

## ROCK DRILL

### DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into as of the date set forth on the City’s signature page below (the “**Effective Date**”), by and between OLIVER BUCHANAN GROUP, LLC, a Delaware limited liability company (“**Developer**”), 3939 Williams Building Corporation, a Colorado corporation (“**Owner**”) and the CITY AND COUNTY OF DENVER, a home rule city and municipal corporation of the State of Colorado (“**City**”). Developer and City are sometimes individually referred to as a “**Party**” and collectively referred to as the “**Parties**.”

#### Recitals

This Agreement is made with reference to the following facts:

A. Owner is the fee owner of that certain real property consisting of approximately 6.69 acres, which is located at 1717 E. 39th Ave., Denver, CO 80205 and is more particularly described on Exhibit A attached hereto and incorporated herein (the “**Property**”).

B. The Large Development Review process concluded with a Large Development Framework document recorded on March 13, 2024 at Reception No. 2024020790.

C. Developer intends to develop the Property as a mixed-use community including, but not limited to, residential, commercial, retail, entertainment, open space, and civic uses (the “**Project**”) including the adaptive use of certain existing buildings on the Property that were used by the Denver Rock Drill Company, along with infrastructure improvements and public facilities, including without limitation, private, publicly accessible streets and open spaces, drainage facilities, sanitary sewer facilities, and water lines (the “**Improvements**”).

D. Developer intends to apply for Tax Increment Financing (“**TIF**”) pursuant to Denver Urban Renewal Authority (“**DURA**”) redevelopment processes.

E. The City has the legal authority to enter into this Agreement pursuant to its home rule powers under Article XX of the Constitution of Colorado and C.R.S. § 24-68-101 *et seq.* (the “**Vested Property Rights Statute**”) (collectively, the “**Authorizing Regulations**”).

F. The City has determined that development of the Property in accordance with the City Regulations and this Development Agreement will provide for orderly growth in accordance with the policies and goals set forth in the City’s Comprehensive Plan 2040 (the “**Comprehensive Plan**”), Blueprint Denver, and the 38<sup>th</sup> and Blake St. Station Area Plan.

G. Subject to the Denver Charter, Denver Revised Municipal Code (“**DRMC**”), the Denver Zoning Code (“**DZC**”), and any other legislatively or administratively adopted rules and regulations or executive orders of the City (the “**City Regulations**”), it is anticipated that the official map amendment changing the zoning classification of the Property to the C-MX-12 and C-MX-16 zone districts and to which the City has assigned the number 2024I-00005, upon final approval by the City Council and effective pursuant to the terms of the City Regulations (the

“Rezoning”), will authorize the use of the Property and development of the Project in accordance with the zone districts.

H. The Parties acknowledge that development of the Project will require Developer to make substantial initial investments in the Improvements, which investments are anticipated to provide material regional benefit to the Property, the Cole neighborhood, the City and its residents.

I. The legislature of the State of Colorado adopted the Vested Property Rights Statute to provide for the establishment of the right of a landowner to undertake and complete the development of certain projects and uses of property substantially in accordance with the uses, density and intensity of use and development standards set forth in, and otherwise subject to the terms and conditions of, an approved site specific development plan (“**Vested Property Rights**”) in order to ensure reasonable certainty, stability and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Authorizing Regulations authorize the City to enter into development agreements with landowners in order to establish Vested Property Rights with respect to the zoning for a period in excess of three (3) years.

J. Development of the Property warrants an extended vesting period due to the relevant circumstances, including, but not limited to, the size and phasing of the Project and the Improvements, economic cycles, and market conditions.

K. In exchange for the benefits to the City contemplated by this Agreement, together with the public benefits served by orderly and well planned development of the Property, Developer desires to receive assurance that, upon the Rezoning becoming effective pursuant to the City Regulations and following Developer’s completion of all other necessary City approvals, Developer may proceed with development of the Property and completion of the Project in accordance with the uses, density and intensity of use and development standards set forth in, and otherwise subject to the terms and conditions of the Approved Site Specific Development Plans (as such term is defined in Article 2).

L. Accordingly, pursuant to the Authorizing Regulations, and notwithstanding any contrary provision of the City Regulations, and upon the Rezoning becoming effective pursuant to the City Regulations, the City intends that the Approved Site Specific Development Plans will be designated as site specific development plans, subject to the terms, conditions and limitations set forth in this Agreement.

M. Upon the Rezoning becoming effective pursuant to the City Regulations, this Agreement constitutes a development agreement granting and establishing Vested Property Rights for the Term (as defined in Section 1.4) in accordance with the Authorizing Regulations.

### **Agreement**

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**GENERAL PROVISIONS; POST-APPROVAL PROCEDURES**

1.1 Incorporation of Recitals. The Parties hereby acknowledge the accuracy of the foregoing Recitals, and the same are hereby incorporated into and made a part of this Agreement.

1.2 Nature of Development Agreement. As further provided in Article 2, and from and after the Effective Date, the Approved Site Specific Development Plans each constitute a site specific development plan pursuant to the Authorizing Regulations, and this Agreement constitutes a development agreement granting and establishing Vested Property Rights for the Term in accordance with the Authorizing Regulations.

1.3 Effectiveness and Recording of Agreement. This Agreement will be effective as of the Effective Date and the Parties shall record this Agreement in the real property records of the City Clerk and Recorder (the “**Records**”) promptly after mutual execution hereof following final approval by the City of the ordinance authorizing execution of this Agreement; provided, however, as between the Parties and any third party having notice of the Parties’ execution and delivery of this Agreement, this Agreement will be effective and legally binding as of the Effective Date and any delay or failure to record this Agreement in the Records will not negate or impair the effectiveness of this Agreement.

1.4 Term. The period during which the Agreement will be in effect and the duration of the Vested Property Rights will commence on the Effective Date, and continue through and include the fifteenth (15<sup>th</sup>) anniversary of the Effective Date (the “**Term**”); except, however, that the Term may be extended pursuant to this Section 1.4, amended pursuant to the amendment procedure set forth in Section 7.2, or earlier terminated as otherwise provided in the Agreement. The duration of the Term reflects the Parties’ recognition of:

- (a) the possible impact on the Project of economic cycles and varying market conditions during the course of development;
- (b) the substantial investment and time required to complete development of the Project and the Improvements;
- (c) the benefits to adjacent and nearby landowners and City residents, and the anticipated expense of the Improvements; and
- (d) the material extent to which successful implementation and financing of the Improvements is predicated on completion of the Project in accordance with the uses, density and intensity of use and development standards set forth in, and otherwise subject to the terms and conditions of this Agreement and the Approved Site Specific Development Plans.

Notwithstanding anything to the contrary as may be otherwise set forth herein, if any action, claim, complaint, lawsuit, or litigation pursuant to any federal, state, or local statute, law, ordinance, rule, or regulation, is filed against the City, Developer, or any party related thereto, and which seeks invalidation of, *inter alia*, the Rezoning, the City’s approval of the Agreement, or any subsequent approval issued in connection with the Project (a “**Legal Challenge**”), the Term shall be extended

by one day for each day that a Legal Challenge remains pending, except that the Term shall in no event be extended more than three (3) years from the date which is the fifteenth (15<sup>th</sup>) anniversary of the Effective Date. Following the expiration of the Term, this Agreement will automatically terminate and be of no further force and effect.

1.5 Rezoning Required. The effectiveness of this Agreement is expressly conditioned upon the City Council's approval of the Rezoning and the same becoming effective pursuant to the City Regulations. The Parties acknowledge, understand, and agree that the City's execution of this Agreement does not obligate the City or any of its constituent bodies, agencies, boards, or employees to approve the Rezoning. Nothing herein relieves Developer from its obligation to comply with the City Regulations governing the Rezoning, and this Agreement shall in no way be construed as abrogating or limiting the City's rights and responsibilities to act in its regulatory or quasi-judicial roles, including without limitation with respect to its review of the Rezoning application. The Rezoning application must be reviewed and adjudicated in accordance with the City Regulations and any approval criteria thereunder. In the event the Rezoning has not become effective pursuant to the City Regulations on or before that date which is one hundred eighty (180) days following the Effective Date, all further rights and obligations of the Parties as set forth in this Agreement will be deemed terminated and of no further force or effect.

