

**DECLARATION OF COVENANTS,  
CONDITIONS AND  
RESTRICTIONS  
FOR  
CAPITOL + GRAND**

After recording return to:  
WBA, PC

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Centennial, Colorado 80122

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(c) Counterclaims brought by the Association in proceedings instituted against it; .....37

(d) Any suit between or among Owners, which does not also include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and .....37

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- (a) Notice. Prior to proceeding with any Claim against a Respondent, each Claimant shall give a Notice to each Respondent, which Notice shall state plainly and concisely: .....37
- (i) The nature of the Claim, including all Persons involved and Respondent’s role in the Claim; .....37
- (ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);.....37
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- (ii) Upon a Termination of Negotiations, the Claimant has thirty (30) days to submit the Claim to mediation under the auspices of JAG in accordance with the rules of JAG in effect on the date of the Notice that is provided for in subsection 13.5(a) of this Declaration. ....38
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(vi) If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 13. In such event, the Party taking action to enforce the agreement will recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including attorneys’ fees and court costs.....38

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(iii) Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the Parties, one arbitrator who has expertise in the areas of dispute, which may include legal expertise if legal issues are involved, will arbitrate the dispute.....39

(iv) Each Party shall bear its own costs and expenses and an equal share of the arbitrator’s and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator shall award reasonable attorneys’ fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.....39

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CAPITOL + GRAND**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CAPITOL + GRAND (the “**Declaration**”) is made and entered into on as this \_\_\_\_\_ day of \_\_\_\_\_, 202\_ by Eagle Multi Family LLC, a Colorado limited liability company (the “**Declarant**”).

**RECITALS**

A. Declarant is the owner of certain real property in Eagle County, Colorado, which is more particularly described as set forth in *Exhibit A* attached hereto and by reference made a part hereof.

B. Declarant desires to create a condominium community under the terms of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et. seq.* (“**CCIOA**”) on the real estate described in *Exhibit A*, under the name “The Capitol + Grand”.

C. Declarant has caused Capitol + Grand Owners Association, Inc., a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an owners’ association, for the purpose of exercising the functions set forth herein.

**ARTICLE 1. SUBMISSION/NAMES/DEFINED TERMS**

Section 1.1 Submission of Property. Declarant hereby submits the real estate described in *Exhibit A*, together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the “**Property**”), to the provisions of CCIOA, as it may be amended from time to time, and to the terms and conditions of this Declaration. In the event CCIOA is repealed, CCIOA on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Property described in *Exhibit A* shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Property, that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Section 1.2 Name and Type. The type of common interest community created hereunder is a condominium community as defined in CCIOA. The name of the Community is “The Capitol + Grand.” The name of the Association is “Capitol + Grand Owners Association, Inc.”

Section 1.3 Property. The Property is located in Eagle County, Colorado. The initial Property subjected to this Declaration is described in *Exhibit A*.

Section 1.4 Defined Terms. Each capitalized term in this Declaration or on the Map shall have the meaning specified in CCIOA or as used in CCIOA, unless otherwise defined in this Declaration or as context requires otherwise:

(a) **“Allocated Interests”** shall mean (i) the Common Expense Liability allocated to each Unit, (ii) the Building Expense Liability allocated to each Unit in a Building; (iii) the undivided ownership interest in the Common Elements, and (iv) the number of votes allocated to each Unit, as set forth in Section 5.4 of this Declaration.

(b) **“Articles of Incorporation”** shall mean the Articles of Incorporation of Capitol + Grand Owners Association, Inc., as filed with the Colorado Secretary State, as may be amended from time to time.

(c) **“Assessment”** shall include all Common Expense Assessments, Building Expense Assessments, Special Assessments, Individual Purpose Assessments, and any other expense levied against a Unit pursuant to this Declaration or CCIOA, including interest, late fees, attorney fees, fines, and costs.

(d) **“Association”** shall mean and refer to Capitol + Grand Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(e) **“Board of Directors”** shall mean the body designated in the Governing Documents to act on behalf of the Association.

(f) **“Building”** shall mean each of the residential buildings containing Units constructed on or to be constructed on the Property.

(g) **“Building Expense Assessment”** shall mean an Assessment levied against the Units in a Building to fund any Building Expenses particular to that Building.

(h) **“Building Expense Liability”** shall mean the liability for Building Expenses allocated to each Unit within a particular Building as set forth in Section 5.4(b) of this Declaration.

(i) **“Building Expenses”** shall mean expenditures made or liabilities incurred by or for the benefit of the Units within a particular Building, together with any allocations to reserves.

(j) “**Bylaws**” shall mean the Bylaws of Capitol + Grand Owners Association, Inc., as may be amended from time to time.

(k) “**CCIOA**” shall mean the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et. seq.*, as it may be amended.

(l) “**Common Elements**” shall mean the Property and all improvements constructed thereon, with the exception of the Units. The Common Elements are owned by the Owners in undivided interests equal to the Allocated Interests set forth in Section 5.4 of this Declaration and consist of the General Common Elements and the Limited Common Elements.

(m) “**Common Expense Assessment**” shall mean an Assessment levied against all Units in the Association to fund the Common Expenses that are for the general benefit of all Units.

(n) “**Common Expense Liability**” shall mean the liability for Common Expenses allocated to each Unit as set forth in Section 5.4 of this Declaration.

(o) “**Common Expenses**” shall mean expenditures made or liabilities incurred by or on behalf of the Association which are for the general benefit of all Units, together with any allocations to reserves.

(p) “**Declarant**” shall mean Eagle Multi Family, LLC, a Colorado limited liability company, and any successor and/or assignee and any Person or group of Persons which succeeds to all or any portion of the Declarant’s rights, or of any successor to the Declarant duly designated in accordance with this definition. Any such successor must be so identified by means of an express written assignment executed and acknowledged by the Declarant and the duly designated successor Declarant and recorded in the real property records of Eagle County, Colorado.

(q) “**Eligible First Mortgagee**” shall mean a First Mortgagee that has submitted a written request for the Association to notify such First Mortgagee of any proposed action requiring the consent of a specified percentage of Eligible First Mortgagees, which request must contain its name, address, and the legal description and address of the Unit upon which it holds a First Mortgage.

(r) “**First Mortgage**” shall mean a mortgage or deed of trust, which is a first and prior lien, encumbering a Unit within the Property.

(s) “**First Mortgagee**” shall mean any Person which owns, holds, insures or is a governmental guarantor of a First Mortgage.

(t) **“General Common Elements”** shall mean all of the Common Elements except the Limited Common Elements.

(u) **“Governing Documents”** shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Association, as they may be amended from time to time.

(v) **“Individual Purpose Assessment”** shall mean expenses incurred by the Association, which are for the benefit of any individual Unit, as more fully provided in Section 8.5 of this Declaration.

(w) **“Limited Common Elements”** shall mean those parts of the Common Elements that are either limited to or reserved for the exclusive use of the Owner of a particular Unit or are limited to and reserved for the use of the Owners of more than one, but fewer than all, of the Units, as may be shown on the Map or as may be more fully described in Section 7.2 of this Declaration.

(x) **“Map”** shall mean and refer to the condominium map(s) of the Property subject to this Declaration and which are recorded in the records of the Office of the Clerk and Recorder of Eagle County, Colorado. More than one condominium map or supplement thereto may be recorded, and, if so, then the term "Map" shall collectively mean and refer to all of such condominium maps and supplements thereto.

(y) **“Member”** shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(z) **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(aa) **“Parking Garage”** shall mean the underground parking garage providing onsite parking for the Property, as shown on the Map.

(bb) **“Parking Space”** shall mean each separately delineated parking space within the Parking Garage which has been allocated for the exclusive use of the Owner of a particular Unit as set forth in a Supplemental Declaration. Each Parking Space is a Limited Common Element appurtenant to the Unit to which it is allocated.

(cc) **“Period of Declarant Control”** shall mean a length of time expiring no later than the first occurrence of the following: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that May Be Included to Owners other than a Declarant; (ii) two (2) years after the last conveyance of a Unit by a Declarant in the

ordinary course of business; or (iii) two (2) years after any right to add new Units to the Declaration was last exercised.

(dd) “**Person**” shall mean a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated association, or any other legal entity or any combination thereof.

(ee) “**Property**” shall mean the property described in or which is subject to this Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(ff) “**Rules and Regulations**” shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Property, and/or clarification of the Governing Documents, including any amendment to those instruments.

(gg) “**Special Assessment**” shall mean a special Assessment levied by the Association from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund or any Building reserve fund.

(hh) “**Storage Space**” shall mean each separate storage area within the Parking Garage which has been allocated for the exclusive use of the Owner of a particular Unit as set forth in a Supplemental Declaration. Each Storage Space is a Limited Common Element appurtenant to the Unit to which it is allocated.

(ii) “**Supplemental Declaration**” shall mean a recorded instrument, to be recorded by the Declarant subsequent to the recording of this Declaration, which allocates Parking Spaces and/or Storage Spaces to certain Units.

