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**DEVELOPMENT AND COMMUNITY BENEFITS AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS**

by

**TAMAS VISKI-HANKA and EDIT VISKA-HANKA,**

and

**2ND & ADAMS MC LLC, a Delaware limited liability company**

to and for the benefit of

**CHERRY CREEK NORTH NEIGHBORHOOD ASSOCIATION,  
A REGISTERED NEIGHBORHOOD ORGANIZATION WITHIN  
THE CITY AND COUNTY OF DENVER, COLORADO**

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**DEVELOPMENT AND COMMUNITY BENEFITS AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DEVELOPMENT AND COMMUNITY BENEFITS AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS** (this “*Agreement*”) is made and entered into as of the 2nd day of May, 2023, by and between TAMAS VISKI-HANKA and EDIT VISKA-HANKA (collectively, “*159 Owner*”), and 2<sup>ND</sup> & ADAMS MC LLC, a Delaware limited liability company (“*167 Owner*”), to and for the benefit of Cherry Creek North Neighborhood Association, a registered neighborhood association in the City and County of Denver (“*CCNNA*” and together with the 159 Owner and the 167 Owner, the “*Parties*”). Capitalized terms used in this Agreement shall have the meaning given such terms where parenthetically defined or, if not parenthetically defined, in Section 1.01 of this Agreement.

RECITALS:

A. CCNNA is a registered “neighborhood organization” formed as Colorado non-profit corporations and registered under Sections 12-91 through 12-98 of the Denver Municipal Code in effect as of the date of this Agreement, which is defined in Section 12-92 of the Code to mean “a voluntary group of individual residents and Owner of real property, including businesses, within a certain prescribed area of the city, and/or a coalition of such groups formed for the purpose of collectively addressing issues and interest common to and widely perceived throughout the area” (“*RNO*”).

B. 159 Owner owns a parcel of real property in the City and County of Denver, State of Colorado containing approximately 6,250 +/- SF of land area located near the southwest corner of East 2<sup>nd</sup> Avenue and Adams Street, as the same is legally described on Exhibit A hereto (the “*Rezoning Property*”).

C. 167 Owner owns certain properties adjacent to the Rezoning Property as the same are described on Exhibit B hereto (the “*Adjacent Property*” and, together with the Rezoning Property, as may be modified pursuant to Section 1.01, the “*Project Property*”).

D. Magnetic Capital Acquisitions, LLC, an affiliate of 167 Owner (collectively with 167 Owner, and as further defined in Section 1.01 of this Agreement, the “*Owner*”) has entered into a contract to purchase the Rezoning Property from 159 Owner (the “*159 PSA*”), and, subject to the closing of the transaction contemplated by the 159 PSA, Owner desires to develop the Project Property in accordance with a future Site Plan for the development of the Project Property as generally depicted in Exhibit C attached hereto (as may be modified from time to time to reflect regulatory, design, and construction-related revisions, the “*Site Plan*”) to be submitted to the City for approval in conformance with the Code and this Agreement.

E. Owner has expressed its intent to develop the Project Property as a retail and office building (“*Project*”) and, to that end, Owner and 159 Owner have jointly filed an application for rezoning of the Rezoning Property to the Urban Center Neighborhood Context Mixed Use Five District (“*C-MX-5 District*”) under the Code dated February 10, 2023, and to which the City has assigned the number 2022I-00258 (relating to the Rezoning Property) (the “*Rezoning Application*”).

F. CCNNA is an RNO in which the Property is located and, as such, Owner is required to notify CCNNA of Owner's development and, as to the Rezoning Property, its rezoning efforts and, in connection therewith, Owner has worked with such CCNNA to disseminate its project information with CCNNA and sought input from CCNNA during its November 10, 2022, CCNNA Board meeting (the "*CCNNA Meeting*"), where the CCNNA Board voted to support the Rezoning Application, subject to the execution of this Agreement to include certain development requirements applicable to the whole of the Project Property. Such efforts have resulted in the preparation by Owner and CCNNA, with the consent of 159 Owner, of this Agreement, which shall be completed prior to proceeding through the City Planning Board Hearing Process.

