

CONCIERGE AT LARGE CLIENT SERVICES AGREEMENT

THIS CLIENT SERVICES AGREEMENT ("Agreement") made on and effective as of _____ (hereinafter, the "Effective Date"), by and between Concierge, a California corporation, whose mailing address is 701 "B" Street, Suite 515 San Diego, CA, 92101, (hereinafter, "Concierge") and The Pinnacle Museum Tower Homeowners Association a _____, whose mailing address is _____ San Diego, CA 92101 (hereinafter, "Client")

RECITALS

1. Concierge is engaged in the business of providing concierge services.
2. Client is a homeowner's association that maintains its association, supervises the rules and regulations of the homeowner's association and provides certain amenities and services to the residents of the building with its principal place of business at _____ San Diego, CA 92101;
3. Client desires to engage the services of Concierge, as an independent contractor and not as an employee, to provide concierge services and consulting as further described herein on the terms and conditions provided in this Agreement;

NOW THEREFORE, Client engages the services of Concierge in consideration of the mutual promises contained herein, and the parties agree as follows:

TERMS

TERM

1. This Agreement is effective as of the Effective Date and will continue in effect until _____ [1 year]. Following the end of such initial term this Agreement will automatically extend for an additional one (1) year term unless either party terminates this Agreement upon thirty (60) days written notice to the other party as set forth in the notice section of this Agreement.

SERVICES

2. The services to be rendered by Concierge to Client consist of those designated in Exhibit "A" attached hereto and made a part hereof for all purposes.
3. Client may, from time to time, request that Concierge perform additional services in addition to those listed in Exhibit "A." Such services will not be undertaken unless Client and Concierge enter into an "Additional Work Authorization" in the form of that attached hereto as Exhibit "B." These Additional Services and the services listed in Exhibit "A" are collectively referred to as the "Services" in this Agreement.

PROPRIETARY RIGHTS AND CONFIDENTIALITY

4. Concierge owns various materials, models, frameworks, tools, templates, computer programs, lists, vendor lists, trade secrets and strategies in existence before the start date of this Agreement (hereafter "Concierge Materials"). Concierge may, at its option use or include Concierge Materials in the work performed under this Agreement. Client agrees that any Concierge Materials used in the performance of any of its services under this agreement are confidential, the property of Concierge and may not be disclosed to any other person or entity without the express written permission of Concierge.
5. Only Concierge, its employees and appointed representatives shall have access to any computer put in place in Clients building and Client shall not have access to any Concierge owned computer without the express written consent of Concierge.

USE OF AGENTS OR ASSISTANTS

6. Concierge is authorized to engage the services of any agents, assistants, persons, corporations, or subcontractors that it determines reasonably necessary to aid or assist in the proper performance of its obligations pursuant to this Agreement. Unless otherwise expressly provided herein, the cost of said services will be paid by Concierge.

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EQUIPMENT AND FACILITIES

7. Concierge will furnish all equipment that may be necessary to perform the Services required under this Agreement.
8. Client will furnish a floor space of approximately one hundred (100) square feet at the entrance of the Pinnacle building and provide a desk, reception table, chairs, all telephone and telephone lines, computer lines including a T-1 cable for high speed internet access and all other facilities that may be necessary to perform the services required under this Agreement.

COMPENSATION AND EXPENSES

9. Concierge will be entitled to the fees set forth in Exhibit "A." For any additional services pursuant to Paragraph 3 above, the compensation shall be agreed upon prior to the initiation of such additional services, and said compensation for additional services shall be set forth in the Additional Work Authorization as provided in Paragraph 3 above.
10. Parties agree Concierge shall be reimbursed at cost for all reasonable and necessary expenses incurred or paid by Concierge in connection with, or related to, the performance of services except as otherwise set forth in the Work Order.
11. Unless otherwise specified in Exhibit "A," Exhibit "B," the Additional Work Authorization, or in this Section, Concierge is to submit invoices monthly on a time expended to date basis. Said invoices shall be payable by Client within thirty (30) days of receipt thereof. Late payments by Client shall be subject to late penalty fees of 1.5% per month from the due date until the amount is paid. In the event that Client has any inquiries, problems, or believes there are errors or discrepancies with respect to any amounts due pursuant to this Agreement, Client agrees to give Concierge written notice thereof within ninety (90) days from the date that the work which gave rise to the inquiry, problem, or discrepancy was performed. Client's failure to give Concierge such notice shall constitute a waiver of any and all rights which Client may have to any adjustment, charge, or reimbursement thereof.

