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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
PRESCOTT WHISPERING ROCK SUBDIVISION  
AND THE  
PRESCOTT WHISPERING ROCK COMMERCIAL ASSOCIATION**

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
PRESCOTT WHISPERING ROCK SUBDIVISION**

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**FOR**

**PRESCOTT WHISPERING ROCK SUBDIVISION**

This Declaration of Covenants, Conditions, Restrictions and Easements is executed as of October 17, 2019, by PRESCOTT WHISPERING ROCK, LLC, an Arizona limited liability company ("Declarant"), with reference to the following:

A. At the date this Declaration is Recorded, Declarant is the owner of fee title to the Property, which Declarant intends to be developed as a first class medical center, subject to the provisions of this Declaration.

B. Declarant has divided, or intends to divide, the Property into several Parcels and Common Property, subject to the provisions of this Declaration.

C. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions for the benefit of all Parcels, all Owners and all other Responsible Parties.

D. Banner is under contract to purchase a Parcel of the Property and reserves certain rights, as set forth herein, once it acquires that certain Parcel.

NOW, THEREFORE, subject to the provisions of this Declaration, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following covenants, conditions, restrictions and easements.

**ARTICLE 1**

**DEFINITIONS, PURPOSES, EASEMENTS  
AND DEDICATIONS**

1.1 Definitions. In addition to other terms which are defined elsewhere in this Declaration, the following words shall have the meanings set forth in this Article 1 unless the context otherwise requires:

1.1.1 "ADA" means the Whispering Rock Pre-Annexation and Development Agreement by and between the City and Hojat Askari dated as of September 11, 2019 and Recorded on September 18, 2019 as document number 2018-0048188.

1.1.2 "Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with Banner or Declarant, and shall include, without limitation, an general or limited partnership, limited liability company, limited liability partnership or corporation in which Banner or Declarant (or another Banner or Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.1.3 Reserved.

1.1.4 “Annual Assessments” means the Assessments levied pursuant to Section 4.4.

1.1.5 “Articles of Incorporation” shall mean and refer to the articles of incorporation of the Association as the same may from time to time be duly amended.

1.1.6 “Assessments” means the Annual Assessments and Special Assessments.

1.1.7 “Association” shall mean PRESCOTT WHISPERING ROCK COMMERCIAL ASSOCIATION, an Arizona nonprofit corporation, comprised of the Members of the Association. The Association shall be the entity responsible for, among other things, performing the delegated obligations herein created, collecting and disbursing the assessments and charges hereinafter created, enforcing the covenants and restrictions hereinafter set forth, and maintaining and administering the Common Property.

1.1.8 “Banner” means Banner Health, an Arizona nonprofit corporation.

1.1.9 “Board of Directors” shall mean the Board of Directors of the Association, which shall be comprised of the Delegates as provided in Section 5.1.

1.1.10 “Bylaws” shall mean and refer to the Bylaws of the Association as the same may from time to time be duly amended.

1.1.11 “City” means the City of Prescott, Arizona.

1.1.12 “Committee” means the architectural design review committee established in Article 6.

1.1.13 “Common Expenses” means the actual and estimated expenses of operating, repairing, replacing and maintaining the Common Property and of performing the obligations and responsibilities imposed by this Declaration upon the Association (other than in its capacity solely as an Owner). Common Expenses shall also include any reasonable reserves in such amounts and for such purposes as determined by the Association. Without limiting the generality of the foregoing, but subject to the limitations set forth below in this Subsection 1.1.13, Common Expenses include the costs of the following:

(a) Maintaining and repairing the surfaces of the Common Property in a level, smooth and evenly covered condition with the type of surfacing material and striping originally installed or a substitute which is in all respects equal in quality, use and durability;

(b) Removing all papers, debris, filth and refuse and washing or thoroughly sweeping the Common Property to the extent reasonably necessary to keep the area in a neat, clean and orderly condition, and free of snow and ice;

(c) Maintaining in full force and effect such public liability insurance on the Common Property as required pursuant to Article 9;

(d) Providing security service, or any other service (e.g., traffic control), to keep the Common Property comparable to the common areas of other similar developments in Yavapai County, such as would be undertaken by a prudent property manager consistent with responsible medical campus management practices, taking into account the nature and frequency of security-related occurrences in the Property;

(e) Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines;

(f) Operating, keeping in repair and replacing, when necessary, any artificial lighting facilities which are reasonably required;

(g) Maintaining any perimeter walls in a good condition and state of repair;

(h) Maintaining all landscaped areas and making any replacement of shrubs and other landscaping which is necessary;

(i) Capital alterations, replacements and improvements to the Common Property made by reason of the laws and requirements of any public authorities or the requirements of insurance bodies imposed after the recordation of this Declaration; provided, however, that such costs shall be amortized over the useful life of the alteration, replacement or improvement in accordance with generally accepted accounting principles, consistently applied;

(j) Capital improvements which improve the comfort or amenities available to tenants or other occupants of the Property made with the consent of the Owners or Responsible Parties of a majority of the total gross square footage within Improvements on the Property; provided, however, such costs shall be amortized over the useful life of the improvement in accordance with generally accepted accounting principles, consistently applied; and

(k) All costs and expenses related to the Association's obligations for maintenance of the Common Property according to the Plat and the ADA, including, but not limited to, maintaining the PUE, sewer, slope, NVAE, and sign easements, as defined on the Plat, on Tracts A, B, and C of the Plat.

Notwithstanding the foregoing, the following shall be excluded from Common Expenses:

(a) any principal, interest, points and fees on debt or amortization on any indebtedness secured by, or mortgage or mortgages encumbering, the Property;

(b) costs incurred by the Association with respect to goods and services (including utilities sold and supplied to tenants or occupants of the Property) to the extent that the Association is reimbursed for such costs (other than through payment of Assessments pursuant to this Declaration);

(c) costs incurred by the Association for the repair of damage to the Common Property to the extent that The Association is reimbursed by insurance proceeds;

(d) The cost of any items for which the Association is reimbursed by insurance or otherwise compensated by parties other than tenants or occupants of the Property;

(e) expenses in connection with services or other benefits which are not offered to all Owners or other Responsible Parties or for which one or more tenants or occupants of the Property are charged directly;

(f) The Association's general corporate overhead and general administration expenses;

(g) any compensation paid to clerks, attendants or other persons in commercial concessions operated by the Association;

(h) costs of signs in or on the Property identifying the Owner or other Responsible Party or any tenant or occupant of any portion of the Property to the extent the Association is entitled to reimbursement for such costs;

(i) electrical power costs for which any tenant or occupant directly contracts with the local public service company;

(j) tax penalties incurred as a result of the Association's negligence, inability or unwillingness to make tax payments when due;

(k) all assessments which are not specifically charged to an Owner or Responsible Party, which can be paid by the Association in installments shall be paid by the Association in the maximum number of installments permitted by law and charged as Common Expenses only in the year in which the assessment installment is actually paid;

(l) depreciation on the Association's original investment in the Property;

(m) the cost of acquisition of new land or construction of new buildings except as otherwise expressly provided in this Declaration;

(n) the cost of supervisory personnel above the grade of property manager;

(o) any expense representing an amount paid to a related corporation, entity, or Person which is in excess of the amount which would be paid in the absence of such relationship;

(p) any insurance premium to the extent that the Association is reimbursed by an Owner or other Responsible Party directly;

(q) all costs and expenses associated with the removal and cleanup of hazardous materials, to the extent the same existed on or under the Property prior to the date this Declaration is Recorded;

(r) costs of a capital nature, including, without limitation, capital improvements (except as expressly permitted), capital replacements, capital repairs, capital equipment and capital tools, to the extent not amortized over the reasonably anticipated useful life of such improvements, replacements, repairs, equipment or tools; and all infrastructure improvements in public right-of-ways and not privately held and are dedicated to the City of Prescott or a third-party utility provider; and

(s) Costs of acquiring, insuring, maintaining and/or repairing sculpture, paintings or other objects of art installed in, on or above the Property, provided, however, this exclusion is not intended to extend to fountains or to the maintenance, repair and insurance of artwork located within the Property.

1.1.14 “Common Property” means any and all real property as may be owned from time to time by the Association (or, subject to the limitations set forth in this Section, owned by one or more other Owners) and designated by the Association as being for the benefit of the Owners and other Responsible Parties and their respective tenants, occupants, employees, agents, customers, licensees and invitees, if any, including, but not limited to, Tracts A, B, and C and all drainage easements designated on the Plat, any and all private streets or private roadways, and all structures, fixtures and facilities situated upon, over or under land included within the Common Property, including, but not limited to, all landscaping, sprinkler systems, drains, sidewalks, street lights, gutters, curbs, utility lines, pipes and equipment, and all other similar installments and improvements, but in no event shall any undeveloped Parcel owned by the Association be designated as or deemed to be Common Property. In no event shall any real or personal property owned by any Owner or other Person other than the Association be deemed to be “Common Property” except that, upon completion of the construction of Improvements on a Parcel in accordance with plans approved to the extent required by Article 6, areas outside the building footprint of such Improvements may be deemed Common Property for purposes of this Declaration if both (i) such property is designated as such by the Association, and (ii) such designation is approved by the Owner or other Responsible Party of the applicable Parcel. In no event shall any real or personal property owned by the Association be deemed to be “Common Property” unless so designated by the Association in accordance with this Subsection. Notwithstanding the foregoing to the contrary: (a) the Association shall have the right from time to time as more particularly provided in Section 1.5 below, to withdraw, or cause to be withdrawn, from the Common Property one or more portions thereof and convert such withdrawn portion(s) to one or more Parcels, whereupon any such Parcel(s) so created shall no longer be deemed Common Property for purposes of this Declaration; and (b) the Association shall have the right from time to time as more particularly provided in Section 1.6 below, to convert one or more Parcel(s) or one or more portions thereof (so long as no buildings or other material Improvements other than paving, landscaping and the like are then situated thereon) into Common Property, whereupon the converted Parcel(s) or portion(s) thereof shall no longer be deemed a Parcel or Parcels, or portion thereof, and shall be deemed Common Property for purposes of this Declaration.

1.1.15 “Declarant” means Prescott Whispering Rock, LLC, an Arizona limited liability company, and any Person or Persons to whom all of the Declarant’s rights and obligations under this Declaration (other than those solely as an Owner of one or more Parcels) are expressly assigned by a Recorded instrument (provided, however, that such assignee must be, or concurrently with such assignment must become, an Owner or Responsible Party under this Declaration). The

mere conveyance by Declarant to another Person of fee title to (or other interest in) one or more Parcels shall not, by itself, make such other Person a Declarant under this Declaration.

1.1.16 “Declaration” means this Declaration of Covenants, Conditions, Restrictions and Easements, as amended from time to time.

1.1.17 “Delegates” shall mean and refer to one person appointed by a Member (pursuant to procedures set forth in the Bylaws) to represent the Member with respect to, and to vote on, matters before the Association. If a Member is an Owner of more than one Parcel, the Member shall appoint only one Delegate to represent the Owner with respect to all Parcels owned.

1.1.18 “First Mortgage” means any mortgage or deed of trust which is a first priority lien on fee title to any Parcel, as well as a leasehold mortgage or leasehold deed of trust which is a first priority lien on the lessee’s interest under any lease of an entire Parcel having an initial term (without reference to any possible extension options) of at least twenty (20) years. If a Parcel is subject to such a lease, it would be possible for there to be two First Mortgages relating to such Parcel, one encumbering fee title to such Parcel and the other encumbering the lessee’s interest under such lease.

1.1.19 “First Mortgagee” means the holder, mortgagee or beneficiary of a First Mortgage.

1.1.20 “Hospital” means the hospital facility and related improvements constructed, or to be constructed, by Banner on property located in Prescott, Arizona.

1.1.21 “Improvements” means all land preparation or excavation, all landscaping, buildings, structures, parking areas, fences, walls, hedges, plantings, poles, driveways, signs, glazing or reglazing of exterior windows, stairways, fountains, artistic works, figurines, ornamentation, embellishments, and all other construction which affects the exterior color or appearance of any building or structure. The term “Improvements” specifically includes both original Improvements and all later changes or alterations. It does not, however, include any original Improvements, or any replacement or repair of any part thereof, which do not affect exterior structure, colors or appearances.

1.1.22 “Member” shall mean and refer to each and every person or entity who, alone, or together with another person or entity which is a record title owner of a fee or undivided fee interest in any Parcel; provided, however, the term “Member” shall not include (i) any person or entity holding a lien or security interest in a Parcel as security for the performance of an obligation; or (ii) the Association.

1.1.23 “Owner” means the Person or Persons who individually or collectively hold fee title to any Parcel. Where reference is made in this Declaration to a Parcel “owned by” a Person, such phrase shall be deemed to refer to a Parcel of which that Person is the Owner, as determined pursuant to this Subsection.

1.1.24 “Parcel” means each parcel of land into which the Property is currently divided or is hereafter divided by Declarant, the exact size and dimensions of which shall be

established either by the legal description contained in the original Recorded instrument of conveyance from Declarant to the Owner of said Parcel or by another Recorded map or other instrument referencing this Declaration and specifically designating a portion of the Property as a "Parcel." Notwithstanding the foregoing, Declarant hereby reserves the right, so long as it is an Owner of one or more Parcels, to create additional Parcels by dividing any Parcel then owned by Declarant into one or more parts, said division to be accomplished by the execution, acknowledgement and Recordation by Declarant with the Recorder of a written instrument (including, but not limited to, a map, a plat, or a deed or other instrument of conveyance) accomplishing said purpose. If two or more contiguous parcels are acquired by the same Owner, they shall be treated as one parcel for purposes of this Declaration. The designation by Declarant or the Association of any Common Property shall not be deemed to make such Common Property (or any part thereof) a "Parcel" or "Parcels."

1.1.25 "Permitted Uses" means resort or hotel use with related services and amenities, medical office space use, assisted living, independent living and memory care use with related services and amenities, out-patient clinic use and other related health care uses, and residential uses but shall specifically exclude any Prohibited Uses.

1.1.26 "Person" means a natural person, corporation, partnership, limited liability company, trust or any other legal entity.

1.1.27 "Plat" means the Final Plat of Whispering Rock dated July 10, 2019 and Recorded on July 11, 2019 a document number 2019-0035096.