(jj) “**Unit**” shall mean an individual air space unit which is contained within the Unit boundaries as defined in Section 7.1 of this Declaration and as shown on the Map, together with all fixtures and improvements contained therein (unless such fixtures and improvements are deemed to be Common Elements as defined herein), and together with the undivided interest in the Common Elements appurtenant to the Unit in accordance with the Allocated Interests as set forth in Section 5.4 of this Declaration.

(kk) “**Units That May Be Included**” shall mean one hundred and seventy-five (175) Units, which shall be the maximum number of Units that may be subject to this Declaration. However, the aforesaid number of Units That May Be Included is not a representation or guarantee as to the actual number of Units that will ultimately be included in the Property.

## **ARTICLE 2. DIVISION OF PROPERTY INTO CONDOMINIUM OWNERSHIP**

Section 2.1 Division of Property into Condominium Units. The Property is a condominium community as defined in CCIOA. The Property consists initially of zero (0) Units. The Units shall be created upon the recordation of one or more Maps, which Maps shall be recorded by the Declarant after the recordation of this Declaration. Upon the recordation of a Map, each condominium unit created by such Map shall constitute a separate Unit, the boundaries and identifying numbers of which are shown on the Map and described in this Declaration. Each Unit so created shall have an undivided interest in the Common Elements appurtenant thereto in accordance with the Allocated Interests in the Common Elements as set forth in Section 5.4 of this Declaration.

Section 2.2 Inseparability of Units. Each Unit, and the undivided interest in the Common Elements appurtenant thereto, and all appurtenances, rights, and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered, or otherwise disposed of only as a Unit. No Owner of a Unit shall transfer, convey, lease, devise, encumber or otherwise dispose of in any manner any of the Limited Common Elements designated to the Unit separately from the Unit to which such Limited Common Elements are allocated. Every transfer, conveyance, lease, devise, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, lease, devise, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties, and obligations created by law or this Declaration.

Section 2.3 Non-Partitionability. The Common Elements shall be owned in common by all of the Owners and shall remain undivided. By the acceptance of a deed or other instrument of conveyance or assignment of a Unit, each Owner specifically waives the right to institute or maintain a partition action or any other action designed to cause a division of the Common Elements.

## **ARTICLE 3. PROPERTY RIGHTS IN THE COMMON ELEMENTS**

Section 3.1 General Common Elements. Every Owner and the family members, guests, tenants and licensees of each Owner shall have a perpetual right and easement of access over, across, and upon the General Common Elements and those Limited Common Elements appurtenant to that Owner's Unit for the purpose of getting to and from the Unit of such Owner and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

- (a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration;

(b) The terms of those recorded easements and licenses appurtenant to the Property, as more fully described on *Exhibit B*, attached hereto and incorporated herein, or to which the Property may be may become subject to pursuant to the rights reserved to the Declarant as set forth herein;

(c) The right of the Association to adopt Rules and Regulations governing the use of the Common Elements and the Units;

(d) The right of the Association to borrow money for the purpose of maintaining or improving the Common Elements, for maintaining those portions of the Units the Association has the obligation to maintain as provided herein, and for other such purposes deemed appropriate or necessary by the Board of Directors to fulfill the Association's obligations, duties or authority as set forth in the Governing Documents;

(e) The right of the Association, upon approval of Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant, to mortgage the Common Elements as security for any loan or liability incurred by the Association, provided, that the rights of such mortgagee shall be subordinate to the rights of the Owners;

(f) The right of the Association to assign its right to future income, including the right to assign its right to receive Assessments;

(g) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, or similar interest through, over or in the Common Elements;

(h) The right of the Association to transfer or convey ownership of the Common Elements, or any portion thereof, subject to the prior approval of Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant; provided that all Owners of Units to which any Limited Common Elements are allocated shall approve any transfer or conveyance of any such Limited Common Elements;

(i) The right of the Association to close portions of the Common Elements for maintenance, repair, replacement and improvement; and

(j) The right of the Association to change the use of, and/or to add or remove improvements to or from the Common Elements.

Section 3.2 Delegation of Use. An Owner may delegate, in accordance with the Bylaws and Rules and Regulations adopted by the Board of Directors, his right of enjoyment to

the Common Elements to the members of his family, his tenants, or contract purchasers who reside in the Owner's Unit. If an Owner delegates such rights to use the Common Elements to tenants or contract purchasers who reside in the Owner's Unit, the Owner shall not be entitled to use the Common Elements.

Section 3.3 Disclaimer of Liability. The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all Persons, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Elements or any of the improvements, fixtures, and facilities thereon. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Elements, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Elements and the improvements and facilities thereon shall use, enjoy, and visit, the same at their own risk and peril.

#### **ARTICLE 4. EASEMENTS**

Section 4.1 Utility, Map and Map Easements. Easements for utilities and other purposes over and across the Units and the Common Elements may be shown upon a recorded Map of the Property, as established pursuant to the terms of this Declaration, granted by authority reserved in any recorded document, or as established in CCIOA.

Section 4.2 Easements for Encroachments. In the event that any portion of the Common Elements encroaches upon any Unit or in the event that any portion of a Unit encroaches upon any other Unit or upon any portion of the Common Elements, or in the event that any encroachment shall occur in the future as a result of settling of a Building, alteration or repair of the Common Elements, or the repair or restoration of a part of a Building and/or a Unit after damage by fire or other casualty, or condemnation or eminent domain proceedings, then in any of said events, a valid easement is hereby created and does exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that one or more of the Units, a Building or other improvements comprising part of the Property are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location and, as a result of such rebuilding or reconstruction, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment is hereby created and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Unit for purposes of marketability of title or other purpose. In interpreting any and all provisions of this Declaration, subsequent

deeds, mortgages, deeds of trust, or other security instruments relating to Units, the actual location of a Unit shall be deemed conclusively to be the Unit intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit as indicated on the Map.

Section 4.3 Utilities. There is hereby created a blanket easement for the benefit of the Owners upon, across and through the Common Elements for installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, computer, cable and master television antennae or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on the Common Elements necessary to repair and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, the Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part of the Common Elements without conflict with the terms hereof; provided, however, that such right and authority shall cease and terminate upon the earliest of ten (10) years after the recordation of this Declaration, conveyance by the Declarant of all Units That May Be Created to Owners other than the Declarant, or when the Declarant elects to surrender such right, at which time said reserved right shall vest in the Association. The easement provided for in this Section 4.3 shall no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

Section 4.4 Maintenance Easement. An easement is hereby granted to the Association, its respective officers, directors, agents, employees and assigns upon, across, over, in and under the Common Elements, and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right of the Association to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association.

Section 4.5 Easements of Access for Repair, Maintenance and Emergencies. Each Unit shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors), and to each Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages. Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a Unit. The Owners of the other Units and the Association shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements or any utility lines or pipes (whether or not Common Elements) located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Property, the Common

Elements or any Unit. The Association shall have an easement to enter a Unit to inspect for events which may be causing waste of water, heat or any other utility provided by the Association or paid as a part of the Common Expenses or for any condition which may be causing damage to the Common Elements or any other Unit.

Section 4.6 Declarant's Rights Incident to Completion of the Project. Each Person who is a Declarant, for itself and its successor and assigns, shall have and hereby retains or is granted a right and easement of ingress and egress over, in, upon, under and across the Common Elements and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the completion of the Project, the sale of the Units, the exercise of Declarant's rights under CCIOA and this Declaration; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, any such Owner's family members, guests or invitees, to or of his Unit or the Common Elements. The rights under this section shall terminate upon the conveyance by a Declarant of all Units That May Be Created to Owners other than a Declarant or ten (10) years after the recording of this Declaration, whichever occurs first.

Section 4.7 Easements Deemed Created. All conveyances of Units hereafter made by a Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 4, even though no specific reference to such easements or this Article 4 appears in the instrument of conveyance.

## **ARTICLE 5. THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

Section 5.1 General Purposes and Powers of the Association. The Association has been formed to perform functions and manage the Property as provided in this Declaration to protect the value and desirability of the Property and the Units, to further the interests of the residents, occupants, tenants and guests of the Property and Members of the Association, and to promote a harmonious community and responsible leadership. The Association shall have a Board of Directors to manage the affairs of the Association. All Owners and any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 5.2 Authority of the Association. The business affairs of the Property shall be managed by the Association. The Association shall be governed by CCIOA, the Colorado Revised Nonprofit Corporation Act, this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents or by Colorado law, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall

relieve the Board of Directors of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to affect such right or privilege or to satisfy such duty or obligation.

Section 5.3 Membership. Every Person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for such membership. When more than one person holds an interest in any Unit, all such persons shall be Members.

Section 5.4 Allocated Interests. The Common Expense Liability, the Building Expense Liability, the undivided ownership interest in the Common Elements, and votes in the Association allocated to each Unit are set as follows:

(a) Unless otherwise provided in this Declaration, the Common Expense Liability allocated to each Unit shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units in the Property from time to time.

(b) The Building Expense Liability allocated to each Unit in any particular Building shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units in that particular Building.

(c) Each Unit's undivided interest in the Common Elements shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units in the Property from time to time.

