

**THE CONDOMINIUM DECLARATION**

**OF**

**400 W. WILLIAM CONDOMINIUMS**

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**PREAMBLE**

THIS CONDOMINIUM DECLARATION OF 400 W. WILLIAM CONDOMINIUMS (the “Declaration”) is made on the date hereinafter set forth by PORCHFRONT HOMES AT SUPERIOR COMMONS LLC, a Colorado Limited Liability Company (“Declarant”).

Declarant hereby submits the real property described on Exhibit A, together with all rights, and appurtenances thereto, and improvements thereon to the provisions of the Colorado Common Interest Ownership Act, as it may be amended from time to time and to the covenants, conditions and restrictions herein, which shall bind the property and run with the land.

**ARTICLE ONE: DEFINITIONS**

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ACT means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.* as it may be amended from time to time. This project is exempt from the Act and except to the extent required by law, shall not be subject to the Act unless so elected by both Directors.

1.2 ALLOCATED INTEREST means the Assessment Liability and the Votes in the Association which are allocated to each of the Units in the Community. Each unit is allocated an equal 50% Allocated Interest and one vote. Each Owner of a Unit shall own and undivided interest in the Common Elements equal to such Owner’s Allocated Interest.

1.3 ASSOCIATION means 400 W. WILLIAM CONDOMINIUM ASSOCIATION, which may be either an unincorporated association, or a Colorado nonprofit corporation. The Members of the Association are the Owners of the Units in the Community.

1.4 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association consisting of two Directors, one appointed by the Owners of each Unit. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

1.5 CITY or COUNTY as applicable means the Town of Superior, a Colorado municipal corporation, and the County of Boulder, State of Colorado. CITY REQUIREMENTS means any requirements of the City by law or agreement.

1.6 COMMON ELEMENTS mean all of the Community as herein defined, except the portions thereof that constitute Units as defined herein. The Common Elements include those parts of the Common Elements that are assigned to the exclusive use of one or more, but not all, of the Owners (Limited Common Elements). Common elements consist of the Real Property, any utility or facility serving more than one unit, and all other parts of the Community necessary in common use or convenient to its existence, maintenance and safety, or as shown on the Maps.

1.7 CONDOMINIUM UNIT or UNITS mean the fee simple interest and title in and to the building improvements that constitute a single Condominium Unit as shown on a Map and as defined herein, together with the appurtenant undivided interest in the Common Elements. Each Condominium Unit is shown on the applicable Map and is identified thereon with a number or other designation.

1.8 COSTS OF ENFORCEMENT means all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines, or (b) in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

1.9 DECLARANT means PORCHFRONT HOMES AT SUPERIOR COMMONS LLC, a Colorado Limited Liability Company, its successors and assigns.

1.10 DECLARANT RIGHTS mean the development, special declarant, and other rights granted to or reserved by Declarant for the benefit of Declarant as set forth in this Declaration and the Act.

1.11 FIRST MORTGAGEE means any Person that owns, holds, insures or is a governmental guarantor of a Security Interest, which is a First Security Interest encumbering a Unit within the Community.

1.12 GUEST means (a) any person who resides with an Owner within the Community; (b) a guest, agent or invitee of an Owner; (c) an occupant or tenant of a Unit within the Community, and any members of his or her household, invitee or cohabitant; or (d) a contract purchaser.

1.13 IMPROVEMENTS mean:

(a) all exterior improvements, structures, auxiliary structures, and any attachments or appurtenances thereto or components thereof of every type or kind;

(b) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, and change of drainage pattern;

(c) all landscaping features, including, but not limited to, buildings, outbuildings, auxiliary buildings, patios, patio covers, awnings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and

(d) any change, alteration, modification, expansion, or addition to any previously approved Improvements, including any change of exterior appearance, finish material, color, or texture.

1.14 LIMITED COMMON ELEMENTS mean those parts of the Common Elements which are limited to and reserved for the exclusive use of the Owner of one or more Units but fewer than all the Units designated, allocated, or reserved by or pursuant to the Declaration or as indicated on the Maps or as designated in the Act.

Without limiting the generality of the foregoing, the following shall constitute Limited Common Elements:

(a) all private yards, decks, patios and carports designated as Limited Common Elements on the Map for a particular Unit; and

(b) all utility, service and maintenance areas, fixtures, apparatus, lines, cables, installations and facilities for power, light, gas, telephone, television, hot water, cold water, heating, incineration, or similar utility, service or maintenance purposes, that serve a particular Unit and which are located outside the foundation of a Unit.

1.15 MAP means the CONDOMINIUM MAP OF 400 W. WILLIAM CONDOMINIUMS.

1.16 UNITS THAT MAY BE CREATED means TWO (2) Units.

## **ARTICLE TWO: NATURE AND INCIDENTS OF THE COMMUNITY**

2.1 Division into Units, Estates of an Owner. The Community is hereby divided into Units as set forth on Exhibit A, each consisting of a separate fee simple estate in a particular Unit, and an appurtenant undivided fee simple interest in the Common Elements.

