



**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
1020 CAPITOL STREET CONDOMINIUMS**

49/2010

AFTER RECORDING PLEASE RETURN TO:

**Town of Eagle
P.O. Box 609
Eagle, CO 81631**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR 1020 CAPITOL STREET CONDOMINIUMS**

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**DECLARATION
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1020 CAPITOL STREET CONDOMINIUMS**

THIS DECLARATION, is made on the date hereinafter set forth, by No Regrets, LLC, a Colorado limited liability company, with offices at 710 West Lionshead Circle, Unit A, Vail, Colorado 81657 (the "Declarant").

RECITALS

A. Declarant is the owner of certain real property and improvements (the "Property"), described as follows:

Tract B-3, Eagle Ranch, Filing No. 2, according to the plat thereof recorded December 30, 1999, at Reception Number 719255, in the real property records of Eagle County, Colorado, together with easements depicted thereon,

except and excluding there from Lot B-3A, according to the Final Plat and Condominium Map 1020 Capitol Street Condominiums, recorded February 24, 2010, at Reception Number 201003741, in the real property records of Eagle County, Colorado

and subject to the easements and interests of record set forth on *Exhibit B* hereto,

Town of Eagle, County of Eagle, State of Colorado,

B. Declarant desires to create a Common Interest Community (Condominium) in and upon the Property, the name of which is 1020 Capitol Street Condominiums, in which portions of the Property will be designated for separate ownership and other portions will be designated for common ownership solely by the Owners of separate ownership portions as defined herein, and subject to Special Declarant Rights as defined herein; and

C. Declarant has caused or will cause to be incorporated under the laws of the State of Colorado, 1020 Capitol Street Condominium Association, a nonprofit corporation, for the purpose of exercising the functions as herein set forth.

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations which shall be deemed to run with the land comprising the Property and shall burden and benefit Declarant, its grantees, successors and assigns and any person acquiring or owning an interest in the Property and improvements thereon and their respective grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE 1
SUBMISSION; EFFECT; COMPLIANCE; TERMS

Section 1.01 Submission of the Property. Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be a burden binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof, their heirs, legal representatives, successors and assigns. Additionally, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act"). In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

Section 1.02 Effect of Provisions of Declaration. Each provision of this Declaration and each agreement, promise, covenant or undertaking to comply with or to be bound by the provisions of this Declaration which is contained herein shall:

(a) be deemed incorporated in each deed or other instrument by which any right, title or interest in any Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument; and

(b) by virtue of acceptance of any right, title or interest in any Unit by an Owner, such owner shall be deemed to have accepted, ratified, adopted and declared said agreements, promises, covenants and undertakings as personal covenants of such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of the Association.

Section 1.03 Compliance With Declaration, Articles and Bylaws. Each Owner and the Association shall comply strictly with, and each Owner shall cause its Guests to comply strictly with, all of the provisions of this Declaration, the Articles, the Bylaws, the Act and the decisions, Rules and Regulations, policies and resolutions of the Association adopted pursuant thereto, as the same may be amended from time-to-time (collectively, the "Association Documents"). Subject to the terms and requirements of any alternative dispute resolution rule, regulation or policy adopted by the Association, the Association or any aggrieved Owner may take judicial action or action via arbitration, as the case may be, against any other Owner or the Association to enforce compliance with Rules and Regulations or other obligations contained herein or in the Bylaws or to recover damages for violation thereof or injunctive relief or both, with the prevailing party to be awarded its reasonable attorneys' fees including legal assistant fees costs and expenses with respect thereto from the non-prevailing party, including costs of collection, where applicable.

Section 1.04 Attorneys Fees. In the event of any litigation or arbitration concerning the enforcement or interpretation of this Declaration, the Articles, Bylaws or the Rules and Regulations, the prevailing party therein shall be entitled to recover and shall be awarded its reasonable attorneys' fees, costs and expenses with respect thereto from the non-prevailing party, including reasonable attorneys' fees, costs and expenses with respect to the collection of any judgment as a result thereof.

Section 1.05 Defined Terms. Each term not otherwise defined in this Declaration or in the Map shall have the meanings specified or used in the Act or other statute governing or applicable to the term in issue.

(1) "Act" means the Colorado Common Interest Ownership Act, Sections 38-33.3-101, *et. Seq.*, Colorado Revised Statutes, as it may be amended from time to time.

(2) "Affiliate of Declarant" means any person who controls, is controlled by, or is under common control with the Declarant. A person controls the Declarant if the person: is a general partner, officer, director, member, manager, or employee of the Declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interests of the Declarant; controls in any manner the election of a majority of the managers of the Declarant, or has contributed more than twenty percent (20%) of the capital of the Declarant. A person is controlled by the Declarant if the Declarant: is a general partner, officer, director, manager, member, or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interests of the person; controls in any manner the election of a majority of the managers of the person; or has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described hereinabove are held solely as security for an obligation and are not exercised.

(3) "Allocated Interest" means each Unit's undivided interest in the Common Elements, Common Expense Liability, and votes in the Association.

(4) "Articles" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

(5) "Association" shall mean the 1020 Capitol Street Condominium Association, a Colorado nonprofit corporation, its successors and assigns.

(6) "Board," "Executive Board" or "Board of Directors" shall mean the body, designated in this Declaration to act on behalf of and be the governing body of the Association.

(7) "Building(s)" shall mean the building improvements now or hereafter existing upon the Property.

(8) "Bylaws" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including any amendments to those instruments.

(9) "Commercial Units" means Units C-1 and C-2 as depicted on the Map which shall be used for commercial purposes in accordance with and subject to the Association

Documents, including Section 9.03 of the Declaration, and applicable zoning ordinances for the Property, as they may be amended from time to time.

(10) "Common Elements" or "General Common Elements" shall mean all of the Project, except the portions thereof which constitute individual Units, and also means all parts of the Building or any facilities, improvements and fixtures which may be within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of the Building or any part thereof or any other Unit therein. "Common Elements" shall also mean the following:

- (a) all of the land constituting the Property;
- (b) all foundations, columns, girders, joists, studs, beams and supports of the Building;
- (c) the exterior walls of the Building, the main or bearing walls and columns within the Building, the main or bearing subflooring and the roofs of the Buildings, which are not within any individual Unit;
- (d) all entrances, exits, driveways, vestibules, halls, corridors, lobbies, lounges, stairs, stairways, loading docks, and fire escapes in the Building or on the Property, except those located within or specifically appurtenant to individual Units;
- (e) any Association offices (except those temporarily occupied by Declarant as provided herein), any utility service and maintenance rooms, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, fire protection, refrigeration, air conditioning, trash, incineration or similar utility, service or maintenance purposes, including furnaces, tanks, pumps, boilers, motors, fans, compressors, flues, piping, wiring, vents, ducts and similar fixtures, apparatus, installations and facilities in the Building which are not located within an individual Unit; and
- (f) all other parts of the Project necessary or convenient to its existence, maintenance, operation, administration and safety or normally in common use, other than individual Units.

(11) "Common Expenses" shall mean:

- (a) all expenses of administration, maintenance, repair or replacement of the Common Elements;
- (b) any expenses declared Common Expenses pursuant to provisions of this Declaration, the Articles or the Bylaws;

(c) any expenses determined to be Common Expenses by the Board or by a vote of at least sixty-seven percent (67%) of the voting interests of the Owners, excluding any of Declarant's costs of constructing any Common Elements; and

(d) any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocation to reserves.

(12) "Common Expense Liability" means the liability for Common Expenses allocated to each Unit.

(13) "Common Interest Community" as the term is used herein or in the Act shall mean the Project as defined in this Declaration, known as "1020 Capitol Street Condominiums."

(14) "Dealer" means a person in the business of selling Units for such person's own account.

(15) "Declarant" shall mean the Declarant named herein, No Regrets, LLC, a Colorado limited liability company, and such successor or successors as may be designated hereafter by Declarant by duly executed and recorded written notice or a successor to all or any part of Declarant's interest in the Project by means of foreclosure or conveyance in lieu thereof, effective upon the recording of appropriate instruments and without the further consent of or assignment by Declarant.

(16) "Declaration" shall mean this instrument, as amended or supplemented from time to time, including the Map.

(17) "Declarant Control" shall mean control of the Board by Declarant from the date of this Declaration through the Owner Control Date.

(18) "Dispose" or "Disposition" means a voluntary transfer of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a Security Interest.

(19) "Eligible Mortgagee" shall mean a First Mortgagee who has registered with the Association in accordance with Section 4.08.

(20) "First Mortgage" shall mean a Mortgage or deed of trust which has first and superior priority under applicable law.

(21) "First Mortgagee" shall mean a Mortgagee holding a First Mortgage, or the beneficiary of any first deed of trust, as well as any insurer or guarantor of such Mortgage.

(22) "Guest" shall mean any agent, contractor, employee, servant, tenant, guest, family member, licensee or invitee of an Owner or tenant who enters upon the Project.

(23) "Identifying Number" means a symbol or address that identifies only one Unit in the Project.

(24) "Limited Common Elements" shall mean those portions of the Common Elements which are reserved or allocated by this Declaration for the exclusive use of one or more Units but fewer than all Units (except as provided in Section 8.03), shall be identified on the Map and designated as appurtenant to a particular Unit; provided, however:

(a) if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit is an unrestricted part of the Common Elements; and

(b) any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

Any area shown on the Map as "LCE Commercial" shall be deemed to be Limited Common Elements appurtenant to all Commercial Units, and those shown as "LCE Residential" shall be deemed to be Limited Common Elements appurtenant to all Residential Units.

(25) "Managing Agent" shall mean any person employed by the Association to perform the management and administrative functions of the Project on behalf of the Association.

(26) "Mortgage" shall mean any mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of County of Eagle, Colorado, encumbering a Unit.

(27) "Mortgagee" shall mean any person to whom an indebtedness is owed which is secured by a Mortgage, deed of trust or Security Interest.

