1.1.25 Declaration.** “Declaration” means the Original Declaration and as amended by this First Amended Declaration.

**1.1.26 Design Guidelines.** “Design Guidelines” mean the rules or guidelines setting forth architectural and design standards in conformity with the original plans and specifications of the Complex and changes approved by the Board or Executive Committee.

**1.1.27 Director or Directors.** “Director” or “Directors” means members of the Association’s Board of Directors.

**1.1.28 DPPC.** “DPPC” means the Company as defined in **Section 1.1.17** above.

**1.1.29 Exclusive Use Area(s).** “Exclusive Use Area(s)” means the Association Property over which exclusive easements, licenses or other rights are reserved for the benefit of specified Owners and their Permittees including open parking for all guests and invitees.

**1.1.30 Executive Committee.** “Executive Committee” means the governing body of the Company.

**1.1.31 First Amended Declaration.** “First Amended Declaration” means this First Amended and Restated Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Commercial Condominiums.

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

**1.1.33 Governmental Requirements.** “Governmental Requirements” means all applicable laws, rules, regulations, orders, ordinances, codes, subdivision requirements, zoning restrictions, map conditions and all other legal requirements of the City or County, and any other governmental agency with jurisdiction over the Complex, including Hazardous Materials Laws.

**1.1.34 Hazardous Materials.** “Hazardous Materials” means any hazardous or toxic substances, materials or wastes which are or become regulated by any local governmental authority, the State of California or the Airspace Unit, and includes, without limitation, any material or substance which is included in the definitions of (i) “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste,” “hazardous substance,” “extremely hazardous substance,” “hazardous material,” “acutely hazardous waste,” “hazardous chemical substance or mixture,” “imminently hazardous chemical substance or mixture,” “toxic substances,” “toxic air contaminant,” “hazardous air pollutant,” “toxic pollutant,” “medical waste” or “solid waste” under the Health and Safety Code, Chapter 11 of Title 22 of the California Code of Regulations, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, the Federal Hazardous Materials Transportation Act, the Federal Comprehensive Environmental

Response Compensation and Liability Act, the Federal Water Pollution Control Act, the Federal Clean Air Act, the Clean Water Act, the Superfund Amendments and Reauthorizations Act of 1986 under the California Administrative Code, or under any other federal, state and local laws, statutes, regulations, orders, rules or common law decision, including those laws regarding mold resulting from a roof or equipment leak, and (ii) pesticides, petroleum, asbestos, polychlorinated biphenyls, solvents, flammable explosives, urea formaldehyde, or radioactive materials and waste. Hazardous Materials do not include products typically used at a complex similar to the Complex if they exist merely in small amounts that do not require remediation and do not pose a hazard to the health or safety of persons on or about the Complex nor do they include radioactive waste materials in amounts normally generated by medical offices or laboratories in a complex similar to the Complex (e.g., a radiology practice, dental or medical office, or diagnostic laboratory) uses if permitted under the zoning applicable to the Complex, so long as such waste materials are stored, handled and disposed of in accordance with applicable Hazardous Materials Laws.

**1.1.35 Hazardous Materials Laws.** “Hazardous Materials Laws” means the federal and state laws cited in the immediately preceding Section as well as any other federal, state or local laws, ordinances or regulations governing the use, storage or disposal of Hazardous Materials.

**1.1.36 Improvement.** “Improvement” or “Improvements” means:

- (a) Each Airspace Unit, its interior fixtures, including, but not limited to, equipment, shelves and cabinets, and appurtenance thereto and all components;
- (b) Any directory or monument Signs, directional Signs, poles, trash enclosures, exterior lights, exterior light fixtures located in the Common Area of the Complex;
- (c) Any type of railings, ramps, walls, antennae, awnings, stairways or decks;
- (d) Any public or private utility lines, or other pipes, sewers, ducts, chutes, conduits, wires or other utility installations located anywhere within the Complex;
- (e) All plantings, irrigation and drainage facilities and landscaping softscape or hardscape;
- (f) All fences and perimeter walls;
- (g) All driveways, sidewalks and parking areas; and
- (h) Any Proposed Alteration requiring approval as defined and required in **Article 5** of this Declaration. The term Improvement shall also include any installation, construction, remodeling, replacement, refinishing, or alteration of any of the foregoing.

**1.1.37 Include, Including.** Whether capitalized or not, include and including means “includes without limitation” and “including without limitation,” respectively.



**1.1.38 Maintain, Maintenance.** Whether capitalized or not, maintain and maintenance mean “maintain, repair and replace” and “maintenance, repair and replacement”, respectively; provided however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning based on the governing Association Board’s discretion or policy.

**1.1.39 Mortgage.** “Mortgage” means any recorded document, including a deed of trust, pledging one or more Condominium Airspace Units or Association Property as security for an obligation and which constitutes a first-priority lien.

**1.1.40 Mortgagee.** “Mortgagee” means a Person or entity that lends money to a borrower, such as an Owner, to whom a Mortgage is made, or the assignee of such Mortgagee’s rights under the Mortgage by a recorded instrument, and includes a beneficiary under a deed of trust.

**1.1.41 Mortgagor.** “Mortgagor” means a Person, individual or entity who borrows money who has mortgaged his or her Condominium Airspace Unit, and includes a trustor under a deed of trust.

**1.1.42 Notice and Hearing.** “Notice and Hearing” means written notice and a hearing before the Board as provided in the Bylaws.

**1.1.43 Official Records.** “Official Records” means the Official Records of Stanislaus County.

**1.1.44 Operating Agreement.** “Operating Agreement” means the Operating Agreement of Downey Park Professional Center, LLC and any amendments thereto.

**1.1.45 Owner.** “Owner” means the Person or Persons holding fee simple title interest to a Condominium Airspace Unit who are also members of the Company. The term Owner includes sellers under executory contracts of sale but excludes Mortgagees.

**1.1.46 Owner’s Percentage.** “Owner’s’ Percentage” or “Percentage Interest” of ownership means a number or ratio expressed as a fraction of one hundred (100) rights in the Association and the Company representing the Airspace Unit Owner’s share and utilized for determining such Owner’s voting and other rights, privileges, duties and liabilities, without regard to such Owner’s Common Area Interest, as follows:

(a) Each Owner’s Percentage Interest shall be the same for determining such Owner’s/Partner’s pro rata share of such Owner’s share of CAM expenses and ownership Interest in the Association and Company. 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 the required transfer of such Owner’s Percentage Interest to a permitted transferee or buyer, as part of the sale price consideration, whether such Suite is transferred to an Owner’s estate, or any other permitted ownership holding vehicle, such as a trust; and

(b) The Owner's net asset valuation, including the Airspace Unit and for determining the Owner's pro rata Percentage Interest in the DPPCOA and DPPC are based solely on the Square Foot Formula described in Recital E that may float or fluctuate from time to time as Owners' modify or expand the square footage and boundary line of their respective Airspace Unit in accordance with the requirements provided by the Governing Documents.

**1.1.47 Partner.** "Partner" means each such Owner of an Airspace Unit who was previously a Partner of the predecessor Partnership and currently a member of the Company.

**1.1.48 Partnership.** "Partnership" means Declarant Downey Park Professional Center, a California General Partnership, or "DPPC", converted to the Company.

**1.1.49 Permittee.** "Permittee" means any Person from time to time entitled to the use and occupancy of any Airspace Unit or any portion thereof under any lease, deed or other arrangement with an Owner, and the officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires of such Person.

**1.1.50 Person.** "Person" means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, it refers only to such natural persons.

**1.1.51 Plan Amendment.** "Plan Amendment" means an approved amendment of the Condominium Plan in accordance with City codes and regulations.

**1.1.52 Reconstruction Assessment.** "Reconstruction Assessment" means a charge against an Owner and his Condominium representing the Owner's share of the Declarant's or Association's cost to reconstruct any Improvements on Association Property within or outside the Airspace Unit envelope that exceeds the amount allocated in the annual Budget. Such charge shall be levied among all Owners and their Condominiums in the same proportions as Annual Assessments.

**1.1.53 Record.** "Record" means, concerning any document, the entry of such document in Official Records of the County.

**1.1.54 Reserve Funds.** "Reserve Funds" means that portion of the Assessments allocated for the future repair and replacement of, or additions to, the major components of Association maintained Improvements and amounts necessary to cover the deductibles under all insurance policies maintained by the Association.

**1.1.55 Rules and Regulations.** "Rules and Regulations" or "Rules" means the current Rules and Regulations for the Complex adopted from time to time by the Board.

**1.1.56 Signs.** "Signs" means any advertising, placards, signs, names, billboards, placards, insignia, numerals, addresses, and descriptive words of any type affixed, inscribed, constructed, or maintained within the Complex or on any portion of an Airspace Unit.

**1.1.57 Special Assessment.** “Special Assessment” means any Assessment levied in connection with any expense incurred or to be incurred in accordance with the Governing Documents which cannot be imposed as an Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment or Compliance Assessment.

**1.1.58 Successor.** “Successor” means a Person who acquires Declarant or substantially all of Declarant’s assets by sale, merger, reverse merger, consolidation, sale of stock or assets, or testamentary disposition, operation of law or otherwise.

**1.1.59 Suite.** “Suite means an Airspace Unit as defined in **Section 1.1.1** above.

**1.1.60 Supplemental Declaration.** “Supplemental Declaration” means an instrument executed, acknowledged and recorded by Declarant which imposes conditions, covenants, or restrictions or reserves easements for all or a portion of the Complex in addition to the conditions, covenants, restrictions and easements established by this First Amended Declaration. A Supplemental Declaration may modify this First Amended Declaration only as it applies to the Real Property encumbered by the Supplemental Declaration.

## **1.2. Interpretation.**

**1.2.1 General Rules.** This First Amended Declaration shall be liberally construed to effectuate the purpose of the Original Declaration, creating a uniform plan for creating, operating and maintaining the Complex. As used in this First Amended Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

**1.2.2 Articles, Sections, and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this First Amended Declaration to Articles, Sections or Exhibits are to Articles, Sections and Exhibits of this First Amended Declaration. The Exhibits attached to this First Amended Declaration are incorporated in this First Amended Declaration by this reference. The locations and dimensions of any Improvements shown on the Exhibits are approximate only and the as-built location and dimension of any such Improvements shall control.