2.2 Description of a Condominium Unit. Every contract for the sale of a Unit written prior to the filing for record of a Map and this Declaration may legally describe a Unit by its identifying Unit designation followed by the words "400 W. WILLIAM CONDOMINIUMS".

Each description shall be construed to include a nonexclusive easement for ingress and egress throughout the Community and for the use of the Common Elements together with the right to the exclusive use of designated Limited Common Elements.

2.3 Unit Boundaries. The Units shall consist of and include the entire building and structure of each separate dwelling unit and the airspace within, from the outside of the perimeter of all walls, ceilings and floors to the center of the common Party Wall dividing the Units and shall include: all walls, floors, ceilings, roofs, decks, foundations (including all soils between, under, and adjacent to the foundations and providing support to the foundation); all exterior installations on roofs and walls serving that unit; all utilities and utility systems to the extent serving only that Unit, including systems that are outside the boundaries of the unit otherwise established. If any

facility, equipment or structure of any kind lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

2.4 Inseparability. An Owner's undivided interest in the Common Elements shall not be separated from the Unit. The Common Elements shall remain undivided, and no Owner or any other person shall bring any action for partition or division of the Common Elements or for subdivision of a Unit.

2.5 Limited Common Elements. The Limited Common Elements to a Unit shall be identified on the applicable Map and are for the sole and exclusive use of the owners of such Unit.

2.6 Compliance with the Provisions of the Project Documents. Each Owner shall comply strictly with, and shall cause each of his or her Guests to comply strictly with, all of the provisions of the Declaration and shall be liable for any breach thereof, including Costs of Enforcement.

2.7 Separate Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation.

2.8 Mechanic's Liens Against the Units. No labor performed or materials furnished for a single Unit or at the request of the Owner of a single Unit shall be a basis for a lien against the other Unit.

### **ARTICLE THREE: VARIOUS RIGHTS AND EASEMENTS**

3.1 Easements. The following Easements are declared and granted.

A. Every Owner and such Owner's Guests shall have the nonexclusive right to use and enjoy the Common Elements, subject to the provisions of the Declaration.

B. Each Owner and the Owner's Guests shall have an exclusive right to use and enjoy the Limited Common Elements appurtenant to the Unit owned by such Owner.

C. There is hereby created and granted a reasonable blanket easement on, over, in, under, and through the Community for the installation, replacement, repair, operation and maintenance of present and future utilities.

D. Each Owner shall have a non-exclusive easement in and over the Common Elements within the Community for the placement of their Unit on the Common Elements and for horizontal and lateral support of the Owner's Unit, and for utility service to the Unit.

E. The Board of Directors may have reasonable routine and emergency access related to the maintenance, repair, or replacement for any of the Common Elements or for emergency access or repairs necessary to prevent damage to the Common Elements or to another Unit.

F. All police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, shall have a reasonable easement in performance of their duties.

G. Each Owner shall have a nonexclusive easement for vehicular, pedestrian and other reasonable access to and between the Owner's Unit and the streets adjacent to the Community.

#### **ARTICLE FOUR: THE ASSOCIATION**

4.1 Purposes and Powers. The Association, by the joint consent of the Directors, shall manage, operate, care for, insure, maintain, repair, and reconstruct the Common Elements and keep them in a safe, attractive, and desirable condition for the use and enjoyment of the Owners and the Guests of the Community. The Association shall have all the power to carry out such purposes and available under the Act. All decisions shall be made by joint decision of the Directors, provided that Directors shall exercise votes in accordance with the requirements of this Declaration. In the event of dispute or impasse, the matter shall be resolved by arbitration as provided herein.

The Owners have sole responsibility to manage, operate, care for, insure, maintain, repair, and reconstruct the Units and the Limited Common Elements. Because the Units and Limited Common Elements constitute all structures on and surface of the Property, it is not anticipated that the Association will have expenses on a regular basis and need not budget for expenses or provide for assessments except to the extent required for insurance in unusual circumstances, such as repair common utilities.

4.2 Voting Rights and . There shall be one vote for each Unit which may be exercised by any person holding an interest in the Unit. Each Unit shall appoint one Director.

4.3 Period of Declarant Control. The Declarant may appoint and remove any Directors until both Units have been sold. Upon such sale, the Declarant shall deliver to the owners all books and records and all funds of the Association, if any.

4.4 Budget:

It is not anticipated that the Association will have an annual budget or assessments. Any decision to have a budget and assessments shall be made by joint decision of the Directors, provided that the Directors shall vote to establish such budget and assessments to the extent reasonably necessary to carry out obligations with respect to the Common Elements. The Directors may agree to pay Common Expenses directly without formal assessments.

