

Landeronea Albuquerque Title 6 21800-2693 05

CONDOMINIUM DECLARATION

FOR

COLORES DE CABEZON OFFICE PARK CONDOMINIUM

SANDOVAL COUNTY

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Introductory Provisions

A. COLORES DE CABEZON LLC, a New Mexico limited liability company ("Declarant"), is the owner of certain real property located in Rio Rancho, Sandoval County, New Mexico, as described with further particularity in Exhibit A attached hereto and incorporated by reference, together with all easements and rights appurtenant thereto (the "Property").

B. Declarant desires to establish a condominium regime as set forth herein.

NOW, THEREFORE, Declarant makes the following Declaration:

Declaration

1. **Submission of Property.** Declarant, submits the Property to the provisions of Sections 47-7A-1 et seq. NMSA 1978, known as the New Mexico Condominium Act (the "Condominium Act"), and hereby creates a condominium regime to be known as Colores de Cabezon Office Park Condominium (the "Condominium").

2. **Name.** The name of the Condominium is to be identified as the Colores de Cabezon Office Park Condominium.

3. **Definitions.** The terms used herein shall have the meanings stated in the Condominium Act, unless otherwise defined or unless the context otherwise requires:

3.1 **Articles of Incorporation** mean the Articles of Incorporation of the Association, including any amendments thereto.

3.2 **Association** means Colores de Cabezon Condominium Owners Association, Inc., and its successors.

3.3 **Board** means the board of directors of the Association.

3.4 **Building(s)** means the structure housing one or more Units.

3.5 **Bylaws** mean the Bylaws of the Association, including any amendments thereto, whether or not filed with the New Mexico Public Regulation Commission, as from time to time amended.

3.6 **City** means Rio Rancho, New Mexico.

3.7 **Common Elements** means and includes the items and areas of the Property described in Section 5.1, and shall include the tangible personal property required for the maintenance and operation of the Condominium even though owned by the Association, as well as the items stated in the Condominium Act.

3.8 **Common Expenses** include (a) expenses of administration, insurance, maintenance, operation, repair or replacement of the Common Elements, and of the portions of Units to be maintained by the Association; (b) expenses declared Common Expenses by provisions of this Declaration or the Bylaws; and (c) any valid charge against the Condominium as a whole.

3.9 **Condominium** means all of the Property as a whole when the context so permits, as well as the meaning stated in the Condominium Act.

3.10 **Declaration** shall mean this Declaration to be recorded with the Sandoval County Clerk, which may be amended or supplemented from time to time.

3.11 **Effective Date Hereof** means the date this Declaration is filed in the real estate records of Sandoval County, New Mexico.

3.12 **First Mortgagee** means the holder of a first mortgage/deed of trust secured by a Unit related to a loan by an institutional lender made in good faith and for value received.

3.13 **Limited Common Elements** means and includes those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units, as described in the Condominium Act and in this Declaration.

3.14 **Plat** means the survey of the Property showing the location of the Buildings, Units, Common Elements and other improvements and the perimeter of the Property which is attached as Exhibit B and incorporated by reference.

3.15 **Singular, plural, gender.** Whenever the context so permits, the use of the plural shall include the singular, the

singular the plural, and the use of any gender shall be deemed to include all genders.