1.1.28 "Prohibited Uses" means any form of diagnostic imaging services, including, without limitation, nuclear medicine testing, magnetic resonance imaging, CT scanning, mammography, bone densitometry, radiation therapy, linear accelerator procedures/services, inpatient or outpatient birthing services, inpatient surgery or a licensed outpatient surgery center, provision or operation of a laboratory (including, without limitation, a pathology laboratory, a clinical laboratory, or a GI laboratory), dialysis service, any other form of testing for diagnostic or therapeutic services, operation of a health maintenance organization or similar direct care provider, or the provision of medical services, or any facility operated for the provision of any such service, other than the examination, diagnosis, and treatment of patients performed by a physician or other health care professionals under the supervision of a physician, which does not materially compete with services offered by Banner or a Banner Affiliate; provided, that assisted living, independent living or memory care uses with related services and amenities and out-patient clinic use shall not be prohibited and minor surgery (excluding, however, surgical suites), respiratory therapy, physical therapy, clinical, and/or pathology laboratory services, laboratory pick-up stations, x-ray services and other ancillary activities performed for patients of the physician occupying all or a portion of any Improvements on a Parcel shall not be prohibited hereunder so long as such patients were not referred to the physician for the purpose of obtaining such services, and such services are incidental to and a necessary part of the examination and diagnosis by a physician of such patients, and such are merely incidental to the physician's primary medical practice and do not include CT or MRI procedures; provided further that the foregoing Prohibited Uses shall not apply to the Hospital, or related facilities, operated by Banner. Prohibited Uses shall also mean (i) any type of sexually oriented business, including without limitation, massage parlors, modeling studios, tanning salons, bookstores or video sales or rent stores engaged in the sale or rental of sexually explicit materials;

(ii) any establishment engaged in gaming activities, provided that the sale of government sponsored lottery tickets shall not be considered a gaming activity for this purpose; (iii) a healthcare clinic where healthcare services are provided for free (but excluding from this restriction a healthcare clinic whose primary operations are not to provide free healthcare services, but which provides free healthcare services to the extent required by applicable law) unless such clinic is owned and operated by Banner Health or its affiliates; (iv) drug or alcohol treatment facility; (v) tattoo parlor; (vi) head shop or other facility which sells drug paraphernalia, (vii) any dry cleaner (except that a dry cleaner that uses non-toxic chemicals or dry cleaner facility which serves only as a drop off and pick up for customers shall be permitted), (viii) laundromat; (ix) the sale of firearms or ammunition for firearms; (x) pawn shop, flea market, second-hand or surplus store; (xi) junk yard or surplus store; (xii) any mortuary or funeral home; (xiii) any fire or bankruptcy sale, call center or auction house operation; (xiv) a self-storage facility; (xv) bowling alley; (xvi) arcade; (xvii) tavern or bar; (xviii) any night club or discotheque; (xix) any mobile home park or trailer court (except that this provision shall not prohibit the temporary use of construction trailers); or (xx) any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any building).

1.1.29 “Property” means the real property described on Exhibit A, together with all Improvements located thereon, and all real property, together with all Improvements located thereon.

1.1.30 “Record,” “Recorded” or “Recordation” means placing or having placed an instrument of public record with the Recorder.

1.1.31 “Recorder” means the Yavapai County, Arizona Recorder or any successor governmental entity with which documents and instruments affecting title to or the legal condition of real property in and around the location of the Property are required to be recorded, filed, lodged or otherwise placed of public record.

1.1.32 “Responsible Party” means: (a) the Owner of fee title to a Parcel; or, (b) if all of a Parcel is the subject of a lease of an entire Parcel having an initial term (without reference to any possible extension options) of at least twenty (20) years, the Person or Persons who individually or collectively hold the lessee’s interest under such lease. So long as there is no lease with respect to a Parcel which meets the conditions described in clause (b) of the first sentence of this Subsection, the Owner shall be deemed the Responsible Party with respect to that Parcel; during any period when a Parcel is subject to a lease which meets the conditions described in clause (b) of this Subsection, the holder of the lessee’s interest thereunder, and not the Owner, shall be deemed the Responsible Party with respect to that Parcel. However, and subject to the other provisions of this Declaration, whenever a Parcel is subject to such a lease, such that the holder of the lessee’s interest under such lease is the Responsible Party with respect to such Parcel, such Responsible Party shall be initially responsible for all responsibilities, obligations and duties imposed by this Declaration on either the Responsible Party or the Owner of such Parcel, but the Owner of such Parcel shall ultimately be responsible to assure the performance of all such responsibilities, obligations and duties (provided, however, that nothing herein shall be deemed to prevent the Owner and any Responsible Party of a Parcel from agreeing among themselves as to the allocation or performance of such responsibilities, obligations and duties, or from agreeing among themselves as to remedies for the breach of such agreement, but no such agreements among any Owner and Responsible Party of a Parcel affect this Declaration, any other Owners or Responsible Parties of other Parcels, or the remedies available

under this Declaration or otherwise at law or equity for the failure of an Owner or Responsible Party to perform the responsibilities, obligations and duties imposed on them, or either of them, by this Declaration). Where reference is made in this Declaration to a "Responsible Party of a Parcel," such phrase shall be deemed to refer to the Responsible Party who holds the requisite interest under this Subsection in the applicable Parcel.

1.1.33 "Site Plan" means the site plan of the Property attached hereto as Exhibit B, together with any additions or modifications thereto as Declarant or the Association may make in connection with its exercise of any rights given it under Sections 1.5 or 1.6. For purposes of this Declaration, any reference to the Site Plan herein is for subdivision references purpose only and shall no way whatsoever be construed to provide for on-site development obligations of Declarant or the Association or any Owner or Responsible Party.

1.1.34 "Special Assessments" means the Assessments levied pursuant to Section 4.5.

1.2 Purpose. The Property is hereby made subject to the covenants, conditions, restrictions and easements contained in this Declaration, all of which shall be deemed to run with the Property and each and every Parcel, to insure proper use and appropriate development and improvement of the Property so as to do the following: (a) protect the Owners and other Responsible Parties (and their tenants and other occupants) against the improper development and use of the Property or portions thereof; (b) prevent the erection within the Property of Improvements constructed of improper or unsuitable materials or with improper quality or methods of construction; (c) insure adequate and reasonably consistent development of the Property; (d) encourage and insure the erection of attractively designed permanent Improvements appropriately located within the Property to achieve harmonious appearance and function; (e) provide adequate off-street parking; (f) generally promote the welfare and safety of the Owners and other Responsible Parties (and their tenants or other occupants); and (g) otherwise encourage, promote and assure development of the Property as a first class, high quality project for the Permitted Uses.

1.3 Establishment and Reservation of Easements. By the Recordation of this Declaration, the following easements are hereby established, reserved or confirmed on, over, under or across the below-designated areas of the Property:

1.3.1 Access and Use and Enjoyment Easement. There is hereby established, in favor of each Owner and each other Responsible Party and their respective agents, contractors, employees, customers, tenants, licensees and invitees, both: (a) a pedestrian and vehicular access easement over and across any and all private roads and streets now or hereafter constituting a part of the Common Property; and (b) a use and enjoyment easement over and in respect of all of the Common Property (including, without limitation, for the parking of vehicles in parking spaces marked for such purposes);

1.3.2 Drainage Easements. There is hereby established, in favor of each Owner and each other Responsible Party and their respective agents, contractors, employees, customers, tenants, licensees and invitees drainage easements as more particularly described and depicted on the Plat.

1.3.3 Repair and Maintenance Easements. There is hereby established on, over, under and across each and every Parcel in favor of Declarant and the Association and their agents, contractors and employees, an access, repair, maintenance and replacement easement for the purposes of operating, maintaining, repairing and/or replacing the Common Property and otherwise exercising its rights and performing its duties under this Declaration (including, without limitation, its obligations under this Declaration to maintain parking facilities and sites on the Common Property). The easements established by this Subsection 1.3.3 are limited to those portions of a Parcel which constitute Common Property pursuant to this Declaration, and do not and shall not extend to any portion of a Parcel covered by a building or other Improvements other than landscaping, paving, sidewalks or ground level parking areas; and

The easements created or reserved under Subsections 1.3.2 and 1.3.3 shall be established and used in a manner so as not to interfere unreasonably with other Owners' or Responsible Parties' use and enjoyment of their Parcels. The easements created or reserved under Subsection 1.3.2 shall be appurtenant to and shall pass with title to each of the Parcels.

1.4 Dedications. So long as Declarant owns any portion of the Property, Declarant shall have the right, power and authority to dedicate, release, alienate or otherwise transfer to the City (including, without limitation, any assessment district thereof) or any other governmental authority having jurisdiction, but only if acceptable to the City or other governmental authority, all or any portion of: (a) any private road or street from time to time comprising a part of the Common Property and connecting with any public road or street; and (b) any portion of any other part of the Common Property on which Improvements (other than landscaping or other minimal Improvements) may not legally be constructed, in each case for such purposes and upon such terms as Declarant, in its reasonable discretion (subject to the terms, if any, of the aforescribed written approval), shall deem appropriate. Immediately upon such dedication to the City (or other governmental authority having jurisdiction), the portion of the Common Property so dedicated shall be deleted from the Property and the effect of this Declaration.

1.5 Conversion of Common Property to Parcels. Notwithstanding anything in this Declaration to the contrary, Declarant shall have the right (but not the obligation) from time to time to withdraw, or cause to be withdrawn, from the Common Property one or more portions thereof and convert such withdrawn portion(s) to one or more Parcels, whereupon any such Parcel(s) so created shall no longer be deemed Common Property for purposes of this Declaration. In any case where Declarant elects to exercise the right granted in the preceding sentence, Declarant shall Record an instrument (whether in the form of a map, a plat, a deed or other instrument of conveyance, memorandum of conversion or otherwise) specifically identifying the portion(s) of the Common Property being withdrawn and converted to Parcel(s) or portions thereof. Such instrument may designate the effective date of such withdrawal and conversion, but if such instrument does not designate such an effective date, then the applicable withdrawal and conversion shall be deemed effective as of the date such instrument is Recorded. Upon the effective date of any such withdrawal and conversion, the applicable portion(s) of the Common Property shall be deemed no longer to be Common Property (or subject to any easements or other rights granted to Owners, Responsible Parties or others over or with respect to Common Property), but shall be deemed to be a Parcel or Parcels (or portion(s) thereof), and shall otherwise be subject to all applicable provisions of this Declaration (including, without limitation, provisions establishing certain easements over Parcels or portions thereof). In no event shall Declarant

exercise a right under the first sentence of this Section if, as a result, there would be insufficient parking spaces for the Property, as determined in accordance with applicable City ordinances (taking into account applicable variances granted by the City, if any). Further, notwithstanding anything to the foregoing in this Section, Declarant shall not exercise any right under this Section in a manner which would materially and adversely affect access to any Owner's or Responsible Party's building, or the visibility from adjacent public streets of any Owner's or Responsible Party's building or signage, unless such Owner or Responsible Party gives its express written consent thereto.

1.6 Conversion of Parcels to Common Property. Notwithstanding anything in this Declaration to the contrary, Declarant shall have the right (but not the obligation) from time to time to convert one or more Parcel(s) or one or more portions thereof (so long as no buildings or other material Improvements other than paving, landscaping and the like are then situated thereon) into Common Property, whereupon the converted Parcel(s) or portion(s) thereof shall no longer be deemed a Parcel or Parcels, or portion thereof, and shall be deemed Common Property for purposes of this Declaration, provided, however, that no such conversion of any Parcel into Common Property shall be done or effective unless, not later than the effective date of such conversion, all Common Property Improvements thereon (including, without limitation, landscaping, paving, sidewalks and other Improvements to be made available thereon for common use) have been completed. In any case where Declarant elects to exercise the right granted in the preceding sentence, Declarant shall Record an instrument (whether in the form of a map, a plat, a deed or other instrument of conveyance, memorandum of conversion or otherwise) specifically identifying the portion(s) of a Parcel or Parcels being converted to Common Property. Such instrument may designate the effective date of such conversion, but if such instrument does not designate such an effective date, then the applicable conversion shall be deemed effective as of the date such instrument is Recorded. Upon the effective date of any such conversion, the applicable portion(s) of the applicable Parcel or Parcels shall be deemed no longer to be a Parcel or Parcels, or portions thereof, but shall be deemed to be Common Property, and shall otherwise be subject to all applicable provisions of this Declaration (including, without limitation, provisions establishing easements or other rights granted to Owners, Responsible Parties or others over or with respect to Common Property). Further, notwithstanding anything to the foregoing in this Section, Declarant shall not exercise any right under this Section in a manner which would materially and adversely affect access to any Owner's or Responsible Party's building, or the visibility from adjacent public streets of any Owner's or Responsible Party's building or signage, unless such Owner or Responsible Party gives its express written consent thereto. Further, Declarant shall not exercise any right under this Section as a means to convert or transfer the costs of repairing or reconstructing damaged or destroyed Improvements on a Parcel, or of clearing rubble and debris from a Parcel after total destruction of Improvements on a Parcel, from the Owner or other Responsible Party of such Parcel to Common Expenses.

## ARTICLE 2

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION AND DEDICATIONS

2.1 Membership. Each and every Owner shall automatically be a Member of the Association without the necessity of any further action on his part, subject to the terms of this

Declaration, the Articles of Incorporation and the Bylaws. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to any portion of the Property. Ownership of any portion of the Property shall be the sole qualification for being a Member; provided, however a Member's privileges in the Common Property may be regulated or suspended as provided in this Declaration or the Bylaws.

2.2 Transfer. Membership of an Owner in the Association may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of said Owner's interest in all or any part of the Property and then only to the purchaser or assignee as the new Owner thereof. Such membership shall not be severed by the encumbrance by an Owner of all or any part of the Property. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void and of no further force or effect. Any transfer of the fee title to a Parcel shall automatically operate to transfer the membership to the new Owner.

2.3 Voting Rights. The Members of the Association shall be represented before the Association by the Delegates. All voting rights of the Members shall be exercised by the Delegates. Each of the Delegates shall have a vote proportionate to the percentages shown on Exhibit C.

2.4 Quorum, Notice and Voting Requirements.

(a) All meetings that require the action of the Members under this Declaration may be called by any Delegate by written notice given to all Delegates not less than 10 days nor more than 60 days in advance of such meeting and shall set forth the location, time and purpose of such meeting. All meetings shall be held in Prescott, Arizona.

(b) A quorum for all meetings of the Members shall mean the attendance by those Delegates, either in person or by teleconference, entitled to cast at least 51% of votes as provided in Section 2.3.