INDEPENDENT CONTRACTOR STATUS

12. Concierge shall perform all services under this Agreement as an "independent contractor" and not as an employee or agent of Client. Concierge will not be entitled to any benefits or compensation from Client except as set forth in this Agreement. Concierge agrees that it is responsible for the direct payment of any federal or state taxes on the compensation paid to it under this Agreement. Concierge is not authorized to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, Client or to bind Client in any manner. Client agrees and understands Concierge has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed. Client understands and agrees that this Agreement is non-exclusive and is consistent with its independent contractor status; Client further understands and agrees that Concierge is not bound by, nor subject to any third party contracts, including but not limited to any third-party exclusivity agreements Client may have with any third party. Client shall not require Concierge to devote full time to performing services required by this Agreement. Concierge is free to contract with any other persons or entities without restriction.

DEVOTION OF TIME

13. Concierge will devote the time that is reasonably necessary for a satisfactory performance of its duties under this Agreement or as stated in an Additional Work Authorization.

NOTICES

14. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective (a) upon receipt, if sent by facsimile, personal delivery or overnight courier delivery or (b) two (2) days after deposit in the United States Post Office, if sent by registered or certified mail, postage prepaid, addressed to the other party at the address shown above, or at such other address or addresses as either party shall designate to the other in accordance with this Section 19.

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MODIFYING THE AGREEMENT

15. Parties recognize that:
- Concierge's original cost and time estimates may be too low when this Agreement was made due to unforeseen events;
 - Unforeseen events include, but are not limited to:
 - (a) Client may desire a mid-contract change in services that would add time and cost to the contract and possibly inconvenience Concierge;
 - (b) Inability to utilize Client's premises, equipment or facilities to perform contractor services;
 - (c) Concierge's inability to perform its services due to interference from Client's employees, contractors or other vendors hired or retained by Client;
 - (d) Reduction, withdrawal or unavailability of Client's personnel or management company or companies;
 - (e) Unforeseen management decisions or actions ;
 - Other provisions of this Agreement may be difficult to carry out due to unforeseen circumstances.

If any changes or modifications of Concierge's initial assignment are due to events beyond the Concierge's control and require adjustments to this Agreement, Parties shall make a good faith effort to agree on necessary particulars. Such agreements shall be put in writing as set forth in "Exhibit B," signed by Parties and added to this Agreement. If the parties are unable to agree on additional compensation due to Contractor based upon events beyond the control of the Contractor then the inability to agree on additional compensation shall constitute cause to terminate this Agreement.

TERMINATION

21. This Agreement may be terminated by either party upon the occurrence of any of the following events:
- a. The other party engaging directly or indirectly in any attempt to defraud the terminating party;
 - b. If any proceeding in bankruptcy or in reorganization or for the appointment of a receiver or trustee or any other proceedings under any law for the relief of debtors shall be instituted by the other party, or if such a proceeding is brought involuntarily against the other party and is not dismissed within a period of thirty (30) days from the date filed, or if the other party shall make an assignment for the benefit of creditors;
 - c. A material breach by the other party of any of the terms of this Agreement which breach is not remedied or cured by the other party to the terminating party's reasonable satisfaction within thirty (30) days of the other party's receipt of notice of such breach from the terminating party by certified mail, return receipt requested. A party may not unreasonably withhold its approval of a reasonable attempt to cure a noticed breach. Should any dispute arise as to whether or not a breach has been cured or not the matter shall be submitted according to the dispute resolution provisions set forth in Paragraphs 30-46 of this Agreement.
 - d. An inability to agree on additional compensation payable to Concierge's in the event of unforeseen circumstances beyond the control of Concierge as set forth in paragraph 20 above.

