

***Declaration of Condominium
of
Ash Street Condominiums***

THIS DECLARATION ("Declaration") is made on the date hereinafter set forth and executed by **1481 Ash, LLC**, a Colorado limited liability Company ("Declarant") pursuant to the provisions of the Colorado Common Interest Ownership Act, Colorado Revised Statutes ("CRS") Title 38, Article 33.3 as amended and supplemented from time to time, hereinafter referred to as the "Act."

RECITALS

WHEREAS Declarant is the owner of certain real property situated in the City and County of Denver, State of Colorado, which is more particularly described as set forth in Exhibit A attached hereto and by this reference made a part hereof;

WHEREAS, Declarant desires to create a condominium Common Interest Community, as defined below, in accordance with the Act, on the real property described in Exhibit A, together with the improvements thereon (the property described in Exhibit A and the improvements thereon shall hereinafter be referred to as the "Property"), in which portions of the Property will be designated for separate ownership and the remainder of which will be designated for common ownership solely by the owners of the separate ownership portions.

WHEREAS, Declarant desires to sell, transfer, and convey the Property, into nine (9) separate fee simple estates as set forth in the Plat of Survey, as defined below, attached hereto as Exhibit C.

WHEREAS, Declarant desires to submit this condominium Common Interest Community to the Act.

WHEREAS, Declarant does not desire to reserve certain Development Rights, as defined in the Act, in or on the Common Interest Community.

NOW THEREFORE, Declarant declares that the Property is hereby established as a condominium project under the Act to be know as Ash Street Condominiums, and that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, uses and obligations, all of which are declared and agreed to be for the protection of the value of the Property for the benefit of persons acquiring interest therein, shall be deemed to run with the land, and shall be a burden and benefit to any persons acquiring such interests, their grantees, successors, heirs, legal representatives and assigns. The address of the Property is 1481 - 1483 Ash Street, Denver, Colorado 80220.

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Declarant has caused to be organized under CRS 38-33.3-301, Ash Street Condominiums Homeowners Association, Inc., a Colorado nonprofit corporation ("Association") for the purpose of exercising the functions as set forth herein.

Declarant has filed on _____ in the City and County of Denver, State of Colorado real property records in **Book** _____, **Pages** _____ and _____ at Reception Number _____, a Plat of Survey, attached hereto as Exhibit C and by this reference, incorporated herein, depicting the location and dimensions of the submitted land and plans of every structure which contains all or part of any Unit or Units.

**ARTICLE I
SUBMISSION, DEFINED TERMS**

I. SUBMISSION, DEFINED TERMS.

- A. Submission of Real Estate. 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, and which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each owner thereof. Declarant hereby conveys the Property as a condominium common interest community to the Association subject to rights reserved by the Declarant in this Declaration and subject to the provision of the Act. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.
- B. Defined Terms. Each capitalized term not otherwise defined in this Declaration or in the Plat of Survey shall have the meanings specified below:
 - 1. "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, trustee, officer, director, 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 of

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the voting interests of the Declarant; controls in any manner the election of a majority of the directors of the Declarant, or has contributed more than twenty percent of the capital of the Declarant. A Person is controlled by the Declarant if the Declarant: is a general partner, officer, director, 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 of the voting interests of the Person; controls in any manner the election of a majority of the directors of the Person; or has contributed more than twenty percent of the capital of the Person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

2. "Allocated Interests" means the undivided interest in the Common Elements, the Common Expense Liability and votes in the Association as outlined in Exhibit B attached hereto.
3. "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.
4. "Common Elements" shall mean all land, improvements and all portions of the Property not contained within any Unit (unless contained within a Unit and serves as support for or service to other Units), including, but not limited to roofs, foundations, pipes, ducts, flues, floors, ceilings, conduits, wires, bearing walls, perimeter walls to the undecorated or unfinished interior surfaces thereof (regardless of location), walkways, gardens, recreational areas, and facilities which are now or hereafter contained within the Property. Common Elements shall also include all Limited Common Elements, General Common Elements, all installations of power, lights, gas, water, telephone, cable, and other utilities existing for common use, and all other portions of the Property necessary or convenient to its existence, maintenance, and

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safety or normally in common use, and all areas and facilities designated as common elements (and not specifically described in this Declaration) in the Act.

5. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.
6. "Common Expense Assessments" means assessments imposed by the Association for Common Expenses.
7. "Common Expense Liability" means the liability for common expenses allocated to each Unit pursuant to this Declaration as allocated in Exhibit B attached hereto.
8. "Common Interest Community" means the Property described in this Declaration which makes up the Ash Street Condominiums with respect to which a Person, by virtue of such Person's ownership of a Unit, is obligated to pay Common Expenses.
9. "Condominium" means this Common Interest Community in which portions of the Property are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions.
10. "Division Line" means the horizontal and vertical boundaries which separate the Units.
11. "Declarant" means any Person or group of Persons acting in concert who:
 - a. As part of a common promotional plan, intends to offer to dispose of to a purchaser such Declarant's interest in a Unit not previously disposed of to a purchaser; or
 - b. Reserves or succeeds to any Special Declarant Rights or any other rights described in this Declaration.
12. "Declaration" means this recorded instrument which creates this condominium Common Interest Community, including any amendments to this instrument and also including the Plat of Survey.

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13. "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.
14. "Executive Board" means the body, regardless of name, designated in this Declaration to act on behalf of the Association.
15. "General Common Element:" All Common Elements not covered by the description of Limited Common Elements are hereby described as General Common Elements.
16. "Governing Documents" shall mean all documents, instruments, maps, plats and surveys, including, but not limited to this Declaration, the Plat of Survey, the Association Articles of Incorporation, the Rules and Regulations, and the Bylaws which govern this Common Interest Community and which may be amended from time to time.
17. "Identifying Number" means a symbol or address that identifies only one Unit in this Common Interest Community.
18. "Limited Common Element" means a portion of the Common Elements allocated by this Declaration for the exclusive use of one or more Units but fewer than all of the Units.
19. "Master Association" means an organization described in CRS section 38-33.3-220, whether or not it is also an association described in CRS section 38-33.3-301.
20. "Party Wall" means the wall as depicted in the Plat of Survey which is the vertical dividing line between adjacent Units. From the center line of the Party Wall to the undecorated or unfinished interior surface of the interior wall of each unit is a Common Element.
21. "Person" means a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.
22. "Plat of Survey" means the surveyor's plat or map

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attached to this Declaration as Exhibit C, recorded on _____ in the City and County of Denver, Colorado real estate records in Book _____ at Reception Number _____, depicting the location and dimensions of the submitted land, plans of every structure which contains part of any Unit and Common Elements.

23. "Property" means the real property described at Exhibit A to this Declaration together with all improvements thereon.
24. "Purchaser" means a Person, other than the Declarant or 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 (40) 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.
25. "Residential Use" means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or service to, the public.
26. "Rules and Regulations" means any instruments, however denominated, which are adopted by the Association for the regulation and management of this Common Interest Community, including any amendment to those instruments.
27. "Security Interest" means an interest in real or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes, but is not limited to, 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 an association, and any other consensual lien or title retention contract intended as security for

an obligation.

28. "Special Declarant Rights" means rights reserved for the benefit of the Declarant to appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control and other rights specified in this Declaration.
29. "Unit" means a physical portion of the Common Interest Community which is designated for separate ownership and/or occupancy and the boundaries of which are described in or determined from the Declaration.
30. "Unit Owner" or "Owner" means the Declarant or other Person who owns a Unit but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the owner of any Unit created by this Declaration until that Unit is conveyed to another Person.

**ARTICLE II
NAMES; DESCRIPTION OF REAL ESTATE**

II. NAMES; DESCRIPTION OF REAL ESTATE

A. Names:

1. **Condominium:** The name of this Condominium Common Interest Community is the "Ash Street Condominiums"
2. **Association.** The name of the Association is Ash Street Condominiums Homeowners Association, Inc. The Association shall be organized and operated as a Colorado nonprofit corporation.
3. **Type of regime:** The Ash Street Condominiums common interest community is a condominium regime.

- B. Real Estate.** This Common Interest Community is located in the city and county of Denver, State of Colorado. The real property which is subject to this Declaration is described in Exhibit A attached hereto.

**ARTICLE III
THE ASSOCIATION/GOVERNING BOARD**

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III. THE ASSOCIATION/GOVERNING BOARD

- A. Authority. The business affairs of the Condominium shall be managed by the Association. The Association shall be governed by its Executive Board in accordance with its Governing Documents.