(c) All matters to be determined by the Members shall be decided by the Delegates holding a majority of the votes (as provided in Section 2.3) represented at a meeting at which a quorum is present, and cumulative voting shall not be permitted.

(d) As an alternative to the procedures set forth in subparagraphs (a) through (c) above, any action required of the Members may be taken by the Delegates without a meeting, by valid written ballot in accordance with Section 33-1250 of Arizona Revised Statutes (or any successor thereto).

### ARTICLE 3

#### GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

3.1 Powers and Duties. The affairs of the Association shall be conducted by the Board of Directors. By accepting appointment as a Delegate, each Delegate automatically accepts election to the Board of Directors of the Association, resulting in the Board of Directors being composed of the Delegates. In addition to the powers and duties enumerated in the Articles of

Incorporation and the Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Board of Directors, for the mutual benefit of the Members of the Association, shall have the following powers and duties:

(a) If, as and when the Board of Directors, in its sole discretion, deems necessary it may take such action to enforce the terms and provisions of this Declaration, the Articles of Incorporation and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel and accounting services, the commencement of legal causes of action, and to enjoin and/or seek legal damages from any Owner for violation of such provisions;

(b) To acquire, maintain and otherwise manage all of the Common Property, public streets required to be maintained by the Town, and all facilities, improvements and landscaping thereon, and all personal property acquired or owned by the Association;

(c) To pay any and all real and personal property taxes and other charges or assessments assessed against the Common Property, unless the same are separately assessed to all or any of the Owners;

(d) To obtain, for the benefit of the Common Property, all water, gas and electric services, refuse collections, landscape maintenance services and other services, which in the opinion of the Board of Directors of the Association shall be necessary or proper;

(e) To make such dedications and grant such easements, licenses, franchises or other rights which in its opinion are necessary for street, right-of-way, utility, sewer, drainage and other similar facilities or video services, cable television services, security services, communication services and other similar services over the Common Property to serve the Property or any part thereof;

(f) To contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board of Directors deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;

(g) To borrow funds to pay costs of operation secured by assignment or pledge of its rights against delinquent Owners to the extent deemed advisable by the Board of Directors;

(h) To enter into contracts for legal and accounting services, maintain one or more bank accounts, and generally, to have the powers necessary or incidental to the operation and management of the Association and the Common Property;

(i) If, as and when the Board of Directors, in its sole discretion, deems necessary it may take action to protect or defend the Common Property or other property of the Association from loss or damage by suit or otherwise;

(j) To sue and defend in any court of law on behalf of the Association;

(k) To establish and maintain a working capital and/or contingency fund in an amount to be reasonably determined by the Board of Directors;

(l) To make available to each Owner and any individual or entity holding a mortgage or deed of trust on any lot, tract or parcel of real estate out of or a part of the Property within 120 days after the end of each fiscal year, an annual report and such annual report shall contain a balance sheet, income statement, statement by sources and uses of funds, auditor's opinion and notes;

(m) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property owned by the Association, and if the proceeds are insufficient to repair damage or replace lost property owned by the Association, to assess the Members in proportionate amounts to cover the deficiency as set forth in Section 4.5 of this Declaration; and

(n) To delegate its powers and duties to committees, officers or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or entity appointed as a manager or managing agent shall be terminable without cause on not more than 30 days written notice by the Association and shall have a term of not more than 1 year with successive 1 year renewal periods upon the mutual agreement of the parties.

#### ARTICLE 4

##### MAINTENANCE OF COMMON PROPERTY; ASSESSMENTS

4.1 Maintenance by Association. Subject to the provisions of this Declaration, the Association shall be responsible for maintaining, operating, repairing and replacing the Common Property, including, without limitation, (i) maintaining, replacing, replanting, repairing, trimming, weeding and otherwise caring for all landscaping situated on the Common Property, (ii) maintaining all parking facilities and sites on the Common Property, and (iii) all maintenance obligations assigned to the property owner's association on the Plat, all costs of which shall be Common Expenses to be borne by the Responsible Parties through payment of Assessments to the Association as provided in this Declaration. All such work shall be done at the direction of the Association. All maintenance for landscaping improvements, drainage improvements, and landscaping irrigation systems in the public right of way shall be completed according to Section 26 of the ADA, and the Association shall enter into maintenance agreements for such landscaping in a form provided by the City. If the Association is not performing its obligations to maintain, operate, repair and replace the Common Property in a manner reasonably satisfactory to Banner, then after ten (10) days written notice, Banner shall have the right (but not the obligation) to perform such maintenance, operation, repair and replacement of the Common Property and the Association must reimburse Banner for all reasonable costs and expenses incurred by Banner.

4.2 Covenants for Assessments. Each Owner or other Responsible Party of a Parcel, by acceptance of a deed or other instrument of ownership transfer, or by executing the lease creating its lessee's interest, for that Parcel (whether or not it shall be so expressed therein), shall be deemed to agree, as a covenant running with the land, to pay to the Association as and when the same shall become due and payable and without demand therefor, any and all Annual Assessments and Special Assessments assessed, fixed or levied against such Parcel (or against such Owner or other

Responsible Party by virtue of its ownership or lessee's interest in such Parcel), in accordance with the remaining provisions of this Article 4.

4.3 Purpose of Assessments. The Annual and Special Assessments shall be fixed, levied, collected and administered by the Association and shall be used exclusively for the operation, repair, maintenance, replacement and improvement of the Common Property, including, but not limited to, the cost of taxes, insurance, labor, equipment, materials, management and maintenance, the establishment of appropriate reserves, and the cost of performing the obligations and responsibilities imposed by this Declaration upon the Association (other than solely as an Owner) (including, without limitation, the cost of fulfilling the Association's obligations under Section 4.1). The Association shall maintain appropriate records of all expenditures of funds and all Assessments, which records shall be open for inspection by any Owner or other Responsible Party during normal business hours upon reasonable notice and at that Owner's or other Responsible Party's cost and expense.

4.4 Annual Assessments. The Association shall determine the amount of each calendar year's Annual Assessment, commencing with the calendar year beginning January 1, 2020, based on its projection of Common Expenses for that calendar year, and shall notify the Owners and other Responsible Parties in writing as to the amount of such Annual Assessment so determined. Said determination shall be final and binding on all Owners and other Responsible Parties. Notwithstanding the foregoing, beginning after the first full calendar year of operation of the Common Property after its initial completion, the Annual Assessment shall not increase from one calendar year (the "Prior Year") to the next calendar year (the "New Year") by more than twenty percent (20 %).

4.5 Special Assessments.

4.5.1 In addition to any Annual Assessments, The Association may, at any time or from time to time, but not more frequently than once in any calendar year (commencing with the calendar year beginning January 1, 2020) levy, subject to approval as hereinafter provided, a Special Assessment, in a specific amount and for a particularly identified purpose or purposes, in order to purchase necessary equipment, facilities or fixtures for the Common Property or in order to defray, in whole or in part, the cost of any construction of any new, or the cost of any alteration, reconstruction, repair or replacement of any existing, capital Improvements upon or within the Common Property, including necessary fixtures or personal property related thereto.

4.6 Notice of Assessments. The Association shall give written notice to each of the Owners and other Responsible Parties of its determination of the amount of Annual Assessments, any Special Assessment: (a) in the case of Annual Assessments, no later than November 1st of any calendar year; and (b) in the case of Special Assessments, no later than fifteen (15) days after its determination.

4.7 Due Dates of Assessments. Annual Assessments under Section 4.4 shall be due and payable on February 1st of each year and shall become delinquent if not paid by the last day of February of each year. The due date(s) of any Special Assessment under Subsection 4.5.1 shall be fixed by the Association in the notice sent to the Owners and other Responsible Parties pursuant to Section 4.6, but in no event shall the initial due date be less than thirty (30) days from the effective

date of that notice. The Association may, in its discretion, require that any Special Assessment under Subsection 4.5.1 be paid in a single lump sum, or may provide the Owners and Responsible Parties the option to pay such Special Assessment in installments, of such number and frequency as the Association may elect (and may include an interest component, at such reasonable annual rate as may be established by The Association, to be paid by any Owner or Responsible Party who exercises such option to pay in installments). A Special Assessment (or installment thereof, if applicable) shall be delinquent if not paid within thirty (30) days after its due date. The Association may, in its discretion, require that any Special Assessment be paid in a single lump sum, or may provide the Owners and Responsible Parties the option to pay such Special Assessment in installments, of such number and frequency as the Association may elect (and may include an interest component, at such reasonable annual rate as may be established by the Association, to be paid by any Owner or Responsible Party who exercises such option to pay in installments. No Owner or Responsible Party shall be entitled to reimbursement from the Association for any Assessments paid to the Association in the event the Owner or Responsible Party sells, transfers or otherwise conveys its interest in that Owner's or Responsible Party's Parcel prior to the end of a calendar year. In that event, the Association shall credit that Owner's or Responsible Party's successor with the amount of Assessments paid for the remaining months of the calendar year after the sale, conveyance or transfer of interest. The Association shall have the right to assess a late charge in the amount of fifteen percent (15%) of the amount due in the event any Owner or Responsible Party fails to make any payment due under this Section 4.7 no later than the date on which the same becomes delinquent and such default shall continue uncured for a period of ten (10) days following the giving of written notice by the Association of the fact of such delinquency. In the case of any Parcel where there is a Responsible Party other than the Owner of that Parcel, if the Responsible Party fails to pay any Assessments or installment(s) thereof on or before the applicable due date(s), the Association shall give written notice thereof to the Owner of that Parcel, and in such instance such Owner shall have a period of ten (10) days following the date the Association gives the Owner such notice within which to pay in full all delinquent Assessments or installments thereof, including applicable late charges or interest thereon pursuant to this Declaration.

#### 4.8 Apportionment of Assessments.

4.8.1 Annual and Special Assessments. Any Annual Assessment or Special Assessment shall be allocated pro rata among the Parcels (including Parcels owned by Declarant) in accordance with the percentages shown on Exhibit C.

4.8.2 Obligation for Payment of Assessments. Although this Declaration provides for the levy and allocation of Assessments against Owners and other Responsible Parties, the Assessments levied against a Parcel shall be the personal and individual debt, jointly and severally, of each Owner of that Parcel. No Owner may exempt itself from personal liability for Assessments, whether by selling, transferring, leasing, abandoning or not using its Parcel or interest therein, by not using or availing itself of the benefits of the Common Property or the services or facilities furnished, provided or maintained by the Association, or otherwise. Any Assessment not paid prior to delinquency shall bear interest at the rate of eighteen percent (18%) per annum on the sum of the amount of the late charge provided for in Section 4.7 and the amount of the Assessment from the due date thereof, together with all costs and expenses of collection (including, without limitation, reasonable attorneys' fees, whether or not legal proceedings are actually instituted), and the Association (acting on behalf of the Owners and other Responsible Parties) shall have the right to

bring suit against the applicable Owner to recover a money judgment for these amounts without foreclosing or waiving the liens provided for in Section 4.10. Nothing in this Declaration shall be deemed to prohibit an Owner of a Parcel and a Responsible Party with respect to such Parcel from agreeing between themselves by contract (i) to the method and manner of allocating responsibility between them for the payment of Annual Assessments and Special Assessments, or any of the foregoing, (ii) to direct payment by the Responsible Party of some or all of such Assessments, or (iii) to such other treatment as between them of any or all of such Assessments, but any such agreement shall be a matter of contract between such Owner and such Responsible Party and shall not affect the personal obligation of such Owner for Assessments as provided herein.

4.9 Assessment Lien and Foreclosure. All Assessments which remain unpaid, together with late charges, interest as provided in this Declaration and the costs of collection (including, without limitation, reasonable attorneys' fees as provided above), as well as any and all other amounts at any time owed by an Owner or other Responsible Party to the Association pursuant to this Declaration shall be a continuing charge and shall constitute and be secured by a separate valid and subsisting lien, which is hereby created and fixed, on the Parcel to which they relate, together with all Improvements thereon, for the benefit of the Association under this Declaration, which lien shall bind such property in the hands of the Owner, the applicable Responsible Party and their respective heirs, devisees, personal representatives, successors and assigns (including, without limitation, the First Mortgagee or any other Person who obtains title to a Parcel as a result of foreclosure, trustee's sale or deed in lieu thereof [hereinafter a "foreclosure"], but only, in the case of a First Mortgagee, where such First Mortgage was Recorded subsequent to the date when the particular Assessment at issue became due and payable). The lien hereby created shall be subordinate and inferior to: (a) all liens for taxes or special assessments levied by any applicable city, county and state governments, or any political subdivision or special district thereof; and (b) all liens securing amounts due or to become due under any First Mortgage Recorded with the Recorder prior to the date payment of the particular Assessments became due and payable; and any foreclosure of any such superior lien (or exercise of any power of sale contained in any such prior First Mortgage or other security instrument) shall cut off and extinguish the liens securing the Annual and Special Assessments which became due and payable prior to the date upon which such foreclosure or sale is completed but no such foreclosure shall free any portion of the Parcel or the Improvements thereon from the lien securing Assessments thereafter becoming due and payable, nor shall the liability of any Owner or other Responsible Party personally obligated to pay any such Annual or Special Assessments which became due prior to such foreclosure be extinguished by any such foreclosure. Further, and notwithstanding anything in this Section to the contrary, no foreclosure of a lien created pursuant to this Section shall terminate: (i) any lease between Declarant, as lessor, and any Responsible Party, as lessee, or (ii) any sublease between any Responsible Party, as sublessor, and any sublessee.

Whenever any Assessment or other amount due from an Owner or other Responsible Party to the Association on behalf of any Parcel or the Improvements thereon is not paid by the date on which the same becomes delinquent, and such default shall continue uncured for a period of thirty (30) days following the giving of written notice by the Association of the fact of such delinquency (subject to the last sentence of Section 4.7), the Association, acting on behalf of the Owners and other Responsible Parties and at Common Expense, may institute and maintain an action at law or in equity against such defaulting Owner or other Responsible Party to enforce collection of such amount or any portion thereof and/or for foreclosure of such lien. All such actions may be instituted

and brought in the name of the Association or any other Person authorized by this Declaration or by law, and the lien may be foreclosed and the Parcel (together with the Improvements thereon) sold in the same manner as a realty mortgage or in any other manner permitted by law for the enforcement or foreclosure of liens against real property. It shall be a condition of any judgments or orders rendered in connection with enforcement or foreclosure of the lien that a purchaser shall take the interest in the Parcel (together with the Improvements thereon) sold subject to this Declaration. In the event the Person who purchases the Parcel at the foreclosure sale (or subsequently redeems the Parcel as permitted by law) is the Person who was the Owner or other Responsible Party of that Parcel at the time the unpaid Assessments were levied (or is an affiliate of such Owner or other Responsible Party), then unless all amounts secured by the lien were paid in connection with such purchase or redemption, the lien shall continue in effect and said lien may be enforced by the Association for the unpaid balance of all amounts that were due prior to the final conclusion of any such foreclosure. Further, notwithstanding any foreclosure of the lien, any Assessments and any other amounts which had accrued as of the time of foreclosure and which remain unpaid after application of any sale proceeds as provided by law shall continue to exist as personal obligations of the defaulting Owner or other Responsible Party of the Parcel to the Association and the Association may use reasonable efforts to collect the same from said Owner or other Responsible Party even after he, she or it is no longer an Owner or other Responsible Party. Any proceeds recovered in connection with the enforcement of the liens created pursuant to this Declaration shall be applied first to restore or reimburse any amounts paid or expended as or from Common Expenses in connection with such enforcement, and thereafter to other debts or obligations secured by the applicable lien(s).