#### **ARTICLE FIVE A: ASSESSMENTS**

5.1 Obligation. It is not anticipated that there will be regular assessments. Any decision to provide for any assessment shall be made by joint decision of the Directors, provided that the Directors shall reasonably make and establish assessments to carry out obligations of the Association. To the extent of dispute or impasse regarding an assessment, the matter shall be resolved by arbitration as provided herein. To the extent established, each owner shall promptly pay assessments. Unpaid amounts shall be subject to interest at 18% per annum and Costs of Enforcement. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Unit. Assessments

may also be established for damage caused by an Owner, Costs of Enforcement, and any obligation established by arbitration as provided herein.

The Association shall have a lien against the Unit of an Owner who fails to pay assessments or other obligations hereunder. Foreclosure of any lien shall be determined in arbitration as provided herein (subject to Court remedies to carry out any such foreclosure award).

Utilities that are separately metered to a Unit shall be paid by the Owner of each such Unit.

Utilities that are not separately metered shall be allocated equally to each Owner unless otherwise agreed or established by the Board or arbitration based on unequal use.

## 5.2 Levy of Assessments and Fines:

(a) Any assessment for common expenses shall be allocated 50% to each Unit.

To the extent that any Common Expenses or a portion thereof benefit fewer than all of the Unit Owners, such expenses shall be assessed against the Units based on benefit.

(b) Individual Assessments. Each Owner causing loss or damage resulting from the breach or wrongful act of such Owner or such Owner's Guests or Tenants or failing to pay obligations allocated to such Owner hereunder shall be assessed with all such loss and damage plus Costs of Enforcement.

(d) Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense related to the Common Elements.

(e) If the Directors do not mutually agree to establish any assessment provided for, required or available hereunder, the matter shall be subject to arbitration as provided herein

5.3 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

5.4 Remedies for Nonpayment of Assessments. If any Assessment (including Costs of Enforcement) is not fully paid within fifteen (15) days after the same becomes due and payable, then interest shall accrue at 18% per annum and the Unit of such defaulting Owner shall be subject to a lien securing the assessment obligation. In the event of dispute, either owner may record a notice of lien claim against the Unit of the defaulting party and the issue shall be determined by arbitration.

Sale or transfer of any Unit shall not affect the lien for the Assessments except as provided by law.

Each Owner waives any homestead exemption now or hereafter provided with respect to assessments or other obligations hereunder.

5.5 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

## **ARTICLE SIX: RESTRICTIVE COVENANTS AND OBLIGATIONS**

6.1 Limitations and Restrictions. All Units shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant as set forth in this Declaration. This Article Six shall not apply to the Declarant to the extent Declarant may be performing construction, marketing or sale within the Community, including any of the Property identified in Exhibit A.

6.2 Use and Occupancy of the Units. Units shall be used only for single family residential purposes and lawful businesses in accordance with applicable laws that do not cause unreasonable impact to the other Unit.

Uses described as “day care” or “child-care” facilities (licensed or unlicensed) are expressly prohibited except with the consent of both Directors.

6.3 Architectural Control. No Improvement shall be made with respect to a Unit without the consent of each Director, such consent not to be unreasonably withheld. A single Director shall have the power to institute enforcement proceeds in the event of the violation of this requirement through arbitration as provided herein.

6.4 Pets Within the Community. No animals, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Condominium Community; except that a reasonable number of customary household pets, but not more than two dogs may be allowed in Condominium Residences. No pets or other animals of any kind shall be raised, bred, or maintained for any commercial purpose. All pets shall be kept in a manner that does not create a nuisance or material inconvenience to any resident of the Community, including noise or aggressive behavior. An Owner is responsible for the actions and behavior of any pet and any damage or impact caused by a pet.

An Owner is responsible for any damage caused by a pet kept by the Owner or the Owner’s Guests and the Owner shall be obligated to clean up after the pet in the Community.

A pet shall not be allowed to run at large within the Community, and shall at all times be under the control of such pet’s owner or caretaker and such pet shall not be allowed to litter the Common Elements.

Loss, damage or expense incurred by the Association in enforcing the terms of this pet policy or dealing with problems or impacts caused by a pet, including cleaning up after a pet, and pet removal or restriction, including attorneys’ fees and costs, may be levied as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.



6.5 Nuisances. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done or maintained thereon that may be or become an annoyance or nuisance or detract from its value as an attractive community, including unreasonable light and sound.