G. Owner and CCNNA, with the consent of 159 Owner, now desire to set forth the agreements with respect to the Project Property reached with and for the community benefit of CCNNA, including its agreements concerning the land use concepts governing the Project Property and the overall redevelopment of the Project Property (and the portions thereof to be rezoned), developed and used in accordance with this Agreement.

NOW, THEREFORE, in consideration of the conditions of rezoning of the Rezoning Property, covenants, conditions, restrictions and undertakings set forth herein, and for ten dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and CCNNA hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

**Section 1.01 Definitions and Interpretation.** The following terms shall have the respective meanings assigned to them in this Section 1.01 unless otherwise parenthetically defined elsewhere in this Agreement:

"*159 Owner*" has the meaning given such term in the initial paragraph of this Agreement.

"*159 PSA*" has the meaning given such term in Recital D.

"*167 Owner*" has the meaning given such term in the initial paragraph of this Agreement.

"*Adjacent Property*" has the meaning given such term in Recital C.

"*Affiliated Party*" means a limited or general partner or member of Owner or any party who controls or is controlled by Owner which owns any portion of the Project Property.

"*Agreement*" means this Development and Community Benefits Agreement and Declaration of Restrictive Covenants, as it may be amended from time to time.

"*Approved Development Plan*" means the development plan for the Project Property approved by the City, that anticipates a development program and the necessary infrastructure systems to support the development on the Project Property in a manner consistent with this Agreement. The Approved Development Plan for the Project must adhere to any restriction,

prohibition or requirement made by this Agreement. The Approved Development Plan shall be filed with the City and CCNNA and shall be enforceable under the terms of this Agreement.

“*Board*” means the board of directors of CCNNA, as appointed or elected pursuant to the organizational documents and bylaws of CCNNA.

“*Blueprint Denver*” means the City’s integrated Land Use and Transportation Comprehensive Plan 2040 adopted April 22, 2019, as amended from time to time.

“*CCNNA*” means the registered neighborhood association in the City and County of Denver for the neighborhood bounded by First Avenue on the south, Colorado Boulevard on the east, University Boulevard on the west, and 6<sup>th</sup> Avenue on the north.

“*City*” means the City and County of Denver, State of Colorado.

“*Code*” means the Denver Municipal Code in effect as of the date of this Agreement, as the same may be modified from time to time and includes the Denver zoning code and the Denver building code and the rules and regulations promulgated thereunder.

“*Design Review Committee*” means any committee of representatives from the CCNNA Board and together with such other members that may, from time to time, be appointed by the CCNNA Board to serve on such committee, for the purpose of reviewing the ongoing Project design elements being developed by Owner for the purpose of addressing design changes or related design issues relating to the Project or the Property as and when necessary to confirm that the Project is being developed and implemented in accordance with the intent, spirit and requirements of this Agreement; provided, however, that a vote of the CCNNA Board are required in order to confirm any action recommended by such Design Review Committee.

“*Design Standards and Guidelines*” means those certain Cherry Creek North Design Standards and Guidelines adopted by the City as of September 26, 2014, as the same have been or may be amended from time to time.

“*Development Documents*” means, collectively, the Rezoning Application, the Site Plan and any and all documents and instruments (including, without limitation, all building plans, permits and authorizations) by and between Owner and the City or Owner and CCNNA or any third party relating to the use, development or construction of the Project.

“*Event of Default*” has the meaning given such term in Section 3.05.

“*Legal Requirements*” means all laws, rules, regulations, ordinances, codes, statutes and guidelines relating to the performance of Owner in connection with construction of improvements on the Development Properties, including, without limitation, those under the Code.

“*Notice of Default*” has the meaning given such term in Section 3.05 of this Agreement.

“*Owner*” has the meaning given such term in the initial paragraph of this Agreement, together with their respective successors and assigns and together with any Affiliated Party that acquires property within the Project Property.

“*Project*” has the meaning given such term in Recital E.

“*Project Property*” has the meaning given such term in Recital C; provided, however, that in the event of a termination of the 159 PSA or any failure by Owner to consummate the transaction contemplated by the 159 PSA, the Rezoning Property will be automatically removed from the Project Property and, as of the date of such termination, the “*Project Property*” will be deemed to mean only the Adjacent Property.

“*Recorded Covenants*” has the meaning given such term in Section 3.02.

