

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CAPITOL LOFTS CONDOMINIUMS**

THIS DECLARATION FOR CAPITOL LOFTS CONDOMINIUMS (this "Declaration") dated as August 13, 2025, shall be effective upon recordation and is made by CAPITOL LOFTS II, LLC, a limited liability company ("Declarant"). Declarant is the owner of certain real property in Eagle County, Colorado, more particularly described on Exhibit A attached and made part of this Declaration by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

### **ARTICLE I IMPOSITION OF COVENANTS**

#### **Section 1.1 Purpose.**

The purpose of this Declaration is to create a mixed use condominium project (the "Project") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory (the "Act"), within the building (as hereinafter defined) and other improvements located on the Property, which Project will incorporate residential and commercial uses.

#### **1 Section 1.2 Declarant.**

Declarant desires to (a) protect the value and desirability of the Project, (b) further a plan for the improvement, sales, and condominium ownership of the Project, (c) create a harmonious and attractive mixed use development within the Project, and (d) promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of condominium units within the Project.

#### **Section 1.3 Mixed Use.**

The residential project and the commercial project together shall comprise the condominium project, the name of which is CAPITOL LOFTS CONDOMINIUMS. The functions, activities, physical appearance and other features commonly associated with commercial uses and residential uses shall be expressly permitted on the Property and within the building and other improvements, all as more particularly described and governed herein.

#### **Section 1.4 Declaration.**

To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration below, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, occupied, and improved, subject to the provisions of this Declaration.

#### **Section 1.5 Covenants Running With the Land.**

All provisions of this Declaration shall be deemed to be covenants running with the land, or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

## ARTICLE 2 DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context shall expressly provide otherwise:

Section 2.1 "Act" means the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory.

Section 2.2 "Assessments" means the annual, special and default Assessments levied pursuant to Article 8 below. Assessments are also referred to as a Common Expense Liability under the Act.

Section 2.3 "Association" means CAPITOL LOFTS CONDOMINIUM ASSOCIATION, INC., a Colorado nonprofit corporation, and its successors and assigns. The Association acts through its Executive Board unless a vote of the Owners is otherwise specifically required by the Act, this Declaration or the articles of incorporation or bylaws of the Association.

Section 2.4 "Association Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the articles of incorporation and bylaws of the Association, the Map, and any procedures, rules, regulations, or policies relating to the Project adopted under such documents by the Association or the Executive Board.

Section 2.5 "Building" means the building located on the Property (including all fixtures and improvements contained within them) in which Condominium Units and Common Elements are located.

Section 2.6 "Commercial Center Association" means the Eagle Ranch Commercial Center Association, a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 "Commercial Center Declaration" means the Declaration for Eagle Ranch Commercial Center as recorded November 13, 2000 at Reception No. 743935 in the Office of the Clerk and Recorder of Eagle County, Colorado, and as amended and supplemented from time to time.

Section 2.8 "Commercial Owners" means Owners of Commercial Units within the Project.

Section 2.9 "Commercial Unit" means a condominium Unit that is not designated as a Residential Unit in Section 2.27.

Section 2.10 "Declarant" means CAPITOL LOFTS II, LLC, its successor or assigns who can sell, convey, modify its interest in a unit not previously disposed of to a purchaser; reserves or succeeds to any special declarant right set forth in C.R.S. 33-33.3-101 (14).

Section 2.11 "Director" means a member of the Executive Board.

Section 2.12 "Eagle Ranch" means all of the real property in the Town of Eagle, Eagle County, Colorado, subject to the Master Declaration.

Section 2.13 "Executive Board" means the governing body of the Association, as provided in this Declaration and in the articles of incorporation and bylaws of the Association.

Section 2.14 "First Mortgage" means a Mortgage that has priority of record over all other recorded

liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.15 "General Common Elements" means the Common Elements, except for Limited Common Elements.

Section 2.16 "Limited Common Elements" means those parts of the Common Elements which are limited to and reserved for the use of the Owners of one or more, but fewer than all, of the Condominium Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, or porch adjacent to an Individual Air Space Unit, storage spaces which may be designated as Limited Common Elements serving those particular Individual Air Space Units, and any individual chimneys and flues, individual air-conditioning units and fixtures, and individual water and sewer service lines, water heaters, and any plumbing or other installation or item servicing an Individual Air Space Unit, including, but not limited to, all such items designated as Limited Common Elements on the Map. The deck, balcony, chimneys or other items which are accessible from, associated with, and which adjoin a particular Individual Air Space Unit, without further reference thereto, shall be used in connection with such Individual Air Space Unit to the exclusion of the use thereof by the other Owners, except by invitation. No reference to the limited use by individual Owners need be made in any instrument of conveyance, encumbrance, or other instrument. Certain Limited Common Elements as depicted on the Map may be limited to and reserved for the use of owners of the designated unit(s) as shown on the Map. These areas shall be deemed Limited Common Elements and appurtenant to the designated unit(s).

Section 2.17 "Individual Air Space Unit" means that portion of a single Condominium Unit designated for separate ownership by an Owner depicted on the Map and consisting of enclosed rooms and bounded by the perimeter walls, ceilings, floors, doors, and windows thereof; provided, however, that some Individual Air Space Units may not be bounded on all sides by walls, in which case the boundaries on such sides of an Individual Air Space Unit(s) shall be those boundaries as are designated on the Map. For the purpose of defining an Individual Air Space Unit, the terms set forth below shall be defined as follows:

An Individual Air Space Unit shall include any drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, windows and window frames, shutters, awnings, doorsteps, and doors and door frames. An Individual Air Space Unit may also include any fireplace (but excluding any chimney and/or flue). An Individual Air Space Unit shall further include fixtures and hardware, and all improvements contained within the unfinished perimeter walls, ceilings, and floors. An Individual Air Space Unit shall include any heating, ventilation and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, ventilation, hot and cold water, electrical, or other utility services to the Individual Air Space Unit and located within the unfinished perimeter walls, ceilings, and floors; provided, however that an Individual Air Space Unit shall not include any of the structural components of the building or utility or service lines located within the Individual Air Space Unit but serving more than one Individual Air Space Unit.

Section 2.18 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance, and management of the Project.

Section 2.19 "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement engaged to perform management services for the Property.

Section 2.20 "Master Association" means Eagle Ranch Association, a Colorado nonprofit

corporation, and its successors and assigns.

Section 2.21 "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for Eagle Ranch as recorded June 23, 1999 at Reception No. 700815, and amendment recorded November 23, 1999 at Reception No. 715599, in the Office of the Clerk and Recorder of Eagle County, Colorado, and as amended and supplemented from time to time.

Section 2.22 "Mortgage" means any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, which secures financing for the construction or development of the Project, or which encumbers a Condominium Unit.

Section 2.23 "Mortgagee" means any person or entity named as a mortgagee or beneficiary under any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.24 "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Condominium Unit; excluding, however, any record owner with an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Condominium Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).

Section 2.25 "Property" means the real property described in the attached Exhibit A.

Section 2.26 "Residential Owners" means Owners of Residential Units within the Project.

Section 2.27 "Residential Unit" means a Condominium Unit designated on the Map as Unit 201, 202, 203, 204, 205 or 206.

Section 2.27 "Supplemental Declaration" means an instrument which subjects any part of Property to this Declaration for additional Units.

Section 2.28 "Supplemental Plat" means a supplemental plat of CAPITOL LOFTS, which may depict additional Units becoming subject to this Declaration through a Supplemental Declaration as more fully described below.

Section 2.29 "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

### **ARTICLE 3 DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP**

Section 3.1 Division Into Condominium Units. As of the recording of this Declaration, the Property is hereby divided into six (6) Residential Condominium Units and One (1) Commercial Condominium. Each Condominium Unit consists of a fee simple interest in an Individual Air Space Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in the Common Elements as set forth in Exhibit B. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units.