## **ARTICLE 2**

### **VESTED PROPERTY RIGHTS**

2.1 General. In consideration of the anticipated benefits to the City resulting from Developer undertaking the obligations contemplated by and set forth in this Agreement, the City will undertake and perform the obligations required for the establishment and preservation of the Vested Property Rights.

2.2 Approved Site Specific Development Plans. The term "**Approved Site Specific Development Plans**", means the following: (i) those terms and conditions of the DZC Section 10.12 Height Incentives as applicable to Urban Center Mixed Use – 12 ("**C-MX-12**") and Urban Center Mixed Use – 16 ("**C-MX-16**") zone districts in effect as of the Effective Date that are set forth in Exhibit B-1 attached hereto, (ii) those certain terms and conditions of the Open Space in Large Developments requirements of DZC Section 10.8 in effect as of the Effective Date that are set forth in Exhibit B-2 hereto, (iii) the High Impact Development Compliance Plan, a copy of which is attached hereto as Exhibit C, together with amendments, if any, thereto, as incorporated by reference into the zoning, and (iv) the private classification of the internal ways within the Property.

2.3 Scope of Vested Property Rights. Subject to the condition precedent set forth in Section 1.5, the Vested Property Rights are established with respect to the Approved Site Specific Development Plans, which are hereby designated as site specific development plans in accordance with the Authorizing Regulations. Accordingly, during the Term and subject to Section 7.2, the City and its constituent agencies, boards, and commissions will take no action that would have the effect of abridging, impairing or divesting the Vested Property Rights, and Developer, together with their respective successors and assigns, will have and be entitled to rely upon and enforce the Vested Property Rights. In addition, the Vested Property Rights include, without limitation, the

right to submit and for the City, as applicable, to process Development Applications in accordance with the procedures set forth in the Approved Site Specific Development Plans.

2.4 Term. The duration of the Vested Property Rights is the Term, as defined in Section 1.4.

2.5 Expiration of Term. After the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, that such termination shall not affect (a) any common law vested rights obtained prior to such termination, or (b) any rights arising from City permits, approvals or other entitlements for the Property or the Project which were granted or approved prior to, concurrent with, or subsequent to the approval of this Agreement.

2.6 Applicability of Other Regulations. Pursuant to the Authorizing Regulations and except for the specific exclusions in Section 2.7, establishment of the Vested Property Rights will not be construed to preclude the City from applying to the Property and the Project ordinances or regulations which are general in nature and applicable to all property subject to regulation by the City, as such regulations exist on the Effective Date or may be enacted or amended after the date on which the application for approval of the Rezoning was submitted to the extent permitted pursuant to Sections 105(a) and (b) of the Vested Property Rights Statute, including, but not limited to:

(a) City Regulations of general applicability pertaining to building, fire, plumbing, engineering, electrical, and mechanical codes (e.g., the International Building Code and similar codes); or

(b) State or federal regulations with respect to which the City does not have discretion in applying; provided, however, the foregoing will not be construed as a waiver by Developer or of any remedy otherwise available pursuant to the Vested Property Rights Statute or this Agreement with respect to such governmental entity (other than the City) or governing body (other than the City Council and Mayor).

(c) Conflict. The terms, conditions and criteria set forth in the Approved Site Specific Development Plans will prevail and govern development of the Project and the Property. Where the Approved Site Specific Development Plans do not address a specific subject, the applicable provisions of the City Regulations will control development of the Project, subject to the terms and conditions as set forth in Section 2.3.

(d) No Implied Restriction. This Agreement will not be construed as a limitation on the exercise of any power or authority of the City except to the extent expressly stated in this Agreement, and then only to the extent so stated.

2.7 Authorizing Regulation Amendment Exclusions. Notwithstanding anything contained herein to the contrary, any amendments to the following sections of the Authorizing Regulations during the Term shall have no force and effect on the Property, the Project or this Agreement:

(a) The height incentives for C-MX-12/C-MX-16 as set forth in the DZC Section 10.12 (Exhibit B-1).

(b) The open space requirements, definitions and standards as set forth in the DZC Section 10.8 (Exhibit B-2).

2.8 City Action. The City shall not initiate any zoning, land use or other legal or administrative action that would have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Vested Rights.

2.9 Private Streets. The internal ways proposed on the Property will not be designated nor dedicated as public rights of way during the Term.

### **ARTICLE 3**

#### **AFFORDABLE HOUSING**

3.1 High Impact Development Compliance Plan. The Parties acknowledge and agree that the Project is a “high impact development” as such term is defined in D.R.M.C. § 27-219(m). In satisfaction of the requirements of D.R.M.C. § 27-229(a), the Developer has prepared, and the City has approved, the High Impact Development Compliance Plan set forth on the attached Exhibit C. The High Impact Development Compliance Plan will prevail and supersede over any contrary requirements set forth in City Regulations.

### **ARTICLE 4**

#### **ECONOMIC DEVELOPMENT AND OPPORTUNITY**

4.1 Community-Serving Uses. The Parties acknowledge Developer is pursuing a TIF through DURA and, through that process, will continue to evaluate the feasibility of certain community-serving uses within the Project and shall memorialize the same in the agreements with DURA.

4.2 Childcare. Prior to commencing construction of the Project, and in addition to the agreements and commitments with DURA, Developer will continue to work with the City’s Economic Development and Opportunity department to study the feasibility of a childcare facility within the Project.

### **ARTICLE 5**

#### **LANDMARK PRESERVATION**

5.1 Historic Buildings. The Parties acknowledge that the Property contains buildings and features with historic value that will be adaptatively reused within the Project, which are depicted on the map attached hereto and incorporated herein as Exhibit D, and subject to the notes and specific considerations for certain buildings and features contained in the building and feature legend contained in Exhibit D (“**Historic Buildings**”). Developer will pursue historic preservation and local designation of the Historic Buildings as follows:

5.2 Short-Term Protection. Developer hereby commits to the following short-term protections for the Historic Buildings: Developer shall provide immediate short-term protection from incompatible alterations to proposed Historic Buildings until such time that they are locally designated for preservation. Any alterations to the exterior of the Historic Buildings that occur prior to the Developer submitting a designation application for the structures must comply with the Design Guidelines for Denver Landmark Structures and Districts. Compliance with the Design Guidelines will be determined by City Landmark Preservation Staff at the time a zoning or building permit is requested for any exterior alterations. Developer will maintain the Historic Buildings in a manner which avoids severe deterioration and severe decay and are kept free from structural defects.

5.3 Long Term Protection. Developer shall apply for local designation of Historic Buildings (Exhibit D) pursuant to Chapter 30 of the DRMC. Developer shall submit an application for Historic Designation for all Historic Buildings as a single historic designation prior to the issuance of a certificate of occupancy for any building within the Property.

## **ARTICLE 6**

### **DEFAULT AND REMEDIES**

6.1 Default. A “breach” or “default” by a Party under this Agreement will be defined as a Party’s failure to fulfill or perform any material obligation of said Party stated in this Agreement

6.2 Notices of Default and Cure Period. If a Party defaults in the performance of its obligations under this Agreement, the Party(ies) asserting the default will deliver notice of the asserted default to the Party alleged to be in default, with copies to any other non-defaulting Parties. -The Party alleged to be in default will have thirty (30) days from and after receipt of the notice to cure the default without liability for the default. If the default is not of a type which can be cured within such cure period and the Party alleged to be in default gives written notice to the Party(ies) who asserted the default within such cure period that it is actively and diligently pursuing a cure, the Party alleged to be in default will have a reasonable period of time given the nature of the default following the end of the cure period to cure the default, provided that the Party alleged to be in default, with the consent of the non-defaulting Party(ies), is at all times within the additional time period actively and diligently pursuing the cure and that the Party(ies) asserting the default have provided consent to the additional time period. Any claim for breach of this Agreement or the Authorizing Regulations that is brought before the expiration of the applicable cure period will not be prosecuted by the Party asserting such claim until expiration of the applicable cure period, and will be dismissed by the Party asserting such claim if the default is cured in accordance with this Section 6.2.

6.3 Remedies. If any default under this Agreement is not cured pursuant to Section 6.2, the Party asserting the default will have all remedies available at law or in equity, including an action for injunction and/or specific performance, but each party hereby waives the right to recover, to seek, and to make any claim for damages for default under this Agreement, or for attorney’s fees or costs. If Developer is determined in a final judicial judgment to have failed to abide by the terms of this Agreement, the City will be entitled such remedies as may be available at law or in equity and, additionally, will be entitled to deny Developer permits or approvals

required for the development of the portion of the Property that is the subject of the default, or enforce against Developer the forfeiture of Developer's Vested Property Rights.