(28) "Owner" or "Unit Owner" shall mean any record owner (including Declarant and including a contract seller, but excluding a contract purchaser), whether one or more persons, of a fee simple interest in or to any Unit; but excluding any such person having an interest therein merely as a Mortgagee, unless such Mortgagee has acquired fee simple title thereto pursuant to foreclosure or any conveyance in lieu thereof. A person automatically ceases to be an Owner upon conveyance of its Unit by deed or upon entering a binding installment contract. Such cessation of ownership shall not extinguish or otherwise void any unsatisfied obligation of such person existing or arising at or prior to the time of such conveyance, including without limiting the generality of the foregoing, any unsatisfied obligation to pay Association Common Expense Assessments.

(29) "Owner Control Date" shall mean that date which is on or before the later of (a) sixty (60) days after Declarant has conveyed seventy-five percent (75%) of the Units of the Project,

or (b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or any earlier date designated by the Declarant in its sole discretion.

(30) "Percentage Interest" shall mean the respective percentage of an Owner's undivided interest in the Common Elements, determined pursuant to Section 8.01.

(31) "Person" or "person" shall mean a natural person, a corporation, a partnership, an association, a trust or any other entity or any combination thereof.

(32) "Map" or "Condominium Map" shall mean the plat or survey, or any supplement thereto, of the Property, showing a survey and legal description thereof, the location of improvements thereon with respect to the boundaries of the Property, together with diagrammatic floor plans of the improvements thereon and showing the boundaries of each Unit, together with Unit numbers identifying the Units, including horizontal and vertical locations and dimensions of the improvements thereon, together with such other information as may be included thereon in the discretion of the Declarant and in accordance with and as may be required by § 38-33.3-209 of the Act. The Map is entitled "Final Plat and Condominium Map 1020 Capitol Street Condominiums."

(33) "Project" shall mean this Common Interest Community and all of its constituent parts, including the Property, the Common Elements, the Units and the Building.

(34) "Purchaser" means a person, other than Declarant or a dealer, who by means of a transfer acquires a legal or equitable interest in a Unit, other than (a) a leasehold interest in a Unit of less than forty years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences or (b) a Security Interest.

(35) "Residential Units" means Units R-1 and R-2 according to the Map, which shall be used and occupied solely for residential purposes as provided in Section 9.02 of the Declaration.

(36) "Rules and Regulations" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

(37) "Security Interest" means an interest in the Project or personal property thereon or therein created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

(38) "Special Declarant Rights" means rights reserved for the benefit of Declarant to perform the following acts as specified in the Act, as amended: (a) to complete improvements indicated on the Map; (b) to maintain sales offices, management offices, signs advertising the Project, and models; (c) to use easements through the Common Elements for the purpose of making

improvements within the Project or real estate which may be added to the Project; and (d) to appoint or remove any officer of the Association or any Board member during any period of Declarant Control.

(39) "Unit" shall mean and refer to a physical portion of this Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined pursuant to this Declaration.

ARTICLE 2 NAMES; DESCRIPTION OF REAL ESTATE; MAP

Section 2.01 Names.

(a) Condominium. The name of the Common Interest Community (Condominium) is 1020 Capitol Street Condominiums.

(b) Association. The name of the Association is 1020 Capitol Street Condominium Association.

Section 2.02 Real Estate. The Common Interest Community (Condominium) is located in the Town of Eagle, County of Eagle, State of Colorado. The real estate of the Common Interest Community (Condominium) is as described in Recital A hereinabove and referred to herein as the Property.

Section 2.03. Map. The Map shall be recorded in the office of the Clerk and Recorder of County of Eagle, Colorado, and may be supplemented or amended as necessary to show all Units and Common Elements subject hereto, and otherwise in compliance with the requirements of Section 38-33.3-209 of the Act.

Declarant hereby reserves unto itself and the Board, the right, from time to time, without the consent of any Owner to: supplement and amend the Map and supplements thereto, including without limitation for purposes of exercising its Special Declarant Rights; to conform the Map to the actual location and dimensions of any of the constructed improvements; to establish, vacate and relocate utility easements, access easements and parking spaces; and to establish certain Common Elements as Limited Common Elements. In interpreting any and all provisions of this Declaration, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered in any deed or deed of trust, notwithstanding any minor deviations from the location of such Unit indicated on the Map. Notwithstanding the foregoing, Declarant specifically does not reserve the right to change the overall plan of the Project or to decide not to construct planned Units or improvements to the Common Elements.

**ARTICLE 3
THE ASSOCIATION**

Section 3.01 Authority. The business affairs of 1020 Capitol Street Condominiums, acting through the Board or the Managing Agent, shall be managed by the Association. The Association shall be governed by its Bylaws, as amended from time to time.

Section 3.02 Powers.

(a) The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Project.

(b) The Association, acting through the Board, may assign its future income, including its rights to receive Common Expense Assessments; provided, however, that no assignment of future income may impair or be in derogation of provisions for mandatory reserve accounts.

Section 3.03 Declarant Control. The Declarant shall have all the powers reserved in Section 38-33.3-303 of the Act to appoint and remove officers and members of the Board through the Owner Control Date.

Section 3.04 Membership. All Unit Owners shall automatically be members of the Association, which memberships are appurtenant to the Units and shall automatically pass with fee simple title thereto. Each Unit Owner and Declarant, except as specifically provided otherwise herein, shall automatically be entitled to the benefits and be subject to the burdens relating to such membership. If fee simple title to a Unit is held by more than one person, each such Owner shall be a member of the Association. Memberships in the Association shall be limited to Unit Owners.

Section 3.05 Bylaws and Articles. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may be amplified by provisions of the Articles, Bylaws and Rules and Regulations.

Section 3.06 Board of Directors. The affairs of the Association shall be managed by the Board, which may by resolution delegate any portion of its authority to a Managing Agent except as limited in the Declaration or the Act. There shall be three (3) members of the Board, all of whom shall be Owners; provided, however, until not later than sixty days after conveyance of twenty-five percent of the Units to Owners other than Declarant, there may be one (1) or more members of the Board, and until the Owner Control Date, the members of the Board may, in the Declarant's sole discretion, be appointed by Declarant, its successors or assigns, and need not be Owners, except as specifically provided for hereinafter. Not later than sixty days after conveyance of twenty-five percent of the Units to Owners other than Declarant, there shall be three (3) members of the Board, and at least one member and not less than twenty-five percent of the members of the Board must be elected by Owners other than the Declarant. Not later than sixty days after conveyance of fifty percent of the Units to Owners other than Declarant, not less than thirty-three and one-third percent of the members of the Board must be elected by Owners other than the Declarant. From and after the Owner Control Date, the Owners of each Commercial Unit shall be

entitled to appoint one Director for each Unit, and the Owners of the Residential Units shall be entitled to appoint one Director in accordance with the Bylaws.

Section 3.07 Removal of Board. The Owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant. A Board member appointed by the Declarant may only be removed by a sixty-six and two-thirds percent (66 2/3%) vote of all voting interests and finding of official malfeasance or misconduct related to the Association.

Section 3.08 Transfer of Control. On or before the Owner Control Date, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, including without limitation the following items:

- (a) the original or a certified copy of the recorded Declaration, as amended, the Articles, Bylaws, minute books, other books, records and financial statements, and any Rules and Regulations which may have been promulgated, which shall thereafter be kept current by the Association and made available, both before and after the Owner Control Date, for inspection by Unit Owners and First Mortgagees during normal business hours;
- (b) an accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the period of Declarant Control ends;
- (c) the Association funds or control thereof;
- (d) all of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in the operation and enjoyment of the Common Elements and inventories of these properties;
- (e) a copy of any plans and specifications used in the construction of the improvements in the Project which were completed within two (2) years before, or at any time subsequent to, the recording of this Declaration;
- (f) all insurance policies then in force, in which the Unit Owners, the Association, or its directors and officers are named as insured persons;
- (g) copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Project;
- (h) any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one (1) year prior to the Owner Control Date;
- (i) written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) a roster of Unit Owners and Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(k) employment contracts in which the Association is a contracting party; and

(l) any service contract in which the Association is a contracting party or in which the Association or the Unit Owners have any obligation to pay a fee to the persons performing the services.

Section 3.09 Voting Rights of Owners. Subject to Subsection 6.03, the Owner or Owners of each Unit shall be entitled to the corresponding number of votes set forth on *Exhibit A* attached hereto and incorporated herein by reference. The number of votes is based upon the number of Units in the Project. There shall be a total of 100 votes. Declarant shall be entitled to vote with respect to Units owned by it.

ARTICLE 4 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 4.01 Association as Attorney-in-Fact. The Association is hereby irrevocably appointed attorney-in-fact for the Owners and each of them, to manage, control and deal with the interest of each Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations and to exercise all of its rights hereunder and under the Act; to deal with the Project upon its destruction or obsolescence as hereinafter and under the Act provided; and to grant utility easements through any portion of the Common Elements. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties assigned to it hereunder and under the Act.

Section 4.02 Maintenance of Common Elements. The Association shall provide for the care, operation, management, maintenance, modification, repairing and replacement of the Common Elements. Without limiting the generality of the foregoing, said obligations shall include the keeping of the Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from the Common Elements which might impair access to the Project or the Units; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements.

Included in the maintenance of the Common Elements, the Association shall provide exterior maintenance upon the Buildings and Limited Common Elements with respect to each Unit, including, but not limited to, paint, finishing, maintaining, repair, replacement and care of roofs, gutters, downspouts; exterior building, building foundations; and other exterior improvements. Such exterior maintenance shall not include glass surfaces, which shall be the responsibility of each Owner. The Association shall provide such services in such a manner so as to ensure that the Project will at all times present an attractive and well maintained appearance. The nature and

frequency with which such services shall be provided shall be at the sole discretion of the Association.