4.10 Suspension of Rights. In addition to all other remedies provided for in this Declaration or at law or in equity, the Association may temporarily suspend the approval rights of an Owner and/or other Responsible Party whose default in the payment of any Assessment or any other amount due to the Association as provided in this Declaration remains uncured for a period of ten (10) days following the giving of written notice by the Association of the fact of such delinquency until such time as all such amounts, together with all applicable late charges in respect thereof and interest thereon and on such late charges, shall have been paid in full.

4.11 Common Property Exempt. All Common Property shall be exempt from the Assessments and liens created herein.

4.12 Maintenance of Records. The Association shall maintain complete and accurate books and records of all Common Expenses. The Association shall maintain books and records of Common Expenses for any given calendar year for a period of not less than three calendar years after the expiration of such calendar year. All such books and records shall be maintained at an office of the Association located in Yavapai County. Upon reasonable notice to the Association, any Owner or other Responsible Party and its representatives shall have the right (exercisable only by an independent certified public accountant who has not been retained to conduct such audit for a contingency fee or other fee based on the Owner's or other Responsible Party's savings or refund) to audit such books and records at any time during normal business hours and the Association shall provide such Owner or other Responsible Party and its representatives with access to such books and records. Within fifteen (15) days after receiving the audit report from its independent certified public accountant, such Owner or other Responsible Party shall provide a full and complete copy thereof to the Association. If such audit discloses that any costs were included in Common

Expenses which should not have been included in Common Expenses pursuant to this Declaration, or that any costs which were included were not properly supported by invoices or other appropriate evidence, then, subject to the Association's right to contest the conclusions of such audit (and to submit the same to arbitration pursuant to Article 10 if the Association and the applicable Owner or other Responsible Party are unable to resolve any such contest between themselves), any resulting overpayments of Common Expenses shall be credited to the obligations of the Owners or other Responsible Parties for payment of Annual Assessments next coming due thereafter. If such audit identifies overpayment or unsupported costs in excess of three percent (3%) of the total Common Expenses for the calendar year being audited, the Association shall pay for the cost of the audit within ten (10) days following the conclusion of such audit; otherwise, the Owner or other Responsible Party shall pay the cost of such audit.

## ARTICLE 5

### PARCEL MAINTENANCE

5.1 Duty of Maintenance. Each Responsible Party shall, at its sole cost and expense, keep such Responsible Party's Parcel (including buildings, private drives, easement areas, grounds and any and all other Improvements thereon) in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements (but subject to Section 4.1). Maintenance requirements shall include, but are not limited to, the following:

5.1.1 all rubbish, trash, garbage, litter, debris, refuse and other waste shall be stored in clean and sanitary waste receptacles and shall be promptly removed from the Parcel;

5.1.2 all exterior lighting and mechanical facilities shall be kept in good working order;

5.1.3 parking areas on the Parcel, if any, shall be striped and any parking areas, private driveways and roads on a Parcel (as distinguished from parking areas, private driveways and roads to be maintained by the Association as part of the Common Property) shall be kept in good repair;

5.1.4 all landscaping on the Parcel shall be properly maintained, replaced, replanted, repaired, trimmed, weeded and otherwise cared for in accordance with applicable industry standards and such additional standards and requirements, if any, as may be adopted by the Committee; and

5.1.5 subject to the provisions of Articles 4, 7 and 8 hereof, all exterior damage to any Improvements shall be promptly repaired and the exterior of all Improvements shall be repainted as needed to maintain a first class appearance of the Improvements.

5.2 Maintenance During Construction. Any construction on or concerning any Parcel by or on behalf of any Responsible Party shall be governed by the following restrictions unless a prior written waiver is obtained from the Committee:

5.2.1 Construction Duration. All construction shall be carried out in an orderly and timely manner. Any construction envisioned to require more than eighteen (18) months for completion shall require the prior written approval of the Committee before commencement of construction and all construction in progress actually requiring more than eighteen (18) months for completion shall require the written approval of the Committee before continuation beyond the eighteen (18) month period is permitted (which approval, in the case of extensions, shall not be unreasonably withheld or delayed if the Responsible Party can demonstrate that completion within the one-year period was not accomplished due to causes over which it had no reasonable control and to which it did not contribute).

5.2.2 Construction Screening. All portions of a Responsible Party's Parcel that are under construction shall be enclosed with a lockable chain link fence, kept in a neat and good condition at all times and locked whenever construction is not actually being performed. Subject to the provisions of Section 7.7, stored building materials shall be appropriately hidden from view to the extent deemed reasonably necessary by the Committee.

5.2.3 Portable Toilets. All portable toilets shall be located as reasonably required by the Committee, and shall be emptied as often as required to ensure the absence of any noxious odors.

5.2.4 Dust. Dust from all construction sites shall be controlled at all times by watering down the construction site. Any sandblasting activities shall be restricted to the water type application. If vehicles entering and leaving the particular site track mud or dust on any private or public streets or roads, the Responsible Party of the Parcel on which or for whose benefit the construction is being performed shall be responsible for maintaining those streets or roads (or causing the same to be maintained) in a clean and dust- and mud-free condition on a daily basis.

5.2.5 Damaged Common Property. All broken sidewalks or cracked or potholed streets or Common Property which are damaged due to the construction process for the development of a Parcel shall be repaired, to the reasonable satisfaction of the Committee, at the sole expense of the Responsible Party of the Parcel on which or for whose benefit the construction is being performed. The damaged property shall be repaired within seven (7) days after such Responsible Party receives notice of such damage. If any damaged property is not completely restored to its pre-damage condition or replaced by substitutes acceptable to the Committee within such seven (7) day period, the Committee may, at its option, cause the damage to be repaired at the expense of the Responsible Party of the Parcel on which or for whose benefit the construction is being performed.

5.2.6 Damaged Utilities. All utilities damaged as a result of any construction being undertaken on or for the benefit of a Parcel shall be repaired immediately and without delay, to the reasonable satisfaction of the Committee, at the sole expense of the Responsible Party of the Parcel on which or for whose benefit the construction is being performed. If any damaged utility is not completely repaired or replaced by substitutes acceptable to the Committee within 24 hours after such Responsible Party receives notice of such damage, the Committee may, at its option, cause the damage to be repaired at the expense of the Responsible Party of the Parcel on which or for whose benefit the construction is being performed.

5.2.7 Damaged Landscaping or Sprinkler Systems. Any landscaping materials or sprinkler systems on an adjacent Parcel or on adjacent Common Property abutting any particular construction project damaged in the course of such construction shall be replaced or repaired, to the reasonable satisfaction of the Committee, at the sole expense of the Responsible Party of the Parcel on which or for whose benefit the construction is being performed. Such damage shall be repaired within two (2) days after such Responsible Party receives notice of such damage. If any damaged landscaping materials or sprinkler systems are not completely repaired or replaced within such two (2) day period, the Committee may, at its option, cause the damage to be repaired at the expense of the Responsible Party of the Parcel on which or for whose benefit the construction is being performed.

5.2.8 Parking. No parking will be permitted on public streets. Construction, delivery and other vehicles operated or utilized in connection with construction activities upon a Parcel shall be parked only upon such Parcel or, with the prior written consent of the Responsible Party of another Parcel, upon such other Parcel.

5.3 Enforcement of Maintenance Duties. If, in the reasonable opinion of the Association, any Responsible Party has failed to observe or perform any of the obligations or duties set forth in Sections 5.1 and 5.2 above, then the Association may give the Responsible Party written notice of such failure, in which event the Responsible Party shall observe or perform the obligation or duty required within ten (10) days after receiving that notice, but if the obligation or duty is one which cannot be performed or observed within ten (10) days, then so long as the Responsible Party commences such performance or observance within said ten (10) day period and thereafter diligently prosecutes such performance or observance to completion to the satisfaction of the Association, then the Association shall not be entitled to exercise its remedies under this Declaration. Without limiting the remedies available to the Association under this Declaration, should any Responsible Party fail to fulfill this obligation or duty within such period, then the Association, through its employees or authorized agents, shall have the right and power to enter onto the Parcel and perform such obligation or duty without liability to any Person for damages for wrongful entry or trespass. Each Responsible Party of any Parcel on which such work is performed shall be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Responsible Party shall fail to reimburse the Association within ten (10) days after receipt from the Association of a written statement describing the work performed and the cost thereof, then such cost shall be a debt of such Responsible Party and shall be secured by the lien against that Responsible Party's Parcel established by Section 4.10. The debt shall bear interest and be subject to the costs as provided for in Section 4.9 and shall be collectible in the same manner as provided for therein. Similarly, the lien referred to herein shall be enforceable as provided in Section 2.10. In the case of any Parcel where there is a Responsible Party other than the Owner of that Parcel, if the Responsible Party fails to timely perform any of the obligations or duties set forth in Sections 5.1 and 5.2 above and does not cure such failure as provided in this Section, the Association shall give written notice thereof to the Owner of that Parcel, and in such instance such Owner shall have a period of ten (10) days following the date the Association gives the Owner such notice within which to fully cure such failure, but if the obligation or duty is one which cannot be performed or observed within ten (10) days, then so long as such Owner commences such performance or observance within said ten (10) day period and thereafter diligently prosecutes such performance or observance to completion to the satisfaction of the Association, then the Association shall not be entitled to exercise its remedies under this Declaration.

5.4 Approvals, Waivers and Variances. It is the intent of this Declaration that the regulation of Parcels as set forth in this Article 5 be strictly adhered to. Notwithstanding that intent, it is recognized that particular circumstances may from time to time and on a case-by-case basis necessitate the waiving or varying of certain of the requirements set forth in this Article 5. Therefore, for good cause shown, the Committee may, in its reasonable, good faith discretion, on a case-by-case basis, waive or vary one or more of the requirements and standards of this Article 5 so long as such waiver or variance does not violate the overall scheme and intent of this Article 5. Any waiver or variance, when granted, shall be final and binding upon all Responsible Parties provided that it is granted in accordance with the provisions of this Section 5.4. The granting of a waiver or variance to one Responsible Party shall not automatically entitle another Responsible Party to the same waiver or variance, it being understood that each request for a waiver or variance shall be treated on its own merits. Further, the granting of a waiver or variance to a Responsible Party shall not automatically entitle that Responsible Party to any subsequent or additional waiver or variance. All approvals, waivers and variances by the Committee shall be in writing and signed by a majority of the members of the Committee and, if requested by the applicant, shall be in recordable form. Any approval, waiver or variance in any form other than as set forth in the immediately preceding sentence shall not be binding on the Committee or Declarant.

5.5 Performance of Responsible Party's Obligations. Nothing in this Declaration shall be construed to prohibit a Responsible Party from contracting with another Person (whether in a lease, occupancy agreement or other contract) for the payment or performance by such other Person of some or all of that Responsible Party's obligations hereunder, but that Responsible Party shall be and remain liable for the payment and performance of all such obligations, notwithstanding such contract or other agreement, and neither Declarant, the Association nor any Responsible Party or other Person having any rights to enforce any of the provisions of this Declaration shall be obligated to seek to enforce such provisions against any Person other than the Responsible Party upon whom or which such obligations are imposed under this Declaration.

## ARTICLE 6

### ARCHITECTURAL AND LANDSCAPING CONTROL

6.1 Committee. The Committee is hereby established to serve as an architectural and landscaping design review committee and otherwise to have the rights and to perform the duties imposed on it in this Declaration. The Committee shall consist of three (3) natural persons who may be (but shall not be required to be) Responsible Parties, affiliates of Responsible Parties, or partners, directors, officers, employees, agents or representatives thereof. The Association shall have sole right, power and authority to appoint, replace and remove the members of the Committee. No member of the Committee shall receive any compensation for his or her services, but any member of the Committee may be reimbursed for reasonable expenses and costs incurred by him or her in carrying out his or her duties. No member of the Committee shall be personally liable to the Responsible Parties, the Association or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake in judgment, negligence or nonfeasance) except for willful or intentional misconduct or fraud. The Association, on behalf of the Owners and other Responsible Parties and as a Common Expense, shall indemnify and hold harmless the members of the Committee, and their respective heirs and legal representatives, against all contractual and other liabilities to others arising out of: (a) acts or

omissions of such members of the Committee; or (b) their status as members of the Committee; provided, however, that such indemnification shall not be applicable where any such act or omission constitutes willful or intentional misconduct or fraud. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, reasonable attorneys' fees and disbursements, amounts of judgments paid and settlement amounts) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such member of the Committee may be involved by virtue of being or having been a member of the Committee; provided, however, that such indemnity shall not be operative with respect to: (i) any matter as to which a member of the Committee shall have finally been adjudged in such action, suit or proceeding to be liable for willful or intentional misconduct or fraud in the performance of his or her duties as such member of the Committee; or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by the Association, there is no reasonable ground for such member of the Committee being adjudged liable for willful or intentional misconduct or fraud in the performance of his or her duties as a member of the Committee.