6.6 Vehicular Parking, Storage and Maintenance. Parking in the Community shall be subject to the following:

(a) No house trailer, camping trailer, other trailer, ATV's, snowmobiles, camper, boat or boat accessories, truck rated with a load capacity of more than two tons, recreational vehicle, wrecked vehicles or mobile home or commercial vehicle may be parked or stored other than in Garages,

(b) Except as may be set forth in the Rules, Garages shall be used primarily for the parking of vehicles and only incidentally for the storage of other items and any use of a garage that does not allow the designated number of vehicles (one vehicle for a one car garage, two vehicles for a two-car garage) to be parked within the garage is prohibited. No gasoline, gasohol, distillate, diesel, kerosene, naphtha or similar volatile combustible or explosive materials shall be stored in any garage except in the fuel tanks of vehicles or equipment parked therein, and reasonable containers for lawn mowers, grills or other incidental uses. Owners shall keep garage doors closed except when it is necessary to open the garage doors to move vehicles or other items in and out and when performing any necessary cleaning and/or maintenance to the garage.

(c) No vehicle maintenance of any kind shall be allowed within the Community except within enclosed garages.

(d) Notwithstanding the foregoing, emergency vehicles may be parked and stored in accordance with Section 106.5 of the Act.

6.7 Unsafe, Unsightly, or Unhealthy Activities. No activity shall be conducted by anyone on any part of the Community that is or might be unsafe, unsightly, unhealthy, or hazardous to any other person. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in the Common Elements, including areas that are Limited Common Elements; and nothing shall be placed on or in windows or doors of Units, that would or might create unsightly appearance. Decks, porches, balconies, and yards shall not be used for storage, shall be maintained in a clean and orderly condition, and shall not be utilized in any manner that is unreasonable or disruptive as determined by the Board of Directors in its discretion. No laundry or other articles may be hung in or on or from yards, decks, or patios or any other portions of the Units or the Common Elements unless not reasonably visible from the street. All rubbish, trash, or garbage shall be regularly removed from the Community and shall not be allowed to accumulate thereon. The Board shall have the discretion to determine when any activity violates the requirements of this paragraph and to take appropriate steps as determined by the Board to enforce the terms hereof or to remedy any such violation.

6.8 Prohibition of Certain Activities. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof that would result in the cancellation of the insurance on the Community or increase the rate of the insurance on the Community over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors.

Nothing shall be done or kept in any Unit or in the Common Elements that would be in violation of any governmental law.

No firearms shall be discharged upon any portion of the Community and no fires shall be lighted or permitted on any portion of the Community, except in a contained barbeque unit.

No Owner shall undertake any work in his or her Unit that would jeopardize or interfere with the soundness, safety or operation of such Unit or any other Unit without the prior written approval of the Board of Directors, which approval may be withheld for any reason, and then only after obtaining any necessary governmental permits and otherwise complying with all applicable governmental laws, regulations, codes and ordinances.

6.9 Solar Installations, Antennas and Satellite Dishes. Subject to applicable law, installation of solar facilities, antennas and satellite dishes of any kind shall require the approval of both Directors.

6.10 Owner Caused Damages. An Owner shall be responsible for any loss or damage resulting from the breach of Article 6 or other terms of this Declaration or the act or neglect of an Owner or that Owner's Guests or Tenants, loss or damage, and any such obligation shall be paid by such Owner and may be the basis for assessment against such Owner's Unit.

6.11 Lease of a Unit. A First Mortgagee who has acquired title to a Unit by virtue of foreclosing a first deed of trust or mortgage or by virtue of a deed in lieu of foreclosure may lease such Unit in accordance with the terms of the applicable mortgage documents and applicable law. An Owner shall have the right to lease his or her Unit upon such terms and conditions as the Owner may deem advisable, subject to the following:, including

(a) any such lease or rental agreement must be in compliance with applicable local, state, and federal laws, including requirements of the Agencies, and this Article 6.11 shall automatically be deemed to be modified to comply with any such requirements;

(b) no Owner may lease, rent or otherwise allow occupation for compensation for (i) less than his or her entire Unit (except in cases where the Owner actually resides in his or her Unit and leases it to a roommate); (ii) for a term of less than six months in duration or (iii) for transient or hotel purposes, including 'VRBO' 'Airbnb' or similar programs. The restrictions of subsections (ii) and (iii) apply even if the Owner actual resides in his or her Unit. The foregoing is subject to the following. The Board in its discretion by joint agreement may waive or alter the foregoing requirements on a temporary basis to avoid hardship, provided that, absent formal amendment to the Declaration, a single Director may require a return to the original requirements of this paragraph.

(c) such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of this Declaration, or the Articles, Bylaws or the Rules of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them, including, but not be limited to, eviction of the lessee from the Unit; and

(d) the Board of Directors shall be furnished with a copy of the lease or rental agreement upon its request.

6.12 Enforcement. The Association, acting through its Board of Directors, shall have the power to enforce all of the above restrictive covenants and obligations. Residents. In the event of impasse, the matter shall be resolved through arbitration as provided herein.