6.4 No Cross-Defaults. No default or breach by a Party of any obligation of such Party arising under any agreement other than this Agreement will be construed as or constitute a default or breach of this Agreement or constitute a basis for another Party to assert or enforce any remedy against such Party under the terms of this Agreement. No default or breach by a Party of any obligation of such Party arising under this Agreement will be construed as or constitute a default or breach of any agreement other than this Agreement or constitute a basis for another Party to assert or enforce any remedy against such Party under the terms of such other agreement.

6.5 Survival. All provisions of this Agreement pertaining to remedies, and limitations on remedies, including but not limited to this Article 6, will survive any termination or expiration of this Agreement.

## **ARTICLE 7**

### **MISCELLANEOUS**

7.1 Referenda. To the extent the Authorizing Regulations subject the City's establishment of the Vested Property Rights pursuant to this Agreement to referendum, and any referendum succeeds in overturning the City's establishment of the Vested Property Rights pursuant to this Agreement, such result will not be construed as overturning, negating or otherwise affecting the City's approval of the Rezoning or any development rights for the Property or approvals otherwise granted with respect to the Property or the Project.

#### 7.2 Amendment of this Agreement.

(a) Written Amendment Required. This Agreement may be amended, terminated prior to the expiration of the Term, or superseded only by mutual consent in writing of the City and Developer following the public notice and public hearing procedures required for approval of this Agreement. For the avoidance of doubt, the Owner or any successor or assign of the Owner will not have the right to consent to or otherwise participate in any amendment of this Agreement, and no such party's consent will be required, unless Developer has specifically assigned to such party and such party has assumed, in a written instrument that has been delivered to the other Party pursuant to the notice requirements in Section 7.12, the rights and obligations, in whole or in part, of Developer. No amendment to this Agreement will be construed to effect an extension of the Term unless the City expressly approves such extension in its approval of such amendment.

(b) Effectiveness and Recording. Any written amendment to this Agreement will be legally effective and binding upon the later to occur of (i) execution by the required Parties, or (ii) the effective date of the ordinance approving such amendment. Promptly after any amendment to this Agreement becomes effective, the parties thereto will cause it to be recorded in the Records. Upon recording in the Records, the amendment will be legally effective and will be binding on the Property. The validity or enforceability of such



an amendment will not be affected by any delay in or failure to record the amendment in the Records.

7.3 Authorization of Rezoning. To the extent any proposed rezoning of the Property is in conflict or is inconsistent with this Agreement, the City and Developer may process a conforming amendment to this Agreement pursuant to Section 7.2.

7.4 Attorneys' Fees. Each of the Parties will be responsible for its own respective costs and attorneys' fees in prosecuting or defending any action filed in relation to the interpretation and enforcement of this Agreement. All provisions of this Agreement concerning remedies or attorneys' fees will survive termination or expiration of this Agreement.

7.5 No Obligation to Develop Site. This Agreement will not be construed to create an implied obligation upon the Developer or the Owner or to develop the Property. Developer and the Owner will have no liability to the City or to any other party arising out of this Agreement based on the timing or non-occurrence of development of all or any part of the Property.

7.6 No Joint Venture or Partnership. No form of joint venture or partnership exists between or among the Parties, and nothing contained in this Agreement will be construed as making the Parties joint venturers or partners.

7.7 No Third Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties. Nothing contained in this Agreement will be construed to give or to allow any claim or right of action by any third party. Any person other than the Parties and their successors and assigns receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

7.8 Waiver. No waiver of one or more of the terms of this Agreement will constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance will constitute a waiver of such provision in other instances.

7.9 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, or if the City's establishment of Vested Property Rights pursuant to this Agreement is rendered inoperative by a citizen initiated referendum, such determination will not be construed to affect or impair the validity or enforceability of any other provision of this Agreement, and the remaining provisions of this Agreement will continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining, or substantially deprive such Party of the benefit of its bargain. The Parties will cooperate in good faith to reform any such invalidated provision(s) in a manner which most fully implements the Parties' original intent and objectives.

7.10 Further Assurances. Each Party will execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of their respective rights and privileges under this Agreement.

7.11 Authorization. The signatories hereto affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

7.12 Notices. In order to be deemed delivered and effective, any notice required or permitted pursuant to this Agreement must be in writing, and must be given either personally or by registered or certified mail, return receipt requested, in either case to the applicable Party(ies) at their addresses set forth below:

If to the City:

Department of Community Planning and Development  
City and County of Denver  
201 W. Colfax Avenue, Dept. 205  
Denver, Colorado 80202  
Attention: Executive Director

With a required copy to:

City Attorney's Office  
1437 Bannock Street, Room 350  
Denver, Colorado 80202  
Attention: City Attorney

If to Developer:

Oliver Buchanan Group, LLC  
Address 360 S. Garfield Street, Suite 605  
Denver, CO 80209  
Attention: Brian Fishman

With a required copy to:

3939 Williams Building Corporation  
1717 E. 39<sup>th</sup> Avenue  
Denver, CO 80205  
Attention: Byron Weiss

With a required copy to:

Foster Graham Milstein & Calisher, LLP  
360 S. Garfield Street, Suite 600  
Denver, CO 80209  
Attention: David Wm. Foster; Erik Carlson

Notices will be deemed delivered and effective as follows: (i) if given personally, when delivered to the Party to whom it is addressed; or (ii) if given by registered or certified mail, on the first to

occur of (A) actual receipt by any of the addressees designated above as the Party to whom Notices are to be sent, or (B) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Any Party may at any time, by giving notice as provided in this Section 7.12., designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given.

7.13 Days; Next Business Day. Unless the context explicitly provides otherwise, the terms “day” or “days” refers to calendar days, not business days. If any date described herein for payment or performance falls on a Saturday, Sunday, or City holiday, the time for such payment or performance shall be extended to the next business day.

7.14 Captions, Gender, Number and Language of Inclusion. The article and section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, the masculine, feminine and neuter adjectives shall include one another, and the following words and phrases shall have the following meanings: (i) “terms” shall mean “terms, provisions, duties, covenants, conditions, representations, warranties and indemnities”, (ii) “rights” shall mean “rights, duties and obligations”, (iii) “liabilities” shall mean “liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including reasonable attorneys’ fees, except as otherwise provided for in Section 7.4,” (iv) “applicable law” shall mean “all applicable Federal, state, county, municipal, local or other laws, statutes, codes, ordinances, rules and regulations, executive orders,” (v) “operation” shall mean “use, non-use, possession, occupancy, condition, operation, maintenance or management”, and (x) “this transaction” shall mean “the purchase, sale and related transactions contemplated by this Agreement.”

7.15 Assignment; Binding Effect. This Agreement will be binding upon and will inure to the benefit of the successors in interest or the legal representatives of the Parties. Any assignment pursuant to this Section 7.15 (i) must be in writing with notice thereof delivered to the City no later than thirty (30) days after such assignment and assumption has taken place, and (ii) the assignee thereunder must expressly assume such obligations. The express assumption of the Developer’s obligations under this Agreement by an assignee or transferee will thereby release the assignor from any further obligation or liability under this Agreement, and will release the City from further obligation to the assignor, with respect to the matters and obligations so assigned and assumed.

7.16 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agree to insert the foregoing provision in all subcontracts hereunder.

7.17 Appropriation. To the extent applicable, all monetary obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the treasury of the City.

7.18 Reasonableness of Consent or Approval. Whenever under this Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either Party hereto, such Party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

7.19 No Personal Liability. No elected official, director, officer, agent, manager, member or employee of the City, Developer or Owner shall be charged personally or held contractually liable by or to the other parties under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

7.20 Conflict of Interest by City Officers. Developer and Owner represent that to the best of their information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

7.21 No Merger. The Parties intend that the terms and conditions of this Agreement shall survive any conveyance of real property and shall not be merged into any deed conveying real property.