Section 3.2 Subdivision of Units. The Owner or Owners of one or more Condominium Units shall have the right to (a) relocate the boundaries of and between Condominium Units, (b) physically combine a part of or combination of parts of the space of one Condominium Unit with a part of or combination of parts of the space within one or more adjoining Condominium Units, or (c) subdivide a Condominium Unit or part of a Condominium Unit to create additional Condominium Units. In order to accomplish any one of the foregoing, a Condominium Owner may install a door between adjacent Condominium Units in a common wall or knock down or create additional walls subject to the terms of this Section and any other applicable provisions of this Declaration. Upon the relocation, combination or subdivision of any Condominium Units, the Condominium Unit(s) resulting from such relocation, combination or subdivision shall be allocated the undivided interest of the predecessor Condominium Unit(s) in and to the General Common Elements and the Limited Common Elements appurtenant to such predecessor Condominium Unit(s). Such allocation shall be reflected by an amendment to Exhibit B hereto. A Condominium Owner must first obtain the consent of the Executive Board and must obtain all necessary approvals from any governmental authority having jurisdiction over the Project before exercising its rights herein. The cost and expense incurred for legal, architectural and/or engineering fees and all other costs and expenses incurred by the Association shall be borne by that party requesting such a change.

In order to relocate the boundaries of combine or subdivide any Condominium Units as provided above, the Owner(s) of such Condominium Units shall submit an application to the Executive Board, which application shall be executed by such Owner and shall include (a) evidence that the proposed relocation of the boundaries of, combination or subdivision of a Condominium Unit or Units complies with all building codes, fire codes and other applicable ordinances or resolutions adopted and enforced by the Master Association, the Town of Eagle and the State of Colorado, and that the proposed action does not violate the terms of any Mortgage encumbering the Condominium Unit(s), (b) the proposed reallocations, (c) the proposed form of amendments to this Declaration, including the Map, as may be necessary to show the Condominium Unit or Units which are created by the relocation, combination or subdivision of a Condominium Unit or Units and their dimensions and identifying numbers, (d) a deposit against attorneys' fees and costs which the Association may incur in reviewing and effectuating the transaction, in an amount reasonably estimated by the Executive Board, (e) evidence satisfactory to the Executive Board that the Owner has obtained or caused to be obtained all requisite insurance in connection with any construction required to effect the proposed action, (f) indemnification of the Association by the Owner for any and all matters relating to the proposed action, and (g) such other information as may be reasonably requested by the Executive Board.

Section 3.3 Delineation of Unit Boundaries. The boundaries of each Individual Air Space Unit are delineated and designated by an identifying number on the Map, and those numbers are set forth in Exhibit B.

### **ARTICLE 4 CONDOMINIUM MAP**

Section 4.1 Condominium Map. The Map shall be filed for record in the Office of the Clerk and Recorder of Eagle County, Colorado. Any Map filed subsequent to the first Map shall be termed as a

supplement or amendment to such Map, and the numerical sequence of such supplements or amendments shall be shown thereon. The Map shall be filed for record subject to this Declaration and prior to the conveyance of any Condominium Unit depicted on the Map to a purchaser. The Map shall show the location of the building on the Property; the floor and elevation plans; the location of the Condominium Units within the building, both horizontally and vertically; the thickness of the common walls, if any, between or separating the Condominium Units one from the other, or one from Common Elements, as applicable; the Condominium Unit designations; designation of General Common Elements and Limited Common Elements; and such other information as Declarant may require in its discretion. The Map shall contain a certificate of a registered professional engineer or licensed architect or a licensed land surveyor certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the building and the Condominium Units, the dimensions of the Condominium Units, and the elevations of the unfinished floors and ceilings as constructed, and certifying that such Map is prepared subsequent to the substantial completion of the improvements. Each supplement or amendment shall set forth a like certificate when appropriate. The Map shall further contain such other information, certifications and depictions as may be required under §38-33.3-209 of the Act.

Section 4.2 Amendment. Declarant reserves the right to amend the Map, from time to time, to the fullest extent permitted under the Act.

## **ARTICLE 5 OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS**

Section 5.1 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 for the purpose of entering and exiting such Owner's Condominium Unit, the parking area 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 Condominium Unit; provided, however, that such right and easement shall be subject to the following:

5.1.1 The covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, the Master Declaration, and the Condominium Map;

5.1.2 The right of the Association to regulate on an equitable basis the use of parking spaces that are General Common Elements, including the right of the Association to prohibit the Residential Owners and their tenants and guests from using any parking spaces other than those specifically designated for their use, and to designate certain employee parking areas and to require that the Commercial Owners and their employees park only in such designated areas. The Association may also designate spaces as reserved for use by the Owners and shall erect signs identifying such spaces. In addition, the Association shall have the right to approve other signage of parking spaces, in an equitable manner, to allocate certain parking exclusively to the use of certain Units. Notwithstanding the foregoing, it is anticipated that all parking serving the Project shall be located on a lot adjacent to the Property owned and managed by the Commercial Center Association, such parking to be regulated by the Commercial Center Association.

5.1.3 The right of the Association to adopt, from time to time, rules and regulations concerning vehicular traffic and travel upon, in, under, and across the Project; and

5.1.4 The right of the Association to adopt, from time to time, any and all rules and regulations concerning the Common Elements as the Association may determine are necessary or prudent, subject to the terms of Section 7.7 and Article 13 hereof.

Notwithstanding the foregoing, the Association shall take no action which unreasonably restricts any Owner's or its family members', guests', tenants' and licensees' right and easement of access over, across

and upon the General Common Elements to their Unit(s).

Section 5.2 Limited Common Elements. Subject to the provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to his Condominium Unit. The Map shall specify to which Condominium Unit or Units each Limited Common Element is allocated.

Section 5.3 Redesignation of Limited and General Common Elements. Any redesignation of the boundaries of the General Common Elements or of the General Common Elements to Limited Common Elements shall be approved by a majority of voting Directors of the Executive Board. Declarant hereby reserves the right and grants to the Association the right to reassign Limited Common Elements to the fullest extent permitted under the Act.

## **ARTICLE 6 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 6.1 Association Membership. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Condominium Unit. No Owner, whether one or more persons, shall have more than one membership per Condominium Unit owned, but all of the persons owning a Condominium Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit.

Section 6.2 Classes of Membership. There shall be one (1) initial class of membership in the Association consisting of all Owners, and including both Residential Owners and Commercial Owners, it being understood and agreed that the designation of certain Owners as Residential Owners or Commercial Owners is for convenient reference in this Declaration and is not intended to create separate classes of ownership hereunder.

Section 6.3 Voting Rights. Each Condominium Unit shall be allocated a number of votes for the purpose of matters relating to the Common Elements and the Project equal to the same number which is described as a percentage interest in the General Common Elements allocated to each Unit as set forth in Exhibit B.

Section 6.4 Election of Directors. The Executive Board shall consist of not less than three (3) nor more than five (5) persons. Except during the period of Declarant control described in Section 6.5 hereof and in the bylaws of the Association, during which time all Directors shall be appointed by the Declarant as provided in the bylaws.

Section 6.5 Declarant Control. Declarant shall be entitled to appoint and remove the members of the Executive Board and officers of the Association to the extent permitted in the bylaws of the Association and in compliance with the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the bylaws of the Association. Declarant may voluntarily relinquish such power evidenced by a notice recorded in the Office of the Clerk and Recorder for Eagle County, Colorado. In such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective.

Section 6.6 Fairness Standard. The Executive Board, the officers of the Association and the Association shall have the duty to represent the interests of all Owners in a fair and just manner on all matters. In upholding their duties, the Executive Board, the officers and the Association shall be held in

their decisions to the standards of good faith and reasonableness with respect to such matters, taking into account the effect, if any, of the matter on the Project as a whole.

Section 6.7 Owner's and Association's Address for Notices. All Owners of each Unit shall have one and the same mailing address and e-mail if to be registered with the Association and used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such addresses to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit.

If no address is registered or if all of the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

An Owner must elect to receive notices, demands and other communications by e-mail, unless specifically prohibited herein.

If the address of the Unit is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Association.

All notices and demands intended to be served upon the Executive Board shall be sent to such address as the Executive Board may designate from time to time by notice to all of the Owners.

## **ARTICLE 7 ASSOCIATION DUTIES**

### **Section 7.1 Association Management Duties; Owner Responsibilities.**

7.1.1 Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, and specifically subject to the obligations of certain Owners to maintain certain Limited Common Elements as described in Section 9.2 below, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements, including the Limited Common Elements, (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 8.6 below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

7.1.2 Notwithstanding the foregoing, if any Limited Common Element is exclusively allocated to one Unit or more Units, the Owners of such individual Unit(s) shall be responsible for payment of Association expenses related to the maintenance, repair, or replacement of any Limited Common Elements allocated to such Unit(s). Unless otherwise specifically provided in this Section 7.1, the expenses incurred by the Association with respect to the maintenance, repair, or replacement of any Limited Common Element that is allocated to more than one Unit shall be allocated among the Units to which such Limited Common Element is appurtenant on the basis that the percentage ownership interest in the General Common Elements of each such Unit bears to the aggregate amount of the percentage ownership interest in the General Common Elements allocated to all Units to which such Limited Common Element is appurtenant.



