

After recording return original to:

CLAY STREET, LLC  
P.O. BOX 17693  
DENVER, CO 80242



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City & County of Denver DEL R86 00 00.00

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of June 3rd, 2011, by Clay Street LLC ("Declarant").

Recitals

A. Declarant is the owner of the real property in the City and County of Denver, State of Colorado, which is comprised of the two parcels identified as 3966 Vrain Street ("Parcel 1") and 3968 Vrain Street ("Parcel 2") and legally described on **Exhibit A** and **Exhibit B**, respectively, attached hereto and incorporated herein by this reference (each a "Parcel," and together the "Parcels"). The term "Parcel" shall include all improvements located or constructed thereon.

A. Each Parcel contains a residential building (each a "Unit," and together the "Units"), a detached garage (each a "Garage," and together the "Garages") and other improvements. Certain utility lines and/or meters currently servicing each Parcel are located upon or cross over the other Parcel.

B. The Units share a common wall which is structurally integrated into each Unit, and which is located substantially along a portion of the property line that runs between the Parcels (the "Unit Party Wall"). A common wall also separates the patios located behind each Unit (the "Patio Party Wall"). The Garages also share a common wall which is structurally integrated into each Garage, and which is located substantially along a portion of the property line that runs between the Parcels (the "Garage Party Wall," and together with the Unit Party Wall and the Patio Party Wall, the "Party Walls").

C. The Units share a common roof that is structurally integrated into each Unit (the "Unit Roof"). The Garages also share a common roof that is structurally integrated into each Garage (the "Garage Roof," and together with the Unit Roof, the "Roofs").

D. Declarant desires to subject the Parcels to certain rights and obligations related and appurtenant thereto, and to create certain easements and related rights and obligations relating to the Party Walls and the Roofs, all as set forth in this Declaration.

CLERK AND RECORDER  
The Clerk and Recorder for the State of Colorado, Denver, Colorado, has received this Declaration and has recorded it in my office.

Clerk and Recorder  
by Marie Valencia  
Deputy County Clerk  
Date 06-3-2011  
Marie S. Valencia

## Declaration and Agreement

NOW, THEREFORE, Declarant, for itself and its successors and assigns, hereby declares that the Parcels shall, from and after the date hereof, be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the covenants, conditions, restrictions, reservations, easements, equitable servitudes and other provisions set forth in this Declaration. This Declaration shall: (i) run with the Parcels at law and as an equitable servitude; (ii) bind any person having or acquiring any right, title or interest in any portion of the Parcels; (iii) inure to the benefit of and be binding upon every part of the Parcels and every interest therein; and (iv) inure to the benefit of, be binding upon and be enforceable by Declarant and its successors in interest and assigns, each Owner (as defined in Section 1 below) and their heirs, successors in interest and assigns.

1. Ownership of Parcels. In the event that fee title to any Parcel is owned by more than one person, such persons collectively shall constitute the "Owner," and each such person shall be jointly and severally liable for performance and observance of all the duties and responsibilities of the Owner with respect to their Parcel. Each group of persons comprising the Owner of a Parcel shall be deemed a single Owner, and any one of such persons may act for and bind all of the other persons comprising such Owner in all matters relating to this Declaration. The persons, if more than one, comprising the Owner of a Parcel may agree among themselves how to share the rights and obligations of such ownership as among themselves, but no such agreement shall affect the right of the Owner of the other Parcel to deal with any of such persons in matters relating to this Declaration, or limit their joint and several liability to the Owner of the other Parcel for performance and observance of all the duties and responsibilities of such Owner.