**1.2.3 Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this First Amended Declaration and the Association Articles or Bylaws, the Company’s Articles of Organization or Operating Agreement, Rules and Regulations, or the Condominium Plan or Plan Amendment, then the provisions of this First Amended Declaration shall prevail; however, the conflicting documents shall be construed to be consistent with the First Amended Declaration to the extent possible.

**1.2.4 Severability.** The provisions of this First Amended Declaration are independent and severable. If for any reason, any provision of this First Amended Declaration becomes invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, or if for any reason, a court of competent jurisdiction determines that any provision of this First Amended Declaration is invalid, partially invalid, unenforceable, illegal, null and void, or against

public policy, the validity and enforceability of the remaining provisions of this First Amended Declaration shall remain in effect to the fullest extent permitted by law.

**1.2.5 Statutory References.** All references made in this First Amended Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

**1.2.6 Supplemental Declarations.** Declarant may, in connection with all or a portion of the Complex, Record one (1) or more Supplemental Declarations, which shall designate the use classifications in the Real Property described therein, and which may supplement this First Amended Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate for the affected Real Property. A Supplemental Declaration may impose additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the particular requirements of the Real Property affected thereby. If there is any conflict between any Supplemental Declaration and the First Amended Declaration, the Supplemental Declaration shall control as to the Real Property affected by such Supplemental Declaration.

**1.2.7 No Representations or Warranties.** Nothing in this First Amended Declaration constitutes a representation or warranty, express or implied, in connection with the Complex, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Complex. Declarant makes no representation or warranty as to the future enforceability of any provision of this First Amended Declaration or any other Governing Document.

## ARTICLE 2

### MAINTENANCE, COVENANTS AND USE RESTRICTIONS

The Complex shall be held, used and enjoyed subject to the following restrictions and subject to the exemptions and rights of Declarant set forth in the Governing Documents.

#### **2.1. Repair and Maintenance.**

##### **2.1.1 Maintenance Obligations and Standards.**

(a) Unless otherwise set forth in this Declaration, the Association shall maintain the Association Property and the Common Area constituting the Common Expenses as defined in **Section 1.1.16** above. As of the Effective Date of this Declaration, the Association performs those obligations with respect to Common Area maintenance, repairs, and replacements as more fully described on **Exhibit C** which is subject to change from time to time by the Board. The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level and frequency of maintenance reflected in the current adopted Budget; provided such maintenance shall conform with all maintenance standards required by this First Amended Declaration, the City or Governmental Requirements;

(b) Each Owner shall maintain his or her Airspace Unit in a clean, sanitary and attractive condition and as directed in the Governing Documents and in conformance with the Maintenance Requirements. Each Owner shall immediately notify the Association of any dangerous, defective or other condition in such Owner's Unit which could cause injury to person or property; or

(c) Repairs and maintenance costs for underground utilities and/or systems that exclusively benefit a specific Airspace Unit, and were not part of the Condominium Plan, including, for example, television or communication lines, shall be maintained at the sole cost and expense of the Airspace Unit's Owner and/or Tenant, without any liability to the Association, other Owners, or the Company. Other utilities such as water and lines that require replacement or service outside the Airspace Unit are part of CAM.

**2.1.2 Association Power to Perform Owner Obligations.** If an Owner fails to maintain any Improvement that the Owner is obligated to maintain, the Association has the power but not the duty to perform the maintenance at the Owner's expense. In an emergency, the Association may perform the maintenance immediately; in all other cases, the Association may perform the maintenance after Notice and Hearing. For purposes hereof, an "emergency" is any situation where the Board determines that there is an imminent threat of injury to persons or damage to property.

**2.1.3 Disputes Regarding Maintenance Obligations.** Disputes between Owners or between any Owner and the Association regarding maintenance shall be resolved in accordance with the enforcement process described in **Section 12.1**.

**2.1.4 Damage by Owners.** Each Owner is liable to the Association for all damage to the Association Property that is sustained due to the negligence or willful act of the Owner or the Owner's Permittees. The Association may, after Notice and Hearing, levy a Compliance Assessment against the Owner to reimburse the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Owner or the Owner's Permittees were responsible. The amount of the Compliance Assessment may include:

(a) The amount of any deductible payable on the insured portion of the loss (if the Association elects to make a claim under its insurance policy);

(b) All costs and expenses, including reasonable attorney's fees, actually incurred by the Association to correct damage that is not covered by the Association's insurance or for which no claim has been made; and

(c) The amount of the increase in premiums payable by the Association, to the extent the increase is caused by or results from damage attributable to the Owner or the Owner's Permittees. In accordance with *Civil Code §6824(a)*, the Association shall have the power to impose a lien for the Compliance Assessment.

**2.1.5 Environmental Compliance.** Each Owner shall comply, and shall ensure that all of its Permittees comply, with all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like relating to the

environmental condition of the Complex or the presence of Hazardous Materials in, on, above, under or otherwise affecting the Complex including, without limitation, the Hazardous Materials Laws. Each Owner shall protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with any violation of the preceding sentence occurring within such Owner's Airspace Unit or, to the extent arising from actions of such Owner or any Permittee of such Owner, within the Association Property.

## **2.2. Use of the Airspace Unit.**

**2.2.1 Permitted Uses.** Except as otherwise set forth herein, the Airspace Units may be used for any uses which are permitted under this First Amended Declaration and applicable Governmental Requirements/all categories of medical, dental or healing arts and uses conducted entirely within an Airspace Unit are permitted, subject to compliance with all applicable Governmental Requirements, the Airspace Units, and all Improvements constructed therein shall only be used for professional offices and similar uses, including medical and dental office buildings and medical and dental services labs. Irrespective, any uses which require issuance of a conditional use permit or amendments thereto under applicable Governmental Requirements shall further require the approval of the Board in its absolute and sole discretion.

**2.2.2 Prohibited Uses.** The following operations and uses shall not be permitted in the Complex unless specifically authorized by Declarant, and thereafter by the Board:

(a) Storage or refining of Hazardous Materials, except if incident to a permitted use and in compliance with all Governmental Requirements, including all Hazardous Materials Laws;

(b) Any operation or use that would increase the rate of insurance for the Complex or any Airspace Unit within the Complex (provided, however, that operations or uses which are normal and customary to any permitted use but which would nonetheless cause an increase in the rate of insurance for the Complex or any other Airspace Unit may be conducted with the prior written permission of the Board, if the Owner requesting such permission reimburses any additional insurance costs incurred by the Association or any other Owner as a result of such operation or use);

(c) Use of any portion of the Complex for temporary lodging or residential purposes (provided, however, that this Section shall not be interpreted to prohibit overnight occupancy by patients of medical practices occupying the Complex); and

(d) Use of any portion of the Complex for auction, sale or other similar commercial activities without the prior written approval of Declarant, and thereafter the Board (which may be withheld in their respective sole discretion).

**2.3. Leases.** Each lease or other rental agreement for an Airspace Unit shall provide that failure by the tenant to comply with the rules of the Association or those set forth in this First Amended Declaration, or as amended, constitutes a default of the tenant under the lease or rental agreement.

**2.4. Nuisances.** No Owner shall commit or suffer to be committed any public or private nuisance or other act or thing which may unreasonably interfere with any other Owner or the use of any other Airspace Unit. It is the intent of this First Amended Declaration that nuisances be determined in accordance with applicable law using objective standards, and not based on individual subjective criteria. No Person may use any Condominium for any use which would violate the provisions of the Governing Documents or increase the rate of insurance for the Complex or any other Condominium in the Complex. Notwithstanding the foregoing, the conduct of any activities in the Complex which are normal and customary for a Complex similar in nature and permitted uses shall not, to the extent otherwise permitted by this First Amended Declaration and the applicable zoning for the Complex, be deemed to constitute a nuisance or otherwise violate this restriction, so long as the activities are conducted in compliance with objective performance standards contained in applicable Governmental Requirements.

**2.5. Trash and Waste Materials.** Permissible trash shall be bagged and temporarily collected in designated outside storage enclosures to be picked up by the maintenance staff and deposited in metal garbage bins in a secure location within the Complex. There shall be no outdoor storage of trash or waste materials of any kind in the Complex, except in designated outdoor trash locations. In no event shall any Owner or Permittee thereof deposit any trash or other materials within such trash receptacles except in strict compliance with all applicable Hazardous Materials Laws. Without limiting the foregoing, waste materials requiring special handling and transportation must be stored in appropriate containers within the Airspace Unit as required under applicable Hazardous Materials Laws, and kept out of regular outdoor trash containers. Any outside storage prohibited by this Section may be removed by the Association at the expense of the offending Owner.

**2.6. Owner Improvements on Association Property.** No mechanical equipment may be placed on the roof or outside of a Condominium, including air conditioning, heating and ventilating equipment and vents, except as part of the original construction of the Condominium, without the approval of Declarant and thereafter the Board, and the City, if required.

**2.7. Loading Facilities.** No loading and unloading activities shall be conducted in any manner which may obstruct free traffic flow during normal business hours or otherwise constitute a nuisance or create a safety hazard.

**2.8. Parking Restrictions.**

**2.8.1 General Restrictions.** Parking is available only during daytime business hours. No vehicle may be parked overnight within any portion of the Complex. No parking shall be permitted which may obstruct free traffic flow, constitute a nuisance, or otherwise create a safety hazard. No Person may repair, maintain or restore any vehicle in the Association Property parking area.

**2.8.2 Parking Spaces.** Parking spaces in striped stalls along drive aisles are free and unreserved and available to all Owners and their Permittees on a first-come, first-served basis.