- B. Powers.
 - 1. Powers Pursuant to Act. 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 Condominium.
 - 2. Assignment of Future Income. The Association may assign its future income, including its rights to receive Common Expense Assessments.
 - 3. Declarant Control. The Declarant shall have all the powers reserved below in addition to the powers reserved in Section 38-33.3-303(5) of the Act to appoint and remove officers and members of the Executive Board for the maximum period of time permitted by the Act.
 - 4. If appointed by the Declarant, in the performance of their duties, the officers and members of the Executive Board are required to exercise the care required of fiduciaries to the Unit Owners.
 - 5. If not appointed by the Declarant, no member of the Executive Board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions.
 - 6. The Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members; however, the Executive Board may fill vacancies in its membership for the unexpired portion of any term.
 - 7. Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first-

class mail, or otherwise deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than fifty (50) days after mailing or other delivery of the summary. Unless at that meeting a majority of all votes of Unit Owners eligible to vote reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

8. The period of Declarant control of the Association shall be the maximum period permitted under Section 38-33.3-303 of the Act.
9. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant control; however, in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**ARTICLE IV
UNITS**

IV. UNITS

- A. Number of Units. The number of Units in the Condominium is nine (9). The Declarant reserves the right to create no additional Units and retains no Development Rights as defined in Section 38-33.3 - 103 (14) of the Act.
- B. Identification of Units. The identification number of each Unit is shown on the recorded Plat of Survey attached hereto as Exhibit C.
- C. Unit Boundaries. The boundaries of each Unit are located as shown on the Plat of Survey attached hereto as Exhibit C and more particularly described as follows.

1. The boundary lines of each Unit are the undecorated or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, interior surfaces of windows and doors, window frames, door frames and trim. Each Unit shall include both the portions of the building that are not Common Elements within such boundary lines and the space so encompassed. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings, nonsupporting interior walls and all utility pipes, electrical lines, cable lines, telephone lines, other utility lines, systems fixtures, or appliances found within the boundary lines of the Unit and servicing only that Unit.
2. Utility pipes, electrical lines, cable lines, telephone lines, other utility lines, systems fixtures, air conditioning and/or heating apparatus, meters, and utility boxes exclusively serving one Unit and not located within the boundaries of that Unit are Limited Common Elements of that Unit.

ARTICLE V
COMMON EXPENSE ASSESSMENTS

V. COMMON EXPENSE ASSESSMENTS

- A. Creation of Association Lien and Personal Obligation to pay Common Expense Assessments. 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 Common Expense Assessments. Such assessments, including 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 assessment or other charges became or fell due.
- B. Continuing Lien. The Common Expense Assessments of the Association shall be a continuing lien upon the Unit against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Unit except those specified in

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Sections 38-33.3-316 of the Act.

- C. 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.
- D. Apportionment of Common Expenses. Common expenses shall be assessed against all Units in accordance with their allocated interests in the Common Elements as shown on Exhibit B of this Declaration.
- E. Purpose of Assessments. The assessments shall be levied and collected by the Association through its Executive Board and shall be used for the purposes of promoting the health, safety, and welfare of the residents in the Common Interest Community, to maintain the Condominium personal and real property in good condition, and to maintain the property values of the Condominium.
- F. Annual Assessment/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 Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments may be collected in the manner as determined by the Executive Board. Common Expense Assessments shall begin on the first day in which conveyance of the first Unit to a Unit Owner, other than the Declarant, occurs.
- G. Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid when due shall bear interest at the rate as determined by the Executive Board and the Association may assess a late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its 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 assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. The

Association may suspend the voting rights on any Unit on which any Assessments remain unpaid when due.

- H. Working Fund. The Association or Declarant shall require the first Owner of each Unit (other than 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 that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working 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 from making regular payments of assessments as the same become due. Upon the transfer of his Unit, an Owner shall be entitled to a credit from his transferee for any unused portion of the aforesaid working fund.

**ARTICLE VI
LIMITED COMMON ELEMENTS**

- VI. Limited Common Elements. The following portions of the improvements, if they exist, in addition to the Limited Common Elements described in Sections 38-33.3-202(1)(b) and (d) of the Act, the Plat of Survey, and this Declaration designated as Limited Common Elements: balconies, attics, patios, stairways, walkways, gardens, courtyards, storage areas, parking areas, and other areas designed herein and in the Plat of Survey as reserved for the use of certain Units to the exclusion of the other Units. Each owner, by accepting a deed to his/her Unit, agrees to the designation of Limited Common Elements herein and in the Plat of Survey.