2. Party Walls.

(a) Declaration of Party Walls. The Unit Party Wall, the Patio Party Wall and the Garage Party Wall are hereby declared to be a fixtures appurtenant to the Parcels. The Owners shall be deemed to own an undivided onehalf interest in the Party Walls, together with the necessary or appropriate easements for the perpetual lateral and subjacent support, maintenance, repair and inspection of the Party Walls, and with equal rights of joint use of the Party Walls. Each Owner shall have an easement in, under and over the adjacent Parcel, to the extent reasonably necessary, upon reasonable advance notice, and in a mutually coordinated manner resulting in the least practical disruption of the use of the Parcels by the Owners, to perform all necessary repairs, reconstruction and maintenance of the Party Walls. To the extent not inconsistent with the terms and conditions herein, this Declaration shall be subject to the general rules of law of the State of Colorado concerning party walls.

(b) Restrictions on Use. Neither Owner shall have the right to destroy, remove or make any structural changes to the Party Walls without the prior

written consent of the other Owner, nor shall either Owner subject the Party Walls to the insertion or placement of timbers, beams, pipes, conduit or other materials in such a way as to adversely affect the structural integrity of the Party Walls. Neither Owner shall subject the Party Walls to any use which in any manner whatsoever may interfere with the equal use and enjoyment of the Party Walls by the other Owner.

(c) Intentional or Negligent Damage or Destruction. In the event that either Party Wall is damaged or destroyed by the intentional or negligent act or omission of an Owner or such Owner's permittee, such Owner shall promptly restore and repair the applicable Party Wall and shall compensate the other Owner for any damages sustained to person or property as a result of such intentional or negligent act or omission, subject to the provisions of Section 9 below.

(d) Other Damage and Destruction; Other Maintenance. To the extent there are insurance proceeds for the repair or replacement of the Party Walls, each Owner shall be entitled to all proceeds from its respective insurance policy. Except as provided in Section 2(c), in the event that either Party Wall is damaged or destroyed, or otherwise requires maintenance or repair, such Party Wall shall be repaired or rebuilt, or such other maintenance and repairs shall be performed, at the equally shared expense of both Owners; provided, however, that each Owner shall be solely responsible for the nonstructural repair and maintenance of the interior surfaces of the Party Walls located within such Owner's Parcel. If the Owners cannot agree on the necessity of any repair, maintenance or replacement of a Party Wall, the Owner advocating the repair, maintenance or replacement shall be entitled, at its own expense, to hire an independent licensed contractor or inspector (who shall not be affiliated, directly or indirectly, with the contractor selected to perform such work, if so determined) to perform an inspection of the applicable Party Wall and provide a written recommendation as to whether repair, maintenance or replacement is advisable pursuant to customary standards in the industry for the geographical area. If the contractor or inspector recommends that the Party Wall be repaired, maintained or replaced, both Owners shall be bound by such recommendation, and shall share the expense of the work in the manner set forth above; provided, however, that the Owner who originally refused to agree to the work shall reimburse the other Owner for one-half of the reasonable costs incurred in obtaining the inspection.

(e) Standard of Repair. Unless otherwise agreed in writing by both Owners, any Owner repairing or reconstructing a Party Wall shall be required to restore such Party Wall to substantially the same condition in which it existed prior to the damage or destruction (including the use of the same or similar materials, and the same proportions).

3. Roofs.

(a) Restrictions on Use. Neither Owner shall have the right to destroy, remove or make any structural changes to the Roofs without the prior written consent of the other Owner, nor shall either Owner subject the Roofs to the insertion or placement of timbers, beams, pipes, conduit or other materials in such a way as to adversely affect the structural integrity of the Roofs. Neither Owner shall subject the Roofs to any use which in any manner whatsoever may interfere with the equal use and enjoyment of the Roofs by the other Owner.

(b) Intentional or Negligent Damage or Destruction. In the event that either Roof or any portion thereof is damaged or destroyed by the intentional or negligent act or omission of an Owner or such Owner's permittee, such Owner shall promptly restore and repair the applicable Roof and shall compensate the other Owner for any damages sustained to person or property as a result of such intentional or negligent act or omission, subject to the provisions of Section 9 below.