**2.8.3 Regulation and Restriction by Board.** The Board has the power to:

(a) Establish additional Rules and Regulations concerning parking in the Association Property, including designating “parking”, “visitor parking”, “handicapped parking”, and “no parking” areas;

(b) Prohibit any vehicle parking or operation in the Complex if it determines in its sole discretion that the activity is a nuisance;

(c) Establish systems of controlled parking in the Complex as the Board may determine reasonably necessary to ensure the equitable use of available parking within the Complex; and

(d) Enforce all parking and vehicle use regulations applicable to the Complex, including the removal of violating vehicles in accordance with *California Vehicle Code §22658* or other applicable laws. The City may, but is not required to, enforce such restrictions, Rules and Regulations, in addition to applicable laws and ordinances.

**2.9. Signs.** All Signs displayed anywhere in the Complex must comply with all applicable laws and regulations governing the type of advertising permitted of the Owner or Permittee by all licensing authorities with jurisdiction over the Complex or the applicable Owner or Permittee, consistent with the original plans of the Complex or as approved by the Board.

**2.10. Ownership of Two Contiguous Airspace Units.** The Owner of two Airspace Units which are contiguous, may construct, at its expense and in accordance with all applicable Governmental Requirements, a means of access (such as a doorway) between the Airspace Units, subject to obtaining approval from the Board. If the Owner of such connected Airspace Units sells, transfers or conveys any one of the Airspace Units, then prior to the recordation of the deed or instrument of transfer, the means of access shall be sealed off, with the Owner obtaining prior Board approval for such work and the wall that was so pierced and any other Association Property that had been altered shall, at the Owner’s expense, be completely reconstructed to its original “as-built” condition. No bearing walls or common utilities shall be removed, altered or damaged in the course of such construction. No modification shall be made which affects the structural integrity of the Complex or impairs any other Owner’s reasonable use of the Association Property, or the utilities that may be located therein, or the value of the Complex. All costs and expenses of such modifications and subsequent restoration of the modifications shall be borne by the Owner of the Airspace Units so joined. Such modifications shall not change the status of the Airspace Units which shall continue to be treated as separate Condominium Airspace Units. Irrespective of this **Section 2.11**, all improvements and modifications are subject to the approval of the Board, as required in **Article 5**, and any applicable Governmental Requirements.



**2.11. Mechanics Liens.** No Owner may cause or permit any mechanics lien to be filed against the Association Property or another Owner's Condominium for labor or materials alleged to have been furnished or delivered to such Owner. Any Owner who permits a mechanics lien to be so filed shall cause the lien to be discharged no later than five (5) days after receipt of written notice to discharge the lien is received from the Board. If the Owner fails to remove a mechanics lien after written notice from the Board, the Board may discharge the lien and levy a Compliance Assessment against the violating Owner to recover the cost of discharge.

**2.12. Commonly Metered Utilities.** If any utility services are not separately metered to measure individual condominium usage, but instead are commonly metered to the Condominium, the Association has the power to enter into contracts with metering service companies for submetering, billing and collection of utility charges to each Owner. The Association may require each Owner to pay to the Association a deposit as determined by the Association as security for such Owner's obligation to pay submetered utility charges when due.

### **ARTICLE 3 INDEMNIFICATION; NON-LIABILITY**

#### **3.1. Indemnification.**

**3.1.1 For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, and all Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied, as a result of any action or threatened action brought because of an act or omission within what such Person reasonably believed to be the scope of the Person's Association duties ("Official Act"). Directors, Association officers, and all Association committee members are deemed to be agents of the Association for purposes of obtaining indemnification from the Association pursuant to this Section when they are performing Official Acts. The entitlement to indemnification under this First Amended Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

**3.1.2 For Other Agents of the Association.** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied, as a result of any action or threatened action because of an Official Act.

**3.1.3 Provided by Contract.** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

#### **3.2. Non-Liability.**

**3.2.1 General Rule.** No Person is liable to any other Person, or to the Association or any party claiming in the name of the Association, for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. The Association is not liable for unknown damage to property in the Complex or known damage scheduled and/or deferred for

logistic or budgetary reasons that are deemed not hazardous unless caused by the negligence of the Association, the Board, or the Association's officers.

**3.2.2 Non-Liability of Owners.** Under *Civil Code §6840*, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association maintains insurance which includes coverage for general liability of the Association in the amount required by *Civil Code §6840* and that insurance is in effect for the cause of action being brought.

## **ARTICLE 4 THE ASSOCIATION**

**4.1. General Duties and Powers.** The Association has the duties and powers enumerated and described in the Governing Documents, in addition to the general and implied powers that (a nonprofit mutual benefit corporation/an unincorporated association organized under California Law) may have that are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Governing Documents. Unless otherwise indicated in the Articles, Bylaws, or this First Amended Declaration, the powers of the Association are exercised by the Board.

**4.2. Specific Duties and Powers.** In addition to its general powers and duties, the Board has the following specific powers and duties:

**4.2.1 Association Property.** The power and duty to accept, exclusively, maintain and manage the Association Property through its Board in accordance with the Governing Documents. The Association may install or remove capital Improvements on the Association Property. The Association may reconstruct, replace or refinish any Improvement on the Association Property.

**4.2.2 Utilities.** The power and duty to obtain, for the benefit of the Complex, all water, gas and electric services necessary for the Association Property.

**4.2.3 Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or other interests in the Association Property, to the extent any such grant is reasonably required:

- (a) For Improvements to serve the Complex;
- (b) For purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association;
- (c) In connection with any lawful approved Plan Amendment; or
- (d) For other purposes consistent with the intended use of the Complex. This power includes the right to create and convey easements for one or more Owners over portions of the Association Property. The Declarant may de-annex any portion of the Complex from the encumbrance of the First Amended Declaration in connection with any lawful Plan Amendment.

**4.2.4 Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Association Property, including legal, management and accounting services.

**4.2.5 Insurance.** The power and duty to keep insurance for the Association Property and other coverages required by the Association or allocated between the Owners and the Association in accordance with this First Amended Declaration.

**4.2.6 Rules and Regulations; Design Guidelines.** The power, but not the duty, to adopt, amend, repeal and create exceptions to Rules and Regulations concerning use of the Complex, to be coordinated in concert with the Company with respect to the parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction, and to Design Guidelines. The Association shall not be liable in damages to any Owner, or to any other Person subject to or affected by this First Amended Declaration, on account of the establishment, amendment, restatement, deletion or waiver of any Rules or Regulations or Design Guidelines.

**4.2.7 Contracts.** The power to enter into contracts, including contracts with Owners or other Persons to provide services or to maintain Improvements in the Complex and elsewhere which the Association is not otherwise required to provide or maintain by this First Amended Declaration.

**4.2.8 Standing to Resolve Disputes.** The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each an "Action") in its own name as the real party in interest and without joining the Owners, in matters pertaining to:

- (a) Damage to the Association Property;
- (b) Damage to portions of the Condominiums which the Association is obligated to maintain or repair; and
- (c) Damage to portions of the Condominiums which arises out of, or is integrally related to, damage to the Association Property or portions of the Condominiums that the Association is obligated to maintain or repair (each a "Claim"). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to an individual Condominium and not included in clauses (a) or (b) above.

The Association may, in its sole discretion, elect to institute, intervene in, continue, settle or dismiss an Action at any time. If the Association institutes or intervenes in an Action on a Claim, the Association's standing shall be exclusive, and the Owners shall thereafter be barred from instituting a new Action or maintaining a pending Action on the same Claim. The Association's election to institute or intervene in an Action on a particular Claim shall not create any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to **Article 12**. If the Association elects to settle an Action, the terms of the settlement shall be binding on the Owners, and the Owners shall be barred from instituting or continuing any other Action on the same Claim. If the

Association elects to dismiss an Action, the dismissal shall be with prejudice to the institution or continuation by one or more Owners of any Action on the same Claim.

### **4.3. Standard of Care.**

**4.3.1 General Scope of Powers.** Rights and powers conferred on the Board or committees or representatives of the Association by the Governing Documents are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Governing Documents or law. Unless a duty to act is imposed on the Board or committees or representatives of the Association by the Governing Documents or law, the Board and the committees or representatives have the right to decide to act or not act. Any decision not to act is not a waiver of the right to act in the future.

**4.3.2 Business Affairs.** This **Section 4.3.2** applies to Board actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances. Each Director shall perform the duties of a Director in good faith, in a manner the Director believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing Director duties, a Director is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(a) One (1) or more officers or employees of the Association whom the Director believes to be reliable and competent in the matters presented;

(b) Counsel, independent accountants or other Persons as to matters which the Director believes to be within such Person's professional or expert competence; or

(c) A committee of the Board upon which the Director does not serve, as to matters under its designated authority, which committee the Director believes to merit confidence, so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This **Section 4.3.2** is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this **Section 4.3.2**.

**4.3.3 Association Governance.** This **Section 4.3.3** applies to Board actions and decisions in connection with interpretation and enforcement of the Governing Documents, architectural and landscaping control, regulation of uses within the Complex, rulemaking and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

#### **4.4. Membership in the Association.**

**4.4.1 Generally.** Every Owner shall automatically acquire a membership in the Association and retain the membership until such Owner's Condominium ownership ceases, at which time such Owner's membership shall automatically cease. Ownership of a Condominium is the sole qualification for membership.

**4.4.2 Transfer.** Unless expressly provided by the Operating Agreement, and unless an Owner sells his or her Airspace Unit, memberships are not assignable or transferable except to the Person to whom title to the Condominium is transferred, and every membership is appurtenant to and may not be separated from the fee ownership of the Condominium. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold the Owner's Condominium to a contract purchaser under an agreement to purchase, and transfers the fee title to the purchaser, shall delegate in writing the Owner's membership rights to such purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner, at the Board's discretion) to reimburse the Association for the administrative cost of transferring the membership to the new Owner on the Association's records.

