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**DECLARATION CONCERNING DISCLOSURES, ACKNOWLEDGMENTS,
WAIVERS AND CONSTRUCTION DEFECT DISPUTE RESOLUTION**

This DECLARATION CONCERNING DISCLOSURES, ACKNOWLEDGMENTS, WAIVERS AND CONSTRUCTION DEFECT DISPUTE RESOLUTION (this “**Declaration**”) is made and executed this 3rd day of November, 2022 by CHESTNUT STREET HOLDINGS, LLC, a Colorado limited liability company (“**Declarant**”).

RECITALS

A. Declarant is the owner of the real property located in the Town of Windsor, County of Weld, State of Colorado, legally described on the attached Exhibit A (the “**Property**”).

B. Declarant has constructed a project on the Property containing twenty-one (21) garages in three (3) separate buildings (collectively, the “**Project**”). Declarant may, in its discretion, subject the Project to a common interest community regime whereby the Project and the Property, or portions thereof, are divided into individual units designated for separate ownership (each, a “**Unit**”) and common areas (“**Common Elements**”) to be owned by the owners of the Units (each, an “**Owner**,” collectively the “**Owners**”) as tenants in common or by a property owners association (the “**Association**”).

C. In determining to proceed with the Project, Declarant has determined that each Owner of any portion of the Property and any Association formed for any portion of the Property must be informed of certain matters relating to the Property and the surrounding areas, and waive claims related to such matters.

D. In determining to proceed with the Project, Declarant has determined that each Owner of any portion of the Property and any Association formed for any portion of the Property must be bound to alternative dispute resolution procedures related to construction of the Project or portions thereof.

E. Without the disclosures, waiver, alternative dispute resolution provisions and other terms and conditions contained in this Declaration, Declarant would not proceed with the Project.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that at all times the Property shall be subject to this Declaration and that all Owners and any Association shall be subject to this Declaration with respect to the Property and any interest therein or obligation with respect thereto such Owners or the Association has from time to time.

1. DISCLOSURES AND WAIVER REGARDING ACTIVITIES. Declarant hereby discloses the following matters concerning or affecting the Property and, by taking title to, owning, holding, using or occupying the Property or any portion thereof, each Owner, any occupants of any portion of the Property (each, an “**Occupant**”) and any Association shall be deemed to have acknowledged and agreed to the following matters:

a. Community Impacts. The Property is located in a setting that may subject Owners, Occupants, or the Property in general to unpredictable levels of political opposition to any non-residential use of the Property (collectively, the “**Community Impacts**”). Without limiting the generality of the foregoing, each Owner, by acquiring a Unit, acknowledges that the Property is located within a master development primarily comprised of residential townhome properties and that, as a result, nearby property owners may oppose certain uses of the Units or the Property or may attempt to further regulate or limit the use of the Units and the Property.

b. Waiver and Release. By taking title to, owning, holding, using or occupying the Property or any portion thereof, each Owner, Occupant and any Association acknowledges the Community Impacts. Each Owner, Occupant and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof, forever waives and releases any actions or claims such party or its successors and assigns may have against Declarant and its successors and assigns, parents, subsidiaries, affiliates, officers, directors, members, investors, contractors, agents and employees, which in any way arise out of the Community Impacts.

2. DEVELOPMENT IMPACTS. Declarant hereby discloses the following matters affecting the Property related to certain development impacts and, by taking title to, owning, holding, using or occupying the Property or any portion thereof, each Owner, Occupant and any Association shall be deemed to have acknowledged and agreed to the following matters:

a. Cannabis Disclosure. Adult use of marijuana, the licensed cultivation of marijuana plants and the sale of marijuana products have been legalized in Colorado. The consumption and cultivation of marijuana are known to cause pungent odors that may be offensive or cause discomfort to some persons and may interfere with the use and enjoyment of the Units and/or Common Elements. The building and the Units within it “breathe” and are not sealed such that air, including odors, is prevented from entering or leaving the building and/or a Unit. The Association cannot control use or cultivation of marijuana in all areas that may impact the Owner’s or Occupant’s use of a Unit. Each Owner, Occupant and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof, forever waives and releases any actions or claims such party or its successors and assigns may have against Declarant, General Contractor, and their successors and assigns and each of their respective parents, subsidiaries, affiliates, officers, directors, members, investors, contractors, agents and employees, which in any way arise out of the existence or occurrence of any cannabis related impacts.