6.2 Function of the Committee. The Committee shall have the authority and responsibility to administer the policies of the Association with respect to construction and to approve and regulate the design, construction and installation of all Improvements (including, without limitation, landscaping) within the Property so as to assure compliance with the intent and purpose of this Declaration and, under such circumstances as the Committee reasonably deems appropriate, to approve variances in accordance with Sections 5.4, 6.9 and 7.17 of this Declaration. All Improvements (including, without limitation, landscaping) shall be designed, constructed and installed strictly in accordance with the plans and specifications therefor as approved by the Committee and the City in accordance with the standards and procedures hereinafter set forth. Approval of plans and specifications by the Committee shall be based, among other things, on the adequacy of Parcel dimensions, structural design, conformity and harmony of the external design with neighboring structures and Parcels, the relation of finished grades and elevations to neighboring Parcels, conformity to both the specific and general intent of this Declaration and any other relevant City ordinances, regulations or requirements or Committee guidelines. Buildings within the Property shall be designed, constructed and maintained so as to be architecturally and aesthetically harmonious with other buildings the Property and should use at least some common materials and colors so that the buildings within the Property give the appearance of an integrated complex. The Committee shall have the right to employ, at the sole cost and expense of the applying Responsible Party, one or more professional consultants to assist it in discharging its duties. Any decision of the Committee in its areas of responsibility shall be final, conclusive and binding upon all Responsible Parties and their tenants provided it is made in accordance with the provisions of this Declaration. Approval by the Committee of any plans, specifications, applications and other items under this Article 6 shall be in addition to, and not in lieu of or in substitution for, approvals by the City required by applicable statute, ordinance, law, rule or regulation.

6.3 Submission of Plans and Specifications. Preliminary civil engineering and architectural plans and specifications and detailed landscape plans for all proposed Improvements and the package which a Responsible Party intends to submit to the City for review (collectively referred to herein as "plans and specifications") shall first be submitted to the Committee in triplicate and shall include:

6.3.1 a statement regarding the proposed use of the Improvements;

6.3.2 a grading plan showing existing contour grades (in 1-foot contour intervals), finished spot grades, building finished floor elevations, and the location of all proposed and existing Improvements. Existing and finished grades shall be shown at Parcel corners and at corners of proposed Improvements. Parcel drainage provisions, including any storm sewer locations and drainage retention areas, shall be indicated as well as cut and fill details if any changes are to occur in the finished contour at any exterior boundary of the Parcel. All grading and drainage retention provisions shall fully comply with applicable City and other governmental ordinances and regulations as may be in effect from time to time;

6.3.3 a site plan showing the location of all existing and proposed Improvements, including, without limitation, any and all parking areas on the applicable Parcel (with number and size of parking spaces), trash receptacle locations, required fire lanes, site ingress and egress, and the location of all delivery or pick-up doors, entry doors, exterior glass or windows, and any other openings in the buildings;

6.3.4 all exterior elevations, building materials and colors for proposed Improvements;

6.3.5 a detailed list of all waivers or variances requested pursuant to Section 5.4, Section 6.9 or Section 7.16;

6.3.6 detailed landscape plans as required by Section 7.8 showing (among other things) the size, type and location of all plants, trees and other landscaping; and

6.3.7 such other information as may be requested by the Committee in its sole discretion, which may include, without limitation, a boundary survey, an ALTA survey, a drainage study and a tree/plant inventory.

The Committee may, in its reasonable discretion, permit plans and specifications to be submitted in scheduled phases and may, but shall not be required to, give conditional or partial approvals to plans and specifications, but no permitted delay in the submission of plans or specifications and no conditional or partial approval shall in any way obligate the Committee to any subsequent or additional approval, waiver or variance, and no Responsible Party may submit a preliminary plans and specifications package to the City until the Responsible Party has first received Committee approval of those plans and specifications as provided for in Sections 6.4 and 6.6. Materials and applications submitted to the Committee pursuant to this Declaration shall be held in confidence by the Committee and its members, and shall not be disclosed, disseminated or released to any Person who is not a member of the Committee, a consultant or other professional retained or consulted by the Committee in connection with its review of any such materials or applications, other Persons to whom the Committee reasonably deems disclosure to be necessary or appropriate in connection with the fulfillment of the Committee's duties hereunder, legal counsel retained by the Committee or the Association in connection with any actual or potential dispute regarding the Committee's actions, and as otherwise may be required by law or by a court of competent jurisdiction. Materials and applications submitted to the Committee pursuant to this Declaration shall not be used by the

Committee, any of its members, the Association or any other Person (other than the applicant) for any purposes other than those specified in this Article 6.

6.4 Initial Committee Approval. The Committee shall indicate its approval or disapproval of the submitted plans and specifications in the manner set forth in Section 6.6. However, if the Committee fails to either approve or disapprove a Responsible Party's plans and specifications (including resubmission of disapproved plans and specifications) within thirty (30) days after they have been submitted to it (provided that all required information has been submitted), it shall be conclusively deemed that said plans and specifications have been approved, subject, however, to the conditions, covenants, restrictions and reservations contained herein and subject to the Responsible Party's completion of the requirements of Section 6.5. Notwithstanding anything to the contrary contained herein, all plans and specifications attributable for the development of the Hospital to be developed on the Parcel owned by Banner or a Banner Affiliate are subject to Banner's sole discretionary approval.

6.5 Final City and Final Committee Approvals. At such time as a Responsible Party has received or is deemed to have received Committee approval pursuant to Section 6.4, the Responsible Party shall submit the plans and specifications and other required materials to the City for review and approval. To the extent a Responsible Party submits any documents or materials to the City which were not previously provided to the Committee, the Responsible Party shall also provide to the Committee complete copies of such additional documents or materials. In the event the Responsible Party receives City approval, the Responsible Party shall be required to submit evidence of the same to the Committee, together with the conditions, limitations, revisions or stipulations, if any, imposed by the City in connection with its approval. The Committee shall have twenty (20) days after its receipt of same to review the City's conditions, limitations, revisions or stipulations, if any, and to impose, in its reasonable discretion, any additional conditions, limitations, revisions or stipulations which it deems reasonably necessary because of the imposition of the City's conditions, limitations, revisions or stipulations to assure compliance with the intent and purpose of this Declaration. If the Committee fails to notify the Responsible Party of additional conditions, limitations, revisions or stipulations within said twenty (20) days, it shall be conclusively deemed that final approval shall be conditioned solely upon compliance with the City's conditions, limitations, revisions or stipulations. Thereafter, the Responsible Party shall submit working drawings to the Committee consistent with the City's and the Committee's conditions, limitations, revisions or stipulations. The Committee shall approve or disapprove the working drawings in the manner set forth in Section 6.6 within twenty (20) days after receipt thereof. The Committee shall not withhold its approval of the working drawings if they are fully consistent with the City's and the Committee's previously imposed conditions, limitations, revisions or stipulations. Failure of the Committee to approve or disapprove the working drawings within said twenty (20) day period shall constitute final approval thereof, subject to the terms and conditions of this Declaration.

6.6 Form of Committee Approvals. All actions of the Committee, including, without limitation, approval of plans and specifications and the granting of waivers or variances pursuant to Section 6.9, shall be set forth in writing and made and signed by a majority of the members of the Committee. Any approval, waiver or variance in any form other than as set forth in the immediately preceding sentence shall not be binding on the Committee or on the Association (except where an approval is deemed to have been given pursuant to the provisions of Sections 6.4 or 6.5).

6.7 Limitation of Liability. Subject to the provisions of Section 6.1, neither the Association nor the Committee (nor any employees, agents or members of either of them), shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Responsible Party affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications. Further, the design and construction of any Improvement shall be the sole responsibility of the applicable Responsible Party and any recommendation with respect to any plans or specifications or the means or method of construction made by the Committee or any member thereof shall not alter the Responsible Party's responsibility for the safe and proper design and construction of said Improvement; nor shall it give rise to any claim by anyone against the Association or the Committee or any employee, agent or member of either of them for any defect in design or construction of any Improvement.

6.8 Enforcement. No Improvement shall be constructed, erected, placed, altered (by addition, deletion or otherwise), maintained or permitted to remain on any Parcel except in accordance with plans and specifications approved by the Committee and the City. Any Improvement not designed and constructed in accordance with plans and specifications so approved shall conclusively be deemed in violation of this Declaration and shall be removed or corrected by the applicable Responsible Party, at such Responsible Party's expense, to the reasonable satisfaction of the Committee. In addition to any other remedy provided for in this Declaration, the Association, on behalf of the Owners and other Responsible Parties, may bring suit to enjoin the commencement or continuance of construction of any Improvement for which the Committee has not approved plans and specifications and may also bring suit to enjoin the continuance of construction of any Improvement that is not being constructed in accordance with plans and specifications previously approved by the Committee and the City.

6.9 Approvals, Waiver and Variances. It is the intent of this Declaration that the regulation of the Property as set forth in this Article 6 be strictly adhered to. Notwithstanding that intent, particular circumstances may from time to time and on a case-by-case basis necessitate the waiving or varying of certain of the requirements set forth in this Article 6. Therefore, for good cause shown, the Committee may, in its reasonable, good faith discretion, on a case-by-case basis, waive or vary one or more of the requirements and standards of this Article 6 so long as such waiver or variance does not violate the overall scheme and intent of this Article 6. Any waiver or variance, when granted by the Committee, shall be final and binding upon all Responsible Parties provided that it is granted in accordance with the provisions of this Section 6.9. The granting of a waiver or variance to one Responsible Party shall not automatically entitle another Responsible Party to the same waiver or variance; each request for a waiver or variance shall be treated on its own merits. Further, the granting of a waiver or variance to a Responsible Party shall not automatically entitle that Responsible Party to any subsequent or additional waiver or variance. All approvals, waivers and variances by the Committee shall be in writing and made by a majority of the members of the Committee and, if requested by the applicant, shall be in recordable form. Any approval, waiver or variance in any form, other than as set forth in the immediately preceding sentence, shall not be binding on the Committee or the Association (except where an approval is deemed to have been given pursuant to the provisions of Sections 6.4 or 6.5).

6.10 Exemption. In any case where a Responsible Party has a direct lease with Declarant for any portion of the Property, Declarant may, in such direct lease, exempt such Responsible Party

from any or all of the requirements of this Article 6 or modify the requirements as they apply to such Responsible Party, if, in Declarant's judgment, the provisions of such direct lease otherwise provide adequate provisions for review and approval by Declarant, as the lessor under such direct lease, of Improvements to be constructed by the Responsible Party pursuant to such direct lease.

## ARTICLE 7

### REGULATION OF USE AND IMPROVEMENTS WITHIN THE PROPERTY

7.1 Permitted Uses. Subject to the provisions of Sections 7.2 and 7.3, and subject further to such additional restrictions or limitations as may be validly imposed in a Recorded instrument affecting one or more Parcels, the Parcels may be used for the Permitted Uses.

7.2 Prohibited Uses. The following uses of Parcels are also deemed Prohibited Uses:

7.2.1 any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration or pollution, or which constitutes a nuisance or is hazardous by reason of risk of fire or explosion, or injurious to the reputation of any Parcel or Responsible Party; and

7.2.2 any use which is in violation of the laws of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Property.

7.3 Additional Use Limitations. In connection with its sale or lease of any portion of the Property, Declarant may also Record against such portion such additional covenants, conditions, restrictions and easements as Declarant may deem appropriate, in its sole discretion, provided that the same shall be in addition to and not in lieu of the provisions of this Declaration.

7.4 Parking. Parking shall be governed as follows:

7.4.1 No parking shall be permitted on any private street or roadway constituting Common Property or at any place other than on the on-site paved parking spaces;

7.4.2 The location, number, size and surfacing of parking spaces shall conform to applicable City ordinances and regulations in effect from time to time;

7.4.3 All parking areas shall be paved with such materials and to such thicknesses and other specifications as are recognized as a sound civil engineering practice for this use; and

7.4.4 Subject to the exterior lighting provisions contained in Section 7.14, all parking areas shall be illuminated with fixtures approved as to height, type, location and appearance by the Committee in accordance with Article 6, which fixtures and illumination shall be screened from view from the streets and from neighboring residential areas to the extent deemed reasonably desirable by, and using such means and materials reasonably approved by, the Committee in accordance with Article 6, and in conformance with applicable City requirements.

7.4.5 Notwithstanding any provision of this Declaration to the contrary, the Association may, from time to time, and as often as may be reasonably necessary, and without

limitation as to amount, designate certain parking areas as reserved for the use of Owners and/or other Responsible Parties and their respective employees, or for use by handicapped individuals, and may cause such reserved areas to be identified and reserved and may enforce such parking reservations and restrictions in any manner permitted by law. Further, and notwithstanding any provision of this Declaration to the contrary, the Association may, pursuant to one or more separate written agreements with any one or more Owners or other Responsible Parties, (a) designate specified covered parking spaces (the “Designated Covered Parking Spaces”) as being for the exclusive use of one or more specified Owners or other Responsible Parties and their respective employees, sublessees, assignees, licensees and invitees, and (b) on such terms as may be included in such separate written agreement(s), permit the applicable Owner(s) or other Responsible Party(ies) to install signage or otherwise mark such spaces for the exclusive use of the applicable Owner or Responsible Party(ies), but in any such case the Association shall not be responsible for enforcing against any third parties the exclusive parking rights in and to any such designated covered parking spaces of any Owner or other Responsible Party (or their respective employees, sublessees, assignees, licensees or invitees).

7.5 Loading and Receiving Areas. All loading and receiving areas shall be screened from view from public streets by aesthetically pleasing means and materials approved by the Committee in its reasonable discretion in accordance with Article 6.

7.6 Outside Storage. Except during construction, no materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be permitted to be stored on any area exterior to the building without the approval of the Committee. Any permitted outside storage shall be screened from view of adjoining properties and public and private streets by a solid visual barrier so as not to be visible to a person six feet tall standing at ground level on any part of adjacent streets; provided, however, that during construction of Improvements on any Parcel, necessary construction materials and supplies may be stored on the Parcel without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. Except during the construction process, no temporary building or structure shall be erected, installed or maintained on any Parcel (or on any portion of the Common Property) without the prior written approval of the Committee. All temporary structures used for construction purposes must receive prior written approval by the Committee with regard to location and appearances, and must be removed promptly upon completion of construction, and that portion of the Parcel (or applicable portion of the Common Property) from which the same are removed promptly shall be placed in such condition as is otherwise required by this Declaration.