7.22 Intent. No provision of this Agreement will be construed as an implied waiver of any right to which Developer is entitled by law, or as an implied waiver or acquiescence in the impairment of any of substantive or procedural rights under C.R.S. § 29-20-201, *et seq.*; provided, however, that the express obligations of Developer under this Agreement will be enforceable in accordance with its terms.

7.23 Venue and Choice of Law; Waiver of Right to Jury Trial; Construction. This Agreement will be construed and enforced according to the laws of the State of Colorado, and the City Regulations, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue will be in the district court for the City and County of Denver, Colorado. To reduce the cost of and to expedite the resolution of disputes under this Agreement, City, Developer and Owner hereby waives any and all right to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. In the event of ambiguity in this Agreement, any rule of construction which favors a party’s interpretation as a non-drafting party will not apply, and the ambiguous provision will be interpreted as though no specific party was the drafter.

7.24 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

7.25 Electronic Signatures and Electronic Records. Developer and Owner consent to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in a manner specified by the City. The Developer, Owner and the City agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its

formation. The Developer, Owner and the City agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

7.26 Examination of Records and Audits. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Developer's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Developer and Owner shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Developer or Owner to make disclosures in violation of state or federal privacy laws. Developer and Owner shall at all times comply with D.R.M.C. § 20-276.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the Effective Date.

**CITY:**

***/INSERT CITY SIGNATURE PAGE/***

**DEVELOPER:**

OLIVER BUCHANAN GROUP, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2024, by \_\_\_\_\_ as \_\_\_\_\_ of Oliver Buchanan Group, LLC, a Delaware  
limited liability company.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

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

**3939 WILLIAMS BUILDING CORPORATION**

3939 WILLIAMS BUILDING CORPORATION a  
Colorado Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2024, by \_\_\_\_\_ as \_\_\_\_\_ of 3939 Williams Building Corporation, a  
Colorado corporation.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

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



## EXHIBIT A LEGAL DESCRIPTION

### LAND DESCRIPTION

#### C-MX-16 ZONE DISTRICT

A PARCEL OF LAND BEING ALL OF LOTS 1 THROUGH 11 AND A PORTION OF LOT 12 AND A PORTION OF LOTS 29 THROUGH 40, BLOCK 2, PROVIDENT PARK AND A PORTION OF THE 16 FOOT ALLEY VACATION WITHIN SAID BLOCK 2 PER ORDINANCE NO. 48, SERIES 1921, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 2, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG THE NORTHERLY LINE OF SAID BLOCK 2 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST 40<sup>TH</sup> AVENUE, N89°47'51"E 240.84 FEET;

THENCE S00°00'00"E A DISTANCE OF 286.35 FEET;

THENCE S90°00'00"W A DISTANCE OF 239.78 FEET TO A POINT ON THE WESTERLY LINE OF SAID BLOCK 2 AND A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF FRANKLIN STREET;

THENCE ALONG SAID WESTERLY AND EASTERLY LINE, N00°12'43"W A DISTANCE OF 285.50 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 1.577 ACRES OR 68,710 SQUARE FEET MORE OR LESS.

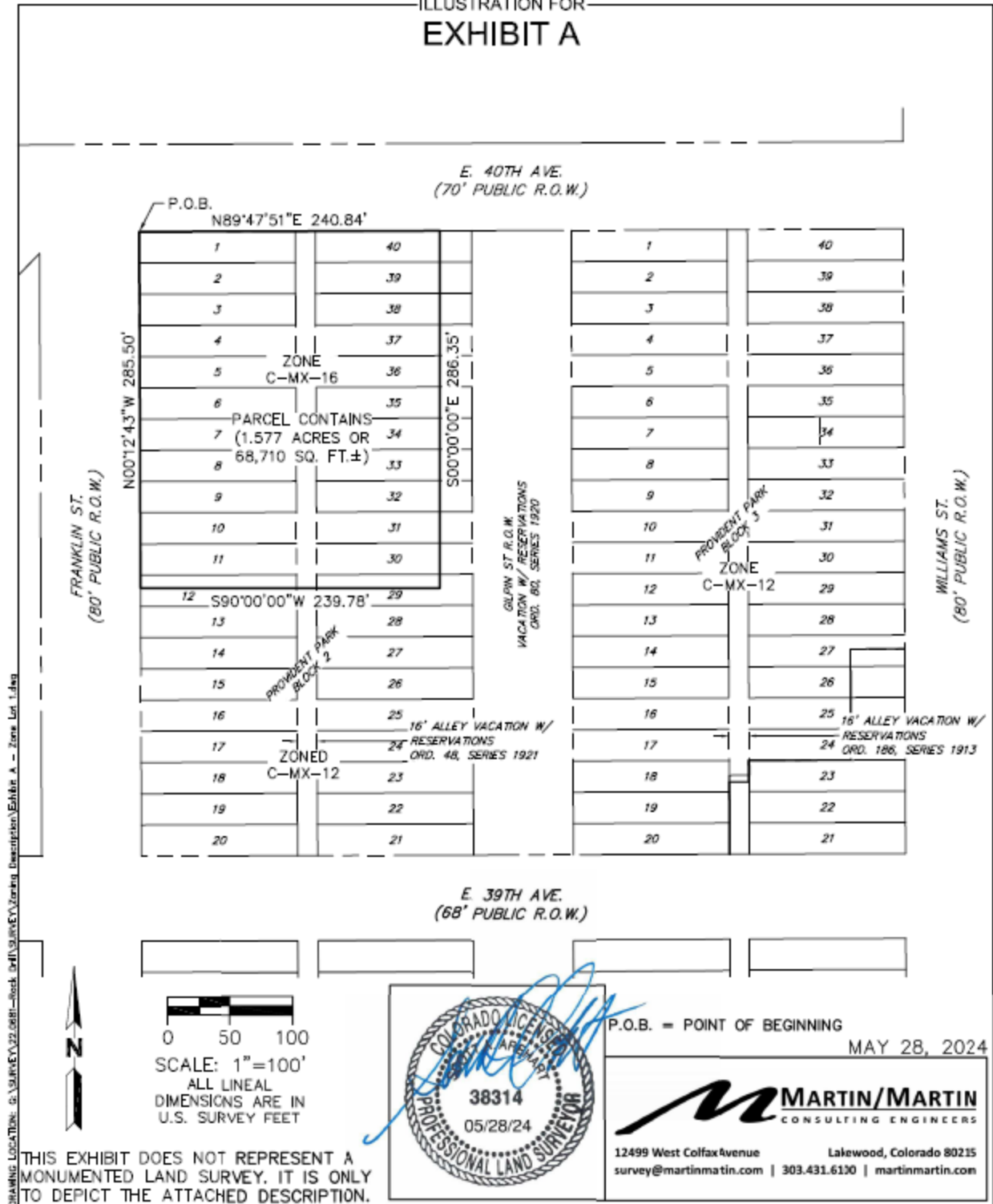
#### BASIS OF BEARINGS

BEARINGS ARE BASED ON THE 22.68 FOOT RANGE LINE IN WILLIAMS STREET ASSUMED TO BEAR S00°13'18"E AND BEING MONUMENTED BY A FOUND #6 REBAR WITH 2-1/2" ALUMINUM CAP PLS #38074 AT THE INTERSECTION OF EAST 40<sup>TH</sup> AVENUE AND WILLIAMS STREET AND A FOUND #6 REBAR WITH 3" BRASS CAP IN RANGE BOX PLS #36053 AT THE INTERSECTION OF EAST 39<sup>TH</sup> AVENUE AND WILLIAMS STREET.