b. Noise Between Units. Each Owner, Occupant and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof acknowledges and understands that the Units are adjacent to one or more other Units and Common Elements such as hallways, walkways, sidewalks, garage exhaust fans, and driveways, and that noise from these other Units and the Common Elements, as well as other sources, will be transmitted into the Owner's or Occupant's Unit, and that noise from the Owner's or Occupant's Unit will be transmitted into other Units and the Common Elements. Each Owner, Occupant and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof, acknowledges and agrees that the Units are not soundproof and forever waives and releases any actions or claims such party or its successors and assigns may have against Declarant, General Contractor, and their successors and assigns and each of their respective parents, subsidiaries, affiliates, officers, directors, members, investors, contractors, agents and employees, which in any way arise out of the existence or occurrence of any noise related impacts.

c. Security. NEITHER DECLARANT NOR ITS AFFILIATES AND THE GENERAL CONTRACTOR, AND EACH OF THEIR, CONTRACTORS OR AGENTS WILL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, AND NEITHER DECLARANT NOR ITS AFFILIATES AND THE GENERAL CONTRACTOR, AND EACH OF THEIR CONTRACTORS OR AGENTS WILL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. EACH OWNER, OCCUPANT AND ANY ASSOCIATION, BY TAKING TITLE TO, OWNING, HOLDING, USING OR OCCUPYING THE PROPERTY OR ANY PORTION THEREOF, ACKNOWLEDGE THAT DECLARANT AND ITS AFFILIATES, OR THE GENERAL CONTRACTOR AND EACH OF THEIR CONTRACTORS OR AGENTS ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT OR ANY ASSOCIATION ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO UNITS, COMMON ELEMENTS, AND ANYWHERE ELSE WITHIN THE PROJECT, AND TO THE CONTENTS THEREIN, AND FURTHER ACKNOWLEDGE THAT DECLARANT AND ITS AFFILIATES OR THE GENERAL CONTRACTOR, AND EACH OF THEIR CONTRACTORS AND AGENTS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OCCUPANT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

d. Other Properties. Each Owner, Occupant, and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof, acknowledges that other properties are located adjacent to and in the general vicinity of the Property (the “**Other Properties**”) and that the Other Properties may be developed pursuant to the land uses permitted by the City’s zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, the “**Ordinances**”). Neither Declarant nor Declarant’s employees, contractors, agents, officers, directors and affiliates make any representations concerning



the planned uses of the Other Properties. Each Owner, Occupant and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof, further acknowledge that the zoning for the Property and the Other Properties is established and governed by the Ordinances. Any amendment of those Ordinances requires approval of the City. Each Owner, Occupant and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof, acknowledge that it has not relied upon any statements or representations regarding the Property or the Other Properties, including, without limitation, any representations made by Declarant or any agents, contractors or employees of Declarant or any real estate agency or any agent, except for those statements and representations expressly set forth in this Declaration and the Ordinances.

e. Inspection by Others; Waiver of Post Inspection Liability. It is hereby expressly understood and agreed by Declarant, any Association, Owner and Occupant, by taking title to, owning, holding, using or occupying the Property or any portion thereof, that Declarant relies upon governmental inspectors and other qualified subcontractors and tradesmen to inspect the construction of the Project, including all Units and the Common Elements, in order to verify compliance with construction plans and with building code requirements applicable to commercial construction. Declarant, each Owner, Occupant and any Association further expressly understand and agree that, with respect to the Project, Units and the Common Elements, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible governmental agency, Declarant, its affiliates and the General Contractor will be deemed to have used their best efforts to construct such Project, including Units and the Common Elements, in substantial compliance with the construction plans and all applicable building code requirements. EXCEPT AS OTHERWISE MAY BE PROVIDED IN A PURCHASE AND SALE OR OTHER AGREEMENT BETWEEN DECLARANT AND AN OCCUPANT, BY TAKING TITLE TO, OWNING, HOLDING, USING OR OCCUPYING THE PROPERTY OR ANY PORTION THEREOF, EACH OWNER, OCCUPANT AND ANY ASSOCIATION HEREBY KNOWINGLY AND WILLINGLY WAIVE AS AGAINST DECLARANT AND ITS AFFILIATES AND THE GENERAL CONTRACTOR, AND EACH OF THEIR CONTRACTORS AND AGENTS ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION, AND ALL LIABILITY, LOSSES, DAMAGES, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE PROJECT, INCLUDING UNITS OR THE COMMON ELEMENTS, WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS NEITHER SUBSTANTIAL NOR MATERIAL IN NATURE AND WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS OR THE COMMON ELEMENTS; AND ANY SUCH NONCOMPLIANCE WILL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT, AND ITS AFFILIATES AND THE GENERAL CONTRACTOR, AND EACH OF THEIR CONTRACTORS AND AGENTS. TO THE EXTENT THAT ANY SUBSTANTIAL OR MATERIAL NONCOMPLIANCE WITH APPLICABLE BUILDING CODES OR WITH THE