3.16 Unit means a unit in the Condominium as defined by the Condominium Act, and as set forth herein.

3.17 Unit Owner means the owner of a Unit.

3.18 Other terms not otherwise defined shall have the meanings specified in Section 47-7A-3 of the Condominium Act.

4. Development Plan.

4.1 Plat and Unit Information.

The first phase of the Condominium is one (1) Building with up to four (4) Units. A list of all Units, their identifying numerical or alphabetical designations, locations, "Areas" (as hereinafter defined), "Rounded Unit Areas" (as hereinafter defined), the undivided "Allocated Interest" (as hereinafter defined) of each Unit Owner in the Common Elements and for Common Expenses liability appurtenant to each Unit, and the "Allocated Votes" (as hereinafter defined) of each Unit is shown on Exhibit C attached hereto and incorporated herein by reference. The "Area" of each Unit is the total number of square feet within the Unit, as determined by reference to the dimensions shown on the Plat. The Allocated Interest of each Unit in the Common Elements and for the Common Expenses liability is based upon the Rounded Unit Area of each Unit as a percentage of the Rounded Unit Areas of all Units. For purposes of calculating Allocated Interests, the Areas of the Units are rounded up or down to the nearest multiple of 100 (e.g., Areas of 2070 square feet and 2132 would be rounded to an Allocated Interest based upon an Area of 2100 square feet) ("Rounded Unit Area"). Pursuant to Section 11 hereof, the Declarant may build in phases up to five (5) additional Buildings containing up to twelve (12) additional Units. Declarant is not obligated to build any of the additional Buildings or Units. After any additional Units are added to the Condominium, the Allocated Interests of the new and pre-existing Units will be recalculated based upon the above formula.

4.2 Unit Boundaries. Each Unit consists of the space within the boundaries defined as follows:

a. Upper and Lower (horizontal) Boundaries: The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical (parametric) boundaries described below:

1. Upper boundary: The horizontal plane of the lower surface of the roof truss system (and specifically excluding the truss system roof and any equipment installed on the exterior surface of the roof).
2. Lower boundary: The horizontal plane at the level of the top surface of the footings.

b. Vertical (parametric) Boundaries: The vertical boundaries of the Unit shall be the vertical plane which includes the outermost surface of the exterior studs, but excluding the exterior wall finish, and the centerpoint of demising walls between Units extended to intersections with each other and with the upper and lower boundaries. The Unit shall also include the exterior windows (but not window frames), exterior doors (but not door frames), and exterior door hardware.

4.3 Relocating Unit Boundaries and Subdivision of Units. The relocation of boundaries between Units and the subdivision of Units will be permitted subject to compliance with the provisions therefor in this Declaration, the Bylaws and in the Condominium Act. Notwithstanding the provisions of this Declaration to the contrary, Declarant shall have the right to relocate boundaries between Units and to subdivide Units without the consent of the Association, any Unit Owner, any First Mortgagees, or other lienholders, except Unit Owners and First Mortgagees having interests in the affected Units.

5. Common Elements; Limited Common Elements; Use of Units.

5.1 Common Elements; Limited Common Elements. All portions of the Condominium other than the Units are Common Elements, including the exterior finish of the Buildings. Any portion of a chute, flue, duct, wire, conduit, or any other fixture which lies within the boundaries of a Unit or outside the designated boundaries of a Unit serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Any portion of any Common Elements serving one or more, but less than all Units is a Limited Common Element allocated exclusively to such Unit or Units. Each of the HVAC units located on the roofs of the Buildings serves only one Unit and is a Limited Common Element allocated exclusively to the Unit which it serves. Any porch or patio, and all roof areas covering all or a portion of same, designed to serve one or more, but less than all Units, which are Limited Common Elements allocated exclusively to the Unit or Units which it serves. The Common Elements and Limited Common Elements shall only be used for the purposes for which

they were intended in the furnishing of services and facilities for the enjoyment of the Units to which they are allocated.

**5.2 Allocation of Certain Limited Common Elements;
Limited Common Element Administration.**

Notwithstanding anything contained herein to the contrary, the Limited Common Elements will be administered by the Association as if they were Common Elements not allocated to one or more, but less than all of the Units.

5.3 Designation of Parking. All parking spaces in the Condominium shall constitute Common Elements, used on a first come, first served basis, but which may be allocated by the Board for the exclusive use of the Unit Owners (their tenants and invitees) in the proportion to the Allocated Interests, rounded to the nearest whole space. Handicapped parking spaces shall at all times be held for "first come, first serve" usage. If the Board allocates parking spaces, the Unit Owners shall be permitted, in their sole discretion and at their sole cost and expense, to indicate their respective designated spaces with signage approved by the Board.

5.4 Occupancy and Use of Units. No Unit shall be used for other than office purposes as permitted under this Declaration and under the zoning and other land use laws of the City. The type and color of all window coverings on exterior windows and the type and color of all exterior doors of the Units shall be determined by the Board. No nuisances shall be allowed upon the Property, nor any use or practice which interferes with the peaceful possession and proper use of the Property by the Unit Owners. No domestic animals shall be permitted on the Property outside of a vehicle, except seeing eye dogs and fish or similar pets which are kept in containers or tanks, and which do not create a nuisance. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No Unit Owner shall permit any use of such party's Unit or make any use of the Common Elements that will increase the cost of insurance for the Condominium.