“*Rezoning Application*” has the meaning given such term in Recital E.

“*Rezoning Property*” has the meaning given such term in Recital B.

“*Site Plan*” has the meaning given such term in Recital D.

“*TDM Plan*” has the meaning given such term in Section 2.02(v).

**Section 1.02 Use of Defined Terms.** Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include each other gender and words of the singular number shall be construed to include the plural number, and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**Section 1.03 Titles and Headings.** The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

## ARTICLE 2

### DEVELOPMENT OBLIGATIONS AND REQUIREMENTS

**Section 2.01 Development of the Property Generally; Process and Requirements.** The recitals set forth above are incorporated herein. In connection with the request for approval of the proposed changes pursuant to the Rezoning Application being made to the City, and in connection with ownership, development, construction and use of the Project on the Project Property or on any portion of the Project Property, 167 Owner and 159 Owner covenant and agree as follows:

(a) **Rezoning.** Owner, with the consent of 159 Owner, shall seek approval from the City for a change in the zoning for the Rezoning Property in a manner consistent with the Rezoning Application.

(b) **Development Process; Ongoing Communications to CCNNA.** Owner shall notify the City of this Agreement in connection with the processing of the Rezoning Application and the future Site Plan and site planning process for the Project. In connection

with the completion of the Development Documents and the Site Plan process, Owner agrees to keep CCNNA reasonably informed, including without limitation, upon request from CCNNA, by presentation at the regularly scheduled meetings with the CCNNA Board or general meetings of CCNNA, as to the status of development of the Project, including updates regarding the Rezoning Application and the Site Plan process and presentation of the design development of the Project, including overall materials selected by Owner for the Project. Owner shall also provide to CCNNA a copy of the traffic and mobility study submitted to the City in connection with the Site Plan process.

**Section 2.02 Permitted Uses, Covenants and Restrictions.** Owner may construct, erect, use and maintain improvements permitted in the proposed C-MX-5 zone district pursuant to the Code and as outlined in the Rezoning Application for the Property subject to the following covenants, conditions and restrictions:

(a) **Uses.** Uses of the Property may include any uses allowed under the Code for the C-MX-5 zone district, except that “dental/medical office and clinic” uses, as that term is defined by Section 11.12.4.6.B.1 of the Code, shall not be permitted; provided, however, that nothing in this Section 2.02 shall be deemed to prohibit (a) any dental or medical related uses for which the primary services do not include the in-person treatment of patients or clients, including, without limitation, office uses related to medical devices, or (b) the use of the Property as a day spa and boutique, including, without limitation, the continued operation of the Edit EuroSpa use in place on the Rezoning Property as of the date of this Agreement.

(b) **Car Parking.** The parking garage to be constructed below grade as part of the Project will provide parking for cars, the number of spaces for which shall exceed the minimum number of parking spaces required by the Code for uses in the Project. The exact number of spaces in excess of the minimum required for the Project shall be determined through the Site Plan review process with the City. Owner has represented to CCNNA that Owner intends to use a third party valet parking operator for employees working in the building and for customers of the retail spaces located in the building and Owner shall use its commercially reasonable efforts to provide such valet services. Such valet parking shall be made available to other parkers in the area to the extent that there is excess parking available in the garage structure.

(c) **Bike Parking.** Subject to any requirements of any third party valet parking operator, Owner shall cause there to be included on each publicly-accessible level of the parking garage and, as appropriate, at the exterior of the building, bicycle parking which will be made available to Owner’s tenants, employees, and agents, as well as for the general public, subject to uniform rules and regulations adopted from time to time with respect to such bicycle parking areas. Bicycle parking areas shall exceed the number required by the Code for the square footage of the building comprising the Project. The exact number of bicycle parking areas in excess of the minimum required for the Project shall be determined through the Site Plan review process with the City.

(d) **Design.** Owner shall cause the Project to comply with the Design Standards and Guidelines, subject to any waivers of such Design Standards and Guidelines provided by CCNNA in writing, at the sole discretion of CCNNA.