**ARTICLE VII
MAINTENANCE, REPAIR AND REPLACEMENT**

- VII. MAINTENANCE, REPAIR AND REPLACEMENT

- A. Common Elements. Except as provided herein, the maintenance, replacement, and repair of the Common Elements shall be the responsibility of the Executive Board and the cost thereof shall be a common expense. The Executive Board shall replace and repair, if they exist, storage areas, atriums, and all other Limited

Common Elements. The Executive Board shall also maintain, replace, and repair the following items if they exist: all conduits, ducts, plumbing and wiring, and other facilities for the furnishing of heat, gas, light, power, air conditioning, water, and sewer contained in the portions of the Units that service part or parts of the Property other than the Unit in which they are contained. All incidental damages caused to a Unit by the maintenance, replacement, and repair of the Common Elements or utility services shall be repaired promptly at the expense of the Executive Board.

- B. Units/Limited Common Elements. The Unit Owners shall have the responsibility to maintain, repair, replace, and keep in a clean and sanitary condition, at the Unit Owner's expense, all portions of the Unit Owner's Unit, except those portions to be maintained, repaired, and replaced by the Executive Board. The Unit Owners shall keep clean and in a sanitary condition their storage areas, balconies, parking spaces, patios, and all other Limited Common Elements, if any.
- C. Expense Allocation. Any Common expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Units to which the Limited Common Element is assigned.

**ARTICLE VIII
ALLOCATED INTERESTS**

VIII. Allocated Interests

- A. Allocated Interests. The undivided interest in the Common Elements, the Common Expense Liability and votes in the Association allocated to each Unit are set forth in Exhibit B.
- B. Determination of Allocated Interests. The interests allocated to each Unit have been calculated as follows.
 - 1. The undivided interest in Common Elements, on the basis of the square footage (measurements taken from the exterior of each Unit) of each Unit as a fraction of the total square footage of all Units in the Condominium.
 - 2. The percentage of liability for common expenses in

the same manner as the allocation of the undivided interest in Common Elements.

3. The number of votes in the Association shall be allocated on the basis of one vote per Unit.

**ARTICLE IX
PURPOSE, RESTRICTIONS ON USE,
ALIENATION AND
OCCUPANCY**

IX. PURPOSE, RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

- A. Purpose. The purpose of the condominium Common Interest Community is for Residential Use to provide for residential housing, parking, and recreational facilities for Unit Owners, their respective families, tenants, guests, and servants.
- B. Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved by the Declarant, the following use restrictions apply to all Units and to the Common Elements:
 1. Nothing shall be done or kept in any Unit or in or on the Common Elements which shall increase the rate of insurance on the Common Elements without the prior written consent of the Executive Board. No Unit Owner shall permit anything to be done or kept in or on his/her Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which would be in violation of any law. No waste will be committed of the General Common Elements or Limited Common Elements.
 2. No sign of any kind shall be displayed to the public view or from any Unit or from the Common Elements without the prior written consent of the Executive Board.
 3. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Elements except that dogs, cats, or other household pets may be kept in Units and on the Limited Common Elements, subject to Rules and Regulations adopted by the Executive Board or as authorizes in the Bylaws and/or the Rules and

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Regulations.

4. No noxious, dangerous, or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein which may be or become an annoyance or nuisance to others.
5. Nothing shall be altered, or constructed in, or removed from the Common Elements, except upon the prior written consent of the Executive Board.
6. The Executive Board is authorized to adopt Rules and Regulations for the use of the Property, and prescribe penalties for any violation thereof, and shall furnish such Rules and Regulations in writing to the Owners, who shall be bound thereby. The Executive Board may, from time to time, amend, modify or re-write the Rules and Regulations.
7. No owner shall install, attach, or hang, or allow to be installed, attached, or hung, any equipment or wiring or electrical installations, television or radio transmitting or receiving antennas, air conditioning units or any other like equipment, or wiring in or across any portion of any Common Elements or protruding from any balcony or through any wall, floor, ceiling, window, or door which is a Common Element, except as approved by the Executive Board. All radios, televisions, electrical equipment, or appliances of any kind or nature and the wiring therefor, installed or used in a Unit shall fully comply with all rules, regulations, or requirements of all public and semi-public authorities having jurisdiction.
8. Each Unit Owner shall promptly and fully comply with any and all applicable laws, rules, ordinances, statutes, regulations, or requirements of any governmental agency or authority with respect to the occupancy and use of his/her Unit, and with the provisions of the Governing Documents.
9. None of the rights and obligations of the Unit Owners created herein, or by the deeds conveying each unit, shall be altered in any way by encroachments due to settlement or shifting of

structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Unit Owner or Unit Owners if said encroachment occurred due to the willful conduct of said Unit Owner or Unit Owners.

- C. Restrictions on Alienation. A Unit may NOT be conveyed pursuant to a time-sharing arrangement described in CRS Sections 38-33-110 to 113. A Unit may not be leased or rented for a term of less than 60 days. All leases and rental agreements shall be in writing and subject to the reasonable requirements of the Executive Board.

**ARTICLE X
CONVEYANCES, EASEMENTS AND LICENSES**

- X. CONVEYANCES, EASEMENTS AND LICENSES.
- A. Easements of Record. All easements and/or restrictions to which the Condominium is presently subject is either indicted on the Plat of Survey or in this Declaration. The recording data for the Plat of survey is on Paragraph IB of this Declaration in the definition of Plat of Survey. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to this Declaration.
- B. Conveyances. Every deed, lease, mortgage, or other instrument may describe a Unit by its Identifying Number set forth in the recorded Plat of Survey. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber, or otherwise effect the Unit Owner's corresponding percentage of undivided ownership in the Common Elements, as a tenant in common, as allocated in Exhibit "B," even though the same is not exactly mentioned or described.
- C. Every deed, lease, mortgage, or other similar instrument shall be deemed to:
1. Except and reserve with respect to a Unit:
 - a. any portion, if any, of the Common Elements lying within said Unit;

- b. easements through said Unit, appurtenant to the Common Elements and all other Units, for support and repair of the Common Elements and all other Units;
 - c. easements, appurtenant to the Common Elements, for encroachment upon the air space of said Unit by those portions, if any, of the Common Elements located within said Unit.
- 2. Include with respect to a Unit nonexclusive easements for ingress and support of said Unit through the Common Elements for the repair of said Unit through all other Units and through the Common Elements.
 - 3. Except and reserve, with respect to the undivided percentage interest in the Common Elements, nonexclusive easements appurtenant to all Units for ingress, egress, support, and repair.
 - 4. Include, with respect to the undivided percentage interest in the Common Elements, nonexclusive easements through each Unit for support and repair of the Common Elements and nonexclusive easements for encroachments upon the air space of all of the Units by and for the portions, if any, of the Common Elements lying within the Units.

**ARTICLE XI
DESTRUCTION OR DAMAGE**

XI. DESTRUCTION OR DAMAGE.

- A. Determination of Destruction. In case of fire or any other disaster which causes damage or destruction to all or part of the improvements to the real property, the Executive Board, with the help of an independent appraisal, shall determine the percentage of the improvements that were destroyed or substantially damaged.
- B. Less than Two-Thirds Destruction. If less than two-thirds of the improvements were destroyed or substantially damaged, the Executive Board shall arrange for the prompt repair and restoration of said improvements using the proceeds of insurance on the same for that purpose, and the Unit Owners shall be

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liable for assessment for any deficiency, if any, in proportion to their allocated interests in the Common Elements. Reconstruction of the improvements shall mean the restoring of the improvements to substantially the same condition they were in prior to the damage or destruction, with each Unit and the Common Elements having the same horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions herein governing eminent domain shall apply.