7.1.3. Notwithstanding the provisions of Subsection 7.11. above, all Owners acknowledge and accept that certain exterior portion of the Property are subject to an easement defined as "easement Common area" pursuant to Section 6.2 of the Commercial Center Declaration, such areas to be managed and maintained by the Commercial Center Association.

Section 7.2 Reserve Account. The Association shall establish and maintain, as part of its budget and out of the installments of the annual Assessments, adequate reserve accounts for maintenance, repair, or replacement of those Common Elements that must be replaced on a periodic basis, except for any Limited Common Elements designated for repair, replacement and maintenance by individual Owners pursuant to Section 7.1 above.

Section 7.3 Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements for which the Association is responsible for maintenance, repair and replacement is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guests, invitees, or tenants, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a default Assessment determined and levied against such Condominium Unit, enforceable by the Association in accordance with Section 8 below. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements for which an individual Owner is responsible for maintenance, repair and replacement is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guests, invitees, or tenants, or by the Association or the Managing Agent, then the expenses incurred by such Owner for such maintenance, repair, or replacement shall be a personal obligation of the Owner or the Association causing the damage; and, if the Owner or the Association fails to repay the expenses incurred by individual Owner within seven (7) days after notice to the Owner or the Association of the amount owed, then the individual Owner may enforce its rights hereunder by appropriate legal or equitable action.

Section 7.4 Delegation of Management and Maintenance Duties. The Executive Board may delegate all or any part of its powers and duties to a Managing Agent, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration, and no such delegation shall modify specific requirements in the Association Documents for approval of certain actions by the Executive Board or by members of the Association.

Section 7.5 LIMITATION OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROJECT, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE IO, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THOSE PORTIONS OF THE PROJECT TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

Section 7.6 Acquiring and Disposing of Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such interests shall not be transferable except with the transfer of a Condominium Unit. A

conveyance of a Condominium Unit shall transfer ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium Unit.

Section 7.7 Cooperation with Master Association and Other Associations. The Association may contract or cooperate with the Master Association, or with other homeowners' associations or entities within Eagle Ranch as convenient or necessary to provide services and privileges, such as access to recreational facilities in Eagle Ranch and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

Section 7.8 Issuance of Rules and Regulations. The Executive Board may make and amend reasonable rules and regulations governing the use and rental of the Units and the use of the Common Elements, which rules and regulations shall be consistent with any applicable requirements of law. Notwithstanding the foregoing, any such rules and regulations shall not be inconsistent with the terms of this Declaration. Such rules and regulations shall, when applied to each of the Units considering the use thereof, be equitable and reasonable as applied to such Unit. The Executive Board shall provide thirty (30) days written notice prior to the adoption or amendment of any rules and regulations and provide for a reasonable opportunity for Owners to comment at a meeting of the Executive Board on the proposed adoption or amendment of any rules and regulations.

Section 7.9 Enforcement of Association Documents. The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

Section 7.10 Identity of Executive Board and Managing Agent. From time to time, but no less frequently than annually, there shall be mailed by the Association to each Owner a notice containing the names and addresses of the members of the Executive Board and the Managing Agent, if any.

Section 7.11 Payments to Working Capital Account. In order to provide the Association with adequate working Capital funds, the Association may collect at the time of the sale of each Condominium Unit an amount determined by the Executive Board. The Association shall maintain the working Capital funds to meet unforeseen expenditures or to acquire additional equipment or services in connection with the General Common Elements for the benefit of the members of the Association, subject to the budget approval procedures of Section 8.6 below. Such payments to this fund shall not be considered advance payments of annual Assessments. The unused portion of the working Capital deposit shall be returned to each Owner upon the sale of his Condominium Unit, provided that the new purchaser of the Unit has deposited the required working Capital deposit with the Association.

Section 7.12 Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association in the Association Documents or reasonably necessary to effectuate any such right or privilege.

Section 7.13 Books and Records of the Association. The Executive Board and/or the Managing Agent, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting

the Common Elements and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees may inspect the records of receipts and expenditures of the Managing Agent or the Executive Board at convenient weekday business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the articles of incorporation and the bylaws of the Association, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner or Mortgagee at all times during convenient weekday business hours.

## **ARTICLE 8 COVENANT FOR ASSESSMENTS**

Section 8.1 Covenant of Personal Obligation of Assessments. Declarant, by creating the Condominium Units pursuant to this Declaration, and every other Owner, by acceptance of the deed or other instrument of transfer of his Condominium Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to covenant and agree with the Association, and hereby does so covenant and agree, to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Owner's Condominium Unit. No Owner may waive or otherwise escape liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Condominium Unit.

Section 8.2 Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the health, safety, convenience, and general welfare of the Owners, including the improvement and maintenance of the Property and the Buildings and of the services and facilities located on the Property. Proper uses of the Assessments shall include, but are not limited to, the following:

8.2.1 Repairing, replacing, renovating and maintaining any of the Common Elements not made the responsibility of the Owners by Section 7.1 or Section 7.3 above,

Section 9.2 below, or other provisions of this Declaration;

8.2.2 Installing, maintaining, and repairing underground utilities upon, across, over, and under any part of the Project which are not conveyed to and accepted by utility companies;

8.2.3 Furnishing garbage and trash pickup and maintaining water and sewer service lines within the Project to the extent such lines are Common Elements and paying common billings for water and sewer services to the Project as Common Expenses;

8.2.4 Obtaining and maintaining insurance in accordance with the provisions of Article 10 below;

8.2.5 Establishing and maintaining reserves for repair replacement, maintenance, taxes, capital improvements, and other purposes;

8.2.6 Carrying out all other powers, rights, and duties of the Association specified in the Association Documents; and

8.2.7 Generally, addressing any other expenses necessary to meet the primary purposes of the Association.

Section 8.3 Commencement of Assessments. All of the Units shall be allocated full Assessments, subject to the provisions of Section 8.6 below, no later than six (6) months after Declarant conveys the first

Unit in the Project to a purchaser.

Section 8.4 Amount of Total Annual Assessments. The total annual Assessments against all Condominium Units 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 the Association's fiscal year, as approved by the Owners pursuant below, which estimates may include, among other things, the costs associated with the items enumerated above, together with any other costs and fees which may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of the Association Documents. In the event of surplus funds remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves, the Executive Board may within its discretion apply the surplus funds (a) into reserves, (b) toward the following year's Common Expenses, (c) toward a credit to Owners against future assessments or in the form of a distribution, or (d) any combination of the foregoing.

Section 8.5 Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to the Condominium Units in proportion to the respective undivided interests in the Common Elements appurtenant to the Units, as shown on Exhibit B, subject to the following provisions. To the extent any Common Expense relating to the Common Elements disproportionately benefits any Owner or group of Owners, the Executive Board may adjust the assessment for such Common Expense in such proportion as may be appropriate provided such allocation is done in a uniform and nondiscriminatory manner. Further, the Executive Board, with the assistance of any company providing insurance for the benefit of the Owners under Article 10, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article 10. Any Common Expenses relating to Limited Common Elements for which the Association is responsible for maintenance, repair and replacement shall be allocated and apportioned only to the Owners of Units to which each such Limited Common Element is appurtenant as provided in Section 7.1 or as otherwise described in this Declaration. The total annual Assessments of the Association shall be apportioned among all Condominium Units as provided in this Section 8.5.

The formula used to establish the allocation of ownership interests and Assessments is as follows: Residential Units are allocated twenty-five percent (25%) and Commercial Units are allocated seventy-five percent (75%) of the total allocation, with individual Units then allocated a percentage within its applicable designation i.e., residential or commercial equal to its square footage as a percentage of the aggregate square footage of all Units within that same designation.

Section 8.6 Annual Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting sixty seven percent (67%) or more of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Association's annual Assessments in accordance with the annual budget.