(c) Other Damage and Destruction; Other Maintenance. To the extent there are insurance proceeds for the repair or replacement of the Roofs, each Owner shall be entitled to all proceeds from its respective insurance policy. Except as provided in Section 3(b), each Owner shall be responsible, at its cost, for the ordinary repair and maintenance of the Roofs over its Unit and Garage, except that the Unit Roof shall only be replaced in its entirety over both Units and the Garage Roof shall only be replaced in its entirety over both Garages. Except as provided in Section 3(b), if the Owners agree to replace an entire Roof, the cost of such replacement shall be paid one-half by each Owner. If the Owners cannot agree on the necessity of replacing a Roof, the Owner advocating the replacement shall be entitled, at its own expense, to hire an independent licensed roofing contractor or inspector (who shall not be affiliated, directly or indirectly, with the roofing contractor selected to replace the Roof, if so determined) to perform an inspection of the applicable Roof and provide a written recommendation as to whether replacement of the Roof is advisable pursuant to customary roofing standards in the industry for the geographical area. If the inspector or contractor recommends that the Roof be replaced, both Owners shall be bound by such recommendation, and shall share the expense of the replacement in the manner set forth above; provided, however, that the Owner who originally refused to agree to the replacement shall reimburse the other Owner for one-half of the reasonable costs incurred in obtaining the Roof inspection.

(d) Standard of Repair. Unless otherwise agreed in writing by both Owners, any Owner repairing or reconstructing a Roof shall be required to restore such Roof to substantially the same condition in which it existed prior to the damage or

destruction (including the use of the same or similar materials, and the same proportions).

4. Units, Garages and Landscaping.

(a) Maintenance of Units, Garages and Other Improvements. Except for maintenance of the Party Walls, the Roofs and any shared utilities, each Owner shall be solely responsible for all maintenance and repair of the exterior and interior of its Unit and Garage, all other improvements on its Parcel, and all utility systems serving its Parcel. In the interest of maintaining the architectural and aesthetic integrity of the improvements, neither Owner shall modify or change the color, texture or general appearance of the exterior of its Unit, its Garage or the Patio Party Wall (including, without limitation, the external structural components, the roof covering, the exterior walls or exterior hardware and trim), unless the other Owner consents in writing to such modification or change. The exterior trim of the Units, the Garages and the Patio Party Wall shall be painted no less often than approximately once every six years and more often, if necessary. The rest of the exterior shall be painted whenever necessary to maintain a pleasing appearance.

(b) Restriction on Exterior Modifications. Neither Owner shall make or suffer any structural or design change (including a color scheme change), either permanent or temporary, and of any type or nature whatsoever, to the exterior of its Unit or Garage or the Patio Party Wall without obtaining the prior written consent of the other Owner, which consent shall not be unreasonably withheld or delayed; provided, however, that the other Owner's denial of such a request shall not be deemed unreasonable if the proposed structural or design change would negatively impact the value of the other Owner's Parcel, in such Owner's reasonable judgment. If an Owner (the "Altering Owner") desires to build, renovate, excavate, improve or otherwise alter its Unit, Garage, the Patio Party Wall or other improvements located on its Parcel and has (if required by the foregoing sentence) obtained the written consent of the other Owner, then the other Owner shall cooperate to the extent reasonably necessary, but at no expense to such other Owner, to enable the Altering Owner to obtain, at the Altering Owner's sole cost and expense, any required building permit or similar permit or license.

(c) Landscaping. Each Owner shall be responsible for the expenses, liabilities and general upkeep responsibilities with respect to the landscaping, fencing, irrigation and similar outdoor improvements located in or on such Owner's Parcel. Neither Owner shall unreasonably cause any diminishment to the value of the other Owner's Parcel which may result from substandard maintenance and repair of landscaping, and both Owners shall make reasonable efforts to preserve, the clean, safe, attractive, sanitary and harmonious common appearance of the

outside areas of the Parcels. No Owner may install swing sets, permanent play equipment, hot tubs, fenced-in dog runs or other similar permanent or temporary structures on the front lawn on its Parcel without the express written consent of the other Owner, and each Owner shall have the right to refuse to approve any such structures which are not reasonably suitable or desirable in his reasonable opinion for aesthetic or other reasons.

