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**LIMITED AMENDMENT TO THE
AMENDED, RESTATED, AND CONSOLIDATED DECLARATION OF THE
MORNINGSIDE CONDOMINIUMS**

THIS AMENDMENT is made this 21 day of September, 2022.

RECITALS

A. A Condominium Declaration for Morningside was recorded by Fulenwider Construction Co., a Colorado corporation, on March 7, 1973, at Reception Number 024513 in the Office of the Clerk and Recorder for the City and County of Denver, State of Colorado. The Original Declaration was supplemented and amended as follows: First Supplement recorded on June 29, 1973, in Book 722, Page 78; Second Supplement recorded on November 7, 1973, Book 792 at Page 56; amendment to Second Supplement recorded on December 13, 1973, in Book 808 at Page 692; Third Supplement recorded on May 21, 1974, in Book 883 at Page 636; Amendment to Third Supplement recorded on October 29, 1974, in Book 965 at Page 192; Fourth Supplement recorded on January 20, 1975, in Book 1000 at Page 596; Fifth Supplement recorded on July 7, 1976, in Book 1278 at Page 623; Amendment to Fifth Supplement recorded on July 26, 1976, in Book 1290 at Page 695; Sixth Supplement recorded on June 15, 1977, in Book 1458 at Page 234; Seventh Supplement recorded on March 13, 1978, in Book 1618 at Page 485; Eighth Supplement recorded on July 28, 1978 in Book 1714 at Page 419; Ninth Supplement recorded on December 27, 1978, in Book 1820 at Page 121; Amendment to Ninth Supplement recorded on March 26, 1979, in Book 1876 at Page 297 (collectively the "Original Declaration").

B. The Original Declaration was amended by the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums on March 11, 2003, at Reception Number 2003041363 in the Office of the Clerk and Recorder for the City and County of Denver, State of Colorado ("Amended and Restated Declaration").

C. Article 9, Section 9.4 of the Amended and Restated Declaration provides that any provision, condition, restriction, or equitable servitude contained in the Amended and Restated Declaration may be amended or repealed at any time, and from time-to-time, upon approval of at least 67% of the votes in the Association and with the written consent of the Association.

D. Members holding at least 67% of the votes in the Association have approved this Amendment. If mortgagee approval is required, then 51% of the mortgagees have consented. Those approving this Amendment have determined it to be reasonable and not burdensome.

NOW, THEREFORE, the Declaration is hereby amended as follows:

- 1. **Amendment.** Article 4, Section 4.4 of the Declaration is amended by deleting that section in its entirety and substituting therefor the following:

Section 4.4 Units to be Maintained. Except as otherwise provided in this Declaration, each Owner has the obligation to maintain, repair, replace, and improve all items as listed on Exhibit C to the Declaration. No bicycles, kayaks, sport or recreational equipment, trash, litter, junk boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon or within any Unit so that the same are visible from any neighboring Unit, or any street. The Association, and its agents, shall have the authority to enter, replace, maintain, repair, and clean up Units which do not conform to the provisions of this Section, and to charge and collect from the Unit Owners thereof all reasonable costs related thereto as an Assessment under this Declaration.

2. **Amendment.** Article 6, Section 6.1 is amended by adding a new paragraph thereto as follows:

If an Owner is a corporation, partnership, trust or other legal entity which is not a natural person, the entity will designate in writing to the Association the name(s) of the natural person(s) who will occupy the Unit. The designated natural person(s) to occupy the Unit may not be changed more frequently than once every 12 months without the express written consent of the Association, which will not be unreasonably withheld in cases of undue hardship and will not be for a period of less than 30 days. The maximum number of occupants in a Unit is limited to two people per bedroom in a Unit as the bedrooms were originally constructed, unless otherwise required by the Fair Housing Amendments Act of 1988, as amended.

3. **Amendment.** Article 6, Section 6.2 is amended by deleting that section in its entirety and substituting therefor the following:

Section 6.2 **Primary Owner Occupancy Covenant and Restriction.** The Community is restricted to be occupied primarily by Owners. The restrictions in this section are intended to support continued primary Owner occupancy in the Community, to enhance and preserve the value of the Units, and to enhance the ability of Owners to obtain financing for Unit sales or for refinancing at costs, rates, and terms which are as favorable as possible to Owner-occupied communities. **Except as provided for in this section, occupancy and leasing of Units is prohibited, and no Owner may own more than two Units.**

(a) **Definitions.**

(i) "Effective Date" means the date this Amendment to the Declaration is recorded in the City and County of Denver, Colorado land records.