CONSTRUCTION PLANS IS DISCOVERED WITH REGARD TO THE PROJECT, ANY UNIT OR THE COMMON ELEMENTS, THE PROVISIONS OF SECTION 5 WILL EXCLUSIVELY GOVERN SUCH MATTER. THE PROVISIONS OF THIS SECTION 2(e) WILL BE BINDING UPON EACH OWNER, OCCUPANT, AND ANY ASSOCIATION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME. If any provisions of this Section 2(e) conflict with any applicable laws of the State of Colorado that provide non-waivable legal rights, the non-waivable terms of such law shall control. If any provisions of this Section 2(e) are interpreted by any court or arbitrator to be void or invalid, such provision shall be interpreted so as to give maximum effect of such provision's intent, as limited by Section 13-21-111.5, C.R.S.

f. Unit Size. There are many different ways to measure the square footage of a Unit and the Common Elements, such as measurements from the outside, inside or mid-point of perimeter walls. Statements of approximate dimensions, floor areas, ceiling heights or volumes (collectively, the "Area") of a Unit or Common Element may be made in construction drawings, marketing materials or other items reviewed by an Owner, Occupant or any Association. Those statements of Area are based on measurements that in some instances are measured to the mid-point or outside of the perimeter walls of a Unit or Common Element, as opposed to the actual boundary of a Unit or Common Element, as defined in the planned community documents. This results in the Area of a Unit or Common Element stated in documents related to an Association being lower than the Area of a Unit or Common Element as stated in the construction drawings, marketing materials or other items that an Owner, Occupant or any Association may have reviewed. BY TAKING TITLE TO A UNIT, EACH OWNER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE CONSTRUCTION DRAWINGS AND MARKETING MATERIALS FOR THE UNIT REFLECT THAT THE AREA OF THE UNIT IS POSSIBLY LARGER AND INCLUDES MORE SQUARE FOOTAGE THAN WHAT IS REFLECTED IN ASSOCIATION RELATED DOCUMENTS. BY TAKING TITLE TO A UNIT, EACH OWNER FURTHER ACKNOWLEDGES AND AGREES THAT (A) DECLARANT HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING THE AREA OF A UNIT AND THE COMMON ELEMENTS, (B) THAT DECLARANT AND ITS AFFILIATES AND THE GENERAL CONTRACTOR, AND EACH OF THEIR WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR DISCREPANCIES RELATED TO THE AREA OF A UNIT OR THE COMMON ELEMENTS, AND (C) IT WAIVES ALL CLAIMS RELATED TO THE SAME.

g. Assumption of Risk. Each Owner, Occupant and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof, knowingly accepts all risks associated with any and all of the matters disclosed in this Section 2.

3. CONSTRUCTION DISCLOSURES. The following items are features of original construction, by design, of which each Owner should be aware prior to acquiring a Unit. In addition, this list identifies actions Owners must take, as well as actions Owners must not take, in order to preserve the integrity and performance of the building systems and components as originally designed and constructed.



a. There shall be no penetrations of any kind in the separation walls or ceilings, except that an Owner may install shelving in its Unit that is affixed to a separation wall; provided, however, that in no event may the nails or other methods of fastening any such shelving cause penetration through the wall into an adjoining Unit.

b. Each Unit will contain exposed concrete flooring. Concrete flooring possesses an inherently high potential to crack over time and is susceptible to cracking from heavy loads. Expected cracking may vary from a single hairline crack to multiple closely spaced hairline cracks. Furthermore, placement of heavy loads on the concrete floors may create new cracks or propagate existing cracks.