In the event that the need for maintenance or repair of any of the Common Elements is caused through the willful or negligent acts of a Unit Owner or such Owner's Guests, the cost of such maintenance or repair shall be added to and become a part of the Common Expense Assessment to which such Unit and/or Unit Owner is subject.

Section 4.03 Construction of New Common Elements. Subject to the other provisions of this Declaration, the Association shall have the right and power to construct new additions to the Common Elements. Ownership of and the cost of constructing and maintaining any such additions shall be apportioned among all Owners according to their respective Percentage Interests. The construction of new additions to the Common Elements shall not modify or alter the Percentage Interests of the Owners nor their voting rights in the Association.

Section 4.04 Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further the interests of the Owners. Such activities, functions or services may include the providing of security services, garbage and trash collection services, firewood and janitorial service.

Section 4.05 Labor and Services. The Association:

(a) may engage and pay for the services of a Managing Agent to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are employed directly by the Association or by any person with whom or which it contracts;

(b) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Association and/or Project or the enforcement of this Declaration; and

(c) may arrange with others to furnish lighting, heating, water, trash collection, sewer service, cable, telephone and other utilities and common services.

The term of any agreement for the professional management of the Project or any contract providing for services of the Declarant, may not exceed one (1) year and shall provide for termination by either party, with or without cause and without payment of any penalty or termination fee, on no more than ninety (90) days written notice.

Section 4.06 Property of Association. The Association may pay for, acquire and hold or lease real property and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the Rules and Regulations of the Association, each Owner and each Owner's Guests may use such property. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall

be distributed as provided in the Articles and the Act. The conveyance of a Unit shall convey to the grantee thereof ownership of the grantor's beneficial interest in such property without any reference thereto.

Section 4.07 Power to Grant Interests in Common Elements. The Association shall have the power to lease and grant easements, licenses or permits over any portion of the Common Elements or any Unit owned by the Association for utilities and other purposes reasonably necessary or useful for the general health, safety and welfare and proper maintenance or operation of the Project.

Section 4.08 Notice to Eligible Mortgagees. Any First Mortgagee may register with the Association by transmitting to the Association, by registered or certified U.S. Mail, return receipt requested, postage prepaid, a notice setting forth its name and mailing address, the Identifying Number of the Unit encumbered by its Mortgage and the name of its mortgagor, and enclosing a copy of its Mortgage or deed of trust. The Association, upon written request, shall transmit to each Eligible Mortgagee:

- (a) notice of any change in the Managing Agent at least ten (10) days before the effective date thereof;
- (b) a copy of the Association's financial statements, as they become available;
- (c) notice of all meetings of the members of the Association which any Mortgagees may attend in person or by representative;
- (d) notice of any condemnation proceeding or casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage;
- (e) notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) notice of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees; and
- (g) notice that Common Expense Assessment installments pertaining to the Unit encumbered by such Mortgage are delinquent by ninety (90) days or more, where such is the case.

Section 4.09 Suspension of Voting Rights. The Board may suspend any Owner's voting rights in the Association during any period in which such Owner fails to comply with the Association's Rules and Regulations or with any other obligations of such Owner under this Declaration or the Bylaws, including without limitation to pay Common Expense Assessments. Such voting rights shall not be suspended, however, if any Owner and the Association dispute the amount of any sum owed by such Owner to the Association, provided the Owner timely pays to the Association such sum as the Owner, in good faith, believes is owed.

Section 4.10 Implied Rights. The Association shall have and may exercise any right, power or privilege given to it expressly by this Declaration and the Articles or Bylaws or reasonably to be implied by law under the Act or otherwise, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

ARTICLE 5 COMMON EXPENSE ASSESSMENTS

Section 5.01 Lien and Personal Obligation. Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association, annual and/or special Common Expense Assessments to meet the Common Expenses, reserves and insurance costs of the Association, as provided for by the Board ("Common Expense Assessment"). The Common Expense Liability shall be the Percentage Interest of the Unit Owner times the amount of Common Expense, as such Common Expense is determined by the Association. Such Common Expense Assessments, including, but not limited to, fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner at the time when the Common Expense Assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed.

The Common Expense Assessments of the Association shall be a continuing lien upon the Unit against which each such Common Expense Assessment is made ("Assessment Lien"). An Assessment Lien hereunder is prior to all other liens and encumbrances on a Unit except as provided in the Act and as otherwise provided by law. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Association's Assessment Lien except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's Assessment Lien to the extent provided in the Act. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Common Expense Assessments thereafter becoming due, nor from the lien thereof.

(a) **Enforcement of Lien.** To further evidence the Assessment Lien, the Association may prepare a written notice thereof setting forth the present amount of delinquent Common Expense Assessments and other sums owed by an Owner, the name of the delinquent Owner and a designation of the Unit. Such a notice shall be signed by an officer or the attorney of the Association or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of County of Eagle, Colorado. The Assessment Lien may be enforced by foreclosure of the defaulting Owner's Unit in like manner as a mortgage on real estate. In any such foreclosure the delinquent Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for recording the notice of lien and all reasonable attorneys' fees, costs and expenses of the Association with respect thereto. Such Owner shall also be required to pay the Association the

monthly Common Expense Assessment installments for the Unit during the period of foreclosure. The Association shall have the power to bid on the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(b) release of lien. Any recorded notice of lien may be released by recording a Release of Lien executed by an officer or the attorney of the Association or by the Managing Agent.

(c) Payment by Mortgagee. Any Mortgagee of a Unit may pay, but shall not be required to pay, any unpaid Common Expense Assessment installment pertaining to such Unit and, upon such payment, shall have a lien on such Unit for the amounts so paid of the same rank as the lien of its Mortgage.

Section 5.02 Apportionment of Common Expenses. Except as otherwise provided in Section 5.15 and the Act, Common Expenses shall be assessed against all Units in accordance with their respective Percentage Interest in the undivided Common Elements as set forth on *Exhibit A* attached hereto.

Section 5.03 Purpose of Common Expense Assessments. The Common Expense Assessments levied by the Association through its Board shall be used for the purposes of promoting the health, safety, and welfare of the residents; for the maintenance, repair and replacement of the Units and Common Elements; and the administration and management of the Association in the informed good faith discretion of the Board.

Section 5.04 Commencement of Common Expense Assessments. The Common Expense Assessment shall be made on an annual basis against all Units and shall be based upon the Associations advance budget of the capital requirements to provide for the administration and performance of its duties during such Common Expense Assessment year. Monthly installments of Common Expense Assessments shall begin on the first day of the month following the conveyance of the first Unit to a Unit Owner other than the Declarant.

The budget shall be adopted no less frequently than annually by the Association in accordance with this Section 5.04. Within ninety days after adoption of any proposed budget for the Association, the 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 the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. Unless the Declaration requires otherwise, the budget proposed by the Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners.

Section 5.05 Effect of Non-Payment of Assessments; Collection Action. Any Common Expense Assessment, charge or fee provided for in this Declaration or the Act, or any monthly or

other installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate of eighteen percent (18%) per year, compounded annually, or at such other rate to be determined by the Board, and the Association may assess a late charge in addition thereto. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Common Expense Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its Assessment Lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Common Expense Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's Assessment Lien therefor. Any such delinquent Owner shall pay the reasonable attorneys' fees, costs and expenses of the Association incurred with respect to any such action, as well as costs and expenses of collection, including reasonable attorneys' fees, costs and expenses with respect thereto.

Section 5.06 Working Capital Fund. The Association or Declarant shall require the first Owner of each Unit after the Declarant to make a non-refundable payment to the Association in an amount equal to one-sixth (1/6) of the annual Common Expense Assessment against the Unit in effect at the closing thereof, which sum shall be held and used by the Association in and as a Working Capital Fund as a reserve to meet unforeseen expenditures or to purchase any additional equipment or services. Said Working Capital Fund shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit, as aforesaid and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner or the Declarant from making regular payments of Common Expense Assessments as the same become due. Upon the transfer of a Unit, an Owner or the Declarant shall be entitled to a credit from its transferee for the amount of its payment into the aforesaid Working Capital Fund. The Association need not hold Working Capital Fund in a separate account and such Fund may be commingled with other funds of the Association. No portion of the Working Capital Fund may be utilized by Declarant to defray any of Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits at any time prior to the Owner Control Date.

Section 5.07 Replacement Reserve Fund. The Association's annual budget shall provide for the maintaining of a reserve fund for the replacement of improvements to the Common Elements that it is obligated to maintain, which reserve fund shall be maintained out of regular Common Expense Assessments; provided, however, that assessments for such replacement reserve fund shall not be levied against Units owned by the Declarant until the Owner Control Date.

Section 5.08 Special Common Expense Assessments. The Board shall have the power at any time to levy and impose against all of the Owners and Units, special common expense assessments for such purpose or purposes, in accordance with this Declaration, the Articles or Bylaws, as the Board deems necessary to maintain the Project as a "first-class" property. Special common expense assessments shall be adopted and approved in accordance Section 5.04.

Section 5.09 Exemptions. No Unit owned by Declarant shall be subject to any Common Expense Assessment until such time as a certificate of occupancy for such Unit is issued by the appropriate governmental authority, at which time such Unit shall become subject to any Common

Expense Assessments otherwise applicable thereto. No Owner may exempt itself from liability for any Common Expense Assessment installment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit

Section 5.10 Other Sums Due the Association. Any sums owed by an Owner to the Association under or pursuant to any provision of this Declaration, the Articles, the Bylaws, the Rules and Regulations or the Act, shall be deemed to be a matured Common Expense Assessment against such Owner and an Assessment Lien against such Unit and the Association shall have all corresponding rights and remedies with respect to the collection thereof, as provided in this Article and this Declaration, the Bylaws or the Act.