(d) The number of votes in the Association shall be allocated equally among the Units with each Unit being allocated one (1) vote.

Section 5.5 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board of Directors may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The agreement shall be by written contract having a term of no more than three (3) years and shall be subject to cancellation by the Association on thirty (30) days' notice, with or without cause, and without a cancellation fee. The Board of Directors shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board of Directors.

Section 5.6 Right to Notice. Notice of matters affecting the Property shall be given by the Association or through access to Association records, as further provided in the Bylaws or as otherwise provided by the Board of Directors.

Section 5.7 Indemnification. To the fullest extent permitted by law, each officer, director, committee member and volunteer of the Association shall be and hereby are indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching his or her duties.

## **ARTICLE 6. BOARD OF DIRECTORS**

Section 6.1 Authority of the Board of Directors. The affairs of the Association shall be managed by the Board of Directors. Except as otherwise provided in the Governing Documents, the Board of Directors may act in all instances on behalf of the Association.

Section 6.2 Election of the Board of Directors During the Period of Declarant Control. Except as otherwise provided in this Article, during the Period of Declarant Control the Declarant may appoint all members of the Board of Directors and officers of the Association and may remove all such members of the Board of Directors and officers of the Association appointed by it. Notwithstanding, no later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units That May Be Included to Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units That May Be Included to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

Section 6.3 Termination of the Period of Declarant Control. Not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of Directors (the exact number of members of the Board of Directors to be set forth in the Bylaws of the Association), at least a majority of whom must be Owners other than the Declarant or representatives of the Declarant.

## **ARTICLE 7. UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

Section 7.1 Unit Boundaries.

(a) The following are designated as boundaries of each Unit, as defined below and depicted on the Map:

(i) The unfinished interior surfaces of the perimeter walls. All lath, furring, drywall, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces are part of the Unit and all other portions of the perimeter floors, walls and ceilings are part of the Common Elements. When found on the walls and ceilings, the interior surfaces of built-in fireplaces and their flues in the closed position shall be boundaries of the Unit.

(ii) Unfinished interior surfaces of floors, or the lowermost floors, if it is a Unit containing more than one level.

(iii) Unfinished interior surfaces of ceilings, or the uppermost ceilings if it is a Unit containing more than one level.

(iv) The windows and window frames, and exterior doors and door frames of the Unit.

(b) Each Unit includes the spaces and improvements lying within the boundaries described above, including windows, window frames, doors and door frames, as depicted on the Map. Each Unit shall include any heating and cooling elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical or other utility services to the Unit and located within the Unit boundaries defined above; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines located within the Unit but serving other Units.

## Section 7.2 Limited Common Elements.

(a) The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(i) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside of the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit. Any portion serving more than one Unit, but less than all Units, is a Limited Common Element to those Units served. Any portion serving only the Common Elements is a part of the General Common Elements.

(ii) Any balconies, patios, decks, steps, stoops, walkways, or other fixtures designed to serve a single Unit, located outside the boundaries of the

Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(iii) Parking Spaces and Storage Spaces which have been assigned to a Unit as set forth in this a Supplemental Declaration allocating such Parking Spaces and/or Storage Spaces, and which are appurtenant to a Unit are Limited Common Elements, allocated solely to the Unit to which the same have been assigned.

(b) The Association may modify Limited Common Elements without a membership vote, but only with the consent of the Owner to whose Unit the Limited Common Element is appurtenant. The Association may also, without a membership vote, assign Common Elements not previously assigned or reassign Limited Common Elements with the consent of the affected Owner(s), provided that any such assignment or reassignment shall be made in accordance with CCIOA.

Section 7.3 Parking Spaces and Storage Spaces.

(a) Units may be allocated the exclusive right to use certain Parking Spaces and/or Storage Spaces, allocated in a Supplemental Declaration allocating Parking Spaces and/or Storage Spaces, to be recorded by the Declarant subsequent to the recording of this Declaration. Each Parking Space or Storage Space so allocated shall be a Limited Common Element of the Unit to which it is allocated.

(b) Except as otherwise provided in this Declaration in relation to the reassignment of Limited Common Elements from one Unit to another, no Owner of a Unit shall transfer, convey, lease, devise, encumber or otherwise dispose of in any manner the interest in the Parking Space or Storage Space allocated to the Unit separately from the Unit to which such the Parking Space or Storage Space is allocated. Every transfer, conveyance, lease, devise, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, lease, devise, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties, and obligations created by law or this Declaration, including the exclusive right to use any Parking Space and/or Storage Space allocated thereto.

(c) No Owner shall have the right to make any alteration or improvement to any Parking Space

**ARTICLE 8. COVENANT FOR COMMON EXPENSE ASSESSMENTS**

Section 8.1 Creation of Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed for a Unit, whether or not it shall be so expressed in any such

deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments and such other Assessments as imposed by the Association.

(a) Such Assessments, including but not limited to fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited to credit card convenience fees from whatever source, shall be the personal obligation of the Owner of such Unit at the time when the Assessment or other charges became or fell due. The personal obligation to pay any past due sums due to the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of any Assessment by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Assessment is made.

(b) The Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited to credit card convenience fees from whatever source, shall be a charge on the respective Unit generating such charges and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

(c) All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association is not properly exercising their duties and powers under this Declaration. Except as provided in this Declaration, all Assessments shall be assessed against all Units based on the Common Expense Liability or Building Expense Liability allocated to each applicable Unit, as applicable, and as set forth in this Declaration.

Section 8.2 Basis of and Budget for Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget for the annual Common Expense Assessment shall be submitted to the Owners for ratification pursuant to C.R.S. § 38-33.3-303(4) and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing a majority of the total Association vote. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of

Directors. The omission or failure of the Board of Directors to levy a Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 8.3 Basis and Budget for Building Expense Assessments. A Building Expense Assessment for any Building may be made on an annual basis against all Units within the particular Building and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the anticipated Building Expenses for the particular Building during such Assessment year. The budget for any annual Building Expense Assessment shall be submitted to the Owners within that Building for ratification pursuant to C.R.S. § 38-33.3-303(4) and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget shall be deemed ratified unless Owners representing at least a majority of the total votes in the Building vote to reject the budget. Building Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy a Building Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 8.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund or a Building reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to C.R.S. § 38-33.3-303(4) and as set forth in the Bylaws, as the Bylaws may be amended from time to time. A proposed Special Assessment will be ratified unless Owners representing at least a majority of the total votes in the Association vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Notwithstanding, the above, if any proposed Special Assessment is to be imposed for Building Expenses only for a particular Building, such Special Assessment shall be deemed ratified unless Owners representing a least a majority of the total votes in the Building vote to reject the Special Assessment. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board of Directors shall have the right to require that Special Assessments be paid in advance of the subject services or materials.

Section 8.5 Individual Purpose Assessments. The Association shall have the right to add to any Owner's Assessment, as an Individual Purpose Assessment, without the need of going through the budget ratification process as provided for herein, the following:

- (a) Those amounts expended by the Association for the benefit of any individual Unit or any occupant thereof, including but not limited to: Unit insurance; improvement, repair, replacement and maintenance specific to a Unit or a Limited Common Element appurtenant to a Unit; or improvement, repair, replacement or

maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;

(b) Any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of an Owner (or his agents, guests, licensees, invitees or lessees);

(c) All fines and costs assessed against an Owner pursuant to the Governing Documents; and

(d) Any other expenditures or charges which the Board of Directors, in its sole discretion, chooses to allocate to a Unit and are reasonably determined to be allocable to a particular Unit.

Section 8.6 Application of Payments. All payments received on an account of any Owner or the Owner's Unit shall be applied in the following manner: first to the payment of any special or regular Assessments due with respect to such Owner or such Owner's Unit, then to any and all legal fees and costs (including attorney fees), then to expenses of enforcement and collection, late fees, returned check charges, lien fees, and other costs owing or incurred with respect to such Owner or such Owner's Unit pursuant to the Governing Documents.

Section 8.7 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within fifteen (15) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Failure to make payment within fifteen (15) days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment and/or Building Expense Assessments, as applicable, for the remainder of that fiscal year to become immediately due and payable at the option of the Board of Directors. The Board of Directors may, in its discretion, decelerate the Member's annual Common Expense Assessment and/or Building Expense Assessment.

(c) Further, the Association may foreclose its lien and/or bring an action at law or in equity, or all of the same, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in

any way waiving the Association's lien therefor. Likewise, the obtaining of a money judgment shall not preclude the foreclosure of the Association's lien so long as the judgment remains unsatisfied.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Unit, the Board of Directors may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under CCIOA.

Section 8.8 Lien Priority. The lien of the Association under this Article is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Unit (except as allowed by CCIOA with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien. Sale or transfer of any Unit shall not affect the lien for said Assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 8.9 Working Capital Fund. Each Person who purchases a Unit from the Declarant [REDACTED] shall make a non-refundable contribution to the Association in an amount equal to [REDACTED]. Said contribution shall be collected and transferred to the Association at the time of closing of the sale of each Unit and shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase equipment,

property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payment of Assessments as the same become due.