4. MOLD DISCLOSURES. Declarant hereby discloses the following matters affecting the Property and, by taking title to, owning, holding, operating, using or occupying the Property or any portion thereof, Owners, Occupants, and any Association is deemed to have had the following matters disclosed to them:

a. Molds, mildew, fungi, bacteria and microbiologic organisms (collectively, “**Molds**”) are present in soil, air and elsewhere in the environment. Molds can proliferate in various environments, including, within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Molds. Due to various reasons, including the varying sensitivities of different individuals to various types of Molds and other contaminants, as of the date of this Declaration there currently exist no state or federal standards regarding acceptable levels of exposure to Molds. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of Molds. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the date of this Declaration it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or Molds. Each Owner, Occupant and any Association, by taking title to, owning, holding, using or occupying the Property or any portion thereof, acknowledge and agree that Declarant is not qualified and has not undertaken to evaluate all aspects of this very complex issue. EACH OWNER, OCCUPANT AND ANY ASSOCIATION ACKNOWLEDGE THAT DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING, THE PAST, CURRENT OR FUTURE, PRESENCE OR ABSENCE OF MOLDS IN OR IN THE VICINITY OF A UNIT, OR ANY OF THE COMMON ELEMENTS, OR IN ANY OTHER PORTION OF THE PROJECT. Declarant recommends that each Owner, Occupant and any Association, at its expense, conduct its own investigation and consult with such experts as it deems appropriate regarding the occurrence and effects of Molds, the potential sensitivity or special risk individuals who will occupy or use the Unit, Common Element, or any other portion of the Property, may have with respect to Molds, and methods to reduce or limit Molds within the Unit, Common Element, or other portion of the Project.

b. When excessive moisture or water accumulates indoors, Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all Mold in an indoor environment. The key to controlling indoor Mold

growth is to control moisture. Each Owner, Occupant and any Association must maintain its respective interest in the Project, including the Common Elements, Units, or adjacent parts of the Project in such a manner as to reduce the potential for increased Mold formation or growth, including, without limitation, preventing and repairing leaks and sources of moisture. Each Owner, Occupant and any Association must make periodic inspections of its respective interest in the Project, including the Common Elements, Units, or adjacent parts of the Project for the presence of Molds or conditions which may increase the ability of Molds to propagate within the Common Elements, Units or adjacent parts of the Project, and must monitor the Unit, Common Element or adjacent part of the Project on a continual basis for excessive moisture, water or Mold accumulation. If water or moisture is discovered in or around a Unit or the Common Elements, the Owner, Occupant, or Association must immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of moisture could result in additional damage and the growth of Mold. Each Owner, Occupant and any Association should not delay in addressing any leaks and water penetrations by professionals. TO THE FULLEST EXTENT PERMITTED BY LAW AND WITHOUT WAIVER OF, OR LIMITATION ON, THE LEGAL RIGHTS, REMEDIES OR DAMAGES PROVIDED BY CDARA (AS DEFINED BELOW), DECLARANT, ITS AFFILIATES AND THE GENERAL CONTRACTOR, AND EACH OF THEIR CONTRACTORS AND AGENTS WILL NOT BE RESPONSIBLE FOR DAMAGES AND EACH OWNER, OCCUPANT AND ANY ASSOCIATION, BY TAKING TITLE TO AN INTEREST IN THE PROJECT, HEREBY WAIVE ALL RIGHTS TO DAMAGES AND SUBROGATION OF DAMAGES CAUSED BY THE PRESENCE OF MOLD IN THE PROJECT, REGARDLESS OF THE SOURCE OR CAUSE. EACH OWNER, OCCUPANT AND ANY ASSOCIATION WILL INDEMNIFY AND HOLD DECLARANT, ITS AFFILIATES AND THE GENERAL CONTRACTOR, AND EACH OF THEIR CONTRACTORS AND AGENTS HARMLESS FROM DAMAGES, INCLUDING IN ALL CASES PERSONAL INJURY OR PROPERTY DAMAGE, CAUSED BY THE PRESENCE OF MOLD IN THE COMMON ELEMENTS, UNIT OR THE PROJECT TO THE EXTENT THAT THE DAMAGES ARE CAUSED BY: (I) SUCH OWNER'S, OCCUPANT'S OR ASSOCIATION'S NEGLIGENCE OR FAILURE TO PROPERLY MAINTAIN AND MONITOR ITS INTEREST IN THE PROJECT; (II) SUCH OWNER'S, OCCUPANT'S OR ASSOCIATION'S FAILURE TO PROMPTLY TAKE APPROPRIATE CORRECTIVE MEASURES AND MINIMIZE ANY DAMAGE CAUSED BY WATER OR MOISTURE (INCLUDING, WITHOUT LIMITATION, FAILURE TO PROMPTLY NOTIFY AND ENGAGE THE HELP OF APPROPRIATE PROFESSIONALS); OR (III) SUCH OWNER'S OR OCCUPANT'S FAILURE TO PROMPTLY NOTIFY THE RESPECTIVE ASSOCIATION OF THE WATER OR MOISTURE PROBLEM AND TO PROVIDE THE RESPECTIVE ASSOCIATION WITH AN OPPORTUNITY TO DRY THE MOISTURE OR WATER, CORRECT THE SOURCE OF THE PROBLEM, AND REMEDIATE, IF NECESSARY, ANY MOISTURE CONDITIONS RESULTING FROM DEFECTS IN WORKMANSHIP AND MATERIALS COVERED BY THE WARRANTY.