6.13 Waiver. The strict application of the foregoing limitations and restrictions in any specific case may be modified or waived in whole or in part by both Directors.

6.14 Exemptions for the Declarant. Declarant shall be exempt from the provisions of this ARTICLE SIX to the extent that Declarant determines, in its sole discretion, that such provisions impede or affect Declarant's development, construction, marketing, sales, or leasing activities.

6.15 Signs and Displays. No sign, flag or other display may be placed on the Common Elements or on or in any visible area of Unit without the consent of both Directors, subject to section 106.5 of the Act and other applicable law. The Board may include in the Rules or Responsible Governance Standards appropriate restrictions consistent with applicable law.

6.16. Smoking. There shall be no smoking in common areas within any buildings or outdoors within twenty-five feet of any building. All smoking related refuse shall be removed from Common Areas and properly disposed of.

6.17. Rules. The Board of Directors may from time to time make and amend rules and regulations to implement the foregoing or to otherwise manage the Common Interest Community and each Owner and Guests and Invitees shall strictly comply with such Rules.

6.18. Pest Control and Mitigation. Each Owner shall, with respect to the such Owner's Unit, Limited Common Elements and any adjacent Common Areas or Common Elements, (i) take reasonable steps to mitigate, control or reduce bird, insect, animal or other pests (including pigeons and other birds, rodents, raccoons, bees, wasps and spiders) (ii) take reasonable steps to eliminate nests, hives, burrows and other structures or areas in which such pests may use and (iii) make reasonable efforts to clean up feathers, defecation or other accumulations relating to such pests. Any such Owner shall notify the Association in writing in the event, despite and after such reasonable efforts, such pests appear to be having a detrimental effect on the Common Areas or Common Elements.

6.19 Construction Ongoing. All Owners acknowledge they may be purchasing their Unit while construction is ongoing on the other Unit and accepts such construction impacts and waives all claims against the Declarant.

6.20 Window Coverings. All window coverings, as seen from outside, must be a neutral color that blends with the exterior color of the Unit and the Building. Window tinting is only allowed with the prior written approval of the Board.

6.21 Party Walls. The Party Wall is the common wall connecting and providing the common boundary between the two Units. Each Owner shall possess, in fee simple, that portion of the Party Wall, as defined herein, lying within his or her Unit the boundary line of which is defined as the center line of the Party Wall. Notwithstanding the foregoing, the adjacent Owners who jointly own a Party Wall shall have joint responsibility for the maintenance and repair of such Party Wall. Such Owners of a Party Wall are granted a mutual reciprocal easement for repair or replacement of said Party Wall. The Owners shall also have joint responsibility for the repair, maintenance and replacement of (i) the fence on or near the boundary between their respective Limited Common Element yards or areas and (ii) the roof of the Units, which is a unified installation. All such items shall be kept in good condition and repair. The maintenance, repair and replacement of such items shall be conducted by mutual agreement of such Owners, provided that in the event of dispute or disagreement, the matter shall be resolved by arbitration. In the event that any portion of any structure as originally constructed, including any Party Wall, shall extent onto or protrude over an adjoining Unit, such structure shall not be deemed to be an encroachment upon the adjoining Unit and an easement shall be deemed to exist for such improvement, including the maintenance, repair and replacement provided the same is in its original location and substantially unchanged. The foregoing shall also apply to any replacements of any Party Wall or other improvement if the same are constructed substantially in conformity with the original Party Wall.

6.22 Sound Transmission Issues. No Owner shall engage in any activity or perform any act, including alterations to the interior of its Dwelling Unit, which unreasonably transmits sound to adjacent Units or results in the unreasonable transmission of sound to other Units. The Board may reasonably regulate wall, floors and floor coverings, including changes or replacements thereof, to the extent that the same may affect the transmission of sound to other Units, including sound transmission through the .

6.23 Restrictions on Trash. Each Owner shall keep all of his or her trash, garbage and other refuse (“Trash”) in a container in the Owner’s garage. Each Owner shall provide for the regular removal of that Owner’s trash.

No trash, litter, garbage, grass, shrub or tree trimmings, scrap refuse, or debris of any kind shall be permitted to remain exposed on any Unit so it is visible from any neighboring Unit, Common Areas or from the street except that any container containing such material may be placed outside at proper times for garbage or trash pickup. No trash, garbage or other refuse shall be burned in outside containers, barbecue pits or the like.