Section 8.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and prepayment of or provision for reserves shall be retained by the Association as reserves or in such other funds as the Board of Directors may direct and need not be paid to the Owners or credited to them to reduce future Assessments.

## **ARTICLE 9. MAINTENANCE AND SERVICE RESPONSIBILITIES**

### **Section 9.1 Association Maintenance and Service Responsibilities.**

(a) The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance and service responsibilities. The Association shall maintain, repair, replace, and keep in good repair in a workmanlike manner as a Common Expense those items set forth in *Exhibit C* of this Declaration.

(b) The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal, which lies within or outside the Property, the cost of which shall be a Common Expense, except as may otherwise be provided in Section 8.5 of this Declaration. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided, however, the Association shall provide Owners with fifteen (15) days prior written notice of the assumption of any obligation which would normally be that of the Owners pursuant to this Declaration. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed, as well as the color and/or type of materials used.

(c) Subject to the maintenance responsibilities herein provided, any maintenance or repair performed by an Owner or occupant on or to the Common Elements or any portion of a Unit that is an Association maintenance responsibility by an Owner or occupant shall be performed at the sole expense and liability of such Owner or occupant, and the Owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(d) The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. Such repair shall be performed based on a reasonableness standard.

(e) Liability of Association.

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any device, pipe, drain, conduit, appliance, material, component or equipment which the Association is responsible to maintain hereunder, except:

(A) For injuries or damages arising after the Owner of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements or device, pipe, drain, conduit, appliance, material, component or equipment for which the Association has a maintenance responsibility; and

(B) Only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

(ii) The Association shall not be liable to the Owner of any Unit or such Owner's tenant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

(iii) The Association shall not be liable to any Owner, or any Owner's tenant, guest, family member, or invitee for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

(iv) No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 9.2 Owner's Maintenance Responsibility.

(a) Except as otherwise provided in this Declaration, each Owner shall have the obligation to maintain, repair and replace all portions of the Owner's Unit as further set forth in *Exhibit C* of this Declaration.

(b) Each Owner shall have the responsibility to:

(i) Perform his or her maintenance responsibility in such manner so as not to unreasonably disturb persons in other Units;

(ii) Promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and

(iii) Pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants, guests, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment as an Individual Purpose Assessment.

(c) An Owner shall not be liable for injury or damage to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of the Unit except if the Owner has failed to exercise due care in performing said maintenance. An Owner shall not be liable to any other Owner, or any Owner's occupant, guest or family, or the Association, for any damage or injury caused in whole or in part by the Owner's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Owner's failure to discharge its responsibilities.

Section 9.3 Mold. Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Unit and the Common Elements, including but not limited to appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover any heating, ventilation or air conditioning ducts. Owners shall immediately notify the Board in Directors in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Unit; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation or air conditioning; and (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Each Owner shall be responsible for any damage to his or her Unit and personal property, to any other Unit or to the Common Elements if the Owner fails to meet the requirements of this Section.

Section 9.4 Inspection, Repair and Replacement of Designated Owner Maintenance Components. The Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of designated Owner maintenance components. If the Association, either through such an inspection or otherwise, determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible

hereunder, then, except in the case of an emergency, the Association may give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

Unless the Association determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board of Directors determines that (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as provided in this Section, the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the Assessment to which such Owner is subject, as an Individual Purpose Assessment, shall become a lien against the Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

**Section 9.5 Owner's Negligence.** If the Board of Directors determines that the need for maintenance or repair of any portion of the Common Elements, any Unit or otherwise is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Unit as an Individual Purpose Assessment, which shall become a lien against the Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

**Section 9.6 Mechanic's Liens.** No labor performed and/or materials furnished for use and incorporated into any Unit with the consent or at the request of the Owner thereof, his agent, contractor or subcontractor, shall be the basis of a filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Unit. The Association may pay any sums necessary to eliminate any lien filed against Units not benefitting from the labor and/or materials furnished and the Common Elements on behalf of the other Owners and all sums paid shall be an Individual Purpose Assessment against the Owner or Owners for whom the labor and/or materials were furnished.

## **ARTICLE 10. UNIT AND COMMON ELEMENT ALTERATIONS**

**Section 10.1 Permitted Unit Alterations.** Each Owner shall have the right, without the written approval of the Board of Directors, to decorate his or her Unit as he or she should so determine. An Owner may move, remove, alter or change any interior, nonstructural wall or partition, and may change the use and/or designation of any room within his or her Unit;

provided however, that no such change shall affect the structural integrity of the Building or the mechanical or utility systems of the Building. No structural alterations to any Unit or any Common Elements shall be done by any Owner without the prior written approval of the Board of Directors.

Section 10.2 Common Element Alterations. No Owner shall have the right to make any alteration or improvement to the exterior of a Building or to the Common Elements without the prior written approval of the Board of Directors. Unless otherwise provided herein, no Owner shall construct anything upon, remove anything from or alter any of the Common Elements, or paint, decorate or landscape any portions of the Common Elements without the prior written approval of the Board of Directors. Balconies, decks, patios and porches shall not be enclosed. No Owner shall install blinds or other coverings on any balcony, deck, patio or porch without the prior written approval of the Board of Directors. Any items on a balcony, deck, patio or porch that can be seen from the Common Elements are subject to approval and regulation by the Board of Directors as may be set forth in the Rules and Regulations. The Board of Directors may, in the Rules and Regulations, authorize certain types of alterations or improvements to the Limited Common Elements. No Units may be combined or subdivided.

## **ARTICLE 11. INSURANCE**

Section 11.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies.

Section 11.2 Real Property Insurance on the Units and Common Elements.

(a) The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Elements, the Units, and the other property of the Association, as more fully provided herein.

(b) The Association's insurance policy shall cover that property within the Property as set forth in *Exhibit C* of this Declaration, regardless of ownership.

(c) If the Board of Directors changes policies so that a lesser level of coverage is provided, the Board of Directors shall notify all Owners in writing at least ten (10) days prior to the commencement of the policy with reduced coverage.

(d) All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, and their successors and assigns, which shall provide that the loss, if any, thereunder shall be payable to the Association for the use and benefit of such First Mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Eagle County, Colorado.

(e) The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Property by the Board of Directors.

(f) The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent one hundred percent (100%) of the replacement value of all improvements required to be insured by the Association, except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article.

(g) The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

Section 11.3 Association Flood Insurance. The Association shall obtain flood insurance to the extent required by the Federal Emergency Management Agency (FEMA) or any other governmental agency.

Section 11.4 Liability Insurance. The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering the Property in such limits as the Board of Directors may from time to time determine, but not in any amount less than a combined single limit of \$1,000,000.00, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Units and the Common Elements. The foregoing liability insurance shall name the Association as the insured.

Section 11.5 Fidelity Insurance. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity insurance shall be in an amount at least covering the Association's reserves plus two months' worth of Common Expense Assessments.

Section 11.6 Workers Compensation. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with

respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 11.7 Director and Officer Liability Insurance. The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers of the Association. Such insurance should include coverage for claims brought seeking both monetary and/or non-monetary damages.

Section 11.8 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 11.9 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.

(c) All policies of insurance shall contain waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days prior written notice to all of the Owners, First Mortgagees and the Association.

(d) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to those First Mortgagees that request the same at least ten (10) days prior to expiration of the then current policies.

(e) All liability insurance shall be carried in blanket form naming the Association, the Board of Directors, the manager or managing agent, if any, and the officers of the Association as insureds.

(f) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of an Owner.

(g) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner, only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such

policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 11.10 Insurance Obtained by Owners. Each Owner shall be responsible for maintaining insurance which covers his Unit to the extent not covered by policies maintained by the Association and as provided in *Exhibit C* of this Declaration. Such insurance shall include, but may not be limited to, furnishings and personal or other property in the Unit and liability insurance for injury, death or damage in or upon the Unit. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby. Owners are encouraged to carry loss assessment coverage as well.

Section 11.11 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for insurance policies carried by the Association shall be a Common Expense to be included as a part of the annual Common Expense Assessments levied by the Association.

Section 11.12 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage.

Section 11.13 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board of Directors, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these Persons.

Section 11.14 Adjustments by the Association. Any loss covered by an insurance policy carried by the Association shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any holder of a mortgage on any Unit. The Association shall hold any insurance proceeds in trust for the Association, Owners and such mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored. If the insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Association may levy a Special Assessment to cover the short fall (or deductible) as more fully provided in Section 11.17 of this Declaration.

Section 11.15 Condemnation and Casualty Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in CCIOA.

Section 11.16 Responsibility for Payment of Deductible Amount. Whether the Board of Directors, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount (or for the amount of the loss if such amount is less than the deductible) for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount (or the amount of the loss if such amount is less than the deductible) for any work, repairs or reconstruction for damage to Common Elements and/or to any portion of a Unit which the Association is obligated to maintain hereunder unless the damage is the liability of an Owner, his family, guests, tenants, or invitees, as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount (or the amount of the loss if such amount is less than the deductible) as an Individual Purpose Assessment in compliance with and under the terms of this Declaration.