7.7 Solid Waste Containers: Biomedical Waste Disposal. Subject to applicable City ordinances and regulations in effect from time to time which may impose additional or more stringent container requirements, each Parcel shall have a minimum of one (1) commercial size solid waste container. Said commercial waste container shall be maintained in good mechanical condition. All waste containers shall be emptied as often as necessary so as to prevent such container from overflowing and at least once every seven (7) days if such container is used for the deposit of garbage or other putrescible material. All garbage or putrescible material must be bagged or wrapped so as to be air tight before being deposited in the waste containers. When waste containers are in use, lids and doors of such waste containers are to be kept in a closed position at all times except during times when such container is being emptied or filled. Each waste container shall be screened from view from all adjacent property or streets by means of solid masonry walls at least the height of the waste

container. Each Owner and Responsible Party shall comply, and shall cause their respective tenants and occupants to comply, with all professional standards and all applicable federal, state and local laws, regulations orders and ordinances pertaining to the handling and disposal of biomedical waste. The Association and all Owners and Responsible Parties, and their respective tenants and occupants, shall cooperate with each other in taking such reasonable actions as are required to comply with such laws, regulations, orders and ordinances. As used herein, the term “biomedical waste” shall include only those wastes (i) defined by the United States Environmental Protection Agency as infectious waste, and any other wastes identified as infectious or as biohazardous or nonbiohazardous medical waste in any other applicable federal, state, county or municipal laws, rules, regulations or guidelines, and similar and associated wastes and (ii) “chemotherapy waste” (also known as antineoplastic or cytotoxic waste). The term “chemotherapy waste”, as used herein means discarded items which have been contaminated by chemotherapeutic drugs or antineoplastic agents provided that such items, including vials or syringes, shall be empty or nonhazardous as defined in applicable federal, state, county or municipal laws, rules, regulations and guidelines. The term “biomedical waste” specifically excludes (x) fetal remains and human torsos, (y) ignitable, corrosive, reactive, radioactive, toxic wastes and other hazardous wastes subject to hazardous waste generator, transporter or treatment, storage and disposal facility requirements in any applicable federal, state, county or municipal laws, regulations or guidelines, and (z) wastes that by law require handling licensing or treatment methods that differ from requirements for biomedical wastes.

7.8 Landscaping. Subject to applicable ordinances or regulations of the City or other applicable governmental authority in effect from time to time, including but not limited to water conservation and other landscaping ordinances (if any), each Parcel, including portions thereof located within any setback lines or easement areas, shall be landscaped in accordance with landscape plans approved by the Committee in accordance with the provisions of Article 6. Said plan shall include information regarding the scale, type of sodding, seeding, trees, shrubs and plants, and their size and locations. The plan shall provide information regarding landscape treatment for the entire Parcel, including fences, walls, drainage and screening. All plans shall also include an underground sprinkler system. All landscaping required hereunder or otherwise to be provided on any Parcel shall be completed by the Responsible Party of that Parcel, at such Responsible Party’s expense, within sixty (60) days after the substantial completion of construction of the last building on the Parcel in accordance with a plan approved by the Committee in accordance with the provisions of Article 6, which plan may not be altered, amended or revised without the prior written approval of the Committee. If any Responsible Party fails to undertake and complete the required landscaping, the Association may enforce such obligation in accordance with the provisions of Section 5.3. Following completion of the landscaping on a Parcel as required by this Section, to the reasonable satisfaction of the Committee and the Association, the Association shall maintain such landscaping as provided in Section 3.1.

7.9 Signs. No sign (including, but not limited to, a building identification or marketing sign or a tenant identification sign) shall be permitted on any Parcel without the prior written approval of the Committee in accordance with the provisions of Article 6 as to size, number, location, design and color. In no event shall the Committee’s approval of signage hereunder be more restrictive than the signage requirements permitted under applicable law. Normally, such approval will be limited to those signs which: (a) identify the name and business of the occupant, or which give directions, or which offer the premises for sale or for lease; and are not of an unusual size or

shape when compared to the building or buildings, if any, on the Parcel. Any permitted sign shall conform to all other governmental ordinances and regulations applicable thereto.

7.10 Utility Connections. All utility wires, pipes, conduits, facilities, connections and installations (including, without limitation, electrical and telephone) shall be underground. No utility meter or apparatus shall be located on any pole or attached to the outside of any building wall which is exposed to view from any street. All transformers shall be placed on or below the surface of the Parcel.

7.11 Height Restrictions. No building, structure or other Improvement located on the Property shall exceed ninety (90) feet in height above average grade of the Property, provided however, that such Improvements relating to the Hospital and development of Banner or Banner's Affiliates Parcel shall not exceed the greater of (i) one hundred twenty (120) feet in height, or (ii) such other height as approved by the applicable governmental jurisdiction.

7.12 Partition Restrictions. Subject to the provisions included in the definitions of the terms "Parcel" and "Common Property" in Article 1 above, and to the provisions in Sections 1.5 and 1.6 above, the Common Property and each Parcel shall remain undivided and no Responsible Party shall bring any action for partition of the same or of its interest therein, it being agreed that this restriction is necessary to preserve the rights of the Responsible Parties with respect to the operation and management of the Property. Notwithstanding the foregoing, judicial partition of a Parcel owned by two or more Persons is not prohibited hereby so long as the same is effected by means of a sale of the entire Parcel with the partition affecting only a division of the proceeds of such sale.

7.13 On-Site Drainage. No water shall be drained or discharged from any Parcel or building thereon, except in accordance with grading plans approved by the Committee in accordance with the provisions of Article 6 and the City. Further, no Responsible Party shall interfere with the drainage established by the grading plan for the remainder of the Property or any other property adjacent to the Parcel.

7.14 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved by the Committee in accordance with the provisions of Article 6. All materials used for the exterior of the buildings shall be high quality, long-life, low maintenance materials.

7.15 Exterior Lighting. All exterior building lighting shall be hidden from view and shall be designed, installed, directed, altered and maintained in accordance with plans and specifications submitted to and approved by the Committee in accordance with the provisions of Article 6. All exterior lighting shall be compatible and harmonious throughout the Property and shall be in keeping with the specific function and building type being served. All exterior lighting which is a part of the Common Property shall be maintained by The Association as a Common Expense. Notwithstanding anything to the contrary contained herein, due to the lighting requirements required for the operation of a Hospital, the exterior lighting restrictions contained in this Section shall not apply to Banner or Banner's Affiliates Parcel.

7.16 Approvals, Waivers and Variances. It is the intent of this Declaration that the regulation of Parcels (and other portions of the Property) as set forth in this Article 7 be strictly

adhered to. Notwithstanding that intent, it is recognized that particular circumstances may from time to time and on a case-by-case basis necessitate the waiving or varying of certain of the requirements set forth in this Article 7. Therefore, for good cause shown, the Association may, in its reasonable, good faith discretion, on a case-by-case basis, waive or vary one or more of the requirements and standards of this Article so long as such waiver or variance does not violate the overall scheme and intent of this Article 7. Any waiver or variance, when granted, shall be final and binding upon all Responsible Parties provided that it is granted in accordance with the provisions of this Section. The granting of a waiver or variance to one Responsible Party shall not automatically entitle another Responsible Party to the same waiver or variance, it being understood that each request for a waiver or variance shall be treated on its own merits. Further, the granting of a waiver or variance to a Responsible Party shall not automatically entitle that Responsible Party to any subsequent or additional waiver or variance. All approvals, waivers and variances by the Association shall be in writing and, if requested by the applicant, shall be in recordable form. Any approval, waiver or variance in any form other than as set forth in the immediately preceding sentence shall not be binding on the Committee or the Association.

## **ARTICLE 8**

### **RIGHTS OF FIRST MORTGAGEES**

Upon written request to the Association identifying the name and address of the First Mortgagee for any Parcel and the Parcel address, any such First Mortgagee will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Common Property; (b) any delinquency in the payment of Assessments or charges owed or other default in the performance of an obligation under this Declaration by a Responsible Party of a Parcel subject to a First Mortgage held, insured or guaranteed by such First Mortgagee which remains uncured for a period of thirty (30) days; and (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association pursuant to this Declaration. First Mortgagees shall be entitled to cure any default or delinquency which is monetary in nature or which is non-monetary in nature but which can be cured by the payment of money within thirty (30) days of a notice of default or delinquency sent to said First Mortgagee pursuant to this Article 8.

## **ARTICLE 9**

### **INSURANCE; DAMAGE AND DESTRUCTION**

9.1 Partial Destruction of Parcel Improvements. Subject to the other provisions of this Article 9, in the event of any damage to or destruction of any part of the Improvements situated on a Parcel which is non-substantial in nature, the Responsible Party of the affected Improvements shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the provisions of Articles 3 and 4 and the requirements of the City applicable thereto. Each Responsible Party shall have an easement of reasonable access onto any adjacent Parcel for purposes of repair or reconstruction of said Improvements.

9.2 Total Destruction of Parcel Improvements. In the event of any damage to or destruction of all or a material portion of the Improvements situated on a Parcel which is substantial

in nature, the Responsible Party of the affected Improvements shall immediately clear the Parcel of all rubble and debris and restore the surface thereof to, and maintain the same in, a neat, clean, safe and attractive condition. Any Improvements the Responsible Party thereafter desires to construct on such Parcel shall be subject to the provisions of Articles 3 and 4 and the requirements of the City applicable thereto. Each Responsible Party shall have an easement of reasonable access onto any adjacent Parcel for purposes of construction of said Improvements (provided, however, that the easement established by this sentence shall be limited to Common Property portions of adjacent Parcels, and such easement shall be exercised in a manner which does not materially disrupt or interfere with the conduct of business on any such adjacent Parcel, including, without limitation, vehicular and pedestrian access thereto).

9.3 Partial Destruction of Common Property. Subject to the other provisions of this Article 9, in the event of any damage to or destruction of any part of the Common Property which is non-substantial in nature, the Association shall reconstruct or replace the same as soon as reasonably practicable either substantially in accordance with the original plans and specifications therefor or in accordance with alternative plans and specifications proposed by the Association and approved by the Committee. The cost thereof shall be a Common Expense. Any excess insurance proceeds shall be held by the Association to meet Common Expenses (including, without limitation, as operating or capital reserves). In the event the proceeds of the insurance policies maintained by the Association as required by this Declaration are insufficient to repair or replace the damaged or destroyed Common Property Improvements, then the Association may use funds from the general account established by it with respect to the Property or, if necessary, levy a Special Assessment on all Responsible Parties to restore or replace said damaged or destroyed Common Property Improvements. Such use of funds from the general account or levy of a Special Assessment shall not constitute a waiver of the Association's or any Responsible Party's rights to institute any legal proceeding or suit against the Person or Persons responsible, purposely or negligently, for the damage or destruction. The Association shall have an easement of reasonable access onto any adjacent Parcel for the purposes of repairing or reconstructing said damaged or destroyed Common Property.

9.4 Total Destruction of Common Property. In the event the Common Property is totally or substantially damaged or destroyed, the repair, reconstruction or disposition thereof and the disposition of any insurance proceeds shall be as provided by an agreement approved in writing by the Association and by Responsible Parties who, together with Declarant, own in the aggregate not less than fifty-one percent (51%) of all acreage within the Property (other than Common Property).

9.5 Insurance.

9.5.1 Liability Insurance. The Association shall obtain and continue in effect at all times commercial general liability insurance insuring the Association and its agents and employees and the Responsible Parties and their respective employees, agents and invitees against any liability for personal injury, property damage or death arising from the activities of the insured parties with respect to the Common Property or from the ownership thereof, including, without limitation, but only if obtainable, a "cross-liability" endorsement insuring each insured against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one Responsible Party because of the negligence of any other Responsible Party or the Association. Such insurance shall be in amounts deemed appropriate by the Association but shall in

no event provide coverage of less than Five Million Dollars (\$5,000,000) combined single limit for injury to or death of any number of persons or for damage to property of others arising out of any one occurrence, provided, however, that the Association, in its sole and absolute discretion, may provide all or a portion of such coverages through its own captive insurance company. If the Association elects to maintain all or a portion of any liability insurance through its captive insurance company as provided above, then (1) the Association shall provide any Owner or other Responsible with such information as is reasonably requested by such Owner or Responsible Party or any lender holding a lien against the fee title to, or ground lessee's interest in, any portion of the Property, in order for such party to understand the funding and claim process involved with such insurance, (2) the Association shall provide to each Owner and other Responsible Party, on an annual basis, a report (either addressed to or through side letter authorizing each Owner, Responsible Party and lender holding a lien against the fee title to, or ground lessee's interest in, any portion of the Property to rely upon such report), prepared by an independent insurance consultant of recognized good standing, confirming that the Association (or its captive insurance company) is maintaining fully funded accounts, pursuant to appropriate actuarial standards, to cover actuarially determined loss levels as well as incurred but not yet reported losses, (3) the Association's captive insurance company shall have net current assets of at least \$60,000,000 and (4) the Association shall provide written notice to each Owner and other Responsible Party of any claims that require notification to the Association's reinsurers.

9.6 Casualty Insurance. The Association shall obtain and continue in effect at all times a policy of fire and multi-peril extended coverage casualty insurance including a so-called "causes of loss-special form" endorsement, in an amount not less than one hundred percent (100%) of the replacement value of the Common Property (including all Improvements constituting part of the Common Property but excluding land and similar items not generally insured under such policies), including, without limitation, but only if obtainable, a "replacement cost" endorsement providing for the payment of proceeds without deduction for depreciation, a "demolition and cleanup" endorsement providing coverage for the demolition of damaged or destroyed Improvements and the removal of rubbish and debris, an "inflation" endorsement providing for increases in the amount of coverage in accordance with changes in the cost of construction and building materials, a "building code" endorsement providing coverage for increased costs due to building code changes or other changes in requirements of applicable governmental entities and "waiver of subrogation" and "severability of interest" endorsements. Such insurance shall be maintained for the benefit of the Association, the Responsible Parties and all First Mortgagees, as their respective interests may appear. To the extent that "cross-liability," "waiver of subrogation" and "severability of interest" endorsements are obtained, the Association and each of the Responsible Parties hereby waive and release each other from all claims covered by insurance, but only to the extent of insurance proceeds actually collected. The Association, in its sole and absolute discretion, may provide all or a portion of such coverages through its own affiliated property and casualty insurance program. If the Association elects to maintain all or a portion of such insurance through its own affiliated property and casualty insurance program as provided above, then (1) the Association shall provide any Owner or other Responsible with such information as is reasonably requested by such Owner or Responsible Party or any lender holding a lien against the fee title to, or ground lessee's interest in, any portion of the Property, in order for such party to understand the funding and claim process involved with such insurance, (2) the Association shall provide to each Owner and other Responsible Party, on an annual basis, a report (either addressed to or through side letter authorizing each Owner, Responsible Party and lender holding a lien against the fee title to, or

ground lessee's interest in, any portion of the Property to rely upon such report), prepared by an independent insurance consultant of recognized good standing, confirming that the Association (or its captive insurance company) is maintaining fully funded accounts, pursuant to appropriate actuarial standards, to cover actuarially determined loss levels as well as incurred but not yet reported losses, (3) such affiliated property and casualty insurance program, or the entity providing same, shall have net current assets of at least \$60,000,000, and (4) the Association shall provide written notice to each Owner and other Responsible Party of any claims that require notification to the Association's reinsurers.