(ii) "Grandfathered Owner" means an Owner who is leasing his Unit on the Effective Date. Owners who are leasing their Unit on the Effective Date must complete permit application paperwork in order to be considered a Grandfathered Owner. Grandfathering applies only to the Unit owned by the Grandfathered Owner on the Effective Date. Grandfathering continues only until the date that the Grandfathered Owner conveys title to the Grandfathered Unit to any other Person (other than the Owner's spouse or significant other).

(iii) "Grandfathered Unit" means the Unit owned by a Grandfathered Owner on the Effective Date.

(iv) "Leasing" means the occupancy of a Unit by any Person(s) other than the Owner, or one Person who occupies the Unit with the Owner, and who occupies the Unit as his primary residence for a term of at least one year.

(b) **Leasing Permit and Restriction.** No Owner of a Unit may lease his Unit unless: (1) the Owner is a Grandfathered Owner; (2) the Owner has requested and received a written leasing permit from the Association; or (3) the Owner has requested and received a hardship-leasing permit from the Association as provided below.

The permit allows an Owner to lease his Unit, provided that the leasing is in accordance with the terms of the permit and this section. The Association has the authority to establish conditions as to the duration and use of permits consistent with this section. All leasing permits and hardship-leasing permits are valid only as to a specific Owner and Unit and are not transferable between either Units or Owners (including a subsequent Owner of a Unit if a permit was issued to the Owner's predecessor-in-title).

An Owner's request for a leasing permit will be approved if the number of current, outstanding permits issued, plus Grandfathered Units, is 25% or less of the total Units in the Community.

Leasing permits and hardship-leasing permits are automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse or significant other or a non-revocable trust under which the Owner is the beneficiary); or (2) the Owner's failure to lease his Unit for 90 consecutive days at any time after the issuance of a leasing permit; provided, however, this time frame may be extended by the Association, upon prior written request, if the Owner has been diligently pursuing the Unit's renovation and the work cannot be reasonably completed and the Unit released within 90 days after completion of renovation or if the Unit cannot be leased at current market rates for comparable Units after having made reasonable efforts to do so.

If the number of current leasing permits issued and Grandfathered Units is more than 25% of the total number of Units, then no additional leasing permits will be issued (except for hardship-leasing permits) until that number falls below 25%. Owners who have been denied a leasing permit will automatically be placed on a waiting list for a leasing permit and will be issued a permit, if they so desire, when the number falls below 25%. The issuance of a hardship-leasing permit to an Owner will not cause the Owner to be removed from the waiting list for a leasing permit.

(c) Hardship-Leasing Permits. If the failure to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis by applying to the Association for a hardship-leasing permit. The Association has the authority to issue or deny requests for hardship-leasing permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to the Community if the permit is approved; (3) the number of hardship-leasing permits which have been issued to other Owners; (4) the Owner's ability to cure the hardship; (5) whether previous hardship leasing permits have been issued to the Owner; and (6) any other facts the Association determines to be reasonably appropriate.

A "hardship" includes, but is not limited to, the following situations: (1) an Owner must relocate his residence more than 150 miles from the Morningside Condominiums and cannot, within six months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) an Owner dies and the Unit is being administered by his estate; or (3) an Owner takes a leave of absence or temporarily relocates more than 150 miles from the Morningside Condominiums and intends to return to reside in the Unit within one year.

Hardship-leasing permits are valid for a term not to exceed one year, as determined by the Association (provided no permit will be issued for a lease of less than 60 days). Owners may apply for additional hardship-leasing permits at the expiration of a hardship-leasing permit if the circumstances warrant. Hardship leasing permits will be automatically revoked if, during the term of the permit, the Owner is approved for and receives a leasing permit.

