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**LEGAL REPORT ON THE SYSTEM OF DIVISION INTO CONDOMINIUM  
OWNERSHIP OF THE ALCAZABA BEACH COMPLEX SITUATED IN  
ESTEPONA (MALAGA).**

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*23 January 2020*

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## 1. ABBREVIATIONS.

ABBREVIATIONS	
Report	Legal Report on the Real Estate Aspect
Client	Alcazaba Beach Community of Owners
The Firm	AV LEGAL - M DOC LEGAL, S.L.U.
The Property	Apartments forming part of the Community of Owners
The Complex	Alcazaba Beach Complex, made up of Phases I to V
Complex/Residential Complex	Private Residential Complex consisting of different communities within the Complex. There are four Residential Complexes set up in the Complex,
Complex 1 /Residential Complex 1	Private Residential Complex to which the three Communities of Phase 1 belong, whose common elements are the beach-front pool, gardens, paths, entrances, etc.
Complex 2 /Residential Complex 2	Private Residential Complex to which the two Communities of Phase 2 belong, whose common elements are the beach-front pool, gardens, paths, entrances, etc.
Complex 3 /Residential Complex 3	Private Residential Complex to which the two Communities of Phase 3 belong, whose common elements are the beach-front pool, gardens, paths, entrances, etc.
Grouping (“Agrupación”) of Communities.	Private Residential Complex set up in 2004 with the intention of grouping together all the communities in the complex.
Common Property Act (LPH)	Act 49/1960, of 21 July, on common property.
TRLSRU	Royal Legislative Decree 7/2015, of 30 October, which approves the Land Urban Renewal Act.
CC	Royal Decree of 24 July 1889, which approves the Civil Code.
DGRN	General Directorate of Registry and Notary Offices.
DNCc	Declaration of New Construction in progress
DNCt	Declaration of New Construction completed
DO and DH	Declaration of New Construction and Condominium Division
RP	Land Registry
BOJA	Official Gazette of the Regional Government of Andalusia
N/A	Not applicable.

## **2. TERMS OF THE ENGAGEMENT**

- I. The Report has been prepared on the basis of the request made by the Client, regarding the Property.
- II. We have not inspected the Complex, nor do we have specific data on the plots of land.
- III. In order to prepare the Report, the Client has provided the Firm with documentation as listed below. The legal opinions made herein are based solely on the documentation obtained, listed below.
- IV. This Report has been drawn up by the Firm for the exclusive use of the Client, in the context of the consultation made on the subject of the report. This Report does not give rise to any liability with third parties.
- V. The information provided in this Report, and the opinions contained herein are based on the documentation obtained for preparing it, itemised below and attached hereto.
- VI. This Report should not be taken as an opinion on the value and/or the condition of the Property. No opinion is given in this Report other than the legal-technical aspect relating to its purpose.
- VII. We start with the basic presumption that all the documents provided are authentic copies of their originals, and that all the replies given to the questions or requests, and any other statements made to the Firm during the course of the investigation of the legal review are exact and made in good faith.
- VIII. The issue of this report does not entail any opinion on the value of the activity or management carried out by the Client in the complex, and the parties disclaim any liability or responsibility.

IX. We have assumed that:

- The copies of the documents that were supplied to us or made available to us are accurate, complete and true to the originals and that all the signatures and stamps are genuine:
- The documents were validly signed by the corresponding community and are in force and enforceable; we have not requested information about other parties appearing in any of the documents.

Except where we have been informed otherwise, none of the documents has been cancelled, modified, altered or substituted;

- X. This Report analyses certain legal aspects of the Property, but does not constitute a valuation. Although in this Report we have tried to identify any contingencies, it is up to the Client to determine the risks associated to those contingencies in the light of the content and the documents referred to. We have expressed no opinion on the business, commercial, financial, technical, insurance, tax or accounting implications of the documents reviewed, nor on the reflections made concerning the legal scope of the system of condominium ownership of the Property.

XI. Responsibility of M DOC LEGAL, S.L.U.

This Report has been prepared for the exclusive benefit of the Client. Consequently, M DOC LEGAL, S.L.U. assumes no liability towards any third parties other than the Client in relation to its content.

If the Client has been advised by one or more advisors and a limitation of liability has been arranged in respect of one or more of them, the Client agrees that the liability of M DOC LEGAL, S.L.U. toward the Client will not be increased due to any limitation of liability with other advisors. Our liability toward the Client according to our commitment will be limited to a proportion of the total losses,

costs or expenses (after taking any negligence into account) calculated from the perspective of equity and justice, considering our responsibility in the losses, damages, costs or expenses in question.

The Client accepts that the maximum liability of M DOC LEGAL, S.L.U. toward the Client (including any negligence) or any others, shall not in any event exceed twice the amount billed by M DOC LEGAL, S.L.U. for the preparation of this Report.

This Report has been drawn up on the basis of the instructions received from the Client. The issues covered by this Report and the emphasis placed on them might not take into account all of the questions of interest to the Client.

If any of the previous points is considered invalid or inapplicable by any competent court, the rest of the points will remain in full force and effect, and will in no way be affected.

M DOC LEGAL, S.L.U. and the Client agree that this Report is governed by Spanish law and the courts of Madrid will have the sole jurisdiction for settling any dispute arising between the Client and M DOC LEGAL, S.L.U. in relation to this Report.

### **3. OBJECT OF THE REPORT.**

This report is issued with slight modifications to the two previous reports sent to the Client, the first on 30 December 2019 and the second on 10 January of 2020. The modifications respond to the additional documents received by the Client on agreements with the developers of Phases IV and V after reviewing the reports sent. The analysis, legal assessment and final recommendation have not varied from the first report, as the additional documents analysed do not involve any change.

The object of this report is to analyse the legal situation of the properties in the Alcazaba Beach Complex, situated in the municipal district of Estepona (Malaga).

To this end, we will firstly analyse the legal system of condominium property, the Communities of Owners and Residential Complexes of which they form a part, set up under the public deeds executed for the purpose. The study is made on the basis of legislation applicable to the subject.

To date, the apartments forming part of the different communities of owners legally set up have been operating as a single community of owners known as Alcazaba Beach.

That is to say, the nine communities of owners, created progressively as the construction and the sales advanced of the five phases into which the complex is divided, have never operated independently, except in the meeting for setting up the Community of Phase IV, the owners of which were incorporated into the “Single Community” in the following meeting.

According to information received since August of 2019 the “Agrupación” (or Grouping) of Communities has a Tax Number separate from that of the Community of the Alcazaba Beach Complex with which the five phases were being managed.

We think the majority of owners are unaware of the actual legal organisation of the Alcazaba Beach Complex, with nine communities and four residential complexes. Being aware of this legal reality is essential for understanding the legal proposal put forward as a guideline in the final sections of the report.

The owners present at the Meeting of 2 November 2019 notified us informally of the wish of the majority of owners for it to function as a single, collective community in which all the owners participate in the decisions adopted, including those for electing offices in the Community for managing and representing it. This wish must be confirmed by a resolution adopted in a general meeting.

The deed of creation of the "Agrupación" (or grouping) of Communities excludes the owners of underground storerooms and garages in the Complex. While it is logical that ownership of storerooms and garages without an apartment does not give the right to common sports amenities, gardens or pools, some community regulations should be considered, possibly within the framework of the individual community where they are located, where they do have the right to use the common elements.

The Firm is commissioned by the Community of Owners to make the report in order to:

1. Define the existing or current legal situation.
  
2. Analyse the legal viability of it functioning as a single community of owners, taking into account the actual regulation in each of the condominium divisions, with communities, general communities and "Agrupación" of communities executed and registered in the Land Registry.
  
3. Study the possible actions necessary so that all the communities making up the Alcazaba Beach Complex can function as a single, collective community.

After the analysis of the system of condominium property applicable to the Complex, we look into the viability of it functioning collectively on a condominium basis, with the resolutions and documents necessary for implementing this. This course of action has to be studied and redefined from a tax aspect, which we recommend be analysed by a tax consultant.

#### **4. DOCUMENTATION USED, CONSULTATIONS MADE AND BASIC LEGISLATION.**

##### **4.1. Documentation used.**

The legal report takes into account the deeds and contracts obtained from the Client, to define the legal framework of the Complex as a whole and of each of the communities and general communities of which it is composed.

##### **4.2. Deeds and private contracts.**

4.2 1 The deeds supplied and studied for making this report are:

- Declaration of New Construction and Condominium Division (Phase I: Staircases 1,2,3,4,17,18,19 and 20) dated 13 November 1986, executed in the presence of Mr Jose Luis Palanco Burgos, Marbella Notary, by Promotora Inmobiliaria Medina S.A. (PIMSA). Five plots were segregated from registered property number 31.180 (52,336.90 m<sup>2</sup>). Deed of Declaration of New Construction (“DNC”) and Condominium Division for the apartment block on registered property number 32.071 (plot D).

- Declaration of New Construction and Condominium Division (Phase I: Staircases 5.6 and 7) dated 15 June 1987, executed in the presence of Mr Jose Luis Palanco Burgos, Marbella Notary, by PIMSA. Deed of New Construction and Condominium Division for the apartment block on registered property number 32.067.
  
- Declaration of New Construction and Condominium Division (Phase I: Staircases 9 to 16) dated 10 September 1987, executed in the presence of Mr Jose Luis Palanco Burgos, Marbella Notary, by PIMSA. Deed of New Construction and Condominium Division on the apartment block on registered property number 32.065.
  
- Deed of Declaration of New Construction and Condominium Division (Phase II: Staircases 21 to 24, 34 and 35) dated 15 December 1987, executed in the presence of Mr Jose Luis Palanco Burgos, Marbella Notary, by PIMSA. Three plots were segregated from registered property number 35.526. Deed of New Construction and Condominium Division for the apartment block on registered property number 35.534
  
- Deed of Declaration of New Construction and Condominium Division (Phase II: Staircases 25 to 33) dated 15 September 1988, executed in the presence of Mr Jose Luis Palanco Burgos, Marbella Notary, by PIMSA. Deed of Declaration of New Construction and Condominium Division on the apartment block on registered property number 35.530.
  
- Deed of Declaration of New Construction and Condominium Division (Phase III: Staircases 37 to 40, 51 and 52) dated 27 October 1988, executed in the presence of Mr Jose Luis Palanco Burgos, Marbella Notary, by PIMSA. Three plots were segregated from registered property number 35.528. Deed of Declaration of New Construction and

Condominium Division on the apartment block on registered property number 38.379.

- Deed of Declaration of New Construction and Condominium Division (Phase III: Staircases 41 to 19) dated 1 March 1989, executed in the presence of Mr Jose Luis Palanco Burgos, Marbella Notary, by PIMSA. Deed of Declaration of New Construction and Condominium Division on the apartment block on registered property number 38.383.
  
- Deed that places on public record the private settlement contract dated 29 July 1998, in the presence of the Marbella Notary, Mr Mauricio Pardo Morales, executed by NOVAPARC DE SANT CUGAT, S.L. (incorporated as PIMSA) and the Community of Owners of Alcazaba Beach, under which an agreement was reached for withdrawing from the lawsuits filed, in exchange for PIMSA assigning various common elements to the Community of Owners, including a supplementary deed dated 18 July 2013:
  - 3 commercial premises, corresponding to the registered properties 32.143, 35.596 and 38.445.
  - 3 swimming pools of the complex, registered properties 32.069, 35.532 and 38.381.
  - Reception and administration office, registered property 44.168.
  - Sports areas, registered property 32.063.
  - Various premises in basements of buildings and the rest of the municipal administrative concession for the installation and hiring of sunbeds and water sports equipment on the beach of the Complex.
  - Any other rights that PIMSA might have over elements or land within the Complex.

- Deed of constitution of the “Agrupación” of Communities of Owners of the Alcazaba Beach Residential Complex, executed on 5 November 2004 in the presence of the Notary of Estepona, Mr Jorge Moro Domingo. Executed by the President of the Community of Phases I, II and III, and representatives of the companies owning Phases IV (registered property number 17.016 in Land Registry no. 2 of Estepona) and V (registered property number 56.403) and its deed of rectification executed on 21 July 2014.
  
- Deed of Declaration of New Construction, condominium division and establishment of ownership per floor (PHASE IV), of 30 September 2005, executed in the presence of Mr Rafael Requena Cabo, Notary of Marbella, by “Jardines de las Fuentes S.A.”. Declaration of New Construction and Condominium Division for the apartment block on registered property number 17.016.
  
- Deed of rectification of new construction, end of construction and condominium division, dated 13 May 2008, executed in the presence of Mr Jose María Garcia Urbano, Notary of Estepona, by “Alcazaba 2002 Desarrollos Inmobiliarios, S.L.”. Rectification of the previous deed of 27 October 2006, on registered property number 56.403 (PHASE V).
  
- Supplementary deed dated 18 July 2013, executed in the presence of Ms. Almudena Romero López, Notary of Estepona, by the President of the Community of Owners of Alcazaba Beach. This deed supplements the deed of 29 July 1998 which places the private settlement contract between PIMSA and the Community of Alcazaba Beach on public record, which requests the registration of the properties transferred as elements for common use to the residential complex, conserving their respective percentages of participation in the expenses and maintenance,

without altering the different Phases, dividing the expenses into proportional parts between those Phases.

- Deed of rectification dated 21 July 2014, executed by the President of the “Agrupación” of Communities (Phases I, II, III, IV and V) of Alcazaba Beach, in the presence of Ms Almudena Romero López, Notary of Estepona. The percentages of the different phases in the expenses of community were rectified, set out in the following deeds:
  - o Deed of constitution of the “Agrupación”, dated 5 November 2004.
  - o Deed of placing the private settlement contract on public record dated 29 July 1998.
  - o Deed supplementary to the above, executed on 18 July 2013.
  
- The Deeds of Declaration of New Construction and Condominium Division of the communities and general communities for the five phases of the Complex executed between 13 November 1986 and 13 May 2008;

4.2 2 The private contracts supplied and studied for writing this report, along with documentation associated to them:

- The private settlement contract between Promotora Inmobiliaria Medina, S.A. and the Community of Alcazaba Beach signed on 30 May 1995.
  
- Private contract signed on 13 August 2002 between the Community of Alcazaba Beach and the company Jardines de las Fuentes, S.A. which established (in respect of what is of interest here) the use and

enjoyment by the apartments of phase IV of all the common elements of the Complex, and in which this Phase IV also contributes all of its common elements, facilities and services so they can all be managed collectively and pays up to a maximum amount or cost of 901,519.00 € to the Community for building work described in the contract carried in benefit of the Community. It was agreed to set up a Residential Complex subject to article 24 of the Common Property Act (LPH).

- Private contract signed on 16 October 2002 between the Community of Alcazaba Beach, the companies Jardines de las Fuentes, S.A. and Promociones Alfa 94, S.L. which establishes, (in respect of what is of interest here) the use and enjoyment by the apartments of phase IV of all the common elements of the Complex, and in which this Phase IV also contributes all of its common elements, facilities and services so they can all be managed collectively and pays up to a maximum amount or cost of 141,237.80 € to the Community of Phases I, II and III for building work described in the contract carried in benefit of the Community.

Jardines de las Fuentes, S.A. undertook to bear the infrastructure expenses for a new road connecting the Complex with Development Sector UEN-R32, bordering with Phase V. There is no record of this being built.

The companies agreed to incorporate Phases IV and V into “the Alcazaba Beach Complex”.

It was agreed to set up a Residential Complex subject to article 24 of the Common Property Act (LPH).

- Summary of payments for refurbishment and reconditioning of facilities of the Complex carried out by the Architect Ms. Isabel Oliver López de Carrizosa, itemising the work to be executed by the developers of Phases IV and V. The document is not signed.
  
- Document submitted to the Estepona Council on 22 August 2002 by the Community of Owners of Alcazaba Beach notifying of the agreement with the developer of Phase IV, Jardines de las Fuentes, S.A., and also the undertaking to make further assignments of land to the Council.