5.5 Signage. All signage placed on the exterior of Units shall constitute Limited Common Elements and shall be approved by the Board, which consent shall not be unreasonably denied. No signage shall be placed on exterior windows or doors unless approved by the Board. Any monument signage for the Condominium shall be a Common Element with individual sign positions, if applicable, constituting Limited Common Elements which are administered by the Association. Except as permitted for Declarant pursuant to Section 6.1, no signs advertising Units

for sale or rent shall be permitted within the Common Elements, unless approved by Declarant, and after the expiration of the special rights of Declarant pursuant to Section 11, by the Board.

5.6 Leasing. To the extent permitted under this Declaration and applicable zoning and other land use laws of the City, Unit Owners may lease entire Units or a portion thereof. The Association may lease portions of the Common Elements for, among other things, cell towers and other purposes approved by the Board and which do not interfere with then existing office uses within the Condominium.

5.7 Rules and Regulations. Reasonable rules and regulations concerning the use of the Property may be made and amended from time to time by the Association in the manner provided by the Articles of Incorporation and Bylaws. Copies of such regulations and amendments shall be furnished by the Association to all Unit Owners.

5.8 Common Expenses. Except as otherwise provided in this Declaration, the Condominium Act or the Bylaws, all Common Expenses shall be assessed against the Units in accordance with the Allocated Interests of each Unit. Expenses related to the Limited Common Elements may be treated as Common Expenses shared by all Units for efficiency and ease of administration, or assessed against the Unit Owners benefited thereby, as reasonably determined by the Board. A Common Expense related to the misconduct of any Unit Owner shall be allocated to the Unit Owner whose misconduct caused the expense. Notwithstanding the foregoing, if, in the opinion of Unit Owners representing not less than sixty-six and two-thirds percent (66 2/3%) of the total Allocated Votes in the Association, any additions, alterations or improvements to the Condominium are exclusively or substantially for the benefit of any Unit Owner(s) requesting the same, such Common Expense shall be assessed against such Unit(s) in such proportions as such Unit Owner(s) jointly approve or, if they are unable to agree, in such proportions as may be reasonably determined by the Board.

6. Easements. In addition to the easements created by Sections 47-7B-14, 47-7B-16 and 47-7C-7 of the Condominium Act and by plats and documents related to the Property and filed in the real estate records of Sandoval County, New Mexico, prior to the filing of this Declaration, the following easements are hereby granted:

6.1 Easement for Sales Purposes/Signs. All Units shall be subject to the statutory right in favor of Declarant provided in Section 47-7B-15 of the Condominium Act. Declarant further reserves an easement to maintain on the Property such

advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and which may be relocated or removed, all at the sole discretion of Declarant.

6.2 Easement for Ingress and Egress Through Common Elements and Access to Units.

a. Each Unit Owner is hereby granted a non-exclusive easement in common with each other Unit Owner appurtenant to the Units, for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Association.

b. Declarant reserves in favor of Declarant, its agents and employees, the Association and other persons authorized by the Association, the right of access to any Unit for maintenance, repair and replacement of the Common Elements. In case of an emergency, such entry shall be immediate whether the Unit Owner is present at the time or not.

c. Declarant expressly reserves for itself, its agents and employees an easement over, upon or through the Common Elements, and the right of access to any Unit, as may be reasonably necessary, for the purpose of (i) making improvements within the Condominium and/or (ii) exercising any Special Declarant's rights and/or (iii) discharging the Declarant's obligations under this Declaration.

7. Maintenance; Damage and Destruction of Improvements.

7.1 Duties of Association. The Association (or Declarant, prior to the formation of the Association) shall repair, replace and maintain the Common Elements and the portions of Units constituting exterior walls to the interior surface of the studs; footings and structural components of the Buildings; demising walls, except gypsum drywall, paneling, wallpaper or other wall coverings; and all roof mounted HVAC systems, or shall arrange and contract for such repair, replacement and maintenance, in a state of good repair and condition. Such repair, replacement and maintenance shall include all walks, private driveways and other means of ingress and egress within the Property, as well as all exterior surfaces (other than window glass and Unit exterior doors) of any Building, landscaping, sprinkler systems, exterior lighting fixtures, roofs (including the structural components thereof), parking areas, carports, refuse containers and dumpsters, and all sidewalks.