(d) Leasing Provisions. When leasing is permitted under this section, it will be governed by the following provisions:

(i) Notice. At least seven days before entering into a lease, the Owner will provide the Board with a copy of the proposed lease agreement (rental amount may be redacted). The Association will approve or disapprove the form of said lease. If a lease is disapproved, the Association will notify the Owner

of the action to be taken to bring the lease into compliance with the Declaration and any Rules and Regulations. Nothing herein will be construed as giving the Association the right to approve or disapprove a proposed resident; the Association's approval or disapproval is limited to the form of the proposed lease agreement. Notwithstanding this provision, occupancy by a parent or child of the owner will not require a written lease, but such arrangements are subject to all provisions of this section, including, but not limited to subsections (d)(ii) and (d)(iii) 1, 2, and 3 below.

(ii) General. Units may be leased only in their entirety; no rooms or fractions of Units may be leased without prior written Association approval. All leases will be in writing and in a form approved by the Association prior to the effective date of the lease. There will be no subleasing of Units or assignment of leases without prior written Association approval. All leases must be for an initial term of not less than one year, except with written Board approval, which will not be unreasonably withheld in cases of undue hardship and will not be for a term of less than 30 days. Within ten days after executing a lease agreement for the lease of a Unit, the Owner must provide the Association with a copy of the lease and the name of all residents occupying the Unit. The Owner must provide the resident with copies of the Governing Documents.

(iii) Contents of Lease. Each lease will contain the following covenants. If the covenants are not expressly contained, then they are deemed incorporated into the lease by existence of this provision.

1. Compliance with Governing Documents. The Owner and resident will comply with all provisions of the Governing Documents and will control the conduct of all other residents and guests of the leased Unit in order to ensure compliance. The Owner will cause all residents of his Unit to comply with the Governing Documents and will be responsible for all violations by the residents, notwithstanding the fact that the residents are fully liable and may be sanctioned for the violation.

2. Remedies.

a. If a Unit is leased or occupied in violation of this section or if the Owner or resident violates the Governing Documents, the Association will be authorized, in addition to all other available remedies, to levy fines against the resident and/or Owner, and to suspend all voting and/or recreational facilities use privileges of the Owner, residents, and unauthorized tenant(s).

b. All leases and rental agreements are subject to the Association's right to remove and/or evict the resident for failure to comply with the terms of the Governing Documents. If the Association requests that the Owner evict the resident based on the terms of this Declaration, and the Owner fails to commence action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon the Owner's failure to comply with the Association's request to evict, the Owner delegates and assigns to the Association, as attorney-in-fact on behalf of and for the benefit of the Owner, the power and authority to evict the resident. If the Association evicts the resident, any costs, including but not limited to reasonable attorney's fees actually incurred and court costs associated with the eviction will be an Assessment and lien against the Unit.

3. Use of Common Elements. The Owner transfers and assigns to the resident, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including, but not limited to, the use of any and all recreational facilities.

(e) Applicability of this Section. This section does not apply to any leasing transaction entered into by the Association, or by any first mortgage holder who becomes a Unit Owner through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by the mortgage. These parties will be permitted to lease a Unit without first obtaining a permit in accordance with this section, and the Units will not be considered as being leased in determining the maximum number of Units that may be leased in accordance with this section.

4. **Amendment.** Article 7, Section 7.1(b) is amended by deleting that section in its entirety and substituting the following therefor:

(b) If requested, duplicate originals of all policies and renewals thereof together with proof of payment of premiums, shall be delivered to any holder of a first lien security interest at least ten (10) days prior to expiration of the then-current policies

5. **Amendment.** Article 7, Section 7.2 of the Declaration is amended by deleting that section and substituting therefor the following:

Section 7.2 Association Hazard Insurance on the Units and Common Elements.

(a) The Association shall obtain and maintain hazard insurance covering full replacement cost, loss, damage, or destruction by fire or other casualty to the Units and the Common Elements and the other property of the Association as set forth in Exhibit C of this Declaration.

(b) If obtainable, the Association shall also obtain the following, and any additional endorsements deemed advisable by the Association: (i) an inflation guard endorsement; (ii) a construction code endorsement; (iii) a demolition cost endorsement; (iv) a contingent liability from operation of building laws endorsement; and (v) an increased cost of construction endorsement.

(c) If a covered cause of loss on the Association's policy occurs, and if that covered loss causes an Owner to be displaced from their Unit during the period of restoration, the Association has the authority to waive the monthly assessments only if the waived assessment income is recoverable by loss of income insurance on the Association's policy.