PREPARED BY SCOTT A. AREHART, PLS  
FOR AND ON BEHALF OF  
MARTIN/MARTIN, INC.  
12499 WEST COLFAX AVE.  
LAKEWOOD, CO. 80215  
303-431-6100  
MAY 28, 2024  
PROJECT NO. 22.0681



# ILLUSTRATION FOR EXHIBIT A



## LAND DESCRIPTION

### C-MX-12 ZONE DISTRICT

A PARCEL OF LAND BEING ALL OF LOTS 13 THROUGH 28 AND A PORTION OF LOT 12 AND A PORTION OF LOTS 29 THROUGH 40, BLOCK 2, PROVIDENT PARK AND A PORTION OF THE 16 FOOT ALLEY VACATION WITHIN SAID BLOCK 2 PER AT ORDINANCE NO. 48, SERIES 1921, AND GILPIN STREET RIGHT-OF-WAY VACATION PER ORDINANCE 80, SERIES AND LOTS 1 THROUGH 28 AND A PORTION OF LOTS 24 THROUGH 27, BLOCK 3, PROVIDENT PARK AND A PORTION OF THE 16 FOOT ALLEY VACATION LOCATED WITHIN SAID BLOCK 3 LOCATED IN THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 3, SAID POINT BEING THE POINT OF BEGINNING;  
THENCE ALONG THE EASTERLY LINE OF SAID BLOCK 3 AND THE WESTERLY RIGHT-OF-WAY LINE OF WILLIAMS STREET, S00°13'18"E A DISTANCE OF 336.68 FEET TO THE NORTHEAST CORNER OF THE PROPERTY RECORDED AT RECEPTION NO. 2000046892;  
THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID PROPERTY RECORDED AT RECEPTION NO. 2000046892 THE FOLLOWING SIX (6) CONSECUTIVE COURSES:  
1) S89°46'18"W A DISTANCE OF 43.59 FEET;  
2) THENCE S00°13'40"E A DISTANCE OF 88.68 FEET;  
3) THENCE S89°46'18"W A DISTANCE OF 82.13 FEET;  
4) THENCE S00°10'20"E A DISTANCE OF 17.14 FEET;  
5) THENCE S89°38'07"W A DISTANCE OF 15.30 FEET;  
6) THENCE S00°10'20"E A DISTANCE OF 58.00 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 3 AND A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF EAST 39<sup>TH</sup> AVENUE;  
THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, S89°48'03"W A DISTANCE OF 471.45 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK 2;  
THENCE ALONG THE WESTERLY LINE OF SAID BLOCK 2 AND THE EASTERLY RIGHT-OF-WAY LINE OF FRANKLIN STREET, N00°12'43"W A DISTANCE OF 214.88 FEET;  
THENCE N90°00'00"E A DISTANCE OF 239.78 FEET;  
THENCE N00°00'00"E A DISTANCE OF 286.35 FEET TO A POINT ON THE NORTHERLY LINE OF SAID BLOCK 2 AND A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST 40<sup>TH</sup> AVENUE;  
THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) CONSECUTIVE COURSES:  
1) N89°47'51"E A DISTANCE OF 65.45 FEET;  
2) THENCE N89°45'40"E A DISTANCE OF 306.16 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 5.133 ACRES OR 223,595 SQUARE FEET MORE OR LESS.

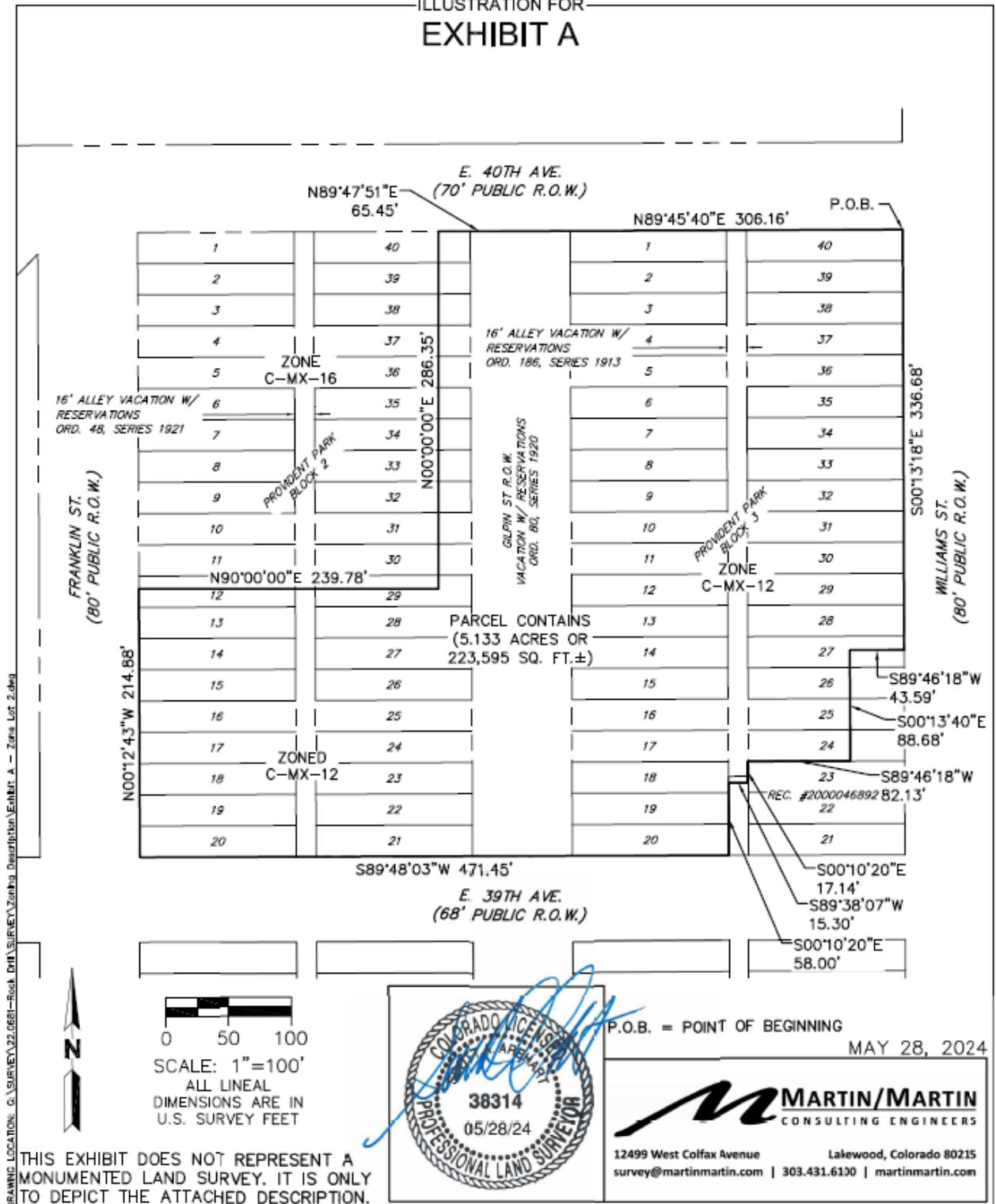
### BASIS OF BEARINGS

BEARINGS ARE BASED ON THE 22.68 FOOT RANGE LINE IN WILLIAMS STREET ASSUMED TO BEAR S00°13'18"E AND BEING MONUMENTED BY A FOUND #6 REBAR WITH 2-1/2" ALUMINUM CAP PLS #38074 AT THE INTERSECTION OF EAST 40<sup>TH</sup> AVENUE AND WILLIAMS STREET AND A FOUND #6 REBAR WITH 3" BRASS CAP IN RANGE BOX PLS #36053 AT THE INTERSECTION OF EAST 39<sup>TH</sup> AVENUE AND WILLIAMS STREET.

PREPARED BY SCOTT A. AREHART, PLS  
FOR AND ON BEHALF OF  
MARTIN/MARTIN, INC.  
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303-431-6100  
MAY 28, 2024  
PROJECT NO. 22.0681



# ILLUSTRATION FOR EXHIBIT A



# EXHIBIT B-1 VESTED INCENTIVES FOR AFFORDABLE HOUSING

## DZC Section 10.12

Article 10. General Design Standards  
Division 10.12 Incentives for Affordable Housing

### DIVISION 10.12 INCENTIVES FOR AFFORDABLE HOUSING

#### SECTION 10.12.1 HEIGHT INCENTIVES

##### 10.12.1.1 Enhanced Affordable Housing

###### A. Intent

To encourage additional affordable housing beyond mandatory requirements by providing flexibility in building height.

###### B. Applicability

This Section 10.12.1.1 shall apply to the Apartment, General, and Shopfront primary building forms in the following zone districts.