Section 8.7 Special Assessments. In addition to the annual Assessments authorized above, the Executive Board may at any time and from time to time determine, levy, and assess in any fiscal year (without the vote of the members of the Association, except as provided in the Act and in this Section below) a special Assessment applicable to that particular fiscal year (and for any such longer period as the

Executive Board may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project or of any facilities located on the Project, specifically including any fixtures and personal property related to it. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Condominium Units in proportion to the respective undivided interests in the Common Elements appurtenant to the Units as shown on Exhibit B; provided, however, that any extraordinary insurance costs incurred as a result of the value of a particular Owner's Condominium Unit or the actions of a particular Owner (or such Owner's agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 8.6 provided that, if necessary, the Association may adopt a new budget pursuant to Section 8.6 prior to levying a special Assessment. Such special assessment(s) shall be due and payable as determined by the Executive Board.

Section 8.8 Due Dates for Assessment Payments. Unless otherwise determined by the Executive Board, the annual Assessments and any special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this Article 8), on the first day of each quarter, beginning with the month of January each year. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Board may assess a "late charge" on the installment in an amount of fifteen percent (15%) of the outstanding amount or such other charge as the Executive Board may fix by rule from time to time as provided in the bylaws of the Association to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Condominium Unit commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period.

Section 8.9 Declarant's Obligation to Pay Assessments. Declarant shall be obligated to pay the annual and special Assessments (including installments thereof) on each Condominium Unit owned by it.

Section 8.10 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents or any expenses of the Association which are the obligation of an Owner shall become liens against such Owner's Unit, which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to the Assessment at least thirty (30) days prior to the due date.

Section 8.11 Lien for Assessments. The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 8.12 below) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Condominium Unit to which such Assessments apply. To further evidence such lien upon a specific Condominium Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the bylaws of the Association and Section 8.12 below, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, or the Managing Agent and shall be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Condominium Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

Section 8.12 Effect of Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the Maximum Rate on any amount of the Assessment which was not paid within such 30-day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Association may declare due and payable all unpaid monthly or other installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Association may proceed to foreclose its lien against the particular Condominium Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Condominium Unit, then all unpaid installments of annual and special Assessments and all default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 8.8 above, any accrued interest under this Section, the Association's costs, expenses, and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Condominium Unit in satisfaction of the Association's lien.

Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Condominium Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Condominium Unit, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 8.13 Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Condominium Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Condominium Unit for such Assessments, all successors in interest to the fee simple title of a Condominium Unit, except as provided in Section 8.14 and Section 8.15 below, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Condominium Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 8.15 below.

Section 8.14 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Condominium Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Condominium Unit for Assessments shall be superior to all other liens and encumbrances except the following:

8.14.1 Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;

8.14.2 To the extent permitted under the Act (which gives the Association's lien priority for a certain amount of common expense assessments), the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens; and

8.14.3 Any lien created by the Master Declaration and/or the Commercial Center Declaration.

With respect to the foregoing subpart 8.14.2, to the extent permitted under the Act, any First Mortgagee who acquires title to a Condominium Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Condominium Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Condominium Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Condominium Unit, and the amount of the extinguished lien may be reallocated and assessed to all Condominium Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in Section 8.14 above and obtaining a lien or encumbrance on any Condominium Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Condominium Unit, including but not limited to a foreclosure sale, except as provided in Section 8.14 above and except as provided in Section 8.15 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Condominium Unit from liability for, or the Condominium from the lien of, any Assessments made after the sale or transfer.

Section 8.15 Statement of Status of Assessments. Upon fourteen (14) calendar days written request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Managing Agent, Executive Board or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Condominium Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

8.15.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Condominium Unit;

8.15.2 The amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

8.15.3 The date of the payment of any installments of any special Assessments then existing against the Condominium Unit; and

8.15.4 Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) business day period, the Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 8.16 Liens. Except for annual, special, and default Assessment liens as provided in this Declaration, mechanics' liens (except as provided in Article 12 below), tax liens, and judgment liens and other liens validly arising by operation of law and liens arising under Mortgages, there shall be no other liens obtainable against the Common Elements or against the interest of any Condominium Unit in the common elements.

## **ARTICLE 9 MAINTENANCE RESPONSIBILITY**

Section 9.1 Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales or leases to initial purchasers of the Condominium Units, each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, forming the boundaries of such Owner's Individual Air Space Unit and all walls, floors, ceilings, and doors within such boundaries.

Section 9.2 Responsibility of the Owner. The Owner at the Owner's expense shall maintain and keep in repair the interior of the Condominium Unit, including the fixtures and utilities located in the Condominium Unit to the extent current repair shall be necessary in order to avoid damaging other Condominium Units or the Common Elements. All fixtures, equipment, and utilities installed and included in an Individual Air Space Unit serving only that Unit, commencing at a point where the fixtures, equipment, and utilities enter the Individual Air Space Unit shall be maintained and kept in repair by the Owner of that Unit. An Owner shall also maintain and keep in repair all windows and other glass items related to such Owner's Condominium Unit and any entry door or doors serving such Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, air conditioning, ventilation, or plumbing systems or integrity of the building, or impair any easement or hereditament. An Owner shall also have the obligation to maintain and keep in good and orderly repair those appurtenant Limited Common Elements designated as storage or service areas at such Owner's expense. Except as otherwise set forth in Section 13.5, no Owner shall alter any Common Elements without the prior written consent of the Association.

Section 9.3 Responsibility of the Association. The Association, without the requirement of approval of the Owners shall maintain and keep in good operating condition, ordinary wear and tear excepted, and shall repair, replace, and improve, as a Common Expense, the General Common Elements and all the Project not required in this Declaration to be maintained and kept in good repair by an Owner, a group of Owners, or Declarant. The Association shall also maintain and keep in good operating condition, ordinary wear and tear except, the exterior surfaces of all Limited Common Elements.

Section 9.4 Owner's Failure to Maintain or Repair. In the event that portions of a Condominium Unit, Limited Common Element or other improvements are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with an Owner or group of Owners, or in the event that such improvements are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or



destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner(s) and the expiration of a thirty (30) day cure period, and with the approval of the Executive Board, shall have the right to enter upon the Condominium Unit and/or associated Limited Common Element to perform such work as is reasonably required to restore the Condominium Unit, Limited Common Element and other improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Condominium Unit, upon demand. The lien may be enforced in the same manner as a lien for unpaid Assessments levied in accordance with Article 8 of this Declaration.

Section 9.5 Association's Failure to Maintain or Repair. If, in the reasonable discretion of an Owner believes that the Association has failed to maintain the Common Elements as required by this Declaration, and if such failure substantially adversely affects such Owner's ability to operate its business in its Unit, then Owner may give written notice to the Association and the Association shall have thirty (30) days in which to cure such failure (or, if such failure cannot be cured within thirty (30) days, such reasonable time as is required to cure, provided that the Association commences cure within such thirty (30) day period and diligently pursues such cure to completion). If the Association fails to cure as provided in this Section above, then the Owner shall have the right to repair any Common Elements on behalf of the Association and shall be entitled to offset against amounts owing by such Owner to the Association with respect to its Assessments next due and payable any reasonable costs of such repair actually incurred by the Owner.

## **ARTICLE 10 INSURANCE AND FIDELITY BONDS**

Section 10.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available:

10.1.1 Property insurance on the Common Elements and the Units for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping, personal property and other items normally excluded from property policies; and

10.1.2 Commercial general liability insurance against claims and liabilities in connection with the ownership, existence, use, or management of the Common Elements and the Association in an amount, if any, deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

10.1.3 The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Condominium Units that the Association is not obligated to insure, to protect the Association or the Owners.

Section 10.2 Cancellation. If the insurance described in Section 10.1 above is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered

or sent prepaid by United States mail to all Owners.

Section 10.3 Policy Provisions. Insurance policies carried pursuant to Section 10.1 above must provide that:

10.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

10.3.2 The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

10.3.3 No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

10.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 10.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 10.1 above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and First Mortgagees as their interests may appear. Subject to the provisions below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and First 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 or the regime created by this Declaration is terminated.

Section 10.5 Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to the property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 10.6 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 10.1 above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

The Executive Board may require an Owner who purchases additional insurance coverage for the Owner's Condominium Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

Section 10.7 Repair and Replacement. Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

10.7.1 The regime created by this Declaration is terminated;

10.7.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

10.7.3 Sixty-seven percent (67%) of the votes of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or

10.7.4 Prior to the conveyance of any Condominium Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all damaged Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear, in proportion to their respective ownership interests in the Common Elements.