6. **Amendment.** Article 8, Section 8.3 of the Declaration is amended by deleting the phrase "sixty-seven percent (67%) of the Eligible Holders of first lien security interests" and substituting therefor the phrase "fifty-one percent (51%) of all holders of first lien security interests" and by deleting the phrase from the last sentence of that section that reads "an Eligible Holder of a first lien security interest" and substituting therefor the phrase "any first lien security interest holder."

7. **Amendment.** Article 9, Section 9.4 of the Declaration is amended by adding a new section thereto that reads as follows:

The Board of Directors, without the necessity of a vote by the Owners, may amend this Declaration to correct any scrivener's errors, to comply with any applicable local, state or federal law, and/or to bring the Community into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") or any successor governmental agencies pursuant to federal law.

- 8. **Amendment.** The Declaration is further amended by adding a new *Exhibit C* thereto, which Exhibit is attached to and incorporated in this Amendment.
- 9. **No Other Amendments.** Except as amended by the terms of this Amendment, the Declaration will remain in full force and effect.
- 10. **Effective Date.** This Amendment will be effective upon recording.

IN WITNESS WHEREOF, the undersigned officer of the Morningside Homeowners Association, Inc. hereby certifies that this Amendment to the Declaration was duly adopted by Owners and Mortgagees as set forth in the Recitals above.

This 21 day of September 2022.

MORNINGSIDE HOMEOWNERS ASSOCIATION, INC.

By: Rosemary Guilmette
President

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing Limited Amendment to the Declaration was acknowledged before me by Rosemary Guilmette Association President, on this 21st day of September, 2022.

Ruby Welch
Notary Public

My commission expires:
07-20-2024

**RUBY WELCH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20204024736
MY COMMISSION EXPIRES 07/20/2024**

EXHIBIT C

MAINTENANCE AND INSURANCE OBLIGATIONS

“A” = Association obligation

“O” = Owner obligation

The term “maintenance” includes repair and replacement unless otherwise noted on the Chart.

	ON GOING MAINTENANCE	INSURANCE
BUILDING EXTERIORS		
Residence-structure, including foundation, columns, girders, beams, supports, and all roof materials	A	A
Siding, sheathing, wrap, brick, trim, molding, and other exterior facade surfaces	A	A
Exterior stoops, steps, and concrete surfaces	A	A
Gutters and downspouts	A	A
Lanai windows, interior caulking, and screens	O	O
Lanai slab floors and lanai railings	A	A
Owner installed lanai floor coverings	O	O
Chimneys and chimney caps	A	A
Unit windows (including frames, glass panes, and hardware) and window screens	O	A
Windows – exterior caulking	A	A
Exterior building doors and garage doors – painting and staining, and other maintenance, repair, and replacement	A	A
Sliding glass doors attached or belonging to Units	O	A
Hallway and Unit entry doors, including peep holes, doorknobs, and lock mechanisms	O	A
Fire escapes and stairwells	A	A

	ON GOING MAINTENANCE	INSURANCE
Exterior light fixtures (excluding lanai light fixtures)	A	A
Lanai light fixtures	O	O
UTILITIES		
Utilities located <u>outside</u> Units: 1. Electrical and other wires 2. Water and sewer pipes 3. Cables 4. Circuit boxes 5. Water meters 6. Circuit breakers 7. Wire between interior unit panel and main breaker	A	A
All fresh water supply pipes to all bathroom, kitchen, and laundry fixtures located within the perimeter boundaries of the Unit, that serve only that Unit *See Note E Attached	O	A
Bathroom sink and toilet waste pipes from the fixture to the building main waste water line	O	A
Bathtub overflow drains	O	A
Shower and tub manifolds	O	A
Bathtub and shower P-trap repairs and replacements (except if caused by Owner negligence*)	A *O (if negligence exists)	A
All Unit laundry waste water pipes from the washer to the building main waste water lines	O	A
All kitchen waste water pipes inside Unit	O	O
All pipes behind the kitchen wall (outside boundary)	A	A
All water delivery pipes serving more than one Unit (inside and outside of Unit)	A	A
All waste water pipes serving more than one Unit (inside and outside of Unit)	A	A
Shut-off valves inside Units	O	A