(b) The Owner shall pay or absorb the deductible (or the amount of the loss if such amount is less than the deductible) for any loss to the Unit that would be the maintenance responsibility of the Owner in the absence of insurance unless the loss is caused by the negligent or willful act or omission of the Association or another Owner, or another Owner's family, guests, tenants, or invitees, in which case the Association or such other Owners, as the case may be, shall be responsible for the deductible (or the amount of the loss if such amount is less than the deductible). If an Owner fails to pay the deductible (or the amount of the loss if such amount is less than the deductible) pursuant to this Section, the Association may, but shall not be obligated to seek the deductible (or the amount of the loss if such amount is less than the deductible) from such Owner as an Individual Purpose Assessment, collected on behalf of the Owner suffering the loss as provided in this Declaration for the collection of Assessments.

Section 11.17 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. Notwithstanding the budget ratification procedure set forth in this Declaration, such an insurance Assessment shall be ratified unless vetoed by Members holding at least sixty-seven percent (67%) of the total votes entitled to be cast in the Association pursuant to C.R.S. §38-33.3-303(4) and as set forth in the Bylaws, as the Bylaws may be amended from time to time.

Section 11.18 Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any Unit shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

## ARTICLE 12. USE RESTRICTIONS

Section 12.1 Flexible Application of the Covenants and Restrictions. All Units within the Property shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

Section 12.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to a Unit, acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Units may be limited by the provisions in the Governing Documents.

(b) The Board of Directors may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.

(c) The Board of Directors may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.

(d) All fines imposed are collectable as Assessments.

Section 12.3 Use/Occupancy.

All Units within the Property shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, Units may be used for business activities provided that the following are satisfied:

(a) The business conducted is clearly secondary to the residential use of the Unit and is conducted entirely within the Unit;

(b) The existence or operation of the business is not detectable from outside of the Unit by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

(c) The business does not result in an undue volume of traffic or parking within the Property, which determination may be made by the Board of Directors in its sole discretion from time to time;

(d) The business conforms to all zoning requirements and is lawful in nature; and

(e) The business conforms to any Rules and Regulations that may be imposed by the Association from time to time on a uniform basis to protect the peace, tranquility and quality of the Property.

Section 12.4 Leasing and Occupancy. Any Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record, and subject to the following:

(a) "**Leasing**" or "**Renting**" for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner, provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Unit by the child or parent of an Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Unit as such Owner's primary residence shall not constitute leasing.

(b) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Rules and Regulations of the Association.

(c) Each Owner who leases his or her Unit shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(d) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant.

(e) All occupancies, leases and rental agreements of Units shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(f) All occupancies of Units shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within thirty (30) days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board of Directors, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Individual Purpose Assessment and lien against the Unit.

(g) Leases shall be for or of the entire Unit.

(h) All Owners who reside at a place other than the Unit shall provide to the Association a mailing address, an e-mail address, and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(i) The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 12.5 Use of Patios and Balconies. Nothing shall be hung from or placed outside the Unit, including patios and balconies, unless allowed in the Rules and Regulations.

Section 12.6 Restrictions on Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Units; provided, however, that a reasonable number of dogs, cats, or other domestic animals which are bona fide household pets may be kept in a Unit, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Property.

When on the Common Elements, pets must be on a leash and under control. Feces left by pets upon the Common Elements must be removed promptly by the owner of the pet or the person responsible for the pet. Pets shall not be allowed to defecate or urinate on any patio or balcony in the Property. Pets shall not be left unattended within a Unit if such pet barks, howls, cries, or otherwise makes noise for a prolonged or repetitive period so as to constitute a nuisance or unreasonably interfere with the quiet enjoyment of the Owners, occupants, or residents of other Units. The repeated or continuous barking or noise of a pet while unattended shall be deemed a nuisance and a violation of this Declaration, regardless of the time of day. Additionally, the Association shall have, and is hereby given, the right and authority via the Rules and Regulations to: set a size or poundage limit on pets; regulate the type(s) and/or breeds of pets that are permitted to be kept; determine in its sole discretion that any pet is being kept for commercial purposes; determine in its sole discretion that any pets are being kept in such number or in such manner as to be unreasonable or to create a nuisance; or determine that an Owner is otherwise in violation of the provisions of this Section. In any of the foregoing instances, the Association may take such action or actions as it deems appropriate to correct the same, including the right to require removal of the pet from the Property. The right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets.

Section 12.7 Antennae/Satellite Dishes. “**Permitted Antennas**” are defined as (a) an antenna which is one (1) meter or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite; (b) an antenna which is one (1) meter or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive local television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Unit or on the Limited Common Elements allocated exclusively to the Unit which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt Rules and Regulations regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Unit or the Common Elements.

Section 12.8 Tanks. No tanks of any kind (either elevated or buried), except for small portable tanks associated with an outdoor gas grill, shall be erected, placed or permitted upon any Unit or any Limited Common Element balcony, patio or deck appurtenant to a Unit without the prior written approval of the Board of Directors.

Section 12.9 Nuisances. No nuisance shall be permitted within the Property, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Unit or any Common Elements, or any portion of the Property by residents.

Section 12.10 Vehicular Parking, Storage, and Repairs.

(a) Except for parking on any public streets, which shall be controlled and enforced by Eagle County or the Town of Eagle, as applicable, all parking within the Property and upon any Common Elements shall be regulated by the Association.

(b) The following may not be parked or stored within the Property, including within the Parking Garage, unless authorized in writing by the Association or as otherwise exempted by Colorado law: oversized vehicles that cannot fit within any Parking Space or on within any other delineated, designated parking area on any other portion of the Common Elements, commercial vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by Rules and Regulations. The foregoing may be parked as a temporary expedience for loading or delivery of goods or services. Overnight parking of the foregoing is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Property which are necessary for construction or for the maintenance of any Common Elements, Units, or any improvement located thereon.

(c) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Property. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable, unlicensed or abandoned vehicles on public streets, or as defined by Rules and Regulations adopted by the Association.

(d) No motor vehicle may impede the safe and efficient use of streets, driveways, alleys, or the Parking Garage within the Property by residents, obstruct emergency access to and/or from the Property, or interfere with the reasonable needs of other residents to use streets, driveways, alleys, or the Parking Garage within the Property.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed on the Property, including within the Parking Garage.

(f) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(g) If any vehicle is parked on any portion of the Property in violation of this Section or in violation of the Association's Rules and Regulations, the Board of Directors may place a notice on the vehicle specifying the nature of the violation and stating that after seventy-two (72) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A sign shall also be conspicuously placed at the Property stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If seventy-two (72) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(h) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Unit, is obstructing the flow of traffic, is parked on any grassy area, is parked in a Parking Space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(i) If a vehicle is towed or booted in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 12.11 Use of Common Elements. There shall be no obstruction of any Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Board of Directors. Nothing shall be altered on, constructed in, or removed from any portion of the Common Elements without the prior written approval of the Board of Directors.

Section 12.12 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Property which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Property which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spotlights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Property except with the prior written approval of the Board of Directors.

Section 12.13 No Hazardous Activities. No activity shall be conducted within the Property which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Property. No open fires shall be lighted or permitted within the Property except in a contained barbeque unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers unless otherwise prohibited by governmental ordinances. No Owner or Owners shall permit any condition within his Unit which creates a fire hazard or is in violation of applicable fire prevention regulations.

Section 12.14 Restrictions on Signs, Advertising Devices, and Flags. An Owner or a resident may display signs and/or flags in the windows of the Unit or on the balcony adjoining the Unit only in accordance the Rules and Regulations.

Section 12.15 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road, alley or on any portion of the Common Elements unless placed in a suitable container and suitably located for pick up, subject to any Rules and Regulations adopted by the Board of Directors related to the same. If trash removal is a service offered by the Association to Owners, then the Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners.

Section 12.16 Prohibited Activities. No Owner or occupant of a Unit may engage in any activity or practice which, in the sole discretion of the Board of Directors, is considered a threat to the health and/or safety of other Owners and residents within the Property, including but not limited to, hoarding, creating conditions conducive to indoor fires, allowing Units to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Units or the Common Elements in the Property.

Section 12.17 Rules and Regulations. In furtherance of the provisions of this Declaration, Rules and Regulations concerning and governing the Property or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 12.18 Use of the Words "Capitol + Grand" and "Capitol + Grand Owners Association". No resident or Owner shall use the words "Capitol + Grand" or "Capitol + Grand Owners Association" or the logo of the Property or the Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

## **ARTICLE 13. DISPUTE RESOLUTION PROCEDURES**

Section 13.1 Definitions Applicable to this Article 13. For purposes of this Article 13 only, the following terms have the meanings set forth in this Section 13.1:

(a) “**JAG**” means the Judicial Arbiter Group or any other Person agreed to by the Claimant and the Respondent in writing for the purpose of performing the functions of the Judicial Arbiter Group under this Declaration with a minimum of ten (10) years’ experience in the subject matter of the dispute. In the event that the Judicial Arbiter Group becomes unwilling or unable to perform its functions under this Declaration, JAG shall refer to any organization in the Denver Metropolitan Area designated by the Declarant that specializes in the provision of impartial mediation and arbitration services and that has a minimum of ten (10) years’ experience in the provision of such services.