Section 10.8 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 10.9 Fidelity Insurance. Fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two (2) months' current Assessments plus reserves as calculated from the current budget of the Association. The Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer or disbursement of Association funds, fidelity insurance with aggregate coverage of not less than two (2) months' assessments plus reserves, as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer or disbursement of Association funds be less than \$50,000. In addition all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 10.10 Worker's Compensation Insurance. If the Association has employees, the Association shall obtain worker's compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 10.11 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors and officers against any liability asserted against a Director or officer or incurred by him in his capacity of or arising out of his status as a Director or officer. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

Section 10.12 Insurance Obtained by Owners. It shall be the responsibility of each Owner to maintain physical damage insurance on the finished interior surfaces of the walls, floors, and ceilings of such Owner's Unit and on such Owner's personal property and furnishings and public liability insurance covering such Owner's Individual Air Space Unit. Each Owner shall also maintain insurance upon any

Limited Common Element for which such Owner has maintenance responsibility pursuant to Section 7.1 hereinabove. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Condominium Unit as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners. Each Owner shall be responsible to provide insurance coverage for the amount of any additional value to any Condominium Unit caused by any improvement to the Condominium Unit made by such Owner and not initially made by Declarant, including, but not limited to, the value of structural upgrades or fixtures supplied by the Owner, or if the applicable insurance is to be provided by the Association, for any additional insurance costs associated with such increased value due to the improvements.

The Executive Board may require an Owner who purchases additional insurance coverage for the Owner's Condominium Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

## **ARTICLE 11 CONVEYANCES AND TAXATION OF CONDOMINIUM UNITS**

Section 11.1 Contracts to Convey Entered into Prior to Recording of Condominium Map and Declaration. A contract or other agreement for the sale of a Condominium Unit entered into prior to the filing for record of the Condominium Map and this Declaration in the Office of the Clerk and Recorder of Eagle County, Colorado, may legally describe such Condominium Unit in substantially the manner set forth in Section 11.2 below and may indicate that the Condominium Map and this Declaration are to be recorded.

Section 11.2 Contracts to Convey and Conveyances Subsequent to Recording of Condominium Map and Declaration. Subsequent to the recording of the Condominium Map and this Declaration, contracts to convey, instruments of conveyance of Condominium Units, and every other instrument affecting title to a Condominium Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required under the Act or by the circumstances or appropriate to conform to the requirements of any governmental authority or any usage or requirement of law with respect thereto:

Condominium Unit , CAPITOL LOFTS CONDOMINIUMS, according to the Condominium Map recorded 9/13, 2025, at Reception No. 202510619 and as defined and described in the Declaration for CAPITOL LOFTS CONDOMINIUMS, recorded on 9/13, 2025, at Reception No. 202510619 in the Office of the Clerk and Recorder of Eagle County, Colorado.

Section 11.3 Conveyance Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, Mortgage, or other instrument affecting the title to Condominium Unit which legally describes the Unit substantially in the manner set forth in Section 11.2 above shall be construed to describe the Individual Air Space Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it (unless any such fixtures or improvements shall be Common Elements), and to incorporate all the rights incident to ownership of a

Condominium Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this declaration, including the easement of enjoyment to use the Common Elements.

Section 11.4 Separate Tax Assessments. Upon the recording of this Declaration and the filing of the Condominium Map for record in Eagle County, Colorado, Declarant shall deliver a recorded copy of this Declaration and the Map to the Assessor of Eagle County, Colorado, as provided by law, which notice shall set forth the descriptions of the Condominium Units, including the interest in the Common Elements appurtenant to the Unit, so that thereafter all taxes, assessments, and other charges by the State or any governmental or political subdivision or any special improvement district or any other taxing agent or assessing authority shall be assessed against and collected on each Condominium Unit, each of which shall be carried on the tax records as a separate and distinct parcel for that purpose. For the purpose of such assessment against the Condominium Units, valuation of the Common Elements shall be apportioned among the Units in proportion to the fractional interest in the Common Elements appurtenant to such Units. Accordingly, the Common Elements shall not be assessed separately but shall be assessed with the Condominium Units as provided pursuant to Colorado Revised Statutes, § 38-33.3-105(2).

The lien for taxes assessed to the Owner or Owners of a Condominium Unit shall be confined to his Individual Air Space Unit and to his appurtenant undivided interest in the Common Elements. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

## **ARTICLE 12 MECHANICS' LIENS**

Section 12.1 Mechanics' Liens. Subsequent to the filing of the Map and recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Condominium Unit with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Condominium Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Individual Air Space Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. 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 for labor performed or for materials furnished in work on such Owner's Condominium Unit against the Condominium Unit of another Owner or against the Common Elements, or any part thereof.

Section 12.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of Section 12.1 above by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Condominium Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Condominium Unit, and enforceable by the Association in accordance with Section 8 above.

## **ARTICLE 13 USE RESTRICTIONS**

Section 13.1 Use of Condominium Units. Residential uses and commercial uses are contemplated within the Project, and any functions, activities and uses permitted under any zoning or other laws, rules or regulations applicable to the Town of Eagle, Colorado, Colorado and under the PUD Plan (as that term is defined in the Master Declaration) are expressly allowed, subject to the restrictions set forth in Section 13.2 pertaining to the Commercial Units and Section 13.3 pertaining to the Residential Units and subject to the rules and regulations promulgated by the Executive Board. The reasonable noise and odors deriving from any permitted use or facilities within any of the Units are allowed. All Owners and their guests, tenants and invitees will be subject to the rules and regulations of the Association promulgated by the Executive Board.

Section 13.2 Commercial Uses. Among the uses permitted under Section 13.1, restaurants, cafes and bars are permitted and planned within the Project, and the reasonable noise and odors deriving from any permitted use or facilities are allowed. Such uses may be open during extended hours and/or may receive deliveries at any time, and noise and disturbance therefrom may occur at any time of day or night. All Commercial Units shall be used in conformity with all zoning laws, ordinances and regulations as well as in conformity with the PUD Plan (as that term is defined in the Master Declaration). Owners of Commercial Units may rent or lease such Units to others for these purposes.

Section 13.3 Residential Uses. All Residential Units shall be used for dwelling and lodging purposes only, in conformity with all zoning laws, ordinances and regulations. Owners of Residential Units may rent or lease such Units to others, on a long term or short term basis, only to the extent permitted by applicable zoning codes and the PUD Plan and may use the Residential Units for home occupations which do not cause unreasonable disturbance to other Owners and which are permitted by applicable zoning codes. Any such lease shall expressly state that the tenancy is subject to all of the terms and conditions of this Declaration. Notwithstanding the foregoing, Declarant may use any Condominium Unit as a sales office, management office, rental management office, storage facility and/or such other uses as may be permitted under the Act.

Section 13.4 Conveyance of Condominium Units. All Condominium Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

Section 13.5 Use of Common Elements. There shall be no obstruction of, nor shall anything be kept or stored by any Owner or other party on any part of the Common Elements without the prior written approval of the Executive Board. Nothing shall be altered or constructed in or removed by any Owner or other party from the Common Elements without the prior written approval of the Executive Board.

Section 13.6 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or, taking into account that the Project is a mixed use project, the uses permitted within the Project pursuant to the Special Use Permit, and the particular use involved, in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body. No damage to or waste of the Common Elements shall be committed by any Owner, or by any member of the Owner's family, or by any guest, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, invitees, or contract purchasers. Failure to indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against

such Condominium Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment as provided in Sections 8 above.

Section 13.7 Nuisances. No nuisance or any use or practice which interferes with the peaceful possession and proper use of the Project by the Owners shall be allowed upon the Common Elements or within a Unit. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist.

#### **ARTICLE 14 EASEMENTS**

Section 14.1 Easement of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the General Common Elements, which shall be appurtenant to and shall pass with the title to every Condominium Unit, subject to the easements set forth in this Article 14.

Section 14.2 Delegation of Use. Any Owner may delegate, in accordance with the Association Documents, the Owner's right of enjoyment in the Common Elements to the Owner's tenants, employees, family, guests, and invitees.

Section 14.3 Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, as shown on the recorded Condominium Map and as created by the Master Declaration. The recording data for recorded easements, licenses and other matters appurtenant to or included in the Property or to which any parts of the Property may become subject is set forth on the attached Exhibit C.