9.7 Additional Insurance. The Association shall purchase such other insurance relating to the use, occupancy, maintenance, repair and replacement of the Common Property as it may deem necessary, including, without limitation, workers' compensation, disability, and employers' liability insurance (provided, however, that if available the Association shall obtain, in any workers' compensation any employers' liability insurance policies, waivers of subrogation in favor of each Owner and Responsible Party).

9.8 Responsible Parties' Insurance. Every Responsible Party may carry such insurance as it deems appropriate under the circumstances, but shall, at the very minimum (but except as otherwise provided in this Section), obtain and continue in effect (or cause to be obtained and continued in effect) at all times the following types of coverage: (a) commercial general liability insurance in favor of itself and its agents and employees providing coverage against any liability for personal injury, property damage or death arising from the activities of the insured parties or incident to the ownership or use of a Parcel in an amount not less than \$5,000,000.00 combined single limit; (b) workers' compensation and employers' liability insurance; and (c) only if and when applicable, contractor's liability insurance in builders' risk form. All policies of insurance carried by a Responsible Party (or caused by a Responsible Party to be carried hereunder) shall contain, if obtainable: (i) waiver of subrogation endorsements in favor of the Association, each other Responsible Party, and all of their respective agents and employees; (ii) a waiver of co-insurance penalties endorsement based upon additional insurance carried by or for the benefit of said Responsible Party; (iii) an endorsement waiving any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by such Responsible Party; (iv) an endorsement waiving any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by The Association, any Responsible Party or any tenant of any Responsible Party, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (v) an endorsement providing that no such policy shall be cancelled, terminated or allowed to expire by its terms without thirty (30) days' prior written notice to both such Responsible Party's First Mortgagee (if any) and the Association if the Association and such First Mortgagee theretofore shall have filed written requests with the insurer for such notice. To the extent that "cross-liability" and "waiver of subrogation" endorsements are obtained, the Association and each of the Responsible Parties hereby waive and release each other from all claims covered by insurance, but only to the extent of insurance proceeds actually collected. Within thirty (30) days after vesting of title, and thereafter no later than fifteen (15) days prior to expiration, each Responsible Party shall furnish to the Association photocopies of all of its initial and renewal insurance policies, together with proof of payment of all premiums in respect thereof. If any loss intended to be covered by insurance carried by or on behalf of the Association pursuant to this Declaration shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Responsible Party (or caused by any Responsible

Party to be carried hereunder), such Responsible Party shall assign the proceeds of such insurance to The Association to the extent of such reduction, for application by the Association to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, the Association may, in its sole discretion, from time to time agree in writing with any Responsible Party to vary or modify the amounts and types of coverages which such Responsible Party is required to maintain, and in such case such Responsible Party shall not be deemed to be in breach or violation of this Section.

9.9 Adjustment of Coverage; Premiums. With respect to all insurance carried by the Association pursuant to Sections 9.5 and 9.6, the Association shall review the same at least annually for the purpose of adjusting the amounts and types of coverage in light of past experience and reasonably anticipated changes in economic conditions. All premiums for insurance coverage required by this Declaration to be obtained by the Association and for any other insurance deemed necessary by the Association shall be Common Expenses to be included in the Annual Assessments. If the Association elects pursuant to Section 9.5 to provide some or all of the insurance coverages required to be maintained by the Association through its own captive insurance company or its own or affiliated property and casualty insurance program, the amounts charged hereunder as Common Expenses for the costs or “premiums” for such coverages shall be in an amount equal to what a reputable, independent third-party commercial insurance company would charge for such coverages, as reasonably determined by the Association (including the cost, as reasonably determined by the Association, of providing “zero-dollar” coverage with no deductible or retention).

9.10 Adjustment of Loss; Collection of Proceeds. With respect to all insurance carried by The Association pursuant to Sections 9.5 and 9.6, the Association shall have full power and authority to make claims, conduct settlement negotiations, receive and give receipts for proceeds and bring suit to enforce the provisions of such policies or for breach thereof or otherwise.

9.11 Exculpation. Except as may be specifically provided to the contrary in any other provision of this Declaration, neither the Association nor any officer, director, employee or agent thereof shall be liable to any Responsible Party or any employee or agent thereof for any risk not capable of being covered by insurance obtainable in the ordinary course of business or for any amounts in excess of the insurance actually obtained by the Association pursuant to this Declaration, but this exculpation shall be of no force and effect unless the Association shall have obtained written statements, dated within thirty (30) days after the occurrence of the loss or risk, from at least three (3) independent professional insurance agents attesting, as at the date of such statements, to the unavailability (or reasonableness of amount, or both, as applicable) of such insurance coverage.

9.12 Responsible Parties’ Cross-Indemnification. Each Responsible Party shall indemnify, hold harmless and defend by counsel of its choice (but reasonably acceptable to the indemnified party[ies]) each and every other Responsible Party from and against any and all claims, losses, judgments, liabilities and expense (including, without limitation, attorneys’ fees and disbursements) arising out of or in connection with the occurrence of any death, personal injury or property damage on its Parcel, but such indemnification and agreement to defend shall not apply to the extent the death, personal injury or property damage occurred as the result of, or if such occurrence was contributed to by, the negligence or other tortious conduct of the Responsible Party which would otherwise have been indemnified or of its partners, directors, officers, shareholders, employees, agents, contractors or representatives.

9.13 Damage Caused by Responsible Party. Subject to the waiver of subrogation provisions of Subsection 9.5.2 above, each Responsible Party shall be liable to the Association for any damage to Common Property (or to any other property maintained by the Association pursuant to this Declaration) which is not fully reimbursed to the Association by insurance if the damage is sustained because of the negligence, willful misconduct or other tortious behavior of such Responsible Party or of its agents, contractors, employees, licensees or invitees or of any other Person deriving its right and easement of use and enjoyment of the Common Property (or other portion of the Property) from such Responsible Party or because of the unauthorized or improper construction, installation, operation, maintenance, repair or replacement by such Responsible Party or its agents, contractors, employees or representatives, or by any other Person deriving its right and easement of use and enjoyment of the Common Property (or other portion of the Property) from such Responsible Party, of any Improvements or personal property on its Parcel. Moreover, in the event that premiums for insurance carried by the Association pursuant to Sections 9.5 or 9.6 are increased on account of any such occurrence, the Association shall have the right to levy against such Responsible Party alone an assessment equal to one hundred percent (100%) of the increase in insurance premiums directly attributable to such occurrence for that year and any subsequent years.

## ARTICLE 10

### CONDEMNATION

10.1 Condemnation of Common Property. Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Common Property is to be taken by any governmental entity by exercise of the power of condemnation or eminent domain, all Responsible Parties (and all First Mortgagees who shall have made written request for such notice pursuant to Article 8) shall be immediately notified by the Association thereof. the Association shall represent the Responsible Parties in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Common Property, and every Responsible Party appoints the Association as its attorney-in-fact, coupled with an interest, for this purpose. The entire award made as compensation for such taking of Common Property, including, but not limited to, any amount awarded as severance damages, or the entire amount received in settlement in lieu of such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but not limited to, attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the "Award"), shall be paid to the Association, acting as trustee for the use and benefit of the Responsible Parties and their First Mortgagees as their interests may appear. The Association shall, in the case where not all of the Common Property is taken, cause the Award to be utilized for the purpose of repairing and/or restoring the remaining portions of the Common Property but not necessarily to the same condition or in the same fashion as existed prior to the taking. In the event of a total taking of the Common Property, the Declaration shall be amended to reflect such taking. In the event that any excess Award is received in respect of a taking, the Association shall propose the method of division thereof among the Responsible Parties. In the event any Responsible Party disagrees with the proposed allocation, such Responsible Party may have the matter submitted to and determined by arbitration in accordance with the provisions of Article 12.

10.2 Condemnation of Parcels. Any Responsible Party who receives a notice of intention or notice of proceedings whereby all or any portion of its Parcel is to be taken by any governmental

entity by exercise of the power of condemnation or eminent domain shall immediately advise the Association thereof. The Responsible Party shall, in the case of a non-total taking of its Parcel, promptly repair and/or restore the remaining portion of its Parcel, but not necessarily to the same condition or in the same fashion as existed prior to the taking. In the event of a total taking of a Parcel (*i.e.*, a taking either of all or so substantial a portion of the Parcels that the Responsible Party can no longer use the remainder for the conduct of its business on that Parcel), the provisions of Section 9.2 shall be applicable. In the event of a total taking of more than one Parcel, the aforesaid provisions shall be applicable to the total taking of each Parcel; provided, however, that if more than fifty percent (50%) of the acreage of the Property (exclusive of Common Property and areas previously dedicated for public use and accepted by a governmental entity) is totally taken, then the Declaration shall be amended to reflect such taking.

## ARTICLE 11

### ENFORCEMENT OF COVENANTS AND ASSIGNMENT OF THE ASSOCIATION'S RIGHTS AND DUTIES

11.1 Abatement and Suit. The conditions, covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of the Association and each of the Responsible Parties. Violation of any condition, covenant or restriction herein contained shall give the Association through its authorized agent or agents, the right, following the expiration of the applicable periods of notice and cure provided for elsewhere in this Declaration (except in the case of emergencies, in which event no notice or cure period need be afforded), to enter upon the portion of the Property wherein said violation or breach exists and to summarily abate and remove at the expense of the Responsible Party any structure, thing or condition that may be or exist thereon in violation or breach of this Declaration, or to institute a proceeding at law or in equity against the Person or Persons who have violated or are attempting to violate any of these conditions, covenants and restrictions, to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover actual damages (but not consequential, speculative, special or punitive damages) for said violation. Notwithstanding the foregoing, the conditions, covenants and restrictions of this Declaration may be enforced, except as otherwise specifically provided for in this Declaration, only by the Association, but if a Responsible Party notifies the Association of a claimed violation of these conditions, covenants and restrictions by another Responsible Party (including, without limitation, the Association or any of its affiliates) and the Association fails to act within sixty (60) days after receipt of such notification, then, and in that event only, a Responsible Party may separately, at its own sole cost and expense (subject to any right or ability such Responsible Party may have to recover any or all of such costs and expenses from the violating Responsible Party), enforce the conditions, covenants and restrictions herein contained.

11.2 Deemed to Constitute Nuisance. Every violation of this Declaration or any part thereof is hereby declared to be and shall constitute a nuisance, and every public or private remedy allowed therefor by law or in equity against a Responsible Party, tenant or occupant shall be applicable against every such violation and may be exercised by the same Persons and under the same conditions as is provided for the exercise of the remedies set forth in Section 11.1.

11.3 Attorneys' Fees. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision thereof, the losing party or parties shall pay

all reasonable costs and attorneys' fees of the prevailing party or parties incurred in connection with such proceeding or otherwise in attempting to enforce this Declaration or restrain a violation hereof, including, but not limited to all costs allowed by applicable statute, food, travel and lodging expenses for all witnesses, expert witness fees and other expert witness costs and expenses, reasonable attorneys' fees, and any and all other costs and expenses reasonably incurred in connection therewith.

11.4 Remedies Cumulative. All remedies provided for herein, or at law or in equity, shall be cumulative and not exclusive. The failure of any party given enforcement powers by Section 11.1 to enforce any of the conditions, covenants and restrictions herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other conditions, covenants and restrictions and none of such parties shall be liable for such failure to enforce.

11.5 Certificate of Compliance. Upon payment of a reasonable fee as established from time to time by the Association, and upon written request of any Responsible Party, tenant, mortgagee, prospective Responsible Party, prospective tenant or prospective mortgagee of a Parcel, the Association shall execute, acknowledge and deliver a certificate in recordable form setting forth the amounts of unpaid Assessments, if any, against that Parcel and generally whether or not said Responsible Party is in violation of any of the terms and conditions of this Declaration. Said written statement shall be conclusive upon the Association in favor of the Persons who rely thereon in good faith. Such statement shall be furnished by the Association within a reasonable time, but not to exceed fifteen (15) business days, from the receipt of a written request for such certificate. In the event the Association fails to furnish such certificate within said fifteen (15) business day period, it shall be conclusively presumed that there are no unpaid Assessments relating to the Parcel as to which the request was made and that said Parcel and Responsible Party are in conformance with all of the terms and conditions of this Declaration.

11.6 Assignment of Declarant's Rights and Duties. Any or all of the rights and obligations of Declarant herein contained may be assigned by Declarant to any Person which agrees to assume any or all of the duties of Declarant hereunder which are being assigned (provided, however, that such assignee must be, or concurrently with such assignment must become, an Owner or Responsible Party under this Declaration). To be effective, any permitted assignment must be in writing and specifically refer to the rights and obligations of the Declarant hereunder which are being assigned. Upon acceptance of such assignment by any such Person, said assignee shall assume the assigned duties and obligations hereunder and shall have the assigned rights and powers hereunder. Upon any such assignment, Declarant shall be relieved of the assigned rights and powers and shall be released from the assigned liabilities, obligations and duties hereunder thereafter accruing. Anything else contained in this Declaration to the contrary notwithstanding, the mere conveyance or transfer of ownership of or other interest in a Parcel within the Property by Declarant to any third party, whether by deed or other instrument of conveyance, shall in no way convey any right or obligation of Declarant hereunder except as otherwise expressly provided in such deed or other instrument of conveyance or transfer, other than the rights and obligations of Declarant hereunder as the Responsible Party of said Parcel.

## ARTICLE 12

### ARBITRATION

12.1 Arbitrable Matters. Whenever it is expressly provided for in this Declaration, but only in such event, that any question, disagreement, difference or controversy (individually or collectively, a “Dispute”) between or among two or more Responsible Parties arising out of or relating to this Declaration or to a breach thereof shall be submitted to and/or determined by arbitration, such arbitration shall be conducted in accordance with the remaining provisions of this Article 12.