(b) “**Bound Party**” means each of the Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article 13. Notwithstanding the foregoing, “Bound Party” does not include any of the parties identified in this subsection (b) if such parties have jointly entered into a separate written agreement providing for dispute resolution applicable to the Claim; in such circumstance, the dispute resolution mechanism set forth in such separate written agreement between such parties shall apply with respect to such Claim unless the parties mutually agree to submit such Claim to the provisions of this Article 13.

(c) “**Claimant**” means any Bound Party having a Claim.

(d) “**Claim**” means, except as exempted by the terms of this Article 13, any claim, grievance or dispute between one Bound Party and another Bound Party, regardless of how the same may have arisen or on what it might be based, including those arising out of or related to the interpretation, application, or enforcement of any of the Governing Documents or the rights, obligations, and duties of any Bound Party under any of the Governing Documents; or (ii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

(e) “**Notice**” means the written notification given by a Claimant to a Respondent and which shall comply with the requirements of subsection 13.5(a) of this Declaration.

(f) “**Party**” means the Claimant and the Respondent individually; “**Parties**” means the Claimant and the Respondent collectively.

(g) “**Respondent**” means any Bound Party against whom a Claimant asserts a Claim.

(h) “**Termination of Mediation**” means a period of time expiring thirty (30) days after submission of the matter to mediation (or within such other time as

determined by the mediator or agreed to by the Parties) and upon the expiration of which the Parties have not settled the Claim.

(i) “**Termination of Negotiations**” means a period of time expiring thirty (30) days after the date of the Notice (or such other period of time as may be agreed upon by the Parties) and upon the expiration of which the Parties have not resolved a Claim.

Section 13.2 Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.

(a) Each Bound Party agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit any Claims to the procedures set forth in Section 13.5 of this Declaration.

(b) By acceptance of a deed to a Unit, each Owner agrees to abide by the terms of this Article 13.

(c) Any applicable statute of limitation shall apply to the alternative dispute resolution procedures set forth in this Article 13.

Section 13.3 Commencement or Pursuit of Claim Against Bound Party.

(a) A Bound Party may not commence or pursue a Claim against any other Bound Party except in compliance with this Article 13.

(b) Prior to any Bound Party commencing any proceeding to which another Bound Party is a party, the Respondent shall have the right to be heard by the Claimant, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

Section 13.4 Claims. Unless specifically exempted below, all Claims between any of the Bound Parties are subject to the provisions of this Article 13. Notwithstanding the foregoing, unless all Parties otherwise agree, the following are not Claims and shall not be subject to the provisions of this Article 13:

(a) Any action or suit by the Association regarding the imposition or collection of Assessments or other charges levied by the Association pursuant to this Declaration, including actions to foreclose assessment liens;

(b) Any action or suit by the Association or the Declarant to enforce any provisions of the Governing Documents, including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary;

(c) Counterclaims brought by the Association in proceedings instituted against it;

(d) Any suit between or among Owners, which does not also include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(e) Any suit in which any indispensable party is not a Bound Party.

#### Section 13.5 Mandatory Procedure.

(a) *Notice.* Prior to proceeding with any Claim against a Respondent, each Claimant shall give a Notice to each Respondent, which Notice shall state plainly and concisely:

(i) The nature of the Claim, including all Persons involved and Respondent's role in the Claim;

(ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) The proposed remedy; and

(iv) The fact that Claimant will give the Respondent an opportunity to inspect all property and improvements potentially involved with the Claim, and that the Claimant will meet with the Respondent within a reasonable amount of time after such inspection to discuss in good faith ways to resolve the Claim.

(b) *Negotiation and Mediation.*

(i) The Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, any Party may appoint a representative to assist the Parties in negotiation.

(ii) Upon a Termination of Negotiations, the Claimant has thirty (30) days to submit the Claim to mediation under the auspices of JAG in accordance with the rules of JAG in effect on the date of the Notice that is provided for in subsection 13.5(a) of this Declaration.

(iii) If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, the Claimant waives the Claim, and the Respondent will be released and discharged from any and all liability to the Claimant on account of such Claim.

(iv) Any settlement of the Claim through mediation must be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator must issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Each Party will bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

(vi) If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 13. In such event, the Party taking action to enforce the agreement will recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including attorneys' fees and court costs.

(c) *Binding Arbitration.*

(i) Upon Termination of Mediation, if the Claimant desires to pursue the Claim, the Claimant may initiate final, binding arbitration of the Claim under the auspices of JAG in accordance with the rules of JAG in effect on the date of the Notice that is provided for in Section 13.5(a) of this Declaration.

(ii) If the Association is the Claimant and the Claim the Association is initiating is a construction defect action, as defined in C.R.S. §38-33.3-303.5(1)(b), the Association shall follow the notice procedures and obtain the Owner approval required by C.R.S. §38-33.3-303.5 prior to initiating final, binding arbitration of such Claim.

(iii) Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the Parties, one arbitrator who has expertise in the areas of dispute, which may include legal expertise if legal issues are involved, will arbitrate the dispute.

(iv) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

Section 13.6 Award. The award of the arbitrator must be accompanied by detailed written findings of fact and conclusions of law. Except as required by applicable law or for confirmation of an award, neither Party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties.

#### **ARTICLE 14. DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

Section 14.1 Development Rights. The Declarant hereby reserves for itself and its successors and assigns, the following rights, herein after the "**Development Rights**":

- (a) The right to create Units or Common Elements, including Limited Common Elements, within the Property, by the recordation of one or more Maps;
- (b) The right to allocate the exclusive right to use Parking Spaces and/or Storage Spaces to particular Units by the recordation of one or more Supplemental Declarations;
- (c) The right to subdivide Units or convert Units into Common Elements; and
- (d) The right to withdraw real estate from the Property.

Section 14.2 Special Declarant Rights. In addition to the Development Rights reserved above, the Declarant further reserves those rights granted to or reserved by the Declarant as hereinafter set forth or as otherwise set forth in this Declaration or CCIOA for the benefit of the Declarant, including but not limited to the following acts (collectively, the "**Special Declarant Rights**"):

- (a) To build and complete improvements in the Property;

(b) To maintain sales offices, models, construction offices, management offices (and reserved parking areas for all of the same), and signs advertising the Property and sale of Units;

(c) To use easements through the Common Elements for the purpose of making Improvements within the Property or within real property which may be added to the Property;

(d) To grant or create easements for access, utilities, drainage, water and other purposes incidental to the development and sale of the Property located in or across Units owned by the Declarant or the Common Elements, provided such easements do not create a permanent, unreasonable interference with the rights of any Owners at the time such easement is created;

(e) To make the Property subject to a master association;

(f) To merge or consolidate the Property with a common interest community of the same form of ownership;

(g) To appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control;

(h) To allocate any of the Common Elements or portions thereof as Limited Common Elements and to allocate such Limited Common Elements among particular Units;

(i) To convert any Unit or other portion of the Property in the Property owned by the Declarant into Common Elements; and

(j) To perform any other right of the Declarant set forth in this Declaration.

Section 14.3 Exercise of Development Rights or Special Declarant Rights. All of the Development Rights and Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Property. The Declarant may exercise any or all of the Development Rights or Special Declarant Rights at any time and from time to time without the approval of any Owners, the Association or First Mortgagees. Unless otherwise provided herein, the Development Rights and Special Declarant Rights shall terminate ten (10) years from the date of the recording of this Declaration, unless surrendered by the Declarant prior to that date by the recording of a written statement that the Declarant has surrendered any such Development Rights or Special Declarant Rights.

Section 14.4 Rights Transferrable/Rights Transferred. Any rights created or reserved under this Article or CCIOA for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the real property records of Eagle County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owners, or any holders of a security interest on any Unit. Any rights created or reserved under this Article or CCIOA for the benefit of the Declarant may also be transferred to the Association by an instrument describing the right transferred and recorded in the real property records of Eagle County, Colorado. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owners or any holders of a security interest on any Unit.

Section 14.5 No Further Authorizations Needed. The consent of Owners or holders of security interests on the Units shall not be required for the exercise of any reserved rights, and the Declarant or its assigns may proceed without limitation at its sole option. The Declarant or its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined. The Declarant or its assigns shall not be obligated to exercise any reserved rights or to expand the Property beyond the number of Units initially submitted.

## **ARTICLE 15. SPECIAL RIGHTS OF FIRST MORTGAGEES**

Section 15.1 General Provisions. The provisions of this Article are for the benefit of holders, insurers, or guarantors of First Mortgages recorded in relation to Units within the Property. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles of Incorporation and Bylaws of the Association. Eligible insurers and guarantors of a First Mortgage shall have the same rights as an Eligible First Mortgagee.