22. Upon termination of this Agreement, or earlier upon Concierge's demand, Client shall immediately deliver to Concierge's all items, Concierge Materials, computers and equipment requested by Concierge containing any Confidential Information as described in Paragraph 4 above, or make such other disposition thereof as Concierge's may direct in writing.

ENTIRE AGREEMENT

24. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting this subject matter. Any subsequent agreement or Additional Work Authorization will be in addition to this Agreement and must be executed by Client and Concierge. Should any of the terms in a subsequent written agreement or Additional Work Authorization conflict with the terms of this Agreement, the terms of the subsequent written agreement or Additional Work Authorization shall control.

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ASSIGNMENT

25. Neither this Agreement nor any duties or obligations may be assigned by Concierge with the exception of Paragraph 11 above.

SUCCESSORS AND ASSIGNS

26. Subject to the provisions regarding assignment, this Agreement is binding on and inures to the benefit of the parties to it, their respective heirs, executors, administrators, legal representatives, successors, and assigns.

REMEDY AND LIMITATION OF DAMAGES

27. Client acknowledges that Concierge, in performance of consulting services under this Agreement, may necessarily rely upon data, reservations, ticket reservation prices and other information provided by third parties in the market, entertainment, travel and service industry. Accordingly, Concierge can make no warranty regarding the accuracy of the information obtained from such third parties, and any warranty of the accuracy of such information is hereby specifically disclaimed.

28. If any action at law or in equity is brought with respect to this Agreement, the services to be performed under this Agreement, or any subsequent Work Order, the prevailing party will be limited to its actual economic damages in the amount specified under this Agreement or under any subsequent Work Order. Under no circumstances shall either party be liable to the other for any special, indirect, or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of such party, its employees, agents, or contractors. This exclusion of liability for special, indirect, or consequential loss or damage is intended to apply to damage or loss of a "commercial" nature such as, without limitation, loss of profits or revenue, cost of capital, loss of use of equipment or facilities, claims for punitive damages, penalties or treble damages or claims of Clients due to loss of service or inconvenience.

29. Client will indemnify, defend and hold harmless Concierge against all liabilities, damages and expenses, including reasonable attorney fees, resulting from any third party claim or lawsuit arising from Concierge's performance under this Agreement.

DISPUTE RESOLUTION

FORMAL NEGOTIATION PROCESS

30. Before evoking the dispute resolution mechanism set forth in this Section of this Agreement, a Party shall serve on the other Party to the Agreement (a) written notice of the claim, specifying the exact amount claimed and the provision of the Agreement or other authority for claim; and (b) a copy of all supporting documents

31. Within ten (10) business days after service, the responding Party shall serve on the serving Party (a) a written response, setting out its position and specifying the contract or other provisions relied on; and (b) a copy of all supporting documents."

32. Within five (5) business days after service of the response, the Parties shall meet to discuss resolution of the claim. Each Party may bring up to three people to the negotiation, at least one of whom shall be a corporate officer who is not involved in the performance of the Agreement. The written claim notice and response and the documents produced, but not the subsequent discussion, shall be admissible in any subsequent proceeding. After negotiation, either Party may invoke the dispute resolution procedure set forth in Paragraph 33 through 44 of this Agreement.

MEDIATION REQUIRED

33. Before evoking the binding dispute mechanism set forth in this Agreement, the Parties shall first participate in mediation of any dispute arising under this Agreement.

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MECHANICS OF MEDIATION

34. The Parties shall select a mediator from San Diego Mediation Services. The mediation shall be held at San Diego Mediation Services. The mediation shall be conducted according to the rules of the San Diego Mediation Services. The cost of mediation shall be borne by the Parties equally. If San Diego Mediation Services is unavailable the parties may agree upon another mediator. If the parties are unable to agree on a successor mediator then a party may petition the San Diego Superior Court to appoint a mediator.