c. The provisions of this Section 4 will be binding upon each Owner, Occupant, and any Association to the fullest extent permitted by applicable law, as may be in effect from time to time.

5. CONSTRUCTION DEFECT DISPUTE RESOLUTION.

a. Testing for Construction Defects.

i. Neither an Owner, Occupant or any Association will undertake or authorize any testing, including, without limitation, investigative testing, destructive testing or invasive testing of any kind for defects in construction of any portion of the Project without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Owner, Occupant, or Association will rely on the opinions and/or the conclusions of a qualified expert (e.g., a structural engineer); even in the event such evidence or conditions exist, the Owner, Occupant, or Association will not be obligated to authorize or undertake such testing.

ii. In determining whether to authorize such testing, each Owner, Occupant and Association shall be governed by the following considerations:

(1) whether an Owner's, Occupant's, or Association's position is strong enough to justify taking any other or further action;

(2) whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable person or to justify expending an Owner's, Occupant's or Association's resources; and

(3) whether it is in an Owner's, Occupant's or Association's best interests, based upon hardship, expense, inconvenience or other reasonable criteria, to pursue the matter further.

iii. Notwithstanding the foregoing, under no circumstances shall any Owner, Occupant or Association authorize such testing as is contemplated under this Section 5(a) unless the nature of the suspected defect is such that:

(1) it poses a significant risk to life, health, safety or personal property; and

(2) it materially threatens or affects the structural integrity, functionality, or performance of the Project (or a portion thereof) for its intended use.

iv. In the event the Owner, Occupant or Association undertakes or authorizes testing for construction defects, then prior to any testing taking place, Declarant, Northern Construction Inc., as the general contractor for the Project (the "**General Contractor**"), Randell Johnson, as the architect for the initial design of the Project (the "**Architect**"), and others responsible for the design and/or construction will be entitled to notice of the alleged defect, access to the area of the alleged defect, and an opportunity to inspect the area. Declarant, the General Contractor, the Architect and others responsible for the design and/or construction

as specified by Declarant will also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

v. After complying with this Section 5(a), the Owner, Occupant or Association will have the right, but not the obligation, to proceed with a Claim (as defined herein) pursuant to this Section 5 of this Declaration, provided the requisite approvals are obtained pursuant to this Section 5. In determining whether to proceed with such a Claim, the Owner, Occupant or Association will be governed by the same standards as set forth in Section 5(e) below.

b. Consensus for Association Litigation, and Exceptions. Except as provided in this Section 5(b), neither an Owner, Occupant, nor an Association will commence a judicial or administrative proceeding regarding any matter, including, without limitation, any proceeding required under Section 5(e) below, without: (a) the written approval of Owners, and not by way of proxy voting, to which at least a majority of the votes in an Association are allocated; and (b) the affirmative vote of Declarant so long as Declarant owns any Unit. This Section 5(b) shall not apply, however, to: (i) actions brought by an Association to enforce the terms of any declaration, bylaws or rules for the Project managed by the respective Association (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the respective Association in proceedings instituted against it. In addition to the foregoing requirements, with respect to any judicial or administrative proceeding that arises out of an alleged defect of any Common Element or Unit, the following provisions shall apply:

i. Declarant and others responsible for the design and/or construction, including the General Contractor and the Architect, will have the right to be heard by the Owners, Occupants and Association, and to access and inspect any portion of the Property, including any improvement as to which a defect is alleged. In addition, the respective Association or the Owner will notify Declarant, the General Contractor and the Architect prior to retaining any other expert as an expert witness or for other litigation purposes.