(d) Damage to Units and Garages. Except as set forth in Sections 2, 3 and 5 regarding the Party Walls, the Roofs and the utilities, if the Unit or Garage on either Parcel is damaged or destroyed, such damage or destruction shall be promptly repaired and reconstructed by the Owner of that Parcel. Repair and reconstruction means the restoration of the improvements to substantially the same condition in which they existed prior to such damage or destruction (including the use of the same or similar materials, and the same proportions, except to the extent otherwise agreed in writing by both Owners). Except as set forth in Sections 2, 3 and 5, the cost to repair and reconstruct the Unit or Garage on a Parcel shall be the sole expense of the Owner of that Parcel. Notwithstanding the foregoing, but subject to Section 9, if the negligence or willful act or omission of an Owner or an Owner's permittee causes damage to, or destruction of, the other Owner's Unit or Garage, such Owner shall be responsible for the cost of repair or reconstruction of the damage to the other Owner's Units or Garage.

5. Utilities.

(a) Intentional or Negligent Damage or Destruction. In the event that any utility systems or equipment serving both Parcels are damaged or destroyed by the intentional or negligent act or omission of an Owner or such Owner's permittee, such Owner shall promptly restore and repair such utility systems or equipment and shall compensate the other Owner for any damages sustained to person or property as a result of such intentional or negligent act or omission, subject to the provisions of Section 9 below.

(b) Other Damage and Destruction; Other Maintenance. To the extent there are insurance proceeds for the repair or replacement of utility systems and equipment that serve both Parcels, each Owner shall be entitled to all proceeds from its respective insurance policy. Except as provided in Section 5(a), each Owner shall be responsible, at its cost, for the repair and maintenance of utility systems serving its Parcel exclusively. Except as provided in Section 5(a), the cost of repair, maintenance and replacement of any utility systems and equipment (or portions thereof) which serve both Units shall be paid onehalf by each Owner. If the Owners cannot agree on the necessity of any such repair, maintenance or replacement, the Owner advocating the repair, maintenance or replacement shall be entitled, at its own expense, to hire an independent licensed contractor or

inspector (who shall not be affiliated, directly or indirectly, with the contractor selected to perform such work, if so determined) to perform an inspection of such shared utility systems and/or equipment and provide a written recommendation as to whether repair, maintenance or replacement is advisable pursuant to customary standards in the industry for the geographical area. If the inspector or contractor recommends that the shared utility systems and/or equipment be repaired, maintained or replaced, both Owners shall be bound by such recommendation, and shall share the expense of the work in the manner set forth above; provided, however, that the Owner who originally refused to agree to the work shall reimburse the other Owner for one-half of the reasonable costs incurred in obtaining the inspection.

6. Creation of Easements.

(a) Easement for Lateral and Subjacent Support. Declarant hereby establishes and grants a perpetual easement over each Parcel for the benefit of the other Parcel for lateral and subjacent support for the Unit and Garage constructed on the other Parcel.

(b) Easement for Maintenance. Declarant hereby establishes and grants a perpetual easement upon, across, over and under each of the Parcels for the benefit of the other Parcel, as reasonably necessary for accessing, replacing, repairing, restoring and maintaining the other Parcel; provided, however, that such easement shall be limited to those activities that cannot reasonably be performed from or on the Parcel benefiting from such easement.