### **ARTICLE 5 ARCHITECTURAL CONTROL**

#### **5.1. Architectural Control Requirements.**

**5.1.1 Unit Improvements or Expansion Requiring Approval.** No Owner shall permit or cause any portion of such Owner's Airspace Unit, or any additional Improvements located therein, to be altered, installed, constructed, reconstructed, replaced, assembled, maintained, relocated, removed or demolished (each, a "Proposed Alteration"), or expand the boundaries of the Owner's Unit by such Proposed Alteration as described in **Section 6.5** below unless Owner obtains the prior written consent of the Board, and such Proposed Alteration conforms to all applicable Governmental Requirements and any Design Guidelines adopted pursuant to this First Amended Declaration. Without limiting the foregoing, the following Proposed Alterations shall further require the approval of the Board:

- (a) Any Proposed Alteration which would be visible from outside of an Airspace Unit;
- (b) Any Proposed Alteration which would pierce, modify or otherwise impact the roof, perimeter walls, Demising Walls, load-bearing or utility-bearing walls, ceilings, foundations or other structural or utility bearing portions of an adjoining Airspace Unit;
- (c) Any Proposed Alteration that would impact in any manner operation of any mechanical systems serving any other Owner's Airspace Unit within the Complex;

(d) Any Proposed Alteration which would materially increase the load on any utility services provided by the Association or otherwise adversely impact any utility improvements installed within the Complex for the delivery of such utility services or any common utility services benefiting more than a single Airspace Unit;

(e) Any Proposed Alteration that would cause a significant increase in the cost of insurance to be carried pursuant to **Article 8** by the Association or the Owner of any other Airspace Unit;

(f) Any other Proposed Alteration which would materially, adversely impact the use and occupancy of any other Owner's Airspace Unit (other than temporary, minor impacts resulting from construction activity related to the performance of such Proposed Alteration); and

(g) Any Proposed Alteration that would expand the area of an Airspace Unit beyond its boundary line so as to encroach into the Common Area.

**5.1.2 Submittals.** To obtain approval for a Proposed Alteration, the Owner shall submit a set of plans and specifications to the Approving Authority showing the Proposed Alteration in sufficient detail to enable the Approving Authority to make its determination. Within thirty (30) days after receiving the Owner's submittal, the Approving Authority shall approve or disapprove such submittal, or request such additional plans and specifications or other information as are reasonably necessary to enable the Approving Authority to make its determination.

**5.1.3 Inspection.** The Approving Authority may inspect any work for which approval of plans is required under this Article. The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy (including removal of) any noncompliance with the plans for the work approved by the Approving Authority.

**5.1.4 Identical Replacements.** Approving Authority consent shall not be required for the restoration or replacement of any Owner Improvement which will be substantially identical to the original Improvements located within the Airspace Unit at the time the Airspace Unit was originally constructed, or any Owner Improvement subsequently installed within the Airspace Unit but previously approved by the Approving Authority.

**5.1.5 Encroachment.** In seeking approval for an Owner Improvement that will result in expansion of the Airspace Unit's boundary line thereby encroaching into the Common Area, the Owner, as part of the approval requirements, will be required to pay the Association for obtaining any required Plan amendment, building permit, or other governmental approvals, including the costs of professional services and updated title insurance policies insuring the Association, Declarant, other Suite Owners and their respective lenders, as their interests may appear.

**5.2. Approving Authority.** The Board is the Approving Authority or may appoint a committee of members of the Association (the "Architectural Review Committee") and delegate to such Architectural Review Committee its authority hereunder. From and after any such delegation, the Architectural Review Committee shall be deemed to be the Approving Authority.

The Approving Authority shall further have the power to retain consultants to advise the Approving Authority in connection with the review, approval and inspection of any Proposed Alteration. Notwithstanding any approval by the Approving Authority or the Architectural Review Committee, the Owner is responsible for complying with all applicable Governmental Requirements, and for consulting and using qualified consultants and contractors when designing, installing or constructing any Proposed Alteration.

**5.2.1 Basis of Approval.** The Approving Authority may disapprove any submittals hereunder if it determines that the Proposed Alteration will or could:

- (a) Adversely affect the integrity of the structural, mechanical or common utility systems in the Condominium Building;
- (b) Significantly increase insurance or utility costs for the Association or any other Owner;
- (c) Materially adversely affect the use or occupancy of any other Owner's Airspace Unit; and
- (d) Is not otherwise in harmony or conformity with the appearance of the Complex or the applicable Governmental Requirements, this First Amended Declaration or any Design Guidelines adopted pursuant to this First Amended Declaration.

**5.2.2 No Liability.** Neither the Approving Authority nor any Person retained by the Approving Authority in connection with the review and approval of Proposed Alterations, nor their respective agents, employees, attorneys or consultants (collectively "Approving Authority Parties"), shall be liable or responsible on account of:

- (a) The approval or disapproval of any submittal under this Article;
- (b) Any construction, performance or nonperformance by an Owner or its Permittees of any work, whether or not pursuant to approved submittals;
- (c) Any damage that results from improvements installed, constructed or modified by or at the direction of an Owner or its Permittees;
- (d) Any mistake in judgment, negligence, act or omission in the Approving Authority's exercise of its powers hereunder. Every Person who makes a submittal for approval of a Proposed Alteration agrees by reason of such submittal, and every Owner or occupant of a Condominium, by acquiring an interest in any Condominium affected by such Proposed Alteration, agrees not to bring any suit or action against Declarant, the Association or the Approving Authority or any Approving Authority Parties, seeking to recover damages. Approval of any submittal by the Approving Authority shall not constitute the assumption of any responsibility by, or impose any liability upon, Declarant, the Association or the Approving Authority or any Approving Authority Parties, with respect to the accuracy or sufficiency of the submittal; or

(e) The expenses of amending the Condominium Plan, obtaining governmental authority, City permits, or construction work.

## **ARTICLE 6 PROPERTY EASEMENTS AND RIGHTS**

### **6.1. Easements.**

**6.1.1 Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Complex as necessary to fulfill the obligations and perform the duties of the Association.

**6.1.2 Reciprocal Easement.** Declarant reserves a reciprocal easement appurtenant to each Condominium over the other Condominiums and the Association Property to accommodate:

(a) Any existing wall or any other Improvement installed by Declarant or approved by the Approving Authority;

(b) Shifting, movement or natural settling of any Condominium Building or other Improvements; and

(c) Declarant reserves easements over the Complex for public services of the local government agencies, including the right of law enforcement and fire protection personnel to enter the Complex to carry out their official duties.

**6.1.3 Owners' Easements in Association Property.** The Owners' reserve nonexclusive easements, including for pedestrian and vehicular access, over the Association Property as reasonably necessary for the use and enjoyment of each Condominium. This easement is appurtenant to and passes with title to every Condominium, but is to be exercised subject to the rights, restrictions, covenants and easements in the Governing Documents and the Association's right to reasonably restrict access to rooftops, maintenance facilities and other areas of the Association Property that are designated from time to time by the Board.

**6.1.4 Exclusive Use Areas.** Owners' reserves exclusive easements over the Association Property for use and enjoyment of any Exclusive Use Areas as defined in this First Amended Declaration. The Exclusive Use Area easements shall be conveyed by recorded deed, and shall be appurtenant to and run with the Owner's Airspace Unit, subject to the right of the Association and its representatives to enter the Exclusive Use Areas to carry out Association maintenance and other obligations as provided in the Governing Documents.

**6.1.5 Declarant's Utility Easements.** Declarant reserves easements over and under each Unit for purposes of installing, repairing and maintaining utility Improvements and telecommunications systems that serve all of the Airspace Units in general. Such repairs are considered "outside of the Airspace Unit" as part of the usual Common Expenses or CAM maintenance and repair protocol. Irrespective, as provided in **Section 2.1.1 (c)**, any repair and maintenance costs for utilities and/or systems that exclusively benefit a specific Airspace Unit such as, for example, cable lines, sewer lines, water, pipelines, pest control services and/or



utilities located directly under and servicing such Owner's Airspace Unit shall be performed and maintained at the sole cost and expense of such Airspace Unit's Owner without any liability to the Association or other Owners.

**6.2. Delegation of Use.** Any Owner may delegate the Owner's right to use the Association Property in writing to the Owner's tenants or subtenants who occupy such Owner's Airspace Unit, subject to regulation by the Board.

**6.3. Right of Entry.**

**6.3.1 Association.** Irrespective of the preceding sections, the Association has the right to enter the Exclusive Use Areas and the Airspace Units for inspection purposes, and may take whatever corrective action it determines to be necessary or proper. Entry may be made after at least three (3) days' advance written notice to the Owner or occupant of the Airspace Unit except for emergency situations, which shall not require notice.

**6.4. Declarant's Easements.**

**6.4.1 Access and Construction Easement Over Association Property.** Declarant reserves for its benefit and for the benefit of Declarant's agents, employees, contractors, customers and invitees nonexclusive easements over the Association Property for access, ingress, egress, use and enjoyment in connection with:

- (a) The promotion and marketing of the Complex, including the sale, leasing or financing of Condominiums;
- (b) Completing any Improvement in the Complex which Declarant considers desirable to implement the design and overall appearance of the Complex;
- (c) Complying with any applicable Governmental Requirements; or
- (d) Otherwise exercising any of the rights reserved for Declarant in this First Amended Declaration; provided, however, such use shall not unreasonably interfere with the rights of enjoyment of the Owners established by this First Amended Declaration.

**6.5. Expansion of Unit's Boundaries.** A Unit Owner may seek to expand the boundaries of such Owner's Unit by an amendment to the Declaration, upon the prior exclusive written consent of the Board, unless such authority has been delegated to the Architectural Review Committee by the Board as provided in **Section 5.2** above.

**6.5.1 Application.** In addition to obtaining the required governmental approvals, a written application for such consent shall be submitted by the Owner seeking the expansion and shall include:

- (a) Evidence that the applicant Owner complied with all building codes, fire codes, land use/zoning codes, planned condominium unit development requirements, parking requirements, and other applicable ordinances or resolutions adopted and enforced by the local governing body and that the proposed expansion does not violate the terms of any

document evidencing a security interest, such as, but not limited to, a deed of trust encumbering the Unit, accompanied by the written consent of the lienholder;

(b) The effect upon the Owner's Percentage Interests and share of CAMS by the proposed expansion of the Unit if any;

(c) The proposed form of amendment to the Declaration, including the Condominium Map, as may be necessary to show the altered boundary of the Owner's Unit;

(d) A deposit against attorney's fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and

(e) Such other information as may be reasonably requested by the Board.