(e) **Alternative Transportation Strategies.** CCNNA is actively participating in Denver Moves Cherry Creek and other initiatives with the City and other entities to reduce traffic congestion and air pollution in the Cherry Creek area. In order to provide for a community benefit to CCNNA, Owner shall participate in good faith with CCNNA and other business owners in the Cherry Creek area to discuss and address such issues in ongoing forums and organized discussions. Owner shall employ all commercially reasonable efforts to encourage and adopt transportation strategies that are commensurate with Blueprint Denver, the transportation plan therein and the rules and regulations adopted by the City and its Department of Transportation and Infrastructure; provided, however, that Owner shall have no obligation to incur any cost or expense in connection therewith, except as contemplated by this Agreement. In connection therewith, Owner acknowledges its obligation to enter into a transportation demand management plan (a "TDM Plan") as a part of its development of the Project. The TDM Plan is an approved plan of strategies, which may include, without limitation, TDM Plan supportive infrastructure and TDM Plan programmatic strategies to maximize options for and facilitate the use of non-single occupancy vehicle travel modes for building occupants/residents and visitors. Without limiting the generality of the foregoing, Owner will include in its TDM Plan the plan to include in its leases provisions to encourage, but not require, its tenants of the Project to provide their respective employees with RTD EcoPass or other paid transit passes, or to provide for alternate transportation options that will significantly offset anticipated single car vehicle trips to and from the Project. In connection with the development of Owner's TDM Plan, Owner shall prepare such plan in a timeframe concurrently with the preparation of the Site Plan for the Project and not wait until the Project is preparing for the issuance of the certificate of occupancy. Owner shall maintain compliance with the approved TDM Plan following the issuance of the certificate of occupancy. Owner shall consider utilizing Transportation Solutions (or a similarly competent transportation management company) in connection with its preparation of the TDM Plan required for the Project. Owner shall keep CCNNA reasonably informed of about the status of, and Owner's compliance with, the TDM Plan, as well as any other initiatives and efforts to reduce traffic congestion and the air pollution caused by the increased density associated with the Project.

**Section 2.03 Good Neighbor Construction Practices.** Owner acknowledges that the size of the Project will require the implementation of certain construction regulations in order to decrease the negative impact of such construction on the neighborhood. Accordingly, Owner agrees to implement construction practices to keep construction traffic to a minimum on side streets within the neighborhood. Owner further acknowledges the requirement to file and implement a construction parking and implementation plan with the City and which shall incorporate the policies outlined on Exhibit D. A copy of such plan shall be provided to CCNNA prior to commencing construction on the Property.

**Section 2.04 Continuity; Design Review Committee.** Owner agrees to work with CCNNA and its applicable zoning or development committees as the Project proceeds. Owner agrees to meet with CCNNA and/or the Design Review Committee from time to time as the Project



design and Development Documents progress to address matters relating to the implementation of this Agreement, not less than quarterly. Upon the request of either party thereto, the parties shall meet to address changes or modifications to the Project design plans that may be deemed necessary or desirable or otherwise to review and approve changes to the Project design as may be required by the City or otherwise required to meet a specific need or concern of Owner in their development of the Project.

**Section 2.05 CCNNA Approval; Board Participation.** CCNNA agrees to prepare a letter in support of the Rezoning Application proposed by Owner on the conditions as outlined herein. CCNNA further agrees that, so long as Owner has not been reasonably alleged by CCNNA to be in default in the terms and conditions of this Agreement as of the applicable date, CCNNA will not oppose the Project or the approval of any subsequent Development Documents, including without limitation by filing any appeal thereto. Notwithstanding such letters of support, Owner acknowledges that there may be members or non-members of CCNNA who may take individual actions inconsistent with the approved actions of CCNNA or their respective Boards or committees. Owner acknowledges that CCNNA is a non-profit organization with a volunteer Board. Owner agrees to hold harmless the individual members of the Board (whether serving prior to or as of the date of this Agreement or in the future) in their individual capacity for any loss, expenses, damages or harm accruing to Owner and resulting out of this Agreement or from and against any actions by or through CCNNA (acting through or under their respective Board) in the negotiation, adoption, implementation and enforcement of this Agreement or in processing any changes hereto or in the implementation of the obligations hereunder.