Section 5.11 Homestead Waiver. By acceptance of a deed or other instrument of conveyance of a Unit, each Owner is deemed to agree and acknowledge that its Unit is not subject to the homestead exemption, and that any Assessment Lien created under this Declaration shall be superior to the homestead exemption provided by Section 38-41-201, C.R.S., as amended, if and to the extent it may exist and apply, and each Owner hereby agrees that the recording of the deed or other instrument conveying to him any Unit shall effectuate the foregoing.

Section 5.12 Statement of Account. Upon payment of a reasonable fee and prior written request from any Owner, from any holder of a Security Interest in a Unit, or a prospective purchaser under a valid contract for the sale of a Unit, delivered personally and receipted for or sent by certified mail, first-class postage prepaid, return receipt requested, to the Association, the Association shall within fourteen (14) calendar days after receipt of the request issue a written statement setting forth the amount of the unpaid Common Expense Assessments, if any, with respect to the subject Unit, the amount of the current Common Expense and/or Special Common Expense Assessment installment(s), the date such Common Expense Assessment installment(s) becomes due, the amount of the balance of such Owner's Working Capital Reserve Account or other reserve on deposit with the Association and any credit for advance payments or prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. If no statement is furnished to the Owner or holder of a Security Interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.

Section 5.13 No Waiver. The omission or failure to fix any Common Expense Assessment or deliver or mail any required statement for any period shall not be deemed a waiver, modification, or release of the Owners from their Common Expense Assessment payment obligations.

Section 5.14 Penalty Assessments. In addition to the Common Expense Assessments authorized by this Article, the Association may levy penalty assessments which may include penalties or fines imposed against individual Owners and their Units for violations of the provisions of this Declaration or the Articles, Bylaws or Rules and Regulations of the Association, in such reasonable amounts as may be determined by the Board. Any such penalty assessments will be

levied only after compliance with notice and hearing procedures properly adopted by the Board and set out in the Bylaws, Rules and Regulations, or otherwise. Any penalty assessment not paid within ten (10) days of the date on which it is due will bear interest at eighteen percent (18%) per year, compounded annually, commencing on the date of the penalty assessment, and until all accrued interest is paid in full. All penalty assessments shall be enforced and collected and shall constitute an Assessment Lien in the same manner as Common Expense Assessments.

Section 5.15 Specific Common Expense Allocation. Common Expenses shall be assessed in accordance with Section 5.02 except for:

(a) any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be equally assessed against that Unit or to those Units to which that Limited Common Element is assigned;

(b) any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed equally, but exclusively against the Units benefited;

(c) the costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage if and to the extent such utilities are not separately metered to the Units;

(d) any Common Expense, including the cost of utilities, that are separately metered or assessed to the Units by third parties or pursuant to service agreements with third parties shall be assessed against the Units so metered;

(e) any Common Expense caused by the misconduct of any Owner(s), which may be assessed exclusively or on such other equitable basis as the Board shall determine against such Owner(s); and

(f) any expense, charge or fee which is charged equally to each and every Unit regardless of size may be assessed equally against all Units.

Section 5.16 Limitation. The Association shall make no capital expenditures for extraordinary additions, alterations or improvements of or to the Common Elements in excess of two-percent (2%) of the insurable replacement cost of the Project in any one fiscal year, without prior approval by the Owners having a sixty-six and two-thirds percent (66 2/3%) of the voting interests of all Units, except in the event of an emergency. Said limitation shall not apply to any expenditures made by the Association for ordinary maintenance, repair or replacement of the Common Elements, nor repair or reconstruction thereof in the event of damage, destruction or condemnation.

Section 5.17 Interest. Any sum owed by an Owner to the Association which is not paid within ten (10) days after the due date thereof shall bear interest from and after the due date at the rate of eighteen percent (18%) per year, compounded annually.

ARTICLE 6 UNITS

Section 6.01 Division Into Units. The Project is hereby divided into four (4) Units, two (2) of which are Residential Units and two (2) of which are Commercial Units.

Section 6.02 Title to a Unit shall be held in fee simple and may be held and owned by more than one person as joint tenants or as tenants in common or in any other relationship recognized under the laws of the State of Colorado.

Section 6.03 Right to Combine Units. Any Owner may physically combine the area or space of one Residential Unit with the area or space of the other Residential Unit, all of which Units are owned by such Owner, or the area or space of one Commercial Unit with the area or space of the adjoining Residential Unit, all of which Units are owned by such Owner, pursuant to and accordance with Section 38-33.3-213 of the Act, and with the written consent of any First Mortgagee having an interest in said Units, and as permitted and in compliance with any applicable governmental regulations. For the duration of any such combination, any walls, floors or other structural separations between the Units so combined or any space which would be occupied by such structural separations but for the combination of such Units, shall be deemed to be Limited Common Elements, provided, however, that such walls, floors or other structural separations of such space shall automatically revert to their original status if the combined Units thereafter become subject to separate ownership. Upon any combination of Units as provided for herein and for the duration thereof, the Owner of the combined Units shall be entitled to cast all of the votes assigned to each of the combined Units. Such Owner shall be personally obligated for each of the separate Common Expense Assessment obligations of each of such combined Units.

Section 6.04 Separate Taxation. Each Unit shall be deemed to be a separate parcel of real property and shall be subject to separate assessment and taxation by each taxing jurisdiction to which it is subject, for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Building, the Property nor the Common Elements shall be deemed to be an independent parcel. The lien for taxes assessed to any Unit shall be confined to that Unit and no forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit or the Common Elements. In the event such taxes or assessments for any year are not separately assessed to each Owner but are assessed to the Project as a whole, each Owner shall pay to the Association the portion thereof equal to its Percentage Interest thereof.

Section 6.05 Right to Mortgage. Any Owner shall have the right from time to time to encumber its Unit by a Mortgage and may create Mortgages junior to the lien of a First Mortgage on his Unit; provided, however, that (i) any such junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien(s) for Common Expense Assessments and other obligations created by this Declaration, the Articles and the Bylaws and (ii) that the Mortgagee under any such junior Mortgage shall release, for the purpose of restoration of any improvements upon the Project, all of its right, title and interest in and to the proceeds of any insurance policies obtained by the Association. Such release shall be furnished

forthwith by a junior Mortgagee upon written request of the Association and if not so furnished, the same may be executed by the Association, as attorney-in-fact for such junior Mortgagees.

(a) Protection of Mortgagee. No violation, breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage, taken in good faith and for value; nor shall such violation, breach, failure or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such First Mortgage or result in any liability, personal or otherwise, of any First Mortgagee subject to the priorities of Section 38-33.3-316 of the Act. Any purchaser at foreclosure under a First Mortgage shall, however, take title subject to this Declaration; provided, however, violations, breaches of or failures to comply with any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed the breaches or violations hereof or failures to comply herewith by such purchaser, its heirs, personal representatives, successors or assigns.

(b) Consent of Eligible Mortgagees. Any Eligible Mortgagee who fails to submit a response to any written request for its consent or approval within thirty (30) days after receipt thereof by registered or certified U.S. Mail, return receipt requested, shall be conclusively deemed to have consented to and approved such matter.

Section 6.06 Subdivision of Commercial Units.

(a) A Commercial Unit may be subdivided into two or more Commercial Units. Subject to the provisions of this Declaration and other provisions of the Town of Eagle's land use regulations, and pursuant to the procedures described in this SECTION, a Unit Owner may apply to the Association to subdivide a Commercial Unit. A Residential Unit may not be so subdivided.

(b) In order to subdivide a Commercial Unit, the Unit Owner of such Unit, as the applicant, must submit an application to the Board, which application shall be executed by such Owner and shall include:

(1) Evidence that the applicant of the proposed subdivision shall have complied with all building codes, fire codes, zoning codes, planned unit development requirements, master plans, and other applicable ordinances or resolutions adopted and enforced by the local governing body, including without limitation the Town of Eagle, and that the proposed subdivision does not violate the terms of any document evidencing a security interest encumbering the unit;

(2) The proposed reallocation of interests, if any;

(3) The proposed form for amendments to the Declaration, including the plats or maps, as may be necessary to show the units which are created by the subdivision and their dimensions, and identifying numbers;

(4) A deposit against attorney fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and

(5) Such other information as may be reasonably requested by the Board.

(c) No subdivision of such Units shall be effected without the necessary amendments to the Declaration, plats or maps, executed and recorded pursuant to subsections 38-33.3-217(3) and (5) of the Act.

(d) All costs and attorney fees incurred by the Association as a result of an application shall be the sole obligation of the Applicant.

ARTICLE 7 DESCRIPTION OF UNITS

Section 7.01 Prior to Recording of Declaration and Map. Every contract for the sale of a Unit entered into prior to the recording of the Map and this Declaration may legally describe a Unit by its Identifying Number, followed by the words "1020 Capitol Street Condominiums," with further reference to the Map thereof and this Declaration to be recorded. Upon recordation of the Map and this Declaration, such description shall be conclusively presumed to relate to the Units therein described.

Section 7.02 After Recording of Declaration and Map. After the Declaration and Map have been filed for record in the real estate records of the County of Eagle, State of Colorado, every instrument affecting title to a Unit may describe that Unit by its Identifying Number, in substantially the following form:

Unit _____, 1020 Capitol Street Condominiums, as defined in and according to the Declaration of Covenants, Conditions and Restrictions for 1020 Capitol Street Condominiums, recorded in the real estate records for the Clerk and Recorder for the County of Eagle, Colorado, on _____, 200__, at Reception No. _____, and the Final Plat and Condominium Map therefore recorded in the real estate records of the Clerk and Recorder for the County of Eagle, Colorado, on _____, 200__, at Reception No. _____.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect title to a Unit. Each such description shall be construed to include a nonexclusive easement for ingress and egress throughout and for the use of the Common Elements, the right to the exclusive use of the appurtenant Limited Common Elements and the other easements and rights appurtenant to such Unit.