The Association may employ a professional management agent, referred to as the "Managing Agent," to perform, subject to the supervision of the Board, such duties and services as the Board shall direct, including, but not limited to, management of any Common Elements, maintenance, repair and replacement of the Common Elements and Units, and the collection of and accounting for assessments made by the Association. Each employment agreement with a Managing Agent shall provide for compensation to be established by the Board and shall further provide for the right of the Association to cancel same upon not more than thirty (30) days' notice. The Managing Agent shall be a person or firm who shall have been in the business of managing income-producing real properties for at least two (2) years prior to employment by the Association and shall be subject to such additional qualifications and requirements as may be set forth in the Bylaws; such person or firm shall not be ineligible to serve solely because of being affiliated with the Declarant or a member of the Board.

7.2 Duties of Unit Owners. The Unit Owners shall be responsible, at the expense of each Unit Owner, to maintain and, as needed in connection with such maintenance, repair and replace (a) all portions of the Unit, including walls (other than the exterior or demising walls) and wall coverings, ceilings, floors and floor coverings, doors (and door hardware, but excluding exterior door frames) and windows (including glass, but not exterior window frames) located in a Unit; (b) the interior gypsum board, paneling, wallpaper or other wall coverings on exterior and demising walls; (c) the air conditioning and heating equipment serving the Unit, except any portion thereof which may be located on the roof of, or outside, the Unit; (d) all appliances and fixtures within the Unit; and (e) and all utility connections servicing the Unit, unless said connections are Common Elements or Limited Common Elements. All areas of a Unit which are exposed to public view shall be subject to the control and supervision of the Association. Without submission to and approval by the Association, no Unit Owner shall do any act which may impair the structural soundness of the Units or Buildings or impair any easement herein granted or reserved. No Unit Owner shall change the appearance of any portion of the exterior of the Building containing the Unit from the original construction or as subsequently modified by the Association. Unit Owners of adjoining Units may not, without submission to and approval by the Association, relocate boundaries between such Units or specify a different Allocated Interest for such Units.

7.3 Failure to Maintain. In the event a Unit Owner shall fail, within a thirty (30) day period following written

notice from the Association, to perform maintenance to be performed by that Unit Owner under this Declaration, the Association may, but shall not be obligated to, enter into and upon such Unit Owner's Unit and any Common Elements appurtenant thereto and accomplish such maintenance for and on behalf of the Unit Owner, and the cost thereof shall be considered a special assessment allocated to said Unit.

7.4 Damage by Unit Owner. Each Unit Owner shall be liable to the Association for any damage to the Common Elements or any area which is to be maintained and repaired by the Association under this Declaration which is not fully reimbursed to the Association by insurance if the damage is sustained because of negligence, willful misconduct or unauthorized or improper installation or maintenance of any improvement by a Unit Owner, including such Unit Owner's agents, employees, invitees, licensees, tenants, or any other persons deriving their right and easement of use and enjoyment of the Common Elements or the Unit from the Unit Owner. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, to levy a special assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Unit Owner or the other persons as described above. In the case of joint ownership of a Unit, the liability of the Unit Owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint Unit Owners to the contrary. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a special assessment allocated to said Unit.

7.5 Destruction and Restoration of the Property. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Condominium, including the improvements other than the "Unit Owner's insurable property" (as hereinafter defined) the Association shall restore and repair the same to its former condition as promptly as practical. The proceeds of insurance maintained pursuant to Section 10 hereof for reconstruction or repair of the Condominium shall be used for such purpose, unless otherwise provided therein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Condominium shall be repaired or rebuilt substantially in accordance with the original construction plans if they are available, unless changes are approved in writing by at least sixty-seven percent (67%) of the total Allocated Votes of the Association

and by of at least fifty-one percent (51%) of the First Mortgagees holding first mortgages on the Units affected by the destruction.