6.24 Use of Decks, Patios, Porches and Balconies. The decks, patios, porches and balconies shall not be used for storage. There shall only be a limited, reasonable number of items left on the decks, patios, porches and balconies at any time including a table, chairs, a barbeque, and a limited number of plants. Use and storage of items on the decks, patios, porches and balconies shall be regulated by the Board of Directors who can adopt Rules, in their sole discretion, regarding the use of the decks, patios, porches and balconies

## ARTICLE SEVEN: INSURANCE

### 7.1:

(a) Introduction and Required Owner Insurance. THE ASSOCIATION WILL NOT BE PROVIDING ANY INSURANCE ON THE UNITS. EACH OWNER SHALL ESTABLISH AND MAINTAIN COMPREHENSIVE CASUALTY AND PROPERTY INSURANCE FOR THE FULL REPLACEMENT COSTS OF THE UNIT AND COMPREHENSIVE LIABILITY INSURANCE RELATING TO THE UNIT AND THE APPURTENANT LIMITED COMMON ELEMENTS. Owner insurance shall include the following: “special form/open peril” form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, and cost of demolition insuring all the insurable improvements located on the Units including one hundred percent (100%) of the current replacement cost of all insurable structures and improvements in the Units and any Limited Common Elements. The property insurance policy shall contain the following endorsements or their equivalent, if applicable and if available at a reasonable cost: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, Increased Cost of Construction Endorsement) Agreed Amount Endorsement, and Inflation Guard Endorsement. All such insurance policies shall contain a standard mortgagee clause or equivalent endorsement (without contribution) naming the First Mortgagee(s) and their successors and assigns as additional insureds in the policy.

Each Owner shall have liability insurance in an amount of not less than \$500,000 per claim and \$1,000,000 aggregate.

The contents and personal property are to be covered and insured by the Owner’s insurance.

(b) Each Owner shall provide copies of the required insurance to the Association. If the Board of Directors determines that any such insurance does not meet the requirements set forth above, or is otherwise inadequate, the Association may, after Notice and Hearing, purchase required insurance and charge the cost thereof to the Owner and the subject Unit as an Individual Assessment.

7.2 Association Insurance. The Association may obtain and maintain any insurance it deems necessary and appropriate. In the event of damage or destruction to common elements, insurance proceeds shall be utilized to repair or replace such Common Elements.

7.3 General Insurance Requirements. The cost of any insurance obtained by the Association shall be paid by the Owners as part of the Common Expense Assessment Liability pursuant to Paragraph 1.3. All Owner and Association policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best’s rating of “A” or better if reasonably available, or, if not reasonably available, the most nearly equivalent rating.

7.4 Repair and Replacement with Insurance Proceeds. Any portion of the Units for which insurance is required under this ARTICLE SEVEN that is damaged or destroyed must be repaired or replaced promptly by the Unit Owner working in conjunction with the Association and the insurance proceeds shall be applied to reconstruction and repair.

## **ARTICLE EIGHT: REPAIR AND RECONSTRUCTION ON DAMAGE OR DESTRUCTION AND CONDEMNATION**

8.1 Repair and Reconstruction of Units. If due to casualty or for any other reason a Unit including appurtenant Limited Common Elements is materially damaged or destroyed, the Owner of the Unit shall proceed with reasonable due diligence to repair and restore the Unit and Limited Common Elements within a reasonable time in accordance with the original construction or such other plans as may be approved by the Directors. To the extent Common Elements are damaged or destroyed, the Association shall proceed with reasonable due diligence to repair and restore the same.

## **ARTICLE NINE: MAINTENANCE, REPAIR AND RECONSTRUCTION**

9.1 Maintenance of the Units and Dwelling Units. The Association shall maintain and repair the common elements but not the Units or Limited Common Elements. The Owners of each Unit shall have sole responsibility for the maintenance, repair, and reconstruction of the Units and all Limited Common Elements of such Unit. All Units and Limited Common Elements shall be kept by such Owner in good repair and in a clean, neat and orderly condition.

## **ARTICLE TEN: DECLARANT RIGHTS**

10.1 Reservation. The Declarant reserves the following Declarant Rights that may be exercised, where applicable, anywhere within the Community:

- (a) To complete the improvements as planned;
- (b) To exercise any Declarant Rights reserved or described herein;
- (c) To maintain business/sales offices, management offices, storage areas, nursery, construction yard, signs, advertising and model Units and to conduct general sales activities;
- (d) To post and maintain signs, displays and advertising on the Common Elements to advertise the Community and to promote sales of the Units;
- (f) To have and use and to permit others to have and use easements through the Common Elements as may be reasonably necessary for construction within the Community, and for the purpose of discharging Declarant's obligations under the Act and this Declaration;
- (i) To amend the Declaration and/or any Map in connection with the exercise of any Declarant Rights or to correct minor or technical errors or omissions; and
- (j) To exercise any other Declarant Rights created by any other provisions of this Declaration.

10.2 Rights Transferable. Declarant Rights reserved or described herein for the benefit of Declarant may be transferred to any Person by an instrument describing the Declarant Rights

transferred and recorded in the Office of the Clerk and Recorder of Boulder County, Colorado. The instrument shall be executed by the transferor Declarant and the transferee.