Section 14.4 Easements for Encroachments. The Project, and all portions of it, are subject to easements hereby created for encroachments between Condominium Units and the Common Elements as follows:

14.4.1 In favor of the Association so that it shall have no legal liability when any part of the Common Elements encroaches upon an Individual Air Space Unit;

14.4.2 In favor of each Owner of each Unit so that they shall have no legal liability when any part of an Individual Air Space Unit encroaches upon the Common Elements or upon another Individual Air Space Unit;

14.4.3 In favor of all Owners, the Association, and the Owner of any encroaching Individual Air Space Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 14.4 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Condominiums or any companies providing electrical, telephone, and other communication services to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners, the Association, and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Executive Board shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section

shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 14.6 Reservation of Easements, Exceptions, and Exclusions. Declarant reserves for itself and its successors and specific assigns and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, utility and other easements within the Common Elements for purposes including but not limited to paths, walkways, drainage, parking areas, ducts, shafts, flues, conduit installation areas, consistent with the condominium ownership of the Project for the best interest of all of the Owners and the Association, in order to serve all the Owners within the Project.

Section 14.7 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 14.8 Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, 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 they are obligated or permitted to perform pursuant to this Declaration.

Section 14.9 Drainage Easement. An easement is hereby reserved to Declarant and its successors and specific assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Project for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

Section 14.10 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Individual Air Space Units or may be conveniently accessible only through the Individual Air Space Units. The Owners of other Individual Air Space Units and the Association shall have the irrevocable right, to be exercised by the Association, as the Owners' agent, to have access to each Individual Air Space 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 therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Individual Air Space Unit. In addition, an easement is hereby created for such Common Elements as they currently exist within the Individual Air Space Units. Subject to the provisions of Section 7.3 above, damage to the interior of any part of an Individual Air Space Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Individual Air Space Unit at the instance of the Association or Owners shall be a Common Expense.

Section 14.11 Governmental Requirements. Declarant hereby reserves the right to grant such easements and rights-of-way, from time to time, as may be required by any government agency. Such easements and rights-of-way shall specifically include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental agencies, for so long as the Declarant holds an interest in any Unit subject to this Declaration.

Section 14.12 Declarant Easements. Declarant reserves unto itself, its successors, specific assigns, lessees, guests, licensees and invitees, for so long as it holds any interest in any Unit, the same easement rights Condominium Unit constructed on the Property, by error in the Condominium Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project.



Section 14.3 Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the granted to Owners under this Declaration and specific easement rights over and across the Project as it may deem necessary for its use from time to time.

Section 14.14 Right of Declarant and Association to Own Units and to Use Common Elements. An easement is hereby reserved by Declarant for itself and its successors and specific assigns and granted to the Association and its officers, agents, employees, successors and assigns to maintain offices, storage areas, and conference areas for use by the Association within the Common Elements, subject to all rules and regulations established under this Declaration, the Master Declaration, and/or the Commercial Center Association. The Association shall also have the right (but not the obligation) to purchase and own any Condominium Unit for the purpose of maintaining an office for the Association or for any other use which the Association determines is consistent with the operation of the Project. The costs and carrying charges incurred by the Association in purchasing and owning any such Condominium Unit shall be part of the Common Expenses.

Section 14.15 Remodeling Easement. Declarant, for itself and its successors and specific assigns, including Owners, retains a right and easement in and about the Condominiums for the construction and installation of any duct work, additional plumbing, or other additional services or utilities in the Common Elements in connection with the improvement or alteration of any Condominium Unit, including the right of access to such areas of the Common Elements as is reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Section, the decision of the Executive Board shall be final.

Section 14.16 Easements Deemed Created. All conveyances of Condominium Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

## **ARTICLE 15 ASSOCIATION AS ATTORNEY-IN-FACT**

Section 15.1 Appointment. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Project upon its damage, destruction, condemnation, or obsolescence as provided below in Articles 16, 17 and 18. In addition, the Association, or any insurance trustee or substitute insurance trustee designated by the Association, is hereby appointed as attorney-in-fact under this Declaration for the purpose of purchasing and maintaining insurance under Article IO above, including: the collection and appropriate disposition of the proceeds of such insurance; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any insurance trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointments of the attorneys-in-fact as provided above. Notwithstanding any other provision of this Declaration to the contrary, the Association may exercise its authority as attorney-in-fact for any purpose permitted pursuant to this Declaration only if, in each and every instance where such exercise is so permitted, the Executive Board approves the exercise of such authority by the affirmative vote of a majority of the voting Directors. If the Executive Board fails to so approve any exercise of authority as attorney-in-fact, the Association shall have such authority as it may have pursuant to the Act.

Section 15.2 General Authority. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed,

## **ARTICLE 16 DAMAGE OR DESTRUCTION**

Section 16.1 The Role of the Executive Board. Except as provided in Section 16.6, in the event of damage to or destruction of all or part of the Common Elements, or other Property covered by insurance written in the name of the Association under Article 10, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged areas of the Project, including, without limitation, the floor coverings, fixtures, and appliances initially installed therein by Declarant, and replacement thereof installed by the Owners up to the value of those initially installed by Declarant, but not including any additional fixtures and equipment, furniture, furnishings or other personal property supplied or installed by the Owners in the Condominium Units unless covered by insurance obtained by the Association. Notwithstanding the foregoing, each Owner shall have the right to supervise the redecorating of the Unit.

Section 16.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Project, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Project damaged or destroyed. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed part of the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Individual Air Space Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

Section 16.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the part of the Project damaged or destroyed. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary in connection with that action.

Section 16.4 Funds for Repair and Reconstruction. Subject to the provisions of Section 16.6 below, the proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction.

Section 16.5 Insurance Proceeds Sufficient to Repair. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association as attorney-in-fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair and restoration of the improvements. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 16.6 Insurance Proceeds Insufficient to Repair; Special Assessment; Remedies for Failure to Pay Special Assessment. If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than seventy percent (70%) of the total replacement cost of all of the Condominium Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special Assessment to be made against all of the Owners and their Condominium Units. Any such special Assessment shall be a Common Expense in accordance with Section 8.7 above and shall be due and payable within thirty (30) days after written notice as provided in Article 8 above. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair, replacement, or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding

the failure of an Owner to pay the Assessment.

Any Assessment provided for in this Section 16.6 shall be a debt of each Owner and a lien on the Owner's Condominium Unit and may be enforced and collected as provided in Article 8 above. In addition, the Association as attorney-in-fact shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association as attorney-in-fact pursuant to the provisions of this Section 16.6. The Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay the Association the costs and expenses for filing the notice, interest at the Maximum Rate on the amount of the Assessment, and all reasonable attorneys' fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

16.6.1 For payment of real property ad valorem taxes, special assessment liens duly imposed by a governmental subdivision, and customary expenses of sale;

16.6.2 For payment of the balance of the lien of any First Mortgage affecting the Condominium Unit;

16.6.3 For payment of unpaid Association Assessments, assessments levied by the Master Association and assessments levied by the Commercial Center Association, interest, costs, late charges, expenses, and attorneys' (and legal assistants') fees;

16.6.4 For payment of junior Mortgages affecting the Condominium Unit in the order of and to the extent of their priority; and

16.6.5 For payment of the balance remaining, if any, to the Owner of the Condominium Unit.

If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is more than seventy percent (70%) of the total replacement cost of all of the Condominium Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and, if permitted under the Act, the proceeds of a special Assessment made against all of the Owners and their Condominium Units, provided, however, that Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more may elect to terminate the Project, and in such event the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary or assistant secretary, the entire Project shall be sold pursuant to the provisions of this Section by the Association as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, and the articles of incorporation, and bylaws of the Association. Assessments for Common Expenses shall not be abated during the period prior to sale.

In such event, the insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's interest in the Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contributions from one account to another, toward the partial or full payment of the lien of any Mortgage encumbering the Condominium Unit represented by such separate account.

Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such an apportionment shall be based upon each Condominium Unit Owner's interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association as attorney-in-fact for the same purposes and in the same order as is provided in Sections 16.6.1 through 16.6.5 above.

In the event that the Owners do not elect to terminate the Project as provided above, Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association (other than Declarant), and all directly adversely affected Owners, may alternatively agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

Section 16.7 Repairs. All repairs and reconstruction contemplated by this Article shall be performed substantially in accordance with this Declaration, the Map, and the original plans and specifications for the Project, unless other action is approved by the Association in accordance with the requirements of this Declaration and the other Association Documents.