Section 7.03 Supplements and Amendments. This reference to the Map or the Declaration in any instrument shall be deemed to include any supplement or amendment to either, without specific reference thereto.

Section 7.04 No Partition. The Common Elements shall be owned in common by all of the Owners and no Owner or any other person shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance of a Unit, each Owner shall be deemed to specifically waive any right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements and this Section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Association, and hereby agrees to reimburse the Association for the Association's costs, expenses and reasonable attorneys fees in defending any such action. Notwithstanding the foregoing, any Co-Owner of a Unit may sue for partition among the Co-Owners of such Unit, provided such partition shall take the form of a sale of the entire Unit and a subsequent division of the proceeds of the sale among such Co-Owners. Partition in kind shall not be allowed and each Owner hereby expressly waives any and all rights of and to partition in kind.

ARTICLE 8 INTEREST IN COMMON ELEMENTS

Section 8.01 Percentage Interest. The Percentage Interest of the Owners in the undivided Common Elements appurtenant to each Unit is a percentage of the whole based upon each Unit's approximate total respective square footage of floor area of the Building. The Percentage Interest in the Common Elements appurtenant to each Unit and the respective Owners thereof is set forth in *Exhibit A* attached hereto and made a part hereof subject to amendment as provided herein. Each Unit conveyed to an Owner by a separate deed shall be deemed to be a separate Unit for any and all purposes of this Declaration. The square footage set forth on *Exhibit A* are approximate and are for purposes of assessment only.

Section 8.02 Inseparability of a Unit. An Owner's Percentage Interest in the undivided Common Elements shall not be separate from the Unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Unit, even though such interest is not expressly mentioned or described in the instrument of conveyance. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

Section 8.03 Right of Use. Each Owner may use the Common Elements and its Unit's appurtenant Limited Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Association may from time to time adopt Rules and Regulations governing the use of the Common Elements. Such Rules and Regulations shall be uniform and nondiscriminatory and further the purposes of this Declaration. Each Owner, by the acceptance of a deed or other instrument of conveyance of a Unit, shall be conclusively deemed to agree to be bound by all such Rules and Regulations.

ARTICLE 9 USE OF UNITS

Section 9.01 Occupancy of Units. Each Owner shall be entitled to the exclusive ownership and possession of his Unit in accordance with all applicable governmental ordinances, rules and regulations, provided, however, each Unit shall be occupied and used only as and for those uses authorized and permitted by governmental ordinances, rules and regulations and zoning requirements in effect on the date of recordation hereof, and as may be amended from time to time.

Section 9.02 Possession and Use of Residential Units. Each Residential Unit and the appurtenant Limited Common Elements shall be used and occupied for residential purposes in conformity with all applicable government laws and regulations, including zoning regulations, except as otherwise provided below. No Residential Unit shall be used for commercial purposes, except that home operated businesses are permitted, so long as such businesses (i) are allowed by applicable government laws and regulations, including zoning regulations; (ii) are not apparent or detectable by sight, sound, or smell from the exterior of the Unit, (iii) do not increase traffic within the Project; and (iv) do not increase the insurance obligation or premium of the Association. No Residential Unit shall be converted to a Commercial Unit.

Section 9.03 Possession and Use of Commercial Units. Each Commercial Unit may be used only for and as a shop, store, restaurant, café, bar, office, or for any other commercial use and purposes which are allowed under and in accordance with applicable government laws and regulations, including zoning regulations, and reasonable rules and regulations of the Association. The reasonable noise and odors derived from any permitted use is permitted.

Section 9.04 Leasing of Units. The Owners may lease or rent one or more of their Units for any purpose or use permitted under this Declaration subject to the provisions of Section 13.08.

Section 9.05 Declarant's Use. Declarant or its nominee or agents may use any Unit owned by Declarant as a construction facility/office, a sales model or as a sales office.

Section 9.06 Association Ownership. The Association shall have the right, but not the obligation, to purchase, own or lease any Unit as a residence or office for a manager, building superintendent or engineer, and the Association may also maintain offices within the Common Elements.

ARTICLE 10 EASEMENTS

Section 10.01 Association Access and Use Easement. The Association shall have a non-exclusive right and easement to make such use of and to enter into or upon the Common Elements, the Limited Common Elements and the Units as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration. Some of the Common Elements are or may be located within a Unit or may be

conveniently accessible only through a Unit. The Association shall have an easement for access through each Unit and to all Common Elements, from time to time, during such reasonable hours as may be necessary, for the maintenance, repair or replacement of any of the Common Elements located therein or accessible there through. Non-emergency repairs shall be made only during regular business hours after at least twenty-four (24) hours notice to the occupants of the Unit wherein such repairs are to be made or access required, unless such occupants have no objection to earlier entry. In emergencies, the occupants of an affected Unit shall be given such notice as is reasonably possible. The cost of repairing damage to any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association, shall be a Common Expense. No diminution or abatement of any Common Expense Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements, or from action taken to comply with any law, ordinance or order of any governmental authority. The damaged improvements shall be restored to substantially the same condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall indemnify and reimburse the Association for the costs and expenses of repairing such damage.

Section 10.02 Owner's Access, Support and Utility Easements. Each Owner shall have a non-exclusive easement for access to his Unit from the streets adjacent to the Project and the driveways in the Project, over and on the halls, corridors, stairs, walks, bridges, and exterior access and other easements which are part of the Common Elements. Each Owner shall have a non-exclusive easement in, on and over the Common Elements, including the perimeter and bearing walls of or within each and every Unit and the Common Elements within the Units of other Owners for subjacent and lateral support of its Unit and other Common Elements; for water, sewer, gas, electricity, internet, telephone and television service.

Section 10.03 General Utility Easements. The utility easements over and across the Units and the Property shall be those easements as may be established pursuant to the provisions of this Declaration, the Map, the Act and/or those of record. There is hereby created a blanket easement upon, across, over and under the Property and the Units for installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, electricity and cable television facilities. By virtue of this easement it shall be expressly permissible for the utility companies or governmental entities supplying such utility service to erect and maintain the necessary equipment on the Property and to affix, repair and maintain water and sewer pipes, gas, electric and telephone wires, circuits, conduits and meters. In addition, the Association, the Board, its agents, Managing Agent and employees shall have a non-exclusive easement to traverse, cross and utilize any portion of the easements created or recognized in this Declaration to perform any of its functions as described in this Declaration. All such previously existing easements are hereby reaffirmed and ratified.

Section 10.04 Easements for Encroachments. If any part of the Common Elements (including without limitation, pipes, conduits, wires, ducts, vents, flues and the like for transmission of water, air, smoke, electricity, sewage, natural gas and telephone and television signals) shall encroach upon or be located within a Unit, an easement therefor and for the maintenance thereof

shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, an easement for such encroachment and for the maintenance thereof shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or on any Unit, for purposes of marketability of title or otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction or remodeling of the Buildings, by error in the Map, by settling, rising or shifting of the earth or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 10.05 Easement for Public Safety and Municipal Services.

(a) A non-exclusive easement for ingress and egress is hereby granted to all public police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, and to any private security service, now or hereafter servicing the Project, to enter upon all Common Elements and Units located in the Project and upon the Property in the legal performance of their official duties.

(b) An easement is hereby granted to the Association to enter upon, across, over, in and under any portion of a Unit or the Common Elements for the purpose of improving, changing, correcting or otherwise modifying the drainage of surface water from the Property.

Section 10.06 Easements Deemed Appurtenant. The easements, uses and rights thereto as provided for in this Declaration shall be deemed to be appurtenant to all of the Units and all instruments of conveyance and other instruments affecting title to a Unit shall be deemed to grant and reserve said easements, uses and rights without specific reference thereto. The Property shall be subject to any easements of record affecting the Property.

**ARTICLE 11
ALTERATION OF UNITS; MAINTENANCE**

Section 11.01 Owners' Maintenance Responsibilities. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own and shall have the right and obligation to maintain, repair, alter and remodel the finished surfaces of the interior walls, ceilings and floors, the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, carpeting and other flooring, but not including the sub-flooring) within his Unit and the interior materials of exterior doors and windows. No Owner shall, however, make any changes or alterations of any type or kind to any Common Elements. An Owner shall not be deemed to own utility lines, pipes, wires, conduits or systems within his Unit which serve any other Unit, except as a tenant in common with the other Owners. All Owners shall maintain and keep in good repair and in a clean, safe, attractive and sightly condition, the interior of their Units, including the fixtures, doors and windows thereof and the improvements affixed thereto and such other items and areas as may be required by the Bylaws and Rules and Regulations. All fixtures, appliances and equipment installed within a Unit shall be maintained and kept in good repair by the Owner thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this Section, the Association may fulfill the same and charge such Owner therefor, which payment shall be enforced

in the manner of Common Expense Assessments pursuant to Article 5. Any expense incurred by an Owner or by the Association in the performance of duties under this Section shall be borne solely by such Owner.

Section 11.02 Prohibited Alterations.

(a) No Owner shall undertake any act, or fail to do an act, nor any work which would violate any zoning or building ordinance, or which would impair the structural soundness or safety of the Buildings, any Unit or Common Element, reduce the value of the Project or impair any easement or hereditament which may affect the Common Elements or any other Unit, nor shall any Owner without the approval of the Association enclose, by means of screening or otherwise, any balcony, yard, or deck which is accessible from, associated with and which adjoins a Unit.

(b) No Owner, without the prior written approval of the Association, shall make alterations to the exterior portions of its Unit or on the roof, or to the Buildings or landscaping, nor shall an Owner remove any additions, improvements or fixtures from the Buildings.

(c) No Owner shall be permitted, unless prior written consent is obtained from the Association, to alter or renovate the interior of any Building or Unit if such alteration or renovation would weaken or impair the structural strength of the Building or Unit, or lessen the value of said Building or Unit. As used herein "alterations" shall include, but not be limited to, alterations to structural, heating and air conditioning, mechanical, electrical, and plumbing systems. Any unauthorized alteration may be restrained by injunction.