###### 1. Suburban Context (S-)

- a. Multi Unit (MU) zone districts: S-MU-3, S-MU-5, S-MU-8, S-MU-12, S-MU-20
- b. Commercial Corridor (CC) zone districts: S-CC-3, S-CC-3x, S-CC-5, S-CC-5x
- c. Mixed Use (MX) zone districts: S-MX-3, S-MX-3A, S-MX-5, S-MX-5A, S-MX-8, S-MX-8A, S-MX-12, S-MX-12A
- d. Main Street (MS) zone districts: S-MS-3, S-MS-5

###### 2. Urban Edge Context (E-)

- a. Residential Mixed Use (RX) zone districts: E-RX-3, E-RX-5
- b. Commercial Corridor (CC) zone districts: E-CC-3, E-CC-3x
- c. Mixed Use (MX) zone districts: E-MX-3, E-MX-3A
- d. Main Street (MS) zone districts: E-MS-3, E-MS-5

###### 3. Urban Context (U-)

- a. Residential Mixed Use (RX) zone districts: U-RX-3, U-RX-5
- b. Mixed Use (MX) zone districts: U-MX-3
- c. Main Street (MS) zone districts: U-MS-3, U-MS-5

###### 4. General Urban Context (G-)

- a. Multi Unit (MU) zone districts: G-MU-3, G-MU-5, G-MU-8, G-MU-12, G-MU-20
- b. Residential Office (RO) zone districts: G-RO-3, G-RO-5
- c. Residential Mixed Use (RX) zone districts: G-RX-3, G-RX-5
- d. Mixed Use (MX) zone districts: G-MX-3
- e. Main Street (MS) zone districts: G-MS-3, G-MS-5

###### 5. Urban Center Context (C-)

- a. Residential Mixed Use (RX) zone districts: C-RX-5, C-RX-8, C-RX-12
- b. Mixed Use (MX) zone districts: C-MX-3, C-MX-5, C-MX-8, C-MX-12, C-MX-16, C-MX-20
- c. Main Street (MS) zone districts: C-MS-5, C-MS-8, C-MS-12

###### 6. Industrial Context (I-)

- a. Mixed Use (MX) zone districts: I-MX-3, I-MX-5, I-MX-8, I-MX-12



### C. Exceptions

1. This Section 10.12.1.1 shall not apply to a Primary Structure where the total square footage of Parking Spaces and Parking Aisles comprises 50% or more of the total gross square footage of all Uses.
2. This Section 10.12.1.1 shall not apply to the Downtown Arapahoe Square 12+ and 20+ (D-AS-12+, D-AS-20+) zone districts or the Downtown Central Platte Valley - Auraria (D-CPV-T, D-CPV-R, D-CPV-C) zone districts. Refer to Article 8 for specific height incentive applicability and standards.

### D. Standards

1. A Structure that qualifies for the incentives for enhanced on-site compliance as set forth in D.R.M.C. Chapter 27, Article X Mandatory Affordable Housing and any applicable Rules and Regulations may develop to the maximum height with incentives set forth in the applicable building form table and summarized below.

MAXIMUM HEIGHT WITH INCENTIVES IN STORIES AND FEET			
ZONE DISTRICT	APARTMENT BUILDING FORM	GENERAL BUILDING FORM	SHOPFRONT BUILDING FORM
3-story zone districts	4/50'	4/55'	4/55'
5-story zone districts	7/90'	7/95'	7/95'
8-story zone districts	12/140'	12/150'	12/150'
12-story zone districts	16/185'	16/200'	16/200'
16-story zone districts	22/250'	22/275'	22/275'
20-story zone districts	30/340'	30/375'	30/375'

2. Maximum height with incentives may be limited if the Primary Structure is located near a Protected District per the rules set forth in the applicable building form standards and in Section 13.1.3.4, Height in Feet.

### 10.12.1.2 Enhanced Linkage Fees

#### A. Intent

To encourage additional affordable housing linkage fee payments beyond mandatory requirements by providing flexibility in building height for nonresidential projects near high-capacity transit.

#### B. Applicability

This Section 10.12.1.2 shall apply to the General and Shopfront primary building forms on Zone Lots that have their nearest point within 1/2 mile of the outer boundary of a Rail Transit Station Platform and are located in Urban Center Residential Mixed Use (C-RX), Mixed Use (C-MX), or Main Street (C-MS) zone districts.

#### C. Standards

1. Notwithstanding the applicability of D.R.M.C. Chapter 27, Article X, Division 2, a Primarily Nonresidential Structure may be developed to the maximum height with incentives set forth in the applicable building form table, if the applicant provides payment of a linkage fee, as set forth in D.R.M.C. Chapter 27, Article V Dedicated Funding for Affordable Housing equal to two (2) times the current applicable rate. If the Primarily Nonresidential Structure contains 10 or more Dwelling Units, it must also provide income restricted units in an amount that complies with D.R.M.C. Sec. 27-224(a). For the purposes of this section, a Structure that is primarily nonresidential shall mean that Primary Residential Uses comprise 50% or less of the total gross floor area excluding parking.

## GENERAL

HEIGHT						
	C-MX-3	C-RX-5 C-MX-5	C-RX-8 C-MX-8	C-RX-12 C-MX-12	C-MX-16	C-MX-20
Stories (max)	3	5	8	12	16	20
Feet (max)	45'	70'	110'	150'	200'	250'
Stories/Feet, with incentives (max)	4/55'	7/95'	12/150'	16/200'	22/275'	30/375'
	See Sec. 10.12.1, Height Incentives					
Feet, within 175' of Protected District (max)	na	75'	75'	75'	75'	75'

SITING						
	C-MX-3	C-RX-5 C-MX-5	C-RX-8 C-MX-8	C-RX-12 C-MX-12	C-MX-16	C-MX-20
REQUIRED BUILD-TO						

- A** Primary Street (min build-to % within min/max range) 70% 0'/10'  
Residential Only Buildings: 0'/15'

### SETBACKS

Primary Street (min)	0'
Side Street (min)	0'
Side Interior (min)	0'
<b>B</b> Side Interior, adjacent to Protected District (min)	10'
Rear, (min)	0'
Rear, adjacent to Protected District, where Alley (public or private) abuts a Rear Zone Lot Line (min)	0'
Rear, adjacent to Protected District, where Alley (public or private) does not abut a Rear Zone Lot Line (min)	10'

### PARKING

Surface Parking between building and Primary Street/Side Street	Not Allowed/Not Allowed
<b>C</b> Surface Parking Screening Required	See Div. 10.5, Landscaping, Fences, Walls and Screening
Vehicle Access	Shall be determined as part of Site Development Plan Review

DESIGN ELEMENTS						
	C-MX-3	C-RX-5 C-MX-5	C-RX-8 C-MX-8	C-RX-12 C-MX-12	C-MX-16	C-MX-20
BUILDING CONFIGURATION						

Dwelling Unit Configuration	Structure may contain Side-by-Side Dwelling Units Residential Only Structure: Side-by-Side Dwelling Units shall not exceed 50% of the Structure's GFA					
<b>D</b> Upper Story Setback Above 27', adjacent to Protected District: Rear, alley/Rear, no alley and Side Interior (min)	15'/25'	20'/25'	20'/25'	20'/25'	20'/25'	20'/25'
<b>E</b> Upper Story Setback Above 51', adjacent to Protected District: Rear, alley/Rear, no alley and Side Interior (min)	na	35'/40'	35'/40'	35'/40'	35'/40'	35'/40'

### STREET LEVEL ACTIVATION

- F** Transparency, Primary Street (min) 40%
- G** Transparency, Side Street (min) 25%
- H** Pedestrian Access, Primary Street Entrance

USES		
	All C-MX	All C-RX
Street Level Active Uses (min % of Primary Street frontage meeting Build-To requirement)	100%	na

Permitted Primary Uses	All permitted Primary Uses shall be allowed within this building form. See Division 7.4, Uses and Required Minimum Parking.	All permitted Primary Uses shall be allowed within this building form; however: (1) Second Story and Above: Residential or Lodging Accommodations uses only; and (2) Buildings with No Residential or Lodging Accommodation Uses: 10,000 sf GFA max
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See Sections 7.3.5 - 7.3.7 for Supplemental Design Standards, Design Standard Alternatives and Design Standard Exceptions