**Section 2.06 Modifications to Code.** Owner agrees that (i) to the extent that the Code is modified to relax or change any zoning or use restrictions contemplated herein, then this Agreement shall continue to control with respect to the matters so modified, and (ii) to the extent that the Code is modified to impose more restrictive zoning and/or use requirements than those that are contemplated herein, then the modified zoning code provisions control with respect to such matters made more restricted. This Agreement shall continue to be effective notwithstanding the implementation of revisions to or restatements of the Code and shall, to the extent possible, be read to be in conformity with such Code. In the event of a conflict between the Code and this Agreement, this Agreement shall control.

### ARTICLE 3

#### BINDING NATURE OF AGREEMENT; ENFORCEMENT

**Section 3.01 Effective Date and Binding Nature of Agreement; Recorded.** This Agreement and all and each of the provisions hereof shall become effective upon the final, non-appealable approval of the Rezoning Application and shall remain in full force and effect as if fully set forth in the Rezoning Application. This Agreement or a memorandum hereof in form and substance satisfactory to CCNNA shall be recorded by 167 Owner, with the consent of 159 Owner, against the Property in order to restrict such parcels in accordance with this Agreement. 167 Owner and 159 Owner agree that the covenants and obligations set forth herein shall be binding upon the development of the Project and 167 Owner and 159 Owner agree that, if either of 167 Owner or 159 Owner transfers the Property or any portion thereof, such transfer shall be subject to the provisions of this Agreement and any such purchaser shall be required to expressly assume

the covenants and obligations of Owner set forth herein, except as expressly contemplated by Section 3.06.

**Section 3.02 Recording of Conditions; Covenants To Run With the Land.** 167 Owner and 159 Owner hereby subject the Project Property and the Project (including any portion of the Project Property that Owner may in the future own, control or acquire any interest therein or in Ownership entity therefor) to the covenants, reservations and restrictions set forth in this Agreement (“**Recorded Covenants**”), it being expressly agreed and understood that the provisions hereof are intended to survive the transfer, sale or assignment (whether by voluntary transfer, foreclosure or otherwise) of any portion of the Project Property, except as expressly contemplated by Section 3.06. In addition, in the event of demolition and reconstruction of the Project, the covenants and restrictions contained herein shall apply to any reconstruction of the Project on the Project Property and, to effectuate such agreement, the restrictions contained herein shall be incorporated into the Recorded Covenants to bind any reconstruction. The Recorded Covenants and restrictions contained herein shall be recorded by 167 Owner, with the consent of 159 Owner, against the Project Property prior to completing the rezoning under the Rezoning Application and prior to applying for any permit for construction of the Project. CCNNA 167 Owner and 159 Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon each of 167 Owner’s and 159 Owner’s successors in title to the Project, except as expressly contemplated by Section 3.06. The Recorded Covenants and each and every contract, deed or other instrument hereafter executed covering or conveying the Project Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments, except as expressly contemplated by Section 3.06.

**Section 3.03 Burden and Benefit.** 167 Owner and 159 Owner hereby declare their respective understanding and intent that the burden of the covenants, conditions and agreements set forth herein touch and concern the land in that 167 Owner’s and 159 Owner’s legal interest in the Project, as applicable, and the Project Property is burdened by the provisions of this Agreement.

**Section 3.04 Uniformity; Common Plan.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project Property in order to establish and carry out a common plan for the use, development and improvement of the Project Property.

**Section 3.05 Default; Enforcement.** If Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner set forth in this Agreement or in any of the Recorded Covenants, then written notice thereof shall be given to Owner by CCNNA. For purposes of the enforcement of this Agreement, CCNNA shall have a right to identify facts under which CCNNA asserts constitutes a default by Owner under this Agreement and CCNNA shall confirm such assertion by and through the Board for or on behalf of CCNNA (following a formal vote of the Board in accordance with the respective organizational bylaws or adopted processes). Notwithstanding anything herein to the contrary, nothing herein shall give any individual member of CCNNA or any individual owner or resident within CCNNA any right to enforce the provisions hereof, it being the intent that only an action by and through the Board of CCNNA has the right to take action under this Agreement. In the event that the Board agrees that

an Owner default has occurred, then the Board shall deliver written notice of such default to Owner with a copy to the City (the “*Notice of Default*”). If such Notice of Default remains uncured by Owner during the sixty (60) day period following the date of such notice of default, then an “*Event of Default*” shall be deemed to have occurred hereunder; provided, however, that if the Event of Default stated in the Notice of Default is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as Owner institute corrective action within said 60 days and diligently pursues such action until the default is corrected. Following the declaration of an Event of Default hereunder, this Agreement may be enforced as follows:

(a) By mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, requiring Owner to perform its obligations and covenants hereunder or enjoining any acts or things which may be unlawful or in violation of the rights or obligations hereunder.