12.2 Governing Rules. Except as specifically may be provided to the contrary in this Article 12, all arbitration shall be conducted in Yavapai County, Arizona in accordance with the rules of the American Arbitration Association (or any organization successor thereto) then in full force and effect, but in the event of any conflict or inconsistency between the provisions of this Declaration and the then current rules of the American Arbitration Association (or any organization successor thereto), the provisions of this Declaration shall govern and be controlling. The arbitrators (or the sole arbitrator as provided below) shall render their decision or award, upon the concurrence of at least two (2) of their number (except as otherwise provided in Section 12.3), within thirty (30) days after the appointment of the third arbitrator. In rendering any award or decision, the arbitrators (or the sole arbitrator as below provided) shall not have any power to and shall not add to, subtract from, deviate from or otherwise modify any of the provisions of this Declaration. The decision or award rendered by the arbitrator(s) shall be conclusive upon the parties and final and non-appealable judgment thereupon may be entered in accordance with applicable law in any court having jurisdiction thereof. Reasonable costs, expenses and fees (including, without limitation, attorneys’ fees) of the prevailing party in such arbitration shall be assessed against the non-prevailing party by the arbitrators (or the sole arbitrator as provided below) as part of the decision or award. The arbitrators or arbitrator, as the case may be, shall be required to give written notice to the parties stating their, his or her determination, and shall furnish to each party a signed copy of such determination. Pending resolution of any Dispute between the Association and a Responsible Party, the Responsible Party shall make all payments to the Association alleged to be due and payable based upon the Association’s billings and determinations and otherwise shall comply with the Association’s other reasonable requirements, but if it is determined that said Responsible Party shall have overpaid, any such overpayment shall be promptly refunded by the Association together with interest thereon at the rate of ten percent (10%) per annum from the date of payment until the date of refund.

12.3 Notice of Arbitration. If a Dispute is permitted to be submitted to and determined by arbitration in accordance with the provisions of Section 12.1 hereof, then the party desiring to initiate the arbitration process shall give written notice (“Notice”) to that effect to the other party and shall, in such Notice, appoint a disinterested person as arbitrator on its behalf. Within ten (10) days after the giving of said Notice, the other party (by Notice to the initiating party) shall appoint a second disinterested person as arbitrator on its behalf. Within ten (10) days after the giving of Notice appointing the second arbitrator, the two arbitrators thus appointed shall appoint a third disinterested Person, and such three arbitrators shall as promptly as possible collectively determine such matter, but: (a) if the second arbitrator is not appointed as provided above, the first arbitrator alone shall proceed to determine the matter; and (b) if the two arbitrators appointed by the parties are unable to

agree, within ten (10) days after the Notice of appointment of the second arbitrator, upon the appointment of a third arbitrator, they shall give Notice of that fact to the parties and, if the parties fail to agree upon a third arbitrator within ten (10) days thereafter, then, within five (5) days thereafter, either of the parties, upon Notice to the other party, may request such appointment by the American Arbitration Association (or any organization successor thereto) or, in such organization's absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator. The initial Notice shall be made in all cases within a reasonable time after the Dispute in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based upon such Dispute would be barred by the applicable statute of limitations.

12.4 Qualifications of Arbitrator(s). Each arbitrator shall be a fit and impartial natural person who shall: (a) be unrelated to any party, any Affiliate of any party, or any of their respective officers, directors, shareholders or partners; (b) have had at least five (5) years experience in the Yavapai County, Arizona in a calling connected with the matter in dispute; and (c) be generally knowledgeable in the area of commercial real property.

12.5 Evidentiary Considerations. Each party shall be entitled to obtain discovery from the other party with respect to all matters relevant or potentially relevant to the Dispute without regard to the discovery rules set forth in the Arizona or Federal Rules of Civil Procedure. Each party shall be entitled to present evidence to the arbitrators, without regard to the provisions of the Arizona or Federal Rules of Evidence, and shall be entitled to submit written (or, if requested by ten (10) days' advance written notice to the other party and to the arbitrator(s), make oral) arguments to the arbitrator(s).

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

13.1 Term. This Declaration, every provision hereof and every covenant, condition and restriction contained herein, as the same may be amended from time to time as provided in this Declaration, shall continue in full force and effect for a term beginning on the date this Declaration is Recorded and continuing through and including the last day of December of the year which includes the ninety-ninth (99) anniversary of the date this Declaration is Recorded, and shall be automatically extended for successive periods of ten (10) years, unless earlier terminated as provided in Section 13.2.

13.2 Amendments. This Declaration may be amended, modified, revoked, rescinded or otherwise revised at any time and from time to time during the initial term and during any extension thereof pursuant to Section 13.1, but only with the express written approval of Owners holding at least seventy-five percent (75%) of the aggregate total of acreage within the Property (other than Common Property); however, no such amendment, modification, revocation, rescission or any other revision shall be effective without the written approval of Declarant for so long as Declarant is the Owner of any portion of the Property.

13.3 Notices. All notices, consents, approvals or other communications required or permitted to be given under this Declaration shall be in writing and shall be considered properly given or made: (a) seventy-two (72) hours after being mailed from within the United States by first

class United States mail, certified mail, return receipt requested, postage prepaid and addressed to the Person for whom it is intended at the address of said Person as set forth below, whether actually received or not; or (b) when actually received by the Person to whom it is addressed if given in any other manner. The mailing address for a Responsible Party shall be the address given by such Person to Declarant or, if no such address is given, the address of such Responsible Party as shown on the tax rolls of the governmental entity having taxing authority over the Parcel. The mailing address for Declarant is: 3124 Willow Creek Road, Prescott, Arizona 86301, Attention: Hojat Askari, M.D. Declarant and each Responsible Party may change its respective address for the receipt of future notices, approvals or other communications by giving notice in the manner specified in the first sentence of this Section: (a) to each Responsible Party (other than Declarant), in the case of a change in Declarant's address; and (b) to Declarant in the case of a change in address at any time of a Responsible Party (other than Declarant).

13.4 Parties Bound. Subject to the provisions of Section 13.6, the terms and provisions contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Responsible Parties and their respective heirs, successors, personal representatives and assigns. Notwithstanding the foregoing, upon the sale of a Parcel, the Responsible Party of said Parcel shall not have any further liability for any obligations which shall accrue against that Parcel after the date of the conveyance, but nothing in this Section shall be construed so as to relieve a Responsible Party of any Parcel from any liabilities or obligations incurred pursuant to this Declaration prior to such sale.

13.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

13.6 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

13.7 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

13.8 Laws, Ordinances and Regulations.

13.8.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Responsible Parties and other Persons to obtain the approval of Declarant, the Association or the Committee with respect to certain actions are independent of the obligation of the Responsible Parties and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve a Responsible Party or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

13.8.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared

to be in violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

13.9 References to this Declaration in Deeds. Deeds to and instruments affecting any Parcel or any other part of the Property may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

13.10 Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

13.11 Captions and Titles; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

13.12 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Property, nor shall any Responsible Party sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Responsible Party's interest in the Common Property or any funds or other assets of held or maintained by the Association under this Declaration except in connection with the sale, conveyance or hypothecation of such Responsible Party's Parcel (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit Declarant or the Association from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property, subject to the other provisions of this Declaration.

13.13 Property Held in Trust. Except as otherwise expressly provided in this Declaration, any and all portions of the Property which are now or hereafter held in a trust (or similar means of holding title to property), the beneficiary of which trust is Declarant or a Declarant Affiliate shall be deemed for all purposes under this Declaration to be owned by Declarant or a Declarant Affiliate, as applicable, and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by the Declarant or such Declarant Affiliate, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by Declarant or such Declarant Affiliate to any such trust (or the trustee thereof) or to Declarant or such Declarant Affiliate by any such trust (or the trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

13.14 Number of Days. In computing the number of days for purposes of any provision of this Declaration, all days shall be counted including Saturdays, Sundays and holidays, but if the final

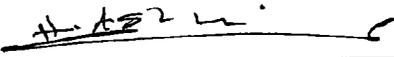
day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

13.15 Notice of Violation. The Association or Declarant shall have the right to Record a written notice of a violation by any Responsible Party of any restriction or provision of this Declaration. The notice shall be executed and acknowledged by Declarant or the Association and shall contain substantially the following information: (a) the name of the Responsible Party; (b) the legal description of the Parcel against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by Declarant or the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Responsible Party to cure the violation. Recordation of a notice of violation shall serve as a notice to the Responsible Party, and to any subsequent purchaser of the Parcel, that there is such a violation. If, after the Recordation of such notice, it is determined by Declarant or the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, Declarant or the Association shall Record a notice of compliance which shall state the legal description of the Parcel against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by Declarant or the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

13.16 Interest Limitation. Notwithstanding any other provision of this Declaration, no interest shall at any time accrue or be levied, assessed, charged or imposed at a rate which is greater than that which parties are permitted by applicable law at the time in question to agree to by contract. In the event this Declaration provides for interest at a rate in excess of such permitted rate, the rate specified in this Declaration shall, ipso facto, be deemed reduced to such permitted rate. To the extent that any Person actually pays interest hereunder at a rate in excess of such permitted rate, the Person to whom such interest was paid shall promptly upon demand refund the portion of such interest in excess of that permitted by law.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first set forth above.

PRESCOTT WHISPERING ROCK, LLC, an  
Arizona limited liability company

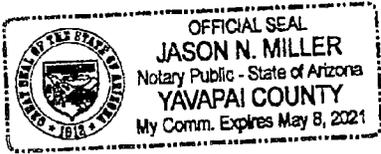
By:   
Name: Hojat Askari  
Its: Managing Member

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF YAVAPAI    )

The foregoing instrument was acknowledged before me this 17th day of October, 2019, by Hojat Askari, Managing Member of Prescott Whispering Rock, LLC, who acknowledged executing the foregoing instrument on behalf of the company for the purposes therein contained.

  
Notary Public

My Commission Expires:

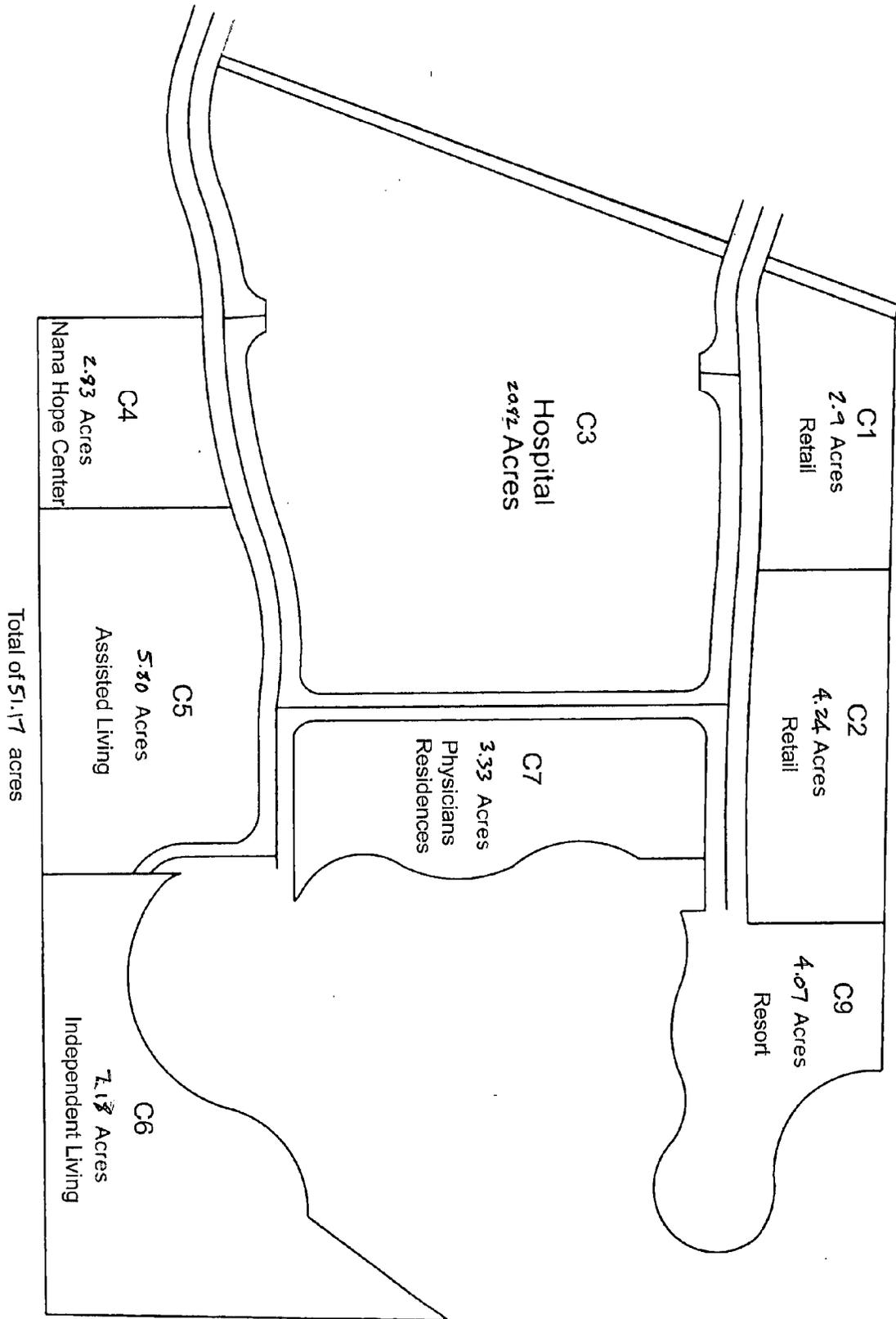


**EXHIBIT A**  
**(LEGAL DESCRIPTION OF THE PROPERTY)**

Lots C1-C7, Lot C9 and Tracts A-C of the Final Plat of Whispering Rock located in Section 2, Township 14 North, Range 2 West of the Gila and Salt River Base Meridian, Yavapai County, Arizona and recorded as Document Number 2019-0035096.

**EXHIBIT B**  
**(SITE PLAN)**

**[See attached]**



**EXHIBIT C**

**(ASSESSMENT AND VOTING ALLOCATION PERCENTAGES)**

<b>Parcel #</b>	<b>Square Footage</b>	<b>Percentage Interest</b>	<b>Number of Votes</b>	<b>Number of Assessments</b>
C1	126,167.34	5.66%	5.66	5.66
C2	184,642.71	8.29%	8.29	8.29
C3	906,950.03	40.70%	40.70	40.70
C4	123,470.62	5.54%	5.54	5.54
C5	252,180.02	11.32%	11.32	11.32
C6	312,762.56	14.03%	14.03	14.03
C7	145,122.11	6.51%	6.51	6.51
C9	177,269.54	7.95%	7.95	7.95

Totals 2,228,564.93 100% 100 100