A reconstruction assessment allocated to the Units shall be levied by the Board to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. The amount, terms and payment provisions of any reconstruction assessment shall be established by resolution of the Board.

7.6 Interior Damage. Restoration and repair of any damage to a Unit Owner's insurable property in the interior of any individual Unit, shall be made by and at the individual expense of the Unit Owner of the Unit so damaged. Such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board.

7.7 Notice to Unit Owners and First Mortgagees. The Board, immediately upon having knowledge of any damage or destruction to the Condominium, or any portion thereof, shall promptly notify all Unit Owners and further shall notify all First Mortgagees and insurers who have filed a written request for such notice with the Board.

7.8 Alteration and Improvement of Common Elements. After the initial completion of the improvements included in the Common Elements which are contemplated by this Declaration, there shall be no alteration or further improvement of Common Elements without the prior written approval of the Association and compliance with this Declaration, subject, however, to the Special Declarant Rights described herein, and except for alterations or improvements which the Board determines are required or reasonably necessary to assure the health and safety of the Unit Owners and other persons using the Condominium or to comply with a legal requirement.

8. Association. The operation of the Condominium shall be by the Association, a corporation not for profit under the laws of New Mexico, which shall fulfill its functions pursuant to the Articles of Incorporation and Bylaws and the following provisions:

8.1 Association Membership. Each Unit Owner shall, by virtue of ownership of a Unit, be a member of the Association. Votes in the Association are allocated based upon the size of the Building containing the Unit ("Allocated Votes"). Each Building is allocated one (1) vote for each 2000 square feet of area,

rounded, up or down, to the nearest multiple of 1000 ("Rounded Building Area"). The Allocated Votes of individual Units will be based upon a fraction, the numerator of which is the Rounded Unit Area of the Unit and the denominator of which is the Rounded Building Area, with the resultant fraction being multiplied by the votes allocated to the Building in which the Unit is located. Specifically, the first Building will be allocated four (4) votes in the Association. Fractional Unit votes for individual Units will be rounded, up or down, to the nearest one-quarter ($\frac{1}{4}$), provided however, the votes as rounded, for a Building, must equal the total votes allocated to said Building. The initial Allocated Votes for the Units are set forth in Exhibit "C". Any new Units will be assigned votes in the same manner as described above.

8.2 Limitation Upon Liability of Association.

Notwithstanding the duty of the Association to maintain, repair and replace parts of the Condominium, the Association shall not be liable to Unit Owners for injury or damage other than the cost of maintenance, repair and replacement caused by any latent condition of the Condominium to be maintained, repaired or replaced by the Association, or caused by the elements or by other Unit Owners or persons.

8.3 Restraint Upon Separation.

a. The Allocated Interests in the Common Elements and rights to Limited Common Elements and Allocated Votes which are appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit whether or not separately described.

b. The Allocated Interests in the Common Elements and rights in the Limited Common Elements appurtenant to a Unit shall remain undivided, and no action for partition of the Common Elements or Limited Common Elements shall lie.

8.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, each decision may be expressed by the same person who could cast a vote for such Unit at an Association meeting, unless the joinder of all record Unit Owners is specifically required by this Declaration.

8.5 Powers of Association. The Association shall have all the powers provided for in Section 47-7C-2 of the Condominium Act, including, but not limited to, the right to assign its rights to future income (including the right to receive assessments for Common Expenses) for the purpose of securing

repayment of funds borrowed or indebtedness incurred by the Association in the performance of its responsibilities.

8.6 Control of Declarant. Notwithstanding anything to the contrary in this Declaration, the Articles of Incorporation or the Bylaws, Declarant shall designate, remove and replace the individual directors of the Board until the earlier of (i) the expiration of the maximum time for Declarant control permitted by Section 47-7C-3 of the Condominium Act, or (ii) thirty (30) days after written notice by Declarant of its voluntary relinquishment of Declarant's rights to appoint and remove directors of the Board.