ii. Any Association must comply with the requirements of Section 38-33.3-303.5, C.R.S., prior to initiating any judicial or administrative action pertaining to alleged construction defects. In addition to such requirements, at least 60 days prior to seeking the approval of Owners to proceed with the judicial or administrative proceeding pertaining to alleged construction defects, in furtherance of the requirements of Section 5(a), any Association shall send written notice signed by the President of such Association, describing the nature of the legal action, which identifies the alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved, and any other pertinent information. In addition to any specific disclosures required under Section 38-33.3-303.5, C.R.S., such notice must also include the following information:



i. Any suit by an Association against any Bound Party to enforce assessments;

ii. Any suit by an Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the respective Association's ability to act under and enforce its own condominium declaration associated with the respective Association; and

iii. Any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of this Declaration or a condominium declaration associated with the respective Association.

iv. Notwithstanding the foregoing, with the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 5(e).

e. Mandatory Procedures.

i. Notice. Any Bound Party having a Claim ("**Claimant**") against any other Bound Party ("**Respondent**") (Claimant and Respondent are hereinafter referred to individually, as a "**Party**," or, collectively, as the "**Parties**") will notify each Respondent in writing (the "**Notice**"), stating plainly and concisely (i) the nature of the Claim, including the persons involved and Respondent's role in the Claim; (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim. The Notice must be accompanied by copies of all maintenance records relating to the portions of the Project that are the subject of the Claim. Failure to maintain maintenance records or the absence of maintenance records will create a rebuttable presumption that no maintenance was performed. The Notice will not be effective unless it includes such maintenance records or a statement that none exist.

ii. Negotiation and Mediation.

(1) The Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the respective Association may appoint a representative to assist the Parties in negotiation, except to the extent that the Association is a party.

(2) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant will have 30 additional days to submit the Claim to mediation with the Judicial Arbitrator Group, Inc., 1601 Blake Street, Suite 400, Denver, Colorado 80202, unless the Parties agree to utilize a different mediator or mediation service. The cost of mediation will be divided equally among the parties to the mediation.



would be barred by the applicable statute of limitations or statute of repose. The arbitration award (the “**Award**”) will be final and binding with no right to appeal, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

iv. Allocation of Costs of Resolving Claims.

(1) Except as provided for below, each Party, including, without limitation, any Owner, Occupant or Association, will share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding (“**Post Mediation Costs**”). Under no circumstances will either Party be entitled to recover its any attorneys’ fees from the other party (except as specifically provided for in Section 38-33.3-123, C.R.S.). EACH OWNER, OCCUPANT, AND ASSOCIATION, BY TAKING TITLE TO, OWNING, HOLDING, USING OR OCCUPYING THE PROPERTY OR ANY PORTION THEREOF, IS HEREBY DEEMED TO HAVE ACKNOWLEDGED AND AGREED THAT SUCH OWNER, OCCUPANT, AND ASSOCIATION HAS WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS’ FEES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE UNDER THIS SECTION 5(e), (EXCEPT AS SPECIFICALLY PROVIDED FOR IN SECTION 38-33.3-123, C.R.S.).

(2) Any Award which is equal to or more favorable to the Claimant than the Claimant’s Settlement Demand will add the Claimant’s Post Mediation Costs to the Award, such costs to be borne by the non-prevailing Party. Any Award which is equal to or less favorable to the Claimant than any prevailing Party’s Settlement Offer will award to the prevailing party its Post Mediation Costs. With respect to any Award which is less favorable to the Claimant than Claimant’s Settlement Demand yet more favorable to Claimant than the relevant Party’s Settlement Offer, each Party will bear its own Post Mediation Costs. If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section 5. In such event, the Party taking action to enforce the agreement or Award will be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys’ fees and court costs to the extent specifically provided under Section 38-33.3-123, C.R.S.

v. Limitation on Damages. No Party, including, without limitation, any Owner, Occupant or Association, will be entitled to receive any award of damages in connection with the arbitration of a Claim other than such Party’s actual

damages, and Declarant, Association and any Owner or Occupant will be deemed to have waived their right to receive any damages in a dispute other than actual damages, which waiver includes, without limitation, attorneys' fees, special damages, consequential damages, and punitive or exemplary damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, EACH OWNER, OCCUPANT, AND ASSOCIATION, BY TAKING TITLE TO, OWNING, HOLDING, USING OR OCCUPANT THE PROPERTY OR ANY PORTION THEREOF, IS HEREBY DEEMED TO HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY DISPUTE UNDER SECTION 5(e), THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION DEFECTS (INCLUDING SOILS RELATED ISSUES), MISREPRESENTATION, NEGLIGENCE OR OTHERWISE.