	ON GOING MAINTENANCE	INSURANCE
Drain cleaning of all waste water pipes serving only one Unit up to the building main waste water line, including all pipes servicing fixtures in the bathroom, kitchen and laundry	O	N/A
All electrical utilities located inside Units serving only that Unit	O	A
Heating and hot water systems, including thermostat, valves, and pipes	A	A
Air conditioners	O	O
RESIDENCE INTERIORS		
Furnishings, including all personal property such as furniture, electronics, jewelry, and clothing	O	O
Window coverings (including on lanais)	O	O
Permanent fixtures (original grade construction) including but not limited to: <ul style="list-style-type: none"> 1. cabinets 2. countertops 3. bathtubs and showers 4. sinks 5. toilets 6. light fixtures 7. louvered exhaust vent covers in bathrooms 	O	A
Appliances in unit including: <ul style="list-style-type: none"> 1. oven 2. range, range hoods, and fans 3. refrigerator 4. dishwasher 5. washer/dryer 6. dryer vents, whether inside or outside unit boundaries 7. microwave 8. ceiling fans 	O	O
Breaker (house) electric panel	O	A
Baseboard hot water heater covers	O	A
Fireplace facade, firebox, and damper (original grade construction)	O	A

	ON GOING MAINTENANCE	INSURANCE
Cleaning interior of flue	O	N/A
Interior unfinished <u>non-perimeter</u> walls, floors, stairways in two story Units, and ceilings, including unfinished surfaces, doors, drywall, studs, insulation, hardware, and other material lying within such walls, floors, and ceilings	O	A
Unfinished surfaces of <u>perimeter</u> walls and ceilings, including drywall	O	A
Finished surfaces of <u>perimeter</u> walls and ceilings, including, but not limited to: 1. paint 2. wallpaper 3. paneling 4. texture	O	O
Finished surfaces of floors (original grade construction): 1. vinyl 2. carpeting	O	A
Finished surfaces of floors (upgrades) – including, but not limited to: 1. tile 2. hardwood 3. underlayment (soundproofing)	O	O
Any components lying <u>between the perimeter drywalls and residence exterior</u> , including but not limited to: 1. insulation 2. girders 3. beams 4. pipes 5. wiring 6. plumbing	A	A
Concrete subflooring and concrete ceilings	A	A
Garage interiors, including any walls or improvements therein, and opener (operator)	A	A

	ON GOING MAINTENANCE	INSURANCE
Garage Remotes	O	O
GROUNDS		
Retaining walls	A	A
Landscaping	A	A
Irrigation system and time clocks	A	A
Driveways, parking lots, and sidewalks	A	A
Clubhouse	A	A
Pool (indoor and outdoor)	A	A
Monuments and signage	A	A
Perimeter fence	A	A
Storage sheds	A	A
OTHER		
Snow removal from driveways, stairways, and sidewalks	A	A
Garbage pick-up	A	A
Common elements existing in Community and not otherwise listed	A	A
Any personal property of Owners not otherwise listed	O	O
Exterior/interior Betterments and Upgrades installed by Owner or Owner's predecessors-in-title not otherwise listed	O	O