9. Assessments. The making and collection of assessments against Unit Owners shall be pursuant to the Bylaws and subject to the following provisions:

9.1 Share of Common Expenses. Each Unit Owner shall be liable for its share of the Common Expenses based upon its Allocated Interest, subject to additional assessments pursuant to this Declaration, and shall share in any common surplus, such shares being the same as the Allocated Interest in the Common Elements appurtenant to the Unit owned by the Unit Owner or its predecessors who contributed to said surplus. Common Expenses shall be assessed and paid as set forth in this Declaration and in the Bylaws of the Association. The Declarant may enter into an agreement with the Association to pay all or a portion of the Common Expenses for a period of time while some of the Buildings, Units and other improvements are being constituted.

9.2 Interest; Application of Payments. Assessments and installments of such assessments paid on or before fifteen (15) days after the day when due shall not bear interest or a late charge, but all sums not paid on or before fifteen (15) days after the date when due ("Delinquency Date") shall bear a late charge of five percent (5%) of the delinquent amount and interest at the rate of twelve percent (12%) per annum from the Delinquency Date until paid. All payments upon account shall be first applied to late charges, interest and costs of collection and then to the assessment payment first due. The rate of interest and late charge may be increased or decreased from time to time by the Board.

9.3 Lien for Assessments. Any assessment remaining unpaid for thirty (30) days after it is due shall automatically become a lien on the Unit to which it is assessed. The lien for unpaid assessments shall also secure reasonable attorney's fees and expenses incurred by the Association incident to the collection of such assessment or enforcement of such lien. The Association may, without further consent or authorization, file a

written notice of such lien. Any such lien may be foreclosed in the same manner as a mortgage under New Mexico law.

10. Insurance.

10.1 Duty to Obtain Insurance; Types. The Board on behalf of the Association shall obtain and maintain at all times the following types of insurance, to the extent that such coverage can reasonably be obtained, considering the availability, cost and risk coverage provided by such insurance:

a. fire and casualty insurance with extended coverage on the Common Elements and the Units, excluding those items as to which the Unit Owners are responsible to insure pursuant to Section 10.3, including coverage for vandalism/malicious mischief and such other risks as customarily are covered with respect to condominium projects similar in construction, location and use. The foregoing coverage shall be in an amount as near as possible to the full replacement value of the insured property (less reasonable deductibles) without deduction for depreciation. Such insurance shall be maintained for the benefit of the Association, the Unit Owners and the First Mortgagees, as their respective interests may appear, subject however to loss payment requirements as set forth herein.

b. blanket public liability insurance (including medical payments), in an amount not less than One Million Dollars (\$1,000,000) covering claims for personal injury and property damage arising out of a single occurrence or other reasonable minimum amounts as the Board may determine, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its members, with respect to the Common Elements.

c. Such other insurance as the Board may deem necessary, including but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, business interruption insurance, medical payments, fidelity bonds and worker's compensation. Fidelity bond coverage which names the Association as obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees and employees of the Association and employees of the Managing Agent.

Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be a Common Expense to be included in the

annual assessments. That portion of the annual assessments attributable to the required insurance premiums shall be separately accounted for by the Board in a reserve fund, to be used solely for the payment of premiums of required insurance as such premiums become due.

10.2 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by and of such party.

10.3 Insurance Obtained By Unit Owners. It is the responsibility of each Unit Owner to provide insurance, sufficient to cover replacement costs, on all finishes, furnishings, including carpet, draperies, appliances, wallpaper, wall coverings, and other items of personalty, or other property belonging to a Unit Owner and any other property within the Unit Owner's Unit or which the Association has not purchased insurance (the foregoing items are sometimes referred to herein as "Unit Owner's insurable property"). Nothing herein shall preclude any Unit Owner from carrying any public liability insurance as it deems desirable to cover its individual liability for damage to person or property occurring inside its individual Unit or elsewhere upon the Property. All policies carried by Unit Owners shall contain waivers of subrogation of claims against Declarant, the Association, the Board, the officers of the Association and all other Unit Owners. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request.

Also, Unit Owners shall provide appropriate hazard and liability coverage (of the type known as "betterments and improvements" coverage) on any improvements and modifications to the Unit, including coverage for damage caused by any contractor performing work on such improvements and modifications.