(c) Easement for Encroachments. In the event that, as a result of construction, reconstruction, shifting, settlement, restoration, rehabilitation, alteration or improvement, any portion of the Party Walls, the Units, the Roofs or the Garages, including, without limitation, roof eaves, soffits and overhangs, gutters, drainpipes, and other architectural features, now or hereafter encroaches upon the other Parcel, Declarant hereby establishes and grants an easement for the continued existence and maintenance of such encroachment which will continue for so long as such encroachment exists and which will burden the Parcel encroached upon and benefit the other Parcel. In no event, however, will an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Parcel burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of, or with the knowledge and consent of, the Owner claiming the benefit of such easement, except for encroachments of the Units, the Garages, the Roofs and/or the Party Walls onto the adjacent Parcel, including, without limitation, roof eaves, soffits and overhangs, gutters, drainpipes, and other architectural features, to the

extent and in the location such Unit, Garage, Roof and/or Party Wall was originally constructed by Declarant.

(d) Easement for Utilities. In the event that utilities serving one Parcel are located as of the date of this Declaration, or are subsequently located due to practical necessity, in, on, over, under or through the other Parcel, Declarant hereby establishes and grants an easement for the existence and maintenance of such utilities, including, but not limited to, overhead power lines, which will burden the Parcel upon which such utilities are located and benefit the Parcel served by such utilities. In no event, however, will an easement for any subsequently installed utilities be deemed established or granted if such utility easement is materially detrimental to or interferes with the reasonable use and enjoyment of the Parcel burdened by such utility easement. In the event that the Owner of the Parcel benefited by such utilities elects to perform maintenance, repair, replacement or other work relating to the utilities in the easement, such Owner shall: (i) provide the other Owner with reasonable prior notice of such activities; (ii) cause such activities to be performed in a workmanlike manner, and diligently complete the work following commencement; (iii) promptly following completion of such activities, cause the easement area to be returned to substantially the condition that existed prior to such activities; and (iv) indemnify the other Owner against all losses and expenses arising out of damage to the other Parcel, mechanic's liens and other claims arising out of such work, but excluding loss of use, inconvenience and similar temporary and normal losses incurred by the other Owner so long as the work is performed in a timely and reasonable manner. The Owner of the Parcel burdened by any such utility easement shall have the right, at its expense, to relocate such utilities on its Parcel.

7. Additional Terms. In the interest of maintaining the aesthetic integrity of the Parcels, each Owner shall:

(a) Keep the sidewalks on its Parcel free from snow and ice in compliance with applicable laws and regulations, and keep the front yard on its Parcel free from litter, dirt, debris, permanent signs and obstructions;

(b) Properly irrigate and care for all trees, shrubbery and lawn located on its Parcel;

(c) Refrain from conducting any activity on its Parcel that would increase the cost of or imperil insurance coverage on the other Parcel;

(d) Conform to and comply with all zoning, health and other city ordinances regarding its Parcel; and



- (e) Refrain from raising, breeding or keeping animals, livestock, poultry or pigs of any kind, except for dogs, cats and other common household pets that are not kept, bred or maintained for commercial purposes and that are not a nuisance.

In addition, no nuisance shall be allowed on either Parcel, nor any use or practice which interferes with the peaceful enjoyment or possession or proper use of the other Parcel by the other Owner.

8. Mechanic's Liens; Indemnification.

(a) No Mechanic's Liens. Except as otherwise provided in this Declaration, if either Owner causes any material to be furnished to its Parcel or any labor to be performed therein or thereon, the other Owner shall not under any circumstances be liable for the payment of any expenses incurred or for the value of any work done or material furnished, and all such work shall be at the expense of the Owner causing it to be done, who shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to its Parcel or any improvements therein or thereon. Nothing contained herein shall authorize either Owner or any person dealing through, with or under either Owner, to charge the Parcel of the other Owner with any mechanic's lien or other lien or encumbrance whatsoever, and the right and power to charge any lien or encumbrance of any kind against the other Owner or the other Owner's Parcel for work done or material furnished to one Owner's Parcel is hereby expressly denied.

(b) Indemnity. Except as otherwise provided herein, if, because of any act or omission of either Owner, any mechanic's or other lien or order for the payment of money shall be filed against the other Owner's Parcel or any improvements therein or thereon, or against the other Owner (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall, at its own cost and expense, cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the other Owner, within 30 days after the date of filing thereof, and further shall indemnify and save the Owner harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees, resulting therefrom.