C. Two-Thirds or More Destruction. If two-thirds or more of the improvements are destroyed or substantially damaged, the Executive Board shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Unit Owners for the purpose of deciding whether or not the improvements shall be repaired and restored. If One Hundred Percent (100%) of the Unit Owners, in person or by proxy, vote to repair or restore the improvements, the Executive Board shall promptly arrange for the reconstruction of the same, using the proceeds of insurance on the improvements affected for that purpose, and the Unit Owners shall be liable for assessment for any deficiency, if any, in proportion to their allocated interests in the Common Elements. If the destruction or damage is by reason of eminent domain, the provisions of the paragraph governing eminent domain shall apply. However, in the event of at least two-thirds of the improvements are destroyed or substantially damaged, and less than One Hundred Percent (100%) of the Unit Owners vote to make provision for reconstruction, the Executive Board shall record, with the County Recorder, a notice setting forth such facts; and upon the recording of such notice:

1. the Property shall be deemed to be owned in common by the Unit Owners;
2. the undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such owner in the Common Elements,
3. any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit Owner in the Property; and

4. the Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, shall be considered as one fund and shall be divided among all Unit Owners in a percentage of undivided interest owned by each owner in the Property, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Property owned by each Unit Owner.

**ARTICLE XII
INSURANCE**

XII. INSURANCE

- A. The Executive Board shall obtain and maintain at all times, to the extent obtainable, policies of insurance, written with financially responsible and able companies licensed to do business in Colorado, covering the risks set forth below:
 1. Insurance against loss or damage by fire and lightning, and such other hazards as are customarily covered in similar projects in the City and County of Denver, Colorado, under extended coverage and "all risk" endorsements. Said casualty insurance shall insure the entire Property (but not including improvements intended for the exclusive use of a Unit, fixtures intended for the exclusive use of a Unit, decorating, furniture, furnishings appliances, or other personal property) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of such first mortgagees as their interests may appear.
 2. Public liability insurance on the Common Elements and property damage insurance in such limits as the Executive Board may from time to time determine, but not in an amount less than \$500,000.00 per injury, per person, per

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occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the Property. All liability insurance shall name the Association, the Executive Board, the Declarant, first mortgagees, the Unit Owners, and the officers of the Association, as insureds thereunder. Public liability coverage on each Unit shall be the responsibility of the Unit Owner.

3. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Property or the Association including, but not limited to, fidelity coverage or fidelity bonds on officers, directors, and any other Persons who handle funds of the Association, and directors' and officers' liability insurance coverage.
- B. All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days prior written notice to all Unit Owners, first mortgagees, and the Association. If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all first mortgagees at least ten (10) days prior to expiration of the then current policies. All Association casualty insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners and first mortgagees.
 - C. Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Executive Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.
 - D. Insurance coverage on improvements and fixtures installed by an Owner and furnishings, including window coverings, oven, range, refrigerator, dishwasher and other items of personal property belonging to a Unit

Owner, and public liability coverage within each Unit shall be the sole and direct responsibility of the Unit Owner thereof, and neither the Executive Board nor the Association shall have any responsibility therefor.

- E. No Unit Owner nor any Unit Owner's guest shall do anything or cause anything to be kept in or on the Property which might result in an increase in the premiums of insurance obtained by the Association or which might cause cancellation of such insurance, and the additional amounts of any premiums or other costs incurred by the Association incidental to such actions by a Unit Owner or a Unit Owner's guests shall be the personal obligation of the Unit Owner who (or whose guests) caused such result, and such amounts shall be subject to and collectible by the Association as assessments in accordance with this Declaration.
- F. Any loss falling within the deductible portion of an insurance policy carried by the Association shall be paid by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, except that the Executive Board may in its discretion assign responsibility for said deductible in a different manner in instances where the event causing the loss was not within the control of said responsible Person. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, the insurance deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly paid by the Association, at the election of the Executive Board. Notwithstanding the foregoing; however, the Executive Board may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of a Unit Owner, his family members, tenants, guests or invitees. Upon such determination of the Executive Board, any such loss or portion thereof may be assessed to the Unit Owner in question and the Association may collect the amounts from such owner in the same manner as any assessment under this Declaration.

ARTICLE XIII
EMINENT DOMAIN

XIII. EMINENT DOMAIN

- A. Notice and Participation in Action. Whenever any

proceeding is instituted that could result in the temporary or permanent taking, injury, or destruction of all or part of the Common Elements or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Executive Board, each Unit Owner and first mortgagee shall be entitled to notice thereof and the Executive Board shall and the Unit Owners, at their respective expense, may participate in the proceedings incident thereto.