NOTES

- A. THE CASUALTY INSURANCE MAINTAINED BY THE ASSOCIATION INSURES THE ENTIRE PROJECT, ANY PROPERTY CLASSIFIED AS A COMMON ELEMENT, AND PROPERTY WITHIN THE UNITS AS IDENTIFIED ON THIS EXHIBIT C THAT WAS ORIGINALLY INSTALLED OR CONVEYED BY THE DECLARANT. THE COVERAGE OF THIS CASUALTY INSURANCE DOES NOT EXTEND TO IMPROVEMENTS, FIXTURES, FURNITURE, DECORATING, APPLIANCES, OTHER PERSONAL PROPERTY SUPPLIED BY OR INSTALLED BY THE OWNERS, OR OTHER COMPONENTS IDENTIFIED ON EXHIBIT C AS OWNER INSURANCE RESPONSIBILITY. *SEE DECLARATION, SECTION 7.2.*
- B. THE PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE MAINTAINED BY THE ASSOCIATION EXTENDS TO ALL ACTIVITIES IN CONNECTION WITH THE OWNERSHIP, OPERATION, MAINTENANCE, OR OTHER USE OF THE COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.
- C. OWNERS ARE RESPONSIBLE TO OBTAIN THEIR OWN CASUALTY INSURANCE ON BETTERMENTS AND UPGRADES AND FIXTURES THEY INSTALL, AND ANY FURNITURE AND PERSONAL PROPERTY THAT BELONGS TO THEM, AND ANY OTHER COMPONENTS IDENTIFIED ON THIS EXHIBIT C AS OWNER INSURANCE RESPONSIBILITY. OWNERS ARE ALSO RESPONSIBLE TO OBTAIN PUBLIC LIABILITY COVERAGE WITHIN THE PHYSICAL BOUNDARIES OF THEIR UNIT. *SEE DECLARATION, SECTION 7.3.*
- D. IN THE EVENT OF A COVERED CAUSE OF LOSS ON THE ASSOCIATION'S INSURANCE POLICY (e.g., BURST PIPE, BUT NOT A PIPE THAT LEAKS AS RESULT OF A MAINTENANCE ISSUE), THE ASSOCIATION'S INSURANCE WILL COVER CONSEQUENTIAL DAMAGES TO PROPERTY THAT IS THE ASSOCIATION'S DUTY TO INSURE (E.G., WATER DAMAGE TO A RESIDENCE'S SHEETROCK/DRYWALL FROM A PIPE BURST AND ORIGINAL GRADE CARPETING, BUT NOT WATER DAMAGE TO HARDWOOD FLOORS OR FURNISHINGS BECAUSE THE OWNER IS RESPONSIBLE FOR INSURING HARDWOOD FLOORS AND FURNISHINGS IN THE UNIT, AS WELL AS BETTERMENTS AND UPGRADES THAT MAY INCLUDE OTHER TYPES OF FINISHED FLOORING). FURTHER, THE ASSOCIATION'S INSURANCE DOES NOT PAY FOR REPAIR OR REPLACEMENT OF FAILED EQUIPMENT (e.g., COST TO FIX THE BROKEN PIPE, WHICH COSTS ARE ALLOCATED AS PROVIDED IN EXHIBIT C.)
- E. PIPE REPLACEMENT OR RELOCATION REQUIRES ASSOCIATION APPROVAL. PIPE MATERIALS MUST BE THE SAME AS ORIGINAL (e.g., COPPER PIPES MUST BE USED TO REPLACE EXISTING COPPER PIPES). THE SIZE AND LOCATION OF PIPES MAY NOT BE CHANGED FROM THE ORIGINAL WITHOUT PRIOR WRITTEN APPROVAL OF THE BOARD.

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Phone Number: (303) 606-3300	DATE FILED: September 15, 2022 5:05 PM CASE NUMBER: 2022CV31173 ▲ COURT USE ONLY ▲ Case No: 2022CV31173 Div/Ctrm: 269
Petitioner: MORNINGSIDE HOMEOWNERS ASSOCIATION, INC. , a Colorado nonprofit corporation	ORDER APPROVING LIMITED AMENDMENT TO THE AMENDED, RESTATED, AND CONSOLIDATED DECLARATION OF THE MORNINGSIDE CONDOMINIUMS PURSUANT TO C.R.S. § 38-33.3-217(7)

THIS MATTER is before the Court following a hearing on September 15, 2022, at 1:00 p.m. After reviewing the record in this matter and taking testimony, the Court summarizes the extensive Findings of Fact and Conclusions of Law made on the record at the hearing and enters the following Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Morningside Homeowners Association, Inc., a Colorado nonprofit corporation (“Association”) is a common interest community that seeks to amend the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums recorded in the real property records of Denver County, Colorado on March 11, 2003, at Reception No. 2003041363, Denver County Clerk and Recorder, (hereafter referred to as the “Declaration”), by means of a proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums (hereafter referred to as the “proposed amendment”).