9. Insurance.

(a) Property Insurance. Each Owner shall obtain and maintain fire and extended casualty property insurance for its Unit, Garage and all improvements to its Parcel, issued by a responsible insurance company or companies rated at least A-X by A.M. Best Company and authorized to do business in the State of Colorado, at a minimum insuring against all risks of direct physical loss as the result of fire or other hazard for 100% of the full replacement cost of the Unit and

the Garage. The property insurance policy shall name the other Owner as an additional insured. To the extent available on reasonable terms, such property insurance will further (i) contain no provisions pursuant to which the insurer may impose a so-called "coinsurance" penalty; (ii) permit a waiver of claims among, and provide for a waiver of subrogation by the insurer as to claims against, the other Owner and the members of such other Owner's household; and (iii) be written as a primary policy, not contributing with and not supplemental to the coverage that any Owner may carry.

(b) Liability Insurance. Each Owner shall provide and keep in force for the protection of itself general public liability and property damage insurance against claims for bodily injury or death or property damage occurring in, on or upon its Parcel and the improvements thereon, with a limit of not less than the greater of \$100,000 or 25% of the fair market value of its Unit and Garage and for bodily injury or death to any number of persons arising out of one accident or event, or for damage to property, and each Owner shall name the other Owner as an additional insured party under such policy. Each such policy shall be issued by a responsible insurance company or companies rated at least A-X by A.M. Best Company and authorized to do business in the State of Colorado.

(c) Certificates. Each Owner shall deliver to the other Owner certificates evidencing all insurance required to be carried under this Section 9 upon request, each containing agreements by the insurers not to cancel or decrease coverage under the policies without giving the other Owner prior written notice of at least 10 days. Each Owner shall have the right upon request to inspect and copy all such insurance policies of the other Owner and require evidence of the payments of premiums thereon.

(d) Joint Policies. Nothing provided in this Section 9 shall prevent the Owners from jointly acquiring a single insurance policy to cover any one or more of the hazards required in this Section 9. Such premiums shall be apportioned according to the relevant coverage to each Parcel, Unit and/or Garage.

(e) Personal Property Insurance. Each Owner may obtain additional insurance, at its own expense, affording personal property, loss of rents, personal liability and any other coverage obtainable, to the extent and in the amount such Owner deems necessary or desirable to protect its own interests.

10. Right of Contribution. Any contributions or other amounts payable between the Owners under this Declaration shall be subject to the provisions of this Section 10.

(a) Personal Obligation. Any contribution or other amount payable by one Owner to the other Owner under this Declaration, together with interest at 12% per annum (computed from the date 30 days after the delivery to the

noncontributing Owner of written notice seeking payment), and together with costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Parcel owned by the non-contributing Owner until paid, as more particularly provided in Section 10(d). Such contribution payment, together with such interest, costs and reasonable attorneys' fees, also shall be the personal obligation of the person who was the Owner of such Parcel at the time such expenses were incurred. Any holder of a first mortgage (or its foreclosure purchaser or other successors in interest) who becomes the Owner of a Parcel will not be personally liable for unpaid contributions that accrued prior to such acquisition of title, but will be liable for any contributions that accrue against such Parcel after that holder (or purchaser) acquires title to the Parcel.

(b) Terms of Payment. Contributions shall be paid immediately upon written demand.

(c) Estoppel Certificate. Within 10 business days after receipt of a written request from any Owner or holder of a mortgage, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to an Owner or its registered agent, such Owner shall furnish to such other Owner or mortgagee, by personal delivery or certified mail, first-class postage prepaid, return receipt requested, an estoppel certificate in writing signed by the Owner and addressed to such other Owner or holder of a mortgage, or the designee of either, stating any then unpaid contribution under this Section 10 due from the requesting Owner or the Owner of the Parcel encumbered by such mortgagee's mortgage, or stating that there are no unpaid contributions due from such Owner. Such an estoppel certificate executed in favor of an Owner, mortgagee or other persons named therein who rely thereon in good faith will be conclusive upon the Owner providing such estoppel certificate as to the matters set forth therein and such Owner's Parcel will not be subject to a lien for any unpaid contributions against such Parcel arising before the date of such certificate and in excess of any unpaid amounts stated in such certificate.