**6.5.2 General Requirements.** In addition to satisfying the above requirements, no expansion of a Unit's boundaries between such a Unit and the Common Area shall be effective unless all necessary amendments to the Declaration, plats, or maps are properly executed and recorded and all required governmental approvals are secured.

**6.5.3 Power of Attorney.** Each Owner irrevocably appoints the Board as its attorney in fact with full power and authority to act in the name and stead of the Owner in approving or disapproving a proposed expansion to be exercisable by a majority of the Board members acting on behalf of the Association after recordation of a certificate executed by those Directors who have the power to exercise this power of attorney, certifying that the power of attorney is properly exercisable under this Declaration. The certificate shall be conclusive evidence of proper exercise and delegation of such powers in favor of any person relying on it in good faith. If such certificate is not approved by a title insurer, the Owners agree to sign all deeds or documents if required by such title insurer, provided the Owner seeking expansion satisfies the requirements set forth in this **Section 6.5** and at no expense to the other Owners.

## **ARTICLE 7 ASSESSMENTS**

**7.1. Purpose.** The Assessments shall be used exclusively to promote the Owners' welfare, operate, improve and maintain the Association Property, and discharge any other Association obligations under the Governing Documents.

**7.2. Personal Obligation to Pay Assessments.** Each Owner shall pay to the Association all Assessments established and collected pursuant to this First Amended Declaration. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner unless expressly assumed

by the new Owner or unless the new Owner has actual or constructive knowledge of such delinquent Assessments.

**7.3. Accounts.** The Association shall establish such Association accounts as the Board deems necessary into which shall be deposited all money collected from Assessments paid to the Association and from which disbursements shall be made, as provided in this First Amended Declaration. The Association accounts may be established as trust accounts at a banking or savings institution.

**7.4. Waiver of Use.** Waiver of use and enjoyment of the Association Property or abandonment of a Condominium by an Owner shall not exempt such Owner from liability for Assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof.

**7.5. Annual Assessments.**

**7.5.1 Annual Assessments.** The Annual Assessment shall be paid in monthly increments as CAMS. The Board, in concert with the Company's Executive Committee ("Executive Committee"), shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent by the Board by first-class mail to every Owner subject thereto not less than thirty (30) days before the revised Assessment becomes due.

**7.5.2 Apportionment of Annual Assessments.** Annual Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be assessed against each condominium in the Complex based on the Owners' Percentage Interest.

## **ARTICLE 8 INSURANCE AND INDEMNITY**

**8.1. Association's Insurance.** The Association shall obtain and keep in effect at all times the following insurance coverages, including all areas outside each Airspace Unit as follows:

**8.1.1 Commercial General Liability.** A policy of commercial general liability insurance (including coverage for medical payments), insuring the Association and the Owners against liability for bodily injury, death and property damage arising from or relating to the ownership or use of the Association Property. Such policy shall specify amounts and include protection from liability and risks as are customarily covered in similar air space commercial condominium developments in the area of the Complex, and shall include a severability of interest endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of other Owners, or the Association or the Association's officers and directors acting in their capacity as officers and directors. The Association's policies shall at all times specify limits no less than the minimum amounts required by *Civil Code §6840*.

**8.1.2 Fire and Casualty Insurance.** A “master” or “blanket” policy of fire and casualty insurance with extended coverage, special form, in an amount as near as possible to the full replacement value of all insurable Improvements on the Association Property, service equipment and supplies, and other personal property belonging to the Association without deduction for depreciation, and including costs attributable to changes in laws and costs of excavation, footings and foundations below the lowest floor. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority vote of the Owners.

**8.1.3 Fidelity Insurance.** Fidelity insurance coverage for any Person handling funds of the Association, the Board or Executive Committee, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance.

**8.1.4 Other Insurance.** Such other insurance providing coverage for risks customarily insured by Association’s managing condominium complexes similar in construction, location, and use, including, but not limited to, directors’ and officers’ errors and omissions insurance and also earthquake insurance in such amounts as may be deemed reasonable or appropriate from time to time by the Board or the Executive Committee.

**8.1.5 Further Association Insurance Requirements.**

(a) The Association’s insurance shall be kept for the benefit of the Association, the Owners and any Mortgagees of the Association, as their interests may appear, subject to loss payment requirements established in this First Amended Declaration;

(b) The Board shall annually review the Association’s insurance policies to determine the adequacy of coverage and to adjust the policies accordingly;

(c) The Board shall make every reasonable effort to secure and approve insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective Permittees;

(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss, and waiving any defense based on co-insurance;

(iii) An agreed amount endorsement, if the policy contains a co-insurance clause;

(iv) Guaranteed replacement cost or replacement cost endorsement; and

(v) An inflation guard endorsement.

(d) Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association in the Principal Office or in a fire proof area or at another secure location as designated by the Board, and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

(e) **Notice of Expiration Requirements.** If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board, and to each Owner, any Mortgagee and other Person who has filed a written request with the carrier for such notice. In addition, fidelity insurance, as described in **Section 8.1.3** above, must contain a provision that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to **Section 8.2.6**.

(f) The Association is trustee of the interests of all named insureds under the Association's insurance policies and the Board has the exclusive authority to negotiate loss settlements with insurance carriers; provided that no Mortgagee having an interest in such loss may be prohibited from participating in settlement negotiations. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

**8.2. Owners' and Tenant's Insurance.** Each Airspace Unit Owner is responsible for insuring the interior of their Airspace Unit, including the Owner's and any Tenant's personal property and all Improvements located within the Airspace Unit constructed and/or used by the Owner's or by an Owner's Tenant's.

### **8.2.1 Additional Owner and Tenant Insurance Requirements.**

(a) The Owner shall provide a comprehensive general liability (CGL) policy and casualty policy issued by an AAA rated insurance company licensed to do business in California with the Association and the Company named as an additional insureds.

(b) Owner's Property Insurance should also be kept to a level which does not trigger co-insurance (an amount that exceeds the value of the Property). If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

(c) The Owners' and Tenant's Insurance and the Association's policies should to the reasonable extent possible complement each other to provide the complete coverages without duplication with the goal to obtain possible competitive or reduced premium rates.

(d) The Board, in concert with their insurer's representative agent, will review each Owner's policies to assure there will be no excess liability and that they provide for restoration or replacement "as built" for damages to Owner's Airspace Unit and Owner's and Tenant's Improvements.

### **8.3. Indemnity.**

**8.3.1 Owner's Indemnity.** In addition to any other indemnity obligations set forth elsewhere in this First Amended Declaration, each Owner (the "Indemnifying Owner") shall protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with:

(a) Any accident, injury, loss, or damage to any Person or loss or damage to the Complex occurring on (or resulting from acts committed on) the Indemnifying Owner's Airspace Unit;

(b) Use of the Airspace Unit or the Complex by the Indemnifying Owner or its Permittees;

(c) The conduct of any business or work or things done, permitted or suffered in or about the Indemnifying Owner's Airspace Unit or the Complex by Permittees of the Indemnifying Owner's Airspace Unit; and

(d) The Indemnifying Owner's breach of this First Amended Declaration. Provided, however:

(i) No Person shall be entitled to indemnification for any damage arising from such Person's own gross negligence or willful misconduct or the gross negligence or willful misconduct of such Person's Permittees; and

(ii) The Association, Declarant and each Owner, for themselves and their respective Permittees, waive any right of recovery against the other Owners and their Permittees for any loss, damage, or injury to the extent the loss, damage or injury is actually covered by insurance.

## **ARTICLE 9 DESTRUCTION OF ASSOCIATION IMPROVEMENTS**

**9.1. Restoration and Reconstruction of the Association Property.** If all or any portion of the Association Property or Company Real Property is damaged, destroyed or stolen, subject to receipt of insurance proceeds and the proportionate share for insurance expenses of any shortfall from the other Owners as provided below, the Association shall repair or reconstruct all of the Improvements within the Complex so damaged or destroyed, excluding any interior Improvements within the Airspace Units not required to be maintained by the Association.

**9.1.1 Reconstruction Standards.** The Association shall cause such Improvements to be repaired or reconstructed substantially in accordance with the original “as-built” plans and specifications, modified:

(a) As may be required by applicable building codes and regulations in effect at the time; and

(b) Subject to any alterations as may be approved by the Approving Authority, the Board shall prepare or obtain the documents necessary for commencing such reconstruction as promptly as practical.

## **ARTICLE 10 EMINENT DOMAIN**

The term “taking” as used in this Article means inverse condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees.

**10.1. Rights of Mortgagees.** Nothing herein contained shall be deemed to prohibit any Mortgagee from participating in any eminent domain proceedings on behalf of or in conjunction with any Owner on whose Condominium it has a Mortgage, provided such participation does not reduce the award to any other Owners or the Association, or alter the application thereof as provided below.

**10.2. Reconstruction on Condemnation.** Subject to the provisions of this **Article 10**, and to the extent economically feasible based upon the extent of the condemnation, the Association and each Owner shall be obligated to reconstruct the Improvements in the event of a condemnation in the same manner and to the same extent and same standard as would be required pursuant to **Article 9** if the condemnation were a casualty and the award were insurance proceeds. If the Association or an Owner is not required to reconstruct all or any portion of the Improvements for which the Association or such Owner is responsible, the Association or such Owner, as applicable, shall clear such Improvements or the affected portion thereof. Any award shall be applied to the restoration or razing required pursuant to this Section, and any excess shall be distributed to the Owners and Mortgagees as provided in their respective Mortgages.

## **ARTICLE 11 RIGHTS OF MORTGAGEES**

**11.1. General Protections.** No amendment or violation of this First Amended Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering a Condominium made in good faith and for value, provided that after the foreclosure of any such Mortgage, the foreclosed Condominium will remain subject to this First Amended Declaration.

**11.1.1 Notification.** Any Mortgagee, upon filing a written request with the Association identifying the Condominium encumbered by the Mortgage, shall be entitled to receive written notification from the Association of:

(a) Any condemnation or casualty loss that affects the encumbered Condominium or a material portion of the Complex;

(b) Any lapse, cancellation or material modification of any policy of insurance maintained by the Association; or

(c) Any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents by the Owner of the encumbered Condominium.