## DENVER ZONING CODE

June 25, 2010 | Republished February 25, 2025

| 7.3-13

## SHOPFRONT

HEIGHT		C-MX-3	C-MS-5 C-MX-5	C-MS-8 C-MX-8	C-MS-12 C-MX-12	C-MX-16	C-MX-20
Stories (max)		3	5	8	12	16	20
A	Feet (min/max)	na/45'	24'/70'	24'/110'	24'/150'	24'/200'	24'/250'
Stories/Feet, with incentives (max)		4/55'	7/95'	12/150'	16/200'	22/275'	30/375'
Feet, within 175' of Protected District (max)		na	75'	na	na	na	na
SITING		C-MX-3	C-MS-5 C-MX-5	C-MS-8 C-MX-8	C-MS-12 C-MX-12	C-MX-16	C-MX-20
REQUIRED BUILD-TO							
B	Primary Street (min build-to % within min/max range)	75% 0'/5' Residential Only Buildings: 0'/10'					
C	Side Street (min build-to % within min/max range)	25% 0'/5' Residential Only Buildings: 0'/10'					
SETBACKS							
Primary Street (min)		0'	0'	0'	0'	0'	0'
Side Street (min)		0'	0'	0'	0'	0'	0'
Side Interior (min)		0'	0'	0'	0'	0'	0'
D	Side Interior, adjacent to Protected District (min)	10'	10'	10'	10'	10'	10'
Rear (min)		0'	0'	0'	0'	0'	0'
Rear, adjacent to Protected District, where Alley (public or private) abuts a Rear Zone Lot Line (min)		0'	0'	0'	0'	0'	0'
Rear, adjacent to Protected District, where Alley (public or private) does not abut a Rear Zone Lot Line		10'	10'	10'	10'	10'	10'
PARKING							
Surface Parking between building and Primary Street/Side Street		Not Allowed/Not Allowed					
E	Surface Parking Screening Required	See Div. 10.5, Landscaping, Fences, Walls and Screening					
Vehicle Access		Shall be determined as part of Site Development Plan Review					
DESIGN ELEMENTS		C-MX-3	C-MS-5 C-MX-5	C-MS-8 C-MX-8	C-MS-12 C-MX-12	C-MX-16	C-MX-20
BUILDING CONFIGURATION							
Dwelling Unit Configuration		Structure may contain Side-by-Side Dwelling Units Residential Only Structure: Side-by-Side Dwelling Units shall not exceed 50% of the Structure's GFA					
F	Primary Street Upper Story Setback above 5 stories or 70' (min) See Section 7.3.6.2 for Alternative	na	na	20'	20'	20'	20'
G	Upper Story Setback Above 27', adjacent to Protected District: Rear, alley/Rear, no alley and Side Interior (min)	15'/25'	20'/25'	20'/25'	20'/25'	20'/25'	20'/25'
H	Upper Story Setback Above 51', adjacent to Protected District: Rear, alley/Rear, no alley and Side Interior (min)	na	35'/40'	35'/40'	35'/40'	35'/40'	35'/40'
STREET LEVEL ACTIVATION							
I	Transparency, Primary Street (min)	60% Residential Only Buildings: 40%					
J	Transparency, Side Street (min)	25%	25%	30%	30%	30%	30%
K	Pedestrian Access, Primary Street	Entrance					
USES		All C-MS and C-MX					
Street Level Active Uses (min % of Primary Street frontage meeting Build-To requirement)		100%					
Permitted Primary Uses		All permitted Primary Uses shall be allowed within this building form. See Div. 7.4, Uses and Required Minimum Parking.					
See Sections 7.3.5 - 7.3.7 for Supplemental Design Standards, Design Standard Alternatives and Design Standard Exceptions							



## EXHIBIT B-2

### VESTED OPEN SPACE REQUIREMENTS

Article 10. General Design Standards  
Division 10.8 Open Space Standards

#### DIVISION 10.8 OPEN SPACE STANDARDS

##### SECTION 10.8.1 OPEN SPACE IN LARGE DEVELOPMENTS

###### 10.8.1.1 Purpose

To ensure large developments provide open space within their boundaries that is publicly accessible, usable, and provides community benefit, including but not limited to pedestrian areas, courtyards, plazas, and natural, pervious areas.

###### 10.8.1.2 Applicability

###### A. General Applicability

This section shall apply to all Development in all zone districts where the total gross land area for the Development is either greater than 5 acres or 3 or more Blocks ("large development").

###### B. Exceptions

A large development may be exempt from providing the minimum open space set forth in this Section 10.8.1 if:

1. The proposed Development is subject to a previously approved General Development Plan (GDP), and when the DRC determines that the previous GDP was approved with minimum open space consistent with the minimum amount and design standards set forth in this Section 10.8.1; or
2. When the DRC determines that the proposed Development is located in an approved Large Development Framework, Infrastructure Master Plan, Subdivision under D.R.M.C. Chapter 50, or other approved regulatory document that has established minimum open space that is consistent with the minimum amount and design standards set forth in this Section 10.8.1; or
3. The Development is in the MHC zone district.

###### 10.8.1.3 Minimum Amount Required

A minimum of 10% of the Net Development Area as defined in Section 13.1.6.4.A, Open Space in Large Developments Rules of Measurement, shall be provided as open space in accordance with this section ("Open Space in Large Developments").

- A. For large developments equal to or under 10 acres and subject to this section, City park land, or land required to be dedicated to the City by the Department of Parks and Recreation, located within the large development boundaries, may count towards the 10% minimum requirement for Open Space in Large Developments, provided the DRC finds that the land complies with:
  1. The minimum design standards in Section 10.8.1.6; and
  2. Applicable design standards adopted by the Department of Parks and Recreation.
- B. For large developments over 10 acres and subject to this section, City park land, or land dedicated to the City for City park, conservation, or recreation public purposes, located within the large development boundaries, may count towards the 10% minimum requirement for Open Space in Large Developments, provided the DRC finds that the land:
  1. Complies with the minimum design standards in Section 10.8.1.6;
  2. Complies with any applicable design standards adopted by the Department of Parks and Recreation; and
  3. Is in addition to any minimum land area required for City park land, or land required to be dedicated to the Department of Parks and Recreation (DPR) in accordance with adopted DPR standards, and located within the large development boundaries.

#### **10.8.1.4 Easement Required**

The required Open Space in Large Developments shall be subject to a perpetual easement granted to the City and/or the general public. All required easements shall be in a form approved by the City.

#### **10.8.1.5 Public Access Required**

The required Open Space in Large Developments shall remain open to the public at all times, or from sunrise to sunset.

#### **10.8.1.6 Design Standards**

The required Open Space in Large Developments shall comply with the following design standards.

- A. The required open space shall be provided in 1 or more contiguous areas measuring at least 15 feet wide and 30 feet deep, and abutting:
  1. A Street; or
  2. An area with direct pedestrian access to a Street, provided such area is subject to a perpetual easement, or similar mechanism, granted to the City and/or the general public.
- B. The required minimum Open Space in Large Developments shall remain publicly accessible and usable in accordance with the following design standards:
  1. Shall not be covered by an Off-Street Parking Area or a Completely or Partially Enclosed Structure, but may include Open Structures excluding Exterior Balconies. The required open space may include user amenities such as tables, chairs, benches, sculptures, and similar elements.
  2. Shall be visible from at least one public named or numbered Street. See Figure 13.1-120.
  3. Shall not be permanently enclosed by railings, fences, gates, or walls.
  4. Shall be within 2 feet of grade at edge of Street or where the open space is accessible to the public.
  5. Shall have barrier-free access to the open space from the abutting Street or the point the open space abuts a Zone Lot Line accessible to the public, designed in accordance with the Americans with Disabilities Act or Denver Accessibility Standards.
  6. The required open space design may be, but is not limited to, any of the following types:
    - a. A courtyard, enhanced streetscape, or pedestrian area with connections to transit facilities, plazas, or streets; and/or
    - b. Natural, pervious areas landscaped with trees and vegetation.
- C. The Zoning Administrator may approve an Administrative Adjustment to the Open Space in Large Development design standards in this Section 10.8.1.6, according to Section 12.4.5 (Administrative Adjustment), and upon finding that the proposed adjustment would meet or exceed the intent and purpose of this Section 10.8.1.

## EXHIBIT C

### HIGH IMPACT DEVELOPMENT COMPLIANCE PLAN

#### I. INTRODUCTION

Developer intends to develop the Project. The Project is a high impact development, as defined in D.R.M.C. Chapter 27, Article X, and this Plan constitutes the high impact development compliance plan required pursuant to D.R.M.C. § 27-229(a).