Section 15.2 Special Rights. Eligible First Mortgagees shall be entitled to:

- (a) Timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default;
- (b) Examine the books and records of the Association during normal business hours;
- (c) Receive a copy of financial statements of the Association, including any annual audited financial statements;

- (d) Receive written notice of all meetings of the Members of the Association;
- (e) Designate a representative to attend any such meetings;
- (f) Written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (g) Written notice of abandonment or termination of the Association of the plan contemplated under this Declaration;
- (h) Sixty (60) days written notice prior to the effective date of any proposed amendments of a material nature to First Mortgagees to this Declaration, the Articles of Incorporation, or the Bylaws;
- (i) Sixty (60) days written notice prior to the effective date of termination of professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Property or by an Eligible First Mortgagee; and
- (j) Immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible First Mortgagee holds a security interest, if the cost of reconstruction exceeds \$20,000 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 15.3 Special Approvals.

- (a) Unless at least fifty-one percent (51%) of the Eligible First Mortgagees (based on one vote for each mortgage owned) of Units in the Association and requisite Owners have given their written approval, neither the Association nor any Members shall:
  - (i) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easement or easements for other public purposes consistent with the intended use of such Property by the Association shall not be deemed within the meaning of this Section);

(ii) Change the method of determining the obligations, Assessments or other charges which may be levied against Owners or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards;

(iii) By act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Unit, or the upkeep of the Common Elements;

(iv) Fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration;

(v) Use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed;

(vi) Take action to terminate the legal status of the Property after substantial destruction or condemnation occurs;

(vii) Adopt any amendments to this Declaration of a material adverse nature to First Mortgagees;

(viii) Establish self-management by the Association when professional management has previously been required by the legal documents for the Property or an Eligible First Mortgagee.

(b) An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only.

(c) If an Eligible First Mortgagee receives a written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within sixty (60) days, it shall be deemed to have approved such request.

(d) Any amendment to any of the provisions set forth in this Declaration governing the following shall be considered of a material nature:

(i) Voting rights;

(ii) Assessments, Assessment liens, or the priority of Assessment liens and/or the methods of imposing or determining any charges to be levied against Owners:

- (iii) Reserves for maintenance and repair of Common Elements;
- (iv) Responsibility for maintenance and repair or concerning the regulation or enforcement of standards for maintenance and repair, architectural design or exterior appearance of improvements on Units;
- (v) Reallocation of voting rights or interests in the Common Elements, or rights to their use;
- (vi) Redefinition of any Unit boundaries;
- (vii) Expansion or contraction of the Property, or the addition, annexation, or withdrawal of Property to or from the Unit, except as exercised by the Declarant;
- (viii) Hazard or fidelity insurance requirements;
- (ix) Imposition of any restrictions on the leasing of Units;
- (x) Imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- (xi) Restoration or repair of the Property after damage or partial condemnation in a manner other than that specified in the Governing Documents;
- (xii) The purpose to which any Unit or the Common Elements are restricted;
- (xiii) Any provisions that expressly benefit First Mortgagees;

Section 15.4 Right to Pay Taxes and Insurance Premiums. Any First Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or the Unit.

## **ARTICLE 16. MISCELLANEOUS AND GENERAL PROVISIONS**

### Section 16.1 Compliance and Enforcement.

(a) The Association may enforce all applicable provisions of this Declaration and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) Imposing reasonable monetary fines, after notice and opportunity for a hearing, which fines shall constitute a lien upon the violator's Unit;

(ii) Suspending an Owner's voting rights during any period in which the Owner shall be in default in the payment of any Assessment, including interest, fines, late fees, attorney fees and costs, levied by the Association;

(iii) Suspending an Owner's voting rights for a period not to exceed sixty (60) days or during any period of violation, whichever is greater, for the violation of any other provision of the Governing Documents other than the non-payment of Assessments;

(iv) Exercising self-help or taking action to abate any violation of the Governing Documents;

(v) Without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Property;

(vi) Bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(b) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as an Individual Purpose Assessment. The Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(c) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(d) The decision of the Association to pursue enforcement action in any particular case shall be left to the discretion of the Board of Directors, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board of Directors shall not be arbitrary or capricious in taking enforcement action.

Section 16.2 Covenants to Run. The covenants and restrictions contained in this Declaration shall run with and bind the Property in perpetuity. All of the covenants, easements, servitudes and provisions contained in this Declaration shall be a burden on the title to all of the lands within the Property, and the benefits thereof shall inure to the owners of all of the lands within the Property.

Section 16.3 Termination. Termination of the common interest community created hereby shall be in accordance with CCIOA.

Section 16.4 Attorney Fees. If an Owner fails to pay any Assessment or any other amount due to the Association as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs, without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Property, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner, shall be charged as an Assessment and shall constitute a lien against the Unit.

Section 16.5 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, and except for amendments that may be approved by the Declarant or the Association under the provisions of this Declaration or CCIOA, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at least sixty-seven percent (67%) of the votes in the Association, and with any First Mortgagee approval required pursuant to Section 15.3 of this Declaration. Said approval may be obtained in any method allowed by the Governing Documents, CCIOA or other applicable law. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Eagle County, Colorado, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association. All challenges to the validity of any amendment or repeal must be made within one (1) year after the date of recording of such amendment or repeal.

Section 16.6 Amendment of Declaration by Declarant. The Declarant may amend this Declaration or the Map to correct clerical, typographical or technical errors. The Declarant may also amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan

Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

Section 16.7 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving any rights to or for the benefit of the Declarant, or its assigns, including any amendment to Article 13 of this Declaration, shall not be effective unless the Declarant has given written consent to such amendment or repeal, which consent may be evidenced by the execution by the Declarant of any certificate of amendment or repeal.

Section 16.8 Cooperation with Other Associations or Districts. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other community association(s) and/or any special or metropolitan district(s) to share facilities, to share the costs and/or responsibility for any operation, maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other community association(s) and/or any special or metropolitan district(s), or to otherwise cooperate with any other community association(s) and/or any special or metropolitan district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other community association(s) and/or any special or metropolitan district(s) as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s) and/or any special or metropolitan district(s) to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association. In any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

Section 16.9 Registration of Mailing Address. Each Owner shall register his mailing address with the Association. Except as may otherwise be required by this Declaration, any notices or demands intended to be served upon an Owner shall be sent by first class mail, postage prepaid, addressed in the name of such Owner at such registered mailing address, or provided by other means as permitted or required by CCIOA. If an Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit.

Section 16.10 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the

authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 16.11 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 16.12 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 16.13 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 16.14 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 16.15 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

## ARTICLE 17. DISCLOSURES

Section 17.1 No Liability for Condition of the Property/Nuisances/Hazards Associated with Adjacent Lands. By purchasing a Unit, each Owner acknowledges that the Unit and/or the Property may be located adjacent to or in relatively close proximity to property utilized for commercial and other non-residential uses (collectively the "**Adjacent Properties**"). Owners recognize and assume the risks of owning property adjacent to or within relatively close proximity to the Adjacent Properties. Such risks include, without limitation injury to person and property arising out of, or resulting from, the operation, maintenance and use of the Adjacent Properties, noise associated with the Adjacent Properties, noise, odors, and attractive nuisances to children (all of the above being collectively referred to as the "**Property Risks**"). The Declarant, the Association, the Board of Directors, and any agent, representative, affiliate, designee, consultant, or contractor of the same (the "**Released Parties**") shall have no liability for any personal injury or property damage resulting from the Property Risks. By virtue of taking title to a Unit subject to this Declaration, each Owner for himself and his heirs, personal representatives, executors, tenants, successors, assigns, invitees and licensees: (i) assumes the risk of loss, injury or damage to property or persons resulting from the Property Risks; (ii) agrees to obtain such policies of insurance as may be necessary to insure such Owner from injury or damage to property or person resulting from the Property Risks; (iii) releases and holds harmless the Released Parties and discharges the same from any liability for any personal

injury or property damage resulting from the Property Risks, including, without limitation, arising from the negligence of the Released Parties, and (iv) indemnifies (including the payment of reasonable costs and attorneys' fees) the Released Parties from and against any claims, actions, suits, demands and compensations, either at law or in equity, brought against or incurred by any of the Released Parties for or on account of any damage, loss, or injury either to person or property, or both, resulting directly or indirectly from any of the Released Parties.

Section 17.2 Land Use Documents. The Property is being developed in accordance with the land use regulations of the Town of Eagle, Colorado. The Declarant, for itself, its successors and assigns, reserves the right to obtain modifications and amendments to all land use documents, subject to the approval of the Town of Eagle, Colorado. Such modifications and amendments could change the uses of the Property and adjacent and nearby land from the uses which are set forth in the land use documents. The Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the Property can or will be carried out, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that such use will continue in effect.