#### 4.3. Minutes of the Community meetings.

<b>MINUTES OF MEETINGS OF THE COMMUNITIES OF ALCAZABA BEACH</b>	
<b>Date</b>	<b>Phases present</b>
10/12/1987	I
20/07/1988	I
28/11/1988	I and II
27/07/1989	I and II
02/01/1990	I, II and III
08/06/1990	I, II and III
04/08/1990	I, II and III
09/08/1991	I, II and III
06/08/1992	I, II and III
05/08/1993	I, II and III
04/08/1994	I, II and III
03/08/1995	I, II and III
08/08/1996	I, II and III
08/08/1997	I, II and III
03/08/1998	I, II and III
03/08/1999	I, II and III
10/08/2000	I, II and III
09/08/2001	I, II and III
14/08/2002	I, II and III
14/08/2003	I, II and III
12/08/2004	I, II and III
11/08/2005	I, II and III
10/01/2006	IV

10/08/2006	I, II, III and IV
09/08/2007	I, II, III and IV
11/08/2008	I, II, III, IV and V
14/08/2009	I, II, III, IV and V
12/08/2010	I, II, III, IV and V
16/08/2012	I, II, III, IV and V
14/08/2013	I, II, III, IV and V
13/08/2015	I, II, III, IV and V
12/08/2016	I, II, III, IV and V
09/08/2017	I, II, III, IV and V
29/03/2018	I, II, III, IV and V
10/08/2018	I, II, III, IV and V
17/04/2019	I, II, III, IV and V
08/08/2019	I, II, III, IV and V
02/11/2019	I, II, III, IV and V

In order to evaluate the resolutions and functioning of the Community of Owners of the Complex, we have analysed the minutes of the owners' meetings for the buildings of which the Complex is composed.

#### **4.4. Meetings and conversations held.**

Weeks before commissioning the report, discussions were held on the situation of the Complex and we asked for preliminary information on its organisation and minutes from the people working in the administration. We also held conversations with owners in the Complex.

Once the report was commissioned, the President of the Community of Alcazaba Beach, implementing the Community resolution taken on 2 November 2019, sent the deeds, contracts and minutes detailed above by email for us to study. Before that meeting the Firm had obtained part of the documentation, supplied by Administration of the Community.

#### **4.5. Legislation applied.**

The basic legislation on condominium property and private residential complexes studied for this case was:

- (i) Act 49/1960, of 21 July, on common property (“LPH”).
- (ii) Royal Decree of 24 July 1889, which approves the Civil Code (“CC”).
- (iii) Royal Legislative Decree 7/2015, of 30 October, which approves the Land Urban Renewal Act. (“TRLSRU”).

### **5. EXECUTIVE SUMMARY.**

#### **5.1. Object of the report.**

The object of this report is to analyse the legal situation of the properties in the Alcazaba Beach Complex, situated in the municipal district of Estepona (Malaga), in relation to:

1. Studying and analysing the legal set-up existing in the Complex, the divisions into condominium property, communities, general communities (mancomunidad) and “Agrupación” of communities executed and registered in the Land Registry.
2. The actual functioning of the Complex since the first community was created.
3. Studying the legal viability, organisation and agreements necessary for all the communities making up the Alcazaba Beach Complex to function as a single, collective community.

4. Proposed organisation, if legally possible, for continuing to function as a single community of owners from the aspect of administration of the elements of common use by all of the apartments.

This course of action has to be studied and redefined from a tax aspect, which we recommend be analysed by a tax consultant.

## **5.2. Legal organisation of the five phases of the Complex.**

In Phases **I, II and III** Promotora Inmobiliaria Medina, S.A. created seven communities of owners:

- (i) Three communities in Phase I,
- (ii) Two in Phase II and
- (iii) Another two in Phase III.

The definition and breakdown of the registered properties and apartments making up each of the Communities of Owners will be addressed below, expressed in tables relating to each one for greater understanding.

In these first three phases, each one originates from a single registered estate, which was segregated. The segregation gave rise to several new registered properties corresponding to:

- Plots of land on which the apartments are built and the different communities in that Phase are set up.
- The rest of the main estate that is constituted as a common element exclusive to the communities of that phase and, lastly,

- Private plots whose ownership was initially reserved for the developer with use for a pool or land with tennis and paddle tennis courts. Subsequently acquired by the owners of Phases I, II and III.

In each of the first three Phases a **general community** [mancomunidad] was set up with the segregated plots which have the following as common elements for the use of those phases: the gardens, entrances, upper pool, built on the rest of the main estate.

On the plots of Phases **IV and V** a single community of owners was set up on each one, with common elements pertinent to each community composed of the apartments, plus storerooms and garages situated beneath ground level of the buildings.

While Phase IV has common elements which can be used by the rest of the phases of the Complex, gymnasium, sauna and pool, Phase V only has gardens around the perimeters of the apartment blocks.

To summarise, there are nine communities of owners in the Complex: seven in the I to III, one in Phase IV and one in Phase V. In addition, there are three general communities, each of the first three Phases has a general community, plus an "Agrupación" of Communities of Owners, the last one being set up in 2004.

**5.3. The development company has reserved ownership of fourteen registered properties, partly on the land segregated from the main estates of Phases I, II and III.**

In the Communities of Phases I, II and III, the **developer reserved its ownership of fourteen registered properties** on which the sports, social and administrative facilities had been built within the Complex: tennis and paddle tennis courts, 3 beach clubs, pools, administration building etc.

The Communities of Phases I, II and III acquired them under private contract dated 30 May 1995, placed on public record in the Deed executed on 29 July 1998. The private contract established that the Developer would transfer ownership of the Properties to the Community of Owners, composed of Phases I, II and III, for the price of 75,000,000.00 pesetas, equivalent to 450,759.078 euros.

The content of the contract was supplemented by the Deed dated 18 July 2013 executed by the President of the Alcazaba Beach Community at that time, under which those properties were contributed to the "Agrupación" of Communities of Phases I to V, set up in 2004, as elements for common use.

**5.4. Creation of the "Agrupación" of the Communities of the Alcazaba Beach Residential Complex and private contracts leading to it.**

5.4 1 Private contracts for integrating Phases IV and V into the Complex.

The rights of the communities of Phases IV and V to use the common elements of Phases I, II and III of the Alcazaba Beach Complex and of the latter to use the common elements of the former, were agreed upon by the developers of the apartments of those phases and Phases I, II and III of the Alcazaba Beach Community which at that time was managing the seven communities and three general communities collectively.

5.4 2 *Private contract giving rise to the rights of Phase IV to use the common elements of Phases I, II and III of the Complex.*

The private contract signed on 13 August 2002 between the Alcazaba Beach Community and the company Jardines de las Fuentes, S.A. described the future promotion of 72 apartments by the latter on the land of Phase IV and the following was agreed:

- a) The use and enjoyment by the Phase IV apartments of all the common elements of the Complex, and in turn this Phase IV would also contribute all of its own common elements, facilities and services in the following terms expressed in clause 3 of that contact, (underlining is ours):

*“Three.-*

*(...)*

*With this, the new apartments will have full use and enjoyment (the same as components of phases one, two and three), of all the common elements of the Complex (gardens, pool, security and control service, cleaning, beach clubs (chiringuitos), sunbeds, tennis and paddle tennis courts, etc.), and in turn contributing all their common elements, facilities and services as common elements of the “Agrupación”, which will also be managed and administered collectively.”*

- b) The creation of a Residential Complex, as a form of organisation agreed upon for managing the facilities collectively and for incorporating Phase IV into the Complex.
- c) Compensation by the Developer of Phase IV, with the obligation to pay the Community of Owners for work carried out in its benefit as detailed in the contract, to a maximum amount or cost of 901,519.00 €. At the date of this

report we have no record of the payment or the implementation of the work agreed in the documentation received, which will have to be confirmed by the Administration of the Community once checked.

Due to the relevance of this contract for the matter under analysis, it is attached as **Document 1**.

In the contracts examined we have not found any prior agreement that expressly legitimises the basis for signing this contract. However, in the AGM held on 10 August 2000 the meeting was informed of the negotiations and the conditions to be included in the contract were approved, specifically in point three of the Agenda.

*5.4 3 Private contract giving rise to the rights of Phase V to use the common elements of Phases I, II, III and IV of the Complex.*

Under the private contract signed on 13 August 2002 between the Alcazaba Beach Community, the company Jardines de las Fuentes, S.A. (Phase IV) and Promociones Alfa 94, S.L. (Phase V), agreements were made in the same terms, transcribed from the contract signed with the developer of Phase IV, in reference to the common elements.

The compensation arranged with the Developer of Phase V, with the obligation to pay the Community of Owners for work to be carried out in its benefit as detailed in the contract, to a maximum amount or cost of 141,237.80 €. At the date of this report we have no record of the payment or the implementation of the work agreed in the documentation received, which will have to be confirmed by the Administration of the Community once checked.

In addition, in this contract, Jardines de las Fuentes, S.A. (Phase IV), undertakes to bear the infrastructure expenses for a new road connecting the Complex with the

UEN-R32 Development Sector, bordering with Phase V. At the date of this report we have no record of the payment or the implementation of the work agreed in the documentation received, which will have to be confirmed by the Administration of the Community once checked.

The companies reciprocally accepted the incorporation of Phases IV and V into “the Alcazaba Beach Complex”.

This contract was ratified after signing. It was specifically ratified under the resolution taken in point three of the agenda for the AGM of the Alcazaba Beach Community held on 14 August 2003, which was at that time made up of Phases I, II and III. The contract was ratified by a majority, not a unanimous, vote.

The transformation of the present “Agrupación” of Communities of Owners into a single community that is recommended in the final part of this report.

Due to the relevance of this contract for the matter under analysis, it is attached as **Document 2**.

#### 5.4.2 Creation of the “Agrupación” of the Communities of the Alcazaba Beach Residential Complex.

The President of the Community and his Committee were delegated to implement the private contracts signed by the Community of Owners of Phases I, II and III, and were granted powers to execute public and private documents and contracts.

Due to the existence of three residential complexes in Phases I to III, the correct procedure, by law, would have been to submit the resolutions in these complexes and the communities owning the fourteen properties purchased from Promotora Inmobiliaria Medina, S.A.

This was the result of the decision taken by majority vote at the AGM of the Community of Owners of Alcazaba Beach held on 14 August 2003, point four of the agenda.

On 5 November 2004 the deed of **Constitution of the “Agrupación” of the Communities of the Alcazaba Beach Residential Complex** was executed, which formalised the obligation to set up a private residential complex between the Communities of the first three phases of the Complex and Phases IV and V, in **implementation of the private contracts previously analysed.**

Due to the relevance of the deed, for a better understanding of the report, it is attached as **Document 3.**

The participants in the Deed were the President of the Community of Owners of Phases I, II and III of the Alcazaba Beach Residential Complex, who provided the resolution taken in the Meeting, and the representatives of the companies owning the plots on which Phases IV and V are located, which at that time were not yet built.

The object of the “Agrupación” of Communities is the **common use and maintenance** of certain common elements belonging to Phases I, II, III and IV, the latter under construction at that time.

Without repeating the determining legal factors indicated for the existence of the communities and complexes in Phases I to III, the **Deed of constitution of the “Agrupación” of Communities has the following omissions and defects:**

1. It does not record the registered properties which are the remainders of the main estates from which each phase originates and on which the three

private residential complexes were set up, one for each phase, on which part of the properties are found whose common use by the five phases is regulated in the deed of “Agrupación” of communities.

2. There is no list of the fourteen registered properties acquired by the owners of Phases I to III from Promotora Inmobiliaria Medina, S.A. under the contract of 30 May 1997, although article 13 of the bylaws includes the beach clubs, tennis courts and beach-front pools as part of the properties of common use, despite not being included in the deed of constitution.
3. The deed of constitution of the “Agrupación” of Communities does not bring any jointly-owned element to the Community grouping, in spite of being executed on the basis of a private residential complex under article 24 of the Condominium Property Act, in which the existence of any common element between the different communities or properties is an unavoidable requirement.

**Ten years later, under the deed of 24 July 2014** to which the “President of the “Agrupación” of Communities” was party, also referred to in this Deed <<“*Alcazaba Beach Community of Owners*”, made up of Phases I, II, II, IV and V>>, **three deeds were rectified:**

- (i) The deed dated 5 November 2004 which sets up the “Agrupación” of the Communities of the Alcazaba Beach Residential Complex.
- (ii) The deed executed on 29 July 1998 for placing the private settlement contract of 30 May 1995 on public record, under which Phases I to III acquired 14 properties from the Developer and the deed which supplements it dated 18 July 2013.

The deed of rectification is attached as **Document 4**.

With the rectification of the deed the 14 properties acquired by the owners of Phase I, II and III from Promotora Inmobiliaria Medina, S.A. were contributed to the “Agrupación” of Communities, as elements for common use, and the fourteen properties were registered in the Land Registry as elements for common use of the “Agrupación” of Communities on 9 September 2014. We consider this registration to be legally questionable although to dispute it now would not be beneficial to the intended aim of functioning as a single community.

The fourteen properties are acquired by the “Alcazaba Beach” Community of Owners made up of phases I, II and III in the form of common elements of the three phases, under the private contract of 30 May 1997 which was subsequently placed on public record. **Document 5**.

The owners of phases IV and V did not participate in the purchase of those properties; those communities did not exist either at the date of purchase nor at the time of completion, nor had the “Agrupación” of Communities in the “Alcazaba Beach” Residential Complex been created yet (5 November 2004).

The justification for providing these fourteen properties for common use could be the interpretation made to that effect of the private contracts signed on 13 August and 16 October 2002 between the Community of Owners of Phases I, II and III and the companies owning the land that would later be Phases IV and V.

The wording of those private contracts, in the part relative to the report, is literally transcribed above and attached.

The wording is not clear; what is ascertained from reading is that it says that the apartments of phases IV and V “*will have access to the full use and enjoyment (the*

*same as the components of the first, second and third phases) of all the common elements of the Complex (...), in turn contributing all their common elements, facilities and services as common elements of the “Agrupación”, which will also be managed and administered collectively.”*

The between full use and enjoyment with their contribution as common elements of the “Agrupación” resulting from the wording of the private contracts, was settled by the deed of constitution of the “Agrupación” of the Community of Owners in 2004 in which points V, VI and VII of the Recitals and also article 13 of its bylaws, specifically limit the right of Phases IV and V to the use of common elements, with each community conserving its right of ownership to its common elements.

The rectification is based on the majority decision taken at the AGM of the Community of Owners of Alcazaba Beach held on 14 August 2003, point four of the agenda. We interpret this as a reference to the registration of the contract for the fourteen elements of common use of Phases I, II and III by the purchasers in the contract, the owners of phases I, II and III, who paid the price through additional service charges collected years before.

#### **5.5. Physical or actual functioning of the Community of Owners of Alcazaba Beach.**

The different communities of owners of the Complex have been functioning as a single community of owners since the first of them was set up, on 10 December 1987, i.e. Staircases 1-2-3-4-17-18-19-20. Other than this first community, there is only record of the creation of the community of Phase IV, with no information regarding its functioning.

The rest of the owners of the apartments that were being sold, including those of the apartments of Phases IV and V, were then gradually incorporated into the community. The owners of the garages and apartments of these phases do not

belong to the “Agrupación” of the Community of Owners in accordance with its bylaws, article 2.

The creation of this community for functioning as a single unit does not meet the requirements of legal form and set-up executed by its developers in the five phases of which it is composed, which includes the mentioned nine communities and three general communities.

**5.6. Recommendation to transform the “Agrupación” of Communities into a Single Community Residential Complex, when the tax expenses can be assumed.**

The format with the legal status that comes closest to the owners’ intention for the Complex to function as a single unit, with its nine communities and four residential complexes, is to convert the present “Agrupación” of Communities set up in 2004 to the format of a Single Community Residential Complex provided for in article 24.2 letter a) of the Common Property Act (LPH).

This requires the unanimous agreement of the owners, article 17.6 LPH, and also administrative authorisation from the Estepona Council, article 10.3 LPH and 26.6 TRLSRU.

The recommendation for transformation into a Single Community will serve to avoid the legal limitations in the scope of actions and resolutions of the “Agrupación” of Communities, which will depend on the communities of which it is composed for any enhanced agreements (important), in addition to limiting its effect to the elements that are under common ownership of the “Agrupación” of Communities, without being able to affect the communal elements of the communities included.