(b) By taking such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder, including seeking damages, equitable remedies or both.

(c) If CCNNA institutes any action or proceeding in court to enforce any provision hereof against Owner for breach of this Agreement or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, they shall be entitled to recover all reasonable court costs and attorneys' fees incurred in connection with such proceeding.

(d) Owner hereby agrees that specific enforcement of Owner agreements contained herein is the only means by which CCNNA may obtain the benefits of such agreements made by Owner herein and Owner therefore agrees to the imposition of the remedy of specific performance against them in the case of any default by Owner hereunder. Notwithstanding anything herein to the contrary, nothing herein shall be deemed to require the Board to act on any uncured Event or Default or to expend funds for enforcement of this Agreement. Any costs so expended to enforce this Agreement shall be recoverable by in accordance with Section 3.05(c).

**Section 3.06 159 PSA Contingency.** Notwithstanding anything to the contrary in this Agreement, in the event of a termination of the 159 PSA or any failure by Owner to consummate the transaction contemplated by the 159 PSA, 159 Owner and, as contemplated by Section 1.01, the Rezoning Property, shall be immediately released from this Agreement, including but not limited to the Recorded Covenants, and as of the date of such termination, this Agreement and the Recorded Covenants shall have no further force and effect with respect to the 159 Owner and/or the Rezoning Property, and further, if the Rezoning has not been approved as of the date of such termination, then Owner shall use commercially reasonable efforts to withdraw the Rezoning Application. Additionally, if pursuant to the Agreement, this Agreement and/or the Recorded Covenants have been recorded in any forum, including but not limited at the Clerk and Recorder of the City and County of Denver, Colorado, a release of such recoding(s) shall be filed immediately at every place of recording.

**Section 3.07 Term; Termination or Amendment of Agreement.** Subject to Section 3.06, above, the Recorded Covenants shall be binding on the Project Property in perpetuity and shall become applicable to and shall bind Owner or any Affiliated Party and all property acquired by them within the Project, together with 159 Owner. This Agreement may be amended or otherwise terminated only upon (i) a rezoning of the Property (or as to any portion thereof) subsequent to the rezoning pursuant to the Rezoning Application which is the subject of this Agreement so long as such further rezoning is in accordance with the rezoning procedures of the City and CCNNA or any then applicable registered neighborhood organizations existing under the then applicable Code are notified and given an opportunity to comment, approve or contest such rezoning and the applicability of this Agreement thereto, or (ii) by amendment or termination agreement in writing executed by Owner and CCNNA, including written approvals of the Boards thereof, and, at any time while the 159 PSA remains in effect, 159 Owner.

**Section 3.08 Reconstruction.** The provisions of this Agreement shall apply to any improvements constructed on the project Property and to any reconstructed improvements which, from time to time, may be constructed on the Project Property.

#### ARTICLE 4

##### MISCELLANEOUS PROVISIONS OF GENERAL IMPORT

**Section 4.01 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

**Section 4.02 Binding Effect.** All the covenants, agreements, terms and conditions to be observed and performed by 167 Owner and 159 Owner shall be applicable to and binding upon their respective Affiliated Parties and their successors and assigns, except as expressly contemplated by Section 3.06.

**Section 4.03 Notices.** Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below for each of the parties hereto, or at such other addresses as may be specified in writing by the parties hereto to the other parties or by email so long as such email is confirmed received. Such notices being delivered to CCNNA by email shall be sent to Board president at the email address for contact purposes as shown on CCNNA website. Copies of any notices shall also be given to the Denver City Councilperson for the District in which CCNNA is located. Notices shall be deemed delivered on the date that confirmed delivery is made if by courier service or registered or certified mail.