vi. Multiple Party Claims. Any and all multiple Party Claims ("Multiple Party Claims") not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all Parties involved, but not otherwise, the arbitrator may consolidate in a single arbitration proceeding any Multiple Party Claims that are substantially identical.

vii. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 5(e) above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section 5(e). In such event, the Party taking action to enforce an agreement or Award will be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs to the extent specifically provided under applicable law.

viii. Waiver of Jury Trial. BY AGREEING TO ARBITRATE CLAIMS, ALL BOUND PARTIES GIVE UP ANY RIGHT THAT PARTY MAY HAVE TO A JURY TRIAL, AS WELL AS OTHER RIGHTS THAT THE BOUND PARTY WOULD HAVE IN A COURT THAT ARE NOT AVAILABLE OR ARE MORE LIMITED IN ARBITRATION, SUCH AS THE RIGHT TO APPEAL. IF FOR ANY REASON, THE REQUIREMENT TO SUBMIT A CLAIM TO



ARBITRATION PURSUANT TO THIS SECTION 5 IS HELD BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, THEN TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY SUCH ACTION WILL BE HEARD AND DECIDED BY A JUDGE AND NOT A JURY, AND EACH OWNER, OCCUPANT AND ASSOCIATION WAIVE ANY RIGHT TO A TRIAL BY JURY IN SUCH MATTER.

ix. Other Rights. If any provisions of this Section 5 conflict with any applicable laws of the State of Colorado that provide non-waivable legal rights, including without limitation, the Homeowner Protection Act of 2007, the Colorado Construction Defect Action Reform Act, or the Colorado Consumer Protection Act, or Section 38-33.3-303.5, C.R.S., the non-waivable terms of such law shall control. If any provisions of this Section 5 are interpreted by any court or arbitrator to be void or invalid under Section 13-21-111.5, C.R.S., such provision shall be interpreted so as to give maximum effect of such provision's intent, as limited by Section 13-21-111.5, C.R.S.

f. Legal Proceedings. Subject to the provisions of Sections 5(a) through 5(e) of this Declaration, the Declarant will have the right, but not the obligation, to institute legal proceedings to enforce all rights under this Declaration. Failure to commence such legal proceedings will not constitute a waiver of any such rights. ANY LIMITATIONS ON DAMAGES AND ALL WAIVERS OF LIABILITY AND RIGHTS TO AWARDS OF DAMAGES SET FORTH IN ANY SECTION OF THIS DECLARATION WITH RESPECT TO OWNERS WILL APPLY WITH EQUAL FORCE AND EFFECT WITH RESPECT TO AN ASSOCIATION IN ANY LEGAL PROCEEDINGS INSTITUTED BY DECLARANT UNDER THIS SECTION 5(f). THE PROVISIONS OF SECTIONS 5(a) THROUGH 5(f) WILL BE BINDING UPON THE OWNERS, OCCUPANTS AND ANY ASSOCIATION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME.

g. Enforcement of Declaration.

i. Sanctions and Self-Help. The Declarant or any authorized agent of Declarant, may exercise self-help to cure any violations of this Declaration that an Owner, Occupant or Association fails or refuses to cure. All of the remedies set forth in this Declaration will be cumulative of each other and any other remedies available at law or in equity. If Declarant prevails in any action to enforce the provisions of this Declaration, it will be entitled to recover all costs, including without limitation, attorneys' fees and court costs to the extent permitted by law and reasonably incurred by in in such action.

ii. No Waiver. In no event will Declarant's failure to enforce any covenant, restriction or rule provided for in this Declaration constitute a waiver of Declarant's right to later enforce such provision.

iii. Intended Third Party Beneficiaries; Amendment of this Article. Declarant, the General Contractor and the Architect are intended third party

beneficiaries of this Section 5 and are entitled to enforce its terms. This Section 5 shall not be amended unless such amendment is approved by all Owners of Units, plus the affirmative vote of Declarant.

h. Application. The provisions of this Section 5 shall only apply to the extent permissible under Colorado law.