Section 17.3 View Impairment. Owners acknowledge that existing views, if any, of the immediate and surrounding areas and mountains may be subject to change or elimination as a result of future development of non-residential and residential uses, road construction, tree growth and landscaping. The Declarant may charge premium prices for similar Units depending on a variety of factors, which may include location, Unit size, solar orientation or proximity to open space. The market value of these factors may be subjective. The Association assumes no responsibility for any representation or promise made by any sales counselor, independent broker or other agent or employee of the Declarant with regard to premium prices. Neither the Declarant nor the Association guarantee or represent that any view from any Unit, or that any open space, will be preserved without impairment, nor is there any obligation to relocate, prune, or thin trees or other landscaping. The Declarant has the right to add trees, walls, fences, berms, or other structures, signs, lighting, water features and other landscaping from time to time, without regard to any view impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 17.4 Disruption from Development and Construction. Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Property, views of or from the Property, the Units, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Each Owner agrees that there are inconveniences which will accompany the construction of Improvements within the Property, including, without limitation, construction noise, portable toilets, construction traffic, uncompleted buildings, areas not landscaped, potholes and construction supplies stored in plain view and general inconvenience associated with construction sites and related issues. Each Owner, by taking title to any Unit, waives any

claims associated with the inconveniences, nuisance and hazards associated with such construction.

Section 17.5 Safety and Security. Each Owner and resident is responsible for their own personal safety and the security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities designed to enhance the level of safety or security in accordance with applicable law. Neither the Declarant nor the Association shall in any way be considered insurers or guarantors of safety or security within the Property, nor be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

DECLARANT:

**EAGLE MULTI FAMILY, LLC,**  
a Colorado limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO            )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_ as \_\_\_\_\_ of Eagle Multi Family, LLC.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

[INCLUDE LEGAL DESCRIPTION OF ALL OF THE PROPERTY, TO BE INCLUDED INITIALLY]



**EXHIBIT B**

**EASEMENTS AND LICENSES OF RECORD**



## EXHIBIT C

### MAINTENANCE AND INSURANCE OBLIGATIONS

“A” = Association obligation

“O” = Owner obligation

“NA” = Not applicable

The term “maintenance” includes repair and replacement unless otherwise noted on the Chart.

	MAINTENANCE	INSURANCE
<b>BUILDING EXTERIORS</b>		
Building-structure, including foundation, column, girders, beams and supports	A	A
Siding, sheathing, wrap, brick, trim, molding, and other exterior facade surfaces	A	A
Exterior stoops, steps, and concrete surfaces	A	A
Gutters and downspouts	A	A
Porches, patios and balconies, including railings and fences surrounding the same	A	A
Roof shingles and roof underlay	A	A
Shutters and awnings	A	A
Chimneys and chimney caps	A	A

<p>Windows and Patio Sliding Glass Doors</p> <ul style="list-style-type: none"> <li>• Complete replacement due to damage to the extent requiring complete replacement, end of useful life, or similar</li> </ul> <p>1.</p> <ul style="list-style-type: none"> <li>• Interior and exterior glass surfaces – cleaning</li> </ul> <p>2.</p> <ul style="list-style-type: none"> <li>• Glass repair or replacement, other than as part of the complete replacement of a window or sliding glass door</li> </ul> <p>3.</p> <ul style="list-style-type: none"> <li>• Window or sliding glass door frames– exterior maintenance, repair, and painting</li> </ul> <p>4.</p> <ul style="list-style-type: none"> <li>• Window or sliding glass door frames – interior maintenance, repair and painting</li> </ul> <p>5.</p> <ul style="list-style-type: none"> <li>• Exterior window and sliding glass door trim and caulking</li> </ul> <p>6.</p> <ul style="list-style-type: none"> <li>• Interior window and sliding glass door trim and caulking</li> </ul>	<p>A</p> <p>O</p> <p>O</p> <p>A</p> <p>O</p> <p>A</p> <p>O</p>	<p>A</p> <p>N/A</p> <p>A</p> <p>A</p> <p>A</p> <p>A</p> <p>O</p>
<p>Exterior Unit doors (other than sliding glass doors) including peep holes, doorknobs and lock mechanisms – maintenance, repair and replacement</p>	<p>O</p>	<p>A</p>
<p>Exterior Unit doors (other than sliding glass doors)</p> <ul style="list-style-type: none"> <li>• Exterior painting or staining</li> </ul> <p>7.</p> <ul style="list-style-type: none"> <li>• Interior painting or staining</li> </ul>	<p>A</p> <p>O</p>	<p>A</p> <p>O</p>
<p>Exterior light fixtures</p>	<p>A</p>	<p>A</p>

	<b>MAINTENANCE</b>	<b>INSURANCE</b>
<b>UTILITIES</b>		
Utilities lying <u>outside</u> the Unit boundaries but servicing more than one Unit, including but not limited to: <ol style="list-style-type: none"> <li>1. Central heating, cooling, water heating and equipment</li> <li>2. Electrical and other wires</li> <li>3. Water and sewer pipes</li> <li>4. Cables</li> <li>5. Circuit boxes</li> <li>6. Water meters</li> </ol>	A	A
Utilities lying <u>outside</u> the Unit boundaries and servicing only one Unit, including but not limited to: <ol style="list-style-type: none"> <li>1. Electrical and other wires</li> <li>2. Water and sewer pipes</li> <li>3. Cables</li> <li>4. Circuit boxes</li> <li>5. Water meters</li> <li>6. Circuit breakers</li> </ol>	A	A
Utilities lying <u>inside</u> the Unit boundaries servicing only that Unit, including but not limited to: <ol style="list-style-type: none"> <li>1. Thermostats</li> <li>2. Ducts</li> <li>3. Conduits</li> <li>4. Water pipes</li> <li>5. Electrical wiring</li> <li>6. Electrical outlets</li> <li>7. Telephone wiring</li> <li>8. Telephone outlets</li> <li>9. Light switches</li> <li>10. Hot water equipment</li> <li>11. Cable wiring</li> <li>12. Compressors</li> <li>13. Sump pumps</li> </ol>	O	A

	<b>MAINTENANCE</b>	<b>INSURANCE</b>
<b>UTILITIES</b>		
Utilities <u>inside</u> a Unit boundary, but serving more than one Unit, including but not limited to: <ol style="list-style-type: none"> <li>1. Ducts</li> <li>2. Conduits</li> <li>3. Water pipes</li> <li>4. Electrical wiring</li> <li>5. Electrical outlets</li> <li>6. Telephone wiring</li> <li>7. Telephone outlets</li> <li>8. Light switches</li> <li>9. Hot water equipment</li> <li>10. Cable wiring</li> <li>11. Compressors</li> </ol>	A	A

	<b>MAINTENANCE</b>	<b>INSURANCE</b>
<b>UNIT INTERIORS</b>		
Furnishings, including all personal property such as furniture, electronics, jewelry and clothing	O	O
Window coverings	O	O
Permanent fixtures, including but not limited to: <ul style="list-style-type: none"> <li>1. Ceiling fans</li> <li>2. Hand rails</li> <li>3. Cabinets</li> <li>4. Countertops</li> <li>5. Bathtubs and showers</li> <li>6. Sinks</li> <li>7. Toilets</li> </ul>	O	O
Appliances, including but not limited to: <ul style="list-style-type: none"> <li>1. Oven</li> <li>2. Range</li> <li>3. Refrigerator</li> <li>4. Dishwasher</li> <li>5. Washer/Dryer</li> <li>6. Countertop microwave</li> <li>7. Built-in microwave</li> </ul>	O	O
Fireplaces (including facade, screen, chimney back, flue, and damper)	O	O
Unfinished surfaces of walls, floors and ceilings, including but not limited to: <ul style="list-style-type: none"> <li>1. Studs</li> <li>2. Insulation</li> <li>3. Hardware</li> <li>4. Any material lying within such walls, floors and ceilings, such as pipes, wiring and plumbing</li> </ul>	O	A
Finished surfaces of perimeter walls and ceilings, including but not limited to: <ul style="list-style-type: none"> <li>1. Drywall</li> <li>2. Paint</li> <li>3. Wallpaper</li> <li>4. Paneling</li> <li>5. Texture</li> </ul>	O	O

	<b>MAINTENANCE</b>	<b>INSURANCE</b>
<b>UNIT INTERIORS</b>		
Finished surfaces of floors, including but not limited to: <ol style="list-style-type: none"> <li>1. Tile</li> <li>2. Vinyl</li> <li>3. Hardwood</li> <li>4. Carpeting</li> </ol>	O	O
Any components lying between the perimeter drywall and the Building exterior or an adjacent Unit, including but not limited to: <ol style="list-style-type: none"> <li>1. Insulation</li> <li>2. Girders</li> <li>3. Beams</li> </ol>	O	A
Subflooring	O	A

	<b>MAINTENANCE</b>	<b>INSURANCE</b>
<b>GROUNDS AND OTHER COMMON</b>		
Parking Garage, including structural components, Parking Space striping, drive lanes, and garage doors	A	A
Storage Spaces walls, floors, and doors	A	A
Storage Space locks	O	O
Elevators, including elevator cars and all mechanical, electricals, and other components of the same	A	A
Retaining walls	A	A
Landscaping on the Common Elements	A	A
Irrigation system and time clocks for landscaping on the Common Elements	A	A
Fences on the Common Elements	A	A
Private roads, drives and sidewalks	A	A
Private parking areas	A	A
Monuments and signage	A	A
<b>OTHER</b>		
Snow removal from driveways and sidewalks	A	N/A
Common Elements existing in community and not otherwise listed	A	A
Any personal property of Owners not otherwise listed	O	O
Any Owner installed exterior/interior improvement not otherwise listed	O	O