10.3 Limitations. The Declarant Rights shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event the Declarant Rights shall terminate without further act or deed ten (10) years after recording of this Declaration.

10.4 Models, Sales Offices and Management Offices. Declarant, its duly authorized agents, representatives, and employees may maintain any Units owned or leased by the Declarant as model Units, or as a sales, leasing and/or management office (and may locate one or more sales trailers within the Community for any of such purposes).

10.5 Declarant's Easements. The Declarant reserves the right to perform warranty work, repairs and construction work on Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repair until completion and reserves easements on, over, in, under and through the Units and Common Elements for such purposes. All work may be performed by the Declarant without the consent or approval of the Board of Directors.

The Declarant reserves an easement on, over, in, under and through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights, whether arising under the Act or reserved herein. These easements shall be for the benefit of Declarant and its duly authorized agents, representatives, employees and contractors.

10.6 Signs and Marketing. The Declarant reserves the right for Declarant and its duly authorized agents, representatives, employees and contractors to post signs and advertising in the Common Elements in order to promote sales of Units. Declarant also reserves the right for Declarant to conduct general sales activities in a manner that will not unreasonably disturb the rights of Owners.

## **ARTICLE ELEVEN: FIRST MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first deeds of trusts or mortgages recorded against Units within the Community

11.1 Amendment to Documents/Special Approvals. The consent of both Owners and consent of fifty-one percent (51%) of the Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration or the Articles or Bylaws of the Association, including changes to: allocated interests or voting rights; unit boundaries; responsibility for maintenance; obligations to repair and reconstruct; termination; or any provision providing rights to a First Mortgagee hereunder.

11.2 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment or consent within sixty (60) days after the Eligible Mortgagee receives proper notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested or as provided by law.

11.3 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association.

#### **ARTICLE TWELVE: EXPANSION**

All Units have been brought in as of the recording hereof. Accordingly there is no expansion.

#### **ARTICLE THIRTEEN: MANDATORY DISPUTE RESOLUTION**

All claims, issues and disputes of any kind related to the Common Interest Community, the Units, the Association, the Declaration (including interpretation and enforcement) and any aspect of the foregoing shall be resolved by binding mandatory arbitration, including:

(a) any dispute or impasse of the Board, or other matter related to the administration or application of the Declaration, including assessments, architectural control, enforcement of the Declaration, collection, liens and any other issue involving the Owners, the Board or the Association;

(b) any dispute among Owners;

(c) any claim related to the acts of the Declarant;

(c) any claim of construction defect or omission with respect to a Unit, a Common Element or the Community, including any claim of an Owner, the Association, or other interested party, against a construction professional or other person or entity pursuant to C.R.S. § 13-20-801 *et seq.* “Construction Professional” means the Declarant, any developer of the project, a contractor, designer, engineer, architect, subconsultant, subcontractor or supplier or any other person providing labor, material or services related to the Units or Common Elements.

The arbitration shall be conducted before and under the rules of the American Arbitration Association, Denver Colorado, before a single arbitrator who shall be an attorney experienced in the subject matter of the dispute. The arbitrator shall have the authority to determine all procedures related to the arbitration and shall have authority to enter any relief the arbitrator deems appropriate, including injunctive relief. With respect to claims under (a) only, the arbitrator may in its discretion, award Costs of Enforcement of costs and attorneys’ fees to the prevailing party, which award may be allocated based on the success of the parties. The arbitrator shall under subsection (a) only award Costs of Enforcement and/or costs and attorneys fees where it determines that an Owner has acted unreasonably or in bad faith. The Association shall not commence any action, mediation or arbitration against Declarant or a Construction Professional without the consent of both Owners.

This ARTICLE THIRTEEN shall not be amended unless such amendment is approved by Declarant and both Owners. All Construction Professionals shall be deemed to have a vested interest in these arbitration procedures, and the arbitration requirement may not be amended or deleted with respect to claims against a Construction Professionals without the written consent of such Construction Professional



**ARTICLE FOURTEEN: DURATION, AMENDMENT, AND TERMINATION OF THE DECLARATION**

14.1 Duration. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated and shall bind the heirs, successors and assigns of the Declarant and all Owners.

14.2 Amendments by Owners. All Amendments require the consent of both Owners.

14.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or First Mortgagees this Declaration, any Map, the Articles and the Bylaws, any time within the limitations set forth in Paragraph 10.3 hereof, as follows:

(a) to correct errors or omissions and to make nonmaterial changes, such as the correction of a technical, dimensional, mapping, clerical, grammatical or typographical error or clarification of a statement;

(c) to comply with any requirements of the Act or governmental authorities; or

(d) to make minor changes to facilitate the operation of the Community.

The amendments cannot impair the lien of a First Mortgagee or any warranties made to any First Mortgagee prior to the amendment.