Section 11.03 Permitted Alterations. In addition to and in conformance with the foregoing Sections, an Owner may alter, remove or add partitions which are not load-bearing and which are located entirely within the walls, ceilings and floors forming and constituting the perimeter boundaries of its Unit, without the prior written consent of the Association; provided, however, that the same would not disrupt or impair any utility service to other Units or any Common Elements.

All such alterations shall conform with and meet applicable governmental building and safety codes, and it is the responsibility of the Unit Owner to assure construction conformance with such codes.

Section 11.04 Mechanic's Lien Restriction. After completion of construction of the Unit improvements by Declarant, no labor performed or materials furnished and incorporated in a common wall with the consent of or at the request of the Owner thereof or his agent, or his contractor or subcontractor, shall be the basis for the filing of a lien against the abutting Unit sharing such common wall where the Owner of such abutting Unit has not expressly consented to or requested the same. Each Owner sharing a common wall shall indemnify and hold harmless each of the Owners of the abutting Unit sharing such common wall from and against all liability arising from the claim of any lien against such abutting Unit for construction performed, or for labor, materials, services or products incorporated in the Owner's Unit. The provisions herein contained are subject to the rights of the Association as set forth in this Declaration.

Notwithstanding the foregoing, any First Mortgagee of a Unit who shall become the Owner of such Unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any Owners of the abutting Units against liability for claims arising prior to the date such First Mortgagee becomes an Owner, but shall be under such obligation for any claims thereafter. At the written request of any Owner the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and obtaining discharge of the lien. Such collection shall be made by Common Expense Assessment pursuant to Article 5.

ARTICLE 12 INSURANCE

Section 12.01 Association. The Association shall obtain and maintain at all times policies of insurance written by insurance companies licensed to do business in Colorado with an acceptable rating, with premiums being paid as a Common Expense. Insurance coverage, consistent with local, state and federal insurance laws, shall be provided for as follows:

(a) **Hazard Insurance.** A "master" or "blanket" type of insurance policy insuring against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement or a policy that includes the "broad form" covered causes of loss. Said insurance shall insure the entire Project and all Common Elements, including fixtures, building service equipment, and common personal property and supplies belonging to the Association. All such insurance coverage shall cover one hundred percent (100%) of the insurable replacement cost of the Project Improvements, including the individual Units as originally delivered by the Declarant to the first Owner after the Declarant. Coverage does not need to include improvements, upgrades and betterments installed by Owners, real estate, foundations, excavations, or other items usually excluded from insurance coverage. Such policies shall show the Association as the named insured, with the "loss payable" clause showing the Association as a trustee for each Unit Owner and each First Mortgagee, and shall contain a standard mortgage clause in favor of each First Mortgagee, with any loss payable thereunder to be paid to the Association for the use and benefit of such First Mortgagees, as their interests may appear. In addition, the following may be included in any such insurance policy:

- (1) Inflation Guard Endorsement, when it can be obtained;
- (2) Building Ordinance or Law Endorsement, providing for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction;
- (3) Steam Boiler and Machinery Coverage Endorsement, if the Project has central heating or cooling, providing for the insurer's minimum liability per accident to at least equal the lesser of \$2 million or the insurable value of the Building(s) housing the

boiler or machinery; or, in lieu thereof, the Association may purchase separate stand-alone boiler and machinery coverage;

(4) Provision for recognition of any insurance trust agreement;

(5) Waiver of the right of subrogation against Unit Owners;

(6) Provision that insurance will not be prejudiced by any acts or omissions of individual Unit Owners that are not under the control of the Association;

(7) Provision that the policy will be primary, even if a Unit Owner has other insurance that covers the same loss;

(8) Provision requiring the insurer to notify the Association and each First Mortgagee in writing at least thirty (30) days before it cancels or substantially changes its coverage; and

(9) Unless a higher maximum amount is required by Colorado law, the maximum deductible amount for policies covering the Common Elements shall be the lesser of \$10,000.00 or one percent (1%) of the policy face amount; provided, however, for losses related to individual Units covered by a blanket policy for the Project, the deductible related to the individual Unit shall be the higher of \$1,000.00 or one percent (1%) of the replacement cost of the Unit. Funds to cover these deductible amounts shall be included in the Working Capital Fund maintained by the Association.

(b) Flood Insurance. If the Project is located in an area identified by the Secretary of Housing and Urban Development as a Special Flood Hazard Area and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a blanket policy of flood insurance on the Project, including any machinery or equipment which is part of the Building in an amount equal to the lesser of the maximum coverage available under the appropriate National Flood Insurance Administration Program, or the full insurable value of the property so insured.

(c) Liability Insurance. A commercial general liability insurance policy for the entire Project, including all Common Elements, public ways, and any other areas under the Association's supervision, providing coverage for bodily injury and property damage that results from the operation, maintenance or use of the Project's Common Elements, with coverage in the minimum amount of \$1 million for bodily injury and property damage for any single occurrence. If such policy does not include "severability of interest" in its terms, there shall be a specific endorsement to preclude the insurer's denial of a Unit Owner's claim because of negligent acts of the Association or of other Unit Owners. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and board member. The policy shall provide for at least thirty (30) days written notice to the Association and each First Mortgagee before the insurer can cancel or substantially modify it.

(d) Worker's Compensation. If the Association has employees, worker's compensation and employer's liability insurance and all other similar insurance with respect to such employees of the Association, in at least the minimum amounts and on the terms now or hereafter required by law.

(e) Other Risks. Such other risks of a similar or dissimilar nature as the Board shall deem appropriate with respect to the Project, including, but not limited to, fidelity insurance and insurance for plate or other glass.

(f) Company Rating. For purposes of this Section the term "acceptable rating" shall mean a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports - International Edition;; an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings; a "BBBq" qualified solvency rating or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review; or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service.

Section 12.02 Insurance Appraisals. Prior to obtaining any policy of casualty insurance or renewal thereof after the Owner Control Date, the Board may obtain an annual appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall estimate the full replacement cost of the entire Project for the purpose of determining the amount of the insurance to be carried. The limits of such casualty insurance shall be adjusted annually in accordance with currently determined full replacement cost.

Section 12.03 Owners' Insurance. Owners may and are encouraged to carry any insurance for their benefit and at their expense, for improvements, upgrades and betterments installed by, and personal property of Owners, provided that the insurance of the Association shall not be affected or diminished by reason of any such additional insurance carried by Owners.

Section 12.04 No Impairment of Insurance. No Person shall do anything or cause anything to be kept in or on the Project which might result in an increase in the premiums for or cause the cancellation of insurance covering the Project. If such an increase in the premium for insurance results from the use, occupancy or ownership of one or more but less than all Units, the Owner of such Units shall pay and be indebted to the Association for the amount of such increase, and such amount shall be assessed against such Unit(s).

ARTICLE 13 RESTRICTIONS

Section 13.01 Laws. No Person shall do anything or keep anything in or on the Project or use or occupy any Unit in such a way which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body.

Section 13.02 Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the Project nor shall anything be done or placed on or in any part of the Project or any Unit or use or occupy any Unit in such a way which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying. No odor shall be emitted on any part of the Project which is noxious or offensive to others.

Section 13.03 Unsightliness. No unsightliness or waste shall be permitted on or in any part of the Project. No Person shall keep or store anything on or in any of the Common Elements, nor shall any Person hang, erect, affix or place anything upon any of the Common Elements and nothing whatsoever shall be placed on or in windows or doors of Units or in open view upon or within a Common Element which creates an unsightly appearance, in the sole discretion of the Board.

Section 13.04 Animals. Animals, livestock, reptiles or birds may be excluded from the Project or regulated pursuant and subject to all governmental animal ordinances and laws and subject to Rules and Regulations as may be promulgated by the Association in regard thereto, provided however, that in no case may animals be kept on any part of the Project for any commercial purpose. Each Owner shall be responsible for any damage caused by its and its Guest's animals and shall be obligated to clean up after its and its Guest's animals on the Project. No animals shall be allowed to remain tied or chained to any balconies, patios, decks or other parts of the Project and any such animal so tied or chained may be removed by the Association or its agents.

Section 13.05 Signs. With the exception of the Declarant's directional, promotional and advertising signs, no sign or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Association.

Section 13.06 Rules and Regulations. No Person shall violate the Rules and Regulations regularly adopted from time to time by the Association in accordance with its Bylaws, whether relating to the use of Units, the use of the Common Elements or adopted for the purpose of implementing the restrictions of each Section of this Article 13. Each Unit Owner by acceptance of the Deed in conveyance hereby irrevocably designates the Association as its attorney-in-fact with respect to the implementation and interpretation of the Rules and Regulations.

Section 13.07 Owner-Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property, including Common Elements or any Unit, such Owner shall be liable and responsible therefor, except to the extent such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner.

Section 13.08 Leasing of a Unit. A Unit Owner may lease its Unit under the following conditions:

(a) such leases and occupancy shall be in accordance with the occupancy restrictions of Section 9.01;

(b) such leases shall be in writing;

(c) such lease shall provide that the terms thereof and the lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws and Rules and Regulations of the Association and that any failure by the lessee to comply therewith shall constitute a default under such lease; and

(d) within ten (10) days after the execution of such lease, the Owner shall deliver a copy of the same to the Association.

Section 13.09 Parking. All parking serving the Project shall be located on an adjacent lot owned and managed by the Eagle Ranch Commercial Center Association (“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. To the extent any parking is assigned to a particular Unit or category of Units (e.g., Residential Units), such assigned parking shall be at the discretion of the Commercial Center Association, who may reassign or eliminate any such assigned parking.

Section 13.10 Zoning Compliance. Units shall not be used for any purposes contrary to or in violation of any pertinent zoning ordinance.