10.4 Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be cancelled or terminated or expire by their terms, without ten (10) days' prior written notice to the Board, Declarant, Unit Owners and their respective First

Mortgagees (provided that Declarant, such Unit Owners and First Mortgagees have filed written requests with the carrier for such notice), and every other person in interest who requests such notice of the insurer.

10.5 Trustee for Policies. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 10.1 shall be paid to the Board as trustee. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of First Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 7.7 of this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. Notwithstanding the foregoing, there may be named as an insured a representative chosen by the Board, including a trustee or attorney-in-fact with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

10.6 Actions as Trustee. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Unit Owners as a trustee, shall have the exclusive right to bind such parties with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all First Mortgagees who have requested the same in writing.

10.7 Annual Insurance Review. The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining

the amount of the casualty and fire insurance referred to in Section 10.1 above. If the Board deems it necessary and appropriate, the Board shall obtain a current appraisal of the full replacement value of the improvements on the Property except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

10.8 Required Waiver. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have those rights without such waivers:

a. subrogation of claims against the Unit Owners and tenants of the Unit Owners;

b. any defense based upon coinsurance;

c. any right of setoff, counterclaim apportionment, proration or contribution by reason of other insurance not carried by the Association;

d. any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Unit Owner or any tenant of any Unit Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;

e. any right of the insurer to repair, rebuild or replace, and, if the improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured;

f. notice of the assignment of any Unit Owner of its interest in the insurance by virtue of a conveyance of any Unit; and

g. any right to require any assignment of a mortgage to the insurer.

11. Development Rights/Special Declarant Rights. Declarant hereby reserves the right, but not the obligation to subdivide Unit 2401 into up to three (3) Units, and to add to the Condominium up to five (5) additional Buildings and twelve (12) additional Units totaling a maximum Area of 24,000 square feet. Declarant may amend this Declaration to reflect the addition of the Units without the written consent of the Association, Unit

Owners, First Mortgagees or any other third parties. Except as to Declarant, no Unit may be further subdivided, without the written consent of the Association. Declarant may use any Units owned by Declarant as model complexes or for sales or leasing offices. Declarant need not seek nor obtain Association approval for any improvement or Building constructed or placed on any portion of the Property by Declarant. The rights of Declarant hereunder may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Property by a written assignment. Declarant shall be entitled to the nonexclusive use of the Common Elements without further cost, for access, ingress, egress, use or enjoyment, to show the Property to its prospective purchasers, lenders or tenants and dispose of the Property as provided herein. Declarant, its successors, assigns and tenants, shall also be entitled to the nonexclusive use of any portions of the Property which comprise drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. Each Unit Owner grants, by acceptance of the deed to such Unit Owner's Unit, an irrevocable, special power of attorney to Declarant to execute and record all documents and plats necessary to allow Declarant to exercise its rights under this Section. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Section shall be effective. The "Special Declarant Rights" described herein shall be exercised not later than the tenth (10th) year anniversary of the recording of this Declaration in the official records of Sandoval County, New Mexico.

12. Priority of Mortgages.

12.1 Mortgagee Priority. Except as specifically provided in this Declaration, no provision of this Declaration shall be construed to grant to any Unit Owner, or to any other person, any priority over the lien rights of First Mortgagees.

12.2 Subordination. Notwithstanding any other provisions of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration and the Bylaws upon any Unit (and any penalties, interest, late charges or the like) shall be subordinate to, and shall in no way affect, the rights of First Mortgagees; and provided further, that such subordination shall apply only to assessments on a Unit which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure or to any deed or other proceeding in lieu of foreclosure, and any such sale or transfer in foreclosure or in lieu of foreclosure shall not relieve the purchaser of the Unit, including the First Mortgagee if it is the

purchaser, from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

13. Amendment of Declaration.

13.1 Mortgagee Consent. Other than any amendment of this Declaration by the Declarant under its reserved Special Declarant Rights, no amendment of this Declaration may be made by the Association or the Unit Owners without prior written approval of First Mortgagees who have provided notice to the Association of the existence of their liens and an address for the service of notice and whose liens encumber the Unit or Units which are affected by such amendment, where such amendment:

a. Changes the Allocated Interest or obligations of any Unit for the purpose of (i) levying assessments or charges or allocating the distribution of hazard insurance proceeds or condemnation awards, or (ii) determining the Allocated Interests of each Unit in the Common Elements and Common Expenses;

b. Subdivides, partitions or relocates the boundaries of any Unit or the Common Elements or Limited Common Elements;

c. By act or omission, seeks to abandon or terminate the Condominium;

d. By act or omission, seeks to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subsection);

e. Uses hazard insurance proceeds for losses to any portion of the Condominium (whether Units or Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Condominium;

f. Imposes any restriction on the right of a Unit Owner to sell or transfer its Unit; or

g. Changes the Allocated Votes in the Association established by this Declaration.