That is to say, in an “Agrupación” of Communities, resolutions can only be adopted on elements for common use, not on the rest of the communal elements (e.g. gardens). This is what led to the interpretation prior to transposing the private contracts signed between Phases I, II and III with Phases IV and V to the Deed of Constitution of the “Agrupación”. Article 24.3 LPH is transcribed:

*24.3. The “Agrupación” of communities referred to in the previous subsection will to all effects and purposes be covered by the same legal situation as for communities of owners and will be governed by the provisions of this Law, with the following particularities:*

*b) For adopting resolutions for which the law requires qualified majorities, in any case, the majority in question will first have to be obtained in each Owners Meetings for the communities making up the “Agrupación”.*

*The authority of the governing bodies of the community grouping only extends to the items of common property, roads, facilities and services. Its resolutions cannot in any case diminish the faculties corresponding to the governing bodies of the communities making up the “Agrupación” of communities.*

It is essential to have a tax expert look into the possibility of avoiding the tax expense of transforming the “Agrupación” of Communities of Owners created under the provisions of article 24.2.b) LPH, into a Residential Complex that will be set up as a single community, in accordance with article 24.2 letter a) LPH.

The transformation of the present ““Agrupación” of Communities of Owners into a Single Community Residential Complex:

a) Will avoid having to resort to agreements from the individual communities in certain resolutions which have to be adopted under a qualified majority, or which limit the actions of the “Agrupación” to

communal services (for common use if the present ones are kept); this is a necessary or compulsory piece of law that cannot be replaced by the independent wishes of the co-owners in accordance with article 1.255 CC, which is only applicable to regulatory standards.

b) Resolutions may be adopted on all elements contributed as communal items, which today are not, such as gardens, upper pools, façades of the buildings, etc.

### **5.7. Proposal for action to be taken**

In order to not omit anything from this point and to avoid reiteration, we refer to heading 12 of this report.

## **6. LOCATION AND APPROACH.**

The Alcazaba Beach residential complex is located in the Municipal District of Estepona (Malaga).

It was originally developed by the company Promotora Inmobiliaria Medina, S.A. on plots segregated from three main estates, each main estate being identified with the first three phases of the Complex.

The first three phases were later completed with the apartment blocks developed on the land of Phases IV and V, built by different developers on plots of land separated by the roads of the first three phases.

The following plan shows the **stages in which the Complex was built:**

- a) A first stage in which the first three Phases of the Complex were built between 1986 and 1989.

- b) A second stage in which construction took place on the plot for Phase IV, carried out between 2005 and 2006.
- c) A third stage in which construction took place on the plot for Phase V, concluded in 2008.

The three building stages are differentiated in the following plan obtained from the Community web site, although the boundary of phase V has been rectified to the buildings to which it really corresponds shown with the red rectangle:



The communities set up in Phases I to III, in some cases are composed of physically separate buildings, each with several staircases for accessing the apartments numbered consecutively from number 1 according to the following plan.

Phases IV and V are apparently divided into different buildings above ground level but are joined below ground level by a single garage parking area, without forming independent communities.

The following plan identifies each of the phases, staircases in the blocks:



In this third aerial photo, the facilities for common use are marked out, to which must be added the administration building, library (as a concession), security facilities, Phase III Beach Club, gardens, paths and pools as indicated:



In the next sections of the report we will look into the legal and registration status of each Phase, as well as of the Complex as a whole.

The reference to the legal and registration status is that taken from the Deeds of New Construction and Condominium Division, with the deeds executed to supplement and rectify them, made available to us.

## **7. PHASES I, II AND III. GENERAL LEGAL STATUS.**

### **7.1. Concept.**

The initial development of the Complex involved the three phases, each one identified as a registered property or main estate, on which several segregations took place giving rise to new properties intended for apartment blocks, pools,

gardens, common elements, including tennis and paddle tennis courts in the first phase.

We try to explain this in the paragraphs and tables in the last chapters.

### **7.2 Existence of seven communities in Phases I, II and III.**

In Phases I, II and III Promotora Inmobiliaria Medina, S.A. created seven communities of owners, whose description, registration and physical details are addressed in subsequent chapters

- (i) Three communities in Phase I,
- (ii) Two in Phase II and
- (iii) Another two in Phase III.

Each Phase originates from a registered estate, segregated into several new estates, resulting in:

- Plots of land on which apartments are built and the different communities in that Phase are set up.
- The rest of the main estate as a common element exclusive to the communities of that phase and, lastly,
- Private plots whose ownership was initially reserved for the developer for use as a pool or land with tennis and paddle tennis courts.

### **7.3. Existence of three communities in Phases I, II and III: one for each Phase.**

In each of the first three Phases a general community [**mancomunidad**] was set up on the communal elements for the use of those phases: the gardens, entrances, pool, built on the rest of the main estate. With this there are three general communities set up on certain communal elements in the service of each of the Communities of Phases I, II and III, plus the rest of the segregated land, which were not divided into condominium ownership (indoor pool, tennis and paddle tennis courts, etc.).

**7.4. The development company has reserved ownership of fourteen registered properties, partly on the land segregated from the main estates of Phases I, II and III.**

In addition to the properties included in the Communities of Phases I, II and III, the **developer reserved ownership of fourteen registered properties** on which the sports, social and administrative facilities had been built within the Complex: tennis and paddle tennis courts, 3 beach clubs, pools, administration building etc.

The ownership and occupation of these fourteen facilities gave rise to different lawsuits between Promotora Inmobiliaria Medina, S.L. and the Communities of Owners of Phases I, II and III.

Those lawsuits were concluded by a settlement, with the Communities of Phases I, II and III acquiring ownership of them under a private contract dated 30 May 1995. The private contract established that the Developer would transfer ownership of the Properties to the Community of Owners for the price of 75,000,000.00 pesetas, equivalent to 450,759.078 euros.

The contract was notarised as a public deed executed on 29 July 1998, the content of which was supplemented by the deed dated 18 July 2013 executed by the President of the Alcazaba Beach Community, under which those properties were contributed to the “residential complex” as elements for common use.

The following table itemises the Communities of the Phases, the elements belonging to the general community of each Phase and the properties initially belonging to Promotora Inmobiliaria Medina, S.A. and subsequently acquired, under the contract of 30 May 1997, by the Community of Owners of Alcazaba Beach, composed only of the owners of Phases I, II and III.

PURCHASE OF PROPERTIES BY C.P. ALCAZABA BEACH FROM INMOBILIARIA MEDINA 30.05.1997										
Order	Description	Area	Situation	Owner	Legal status in Land Registry	Registered Property	Cadastre registration (*) Previous references	Title creation	Title acquisition Communities Phases I to III	Title acquisition for <u>attributing mistakenly to</u> Communities Phases I to V
1	Commercial premises Beach Club 1	Built and covered area 211.28 m2 plus 669.75 m2 of terrace	Ground floor Staircase 19	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	32,143	10753211Q	Deed DNC+DH 13.11.1986	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
2	Commercial premises Beach Club 2	Built and covered area 232.22 m2 plus 696.89 m2 of terrace	Basement Level Staircase 35 plot 8	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	35,596	10753326T	Deed DNC+DH 15.12.1987 rectified in Deed of 26/09/1990	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
3	Commercial premises Beach Club 3	Built and covered area 238.53 m2 plus 666,60 m2 of terrace	Basement Level Staircase 51 plot 10	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	38,445	10752915L	Deed DNC+DH 27.10.1988	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
4	Pool. Plot 5	1225,13 m2 of plot area	Plot 5	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	32,069	?	Deed of Segregation 13.11.1986	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
5	Pool. Plot 9	988,75 m2 of plot area	Plot 9	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	35,532	?	Deed of Segregation 15.12.1987	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
6	Pool. Plot 11	832 m2 of plot area	Plot 11	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	38,381	?	Deed of Segregation 27.10.1988	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
7	5 tennis courts and 3 paddle tennis courts	14,994.55 m2.	Rest of the Land Segregated from the Original of 15,693.55 m2	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	32,063	10753173H	Deed of Segregation 13.11.1986	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".

8	Offices and commercial premises	699 m2 of Built area 249.16 m2 Terraces: 20.97 m2.	?	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	44,168	?	Deed of Segregation and New Construction 10.10.1990	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
9	Diaphanous premises	Built and covered area 307.10 m2	Basement Level Staircase 42 plot 12	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	44,463	?	Deed of rectification 26.09.1990	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
10	Storerooms	Built area of 319.79m2	Basement Staircase 21 plot 8	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	44,465	?		Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
11	Storerooms: 80	Built area of 319.49m2	Basement Staircase 22 plot 8	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	44,467	?		Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
12	Storerooms: 80	Built area of 355.49m2	Basement Staircase 34 plot 8	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	44,469	?		Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
13	Storerooms: 80	Built area of 367.43m2	Basement Staircase 36 plot 8	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	44,471	?		Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".
14	Warehouse staff	Built area of 95.25m2	Basement Staircase 18 plot 4	"Agrupación" Communities Owners Phases I to V	Element for common use "Agrupación" Communities Phases I to V	37,402	?	Deed Rectification 26.11.1990	Private contract Settlement with transfer of properties of 29 July 1998, later notarised	Supplementary deed of 18 July 2013 under which the 14 properties were brought to the "Alcazaba Beach residential complex" as elements for common use. This Deed supplements the Deed for notarising the private settlement contract and acquisition 14 properties by the "Community of Owners of Phases I, II and III".



*Part of the facilities subject to the private settlement contract are marked.*

The following tables give details of each of the three residential complexes, one for each phase, the registered properties of which they are composed, the actual use of each property, the condominium divisions of each Phase with the staircases, their built area and date of the bylaws that regulate them, included in the attached deeds as annexes to this report.

## **8. SPECIFIC LEGAL SET-UP FOR PHASES I, II AND III. ORIGINAL ESTATES, SEGREGATIONS AND SETTING UP RESIDENTIAL COMPLEXES**

### **8.1. Legal set-up of Phase I. Original estate, segregations and creation of the Phase I Residential Complex.**

Phase I corresponds to registered property number 31.180 before its segregation indicated below, with an area of 52,336.90 m<sup>2</sup>.

This main estate no. 31.180 was segregated by Promotora Inmobiliaria Medina S.A. into 5 properties, to which a sixth property must be added with an area of 14,215.20 m<sup>2</sup> which is left as the remainder of that main estate. This is taken from the public deed authorised on 13 November 1986 by the Marbella Notary, Mr José Luis Palanco Burgos.

These six resulting properties after segregation from the main estate form a **residential complex** and the rest of the main estate is established as communal elements for use by the five segregated properties: indoor pool, gardens, roads, interior roads and entrances.

The properties resulting from the segregation were used as follows:

- 1) Three plots on which apartment blocks were built, one with a Beach Club, of which the Developer retained ownership. On three of the segregated properties apartment blocks were built, for which three communities of owners were set up.
- 2) Plot with beach-front pool, of which the Developer retained ownership.
- 3) Plot for use as paddle and tennis courts, basketball courts, children's playground and football pitch, of which the Developer retained ownership.
- 4) Communal elements of the five plots of the complex: indoor pool, gardens, roads, interior roads and entrances, land remaining from the main estate. They form an inseparable annex to each of the segregated plots, and a percentage of participation in the conservation and maintenance expenses is attributed to each plot according to table below.

What was **created** at that time is what is nowadays known as a **Private Residential Complex**, regulated under article 24 of the Common Property Act 49/1960, of 21 July, hereinafter “**LPH**”.

The regulation of residential complexes originates from the amendment to the LPH of 6 April 1999, defining them as pertaining to “*a multiple number of plots of land or buildings separate from each other*”.

Private residential complexes are also regulated by article 26.6 TRLSRU. Any alterations to the complex would currently require authorisation from the Council, under this law and article 10.3 LPH which includes it.

Therefore, if the present “Agrupación” of Communities is altered, authorisation or a permit would have to be obtained from the Estepona Council, before executing the deed of amendment and registration.

In our opinion, the rectification of the “Agrupación” is not subject to administrative authorisation. It will have to be demonstrated to the Notary who authorises the deed of rectification that this requirement has been met, and the evidence included in the recitals of the deed of rectification.

The General Directorate of Registry and Notary Offices (“**DGRN**”) has expressed its opinion on the difference between a residential complex and ordinary condominium property on numerous occasions. In its Resolution dated 17 October 2014, it establishes the criteria for differentiating them within the complexity of the system.

The complexity of the private residential complexes of Phases I to III and their very definition are what define their nature, as differing from ordinary condominium property.

The complexes of these phases constitute a separate property with the land for gardens and pool from the rest of the plots of land, all built on and subject to condominium division, except the plots to be used for beach-front pools, of which the Developer initially retained ownership in the three phases, the same as for the land for sports use (paddle and tennis).

The table on the next page summarises the basic conditions for segregation from the main estate and the common element of the Residential Complex:

PHASE I. MAIN ESTATE. SEGREGATIONS AND RESIDENTIAL COMPLEX 1						
Property	Plot		Area	Description	Registered Property	Participation
Main estate			52,336.90	N: Cadiz-Malaga Highway; S: coastline; E: rest of the main estate; W: various owners and segregated land	31,180	
<b>Segregated from the main estate</b>						<b>Use</b>
A	1	Segregated	15,693.50		32,063	0.75%
<b>Tennis and paddle tennis courts.</b> Acquired under private contract by Communities Phases I to III on 29 July 1998 and incorporated as element for common use into the "Agrupación" of Communities of Phases I to V Alc. Beach on 9 Sept. 2014.						
B	2	Segregated	10,191.88	Staircases 8,9,10,11,12,13,14,15 and 16	32,065	45%
Units						
C	3	Segregated	3,045.63	Staircases 5,6 and 7	32,067	15%
Units						
D	4	Segregated	7,965.51	Staircases 1, 2, 3, 4, 17, 18, 19 and 20	32,071	39%
Apartments and Beach Club						
E	5	Segregated	1,225.13		32,069	0.25%
<b>Beach-front pool.</b> NOT initially a common element of the complex of the three communities of Phase I. it is a separately owned plot belonging to Promotora Inmobiliaria Medina, S.A. Acquired later under private contract. by the Communities of Phases I to III on 29 July 1998 and incorporated as element for common use into the "Agrupación" of Communities of Phases I to V, Alc. Beach on 9 Sept. 2014.						
		Rest main estate	14,215.20	5 areas contained within; plot 1 to 5	31,180	
<b>Common element of the complex formed by the three communities of Phase I. beach-front pool and recreational areas. Indoor pool Phase I.</b> Roads, paths, pavements and squares, landscaped areas, parking, general drainage system, water pipe system, LV electricity system, lighting, electricity sockets telephony network and watering system.						
<b>TOTAL</b>			<b>52,336.85</b>			<b>100.00%</b>

The deed of segregation and constitution of the Residential Complex includes a provision so that when the segregated plots are divided on a condominium basis, each owner will be allocated a percentage of participation in the Residential Complex. For this reason, the apartments resulting from each condominium division will be attributed two sets of community fees:

- a) A percentage of participation in the building (the community to which they belong).
- b) A percentage of participation in the expenses of the Residential Complex.

An excerpt is given of the description of one of the apartments resulting from the condominium division of its building for a better understanding of the double community fee system, one for the community (block) to which it belongs and the second for the Residential Complex of Phase I appearing in the description of the apartment itself:

*“10.- Duplex apartment [\*\*\*], on the second floor of staircase number 2 of plot number 4 of the Alcazaba Beach complex within the municipal boundary of Estepona, sector of El Padrón, district of Cañada Ortega y Los Llanos. It is distributed as several rooms and annexes. It has a built and covered area of one hundred and fifty seven point 41 square metres.*

*It is bordered by common areas to the front and rear, and on the left, and by apartment number [\*\*\*], on the right.*

*Participation in the block: 2.74 per cent.*

*Participation in the complex: 1.0686 per cent.*

We would point out that the reference to “block” in the description is identified with the Community of Owners, even though the community has more than one building or block physically separated, as occurs in the Phase I Community of Owners,

composed of two buildings, one consisting of staircases 1, 2, 3 and 4 and the second building of staircases 17, 18, 19 and 20.

In Phase I three communities of owners have been set up. Of the six plots in this phase, three have been built and divided on a condominium basis, setting up a community on each one.