Section 13.11 Determination of Violation. Any determination as to whether or not a particular activity or condition constitutes a violation of the provisions of any Section of this Article 13 shall be within the sole unrestricted discretion of the Board and shall be final.

Section 13.12 Exterior Windows and Doors. No windows or doors of any Units located in the exterior walls of the Buildings shall be altered in any way or repainted on the exterior by any person without the Board’s prior written approval, nor shall any person cause any window air conditioner or other device or article to protrude outside the sash of any such window, without the prior approval of the Board.

Section 13.13 Disrepair. No Owner shall suffer or permit any portion of its Unit which is required to be maintained by such Owner to fall into disrepair so as to create, in the opinion of the Association, a dangerous, unsafe, unsightly, or unattractive condition. The Association, upon thirty (30) days' prior written notice to such Owner, and after opportunity for a hearing as shall be provided for in the Bylaws, or without notice and hearing in case of emergency, shall have the right, but not the duty, to enter such Owner's Unit and correct such condition, and such Owner shall promptly reimburse the Association for all costs and expenses including reasonable attorneys' fees, incurred by the Association. Such costs shall be a separate assessment and shall create a lien

enforceable in the same manner as provided in this Declaration for liens and for the nonpayment of Common Expense Assessments. In the event any portion of a Unit which is required to be maintained by the Association falls into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Owner of such Unit shall promptly notify the Association of the need for maintenance and repair.

Section 13.14 Notice of Change in Use or Occupancy. Each Owner shall provide prompt written notice to the Association of each and every change in the use, occupancy, tenancy, or ownership of its Unit.

Section 13.15 Hazardous Materials. No Person shall do anything or keep or store anything in or on the Project or the Unit, or use or occupy any Unit in such a way which would violate any governmental law, ordinance or regulation relating to (i) toxic or hazardous materials, substances or waste as those terms are defined by any governmental law, ordinance or regulation, or (ii) public health and safety and the protection of the environment (collectively, "Environmental Laws"). Any storage or use of such hazardous materials anywhere on the Project must comply with all such Environments Laws.

Section 13.16 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 Eagle Ranch Association ("Master Association") and of the Eagle Ranch Commercial Center Association ("Commercial Center Association"), to enforce the covenants and restrictions contained in the Declaration of Covenants, Conditions and Restrictions for Eagle Ranch recorded June 23, 1999 at Reception No. 700815, Eagle County, Colorado, as amended and supplemented from time to time ("Master Declaration") and/or the Declaration for Eagle Ranch Commercial Center recorded November 13, 2000 at Reception No. 743935, Eagle County, Colorado, as amended and supplemented from time to time ("Commercial Center Declaration"), but only as said covenants and restrictions relate to 1020 Capitol Street Condominiums, and to collect regular, special, and default assessments on behalf of the Master Association and/or on behalf of the Commercial Center Association.

This Declaration is intended to supplement the Master Declaration and Commercial Center Declaration as they apply to the Property. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration and the ARTICLES and BYLAWS of the Association, the Association shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration and Commercial Center Declaration. The Association and all committees thereof also shall be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Master Declaration and the Commercial Center Association pursuant to the Commercial Center Declaration. The Association shall take no action in derogation of the rights of, or contrary to the interests of, the Master Association and the Commercial Center Association.

ARTICLE 14
DAMAGE, DESTRUCTION; OBSOLESCENCE

Section 14.01 Association as Attorney-In-Fact. Title to each Unit is hereby declared to be expressly subject to the terms and conditions of this Section, and acceptance by any Owner of a conveyance of a Unit from Declarant or from another Owner shall constitute such Owner's appointment of the Association as its attorney-in-fact as herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, places and steads as attorney-in-fact for the purpose of dealing with the Project upon its damage, destruction, obsolescence, or condemnation as hereinafter provided. As such attorney-in-fact, the Association shall have full and complete authority, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. The terms "reconstruction" and "reconstruct," as used in the following Sections, mean the restoration of damaged improvements to substantially the same condition which existed prior to such damage, with each Unit and the Common Elements having substantially the same vertical boundaries as before. Except as is otherwise herein provided, the proceeds of any casualty insurance payable by reason of damage to or destruction of the Project shall be paid to the Association. Common Expense Assessment installments shall not be abated during any period of reconstruction.

Section 14.02 Repairable Damage. Except as otherwise required by the Act, in the event of damage to or destruction of the Project to the extent of not more than sixty-seven percent (67%) of the total replacement cost thereof, excluding land, due to any insured casualty, the insurance proceeds, if sufficient to reconstruct, shall be applied by the Association, as attorney-in-fact, to effect reconstruction.

Section 14.03 Special Assessment. If insurance proceeds are insufficient to effect reconstruction and if such damage does not exceed sixty-seven percent (67%) of the total replacement cost of the Project, excluding land, the Association shall promptly reconstruct, using such proceeds of insurance, reserve and/or working capital funds and the proceeds of a special assessment to the extent necessary to pay the balance of the cost of reconstruction or to replenish reserve and/or working capital funds so depleted. Such special assessment shall be due and payable thirty (30) days after written notice thereof to the Owners and enforced as a Common Expense Assessment pursuant to Article 5.

Section 14.04 Sale of Project. Except as otherwise required by the Act, if the Project is destroyed or if damage thereto, or condemnation thereof, exceeds sixty-seven percent (67%) of the total replacement cost thereof, excluding land, within ninety (90) days thereafter, any plan adopted for the sale of the Project must be approved by the Owners having sixty-seven percent (67%) or more of the voting interests of all Units, which plan must have the approval of at least fifty-one percent (51%) of the Eligible Mortgagees (based upon one vote for each First Mortgage held); and if a plan for the sale of the Project is so approved the Association shall forthwith record a notice setting forth such fact or facts and, upon the recording of such notice, the entire 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 Map, the Articles and the Bylaws. All insurance and sale

proceeds shall be collected by the Association and shall be apportioned among the Owners on the basis of each Owner's Percentage Interest and placed into separate accounts, each such account representing and identified with a specific Owner and its respective Unit. The total funds of each such account shall be used and disbursed to or on behalf of the Owner, with respect to each Unit, without contribution from one account to another, in the following order:

- (a) in payment of accrued taxes and governmental special assessments;
- (b) in payment of the balance secured by any First Mortgage;
- (c) in payment of unpaid Association Common Expense Assessment installments;
- (d) in payment of junior Mortgages and encumbrances in the order of and to the extent of their priority; and
- (e) the balance remaining, if any, shall be paid to the former Owner of the Unit to which such account pertains.

The provisions contained in this Section shall not prejudice or impair the protection given to any First Mortgagee under a mortgage endorsement.

Section 14.05 Reconstruction of Project. Except as otherwise required by the Act, if the Project is destroyed or damaged to the extent of more than sixty-seven percent (67%) of the total replacement cost thereof, excluding land, and if the Owners having sixty-six percent (66%) or more of voting interests of all Units adopt a written plan for reconstruction, within ninety (90) days thereafter, which plan must have the approval of at least fifty-one percent (51%) of all Eligible Mortgagees (based upon one vote for each First Mortgage held), all of the Owners and Eligible Mortgagees shall be bound by the provisions of such plan. The Association shall have the right and power to use, in accordance with such plan, all proceeds of insurance received as a consequence of such destruction or damage any funds held as reserve funds or working capital funds and/or the proceeds of a special assessment, if necessary, to pay the balance of the cost of reconstruction. Any special assessment made in connection with such plan shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof to the Owners.

Section 14.06 Other Mortgagees; Implied Mortgagee Consent. The consent of any Mortgagee other than Eligible Mortgagees shall not be required as a condition to the implementation of any provision of this Article.

ARTICLE 15 CONDEMNATION

Section 15.01 Consequences of Condemnation. If all or any part of the Project shall be taken by condemnation or under threat thereof, the provisions of this Article shall apply.

Section 15.02 Proceeds. All compensation, damages or other proceeds from any such taking, the sum of which is hereinafter called the "Award", shall be payable to the Association as attorney-in-fact for the Owners and Mortgagees.

Section 15.03 Complete Taking. In the event the entire Project is so taken, condominium ownership pursuant to this Declaration shall terminate as of the date of possession of any part of the Project is taken by the condemning authority and the Award shall be apportioned and disbursed by the Association in the manner prescribed in Section 15.04 of this Declaration, except to the extent any portion of the Award may be specifically allocated to personal property, fixtures and improvements in and upon individual Units placed thereon and therein by the Unit Owners, such allocation shall be appropriately apportioned to such Unit separately.

Section 15.04 Partial Taking. In the event less than the entire Project is so taken, each Owner shall be entitled to a share of the Award determined hereunder. As soon as practicable after receipt of the Award, the Association shall, utilizing reasonable good faith judgment, apportion and disburse the Award among the Owners as follows: (a) the total amount attributable to the taking of or damage to the Common Elements shall be apportioned among the Owners in proportion to their respective Percentage Interests; (b) the total amount attributable to severance damages shall be apportioned among the Owners of the Units which were not taken; (c) the amount attributable to the taking of or damage to a particular Unit and improvements made by the Owner thereof or personal property within such Unit, shall be apportioned to such Owner; and (d) the amount attributable to consequential damages and any other taking or damage shall be apportioned as the Association determines to be equitable in the circumstances. All disbursements of the Award made pursuant to this Section shall be made by checks payable jointly to the Owners and their respective First Mortgagees.

Section 15.05 Reallocation of Percentage Interests. In the event a partial taking results in the taking of an entire Unit, the Owner thereof automatically shall cease to be a member of the Association and such Owner's interest in the Common Elements shall thereupon terminate and the Association, as attorney-in-fact for such Owner, may take such action and execute such documents as are necessary to reflect such termination; provided, however, for purposes of Section 15.04, such Owner shall be deemed to continue to own such Unit. Thereafter, the Association shall promptly reallocate the Percentage Interests according to the principles set forth in Article 8 and shall record a notice of such reallocation in the office of the Clerk and Recorder of the County of Eagle, Colorado, after which the Percentage Interests of the remaining Owners shall be as stated in said notice.

