

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

Park East Square HOA
1075 Monroe Drive
Boulder, CO
80303

Above space reserved for Recorder's use

**ENERGY EFFICIENCY AWNING MAINTENANCE, LICENSE, AND INDEMNITY
AGREEMENT**

This MAINTENANCE, LICENSE, AND INDEMNITY AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20__ ("Effective Date") by _____ (hereafter individually or jointly referred to as "Owner"), whose legal address is _____, and the Park East Square Homeowners Association, Inc., a Colorado nonprofit corporation ("Association").

RECITALS

- (a) The Association is the association named and referred to in the Declaration of Covenants, Conditions, Restrictions and Easements ("Declaration"), recorded December 31, 1974, at Reception No. 125648, in the real property records of Boulder County, State of Colorado, as may be amended. All terms not otherwise defined herein shall have the definition set forth in the Declaration.
- (b) The Owner is the record owner of (insert PESHHA address): _____ ("Townhome").
- (c) Article V of the Declaration requires the Association, acting through the Board of Directors, to review and approve any exterior alteration or improvement.
- (d) Owner desires to install an Energy Efficient Awning ("Awning") as further described on **Exhibit A** that includes plans and specifications for such Awning incorporated into this Agreement by this reference.
- (e) Because the proposed Owner's Awning will be installed onto a component over which the Association has maintenance, repair, and replacement obligations, the Association is concerned that it will increase the maintenance, repair, insurance, and liability exposure of the Association.
- (f) The Association acknowledges that C.R.S. §38-33.3-106.7 requires the Association to allow the Owner to install such Awning, subject to certain conditions specified in the statute. However, the Association is permitted to adopt reasonable regulations over such installations.
- (g) Pursuant to the authority stated in C.R.S. §38-33.3-106.7, the Association has agreed to allow the Owner to install the Awning, as more particularly described in **Exhibit A**, pursuant to the terms and conditions set forth in this Agreement.

1. **Approval, Installation and Conditions of Owner.** Prior to installing the Awning, the Owner shall submit a complete *Application for Exterior Modifications* ("Application") that includes plans, specifications, and other required documentation concerning the proposed Awning to the Association and

receive the Board's written approval for such installation. The Application, including plans and specifications, shall be in compliance with such resolutions, policies, rules, and architectural control guidelines as adopted by the Board. The Awning shall be installed and performed in accordance with all specifications and requirements contained in **Exhibit A** and at the sole cost and expense of the Owner, including costs to restore any other Common Area or Association-maintained components disturbed in the process of installing the system. No additional equipment or upgrades may be installed that are not set forth in **Exhibit A**.

The Owner shall further be responsible for: (i) obtaining any necessary permits and/or governmental approvals; (ii) ensuring that the Awning complies with applicable zoning, building, and/or other codes, rules, regulations, and ordinances, including any and all safety requirements; and, (iii) ensuring that the Awning will not violate, encroach upon, or interfere with any easements, utility lines, or other encumbrances.

2. **Grant of License/Purpose.** The Association hereby establishes and grants to the Owner a license for the purpose of allowing the installation of the Awning in accordance with the plans and specifications in the Application approved by the Association. In the event the Owner wishes to remove, alter, modify, or otherwise change the Awning in the future, the Owner shall first obtain the prior written approval of the Association. The Association shall have the right to demand removal of the Owner's Awning and restoration of the building or any affected Common Area, at the Owner's sole cost, should the Owner's Awning cause material damage to the building exterior, any Common Area of the Association, or another owner's Townhome.

3. **Maintenance and Repair.** The parties agree with the following.

- a. The Owner shall cause the Awning to be maintained in a good, attractive, working condition as determined in the sole discretion of the Association's Board of Directors, at the Owner's sole cost, without contribution from the Association and without any reduction with respect to Owner's assessment obligations.
- b. The Owner is financially responsible for any costs for damages to the Awning or any other property, including but not limited to the Common Area, which arise in whole or in part from the installation, use, maintenance, repair, removal, or replacement of the Awning.
- c. The Owner is responsible for removing the Awning if reasonably necessary or convenient for the repair, maintenance, replacement, modification, or improvement obligations under the Declaration. Should the Owner fail to perform such removal after written notice, not less than 72 hours absent an emergency, the Association may undertake such removal on its own, and charge the cost thereof to the Owner pursuant to the Declaration.
- d. This Agreement is not intended to, and does not, modify any obligations of the party under the Association's governing documents except as explicitly set forth herein. Specifically, Owner acknowledges that there is no claim of offset for assessments imposed by the Association based on the Owner's maintenance of Owner's Awning.
- e. The Awning is the property of the Owner. Upon sale or change in occupancy of the Townhome, if the Awning is removable, the Owner shall either remove, assign, or sell it to the buyer of the Townhome. If the Awning is not removed at the time of sale or change in occupancy, each successive owner shall assume all the terms and conditions of this Agreement until the Awning is removed.