**11.2. Mortgage Cure Rights.** A Mortgagee may jointly or singly pay any Assessments or installments thereof which are in default and take any action reasonably necessary to cure any other default of its Mortgagor under the Governing Documents with the same effect as such cure by such Mortgagor itself. Any Mortgagee of a Mortgage having first priority over other Mortgages on a Condominium may, jointly or singly, pay taxes, assessments or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**11.3. Unpaid Assessments.** If the Mortgagee of a Condominium obtains fee title to the Condominium by foreclosure of the Mortgage, then the Mortgagee shall take title to the Condominium free and clear of any claims for unpaid Assessments levied or accrued against the Condominium before the date on which the Mortgagee acquired title to the Condominium, except for Assessment liens recorded before the Mortgage. (**NOTE:** Mortgagees can be required to assume up to six (6) months of delinquent assessments, but this may impact finance ability of Airspace Units).

## **ARTICLE 12 ENFORCEMENT AND DISPUTE RESOLUTION**

**12.1. Enforcement of Governing Documents.** All violations of or disputes relating only to the enforcement of the Governing Documents, except for those governed by Delinquent Assessments or subject to *Civil Code* §§6870–6876, shall be resolved in accordance with this **Article 12**.

**12.1.1 Notice of Violations Other than Nonpayment of Assessment.** If the Board or the Approving Authority determines that there is a violation of the Governing Documents, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying:



(a) The condition or violation complained of; and

(b) The length of time the Owner has to remedy the violation, including, if appropriate, the length of time the Owner has to submit plans to the Approving Authority and the length of time the Owner has to complete the work proposed in such plans. This requirement shall apply notwithstanding the fact that this First Amended Declaration may duplicate City ordinances or regulations. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Compliance Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established below.

**12.2. Violations by Persons Other than Owners.** If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to litigation or other remedies for relief.

**12.3. Remedies.** Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in above must first be followed, if they apply. The Board may adopt a schedule of reasonable fines or penalties which the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed under *Civil Code §6850*. The Association may use any legal remedy necessary to enforce the CC&Rs, Bylaws, or Rules and Regulations. The Association is entitled to collect from a noncomplying Owner all legal costs, legal fees, and corrective costs incurred in bringing the Owner or such Owner's Airspace Unit or personal property into compliance with the CC&Rs, Bylaws, and Rules and Regulations.

**12.4. No Waiver.** Failure by the Association or by any Owner to enforce any provision of the Governing Documents does not waive the right to enforce that provision, or any other provision of the Governing Documents.

**12.5. Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of *Civil Code §§6870–6876*.

**12.5.1 Right of Association to Act Without Approval.** Such approval is not necessary if the legal proceedings are initiated:

(a) To enforce the use restrictions contained in **Article 2** or in the Association's Rules and Regulations;

(b) To enforce the architectural provisions contained in Article 5;

(c) To collect any unpaid Assessments levied pursuant to the Governing Documents; or

(d) As a cross-complaint in litigation to which the Association is already a party.

## **12.6. Delinquent Assessments.**

**12.6.1 Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Commencing thirty (30) days after the due date, delinquent Assessments plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest until paid at the maximum rate permitted by law. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

**12.7. Lien Rights.** At least thirty (30) days before recording a lien on an Owner's Condominium to collect a past due Assessment, the Association shall send written notice to the Owner pursuant to *Civil Code §6812*. Monetary penalties described in *Civil Code §6824(b)* may not become a lien against an Owner's Condominium enforceable by the sale of the Condominium under *Civil Code §§2924, 2924b, and 2924c*.

**12.8. Association Ownership of Airspace Units.** The Association shall have the power to bid at a foreclosure sale for any Condominium in the Complex, and to acquire and hold, lease, mortgage and convey the same. Where the purchase of a Condominium at a foreclosure sale will result in a five percent (5%) or greater increase in Annual Assessments, the purchase shall require the vote or written consent of a majority of the Owners of the Association (excluding the voting power of the Owners whose Condominium is subject to the foreclosure). During the period a Condominium is owned by the Association, no right to vote shall be exercised on behalf of the Condominium, and the Board may waive the levy of Assessments against the Condominium, and if so waived, each other Condominium shall be charged, in addition to its usual Assessment, its pro-rata share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure.

**12.9. Dispute Resolution.** The following dispute resolution procedure is implemented with the intent to avoid costly and potentially lengthy traditional court proceedings. Any dispute between the Association or any Owners, or any director, officer, Board member or the Company's Executive Committee member, or employee is a "Dispute" that shall be resolved in accordance with the alternative dispute resolution procedures set forth below.

**12.10. Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by *Code of Civil Procedure §415.10, §415.20, §415.21, §415.30, or §415.40* (or any successor statutes) to the party to whom the Dispute is directed ("Respondent") describing the nature of the Dispute and any proposed remedy (the "Dispute Notice").

**12.11. Mediation.** If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation (a “Mediation Notice”) in the same manner as allowed for delivery of the Dispute Notice.

**12.11.1 Mediation Method and Procedure.** The Dispute shall be mediated pursuant to:

(a) The Judicial Arbitration and Mediation Service (“JAMS”) mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section;

(b) The mediation procedures of any successor to JAMS in existence when the Dispute Notice is delivered, as modified by this Section;

(c) Mediation procedures approved by the parties of any entity offering mediation services that are acceptable to the parties to the Dispute (each, a “Party” and collectively, the “Parties”);

(d) The mediator shall be selected within sixty (60) days after delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the Parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process;

(e) No later than sixty (60) days after selection of the mediator, each Party shall submit a letter containing a description of the Party’s position concerning the issues that need to be resolved;

(f) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties;

(g) The provisions of *California Evidence Code §§1115–1128* or a successor statute shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material;

(h) Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties;

(i) There shall be no stenographic, video or audio record of the mediation process; and

(j) Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise.

**12.12. Judicial Reference.** If a Dispute remains unresolved after the mediation required by Subparagraph (d) above is completed, any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of the other party) before filing a lawsuit in the Dispute. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to *Code of Civil Procedure §§638 and 641–645.1*, as modified by this paragraph. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No Party shall be required to participate in the judicial reference proceeding if all Parties against whom such Party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless all parties to the judicial reference proceeding consent, or the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter.

**12.13. Additional Requirements.**

(a) The proceedings shall be heard in Stanislaus County;

(b) The referee shall be a retired judge who served on the California Superior Court in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Complex, unless the Parties agree otherwise. The Parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding the selection of the referee shall be resolved by the court in which the complaint is filed;

(c) The referee shall begin the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay;

(d) The referee may require pre-hearing conferences;

(e) The Parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following:

- (i) Witness lists;
- (ii) Expert witness designations;
- (iii) Expert witness reports;
- (iv) Exhibits;
- (v) Reports of testing or inspections; and

(vi) Briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all Parties to the judicial reference proceeding.

(f) The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense;

(g) A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(h) The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to *California Code of Civil Procedure §632*. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court;

(i) The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding;

(j) The referee may rule on all post-hearing motions in the same manner as a trial judge;

(k) The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court; and

(l) Each Party shall bear its own attorneys' fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract

between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

**12.14. Arbitration of Disputes.** To the extent that the Dispute is not resolved during mediation and cannot be submitted to judicial reference as provided under Judicial Reference above, the entire matter shall proceed as one of binding arbitration governed by the Federal Arbitration Act (9 USC §§1–16) (“Arbitration”). To the extent the rules of procedure set forth herein do not conflict with the Federal Arbitration Act, such rules of procedure shall be the rules of procedure for the Arbitration. JAMS, its successors, or any other entity offering arbitration services agreed to by the Parties shall hear, try and decide all issues of both fact and law and make any required findings of fact and, if applicable, conclusions of law. Notwithstanding the requirements to submit Disputes to Arbitration, if the Party seeking to submit a Dispute to Arbitration chooses, the Dispute may instead, as an alternative to Arbitration, be submitted to the California small claims court subject to the limitations on the jurisdiction of such court. The decision of the small claims court and any small claims appeals court will be final as to the Dispute.

#### **12.14.1 Additional Requirements.**

(a) The procedures specified in this Section pertaining to Arbitration are to be interpreted and enforced as authorized by the Federal Arbitration Act (9 USC §§1–16), which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation and application of those procedures shall conform to Federal court rules interpreting and applying the Federal Arbitration Act. The Complex is constructed of or uses materials and products manufactured throughout the United States which have been shipped to the Complex for installation in the Complex. The shipment of these materials and products across state lines to the Complex causes the products and materials to enter into the stream of interstate commerce and become subject to the Interstate Commerce Clause (Article I, Section VIII of the United States Constitution) and ensuing Federal laws. References to California procedural law shall not be construed as a waiver of any rights of the Parties under the Federal Arbitration Act or the right of the Parties to have the procedures set forth in this Section 12.4.4 interpreted and enforced under the Federal Arbitration Act;

(b) The provisions of this paragraph shall not be amended nor shall other provisions be adopted that purport to supersede it without Declarant’s prior written consent. The Parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to carry out the purposes of this Section;

(c) Any Party wishing to initiate an Arbitration pursuant to this Section shall serve a demand for Arbitration upon the responding Parties and upon JAMS its successor, or to any other entity offering arbitration services agreed to by the parties. Except as otherwise set forth herein, the Arbitration shall be conducted by and in accordance with the rules of JAMS its successors, or to any other entity offering arbitration services agreed to by the Parties;

**(d)** The arbitrator to be appointed shall be employed by JAMS, its successor, or to any other entity offering arbitration services agreed to by the Parties. Except as otherwise set forth herein, the arbitration proceedings shall be conducted by and in accordance with the rules of JAMS or any successor thereto. Except for procedural issues, the proceedings, the ultimate decisions of the arbitrator, and the arbitrator himself shall be subject to and bound by existing California case and statutory law. Should JAMS cease to exist, as such, then all references herein to JAMS shall be deemed to refer to its successor or, if none, to the American Arbitration Association (in which case its commercial arbitration rules shall be used). The Parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to ensure that all necessary and appropriate Persons are included in the proceeding. Declarant shall not be required to participate in the proceeding if all Persons against whom Declarant would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the proceeding;