ARTICLE 16 AMENDMENT; TERMINATION

Section 16.01 Material Amendments. Any material provision of this Declaration may be amended or material additional provisions may be added to this Declaration by the recording of a written instrument or instruments specifying the amendment or addition, executed by a duly authorized officer of the Association, as shown by the records in the office of the Clerk and

Recorder of the County of Eagle, Colorado, upon approval by sixty-seven percent (67%) of the voting interests of all Units. A change to any of the provisions governing the following are to be considered as "material," except for changes pursuant to Sections 6.05 and 6.06 or as otherwise permitted in the Declaration:

- (a) voting rights;
- (b) increases in Common Expense Assessments that raise the previously assessed amount by more than twenty-five percent (25%);
- (c) reductions in reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common Elements, or rights to their use;
- (f) redefinition of any Unit boundaries;
- (g) convertibility of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- (i) reduction or relaxation of hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of Units;
- (k) imposition of any restrictions on a Unit Owner's right to sell or transfer its Unit;
- (l) restoration or repair of the Project (after damage or partial condemnation) in a manner other than as specified; or
- (m) any provisions that expressly benefit mortgage holders, insurers or guarantors.

Section 16.02 Termination. This Declaration and condominium ownership of the Project may be terminated and revoked in case of termination for reasons other than substantial destruction or condemnation by the recording of a written instrument to that effect, executed by the Owners, as shown by the records in the office of the Clerk and Recorder of the County of Eagle, Colorado, of sixty-seven percent (67%) or more of the voting interests of the Units and by sixty-seven percent (67%) or more of Eligible Mortgages (based upon one vote for each First Mortgage held).

Section 16.03 Other Mortgagees. The consent of any Mortgagee, other than Eligible Mortgagees, shall not be required as a condition to implementation of any provision of this Article 16.

Section 16.04 Declarant Amendments. Except as otherwise provided in the Act, notwithstanding anything herein to the contrary, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles, the Map or Bylaws shall be necessary, prior to the Owner Control Date, in order to clarify any apparently conflicting provision or to correct any mistakes or errors, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendment without obtaining the approval of any Owners or Mortgagees. In furtherance of the foregoing, a power coupled with an interest is hereby reserved to Declarant to make or consent to such amendment on behalf of all Owners and Mortgagees. The recording of each deed and Mortgage affecting a Unit shall be deemed to be a grant and acknowledgement of and a consent to the reservation of the power of Declarant to make, execute and record such amendments. Any such amendment shall be made on or before the Owner Control Date.

ARTICLE 17 SPECIAL DECLARANT RIGHTS

Section 17.01 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights for the maximum time limit allowed by law:

- (a) the right to complete or make improvements indicated on the Map;
- (b) the right to maintain such facilities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction, sale or rental of Units, including, without limitation, sales offices, management offices, construction offices and models; storage areas, construction yards and signs; lighting; parking areas and temporary parking facilities in or on the Common Elements, but only until the last Declarant-owned Unit is conveyed or transferred, and thereafter to remove any and all such facilities;
- (c) the right to use, and to permit others to use, easements through the Common Elements and Units as may be reasonably necessary and during reasonable hours and upon reasonable notice during periods of construction for the purpose of any required refurbishment, construction, maintenance or repair and for the purpose of discharging the Declarant's obligations under the Act and this Declaration; and
- (d) the right to appoint or remove any officer of the Association or any Board Member during the period of Declarant Control consistent with the Act.

Section 17.02 Limitations. Unless sooner terminated by a recorded instrument signed by the Declarant, any Special Declarant Right may be exercised by the Declarant for the period of time specified in the Act, or for a period of 30 years, whichever is longer.

Section 17.03 No Development Rights. Declarant reserves no development rights as set forth in the Act. The Declarant reserves the right to create no Units in addition to those created hereby.

ARTICLE 18 MISCELLANEOUS

Section 18.01 Duration of Declaration. All of the provisions contained in this Declaration shall continue and remain in full force and effect until this Declaration and condominium ownership of the Project are terminated or revoked.

Section 18.02 Supplemental to Law. The provisions of this Declaration shall be in addition and supplemental to the Act, and to all other applicable provisions of law.

Section 18.03 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Section 18.04 Notices. Unless an Owner shall notify the Association by registered or certified mail of a different address, any notice required or permitted to be given by the Association under this Declaration to any Owner or any other written communication to any Owner may be hand delivered or mailed to such Owner, postage prepaid, first class U.S. Mail, registered or certified, to the address of the Unit shown upon the Association's records as owned by such Owner. If more than one Owner owns a Unit, any notice or other written instrument may be addressed to all of such Owners and may be delivered or mailed in one envelope in accordance with the foregoing. Any notice or other written instrument given to any person by the Association in accordance herewith, shall be deemed to be given on the date mailed.

Section 18.05 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner and their heirs, personal representatives, successors and assigns, respectively.

Section 18.06 Subordination. The holders of deeds of trust signing this Declaration subordinate their liens to the liens and provisions of this Declaration and consent to its terms.

Section 18.07 Severability. The invalidity or unenforceability of any provision of this Declaration shall not affect the validity of enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

Section 18.08 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

Section 18.09 No Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the _____ day of _____, 200__.

NO REGRETS, LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

The foregoing Declaration was acknowledged before me this ___ day of _____, 200__, by _____, _____ of No Regrets, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 2 day of _____, 2010.

NO REGRETS, LLC,
a Colorado limited liability company

By: [Signature]

Name: Kyle H. Webb

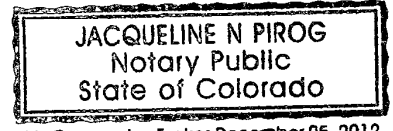
Title: Mgr.

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

The foregoing Declaration was acknowledged before me this 9th day of February, 2010, by Kyle H. Webb, Manager of No Regrets, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 12-5-2012.



[Signature]
Notary Public

CONSENT OF PRIOR LIENHOLDER

THE UNDERSIGNED, lienholder respecting the Property described in the Declaration of 1020 Capital Street Condominiums, consents to the filing and recording of this Declaration and the creation of condominium ownership with respect to such Property, provided no provisions in the Declaration relating to Mortgagees shall be construed to impair the rights of the undersigned.

Randal E. Gorman

By: [Signature]

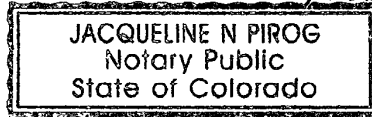
Its: ISVP

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

The foregoing Consent of Prior Lienholder was acknowledged before me this 9th day of February, 2010, by Randal Gorman, as the Executive Vice President of Colorado Capital Bank

Witness my hand and official seal.

My commission expires: 12-5-2012.



My Commission Expires December 05, 2012

[Signature]
Notary Public

EXHIBIT A

To Declaration of Covenants, Conditions and Restrictions
For 1020 Capitol Street Condominiums

Unit	Percentage Interest in the Common Elements	Approximate Square Footage	Number of Votes
C-1	43.90%	2,923	43.9
C-2	22.00%	1,465	22.0
R-1	18.20%	1,212	18.2
R-2	15.90%	1,059	15.9
totals	100%	6,659	100

EXHIBIT B

To Declaration of Covenants, Conditions and Restrictions For 1020 Capitol Street Condominiums

Easements, Licenses And Other Title Matters

1. **RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED AUGUST 18, 1994, IN BOOK 648 AT PAGE 121.**
2. **RESERVATION OF AN UNDIVIDED ONE-HALF (1/2) INTEREST IN ALL OIL, GAS, AND OTHER MINERALS AND MINERAL RIGHTS IN WARRANTY DEED RECORDED DECEMBER 14, 1961 IN BOOK 166 AT PAGE 21.**
3. **RIGHT OF WAY EASEMENT AS GRANTED TO EAGLE RIVER ELECTRIC COMPANY, A CORPORATION IN INSTRUMENT RECORDED FEBRUARY 05, 1929, IN BOOK 113 AT PAGE 198.**
4. **TERMS, CONDITIONS AND PROVISIONS OF THE EAGLE RANCH PLANNED UNIT DEVELOPMENT GUIDE RECORDED MAY 18, 2004 UNDER RECEPTION NO. 877629.**
5. **EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS, RESERVATIONS, AND NOTES AS SHOWN OR RESERVED ON THE PLAT OF EAGLE RANCH, FILING NO. 2 RECORDED DECEMBER 30, 1999 RECEPTION NO. 719255.**
6. **RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW AS CONTAINED IN INSTRUMENT RECORDED JUNE 23, 1999 UNDER RECEPTION NO. 700815 AND SUPPLEMENT RECORDED JUNE 18, 2002, UNDER RECEPTION NO. 798949.**
7. **TERMS, CONDITIONS AND PROVISIONS OF ELECTRIC EASEMENT RECORDED FEBRUARY 10, 2004 AT RECEPTION NO. 867492.**
8. **TERMS, CONDITIONS AND PROVISIONS OF WATER LINE EASEMENT AGREEMENT RECORDED JANUARY 12, 2006 AT RECEPTION NO. 200600951.**
9. **TERMS, CONDITIONS AND PROVISIONS OF SPECIAL WARRANTY DEED RECORDED NOVEMBER 20, 2007 AT RECEPTION NO. 200730641.**
10. **TERMS, CONDITIONS AND PROVISIONS OF UNDERGROUND RIGHT-OF-WAY EASEMENT RECORDED FEBRUARY 26, 2009 AT RECEPTION NO. 200903397.**
11. **TERMS, CONDITIONS AND PROVISIONS OF TRENCH, CONDUIT, AND VAULT AGREEMENT RECORDED FEBRUARY 26, 2009 AT RECEPTION NO. 200903401.**