## **ARTICLE 17 OBSOLESCENCE**

Section 17.1 Adoption of Plan; Rights of Owners. The Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction thereof. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the date of adoption of such plan that his Condominium Unit shall be purchased by the Association for the fair market value of the Unit in cash or certified funds. The Association shall then have thirty (30) days after the expiration of such 15-day period within which to cancel such plan. If such plan is not canceled, the Condominium Unit of the requesting Owner shall be purchased according to the following procedures.

If such Owner and the Association can agree on the fair market value of the Unit, then such sale shall be consummated within ninety (90) days after such agreement. If the parties are unable to agree, the date when either party notifies the other that no agreement may be reached shall be the "commencement date" from which all periods of time mentioned hereafter shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with another appraiser. If the two designated or selected appraisers are unable to agree on the fair market value of the Unit, they shall appoint another appraiser to be umpire between them, if they can agree on such person, which umpire shall independently determine the fair market value of the Unit in the case of continued disagreement. If the two appraisers are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser.

The decision of the appraisers as to the fair market value, or in the case of their disagreement, then

such decision of the umpire shall be final and binding, and a judgment based upon the decision rendered may be entered in any court having jurisdiction thereof. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds for the same purposes and in the same order as provided in Sections 16.6.1 through 16.6.5 above.

Section 17.2 Sale of Obsolete Units. The Owners representing an aggregate ownership interest in the Common Elements of sixty seven percent (67%) or more may agree that the Condominium Units are obsolete and that the Project should be sold. In such instance, the Association shall immediately record in the Office of the Clerk and Recorder of Eagle County, Colorado, a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Map, and the articles of incorporation and bylaws of the Association. Unless otherwise agreed in writing by all the Owners, the sale proceeds (and any insurance proceeds under Section 16.5 above) shall be apportioned among the Owners in proportion to each Owner's undivided interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner and designated as an agency account. From each separate account, the Association, as attorney-in- fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Sections 16.6.1 through 16.6.5 above.

## **ARTICLE 18 CONDEMNATION**

Section 18.1 Consequences of Condemnation. If, at any time or times during the continuance of the Project pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu or in avoidance of condemnation, then all compensation, damages, or other proceeds of condemnation, the sum of which is referred to as the "condemnation award" below, shall be payable to the Association, and the provisions of this Article shall apply.

Section 18.2 Complete Taking. In the event that the entire Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance of condemnation, the condominium ownership pursuant to this Declaration shall terminate, subject to the provisions of Section 18.7 below. The condemnation award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. Such award shall be apportioned among the Owners and the Mortgagees on the basis of the undivided interests in the Common Elements appurtenant to the Unit in which such Owners and Mortgagees have an interest; provided, however, that if a standard different from the value of the Project as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, then in determining such apportionment the same standard shall be employed. The Association shall, as soon as practical, determine the share of the condemnation award to which each Owner and Mortgagee is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practical for the same purposes and in the same order as provided in Section 16 above.

Section 18.3 Partial Taking. In the event that less than the entire Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance of condemnation, the condominium ownership under this Declaration shall not terminate. Each Owner (and Mortgagee holding an interest in such Owner's Unit) shall be entitled to a share of the condemnation award to be determined under the following provisions. The condemnation award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. As soon as practical, the Association shall reasonably and in good faith allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, unless otherwise required under the Act, as

follows:

18.3.1 The total amount allocated to a taking of or injury to the Common Elements shall be apportioned among Owners and their Mortgagees on the basis of each Owner's undivided interest in the Common Elements;

18.3.2 The total amount allocated to severance damages shall be apportioned to the Owners and Mortgagees of those Condominium Units which were not taken or condemned;

18.3.3 The respective amounts allocated to the taking of or injury to a particular Condominium Unit or to improvements an Owner has made within the Owner's own Condominium Unit shall be apportioned to the Owner and Mortgagees of that particular Condominium Unit involved; and

18.3.4 The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under the circumstances.

If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award, the Association shall employ such allocation. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

Section 18.4 Reorganization. In the event a partial taking results in the taking of an Individual Air Space Unit, the Owners thereof shall automatically cease to be members of the Association, and their ownership interests in the Common Elements shall terminate and vest in the Owners of the remaining Condominium Units. Thereafter, subject to the provisions of Section 18.7 below, the Association shall reallocate the ownership, voting rights, and Assessment ratios determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of the remaining Individual Air Space Units for the amendment of this Declaration.

Section 18.5 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in Article 16 above.

Section 18.6 Notice of Condemnation. In the event that any portion of the Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner.

Section 18.7 Limitations on Actions of Association. Except as provided by statute, in case of condemnation, unless Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more have given their prior written approval, the Association may not take any of the actions specified in Section 18 above.

## **ARTICLE 19 OTHER ASSOCIATION MATTERS**

Section 19.1 Master Association Matters. Each Owner, by accepting a deed to a Condominium Unit, recognizes that (a) the Project is subject to the Master Declaration and (b) by virtue of his ownership, he has become a member of the Master Association. Each Owner, by accepting a deed to a Condominium Unit, acknowledges that he has received a copy of the Master Declaration. The Owner agrees to perform all of his obligations as a member of the Master Association as they may from time to time exist, including,

but not limited to, the obligation to pay assessments as required under the Master Declaration and other governing documents of the Master Association.

Section 19.2 Enforcement of Master Association and Commercial Center Declarations. The Association shall have the power, subject to the primary power of the Board of Directors of the Master Association and of the Commercial Center Association, to enforce the covenants and restrictions contained in the Master Declaration and/or the Commercial Center Declaration, but only as said covenants and restrictions relate to Capitol Lofts Condominium, and to collect regular, special, and default assessments on behalf of the Master Association and/or on behalf of the Commercial Center Association.

Section 19.3 Commercial Center Association Matters. Each Owner of a Unit is subject to the Commercial Center Declaration and by accepting a deed to a Unit acknowledges that he has received a copy of the Commercial Center Declaration. The Owner agrees to perform all of his obligations as member of the Commercial Center Association as they may from time to time exist, including but not limited to, the obligation to pay assessments as required under the Commercial Center Declaration and other governing documents of the Commercial Center Association. By virtue of his ownership of a Unit, the Owner has become a member of the Commercial Center Association.

#### Section 19.4 Architectural Control.

19.4.1 No exterior or structural addition to or change or alteration to the Common Elements (including the construction of any additional skylight, window, awning or door) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Executive Board.

19.4.2 After receiving the approval of the Executive Board, the Owner required to obtain such approval shall thereafter obtain all other approvals as may be required by the Master Declaration, the Commercial Center Declaration, and or any governmental or quasi- governmental body having jurisdiction over the Property.

Section 19.5 No Use of Trademark. The term "Capitol Lofts Condominium" is a service mark and trademark of Declarant and the term "Eagle Ranch" is a service mark and trademark of West Eagle Ranch, LLC the declarant under the Master Declaration, a Delaware limited liability company. Each Owner, by accepting a deed to a Unit, covenants and agrees that such Owner shall not use the terms "Capitol Lofts Condominium "Lofts" or "Eagle Ranch" without the prior written permission of Declarant or West Eagle Ranch, LLC, respectively.

Section 19.6 Limit on Timesharing. No Residential Unit shall be used (i) for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Residential Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, or (ii) for the operation of a reservation or time-use system among co- Owners of a Residential Unit managed by a party other than the co-Owners themselves or a system whereby co-Owners are required as a condition of purchase of a fractional interest in the Residential Unit to subject the fractional interest to a pre-determined reservation or time-use system among co-Owners, regardless of whether or not the co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

Section 19.7 Access. Roads within Eagle Ranch are subject to ordinances, rules and regulations of the Town of Eagle, Colorado.

Section 19.8 Mountain Conditions. Ownership of real property in mountain areas involves certain inherent inconveniences. These include but are not limited to (a) dripping water onto decks and porches from snow melt, (b) snow and ice build-up on decks and porches during winter months, (c) the need to open windows to the Units, and (d) other inconveniences arising from the sometimes severe winter conditions in the Rocky Mountains.