- B. General Common Elements. With respect to General Common Elements, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. After such determination, each Unit Owner shall be entitled to a share in the damages in the same proportion as his percentage of undivided interest in the Common Elements. This provision does not prohibit a majority of votes of Unit Owners entitled to vote from authorizing the Executive Board to use such damages or awards for replacing or restoring the Common Elements so taken on the remaining land, or on other acquired land, provided that this Declaration and floor plans are duly amended.
- C. With respect to Limited Common Elements, any damages or awards shall be determined for such taking, injury or destruction as it pertains to the Limited Common Element. The Executive Board shall equitably allocate any such damages or award for the Limited Common Elements among the owners of the Units to which that Limited Common Element was allocated.
- D. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be distributed in accordance with the Act.
- E. Changes in Units, in the Common Elements, and in the ownership of the Common Elements that are affected by the taking referred to in this paragraph shall be evidenced by an amendment to this Declaration.

**ARTICLE XIV
MECHANICS' LIENS**

XIV. MECHANICS LIEN

- A. If any Unit Owner shall cause any material to be

furnished to a Unit or any labor to be performed therein or thereon, the other Unit Owners shall not under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Unit Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen, and other persons furnishing labor or materials to his/her Unit or any improvement therein or thereon. Nothing herein contained shall authorize any Unit Owner or any person dealing through, with or under any Unit Owner to charge the Units of the other Unit Owners with any mechanic's lien or other lien or encumbrance whatsoever. Notice is hereby given that the right and power to charge any lien or encumbrance of any kind against one Unit for work done or materials furnished to the other Units is hereby expressly denied.

- B. If, because of any act or omission of any Unit Owner, any mechanic's or other lien or order for the payment of money shall be filed against an other Unit Owners' Unit(s) or any improvement therein or thereon (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to such other Unit Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save the other Unit Owners harmless from and against any and all costs, expenses, claims, losses, or damages, including reasonable attorney's fees resulting therefrom.

**ARTICLE XV
FIRST MORTGAGE PROTECTION**

XV. FIRST MORTGAGE PROTECTION

- A. The term "first mortgage" as used herein shall mean any recorded mortgage having priority over all other mortgages and shall include a recorded deed of trust. The term "first mortgagee" shall mean the owner and holder of a first mortgage and shall include a beneficiary under a deed of trust.
- B. The Executive Board shall maintain a roster of Unit Owners from the evidence of change of ownership

furnished to the Executive Board, which roster shall include the mailing addresses of Unit Owners. If the Executive Board has been given sufficient information by Unit Owners or their first mortgagees, the Executive Board shall maintain another roster which shall contain the name and address of each first mortgagee of a Unit.

- C. Any first mortgagee on any Unit is entitled to written notification from the Executive Board of any default by the mortgagor of such Unit in the performance of such mortgagor's obligation under the Declaration which is not cured within thirty (30) days.
- D. The Executive Board, when giving notice to a Unit Owner of a default, shall send a copy of such notice to any listed first mortgagee holding a listed first mortgage covering the Unit or Units affected by such default.
- E. No amendment to this paragraph shall affect the rights of a first mortgagee whose interest evidenced by a first mortgage was recorded prior to the recordation of any such amendment not otherwise entitled therein.

ARTICLE XVI
SPECIAL DECLARANT RIGHTS

XVI. SPECIAL DECLARANT RIGHTS.

- A. Reservation of rights. The Declarant reserves the following Special Declarant Rights for the maximum time limit allowed by law:
 - 1. The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration; and
 - 2. The right to appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.

ARTICLE XVII
COMBINATION OF UNITS

XVII.COMBINATION OF UNITS

- A. The Combination of Units is not permitted.

**ARTICLE XVII
OWNER OCCUPANCY RESTRICTIONS**

XVIII. OWNER OCCUPANCY RESTRICTIONS

A. Owner Occupancy Restrictions.

Units must be owner occupied for at least the first year after a unit owner acquires title to the unit. In addition, no more than two units may be non-owner occupied at any one time. This restriction is implemented to meet lender guidelines so that individual owners may obtain financing to purchase units.