If the Owner fails to maintain the Awning, as provided hereunder and after written notice from the Association, the Association has the right to perform such maintenance and repairs of the Awning or repair any damage caused by the Awning and assess all maintenance and repair costs against the Owner.

Absent an emergency, the Association shall provide the Owner reasonable notice, but not less than 72 hours, to perform any necessary maintenance and repairs.

4. **Contractor.** The Owner is responsible for engaging the services of a duly licensed contractor familiar with the installation and code requirements of an energy efficient awning and carries the necessary liability and workers' compensation insurance to perform work in the Association. The Owner must provide a copy of the contractor's license and certificates of insurance as part of the Application. After the work has been completed, the Owner must provide a copy of a lien waiver or other proof of full payment for the Contractor's services to the Association upon request.

The Owner shall also provide a statement from a professional engineering inspector certifying that the specific Awning can be safely installed at the proposed location on the exterior of the building. The statement, including proof of the engineering inspector's certification, must be included in the Application.

5. **Insurance.** The Owner agrees to provide, within 14 days of the Owner receiving the Association's consent for the installation, a certificate of insurance naming the Association as an additional insured on the Owner's insurance policy for any claim related to the installation, maintenance, or use of the system. The Owner, and each successive owner shall at all times have and maintain such insurance policy.

6. **Indemnification and Release.** The Owner shall indemnify and hold harmless the Association and its officers, directors, managers, and members from any and all liability, costs, expenses, loss, damage, (including reasonable attorney fees), manner of action, inactions, cause and causes of action, suits, controversies, claims and demands or claim of loss whatsoever, in law or equity, which arise from, or are in any way related to, the installation, maintenance, repair, removal, or replacement of the Awning. The Owner hereby releases and forever discharges the Association, its officers, directors, members, managers, successors and assigns of and from any and all liability, costs, expenses, loss, damage, (including reasonable attorney fees) manner of action, inactions, cause and causes of action, suits, controversies, claims and demands or claim and loss whatsoever, in law or equity, against the Association that Owner ever had, now has, for, upon or by reason of, any matter, cause or things whatsoever, relating to the installation, maintenance, repair, removal, or replacement of the Awning.

7. **Enforceability.** The invalidity or unenforceability of any particular provision of this Agreement shall not in any way affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue shall be proper in Boulder County, Colorado.

9. **Remedies.** In the event of a default under this Agreement, the remedies available to the non-defaulting party shall include all those remedies provided in the Declaration, or other legal documents of the Association, together with specific performance, damages, or both. In addition, the prevailing party in any dispute shall be entitled to recover their reasonable costs and attorney fees. The Association has the option to terminate upon the earlier of: (i) the Owner's breach of this Agreement; or (ii) the Owner's abandonment of the rights granted to it pursuant to this Agreement.

In the event of any legal action or arbitration arising out of or in connection with this Agreement, the prevailing party shall be entitled, in addition to any other relief, to reasonable attorney fees, expert witness fees, ad costs.

10. **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which shall constitute one and the same instrument.

11. **Amendment.** This Agreement may not be amended except by a written instrument signed by all of the parties.

12. **Recording, Successors/Assigns.** The Association shall record this Agreement in the real property records for the County of Boulder, Colorado. The Owner shall reimburse the Association all recording fees and such fees shall be collectible as assessments. This Agreement and the Owner's obligation hereunder shall be a covenant running with the Townhome and shall be binding upon the parties, and their successors and assigns, including all subsequent owners of the Townhome. The Owner hereby agrees to disclose the existence of this Agreement to any prospective purchaser of the Townhome and, at the Association's request, to require any subsequent purchaser of the Townhome to execute a similar agreement with the Association as a condition of any conveyance of the Property.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Owner: Park East Square Homeowners Association, Inc.,
a Colorado nonprofit corporation

President

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing was acknowledged before me this ____ day of _____, 20____,
by _____ as President of the Park East Square Homeowners Association,
Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing was acknowledged before me this ____ day of _____, 20____
by _____ as Owner of the Townhome.

Witness my hand and official seal.

My commission expires: _____

Notary Public

October 10, 2024

Exhibit A

See attached Awning Installation Plans and Specifications