Section 19.9 Parking. All parking serving the Project shall be located on an adjacent lot owned and managed by the Commercial Center Association and shared with other members of the Commercial Center Association and their respective customers, guests and invitees pursuant to applicable rules and regulations adopted by the Commercial Center Association to regulate such parking. Each Owner acknowledges and agrees it is anticipated, without obligation, that no parking will be exclusive to any Unit but that each Owner shall have a non-exclusive right to use such parking pursuant to applicable regulations.

## **ARTICLE 20 DECLARANT'S RIGHTS REGARDING TRANSFER**

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado.

## **ARTICLE 21 MISCELLANEOUS**

Section 21.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 21.2 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 21.3 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon the written consent of Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more; provided, however, matters not requiring Owner approval as described in C.R.S. 38-33.3- 217(1) may be handled by the Executive Board; and provided further, however, that the any provision of this Declaration requiring a vote of more than 67% of the total voting interest in the Association to be effective may only be amended by a vote of the applicable aggregate voting interest stated in such provision. In addition, a majority of the voting Directors of the Executive Board may make, without the approval of the Owners, changes to the Map or any other Association Documents to the extent necessary to correct a factual error, and any proposed amendment to this Declaration which affects any right of Declarant shall require the prior written approval of Declarant, in addition to the approval requirements otherwise set forth herein.

Section 21.4 Unilateral Amendment Rights Reserved by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration to the fullest extent permitted under the Act including, without limitation, to correct clerical, typographical or technical errors, or 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 21.5 Recording of Amendments. Any amendment to this Declaration made in accordance with this Article shall be immediately effective upon recording in the Office of the Clerk and Recorder of Eagle County, Colorado, a copy of the amendment, executed and acknowledged by the appropriate number of Owners, accompanied by a certificate of a licensed title insurance company as to ownership, or upon the recording of a copy of the amendment, together with a duly authenticated certificate of the secretary of the Association stating that the required number of consents of Owners and a certificate of a licensed title company as to title to the Condominium Units were obtained and are on file in the office of the Association.

Section 21.6 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the articles, the bylaws and the rules and regulations of the Association, all as amended, shall be by any proceeding at law or in equity against any person or persons, including the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right (after notice and an opportunity to be heard) to levy and collect fines for the violation of any provision of the aforesaid documents. Any legal action initiated by the Association other than as described in this Declaration shall require the approval of the Executive Board. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 21.7 Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 21.8 Conflict of Provisions. In case of any conflict between this Declaration and the Master Declaration, the Master Declaration shall control. In case of any conflict between this Declaration and the Commercial Center Declaration, the Commercial Center Declaration shall control. In case of any conflict between this Declaration and the articles or the bylaws of the Association, this Declaration shall control. In case of any conflict between the articles and the bylaws, the articles shall control. The foregoing notwithstanding, in the event of any inconsistency between this Declaration or the articles or the bylaws, on the one hand, and the Act, on the other, then in all events the Act shall control.

Section 21.9 Nonwaiver. Failure by Declarant, the Association, or any Owner to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 21.10 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

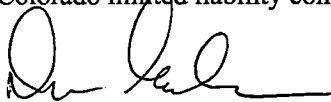
Section 21.11 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 21.12 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 12 day of ~~June~~<sup>August</sup>, 2025.

**DECLARANT:**

**CAPITOL LOFTS II, LLC**  
a Colorado limited liability company



**Dan Godec Owner/Manager**

STATE OF COLORADO       )  
  )ss.  
COUNTY OF EAGLE       )

The foregoing instrument was acknowledged before me this 12 day of ~~June~~<sup>August</sup>, 2025, by DAN GODEC as Manager of CAPITOL LOFTS II, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 04/11/2028

  
Notary Public

|   |
|---|
| <b>XIMENA MARGARITA LOZANO PEREIDA</b><br><b>NOTARY PUBLIC</b><br><b>STATE OF COLORADO</b><br><b>NOTARY ID 20244014202</b><br><b>MY COMMISSION EXPIRES 04/11/2028</b> |
|---|

**EXHIBIT A: DESCRIPTION OF PROPERTY**

LOT 1, BLOCK 9, EAGLE RANCH, FILING NO. 5, ACCORDING TO THE PLAT RECORDED  
NOVEMBER 13, 2000, UNDER RECEPTION NO. 743931, COUNTY OF EAGLE, STATE OF  
COLORADO.

EXHIBIT B: OWNER’S INTERESTS IN COMMON ELEMENTS

| Unit No. | % Common Elements | % Residential | % of Commercial |
|----------|-------------------|---------------|-----------------|
| C-101    | 75.0              |               | 100%            |
| 201      | 2.1               | 21.056        |                 |
| 202      | 1.5               | 15.457        |                 |
| 203      | 1.8               | 17.783        |                 |
| 204      | 1.5               | 15.437        |                 |
| 205      | 1.2               | 11.888        |                 |
| 206      | 1.8               | 18.375        |                 |
| 18,372   | 100%              | 100%          | 100%            |

## **EXHIBIT C: EASEMENTS AND OTHER RESTRICTIONS**

### NOTES

1. Survey Date: December 19, 2024
2. The purpose of this condominium map is to create the condominium units and the common ownership areas as depicted hereon.
3. All lineal distances are in units of U.S. survey feet.
4. Record easements and rights-of-way shown for this plat were derived from Title Commitment Order No. RND50073006 provided by Land Title Guarantee Company of Greenwood Village, CO with an effective date of October 16, 2024 at 5:00 P.M. and the Final Plat of Eagle Ranch, Filing No. 5, recorded November 13, 2000 at Reception Number 743931 in the Office of the Clerk and Recorder, Eagle County, State of Colorado.
5. Bearings are based upon a point marking the northeast corner of Lot 1, Block 9 according to the above referenced Final Plat of Eagle Ranch, Filing No. 5, monumented by a found 1" diameter washer set in concrete LS 30116 and a point marking a southerly property corner of said Lot 1, Block 9 of said Final Plat of Eagle Ranch, Filing No. 5, monumented by a found 1 1/2" diameter aluminum cap on number 5 rebar LS 30116, the bearing being S22°58'42"W a record distance of 153.70 feet (153.79 feet measured distance).
6. All of the property depicted on this condominium plat is subject to the terms, conditions, and provisions of the Annexation Agreement recorded at Reception Number 692227 on April 12, 1999, the amended Planned Unit Development Guide recorded at Reception Number 750477 on February 23, 2001, and the amendment thereto recorded at Reception Number 757729 on May 23, 2001.
7. All of the property depicted on this condominium plat is subject to the easements, reservations and restrictions as shown or reserved on the plat of Eagle Ranch, Filing No. 2, recorded at Reception Number 719255 on December 30, 1999.
8. All of the property depicted on this condominium plat is subject to the Declaration for Eagle Ranch recorded at Reception Number 700815 on June 23, 1999, the amendment recorded at Reception Number 715599 on November 23, 1999, and the 12th Supplement recorded at Reception Number 751107 on March 26, 2001.
9. All of the property depicted on this condominium plat is subject to the Declaration for Eagle Ranch Commercial Center as recorded at Reception Number 743935 on November 13, 2000.
10. All of the property depicted on this condominium plat is subject to the terms, conditions and provisions of the Restrictive Covenant recorded at Reception Number 753712 on April 5, 2001.
11. All of the property depicted on this condominium plat is subject to the terms, conditions and provisions of Notice of Voting Allocation recorded at Reception Number 200924643 on November 17, 2009.

12. All of the property depicted on this condominium plat is subject to the terms, conditions, provisions, burdens and obligations as set forth in Memorandum of Building and Rooftop Lease Agreement recorded at Reception Number 202114606 on June 23, 2021.

13. All of the property depicted on this condominium plat is subject to the terms, conditions, provisions, burdens and obligations as set forth in Ordinance No. 03, Series of 2022 recorded at Reception Number 202201732 on February 2, 2022.

14. All of the property depicted on this condominium plat is subject to the Declaration of Covenants for Capitol Lofts Condominiums recorded contemporarily with this plat condominium plat at Reception Number 202510619 on August 13, 2025.

15. Site Benchmark: Site Benchmark for condominium is situated on the rim of a sewer manhole at the center of the Intersection of Capitol Street and Founder Avenue having an assumed vertical elevation of 97.23.

16. Easements, covenants, conditions and restrictions, reservations and notes as shown or reserved on the plat of Eagle Ranch, Filing #35 recorded November 13, 2001 At Reception #743931.

17. Any future change must comply with the Municipal Code and PUD Guide then in effect.