**ARTICLE XIX
DECLARATION OF MISCELLANEOUS PROVISIONS**

XIX. DECLARATION OF MISCELLANEOUS PROVISIONS

A. Amendment, Revocation, Termination.

1. Amendment, Revocation or Termination. This Declaration may be amended, revoked or terminated at any time only upon the prior written approval of the Unit Owners entitled to vote owning not less One Hundred Percent (100%) of the voting rights in the Association, and the first mortgagees of record on not less One Hundred Percent (100%) of the Units in the Association, with such approvals to be in recordable form. In order to be effective, all amendments, revocation and termination to this Declaration must be recorded in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado, and must contain evidence of the required approval thereof.
2. Without the need for obtaining approval from the Unit Owners, first mortgagee, or any other lien holders, the Declarant is hereby vested with the right to amend and supplement this Declaration and the floor plans as may be reasonably necessary or desirable to facilitate the practical, technical, administrative, or functional integration of the Units.
3. The Declarant may amend the Declaration and Plat of Survey to correct clerical, typographical, or technical errors.
4. The Declarant may amend the Declaration and Plat

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of Survey to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and/or the Federal National Mortgage Association.

- B. Enforcement. Each Unit Owner shall strictly comply with the Governing Documents and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Executive Board or its designee on behalf of the Unit Owners, or in an appropriate case, by an aggrieved Unit Owner.
- C. Notice. Each Unit Owner shall register its mailing address with the Executive Board and all notices or demands intended to be served upon Owners shall be sent by certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. In the alternative, notices may be delivered, if in writing, personally to Unit Owners. All notices or demands intended to be served upon Association or the Executive Board shall be sent by certified mail, postage prepaid, addressed in the name of the registered agent of the Association at its registered mailing address or other address as promulgated by the Executive Board. The registered agent and the registered mailing address shall be on record with the Colorado Secretary of State.
- D. Duration. All of the provisions contained in this Declaration shall continue and remain in full force and effect until revoked or amended as herein provided.
- E. Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.
- F. Construction. When necessary for proper construction, the masculine of any word used in this Declaration shall include the feminine or neuter gender and the singular the plural, and vice versa.
- G. 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

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Declaration.

- H. Common Element Use. Subject to the provisions of this paragraph, every owner shall have an easement of enjoyment in and to the Common Elements and such easement shall be appurtenant to and shall pass with the title to every parcel, except that any Unit Owner may delegate its right of enjoyment to the Common Elements and facilities to the members of its family, its tenants, or contract purchasers who reside in the Unit Owner's Unit. The easement of enjoyment created hereby shall be subject to the following, in addition to any restrictions imposed by this Declaration:
1. The right of the Association to borrow money for any purpose for which it is permitted to levy assessments and expend funds under this Declaration, and to mortgage the Common Elements as security for any such loan;
 2. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure;
 3. The right of the Association to promulgate, publish, enact, amend, repeal, re-enact, and enforce Rules and Regulations with which each Unit Owner, its family members, tenants, guests and invitees shall strictly comply;
 4. The right of the Association to suspend the voting rights of any Unit Owner for any period during which any assessment against its Unit remains unpaid and for any infraction of the Association's published Rules and Regulations;
 5. The right of the Association to close or limit the use of the Common Elements, or any portion thereof, incidental to the maintenance, repair, and/or replacement of the Common Elements;
 6. The right of the Association to take any actions permitted by, or arising from this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations or by law.
- I. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one

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WHEN RECORDED, RETURN TO:

Law Offices of John Carver, LLC
The Equitable Building
730 17th Street, Suite 700
Denver, CO 80202

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EXHIBIT A
LEGAL DESCRIPTION

LOTS 44 TO 46, INCLUSIVE AND THE NORTH 10 FEET OF LOT 43, BLOCK 2
BELLEVUE WEST LOCATED IN THE NORTHWEST QUARTER OF SECTION 6,
TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH P.M., CITY AND COUNTY
OF DENVER, STATE OF COLORADO

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EXHIBIT B

ALLOCATION OF INTERESTS

| <u>UNIT #</u> | <u>SQUARE FEET</u> | <u>PERCENTAGE ALLOCATION</u> |
|---------------|--------------------|------------------------------|
| Unit 1 | 641 | 11.652% |
| Unit 2 | 656 | 11.925% |
| Unit 3 | 641 | 11.652% |
| Unit 4 | 656 | 11.925% |
| Unit 5 | 656 | 11.925% |
| Unit 6 | 615 | 11.180% |
| Unit 7 | 656 | 11.925% |
| Unit 8 | 629 | 11.434% |
| Unit 9 | 351 | 6.382% |
| | 5,501 | 100.000% |

**EXHIBIT C
PLAT OF SURVEY**