2. The Association has complied with the notice and meeting requirements set forth in C.R.S. § 38-33.3-217(7) by fulfilling the following requirements:

(a) Notices. The Association met the requirement to send at least two notices of the proposed amendments to all unit owners who are entitled by the Declaration to vote on the proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums. The notice dated February 4, 2020 was sent via U.S. mail; the notices dated February 4, 2020 and July 1, 2021 were emailed to homeowners and placed in the management office and building lobbies. In addition, Homeowners were encouraged to vote on the Proposed Amendment in the September 2019, June 2020, September 2021, and October 2021 newsletters delivered to each unit or mailed to off-site owners, and reminder flyers were emailed to homeowners and posted in all lobbies, elevators, laundry rooms, and garages. These methods of notice were sufficient, including under § 7-121-402 and § 7-127-104.

(b) **Meetings**. The Association discussed the proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums at meetings of the Association prior to the final voting draft. Those meetings were held February 22, 2020, and March 4, 2020. The Court determined that these meetings satisfied the requirements of § 38-33.3-217(7)(a)(II) and § 38-33.3-308 and also that the objectors did not demonstrate that the meetings failed to satisfy the Association's governing documents.

(c) **Results of Vote Taken**. Section 38-33.3-217(7)(a)(III) requires that unit owners to which are allocated more than 50% of the number of approvals that would be required under the Declaration to adopt the proposed amendments have voted in favor of the proposed amendments. The Declaration requires consent of owners of at least 67% of the total Association vote; therefore, under the terms of § 38-33.3-217(7)(b), approval of owners of at least 33.5% of the units are required as a condition for filing this Petition.

There are 434 Units in the Morningside Condominiums community, and each Unit is entitled to one vote. Owners representing 252 units voted, representing 58% of the total Association vote. Of the votes cast, owners of 177 units (40.8% of the total Association vote) voted in favor of the amendment to the Declaration, thereby exceeding the statutory requirement for approval of the amendments by more than 33.5% of the total Association vote.

3 The Court found that the requirements for the content of the Petition, the setting of a hearing on the Petition, and Notice of the Petition were satisfied. § 38-33.3-217(7)(b)-(d).

4 Notice was sent to mortgagees entitled to vote pursuant to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums.

5 Therefore, pursuant to § 38-33.3-217(7)(e), the Court finds that the Association has complied with all the requirements of § 38-33.3-217(7).

6 Not more than 33% of the owners or lenders filed written objections with the Court prior to the hearing.

7 No notice was sent to the Federal Housing Administration or the Veterans Administration since they have no voting rights in the proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums.

8 The Court accepts that § 38-33.3-217(7)(e)(IV) is satisfied in these circumstances. There has been no suggestion that the proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums eliminates any rights or privileges belonging to a declarant. In these circumstances, no notice was sent to the declarant. The Declarant identified in the 1973 Declaration is Fulenwider Construction Co. The trade name expired in April 2006, and there is no indication of an entity that used the trade name registered with the Colorado Secretary of State. The Association has no address for the Declarant.

9 The Court accepts that § 38-33.3-217(7)(e)(V) is satisfied in these circumstances. There has been no suggestion that the proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums eliminates any rights or

privileges belonging to a lender, and no lender has filed a written objection to proposed amendment prior to the hearing.

10. The proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums does not terminate the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums. Application of plain language of the Declaration indicates that the proposed Limited Amendment to the Restated Amended, Restated, and Consolidated Declaration of the Morningside Condominiums is an amendment of the Declaration and not a termination of that Declaration.

11. The proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums presented to the Court does not change the allocated interests of the owners.

12. Based on these Findings of Fact and Conclusions of Law, and including the reasons stated on the record at the hearing, and pursuant to the requirements of C.R.S. § 38-33.3-217(7)(e) and (f), it is hereby:

ORDERED that the proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums is approved by this Court, shall be binding upon all owners subject to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums, and shall have the same legal effect as if it were adopted pursuant to the amendment requirements set forth in the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums upon the recording of the proposed Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums, with this Order attached, with the Clerk and Recorder's office for Denver County, Colorado.

IT IS FURTHER ORDERED that the Association record a fully executed copy of the approved Limited Amendment to the Amended, Restated, and Consolidated Declaration of the Morningside Condominiums together with a copy of this Order in the office of the Clerk and Recorder for Denver County, Colorado.

DONE AND SIGNED this 15th day of September, 2022.

BY THE COURT:



STEPHANIE L. SCOVILLE
Denver District Court Judge