**(e)** The proceeding shall be conducted by one (1) qualified arbitrator selected in accordance with the rules of JAMS. The term “qualified” shall mean a retired judge who has experience with the laws governing residential real estate development and construction or an attorney who has actively practiced law in California for at least fifteen (15) years and who has experience with the laws governing real estate development and construction;

**(f)** The arbitrator shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. In addition, the arbitrator shall have the power to summarily adjudicate issues of fact or law, including but not limited to the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. The arbitrator shall have the power to grant provisional remedies including preliminary injunctive relief. Before the selection of the arbitrator any Party shall have the right to petition the Superior Court of Stanislaus County for any necessary provisional remedies;

**(g)** Except as limited herein, the Parties shall be entitled to limited discovery consisting of:

- (i)** Witness lists;
- (ii)** Expert witness designations;
- (iii)** Expert witness reports;
- (iv)** Exhibits;
- (v)** Reports of testing or inspections, including but not limited to, destructive or invasive testing;
- (vi)** Arbitration briefs; and

(vii) The deposition, under oath, of any designated experts and two other depositions of their choosing without obtaining the consent of the arbitrator. All other discovery shall be permitted by the arbitrator at his discretion upon a showing of good cause or based on the agreement of the Parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(h) Each Party shall, in good faith, make a full disclosure of all issues and evidence to the other Parties before the hearing. Any evidence or information that the arbitrator determines was unreasonably withheld shall be inadmissible by the party that withheld it. The initiating Party shall be the first to disclose all of the following, in writing, to the other Party and to the arbitrator:

(i) An outline of the issues and its position on each such issue;

(ii) A list of all witnesses it intends to call; and

(iii) Copies of all written reports and other documentary evidence whether or not written or contributed to by its retained experts (collectively the “Outline”). The initiating Party shall submit its Outline to the other Parties and to the arbitrator within thirty (30) days of the final selection of the arbitrator. Each responding Party shall submit its written response as directed by the arbitrator.

(i) The hearing shall be held in Stanislaus County. The arbitrator shall promptly commence the hearing giving due consideration to the complexity of the issues, the number of Parties and necessary discovery and other relevant matters. The hearing shall be conducted as informally as possible. *Evidence Code §1152* shall be applicable for the purpose of excluding from evidence offers, compromises, and settlement proposals, unless the Parties thereto consent to their admission. Attorneys are not required and any Party may elect to be represented by someone other than a licensed attorney. Cost of an interpreter shall be borne by the Party requiring the services of the interpreter in order to be understood by the arbitrator and the expenses of witnesses shall be borne by the Party or Parties producing such witnesses;

(j) The decision of the arbitrator shall be binding on the Parties and if the award of the arbitrator is not paid within sixty (60) days of the award it shall be entered as a judgment in the Stanislaus County Superior Court. The arbitrator shall cause a complete record of all proceedings to be prepared similar to those kept in the Stanislaus County Superior Court, shall try all issues of both fact and law, and shall issue a written statement of decision, such as that described in *Code of Civil Procedure §643* (or its successor), which shall specify the facts and law relied upon in reaching his/her decision within twenty (20) days after the close of testimony; and

(k) The total cost of the proceedings, including the initiation fees and other fees of JAMS and any related costs and fees incurred by JAMS (such as experts and consultants retained by it) shall be reallocated in accordance with the Federal Arbitration Act and supporting case law, as determined by the arbitrator. The arbitrator shall not award attorneys’ fees to any Party, each Party to bear its own attorney’s fees. The arbitrator may award recoverable costs pursuant to California law. This provision does not modify any provision of a



contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and a Declarant Party.

**12.15. Statutes of Limitation.** Nothing under Dispute Resolution above shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

### **ARTICLE 13 DURATION AND AMENDMENT**

**13.1. Duration.** This First Amended Declaration shall continue in full force unless a Declaration of Termination or subsequent amended declaration is recorded by Certificate in accordance with **Section 13.3** below.

**13.2. Amendment.** This First Amended Declaration and any subsequent declarations shall be amended and thereafter recorded if approved by a majority of Owners pursuant to Section 4065 of the California Civil Code.

**13.3. Certificate of Termination.** A Declaration of Termination or amendment becomes effective when a Certificate of Amendment is recorded. The certificate, signed and sworn to by two (2) Association officers, is conclusive evidence that the requisite number of Owners have approved the termination. The Association shall keep the record of all such approvals in its files for at least four (4) years.

### **ARTICLE 14 GENERAL PROVISIONS**

**14.1. Partition.** No Owner shall have the right to partition of the Owner's interest in his Condominium and there shall be no judicial partition of the Complex, or any part thereof.

**14.2. No Public Right or Dedication.** Nothing in this First Amended Declaration is a gift or dedication of all or any part of the Complex to the public, or for any public use.

**14.3. Notices.** Except as otherwise provided in this First Amended Declaration, notice to be given to an Owner must be in writing and may be delivered to the Owner, or a designated representative of such Owner, personally or by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means, at the address provided by such Owner to the Association. Delivery of such notice to one (1) or more co-Owners of an Airspace Unit, to any general partner of a partnership owning the Airspace Unit, or to a manager or managing member of a limited liability company owning an Airspace Unit, constitutes delivery to all co-Owners or such partnership or limited liability company. Delivery of such notice to any officer or agent for the service of process on a corporation constitutes delivery to the corporation. Alternatively, notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to Declarant or the Association, as applicable. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of any meeting of members or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board of Directors, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be

fixed from time to time and circulated to all Owners or sent by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means to such address or telephone number as the Board may establish. All notices to Declarant shall be sent to: Attention: Executive Secretary

Each Owner and Declarant may change its address by written notice to each other given in the manner hereinabove stated.

**14.4. Notice of Emergency Situation.** Each Owner shall be responsible for providing to the Association a telephone number or other means of immediate notification for purposes of contacting such Owner upon the occurrence of an emergency situation in such Owner's Airspace Unit. If the Airspace Unit is leased, the Owner may designate the tenant as such Owner's emergency notification contact, and notice of an emergency situation to such tenant shall be deemed notice to the Owner. Failure to provide valid contact information for emergency notification purposes shall be deemed a waiver of the right to prior notice of the exercise of any rights provided to the Association hereunder upon the occurrence of an emergency situation.

**14.5. Estoppel Certificate.** Each Owner, Declarant and the Association shall, upon the written request of Declarant (for so long as Declarant is an Owner) or any other Owner, issue to the requesting party, or to any prospective Mortgagee or purchaser of such requesting party's Airspace Unit, an estoppel certificate.

**14.5.1 Contents of Certificate.** The estoppel certificate shall state the following:

(a) Whether the party to whom the request has been directed knows of any default under this First Amended Declaration relating to or materially affecting the requesting Owner's Airspace Unit and, if there are known defaults, specifying the nature thereof;

(b) Whether, to the best knowledge of the responding party, this First Amended Declaration has been modified or amended in any respect and, if there are known amendments, specifying the nature thereof; and

(c) Whether, to the best knowledge of the responding party, this First Amended Declaration is, at that time, in full force and effect.

**14.6. Attorneys' Fees; Court Costs.** Subject to compliance with the provisions of **Article 12** of this First Amended Declaration, if any action or proceeding is instituted to enforce or interpret this First Amended Declaration or for damages on account of the breach of this First Amended Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the other party its reasonable attorney's fees and costs and expenses of litigation incurred in such action or proceeding.

**14.7. Real Estate Taxes.** Each Owner shall pay, or cause to be paid, when due, all Real Property or personal property taxes and assessments which may be levied, assessed, or charged by any public authority against the Owner's Airspace Unit or any personal property or Improvements in such Condominium on such Owner's pro rata share of taxes if assessed against the Common Area (Lot 1). If real estate taxes on an Airspace Unit are not separately assessed as of the close of escrow for the sale of an Airspace Unit, the Owner shall take such action as may

be reasonably necessary to obtain separate real estate tax assessment of the Airspace Unit. If all Airspace Units are taxed under a tax bill covering all of the Complex, the Association shall allocate taxes among the Owners and their Airspace Units allocable to each such Airspace Unit's Percentage Interest. At least forty-five (45) days before the delinquency date of any tax installment, the Association shall deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his share of the tax installment and the potential additional charges to the Owner for failure to comply. Each Owner shall pay his share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall pay the taxes on behalf of any Owner who does not pay his share, and shall impose a Compliance Assessment on the Condominium of any delinquent Owner in an amount equal to the sum advanced by the Association pursuant to this Section, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill resulting from the failure of the delinquent Owner to make timely payment of his share of the taxes.

**14.8. Counting Days.** Days shall be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall be excluded. Any act required by this First Amended Declaration to be performed by a certain day shall be timely performed if completed before 5:00 P.M., Pacific Time, on that date. If the day for performance of any obligation under this First Amended Declaration is a Saturday, a Sunday, or a legal holiday, the time for performance of that obligation shall be extended to 5:00 P.M., Pacific Time, on the first following day that is not a Saturday, Sunday, or legal holiday.

**14.9. Exhibits.** All Exhibits described below are incorporated herein by reference and made a part of this First Amended Declaration:

- Exhibit A      Airspace Units Legal Description (Recital A, Page 2)
- Exhibit B      Percentage Interest Schedule (Recital H, Page 2)
- Exhibit C      Association Maintenance (Section 2.1.1(a), Page 12)

**IN WITNESS WHEREOF**, the Declarant has hereunto caused this First Amended Declaration to be executed as of the date first set forth above.