6. MISCELLANEOUS.

a. Duration of Declaration. The disclosures, acknowledgments, waivers and dispute resolution procedures and limitations set forth in this Declaration shall run with and bind the Property and all subdivided portions of the Property in perpetuity unless terminated in accordance with the terms of this Declaration. In the event that this Declaration or any provision hereof is found to be subject to any rule against perpetuities or similar legal doctrine, this Declaration or provision shall be deemed to run for a period of 20 years from the date of recordation of this Declaration, after which it shall be automatically extended for successive 10 year periods, unless at least 1 year prior to the expiration of the 20 year period or any successive 10 year period, this Declaration is terminated by a recorded termination agreement executed by Declarant.

b. Amendment. This Declaration runs to the benefit of Declarant and may not be amended or terminated unless such amendment or termination instrument is approved by all Owners of Units, plus the affirmative vote of Declarant. Any such amendment or termination instrument will be recorded in the office of the Weld County, Colorado Clerk and Recorder.

c. Effect of Provisions of Declaration: Declaration Runs with the Property. Each disclosure, acknowledgment, waiver and dispute resolution procedure or limitation of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Property or any subdivided portion of the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in the Property or any subdivided portion of the Property by an Owner or Occupant be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or Occupant, as the case may be and, as a personal covenant, shall be binding on such Owner or Occupant and their respective heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner; and (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Property and any subdivided portion of the Property.

d. Recitals. The Recitals set out above are incorporated herein and made part hereof.

e. Equitable Relief. In the event of a default under or non-compliance with the terms, covenants or conditions of this Declaration, Declarant may suffer immediate and irreparable harm. Accordingly, Declarant reserves to itself the right of specific performance of the terms, covenants and conditions of this Declaration and the right to

obtain from the District Court of Weld County, Colorado a temporary restraining order, preliminary injunction and permanent injunction to obtain such performance. Any equitable relief provided for herein may be sought separately or in combination with such legal remedies as may be appropriate pursuant to the provisions of this Declaration or under the laws of the State of Colorado.

f. Attorneys' Fees. Except as provided with respect to construction dispute resolution in Section 5, in the event of any dispute under or with respect to this Declaration, or the enforceability or interpretation hereof, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, but not limited to, reasonable attorneys' fees and disbursements.

g. Successors and Assigns. Except as may otherwise be provided for herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, an Association, Owner, Occupant, and their respective successors and assigns.

h. Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

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

j. 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.

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

l. Notices. All notices or demands provided for in this Declaration shall be in writing and shall be sent by (i) United States Postal Services, certified mail, return receipt requested, (ii) any nationally known overnight delivery service for next day delivery, (iii) personal delivery, or (iv) sent by electronic mail (with a copy thereof sent thereafter in accordance with clause (i), (ii) or (iii) above), in each instance, to the address of Declarant and any Association, Owner, or Occupant at the addresses shown in both the recorded instrument transferring title to the Property or a subdivided portion of the Property to Declarant and each Owner, if any, or if changed by written notice given to the addressee by the other party in accordance with this Section, at such address contained in the written notice, and at the addresses shown in the records of the Colorado Secretary of State for Declarant, any Association, Owner, or Occupant, as applicable. Any notice to be given by any party hereto may be given by the counsel for such party.

[Signature on following page]

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first above set forth.

DECLARANT:

CHESTNUT STREET HOLDINGS, LLC
a Colorado limited liability company

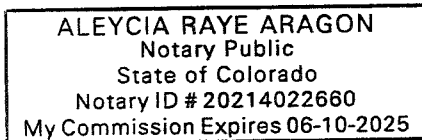
By: 
Mike Zapf
Managing Member


STATE OF COLORADO)
) ss.
COUNTY OF Weld)

The foregoing instrument was acknowledged before me this 31 day of Oct, 2022, by Mike Zapf, Managing Member of Chestnut Street Holdings, a Colorado limited liability company.

Witness my hand and official seal.

My Commission Expires: 6-10-25




Notary Public

4865223 Pages: 18 of 19
11/03/2022 12:07 PM R Fee:\$103.00
Carly Koppes, Clerk and Recorder, Weld County, CO



EXHIBIT A
To
Declaration

LEGAL DESCRIPTION

TRACTS A, B AND C, CHIMNEY PARK SUBDIVISION, FIFTH FILING, TOWN OF WINDSOR, COUNTY OF WELD, STATE OF COLORADO, ACCORDING TO PLAT RECORDED ON FEBRUARY 1, 2019 AT RECEPTION NO. 4463910 AND AFFIDAVIT OF CORRECTION RECORDED MAY 15, 2019 AT RECEPTION NO. 4489405, COUNTY OF WELD, STATE OF COLORADO.

4865223 Pages: 19 of 19
11/03/2022 12:07 PM R Fee:\$103.00
Carly Koppes, Clerk and Recorder, Weld County, CO