14.4 Consent of Declarant Required. For ten years from the recording hereof, and otherwise as long as Declarant has any rights or obligations under or pursuant to this Declaration, any proposed amendment of any provision of this Declaration shall require Declarant's written consent to such amendment. Any amendment made without Declarant's written consent as required herein shall be null and void and shall have no effect.

**ARTICLE FIFTEEN: GENERAL PROVISIONS**

15.1 Right of Action. Subject to the provisions of ARTICLE THIRTEEN hereof, the Association and any aggrieved Owner shall have an appropriate right to institute arbitration against Owners for failure to comply with the Declaration. Owners shall have a similar right of arbitration against the Association.

15.2 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PORCHFRONT HOMES AT SUPERIOR COMMONS,  
LLC, a Colorado Limited Liability Company

By \_\_\_\_\_

STATE OF COLORADO                    )  
  ) SS.  
COUNTY OF BOULDER                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_ of PORCHFRONT HOMES AT SUPERIOR COMMONS, LLC, a Colorado Limited Liability Company.

My commission expires: \_\_\_\_\_.  
WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**EXHIBIT A  
TO CONDOMINIUM DECLARATION  
OF  
400 W. WILLIAM CONDOMINIUMS**

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**LEGAL DESCRIPTION OF THE REAL PROPERTY  
SUBMITTED TO CONDOMINIUM DECLARATION  
OF  
400 W. WILLIAM CONDOMINIUMS**

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Units A and B

400 W. WILLIAM CONDOMINIUMS

Lot 1, 4<sup>th</sup> Avenue Condominiums per document recorded July 29, 2019 at  
Reception No. 03726693

Also described as Lot 1, Block R, West Addition To Superior  
Superior, Boulder County, Colorado

**EXHIBIT B  
TO CONDOMINIUM DECLARATION  
OF  
400 W. WILLIAM CONDOMINIUMS**

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**THE RECORDING DATA FOR RECORDED EASEMENTS, LICENSES AND  
OTHER MATTERS WHICH THE CONDOMINIUM COMMUNITY  
IS OR MAY BECOME SUBJECT TO:**

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1. All easements as contained in ARTICLE THREE hereof or otherwise set forth in the Declaration.
2. All easements as per the recorded Plat of the 400 W. WILLIAM CONDOMINIUMS.
3. All matters set forth on any Map of the 400 W. WILLIAM CONDOMINIUMS.
4. Notes and easements as shown on the Plat of West Addition to Superior recorded August 23, 1904 in Plat Book 2 at Page 216.
5. Any tax, lien, fee, or assessment by reason of inclusion in the Cherryvale Fire Protection District, as evidenced by instrument recorded April 27, 1978 at Reception Nos. 276131 and 276194; Amended recorded November 07, 1986 at Reception No. 00803420.
6. The effect of Application for Water Rights recorded September 17, 1979 at Reception No. 359907.
7. The effect of Town of Superior Corrected Map recorded December 19, 1980 at Reception No. 427644.
8. An Oil and Gas Lease, executed by Isabella D. Mayhoffer, David Mayhoffer and John D. Mayhoffer as Lessor(s) and by Teton Energy Co., Inc. as Lessee(s) for a primary term of 1 years, dated March 18, 1978, recorded February 03, 1986 at Reception No. 00739938; and any and all assignments thereof or interests therein.  
NOTE: Matters affecting the present interest of the lessor or lessee are not shown herein.
9. Terms, agreements, provisions, conditions, obligations easements, and restrictions, if any, as contained in Assignment and Bill of Sale recorded October 19, 1992 at Reception No. 01230904.
10. Any tax, lien, fee, or assessment by reason of inclusion in the Northern Colorado Water Conservancy District, as evidenced by instrument recorded October 20, 1997 at Reception No. 1740443.
11. Terms, agreements, provisions, conditions, obligations easements, and restrictions, if any, as contained in Order for Inclusion of Town of Superior into the Northern Colorado Water Conservancy District recorded October 18, 2002 at Reception No. 2345200.
12. Terms, agreements, provisions, conditions, obligations easements, and restrictions, if any, as contained in Notice of Mineral Interests and Surface Use recorded March 07, 2007 at Reception No. 2840804.
13. Any interest in all oil, gas and other minerals conveyed to NRC-CO 1, LLC, a Colorado limited liability company by Mineral Deed, recorded June 16, 2008 at Reception No. 2936492; together with any rights of ingress and egress therein and any and all assignments thereof or interests therein.

14. The effect of Request for Notice of Surface Development recorded September 28, 2009 at Reception No. 03032258.
15. Those items as shown on the Condominium Map of 4th Ave Condominiums recorded July 29, 2019 at Reception No. 03726693, including easements for public utilities, sewer purposes, drainage and other incidental purposes affecting only the common elements.