35. At least ten (10) business days before the day of the mediation, each side shall provide the mediator with a statement of its position and copies of all supporting documents. Each party shall send to the mediation a person who has authority to bind the Party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they shall also be asked to participate in the mediation.

36. If a Party has participated in the mediation and is dissatisfied with the outcome, that Party may evoke the dispute resolution provisions of this Agreement.

ARBITRATION REQUIRED

37. The Parties shall submit all remaining disputes relating to this Agreement (whether contract, tort, or both), to binding arbitration, in accordance with California Code of Civil Procedure section 1280 through 1294.2. Either party may enforce the award of the arbitrator under section 1285 of the Code. The Parties understand that they are waiving their rights to a jury trial.

COMMENCING ARBITRATION

38. The Party demanding arbitration shall submit a written claim to the other Party, setting out the basis of the claim and proposing the name of an arbitrator. Responding Party shall have ten (10) business days in which to respond to this demand in a written answer. If this response is not timely made, or if the responding Party agrees with the person proposed as the arbitrator, then the person named by the demanding Party shall serve as the arbitrator. If the responding Party submits a written answer rejecting the proposed arbitrator then, unless the Parties agree on arbitrator either Party may apply to the Superior Court for the appointment for an arbitrator. If it please the court, the Superior Court shall propose five names. Each Party may, within five (5) days after receipt of the proposed names, strike one name from the list. Thereafter the Court shall appoint as arbitrator a person whose name has not been stricken from the list. The arbitrator shall have the power to enter a default award if a Party fails to participate in the arbitration.

39. The arbitration shall take place in San Diego, California at a time and place selected by the arbitrator.

ARBITRATOR QUALIFICATIONS

40. All arbitrators shall be attorneys and shall have at least ten years experience in his or her field.

WRITTEN DECISION OF ARBITRATOR

41. Within fifteen (15) days after completion of the arbitration, the arbitrator shall submit a tentative decision in writing, specifying the reasoning for the decision and any calculations necessary to explain the award. Each Party shall have fifteen (15) days in which to submit written comments to the tentative decision. Within ten (10) days after the deadline for written comments, the arbitrator shall announce the final award.

PAYMENT OF ARBITRATION COSTS

42. Before arbitration commences, each Party shall pay the arbitrator half of the expected cost of the arbitration. At the conclusion of arbitration, the arbitrator may award the prevailing Party some or all of the arbitration costs.

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LIMITED DISCOVERY IN ARBITRATION

43. No more than thirty (30) calendar days before the arbitration, a Party may serve a document request calling for any document that would be discoverable in civil litigation. The Party served with this request shall deliver the requested documents and any objections within five (5) business days. The arbitrator may resolve any dispute over the exchanged documents. Thereafter, each party may take no more than three depositions, each of which shall last no more than four hours each. The arbitrator may resolve any dispute over the depositions as they would be resolved in civil litigation.

ARBITRATOR'S POWERS

44. The arbitrator shall have the powers provided in California Code of Civil Procedure sections 1282.2 - 1284.2.

ATTORNEY'S FEES

45. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be awarded reasonable attorney's fees and costs in addition to any other relief to which it may be entitled.

GOVERNING LAW AND VENUE

46. This Agreement, and the rights and duties of the parties under it, are governed by the laws of the State of California without regard to conflict of laws provisions. Jurisdiction of any dispute arising out of any aspect of this Agreement shall be in San Diego County, California.

AMENDMENT

47. This Agreement may be amended solely by a written agreement executed by Client and Concierge.

MISCELLANEOUS

48. No delay or omission by Concierge in exercising any right under this agreement shall operate as a waiver of that or any other right. A waiver or consent given by Concierge on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

49. The captions of the sections of this agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this agreement.

50. In the event that any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions, and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

Executed this ____ day of _____, ____.

CONCIERGE

CLIENT

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____