The conditions of the three communities are summarised in the table on the following page.

**RESIDENTIAL COMPLEX 1 Phase I**

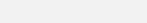
**SEGREGATION, DNC and DH. Deed 13.11.1986**

**PHASE I. MAIN ESTATE. SEGREGATIONS AND RESIDENTIAL COMPLEX 1**

Property	Plot	Area	Description	Registered Property	Part. %		Properties contributed in deed of constitution of "Agrupación" of Communities Phases I to V. Deed 05.11.2004, rectified under deed of 24.07.2014.			
<b>Main estate</b>		52,336.90	N: Cadiz-Malaga Highway ; S: coastline; E: rest of the main estate; W: various owners and segregated land	31,180						
<b>Segregated from the main estate</b>						<b>Use</b>	<b>Deed of Condominium Division</b>	<b>Blocks/ Sector:</b>	<b>Built area, incl. common areas</b>	<b>Bylaws</b>
A	1	Segregated 15,693.50		32,063	0.75%	<b>Tennis and paddle tennis courts.</b> Acquired under private contract by Communities Phases I to III on 29 July 1998 and incorporated as element for common use into the "Agrupación" of Communities of Phases I to V Alc. Beach on 9 Sept. 2014 (incorrectly).				
B	2	Segregated 10,191.88	Staircases 8,9,10,11,12,13,14,15 and 16	32,065	45%	Units	Cond. Div. Third. 10.09.1987 (Staircases 8,9,10,11,12,13,14,15 and 16).	1¿?	6,470.25	13.11 1986
C	3	Segregated 3,045.63	Staircases 5,6 and 7	32,067	15%	Units	Cond. Div. Second. 15.06.1987 (Staircases 5,6, and 7).	1	2,105.09	13.11 1986
D	4	Segregated 7,965.51	Staircases 1, 2, 3, 4, 17, 18, 19 and 20	32,071	39%	Apartments and Beach Club	Cond. Div. First. 13.11.1986 (Staircases 1, 2, 3, 4, 17, 18, 19 and 20=	2	5,953.91	13.11 1986
Residual	5	Segregated 1,225.13		32,069	0.25%	<b>Beach-front pool. NOT initially a common element of the complex of the three communities of Phase I.</b> it is a separately owned plot belonging to Promotora Inmobiliaria Medina, S.A. Acquired later under private contract. by the Communities of Phases I to III on 29 July 1998 and incorporated as element for common use into the "Agrupación" of Communities of Phases I to V, Alc. Beach on 9 Sept. 2014.				
		Rest main estate 14,215.20	5 areas contained within; plot 1 to 5	31,180		<b>Common element of the complex formed by the three communities of Phase I. beach-front pool and recreational areas. Indoor pool Phase I.</b> Roads, paths, pavements and squares, landscaped areas, parking, general drainage system, water pipe system, LV electricity system, lighting, electricity sockets telephony network and watering system.				
<b>TOTAL</b>		<b>52,336.85</b>			<b>100 %</b>					

The properties of the Residential Complex and buildings making up the three communities of and remaining plots of Phase I are approximately identified on the following plan:



Plot 4. Community of Owners 1: Registered Property number 32.071	
Plot 3 Community of Owners 2: Registered Property number 32.067	
Plot 2 Community of Owners 3: Registered Property number 23.065	
Rest main estate: 31,180: Common Elements of Comm. 1-2-3	
Plot 1. Tennis and Paddle: Property 32.062, and Indoor Pool: Property 32,069	

## **8.2. Specific legal set-up for Phase II. Original estate, segregations and setting up Residential Complex of Phase II.**

Phase II is identified with the area and description of Registered Property number 35.526 before its segregation indicated below, with an area of 27,218.00 m<sup>2</sup>.

This main estate no. 35.526 was segregated by Promotora Inmobiliaria Medina S.A. into 3 properties, to which a fourth property must be added with an area of 8,586.7 m<sup>2</sup> which is left as the remainder of that main estate. This is taken from the public deed authorised on 15 December 1987 by the Marbella Notary, Mr José Luis Palanco Burgos.

These four resulting properties after segregation from the main estate form a **private residential complex** and the rest of the main estate is established as communal elements for use by the three segregated properties: beach-front pool, gardens, roads, interior roads and entrances.

The properties resulting from the segregation were used as follows:

- 1) Two plots, nº 7 and 8, on which apartments were built, storerooms and a beach club now used as a restaurant at the service of the Complex. On two of the segregated properties apartment blocks were built, for which two communities of owners were set up, one on each plot.

Community of Owners 1 of Phase II composed of two buildings, one consisting of staircases 21, 22, 23, and 24 and the second building of staircases 34, 35 and 36.

Community of Owners 2 of Phase II composed of three buildings, the first consisting of staircases 25, 26, 27, and 24, the second building of staircases 28, 29 and 30, and the third with staircases 31, 32 and 33.

The conditions of the two communities of Phase II are summarised in the table on the following page.

- 2) Plot with beach-front pool, initially belonging to the developer and subsequently transferred to the owners of Phases I, II and III and then contributed to the Residential Complex as an element for common use.
  
- 3) Common elements of the five plots of the complex: indoor pool, gardens, roads, interior roads and entrances, land remaining from the main estate. They form an inseparable annex to each of the segregated plots, and a percentage of participation in the conservation and maintenance expenses is attributed to each plot according to table below.

The same as occurs with Phase I, the deed of segregation and constitution of the Phase II Residential Complex includes provision for when the segregated plots are divided on a condominium basis, each owner will be allocated a percentage of participation in the Residential Complex.

The above continues with the system of double participation in expenses and in voting rights for the apartments resulting from each condominium division. They are allocated two sets of community fees: (i) Percentage of participation in the building (community to which they belong) and (ii) Percentage of participation in the expenses of the Residential Complex.

The table on the next page summarises the basic conditions for segregation from the main estate and the common element of the Residential Complex:

**RESIDENTIAL COMPLEX 2 PHASE II**  
**SEGREGATION, DNC and DH. Deed 15.12.1987**

Property	Plot		Area	Description	Registered Property	Part. %						
Main estate			27,218.00		35,526 (?)							
<b>Segregated from the main estate</b>												
							Use	Cond. Div.	Blocks/ Sector:	Floors	Built area, incl. common areas	Bylaws
A	7	Segregated	9,982.34	Staircases 25,26,27,28,29,30,31,32 and 33	35,530	55.85%	Units	Cond. Div . 15.091988	3	Ground floor +2	6,482.30	15.09 1988
B	8	Segregated	7,660.21	Staircases 21,22,23,24.; 34,35 and 36	35,534	43.90%	Apartments and Beach Club	Cond. Div. 15.12 1987	2	Ground floor +2 Staircase. 35 Gr.+2+ basement (commercial premises)	5296.52 + 509.65 of Terraces	15.12 1987
D	9	Segregated	988.75		35,532	0.25%	<b>Beach-front pool. NOT initially a common element of the complex of the three communities of Phase II.</b> it is a separately owned plot belonging to Promotora Inmobiliaria Medina, S.A. Acquired later under private contract by the Communities of Phases I to III on 29 July 1998 and incorporated as element for common use into the "Agrupación" of Communities of Phases I to V, Alc. Beach on 9 Sept. 2014.					
		Rest main estate	8,586.70	3 areas contained within; plot 7 to 9			<b>Common element of the complex formed by the three communities of Phase I. beach-front pool and recreational areas. Indoor pool Phase II.</b> Roads, paths pavements and squares, landscaped areas, parking, general drainage system, water pipe system, LV electricity system, lighting, electricity sockets telephony network and watering system.					
<b>TOTAL</b>			<b>27,218.00</b>			<b>44.15%</b>						

The properties of the Residential Complex and buildings making up the three communities of and remaining plots of Phase I are approximately identified on the following plan:



Community of Owners 4: Registered Property number 35.534	■ ■ ■
Community of Owners 5: Registered Property number 35.530	■ ■ ■
Rest main estate: 35,526: Common Elements Comm. 4-5	■ ■ ■ ■ ■
Outdoor Pool: Property 35,532	■ ■ ■

### **8.3. Legal set-up for Phase III. Original estate, segregations and setting up Residential Complex of Phase III.**

Phase III is identified with the area and description of registered property number 35.528 before its segregation indicated below, with an area of 27,429.69 m<sup>2</sup>.

This main estate no. 35.528 was segregated by Promotora Inmobiliaria Medina S.A. into 3 properties, to which a fourth property must be added with an area of 10,226.93 m<sup>2</sup> which is left as the remainder of that main estate. This is taken from the public deed authorised on 27 October 1988 by the Marbella Notary, Mr José Luis Palanco Burgos.

These four resulting properties after segregation from the main estate form a **private residential complex** and the rest of the main estate is established as communal elements for use by the three segregated properties: beach-front pool, gardens, roads, interior roads and entrances.

The properties resulting from the segregation were used as follows:

1. Two plots, nº 10 and 12, on which apartments, storerooms and a beach club were built. On two of the segregated properties apartment blocks were built, for which two communities of owners were set up, one on each plot.

Community of Owners 1 of Phase III composed of two buildings, one consisting of staircases 37, 38, 39 and 40 and the second building of staircases 50, 51 and 52.

Community of Owners 2 of Phase II composed of three buildings, the first consisting of staircases 41, 42, 43 and 44, the second building of staircases 45 and 46, and the third with staircases 47, 48 and 49.

The conditions of the two communities of Phase III are summarised in the table on the following page.

2. Plot with beach-front pool, initially belonging to the developer and subsequently transferred to the owners of Phases I, II and III and then contributed as an element for common use to the Residential Complex.
3. Common elements of the five plots of the complex: indoor pool, gardens, roads, interior roads and entrances, land remaining from the main estate. They form an inseparable annex to each of the segregated plots, and a percentage of participation in the conservation and maintenance expenses is attributed to each plot according to table below.

The same as occurs with Phases I and II, the deed of segregation and constitution of the Phase III Residential Complex includes provision for when the segregated plots are divided on a condominium basis, each owner will be allocated a percentage of participation in the Residential Complex.

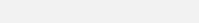
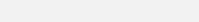
The system of double participation in expenses and in voting rights for the apartments resulting from each condominium division: (i) Percentage of participation in the building (community to which they belong) and (ii) Percentage of participation in the expenses of the Residential Complex.

The table on the next page summarises the basic conditions for segregation from the main estate and the common element of the Residential Complex:

**RESIDENTIAL COMPLEX 3 PHASE III**  
**SEGREGATION, DNC and DH. Deed 27.10.1988**

Plot	Area	Description	Registered Property	Part. %								
Main estate	27,429.69		35,528									
<b>Segregated from the main estate</b>					<b>Use</b>	<b>Cond. Div.</b>	<b>Blocks/ Sector:</b>	<b>Floors</b>	<b>Built area incl. common</b>	<b>Bylaws</b>		
A	10	Segregated	7,132.38	7 Staircases: 37,38,39,40, 50,51 and 52.	38,379	43.50%	Apartments and Beach Club	Cond. Div . 27.10.1988	2	Ground floor +2 Staircase. 51 Gr+2+ basement (commercial premises)	6,482.30	27.10 1988 deed Incomplete
B	11	Segregated	832.00		38,381	0.25%	<b>Beach-front pool. NOT initially a common element of the complex of the three communities of Phase II.</b> it is a separately owned plot belonging to Promotora Inmobiliaria Medina, S.A. Acquired later under private contract by the Communities of Phases I to III on 29 July 1998 and incorporated as element for common use into the "Agrupación" of Communities of Phases I to V, Alc. Beach on 9 Sept. 2014.					
C	12	Segregated	9,238.38	9 Staircases: 41.42, 43, 44, 45, 46, 47, 48 and 49.	38,383	56.25%	Units	Cond. Div. 01.03 1989	1	Ground floor +2	6.478,94 m2 built area+ 652.72 m2 of Terraces	27.10 1988
		Rest main estate	10,226.93		35,528		<b>Common element of the complex formed by the three communities of Phase I. beach-front pool and recreational areas. Indoor pool Phase III.</b> Roads, paths pavements and squares, landscaped areas, parking, general drainage system, water pipe system, LV electricity system, lighting, electricity sockets telephony network and watering system.					
<b>TOTAL</b>			<b>27,429.69</b>			<b>100.00</b>						<b>%</b>

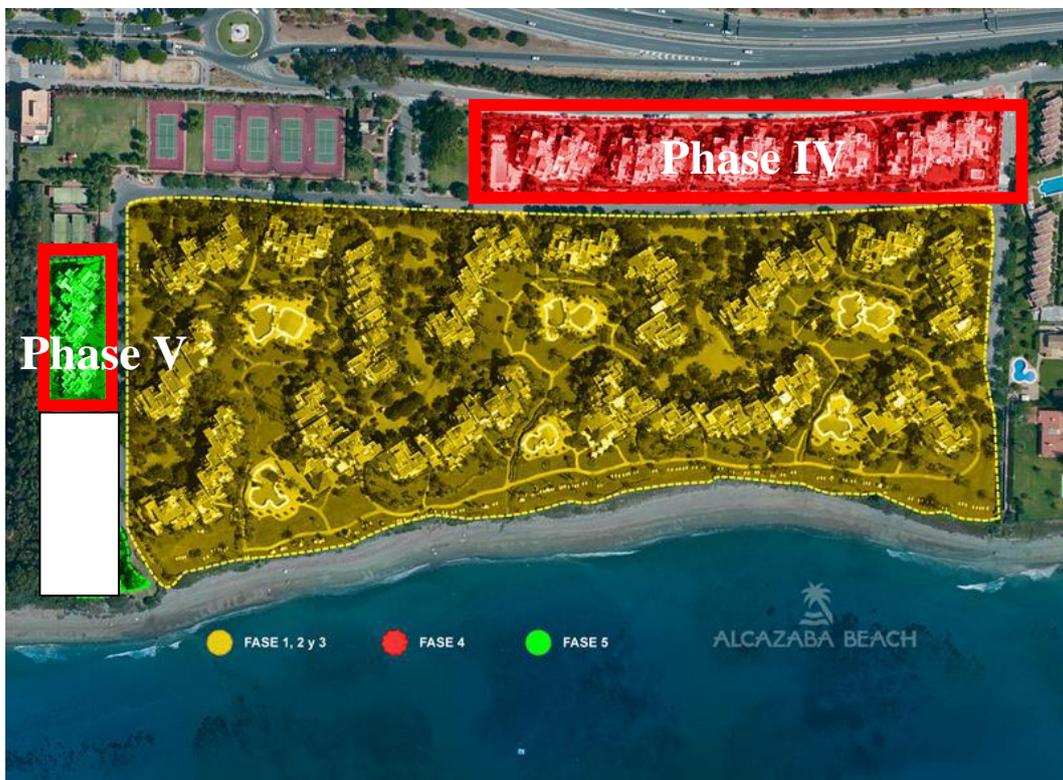


Community of Owners 6: Registered Property number 38.379	
Community 7: Registered Property number 38.383	
Rest main estate: 35.528: Common Elements Comm. 6-7	
Outdoor Pool: Property 38,381	

## 9. LEGAL SET-UP FOR PHASES IV AND V.

### 9.1. Analysis and general characteristics of Phases IV and V.

Next to the first three plots of lands developed in the scope of the Alcazaba Beach Complex, there are two other plots of development land which make up phases IV and V, located on the northern and western boundaries of the complex.



Phases IV and V are not physically joined to phases I to III, although they are separated by the interior streets of the complex, now municipal roads as we have been verbally informed, without having any documentary evidence of their being handed over to the Estepona Council.

These two Phases were built by different developers from those of Phases I to III, although the Management of the developer of Phase IV, Jardines de las Fuentes, S.A. has the same origins.

The initial developer of Phase V, the company “Alcazaba 2002 Desarrollo Inmobiliarios, S.L.”, controlled by its sole member, Promociones Alfa 94, S.L., subsequently by DUNA PROJECT MANAGEMENT, S.L. as sole member.

From the information obtained, the buildings were acquired by March Patrimonios, S.A. and sold on 11 April 2014 by WYCHWOOD CAPITAL PARTNERS SPAIN, S.L. who transferred part of the apartments of this Phase subject to condominium division and incorporated into the "Agrupación" of Communities of the Alcazaba Beach Complex.