(d) Perfection and Priority of Lien. The Owner seeking contribution shall have a lien against the noncontributing Owner's Parcel to secure payment of the contribution, as well as interest at 12% per annum (computed from the date 30 days after the delivery to the noncontributing Owner of written notice seeking payment), and costs and reasonable attorneys' fees. Such lien shall be perfected upon the recording of a "Notice of Lien" which states: (i) the amount of the unpaid contribution due and owing to the other Owner; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) a list of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of the Notice of Lien; (iv) the Parcel encumbered by the lien; and (v) the name or names, last known to

the Owner seeking contribution, of the Owner of the Parcel. Such lien shall be junior and subordinate to: (A) the liens of all taxes, bonds, assessments and other levies which by law are superior; (B) the lien of any first mortgage made in good faith for value; and (C) any mortgage, lien or other charge against the Parcel which is recorded prior to the recording of the Notice of Lien.

(e) Enforcement of Lien. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Colorado. The Owner seeking contribution may bid for a Parcel at any foreclosure sale and acquire, hold, lease, mortgage and convey such Parcel. The Owner seeking contribution may sue for unpaid contributions and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(f) Transfer of Parcel. The sale or transfer of any Parcel shall not affect an existing perfected lien for previous unpaid contributions or relieve such Parcel from any lien for subsequent unpaid contributions.

11. Remedies. In addition to the remedies set forth in Section 10, each provision of this Declaration shall be enforceable by either Owner by a proceeding for a prohibitive or mandatory injunction and/or by a suit or action to recover damages. If court proceedings are instituted in connection with the rights or enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and costs.

12. General Provisions.

(a) Notice. Each Owner shall register its mailing address with the other Owner and all notices or demands intended to be served upon an Owner shall be sent by reputable national overnight delivery service or certified mail return receipt requested, postage prepaid, addressed in the name of the owner at such registered mailing address or by hand delivery. In the event that an Owner does not register a mailing address with the other Owner, such Owner shall be deemed to have registered the mailing address of its Unit as the mailing address for notices.

(b) Duration; Amendment and Termination. This Declaration shall continue and remain in full force and effect in perpetuity, unless terminated in accordance with this Section 12(b). This Declaration may only be amended or terminated by recorded instrument signed by all persons comprising the Owners and all holders of first mortgages as may be required by any notes or deeds of trust. Any such termination shall not release either Owner from liability for satisfying its obligations hereunder that have accrued and remained unsatisfied as of such termination, and the same shall survive termination and remain enforceable thereafter.

(c) Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision, the right to enforce such provision thereafter, or of any other provision of this Declaration.

(d) 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 which shall remain in full force and effect.

(e) No Merger. Notwithstanding the fact that Declarant owns all property subject to this Declaration as of the date of this Declaration, such ownership and any future ownership of all property subject to this Declaration by a single owner shall not act to merge the covenants, easements, burdens and benefits created by this Declaration with the underlying real property. Any amendment or revocation of this Declaration or the covenants, easements, burdens and benefits created herein may only be effected pursuant to Section 12(b).

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

(g) 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.

(h) Governing Law. This Declaration is made and executed under and will be governed and construed by the laws of the State of Colorado.

*[Remainder of page intentionally left blank]*





**EXHIBIT B**  
**to**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**(Legal Description of 3968 Vrain Street - Parcel 2)**

**LOT 42 BLOCK 7, MOUNTAIN VIEW, EXCEPT THE REAR 5 FEET OF SAID LOT,  
CITY AND COUNTY OF DENVER, STATE OF COLORADO**