**If to Owner:** 2ND & ADAMS MC LLC  
 c/o Magnetic Capital Acquisitions, LLC  
 500 Eudora Street  
 Denver, CO 80220  
 Attention: Dan Huml

**If to 159 Owner:** Tamas Viski-Hanka and Edit Viski-Hanka  
325 Franklin Street  
Denver, CO 80218

**And:** Magnetic Capital Acquisitions, LLC  
500 Eudora Street  
Denver, CO 80220  
Attention: Dan Huml

**If to CCNNA** to the address of record with the Secretary of State  
Attention: President of the CCNNA Board of Directors

**IN EACH CASE, WITH A COPY TO THE CITY COUNCILPERSON FOR THE DISTRICT IN WHICH THE PROJECT IS LOCATED.**

**Section 4.01 Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**Section 4.02 Multiple Counterparts.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

**Section 4.03 Third Party Beneficiaries.** This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any person who is not a party hereto unless expressly otherwise provided herein. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project Property to the general public, it being the intention and understanding of Owner and 159 Owner that the benefits and burdens created by this Agreement shall be limited to and for the purposes herein specified.

**Section 4.04 Recorded Covenants Prior to Any Mortgage or Financing.** Any mortgage or financing liens against the Project Property shall be subject to the Recorded Covenants. 167 Owner and 159 Owner shall obtain the written consent to this Agreement by any lenders prior to this Agreement becoming binding on the parties hereto and such consents shall be in recordable form and shall be recorded concurrently with the recordation of this Agreement. Such lender consents to this Agreement shall be obtained by 167 Owner and 159 Owner prior to appearing before City Council seeking the approval of the Rezoning Application.

**Section 4.05 Integration; Controlling Documents.** This Agreement constitutes the final agreement of the parties hereto as to the matters set forth herein. This Agreement controls as to any prior term sheet, outline or other communications regarding the Project and CCNNA's positions with respect thereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Owner have duly executed this Agreement as of the date first set forth above.

159 Owner:

[Signature]  
Tamas Viski-Hanka

[Signature]  
Edit Viski-Hanka

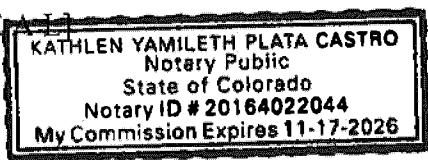
STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of April, 2023, by Tamas Viski-Hanka.

Witness my hand and official seal.

My commission expires: 11/17/26

[S E A L]



[Signature]  
Notary Public (or official title)

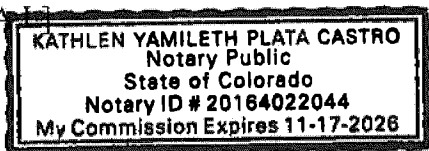
STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of April, 2023, by Edit Viski-Hanka.

Witness my hand and official seal.

My commission expires: 11/17/26

[S E A L]



[Signature]  
Notary Public (or official title)

**[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]**

167 Owner:

2<sup>nd</sup> & Adams MC LLC,  
a Delaware limited liability company

By: [Signature]  
Name: Daniel J Huml  
Title: Manager

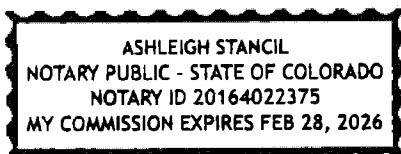
STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 2023, by Daniel Huml, as manager of 2<sup>nd</sup> & Adams MC LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: Feb 28, 2026

[S E A L]



[Signature]  
Notary Public (or official title)

**[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]**

**Cherry Creek North Neighborhood Association**

By: *M. Lou Raders*  
Acting CCNNA Board President, on behalf of the CCNNA Board and as approved by the  
CCNNA Board by Resolution dated November 10, 2022 and subsequent document approval  
April 28, 2023.

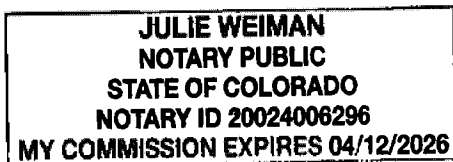
STATE OF COLORADO                    )  
CITY AND                                    ) ss.  
COUNTY OF DENVER                    )

The foregoing instrument was acknowledged before me this 28th day of April, 2023, by  
M. Lou Raders, as President of Cherry Creek North Neighborhood Association, a Colorado  
nonprofit corporation.