## **9.2. Legal set-up for Phase IV.**

Phase IV was built on a plot of land situated to the south of the complex, bordering with the former Cadiz-Malaga highway; its initial planning classification was commercial, and then changed to the current residential use.

On this land a residential building was constructed with five blocks above ground level, accessed by five staircases with a lift, plus garages and store rooms located on the common basement level.

The land on which it is built, Registered Property 17.016, with an initial registered area of 23,388.40 m<sup>2</sup> although the deed shows 22,546.85 m<sup>2</sup>, was segregated under the deed authorised on 5 March 2004 by the Estepona Notary Mr Jorge Moro Domingo, with number 938 of his official record, reducing its area to 6,239.75 m<sup>2</sup>.

In addition to the first of the Communities set up in Phase I, on 10 December 1986, Phase IV the second was set up on 10 January 2006.

The community of owners originates from the Declaration of New Construction and Condominium Division executed on 30 September 2005 by Jardines de las Fuentes, S.A. as Developer.

The bylaws of the community include the possibility of creating a second community on the land, separate from that of the apartments, to be used as store rooms and garages. There is no record of the existence of this second community.

The “introduction” to the bylaws gives a summary of the background of the complex into which this new community is incorporated; its incorporation into the "Agrupación" of Communities of the Alcazaba Beach Residential Complex, is reflected in the deed of "Agrupación" of communities.

This "Agrupación" of Communities is given the name of “Supra Community”, obliging the properties resulting from the division of Phase IV to contribute to the expenses of that Supra Community in the percentages and participations assigned to each of the properties in the deed of condominium division. Accordingly, each of those properties has:

- a) One participation percentage relating to the "Agrupación" of Communities of the Alcazaba Beach Residential Complex” and
- b) Another participation percentage, this one relating to the Community of Phase IV of Alcazaba Beach.

We include the description of one of the apartments in the deed of condominium division for greater clarity:

*“Number 36: Apartment no. [\*\*\*] on the ground floor- Its built area is 254.93 m<sup>2</sup>, of which 96.91 m<sup>2</sup> are terraces, distributed internally as hallway, corridor, lounge-diner, kitchen, 3 bathrooms, 3 bedrooms and terrace.*

*It is bordered: To the front: with distribution corridor, lifts and staircase; to the right upon entering: with apartment [\*\*\*] of the same block and staircase: to the left upon entering: with the pedestrian entrance from the pre-existing street of the La Alcazaba Complex and to the rear or back: with gardens of the Complex.*

*It represents one participation percentage relating to the "Agrupación" of Communities of the Alcazaba Beach Residential Complex: 0.3083 %.*

*It represents one participation percentage relating to the Community of Phase VI of Alcazaba Beach: 1.5857 %.”*

The table on the next page summarises the basic conditions of the Phase IV community:

COMMUNITY OF OWNERS Phase IV										
Property	Plot	Area	Registered Property 2	Part. %	Description	Cond. Div.	Blocks/ Sectors	Floors	Built area, incl. common areas	Bylaws
Main estate		6,239.75 m2 (before segregation 22,546.85 m2).	17,016							
					One building in the basement and 5 buildings above ground level	Deed New Const.+ Cond Div. 30.09.2005	5	Basement+Gr. Fl+2,	19,145.04 m2 built area. 5,374.13 m2 basement; 1,141.53 m2 common areas and 12,629.38 apartments, of which 4,384.54 m2 are terraces.	Deed New Const.+ Cond Div. 30.09.2005



### **9.3. Legal set-up for Phase V.**

On a plot of land situated to the west of the complex on which a residential building was built equipped with a lift, with garage and store rooms in the basement level. It consists of two buildings, with 12 apartments, joined by the basement, which has two levels used for parking and store rooms.

The community of Phase V was set up on this plot of land, under the deed of Rectification of New Construction, End of Building Work and Condominium Division, executed by Alcazaba 2002 Desarrollos Inmobiliarios, S.L. in the presence of the Estepona Notary Mr José Maria García Urbano on 13 May 2008.

The introduction to the bylaws of this community describe how this Phase V belongs to an "Agrupación" of Communities, and that Phase V is governed by the rules of the "Agrupación" of Communities and by its own bylaws.

In the bylaws, article 8 refers to what are known as "Communal elements contained in the agreement of the communities of the ALCAZABA BEACH Residential Complex" including the list in article 13 of the bylaws of the "Agrupación" of owners. Article 13 letter c includes the percentage of participation in the expenses of the "Agrupación" of owners. Lastly, the bylaws of the "Agrupación" of Communities are included as Annex I of the bylaws of Phase V.

The table on the next page summarises the basic conditions of the Phase V community:

COMMUNITY OF OWNERS Phase V										
DNC concluded and Cond. Div. Deed 13.05.2008 (originating from DNC and new construction 27.10.2006)										
Property	Area (m <sup>2</sup> )	Cadastre Reference	Registered Property	Description	Cond. Div.	Blocks/ Sectors	Floors	Built area, incl. common areas	Bylaws	
Property	2,712.30	9934029UF0393S0001PG	56.403	2 buildings, 12 apartments divided into 3 staircases, 3 apartments in building 1 and 9 apts. Basement joined with 15 parking spaces and 12 store rooms. In building 2. Floors: Ground+ 2+ basement.	13.05.2008	2	B+2 +basement		13.05.2008	



## **10. CREATION OF THE "AGRUPACIÓN" OF THE COMMUNITIES OF THE ALCAZABA BEACH RESIDENTIAL COMPLEX AND PRIVATE CONTRACTS LEADING TO IT.**

### **10.1. Concept.**

With the intervention of the president of the communities of Phases I to III of Alcazaba Beach in the deed, where it indicates that there were seven, together with the companies owning the land on which the apartments of phases IV and V were to be built, they created an "Agrupación" of Communities with the intention of enabling the common use of the facilities and gardens of the Complex.

In our understanding, the intention of this "Agrupación" was to incorporate Phases IV and V, with the future apartment owners contributing to the maintenance of the elements for common use.

The absence of any property contributed in 2004 as a common element in the constitution of the "Agrupación" of Communities, of those comprised in each of the three Residential Complexes of phases I to III, owners of the green zones, pools, etc. of each of the phases, or even of the properties acquired by these phases from Promotora Inmobiliaria Medina, S.A., suggests a failed attempt to regulate the collective functioning of the communities in the Alcazaba Beach Complex. Our reasoning is given in the following sections.

The Constitution of the "Agrupación" of Communities is the result of the private contracts concluded on 13 August and 16 October 2002 between Phases I, II and III, operating as a single community, and the owners of the plot of lands where the apartments of Phases IV and V would be developed.

In those private contracts it was established that the owners of apartments in the five phases would have the use of the common elements, with a confused wording from which the contribution of the ownership of common elements to a supra community or "Agrupación" of owners cannot be clearly ascertained. With the creation of the "Agrupación", the 2004 deed does not transfer ownership of any common element to the "Agrupación" of Communities, it only grants the right of use and enjoyment of the common elements by all the apartment owners.

## 10.2. Private contracts for integrating Phases IV and V into the Complex.

The rights of the communities of Phases IV and V to use the common elements of Phases I, II and III of the Alcazaba Beach Complex and of the latter to use the common elements of the former, were agreed upon by the developers of the apartments of those phases and Phases I, II and III of the Alcazaba Beach Community which at that time was managing the seven communities and three general communities collectively.

### 10.2.1 Private contract giving rise to the rights of Phase IV to use the common elements of Phases I, II and III of the Complex.

The private contract signed on 13 August 2002 between the Alcazaba Beach Community and the company Jardines de las Fuentes, S.A. described the future promotion of 72 apartments by the latter on the land of Phase IV and the following was agreed:

- a) The use and enjoyment by the apartments of Phase IV of all the common elements of the Complex, and in turn this Phase IV would also contribute all of its common elements, facilities and services in the following terms expressed in their clause 3, (underlining is ours):

*“Three.-*

*(...)*

*With this, the new apartments will have full use and enjoyment (as components of phases one, two and three), of all the common elements of the Complex (gardens, pool, security and control service, cleaning, beach clubs (chiringuitos), sunbeds, tennis and paddle tennis courts. etc.), in turn contributing all their common elements, facilities and services as common elements of the “Agrupación”, which will also be managed and administered collectively.”*

- b) The creation of a Residential Complex, as a form of organisation agreed upon for managing the facilities collectively and for incorporating Phase IV into the Complex, with the following literal wording also included in clause three of the contract:

*“Three.- In order for the buildings on the land to be incorporated into the complex as its phase four, an “Agrupación” of owners or general community [Mancomunidad] will be set up between the Alcazaba Beach Community and the owner of the apartments built on the plot of land, in accordance with the provisions of sub-section b, 1 of article 24 of the Common Property Act of 18 March 1999. To that end a deed will be executed to create that “Agrupación” by the owner of that plot of land and by the president of the Alcazaba Beach Community before selling the apartments to be built to third parties, with that deed being registered in the Land Registry.  
(...).”*

- a) Compensation by the Developer of Phase IV, with the obligation to pay the Community of Owners up to a maximum amount or cost of 901,519.00 € for work carried out in its benefit as detailed in the contract. At the date of this report we have not received any documentary evidence of the payment or the implementation of the work agreed, which will have to be confirmed by the Administration of the Community once checked.

Due to the relevance of this contract for the matter under analysis, it is attached as **Document 1**.

In the contracts examined we have not found any prior agreement that expressly legitimises signing this contract. However, in the AGM held on 10 August 2000 the meeting was informed of the negotiations and conditions to be included in the contract were approved, specifically in point three of the Agenda.

#### AGENDA

- 1. Reading, if necessary, the minutes of the AGM of 10 August 2000 and of the EGM of 24.8.2000.*
- 2. President’s Report.*
- 3. Report on the negotiations with the owner of the north plot, and in relation to the President’s Report, sent as an attachment, voting, where appropriate on what will be most suitable for the Community.*

(...) with the following resolution:

**Point 3 of the Agenda:** *The President referred to the report on this matter that was sent to all owners with the formal notice of the Meeting and which everyone is therefore aware of and can be summarised as follows:*

*Once the land has been reclassified, the owner intends to build a development of 66 apartments designed by Melvin Villarroel, with gardens and pool similar to those of Alcazaba Beach.*

*If an agreement is reached with our Community:*

*a) Contribution of sun beds for beach and pool in the proportion as at present.*

*b) Proportional participation in the Community expenses as if they were the 4<sup>th</sup> phase of Alcazaba Beach.*

*c) Compensation for the common elements as follows:*

*- Construction of children's club with gymnasium.*

*- Indoor heated pool.*

*- Signage at the entrance to the complex according to the project by Melvin Villarroel.*

*Lastly, we will look into the how Alcazaba Beach owners can be given preference in the purchase of future apartments.*

*The Committee proposed approving the basic conditions set out above as minimum conditions (accepted in principle by the owner), notwithstanding establishing a final figure taking into account the similarity, uniformity, density and equal distribution of expenses, rights and charges, as expressly worded in the proposal, which is transcribed below:*

*1. On the Plot in question a maximum of (to be determined) square metres will be built, distributed as a maximum of SIXTY SIX (66) apartments, type P.M-1 (Mediterranean Village), similar in appearance to those already built in phases I, II and II of Alcazaba Beach so that*

*they would be uniformly integrated into the complex as if they were another phase of it, which is why the project for those apartments should be designed by the same Architect who originally designed Alcazaba Beach, Melvin Villarroel.*

*2. The Land will be equipped with:*

*i) Green zones adequate to the density of the number of apartments to be built; the gardens should be created in the form and with species similar to those currently found in Alcazaba Beach.*

*ii) A pool similar in design to those in Alcazaba Beach.*

*iii) A children's club, gym and heated indoor pool, with a capacity appropriate for the total of 378 apartments, and signage for the complex as designed by Melvin Villarroel.*

*3. Underground parking spaces will be built on the land to be sold to owners of Alcazaba Beach wishing to buy, upon firm request.*

*4. The amount of THREE MILLION FIVE HUNDRED PESETAS (3,500,000) will be paid to the Alcazaba Beach Community in compensation for the inconvenience caused during the construction period.*

*5. For a reasonable period of time, Alcazaba Beach owners will have priority in buying, in the terms to be established regarding price and form of payment.*

*6. An "Agrupación" of communities will be set up between the Alcazaba Beach communities and the new community resulting from the development built on Plot UEP-R 19, in the terms set out in article 24 of the Common Property Act of 18 March 1999; the deed of constitution of the "Agrupación" will be executed by the Owners of that land and the President of Alcazaba Beach prior to any sale to third parties of the apartments, with that deed being registered in the Land Registry.*

*Several owners then spoke, putting forward and debating the aspects or points listed below in summary:*

*a) Legal possibility of the Community buying the land, even if a unanimous vote is not reached in that respect.*

*b) Possibility of renegotiating the purchase of that land by any owners who are interested and willing to do so.*

c) *Insist on and propose, as an underlying assumption within the necessary conditions for any possible agreement, the quantification of the valuable assets involved in the investments made by the Community for the maintenance of gardens, sports amenities (courts and pools) and the purchase of land and buildings by the Community from the Developer, as all those assets would become saleable assets for the new development, in benefit of the Developer.*

d) *Consider the compensation offered by the owner to be insufficient, and demand a maximum of 42 apartments with building volume, occupation percentage of the land and infrastructure for gardens, sports amenities, pool and design identical to our Community, and if the owner does not accept this, to totally oppose the construction with all the means available to our Community.*

*After putting forward and debating the issues and proposals expressed above and excluding points a) and b) as we have had recent communications with the owner to the effect that he is not prepared to sell the land, neither to the Community as such nor to the owners in the Community, apart from the major practical, and also legal, difficulties in carrying this out even if an agreement were reached, the Committee's proposal was put to the vote and also, as an alternative, the proposal expressed in point d) above. The President thought that, for a future negotiation, we should try and have the conditions set out in points c) and d) included.*

#### 10.2.2. Private contract giving rise to the rights of Phase V to use the common elements of Phases I, II, III and IV of the Complex.

Under the private contract signed on 13 August 2002 between the Alcazaba Beach Community, the company Jardines de las Fuentes, S.A. (Phase IV) and Promociones Alfa 94, S.L. (Phase V), agreements were made in the same terms, transcribed, as in the contract signed with the developer of Phase IV, in reference to the common elements.

The compensation arranged with the Developer of Phase V, with the obligation to pay the Community of Owners for work to be carried out in its benefit as detailed in the contract, to a maximum amount or cost of 141,237.80 €. We have no record of the payment or the implementation of the work agreed.

In that contract, Jardines de las Fuentes, S.A. undertook to bear the infrastructure expenses of a new road connecting the Complex with Development Sector UEN-R32, bordering with Phase V.

We have not received any documentary evidence of the payment or the implementation of the work agreed. We refer to a possible request to the Administration of the complex for them to bring the documents to the Committee or to any owners who are interested.

The companies reciprocally accepted the incorporation of Phases IV and V into “the Alcazaba Beach Complex”.

Due to the relevance of this contract for the matter under analysis, it is attached as **Document 2**.

This contract was ratified after signing. It was specifically ratified under the resolution taken in point three of the agenda for the AGM of the Alcazaba Beach Community held on 14 August 2003, which was at that time made up of Phases I, II and III; the literal wording is:

*Point 3 of the Agenda: Ratification of the document signed relating to the plot on the west side, setting conditions and compensation the same proportions as those established for the plot on the north side.*

*The President explained that the Meeting is asked to ratify the document signed on 16 October 2002 relating to the conditions established for incorporating the western plot into our Complex, the text of which is included as an appendix to these minutes, and considered to be reproduced entirely.*

*A vote was taken on the proposed ratification, with 86 owners voting in favour and 15 against. Therefore the ratification of that document was approved by a majority.*

That is to say, the contract was ratified by a majority, not a unanimous vote; there is no record of the resolution being challenged.

The transformation of the present “Agrupación” of Communities of Owners into a single community that is recommended in the final part of this report can include the new system governing these common elements with the agreement of the owners as required in article 17.6 of the Common Property Act.