“Declarant”

Downey Park Professional Center,  
a California Limited Liability Company

By \_\_\_\_\_  
Name: \_\_\_\_\_,  
Its Chairperson

By \_\_\_\_\_  
Name: \_\_\_\_\_,  
Its Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Stanislaus )

On November 27, 2017, before me, Carol Jones, a Notary Public, personally appeared Corey R. Acree, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Stanislaus )

On November 27, 2017, before me, Carol Jones, a Notary Public, personally appeared Caroline Hutto, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT A**  
(Airspace Units Legal Descriptions)

**EXHIBIT B**  
(Percentage Interest Schedule)



**EXHIBIT C**  
(Association Maintenance)

**EXHIBIT A**  
(Airspace Units Legal Descriptions)

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-002**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 10.73% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot A as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-001**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

AN UNDIVIDED 10.00% INTEREST IN AND TO LOT 1 IN BLOCK 1111 OF "DOWNEY PARK PROFESSIONAL CENTER CONDOMINIUM", AS PER MAP FILED FOR RECORD SEPTEMBER 20, 1993 IN BOOK 46 OF PARCEL MAPS, AT PAGE 17, STANISLAUS COUNTY RECORDS.

EXCEPTING THEREFROM ALL UNITS OF LOTS, BEING A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P AND Q AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN RECORDED AS PAGES 3 AND 4 OF THE PARCEL MAP ABOVE REFERRED TO.

**PARCEL TWO:**

UNIT OF LOT B AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN REFERRED TO IN PARCEL ONE ABOVE.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-003**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL NO. 1**

AN UNDIVIDED 6.23% INTEREST IN AND LOT 1 IN BLOCK 1111 OF THE DOWNEY PARK PROFESSIONAL CENTER CONDOMINIUM AS PER MAP FILED SEPTEMBER 20, 1993 IN BOOK 46 OF PARCEL MAPS, PAGE 47, STANISLAUS COUNTY RECORDS.

EXCEPTING THEREFROM: ALL UNITS OR LOTS, BEING UNITS A, B, C, D, E, F, G, H, J, K, L, M, N, O, P AND Q AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN RECORDED AS PAGE 3 AND 4 OF THE PARCEL MAP ABOVE REFERED TO.

**PARCEL NO. 2**

LOT C AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN REFERRED TO IN PARCEL NO. 1 ABOVE.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-004**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A CONDOMINIUM COMPRISED OF:

PARCEL ONE:

AN UNDIVIDED 7.68% INTEREST IN AND TO LOT 1 IN BLOCK 1111 OF THE DOWNEY PARK PROFESSIONAL CENTER CONDOMINIUM AS PER MAP FILED SEPTEMBER 20, 1993 IN BOOK 46 OF PARCEL MAPS, PAGE 17, STANISLAUS COUNTY RECORDS.

EXCEPTING THEREFROM: ALL UNITS OR LOTS, BEING UNITS A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P AND Q AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN RECORDED AS PAGES 3 AND 4 OF THE PARCEL MAPS ABOVE REFERRED TO.

PARCEL TWO:

UNIT OR LOT D AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN REFERRED TO IN PARCEL ONE ABOVE.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-005**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 5.37% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot E as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-006**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 5.37% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium" as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P and Q as shown and defined upon the Condominium to Plan Recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot F and an undivided 1/2 interest in Unit or Lot EFC, as shown and defined upon the Condominium Plan referred to in Parcel One above.



**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-007**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 6.57% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot G as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-008**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A CONDOMINIUM COMPRISED OF:

PARCEL ONE:

AN UNDIVIDED 6.89% INTEREST IN AND TO LOT 1 IN BLOCK 1111 OF THE DOWNEY PARK PROFESSIONAL CENTER CONDOMINIUM AS PER MAP FILED SEPTEMBER 20, 1993 IN BOOK 46 OF PARCEL MAPS, PAGE 17, STANISLAUS COUNTY RECORDS. EXCEPTING THEREFROM, ALL UNITS OR LOTS, BEING UNITS A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P AND Q AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN RECORDED AS PAGES 3 AND 4 OF THE PARCEL MAPS ABOVE REFERRED TO.

PARCEL TWO:

UNIT OR LOT H AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN REFERRED TO IN PARCEL ONE ABOVE.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-009**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 7.63% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot J as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-010**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 4.52% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot K as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-011**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 4.63% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot L as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-012**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 4.57% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot M as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-013**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 8.84% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot N as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-014-000**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

AN UNDIVIDED 2.22% INTEREST IN AND TO LOT 1 IN BLOCK 1111 OF "DOWNEY PARK PROFESSIONAL CENTER CONDOMINIUM", AS PER MAP FILED FOR RECORD SEPTEMBER 20, 1993 IN BOOK 46 OF PARCEL MAPS, AT PAGE 17, STANISLAUS COUNTY RECORDS.

EXCEPTING THEREFROM ALL UNITS OF LOTS, BEING A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P AND Q AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN RECORDED AS PAGES 3 AND 4 OF THE PARCEL MAP ABOVE REFERRED TO.

**PARCEL TWO:**

UNIT OF LOT O AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN REFERRED TO IN PARCEL ONE ABOVE.



**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-015-000**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL NO.1

AN UNDIVIDED 3.54% INTEREST IN AND TO LOT 1 IN BLOCK 1111 OF THE DOWNEY PARK PROFESSIONAL CENTER CONDOMINIUM AS PER MAP FILED SEPTEMBER 20, 1993 IN BOOK 46 OF PARCEL MAPS, PAGE 17, STANISLAUS COUNTY RECORDS.

EXCEPTING THEREFROM: ALL UNITS OR LOTS, BEING UNITS A, B, C, D, E, F, G, H, J, K, L, M, N, O, P AND Q AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN RECORDED AS PAGES 3 AND 4 OF THE PARCEL MAP ABOVE REFERRED TO.

PARCEL NO. 2

LOT P AS SHOWN AND DEFINED UPON THE CONDOMINIUM PLAN REFERRED TO IN PARCEL NO.1 ABOVE.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-016**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A condominium comprised of:

**PARCEL ONE:**

An undivided 5.21% interest in and to Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

EXCEPTING THEREFROM all Units or Lots, being Units A, B, C, D, E, EFC, F, G, H, J, K, L, M, N, O, P, and Q as shown and defined upon the Condominium Plan recorded as Pages 3 and 4 of the Parcel Map above referred to.

**PARCEL TWO:**

Unit or Lot Q as shown and defined upon the Condominium Plan referred to in Parcel One above.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-017**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Unit EFC (common area for Units E & F) in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 031-049-018**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 1 in Block 1111 of "The Downey Park Professional Center Condominium", as per map filed September 20, 1993 in Book 46 of Parcel Maps, at Page 17, Stanislaus County Records.

**EXHIBIT B**  
(Percentage Interest Schedule)

## Schedule of Interests

Unit	APN	Owner(s)	Percentage Interest/ Share of CAMS*
A	031-049-002	James M. and Laurel M. Carlson, H&W/CP, 1/3%; Darrel R. Hansen and Betty K. Hansen, Trustees of The Hansen 2005 Revocable Trust, 1/3%; James L. and Joy T. Stanton, H&W/CP, 1/3%	Collectively 11.232%
B	031-049-001	Corey R. Acree and Bonnie M. Acree, Trustees of the C & B Acree Revocable Trust	11.35%
C	031-049-003	Kelly R. Gerber	7.50%
D	031-049-004	Hutto, LLC, California Limited Liability Company	7.19%
E	031-049-005	Lance C. Bautisa, a married man, sole/separate property	4.48%
F	031-049-006	Lance C. Bautisa, a married man, sole/separate property	5.30%
G	031-049-007	Christopher D. Anderson, unmarried man, 1/2% and David Bauman and Lucinda L. Anderson, H&W/CP, 1/2% of an undivided 37.5%; Christopher D. Anderson and Patricia Lloyd, H&W/CP, 1/2% and David Bauman & Lucinda L. Anderson, H&W/CP, 1/2%, of an undivided 62.5%	Collectively 5.25%
H	031-049-008	Keith and Charlotte Brewer, H&W/CP	8.92%
J	031-049-009	Edwin Y. Josephs & Andria Y. Kubo, H&W/JT	6.21%
K	031-049-010	Lisa P. Lang, Trustee of The Lisa P. Lang Family Trust	4.02%
L	031-049-011	H.H.H. Properties, LLC, a California Limited Liability Company	6.14%
M	031-049-012	Kevin Huy Vu, a single man	4.94%
N	031-049-013	Dennis W. Hobby and Caroline Hobby, Trustees of The Hobby 2003 Revocable Trust	7.88%
O	031-049-014	Corey R. Acree and Bonnie M. Acree, Trustees of the C & B Acree Revocable Trust	2.23%
P	031-049-015	Wesley J. Ferguson and Lorinda K. Ferguson, as Trustees of the W & L Ferguson Trust	3.05%
Q	031-049-016	James M. Carlson, married man, sole/separate property, 1/3%; Darrel R. Hansen and Betty K. Hansen, Trustees of The Hansen 2005 Revocable Trust, 1/3%; and Grace Y. Kwon-Hong, Trustee of The Grace Y. Kwon-Hong Trust, 1/3%	Collectively 4.311%
EFC	031-049-017 & 031-049-018	Downey Park Professional Center, Partnership	

\*Subject to Amendment as Ownership Interests Change

**EXHIBIT C**  
(Association Maintenance)

## EXHIBIT C DPPC MAINTENANCE OBLIGATIONS

Maintenance obligations for the DPPC facilities and grounds can be summarized in this way.

The individual suite owner is responsible to maintain and replace everything that is within the exterior walls of their suite including everything below the suite under the floor.

The owners corporately through DPPC are responsible to maintain and replace everything falling outside the walls of the individual suites including the exterior surfaces of each building.

Special Considerations:

1. Since windows, doors and skylights have both an interior and exterior component, the cost of replacement will be shared equally between the individual owner and DPPC. In cases where the suite owners insurance will pay for replacement, DPPC will pay the owners deductible up to \$250.
2. When interior damage is caused by failure of an exterior item the association will pay for repair of the interior damage. For example a roof leak resulting in interior damage would be repaired by DPPC . The suite owner must inform DPPC in a timely manner of any such damage.
3. Since it is impossible to list every possible maintenance issue that will arise, final decisions on maintenance obligations will rest with the board. Disputes between Owners or between any Owner and the Association regarding maintenance shall be resolved in accordance with the enforcement process described in Section 12 of the First Amnended and Restated Declaration Of Protective Restrictions.