Witness my hand and official seal.

My commission expires: 04/12/2026

[S E A L]



*J. Weiman*  
Notary Public (or official title)



**EXHIBIT A  
LEGAL DESCRIPTION OF REZONING PROPERTY**

THE NORTH HALF OF PLOT 5, BLOCK 73,  
HARMAN'S SUBDIVISION,  
CITY AND COUNTY OF DENVER, COLORADO.

**EXHIBIT B**  
**LEGAL DESCRIPTION OF ADJACENT PROPERTY**

The South 1/2 of Plot 4, Block 73,  
HARMAN'S SUBDIVISION,  
City and County of Denver,  
State of Colorado

and

The North 1/2 of Plot 4, Block 73,  
HARMAN'S SUBDIVISION,  
City and County of Denver,  
State of Colorado

**EXHIBIT C  
CONCEPTUAL DESIGN**



## **EXHIBIT D GOOD NEIGHBOR CONSTRUCTION POLICY**

Owner agrees to implement a plan of construction management techniques, including the following:

- Project manager cell phone 24/7
- Address parking for workers (on-site if possible) and agree to apply for parking restrictions if the rest of the block owners so desire
- Trash picked up/enclosed port of lets out of sight
- No trucks and back up beeps before 8 a.m.
- Construction weekdays 7a.m. – 7 p.m. / weekends 8 a.m. – 5 p.m.
- Dust mitigation methods, including without limitation, water wagons for construction dust control.
- Use a website for the purpose of updating the CCNNA of important dates (such as street closures and water interruption) and generally for project updates. Provide a complaint forum via email so that neighborhood concerns are able to be expressed on a timely basis.

### **Owner will adhere to the “4 C’s”**

Communication with Neighbors Can Facilitate Cooperation and Support

The 4-C Solution:

1. Communication:

Builders who communicate while attempting to limit the impact that construction invariably causes will win the tolerance of the neighboring residents. A sign on the site, a flyer, a letter to residents in the immediate area explaining the project and the anticipated schedule can alleviate much of the residents’ concerns about the short-term problems commonly generated by construction.

2. Common Sense:

While it is the nature of construction to be messy, noisy and paced to meet the pressure of deadlines and budgets, neighborhood sites require special consideration. Neighbors and builders must acknowledge the root of the situation – the area is both a neighborhood, where people retreat from the work-a-day world, and a job site, where time is money and money is the bottom line. Residents’ concerns arise when construction practices continually go beyond the limits of common sense.

3. Courtesy:

Builders can work to the limit of the law, which allows construction noise from 7 AM to 9 PM seven days a week. Thoughtful contractors who make the effort to schedule the more disruptive aspects of the project to take place during weekdays between 8 AM and 5 PM should expect few complaints from the surrounding residents. Builders who respect neighbors’ concerns and take action to remedy or modify a problem will find that that kind of consideration should gain friendly support during the project. By responding with common courtesy, the contractor may attract a future project from another homeowner.

#### 4. Compromise:

Compromise begins when builders and neighbors consider each other's point of view. Compromise takes place through friendly communication between neighbors, Owner and the contractors.

### **GUIDELINES FOR BUILDERS**

Informing Neighbors: At least two days in advance of construction or demolition, Owner should:

1. Call or meet with as many adjacent neighbors as possible
2. Mail letter or flyers describing the project
3. Post a sign at the site with a phone number for questions

During Construction: Considerate site policies and procedures should be specifically outlined for the contractors' employees as well as any sub-contractors on the job.

1. Limit working hours of high noise operations to the middle of the day at least until the structure is fully enclosed
2. Limit and control radio noise
3. Consider neighbor's exposure in siting and screening the project's mechanical equipment
4. Place the dumpster on the lot or on the street in the middle of the site
5. Avoid blowing debris and accumulation of clutter
6. Cover the dumpster with a tarp bound by cord to contain dust and debris and to control unauthorized use of the dumpster
7. Park construction vehicles off-street if possible. Turn off engines unless operating other equipment
8. Place portable toilets away from property lines in less visible locations; arrange for regular service
9. Control dust with water and chutes
10. Avoid unnecessary damage to trees and landscaping