### **10.3. Creation of the "Agrupación" of Communities of Alcazaba Beach.**

The President of the Community and his Committee were delegated to implement the private contracts signed by the Community of Owners of Phases I, II and III, and were granted powers to execute public and private documents and contracts.

Due to the existence of three residential complexes in Phases I to III, the correct procedure, by law, would have been to take a vote on the agreements in those complexes and the communities owning the fourteen properties purchased from Promotora Inmobiliaria Medina, S.A.

The agreement for transforming the current residential complex in its format of an "Agrupación" of Communities into a residential complex under a Single Community, as recommended at the end of this report in order to achieve the intended goal, in order for the complex to function as a single community legitimised under article 24.2 letter a) of the Common Property Act.

This was the result of the decision taken by majority vote at the AGM of the Community of Owners of Alcazaba Beach held on 14 August 2003, point four of the agenda:

*Point 4 of the Agenda: Powers and authority given to the President and Committee to formalise any public or private documents necessary or appropriate for the execution and performance of the contracts entered into, and to execute any supplementary deeds for compliance with the requirements of the Land Registry in order to register the deed signed on 29 July 1998 in the presence of the Marbella Notary, Mauricio Pardo Morales. It was decided to take a separate vote on the two items of this point, which resulted as follows:*

*A) Powers and authority given to the President and Committee to formalise any public or private documents necessary or appropriate for the execution and performance of the contracts entered into.*

*The President pointed out the importance and relevance of this proposal as it involves granting powers, in the broadest terms, for the Committee that is elected, through its President, Vice-President and committee members, to be able to sign any documents considered necessary or appropriate for the implementation and performance of the contracts entered into with the owners of the northern and western plots, mentioned repeatedly during the course of this meeting.*

*A vote was taken on this proposal for granting powers and authority, which was approved by 100 owners, with 1 owner voting against, thus being approved by a majority.*

On 5 November 2004 the deed was executed for the **constitution of the "Agrupación" of the Communities of the Alcazaba Beach Residential Complex**, authorised by the notary Mr Jorge Moro Domingo under number 4.186 of his official record.

**The deed of constitution formalised the obligation to set up a private residential complex between the Communities of the first three phases of the Complex and Phases IV and V, in implementation of the 2002 private contracts previously analysed.**

According to the text of the Deed, the President of the Community of Owners of Phases I, II and III of the Alcazaba Beach Residential Complex and the representatives of the companies owning the plots on which Phases IV and V are located, were the parties signing the deed.

With the creation of the "Agrupación" of the Communities of the Alcazaba Beach Residential Complex, what was intended was the common use and maintenance of the common elements belonging to Phases I, II, III and IV, the latter under construction.

Party to the deed is *"the president of the Community of what are known as Phases I, II and III of the Alcazaba Beach Residential Complex"*.

Subsequently, in Point I of the Recitals of the deed, it states that the properties represented by the *"President of the Community of what are known as Phases I, II and III of the Alcazaba Beach Residential Complex"* are those making up the seven communities set up in Phases I to III:

*"... that the condominium properties he is representing, the seven encompassed within what are known as Phases I, II and III of the ALCAZABA BEACH residential complex, are set up on the following estates: - PHASE I (...)"*

The deed lists each of the properties forming a community, for all seven phases under analysis.

However, we think the **deed of constitution of the "Agrupación" of Communities has the following omissions and defects:**

1. It does not contain the registered properties which are the remainders of the main estates from which each phase originates and on which the three existing private residential complexes were set up, one for each phase, which is where most of the properties are located whose common use by the five phases is regulated in the deed of "Agrupación" of communities.

That is to say, the seven communities that are included only refer to the apartment buildings and the common elements pertinent to those buildings themselves, their ground floor entrance, façades, facilities belonging to the building, etc. None of these seven communities include the common elements of interest for the common use of the grouped phases, the pools, gardens, paths, etc.

Part of those common elements of interest for common use are the common elements of each of the Residential Complexes existing in Phases I, II and III, one per Phase.

2. Furthermore, the listing of registered properties making up the seven communities of Phases I to III, plus the properties on the land of Phases IV and V, does not include or contain the fourteen registered properties acquired by the owners of Phases I to III from Promotora Inmobiliaria Medina, S.A. under the contract of 30 May 1997.

The payment and acquisition of ownership of these fourteen properties by the owners of Phases I to III took place under the private contract of 1997, placed on public record in 1998. The acquisition took place in 2001 with the payment of the full amount of the deferred price. That is, three years before setting up the "Agrupación" of communities.

Among the properties not contributed are the three beach-front pools, three beach clubs, tennis and paddle tennis courts, children's playground, administration building, etc.

The common use of these properties is included as being for common use in article 13 of the bylaws of the "Agrupación" of Communities, despite not being contributed in its deed of constitution.

However, at least the use and enjoyment of all of the common elements was arranged in the private contracts signed in August and October of 2002 between the representatives of the Alcazaba Beach Community (which grouped together the communities of Phases I, II and III), and the developers of Phases IV and V. Those common elements include the fourteen acquired by Phases I to III from Promotora Inmobiliaria Medina.

3. The deed of constitution of the "Agrupación" of Communities does not include any element that belongs jointly to the Communities grouped together, in spite of being executed for the constitution of a private residential complex under article 24 of the Common Property Act, which says the existence of any common element between the different communities or properties is an unavoidable requirement.

In short, the deed of constitution of the "Agrupación" of Communities makes no mention of any of the registered properties permitted for common use, nor of the three residential complexes in Phases I, II and III, or the fourteen properties acquired collectively by the owners of those first three phases and, lastly, no properties are contributed as common elements of the grouped communities, thus failing to fulfil the legal obligation of having an element common to all of them.

In our opinion, the constitution of the "Agrupación" of Communities in 2004 was not carried out in accordance with legislation on condominium property. Due to the significance of this matter we will dedicate a specific section to analysing it.

The deed of constitution is attached as **Document 3**.

#### **10.4. Rectification of the deed of constitution of the "Agrupación" of owners and others.**

Subsequently, under the **deed of 24 July 2014** with the participation of the "President of the "Agrupación" of Communities"<sup>1</sup>, also referred to in this deed as <<"Community of Alcazaba Beach", comprised of Phases I, II, II, IV and V>>, **three deeds were rectified:**

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<sup>1</sup> Transcription of the parties to the deed of rectification. The "Agrupación" of Communities at that time had not been created, nor is it at the present time.

- (i) The deed of constitution of the "Agrupación" of the Communities of the Alcazaba Beach Residential Complex dated 5 November 2004.
- (ii) The deed executed on 29 July 1998 placing the private settlement contract on public record dated 30 May 1995, and
- (iii) the deed that supplemented the previous one, dated 18 July 2013.

What is relevant in the deed of rectification for the matter under analysis is:

- (i) That in the representation of the President it says that the "Agrupación" of the Communities is only composed of the registered properties making up the nine communities. It omits any reference to the pools, gardens, sports facilities, the 3 Beach Clubs, administration buildings included both in the three general communities, one in each of Phases I, II and III, and also the fourteen properties acquired by those first three phases from Promotora Inmobiliaria Medina, S.A.

In short, since the constitution of the "Agrupación" of the five communities up until that deed of rectification, there was no inclusion of the properties relating to those for common use as defined in article 13 of the bylaws of the "Agrupación": pools, gardens, sports facilities, the 3 Beach Clubs, administration buildings, etc.

- (ii) The rectification only refers to the participation percentages of each community, their registered property number, in the "Agrupación" of Communities of the five phases.

The deed of rectification is attached as **Document 4**.

The purpose of rectifying the deed was to contribute the 14 properties acquired by the owners of Phase I, II and III from Promotora Inmobiliaria Medina, S.A. to the "Agrupación" of Communities.

The owners of phases IV and V did not participate in the purchase of those properties; those communities did not exist either at the date of purchase nor at the time of completion, nor had

the “Agrupación” of Communities in the “Alcazaba Beach” Residential Complex been created yet (5 November 2004).

The justification for contributing these fourteen properties for common use could be the interpretation made to that effect of the private contracts signed on 13 August and 16 October 2002 between the Community of Owners of Phases I, II and III and the companies owning the land that would later be Phases IV and V.

The wording of those private contracts, in the part relative to the report, is literally transcribed above and attached.

The wording is not clear; what is ascertained from reading is that it says that the apartments of phases IV and V “*will have access to the full use and enjoyment (as do the components of the first, second and third phases) of all the common elements of the Complex (...), in turn contributing all their common elements, facilities and services as common elements of the “Agrupación”, which will also be managed and administered collectively.*”

The contradiction between full use and enjoyment with their contribution as common elements of the “Agrupación” resulting from the wording of the private contracts, was settled, and possibly with an error of interpretation, by the deed of constitution of the “Agrupación” of the Community of Owners in 2004 where, points V, VI and VII of the Recitals and also article 13 of its bylaws, specifically limit the right of Phases IV and V to the use of common elements, with each community conserving its right of ownership to its common elements.

*VII. On 16 August 2002, the Community of Owners of Phases I, II and II of the Alcazaba Beach Complex and the company PROMOCIONES ALFA 94 S.L., Sole Director of the company ALCAZABA 2002 DESARROLLOS INMOBILIARIOS S.L., the current owner of the land where the future Phase V of the Complex is to be built, entered into a private contract for incorporating that phase into the Complex and thus permit the use of the common elements of the Complex by the owners of the apartments of that Phase V; those owners will also participate in the expenses for the upkeep and maintenance of those common services and elements.*

*ARTICLE 13. The elements and services for common use of the Residential Complex, notwithstanding the ownership rights over them held by the different Communities consist of the following:*

The rectification originates from the majority decision taken in the Annual General Meeting of the Alcazaba Beach Community held on 14 August 2003, point four of the agenda, although we think it is referring to the registration of the contract for the fourteen elements for common use of Phases I, II and III by the purchasers in the contract, the owners of phases I, II and III who paid the price by means of extra service charges issued years before:

*Point 4 of the Agenda: Powers and authority given to the President and Committee to formalise any public or private documents necessary or appropriate for the execution and performance of the contracts entered into, and to execute any supplementary deeds for compliance with the requirements of the Land Registry in order to register the deed signed on 29 July 1998 in the presence of the Marbella Notary, Mauricio Pardo Morales. It was decided to take a separate vote on the two items of this point, which resulted as follows:*

*B) Powers and authority given to the President and Committee to execute a supplementary deed in order to comply with the requirements of the Land Registry in order to register the deed signed on 29 July 1998 in the presence of the Marbella Notary, Mauricio Pardo Morales.*

*The President pointed out the relevance of granting powers and authority under this proposal so that the Committee that is elected, through its President, Vice-President and committee members, can sign any deed or deeds necessary or appropriate for the purposes indicated, making any representations they consider appropriate or necessary for having them registered.*

*A vote was taken on this proposal for granting powers and authority, which was approved by 89 owners, with 12 owners voting against, thus being approved by a majority.*

We have not had access to the Registrar's assessment or the corrections required for registering the deed of constitution of the "Agrupación" of 2004.

As a result of this deed of rectification, the Registrar of the Land Registry number 2 of Estepona registered the fourteen properties as elements for common use of the "Agrupación" of Communities on 9 September 2014. We consider this registration to be legally questionable for the reasons of ownership of those properties substantiated above.

## **11. CONSTITUTION OF THE "AGRUPACIÓN" OF COMMUNITIES OF OWNERS AND REGISTRATION OF PROPERTIES AS THEIR ELEMENTS FOR COMMON USE.**

### **11.1. Regulation of Residential Complexes and Groupings ("Agrupacion") of Communities.**

When addressing the private residential complexes of the first three phases, we narrowed their regulation down to the following pieces of legislation, also applicable to the "Agrupación" of Communities under analysis:

- a) Article 24 of the Common Property Act, (LPH) as it affects "*a multiple number of plots of land or buildings separate from each other*", originating from the amendment to the LPH of 6 April 1999.
- b) Article 26.6 TRLSRU which states that its constitution or any alterations require authorisation from the Council and which defines private residential complexes with the following wording:

*"For the purposes provided for under this article, any system of organisation of property units which identifies private elements under exclusive ownership and common elements, which belong to those who, at any given time, are the owners of the private elements, is considered to be a residential complex."*

Sub-Section 1 of Article 24 of the Common Property Act describes the **requirements to be met by private residential complexes:**

*"a) They must consist of two or more buildings or plot of lands independent from each other and whose main purpose is residential or commercial premises."*

*b) The owners of these properties, or of the apartments or premises into which they are divided participate in the indivisible co-ownership of other elements, streets, amenities or services, as an inherent right to their ownership.*

The definition based on the differentiation between the exclusively owned private elements and the common areas which are owned by the former on a proportional or percentage basis, appears in both the legislation on condominium property, article 24 Common Property Act, and the legislation on state-owned land, article 26.6 TRLSRU.

**The formulas for the organisation of residential complexes** provided by the Common Property Act are:

- a) To be set up as a single community according to article 5 of the Common Property Act. This option was not chosen for the Alcazaba Beach Complex.
- b) To group together and set up an "Agrupación" of Communities. This option was chosen by the Alcazaba Beach Complex in the deed dated 2004 which we will analyse below.

In this case, for the creation, or modification, of the "Agrupación" of Communities, the requirements are:

- 1- The deed must be executed by the sole owner of the complex or by the presidents of all the communities included in the "Agrupación" of Communities, previously authorised by a majority resolution taken in their respective Owners Meetings.
- 2- It must contain the description of the residential complex as a whole and of the common elements, streets, amenities and services.
- 3- It must establish the participation percentage of each of the communities included, which will be collectively responsible for contributing to the funds for the general expenses of the community grouping.

The deed and the bylaws of the community grouping will be registered in the Land Registry once they meet these requirements.

The "Agrupación" of communities will have the same legal status as the communities and will be governed by the Common Property Act, with the special provisions established in that Act:

1- Composition of the Owners Meeting.

Unless decided otherwise, by the presidents of the communities included in the "Agrupación" representing all of the owners of each community. The composition of the Meeting can be regulated in the bylaws by all of the owners, as decided by the complex under analysis.

2- The adoption of prior resolutions by the grouped communities for which the law requires qualified majorities.

This requires having previously obtained the majority in question in each Owners Meeting for the communities making up the "Agrupación".

3- Competence of the governing bodies of the community grouping.

This only extends to the properties, streets, common amenities and services of which it is composed. Its resolutions cannot affect the faculties corresponding to the governing bodies of the communities making up the "Agrupación" of Communities."

4- No requirement to have a reserve fund.

c) To be set up under a different format other than as a community or "Agrupación" of Communities.

The mentioned Art. 24 of the Common Property Act, specifically in sub-section 4 of Article 2, makes it possible for private residential complexes to be set up without adopting the legal status of a Community or "Agrupación" of Communities, which will be subject, in addition to any other agreements established between the co-owners themselves, to the Common Property Act, with the same special provisions established under letters a) and b) above.

Article 24 of the Common Property Act grants great scope for autonomy in electing the legal format for the organisation of residential complexes: on the one hand it offers two models of organisation described in sub-section 2 (community of owners or "agrupación" of communities), and in sub-section 4 another that is different, atypical or unnamed, giving owners greater freedom to organise themselves, but also with legal status.

The majority of legal experts are of the opinion that under the three models of organisation the general requirements of article 24.1 of the Common Property Act must be complied with.

a) They must consist of two or more buildings or plot of lands independent from each other and whose main purpose is residential or commercial premises.

b) The owners of these properties, or of the apartments or premises into which they are divided, as an inherent right to their ownership, must participate in the indivisible co-ownership of other elements, streets, amenities or services.

**The legal association with those properties arises under this latter requirement, the existence of some common element shared by the different communities.**

The Ruling of the First Chamber of the Supreme Court of 27 October 2008, Roj: STS 6001/2008, Id Cendoj: 28079110012008101038, rec. nº 2690/2003, Judge Rapporteur Mr Antonio Xiol Rius, defines residential complexes, according to what is known as the Rome Charter approved in the V International Congress on Registration Law, 1982, which describes residential complexes as «a multiple number of properties interconnected through common elements or services, or a system of limitations and obligations towards each other, intended to apply to a multiple number of owners for obtaining and conserving the general and private interests of the participants»; the ruling adds that «according to technical expert opinion, the definition of residential complexes referred to in the Common Property Act is, therefore, the existence of a multiple number of properties linked by a quantified connection point in the shared ownership of elements for common use, streets, amenities or services, which is inherent to the private rights of each of them.».