13.2 Vote of Unit Owners. Except as otherwise provided or reserved herein, in the Articles of Incorporation, Bylaws or in the Condominium Act, this Declaration may be amended only by a vote of Unit Owners of Units holding at least sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the total Allocated Votes in the Association.

13.3 Declarant Consent. No amendment to this Declaration which purports to decrease, modify or otherwise limit the Special Declarant Rights or the period of Declarant control under Section 8.6, shall be valid unless approved by the Declarant and the written consent of the Declarant is endorsed thereon prior to the recording of such amendment.

13.4 Implied Consent. A First Mortgagee or Unit Owner will be deemed to have approved a proposed amendment to this Declaration if the First Mortgagee or Unit Owner does not object or consent to a written proposal for an amendment within thirty (30) days after receipt of the written proposal by hand delivery or certified mail, return receipt requested. A Unit Owner will also be deemed to have approved a proposed amendment to this Declaration if the Unit Owner does not object or consent in person or by proxy at a duly called meeting to consider the proposal.

14. Miscellaneous.

14.1 Declarant's Right to Lease. Declarant shall retain title to each Unit not sold to any purchaser. Declarant retains the right to enter into one or more leases or rental arrangements with others for the rental of Units retained by Declarant and not sold to any purchaser.

14.2 Prohibition Against Timeshares. No Unit may be subdivided into timeshares, interval ownerships, use periods or any similar property interest commonly considered to fall within the general concept of timesharing.

14.3 Taxes. Each Unit together with the respective Allocated Interest in the Common Elements appurtenant thereto shall be deemed a separate parcel for the purpose of governmental assessments and taxation. Pending the separate assessment of individual Units by the Sandoval County Assessor, the Association shall collect a prorata share of ad valorem taxes with the assessments for Common Expenses and pay said taxes.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 13th day of December, 2007.

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DECLARANT:

COLORES DE CABEZON LLC, a
New Mexico limited liability
company

By: [Signature]

Its: Mgr

ACKNOWLEDGMENT

STATE OF NEW MEXICO)

COUNTY OF Bernalillo

The foregoing Condominium Declaration for Colores de Cabezón
Office Park Condominium was acknowledged before me on December
13, 2007, by John Welger Jr., Manager of COLORES
DE CABEZON LLC, a New Mexico limited liability company.

MY COMMISSION EXPIRES:

[Signature]
NOTARY PUBLIC



OFFICIAL SEAL

DIANA STONEBERGER

NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 09/13/2010

SANDOVAL COUNTY

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Exhibit A

Legal Description of Property

Tract 15-B-1, of CABEZON SUBDIVISION, within the Town of Alameda Grant, in projected Section 36, Township 12 North, Range 2 East, New Mexico Principal Meridian, City of Rio Rancho, Sandoval County, New Mexico, as the same is shown and designated on the plat thereof, filed in the Office of the County Clerk of Sandoval County, New Mexico, on November 8, 2007, in Volume 3, Folio 2861-B.

Exhibit B

The Plat

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Exhibit C
Unit Information

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<u>Unit No.</u>	<u>Area</u> <u>(Sq. Ft.)</u>	<u>Rounded</u> <u>Area</u> <u>(Sq. Ft.)</u>	<u>Allocated Interests</u> <u>in Common Elements</u> <u>and Common Expenses</u>	<u>Allocated</u> <u>Votes in</u> <u>Association</u>
2401	5,837	5,800	72.5%	2.75
2401A	2,206	2,200	27.5%	1.25
<u>Totals</u>	<u>8,043</u>	<u>8,000</u>	<u>100%</u>	<u>4</u>