This same approach, regarding the need for the existence of common assets or services differentiated from individual ownership, which generate common rights and obligations, is taken in the Ruling of the Provincial High Court of Madrid, Section 10, of 27 November 2006 and in Ruling nº 487/2016 of the Provincial High Court of Madrid, Section 11, Rec 16/2016 of 28 November 2016, Judge Rapporteur: The Honourable Ms. Maria de los Desamparados Delgado Tortosa; Ruling nº 446/2004, Provincial High Court of Seville, Section 2, Rec 5693/2004 of 19 October 2004, Judge Rapporteur: The Honourable Mr Manuel Damián Alvarez Garcia.

Furthermore, the Resolution of the General Directorate of Registry and Notary Offices of 21 January 2014, (OSG 13 February 2014, page 13161 and following pages, applies the same legal theory, interpreting the requirement of having common elements in order for a residential complex to exist:

*“7. In the light of the above legal grounds and legislation seen, and even admitting that this is an issue that has to be addressed with flexibility based on the principle of freedom of choice, given the extensive cases that can arise, the fact is that there are some criteria that seem to define the basic structure or content of a private residential complex and that do not depend on whether it is large or small in size, but on the system under which ownership is organised. It must necessarily involve a system of unitary organisation of ownership which means that, together with the elements of private and exclusive property, there are others for common use, whether properties, rights, amenities or services, the ownership of which is allocated by percentages, which must be instrumental, to the persons who at any given time are the owners of the private elements. Therefore there must be an «ob rem» connection between both elements or, to define it in broader terms, as it does not always apply to properties, there must be a subordination of the service or use in favour of the private elements of which the complex is composed”.*

The elements for common use assigned to the "Agrupación" of Communities, in a way that is we find questionable, are those which uphold the existence of the "Agrupación" as a Residential Complex. Notwithstanding the expert legal opinions which uphold the possibility of a complex without the existence of any common elements between the various communities, which we will comment on below.

We have seen how each type of residential complex is governed according to how it is composed:

1. As a Community of Owners.

2. As an "Agrupación" of Communities.
3. As an atypical private residential complex.

In spite of being set up in 2004 as an "Agrupación" of Communities of Alcazaba Beach, what we are really dealing with is a Residential Complex outside of the regulations for an "Agrupación" of Communities and for a Community of Owners; it is an atypical Residential Complex.

It is atypical because it has come into being without any elements that are common to the Communities of which it is composed; its purpose is the use of common elements of some of the communities. Really it is a macro-community which includes the common elements of three residential complexes and of the nine communities of which it is composed.

It is regulated by the provisions for Complexes referred to in art. 24.4 LPH: "*those which do not follow any of the legal formats set out in sub-section 2*", i.e. community or "agrupación" of communities.

In this type of atypical complex, the agreements between owners overlap the general rules of legislation on condominium ownership; those agreements become mandatory rules that cannot be contrary to law, in consideration of the principle of freedom of contract set out in article 1.255 of the Civil Code.

Lastly, we would highlight the interpretation given to qualified expert legal opinion (ARNAIZ EGUREN, R. "El complejo inmobiliario privado" in "Terreno y Edificación. Propiedad Horizontal y Prehorizontalidad, Edit. Marcial Pons), which could easily fall under the mentioned sub-section 4 of Point 2, Art. 24 of the LPH, the **constitution of residential complexes which, as an exception are organised with no common elements**. With this, the purpose of the concept has to be the creation of a "**community of interests**" in which the owners of the private elements are bound to each other by a series of common obligations referring to the appearance and treatment of the private elements or other similar aspects.

The author concludes that this scenario is not yet provided for even indirectly in positive legislation. However, the logical thing is to admit that it could be possible under the principle of freedom of contract which establishes our basic civil legislation and the principle of "*numerus apertus*" that underlies the registration system.

Freedom of contract as a useful tool in the case in hand, although complying primarily with the legal requirements for Residential Complexes, the existence of common elements between the communities grouped together.

## **11.2. The questionable constitution of the "Agrupación" of Communities of the Alcazaba Beach Complex in 2004 and the subsequent contribution and registration of properties as its elements for common use.**

### *11.2.1.- The questionable constitution of the "Agrupación" of Communities of the Alcazaba Beach Residential Complex.*

The Community of the "ALCAZABA BEACH" Complex purchased the three indoor pools, the three beach clubs, the plot of land with tennis and paddle tennis courts, bathrooms, football pitch and children's playground, the administration office and the other premises for use as store rooms in the private contract subsequently placed on public record in the deed dated 29 July 1998 in the presence of the notary Mauricio Pardo Morales, when it was only composed of Phases I, II and III, i.e. composed of three Private Residential Complexes, in turn consisting of the nine communities set up until that date.

The purchase price was 75,000,000.00 pesetas, (450,759,078 €), of which the payment of 55,000,000.00 pesetas (330,556,657 €) was deferred as four annual payments of 13,750,000.00 ptas. (82,639,164 €), which, according to the contract, would be paid through an extra service charge of 40,000.00 pesetas per apartment per year. Note that the payments were made in equal parts by all the owners at the time through extra service charges of equal amounts.

The notarised copy of the contract for the purchase of the fourteen properties from Promotora Inmobiliaria Medina, S.A., is attached as **document 5**.

In this respect we think, although it could be questionable, that the fourteen properties were acquired by the "Alcazaba Beach" Community composed of the phases I, II and III **as common elements of the three phases**, according to the terms of the private contract of 30 May 1997 in which Clauses III and IV stated:

*“III- Under the condition precedent provided for in Clause IV, Promotora Inmobiliaria Medina, S.L. transfers the following registered properties to the Alcazaba Beach Community to be given a common use, (...)”*

*“IV- The formalisation of the transfer of those properties, in order for them to be considered common assets, will take the form and the manner agreed upon by the parties through their legal and tax advisors,(...)”.*

So, in our understanding, the legal organisation most suited to the use and maintenance of these acquired properties would have been to set up a new “supra residential complex” under the terms of Art. 24 of the Common Property Act, consisting of the residential complexes of the first three phases, which would have the fourteen properties acquired as common elements, for common use.

The transfer of the fourteen properties to the Community as common elements was completed with the fulfilment of the condition precedent to which the private contract of 1997 was subject, i.e. payment of the full price in four years. The Developer issued receipt of payment and recorded the fulfilment of the condition precedent in the deed executed in the presence of the Marbella notary, Mr Mauricio Pardo Morales on 6 September 2000, number 3.515 of his official record.

In any event, the owners of phases IV and V did not participate in the purchase of those properties; those communities did not exist either at the date of purchase nor at the time of completion, nor had the “Agrupación” of Communities in the “Alcazaba Beach” Residential Complex been created yet (5 November 2004).

The statement made in the previous paragraph is qualified by the private contracts signed in 2002 between Phases I to III with the developers of the land of Phases IV and V, in which the use and enjoyment is established on all the common elements of the Complex so they can be managed and administered collectively, including them as Phases IV and V of the Complex.

With this legal and factual background, we consider questionable the constitution of the “Agrupación” of communities in the terms of article 24 of the Common Property Act drawn up in the deed of 5 November 2004 in the presence of the Notary Mr Jorge Moro Domingo, no. 4.186 of his official record. The grounds for considering it to be questionable arise from the

defect that the owners of the blocks which would form part of the private residential complex **did not participate in any indivisible co-ownership of other elements of property, streets, amenities or services.**

From the content of the deed of constitution of the “Agrupación” of communities indicated, it is implicitly ascertained that this situation of “co-ownership” did not exist as the “Agrupación” of communities was set up for a common use of elements, services, etc, regardless of who owned them:

*“Art. 11.- For the maintenance of the services, elements, taxes, charges and responsibilities arising from the elements and services for common use by the residential complex.”*

*Art. 13.- The elements and services for **common use** of the Residential Complex, notwithstanding the ownership rights over them held by the different Communities consist of the following: ...”.*

Therefore, the non-existence of elements that are common to the communities of Phases IV and V with the communities of Phases I, II and III, made it unviable to set up an “Agrupación” of communities in the terms of article 24.1.b of the Common Property Act.

However, we think it would be possible to accept the validity of being set up as an “Agrupación” of communities for the common use of elements and services in the terms of the interpretation of the expert legal theory (expressed above) of sub-section 4 of point 2, Article 24 of the Common Property Act, regarding the freedom of contract established in our basic civil legislation (Art. 1255 of the Civil Code.) and the “*numerus apertus*” principle on which the Spanish registration system is based.

*11.2.2.- The questionable contribution and registration of the properties acquired in the name of the “Agrupación” of Communities of the Alcazaba Beach Residential Complex.*

In the General Meeting of the “ALCAZABA BEACH” Community held on 16 August 2012, at that time composed of the five phases of the complex, a point was included as number 11 on the Agenda which was the discovery by its representatives that the elements acquired in 1998 were not yet registered in the name of the Community (having been acquired by the Community when

it was only composed of Phases I, II and III and whose common use by the five Phases, regardless of the right to ownership, was established in the deed of “Agrupación” of communities of 5 November 2004). That Meeting unanimously approved point 12 under which the resolution was adopted to:

*"Expressly authorise the President and Secretary of the Community so that, jointly, they can issue the necessary certificates and appear before the Notary to execute the deeds of correction, amendment, rectification, remedy, whether full or partial, that may be required, on behalf of the Community, until the properties can be registered as assets for the common use of the Community".*

Thus authorised by the content of that resolution, exercised jointly with the Secretary of the Community, the President at that time appeared before the Notary Ms Almudena Romero López to supplement the deed dated 29 July 1998 and contribute the fourteen properties acquired as elements for common use to the “Alcazaba Beach” Residential Complex, already consisting of the five Phases (the supplementary deed executed on 18 July 2013).

Despite the legal contingencies pointed out, the documents were submitted to the Land Registry, and on 15 October 2014 the constitution of the "AGRUPACIÓN" OF COMMUNITIES OF OWNERS OF THE ALCAZABA BEACH RESIDENTIAL COMPLEX – composed of the phases I, II, III, IV and V” was registered as special property 66.146, and the fourteen properties previously acquired by the Community when it was only composed of Phases I, II and III were registered as assets for the common use of that "Agrupación" of communities”.

Registration took place without apparently executing any deed of clarification of the deed of "Agrupación" of Communities dated 5 November 2004, which clearly would have been appropriate; its bylaws were redrafted and in turn, as elements for common use then did exist, it complied with the requirements of article 24.1 letter b of the Common Property Act:

*“The founding deed will contain the description of the residential complex as a whole, and of the elements, streets, amenities and common services.”*

Any possible exceedance by contributing the elements for common use, acquired by the Community when it was only composed of phases I, II and III, as elements for common use of

the "Agrupación" of Communities, ten years after being set up and once phases IV and V had been incorporated, should be declared officially.

We do not recommend making a court declaration, which would involve a lengthy and costly court procedure which would pronounce the invalidation of the contribution, and also the invalidation of all registrations of documents, in order to return to the situation in which the fourteen properties are declared as being solely for the common use of the residential complexes of phases I, II and III and again registered in the Land Registry in the name of the communities I, II and II.

In this case, a deed should be executed for setting up a "*supra-residential complex*" comprising those three phases to have them re-registered in its name in the Land Registry.

To take legal action as indicated in previous paragraphs does not seem to be practical nor would it help to find a peaceful solution to the current situation of the Complex whose owners are trying to provide continuity to the present functioning, i.e. as a single community.

**If the "Agrupación" of Communities of Alcazaba Beach loses its current registered ownership of the elements for common use** would clash with its legal viability.

**Questionable aspect of the "Agrupación" of Communities** being set up **without meeting the requirement of the existence of common elements, solely for the purposes of** common use of elements and services, notwithstanding that the ownership rights to them could be considered valid. **The contribution in 2014 of the fourteen properties for common use allowed the Registrar of the Land Registry to register the "Agrupación" of Communities.**

It should also be pointed out that, based on the principle of legal standing in the registry under **article 38** of the Mortgage Act, there would be an assumption of "iuris tantum", which would have to be proved otherwise, that the fourteen properties are for the common use of the "AGRUPACIÓN" OF COMMUNITIES OF OWNERS OF THE ALCAZABA BEACH RESIDENTIAL COMPLEX – composed of phases I, II, III, IV and V.

We think a possible solution to the contingency described would be the possibility of the current owners of the properties belonging to phases I, II and III ratifying the contribution of the fourteen

properties as elements for common use of the "AGRUPACIÓN" OF COMMUNITIES OF OWNERS OF THE ALCAZABA BEACH RESIDENTIAL COMPLEX – composed of phases I, II, III, IV and V”.

We also consider that the statute of limitations for taking action against the contribution made would also consolidate the present legal situation.

**11.3. Recommendation of converting the Complex in the format of an "Agrupación" of Communities into the format of a Single Community Residential Complex, if this action would not involve a tax expense, or the expense would be insignificant.**

In our opinion, the most appropriate format that provides the legal status that will enable the Complex to function as a single unit, with its nine communities and four residential complexes, is to convert the present “Agrupación” of Communities set up in 2004 to the format of a Single Community Residential Complex.

The concept of a Single Community Residential Complex is found in article 24.2 letter a) of the LPH, for setting up and functioning as a single community. This transformation will require the unanimous agreement of the owners, article 17.6 LPH, and also administrative authorisation from the Estepona Council, article 10.3 LPH and 26.6 TRLSRU.

The recommendation to transform into a single community arises from section 3 of art. 24 LPH which limits the scope for an “Agrupación” of Owners to act and adopt resolutions:

*"3. The “Agrupación” of communities referred to in the previous sub-section will to all effects and purposes be covered by the same legal situation as communities of owners and will be governed by the provisions of this Law, with the following particularities:*

*a) Unless decided otherwise, the Owners General Meeting will be composed of the presidents of the communities included in the "Agrupación", who will represent all of the owners of each community.*

*b) The adopting of resolutions for which the law requires qualified majorities will, in any case, require having obtained the majority in question in each Owners Meeting for the communities making up the “Agrupación”.*

*The authority of the governing bodies of the “agrupación” of communities only extends to the items of common property, roads, facilities and services. Its resolutions cannot in*

*any case diminish the faculties pertaining to the governing bodies of the communities making up the "agrupación" of communities."*

The difficulty arising with this transformation is also its possible tax expense.

It is essential to have a tax expert look into the possibility of avoiding the tax expense of transforming the "Agrupación" of Communities of Owners, article 24.2.b) LPH, into a Residential Complex to be set up as a single community, article 24.2 letter a) LPH.

A Single Community Residential Complex would avoid having to rely on agreements from the individual communities in certain resolutions which have to be adopted under a qualified majority, or which limit the actions of the "Agrupación" to communal services (for common use if the present ones are kept); this is a necessary or compulsory piece of legislation that I think cannot be displaced by the individual wishes of the co-owners in accordance with article 1.255 CC, which is only applicable to regulatory rules.

## **12. FUNCTIONING OF THE COMMUNITY OF OWNERS OF ALCAZABA BEACH.**

### **12.1. Functioning as a single community of owners.**

Having analysed how the Complex is regulated from the legal and registration aspects, we should now look into its material or effective functioning since the constitution of the first community until the present day.

The Complex is known to be functioning as a single community since its creation, without abiding by the formal requirements and legal format given to it by its developers for the five phases of which it is composed.

We only have evidence of the actual constitution of two of the nine existing communities, without any formal constitution of the three general communities [mancomunidad] that group together the communities of the first three phases, nor has the "Agrupación" of Communities of Alcazaba Beach been constituted, in spite of this being proposed in owners' meetings.

The first community corresponds to the buildings composed of staircases 1-2-3-4-17-18-19-20; it was created on 10 December 1987 and its name was Alcazaba Beach Community of Owners. This was the seed that gave rise to the present “de facto community”, which groups together the owners of all the apartments in the complex.

The owners who subsequently bought apartments in the various phases, belonging to communities that were never set up, became members of this first Community of 1987.

The minutes of the founding meeting held on 10 December 1987 record that the agenda contained the resolution for setting up the community:

*Marbella, 10 December 1987*

*Minutes of the Constitution of the Alcazaba Beach Community of Owners, Blocks 1-2-3-4-17-18-19-20”, held on 10 December 1987 in the Hotel Las Fuentes del Rodeo, in Marbella.*

#### *AGENDA*

- 1. Constitution of the Community*
- 2. Appointment of President, Vice-President and Administrator*
- 3. Approval of budget for expenses anticipated*
- 4. Any Other Business*

*Constitution of the Community: Mr Fernando Fernandez Garcia informed the Meeting that the main reason for holding this meeting is to set up the Community of Owners of the apartments completed and delivered to their respective owners, that is, in blocks 1-2-3-4-17-18-19-20.*

*The Meeting unanimously voted to constitute the Alcazaba Beach Community of Owners, Blocks 1-2-3-4-17-18-19-20. They then passed to the next point on the Agenda*

In the next meeting of the “Alcazaba Beach” Community on 28 November 1988 the owners of blocks, 21, 22, 23, 24, 34, 35 and 36 were incorporated:

*COPY OF THE MINUTES OF THE EXTRAORDINARY GENERAL MEETING OF THE OWNERS OF ALCAZABA BEACH IN ESTEPONA HELD IN THE HOTEL LAS FUENTES DEL RODEO ON 28 NOVEMBER 1988.*

*Present:*

<i>Mr. Taborna Ruiz</i>	<i>2011</i>
<i>Mr Iturrioz Nicolas</i>	<i>2022</i>
<i>Mr and Mrs Stanton</i>	<i>2101</i>
<i>Mr and Mrs Heide</i>	<i>1211</i>

*The Meeting began at 10.30 in second call with Mr Fernandez Garcia informing that the main reason for the meeting is to incorporate the new owners of the various apartments in blocks numbered 21, 22, 23, 24, 34, 35 and 36 into the rest of the community and as a result, the modification of the Budget for 1988/89, due furthermore to a security guard service coming into operation from the beginning of November, and equipping of the future premises for use by the community, etc.*

*1. The Meeting unanimously approved incorporating the new apartments officially completed at the beginning of November 1988, that is, all the properties located in the two blocks numbered 21, 22, 23, 24, 34, 35 and 36, into the Community of Alcazaba Beach.*

In the community meeting of 27 July 1989 the agenda included the incorporation of blocks 25, 26, 2, 28, 29, 30, 31, 32 and 33<sup>2</sup>:

*COPY OF THE MINUTES OF THE AGM OF THE ALCAZABA BEACH COMMUNITY OF OWNERS, HELD ON 27 JULY 1989*

*In Estepona, at 5 p.m. on the 27 July 1989, the owners listed below, and the apartments listed who were represented in the meeting, met in second call to discuss the following Agenda:*

- 1. Inclusion of blocks 25, 26, 2, 28, 29, 30, 31, 32 and 33 in the Community*
- 2. Reading and approval of the previous Minutes*
- 3. Rreading and approval of the Accounts*
- 4. Presentation and approval of the Budget for 89/90*
- 5. Resignation of the Administrator*
- 6. Appointment of new Administrator*
- 7. Appointment of President and Vice-President (1<sup>st</sup> and 2<sup>nd</sup> Phases)*
- 8. Any other business*

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<sup>2</sup> There must be a set of minutes prior to incorporating staircases 5, 6 and 7 into the Community. Some of the minutes are missing for 1988; they are mentioned in other minutes.

In this meeting the president of the Community, appointed since it was created, defended the existence of a single community that would group together the successive “blocks” or staircases for cost-saving reasons:

*Mr Lewis first mentioned the positive aspects of the Community. He said he was elected in the first General Meeting when there were very few owners and was ratified in office in the second AGM. His idea was to create a single community for reasons of economy in order to keep expenses down. Regarding the Developers, he thought them to be reasonable people, willing to accept and discuss suggestions put forward by the Community. Apart from the beach problem, which is a natural process, there were not many construction problems....*

Advocating a professional approach, engaging advisors, which will be required by a future complex with over 300 apartments, the owners of the “blocks” or “staircases” 25, 26, 2, 28, 29, 30, 31, 32 and 33 were welcomed to the Community of Alcazaba Beach:

*In the future there will be over 300 apartments and we need a person with exclusive dedication to attend to the needs of the Community, and an advisor, proposing Mr. Francisco Taillefer Ron as advisor to the Community and Mr Enrique Martin Hurtado de Mendoza as delegated Administrator.*

*The President also welcomed the owners of the apartments in blocks 25 to 33, both inclusive, to the Community*

The incorporation of the new apartments delivered by the Developer to the buyers continued in other meetings such as the one held on 2 January 1990, without any specific resolutions regarding the incorporation of all of the new apartments in phases I to III:

*COPY OF THE MINUTES OF THE EXTRAORDINARY GENERAL MEETING OF THE ALCAZABA BEACH COMMUNITY OF OWNERS, HELD ON 2 JANUARY 1990*

*In Estepona, at 5 p.m. on the 2 January 1990, the owners listed below, and the apartments listed who were represented in the meeting, met in second call to discuss the following Agenda:*

*1. Inclusion of Blocks 37, 38, 39, 40, 50, 51 and 52 in the Community.*

*They passed to the first point on the Agenda.*

*Point 1. The Administrator address the owners present in English saying that as we are in Spain and an interpreter is present, he will speak in Spanish. He then informed that Blocks 37, 38, 39, 40, 50, 51 and 52 were officially completed on 1 January 1990 and there he proposed a vote for incorporating those Blocks into the Community (...)*

*A vote was taken, and it was unanimously agreed to incorporate those Blocks and welcome the owners.*

The successive incorporation of the owners of the new apartments of the nine communities of Phases I to III into the first of the communities set up, either with specific resolutions taken in Meetings or by unwritten arrangements, has enabled it to materially or effectively function as a single community.

A single community of owners that has performed actions of management and of disposal and taken resolutions relating to the common elements belonging to the three residential complexes of these phases (gardens and upper pools) or on the fourteen common properties acquired from Promotora Inmobiliaria Medina, S.A., plus the common services such as administration, security or the common elements pertinent to each community (buildings) such as façades, staircases, lifting platforms, etc.

## **12.2. Minutes of the different Owners Meetings.**

The table summarises the most relevant information from the minutes of the owners meetings of the Alcazaba Beach Complex regarding its effective functioning as a single community.

<b>MINUTES OF MEETINGS OF THE COMMUNITIES OF ALCAZABA BEACH</b>			
<b>Date</b>	<b>Communities Present</b>	<b>Phases present</b>	<b>Remarks</b>
10/12/1987	Communities Blocks 1-2-3-4-17-18-19-20	I	Constitution First Community of Owners
20/07/1988	Communities Blocks 1-2-3-4-17-18-19-20	I	
28/11/1988	Alcazaba Beach Community	I and II	Inclusion of blocks 21, 22, 23, 24, 34, 35 and 36. We were unable to consult this.
27/07/1989	Alcazaba Beach Community	I and II	Inclusion of blocks 25 to 33.
02/01/1990	Alcazaba Beach Community	I, II and III	Inclusion of blocks 37 to 40, 50, 51 and 52. We were unable to consult this.
08/06/1990	Alcazaba Beach Community	I, II and III	Inclusion of blocks 41 to 49. We were unable to consult this.
04/08/1990	Alcazaba Beach Community	I, II and III	

09/08/1991	Alcazaba Beach Community	I, II and III	Announcement of the intention to adapt the bylaws of the community.
06/08/1992	Alcazaba Beach Community	I, II and III	
05/08/1993	Alcazaba Beach Community	I, II and III	A report was presented on the status of the complex and the negotiations with the Developer PIMSA for the Community to obtain the common elements that the Developer withheld.
04/08/1994	Alcazaba Beach Community	I, II and III	Information on the negotiations with the Developer PIMSA, and the lawsuits filed against it.
03/08/1995	Alcazaba Beach Community	I, II and III	Information on negotiations for purchasing the Beach Clubs.
08/08/1996	Alcazaba Beach Community	I, II and III	Agreement with PIMSA for transfer of the common elements (Beach Clubs, pools, sports facilities and others).
08/08/1997	Alcazaba Beach Community	I, II and III	
03/08/1998	Alcazaba Beach Community	I, II and III	
03/08/1999	Alcazaba Beach Community	I, II and III	
10/08/2000	Alcazaba Beach Community	I, II and III	
09/08/2001	Alcazaba Beach Community	I, II and III	
14/08/2002	Alcazaba Beach Community	I, II and III	
14/08/2003	Alcazaba Beach Community	I, II and III	Ratification of document of 16 October 2002 under which the western plot of land is included in the complex
12/08/2004	Alcazaba Beach Community	I, II and III	
11/08/2005	Alcazaba Beach Community	I, II and III	
10/01/2006	PHASE IV Community of Owners	IV	Creation of the PHASE IV Community of Owners
10/08/2006	Alcazaba Beach Community and Phase IV Community	I, II, III and IV	Formalisation of the obligations arising from the deed of constitution of the "Agrupación" of communities of the residential complex, executed on 2 November 2004.
09/08/2007	Alcazaba Beach Community and Phase IV Community	I, II, III and IV	
11/08/2008	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	Modification of the percentages of participation in the general expenses with the incorporation of Phase V into the Community of Alcazaba Beach.
14/08/2009	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	
12/08/2010	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	
16/08/2012	Alcazaba Beach Community, including the Phase IV Community	I, II, III, IV and V	Resolution to authorise the President and Secretary of the Community to be able to register the plots acquired from PIMSA on 30 May 1997 (pools, tennis and paddle tennis courts, and Community office) as assets for common use.
14/08/2013	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	
13/08/2015	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	
12/08/2016	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	Project for building the footpath

09/08/2017	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	
29/03/2018	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	Information on the negotiations with the Estepona Council for enclosing the perimeter of the complex, as a result of the footpath.
10/08/2018	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	
17/04/2019	Alcazaba Beach Community and Phase IV Community	I, II, III, IV and V	Report on the structure of the community commissioned by the Community to a consultant.
08/08/2019	"Agrupación" of Communities Alcazaba Beach	I, II, III, IV and V	Formal constitution of the Community of the "Agrupación" of Communities of Alcazaba Beach.
02/11/2019	"Agrupación" of Communities Alcazaba Beach	I, II, III, IV and V	

### **13. ANALYSIS OF VIABILITY OF THE COLLECTIVE FUNCTIONING OF THE ALCAZABA BEACH COMPLEX AS A SINGLE COMMUNITY DIVIDED INTO CONDOMINIUM OWNERSHIP.**

In order to control the effective functioning of all of the Communities making up the Complex as a single community, the margin of autonomy provided under article 24 LPH should be utilised for selecting the legal form for the organisation of residential complexes.

The current "Agrupación" of Communities set up in 2004 will have to be adapted and converted according to legal requirements, combined with the standard regulation for elements that do not fall under the joint ownership of the "Agrupación".

This atypical situation will bring greater freedom to owners for organising themselves, and will also allow for a more flexible legal framework governing multiple properties and entitlements affected.

We propose taking advantage of the framework for private residential complexes, with resolutions adopted by the owners as part of their margin of freedom of choice, with the restrictions of imperative law.

The proposal to be considered by the owners of the "Agrupación" of Communities would be as follows:

1. Continuing with the present system for the Community of Alcazaba Beach as a single community will require adopting resolutions and the rectification of the deed of constitution of the "Agrupación" of Communities.

2. The course of action proposed must previously be studied by a tax expert who will advise the Complex and verify/adapt the procedure proposed in order to avoid tax expenses.
3. Taking as a basis the legal requirement of the existence of common elements in order to validly set up and register the "Agrupación" of Communities.
4. The formula for the **“Agrupación” of Communities or any different formula other than a Residential Complex set up as a single community of owners, is legally not permitted to function as a community independent from the communities of which it is composed when taking the most important resolutions for the complex** (e.g. the seafront footpath or pedestrian access to the beach under construction). Under Article 24.3 of the Common Property Act the following are necessary:
  - a) Prior adoption of resolutions by each of the Communities if, due to the subject of the resolution, they have to be adopted by a qualified majority, i.e. more than a simple majority. Any modification of the bylaws requires a qualified majority and this resolution needs to be previously approved by the existing communities.
  - b) The resolutions of the "Agrupación" are limited to the elements of property, streets, amenities and common services.

To avoid these limitations and unify the functioning of all the Communities and complexes of the Complex, the **most appropriate concept from the legal aspect is the transformation of the current "Agrupación" of Communities into a Residential Complex set up as a Single Community which incorporates all the communities and residential complexes that have been constituted**, article 24.2 letter a) of the Common Property Act.

We recommend that before formally calling the meeting of the "Agrupación" of Communities of owners referred to above, **the tax implications of transforming the "Agrupación" of Communities into a residential complex set up as a single community should be analysed, under the terms of article 24.2.a) of the Common Property Act.** The obstacle to this transformation is that it could involve a high tax expense.

With these assumptions, the procedures to follow, once confirmed by a tax advisor and the owners of the Complex, are:

- To call and hold a meeting of the owners of all Phases of the Complex, in representation of the communities of owners, for the resolution on the functioning as a single community, if the tax expense permits.

The terms of its functioning will be those of the following resolution which would correspond to the "Agrupación" of the Community of Owners.

- If there is no tax expense, or if it is low, we recommend converting the current "Agrupación" of Communities into a Residential Complex set up as a Single Community, amending the bylaws in the terms described below.

The concept of a Single Community Residential Complex is found in article 24.2 letter a) of the LPH, for setting up and functioning as a single community.

In order to convert the present "Agrupación" of Communities in Complex into a single community the following are required:

- a) Unanimous agreement of the apartment owners in the five phases, article 17.6 LPH, and,
- b) Administrative authorisation from the Estepona Council, article 10.3 LPH and 26.6 TRLSRU, before executing the public deed.

1. Option 2 supplementary to 1.

If the tax expenses of the transformation of the "Agrupación" of Communities into a Single Community Residential Complex are high, it is proposed continuing with the current format of the "Agrupación" of Community.

A meeting of the "Agrupación" of Communities would have to be called and held with the following agenda:

1.1. Resolution for the constitution of the "Agrupación" of Communities of the five phases of the Complex, electing a Committee in accordance with article 4 of the "Agrupación" bylaws.

1.2. Resolution for rectification of the public deed of constitution of the "Agrupación" of Communities in the following terms:

- a) Description of the registered properties on which common use and maintenance is established, essentially the description of the residential complexes of Phases I, II and III plus the pool, gymnasium and sauna of Phase IV.
- b) Description of the fourteen registered properties that are set up as elements for common use, with reference to the prior resolution to be adopted by the owners of Phases I to III which ratifies their contribution as elements for the common use of the "Agrupación" of Communities.

Those fourteen properties also have a percentage of participation in the three Residential Complexes of Phases I, II and III, the description and participation of which has to be included.

- c) Description of the elements or properties on which common use or ownership is not established but for which rules or regulations are drawn up which grant powers to the "Agrupación" of Communities. For example, on the appearance and maintenance of façades of the buildings, as currently regulated for the "Agrupación" of Communities.

1.3. Amendment of the bylaws of the "Agrupación" of Community, after receiving tax advice.

- a) To define the regulations relating to the elements for common use, those relating to elements of Communities of Owners by Phases that are subject to rules and common maintenance (façades and roofs) and those elements of Communities not subject to rules and common maintenance (e.g. lifts of Phases IV and V),

establishment and regulation of the common services to be provided and funded by the General community (mancomunide) (administration, gardening, security, maintenance of areas of common use or ownership, etc.).

- b) Modification of article 9 of the bylaws of the "Agrupación" of owners under which resolutions must be adopted, including in second call, by owners representing more than half of the participation percentages of the apartments of the five phases, whether they are present at the meeting or not.

We propose that the resolutions be counted in respect of the owners present at the meeting and in accordance with the majorities required in the Common Property Act.

The above system for adopting resolutions would be based on a Residential Complex with common elements, registered as being for common use, organised under the system of "Agrupación" of Communities.

The system of "Agrupación" of Communities is a mixed system, as it also includes specific rules for the Complex; it would be useful to continue with those applied in the functioning and management in recent years.

Madrid, 23 January 2020.

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