#### II. DEFINITIONS

- A. The following terms used in this Plan shall have the meanings set forth below:
1. **“AMI”** means, as set forth in D.R.M.C. § 27-219(a), the median income for the Denver metropolitan area, adjusted for household size, as calculated by the U.S. Department of Housing and Urban Development.
  2. **“City”** means the City and County of Denver, a home rule municipality and political subdivision of the State of Colorado.
  3. **“City Regulations”** means the provisions of the D.R.M.C., the DZC, and any regulations established under either of them.
  4. **“Control Period”** means the affordability period established pursuant to Section IV.D.
  5. **“Developer”** means, initially, OliverBuchananGroup, LLC, and its successor(s) and assign(s) in interest.
  6. **“Development”** means any building or structure, or group of buildings or structures. For purposes of this Plan, a Development will be any building or structure, or group of buildings or structures, shown on one or more SDP(s).
  7. **“Development Agreement”** means that certain Rock Drill Development Agreement entered into by and between Developer and the City with respect to the Project.
  8. **“D.R.M.C.”** means the Denver Revised Municipal Code, as amended from time to time.
  9. **“DZC”** means the Denver Zoning Code, as amended from time to time.
  10. **“Full Buildout”** means the date on which Developer notifies the City that the Project has been completed, as evidenced by obtaining, at a minimum, Temporary Certificates of Occupancy (**“TCO”**) for all buildings within the Property.
  11. **“HOST”** means the City Department of Housing Stability, or any successor agency with substantially similar responsibilities.
  12. **“IRU”** means Income Restricted Unit. An IRU is a residential Unit that has a recorded covenant restricting the use of the Unit to a certain AMI for the Control Period
  13. **“Linkage Fee”** means the affordable housing linkage fee that is assessed pursuant to D.R.M.C. Chapter 27, Article V, as it may be amended from time to time.
  14. **“Plan”** means this High Impact Development Compliance Plan.
  15. **“Project”** means the anticipated development of a mixed-use commercial and residential development project located on the Property.

16. **“Property”** means that certain real property legally described on the attached Exhibit A of the Development Agreement.
  17. **“Records”** means the real property records of the City Clerk and Recorder.
  18. **“Rental Covenant”** means a covenant that encumbers the portion of the Property underlying such building, in substantially the same form as is attached hereto as Schedule A, with such modifications as may be acceptable to Developer and HOST, which shall constitute a covenant running with the title to the land.
  19. **“SDP”** means a site development plan, as such term is defined in the DZC.
  20. **“Unit”** means a “dwelling unit,” as such term is defined in DZC § 11.12.2.1.B.
- B. Any initially capitalized term used herein without definition shall have the meaning set forth in the City Regulations.

### III. LEGAL AUTHORITY

- A. High Impact Development Compliance Plan. This Plan is a high impact development compliance plan pursuant to D.R.M.C. § 27-229(a), and has been approved in accordance with procedures and requirements set forth in D.R.M.C. § 27-229(c), including but not limited to any regulations established pursuant to D.R.M.C. § 27-230, as demonstrated by Developer’s signature on the Development Agreement and the HOST Executive Director’s signature at the end of this Plan.
- B. Compliance with D.R.M.C. The Executive Director of HOST acknowledges that the commitments set forth in this Plan meet or exceed the compliance options set forth in D.R.M.C. § 27-224(c).
- C. Community Outreach. The Executive Director of HOST acknowledges that, in connection with the Project, Developer has engaged in outreach to the surrounding community as more particularly described in Schedule B attached hereto, and that, in accordance with D.R.M.C. § 27-229(a)(2), the terms and conditions of this Plan have been negotiated and agreed upon to be responsive to such conducted community outreach.
- D. Conflict. This Plan governs and controls the development of affordable housing on and the payment of Linkage Fee applicable to the Property. To the extent this Plan is silent on a matter covered by the City Regulations, the City Regulations shall control. To the extent this Plan directly conflicts with any provisions of the DZC or D.R.M.C. Chapter 27, Articles V or X, or any successor provision of the DZC or D.R.M.C. intended to govern and control the development of affordable housing and/or payment of Linkage Fee, this Plan shall control.

### IV. OBLIGATION TO CONSTRUCT AND MAINTAIN AFFORDABLE HOUSING UNITS

- A. Minimum Required Affordable Housing. At Full Buildout, ten percent (10%) of the total number of Units within the Project shall be income-restricted as to be affordable to households earning no greater than fifty percent (50%) of AMI (each such Unit, an “IRU”). Such IRUs shall be constructed and marketed concurrently, on an approximately proportionate basis, as the Units that do not qualify as IRUs.

- B. Two- and Three-Bedroom Units. The IRUs within the Project will include a minimum of fifteen percent (15%) as Two-Bedroom Units; and (ii) a minimum of five (5%) as Three-Bedroom Units.
- C. Control Period. Any IRU constructed pursuant to this Plan shall remain income-restricted for a minimum period of ninety-nine (99) years from the date of issuance of the certificate of occupancy for the building containing the IRU.
- D. Compliance With City Regulations. Except as otherwise expressly set forth herein, the design, construction, maintenance, and operation of IRUs within the Project shall comply with all City Regulations.
- E. No Cash in Lieu Alternative. The obligations set forth in this Section IV may not be satisfied by the payment of cash in lieu of construction and maintenance of IRUs.

## **V. LIMITATIONS AND REQUIREMENTS ON AFFORDABLE HOUSING UNITS**

For any building within the Project that will contain an IRU, Developer shall, as a condition of the City's issuance of the first certificate of occupancy for the building, cause the recording in the Records of a Rental Covenant with respect to the portion of the Property upon which the IRUs are constructed. Each Rental Covenant shall provide all the information required by applicable City Regulations, including that all IRUs shall be occupied by tenants whose household incomes are at or below the AMI limitation for such IRU and that the rent for such IRU shall not exceed the applicable income limitation for such IRU, for the duration of the Control Period.

## **VI. LINKAGE FEES**

- A. Linkage Fee Applicable to Certain Development. All Development that would otherwise be subject to the payment of the Linkage Fee pursuant to D.R.M.C. § 27-153 will be required to pay the Linkage Fee as follows:
  - 1. Within structures that do not contain IRUs, with respect to any street level Primary Commercial Sales, Services, & Repair uses pursuant to the DZC, the Linkage Fee will be assessed at the then-current rate pursuant to the City Regulations.
  - 2. Within structures containing IRUs, any street level Primary Commercial Sales, Services, & Repair uses pursuant to the DZC shall be exempt from the obligation to pay any Linkage Fee.

## **VII. INCENTIVES**

The Project is choosing On Site compliance as defined in Section 27-224 and meets the standard of Enhanced On Site compliance defined in Section 27-224(c)(1). Any structure built on the Property is eligible for Base and Enhanced Incentives pursuant to Section 27-224(b)(1) and Section 27-224(c)(1) of the DRMC.

## **VIII. ENFORCEMENT AND COMPLIANCE**

- A. SDP Monitoring. Developer shall ensure that the requirements of this Plan are met with each SDP or SDP amendment filed for land within the Property. To allow for periodic assessment of compliance, each SDP or SDP amendment that includes Units shall include a compliance report noting (a) the number of current and

anticipated Units within each Development in the Project, disaggregated by bedroom count (e.g. studio, 1-bedroom, 2-bedroom, etc.); (b) the number of current and anticipated IRUs within each Development in the Project, disaggregated by bedroom count (e.g. studio, 1-bedroom, 2-bedroom, etc.); and (c) the current and anticipated affordability levels of completed and planned IRUs. The City shall not approve any SDP if Developer fails to provide the information required by this Section VII.A, and the City shall not approve any SDP that is inconsistent with this Plan unless and until the SDP is revised to be consistent with this Plan.

- B. Default in Performance Under Plan. The City may deny issuance of further building permits or certificates of occupancy within the Project if the Project is not in compliance with the requirements of this Plan, or if Developer fails to fulfill or perform any express obligation of Developer stated in this Plan.
- C. Default in Performance Under Rental Covenant. The owner of any IRU, or its designee, shall be responsible for compliance with any Rental Covenant and for periodic reporting to HOST on such compliance. HOST will be responsible for monitoring such compliance, the City's enforcement authority, applicable penalties, and any appeal right will be governed by City Regulations.

## **IX. MISCELLANEOUS**

- A. Termination. This Plan shall remain in full force and effect until the earliest of the following to occur:
  - 1. Full Buildout; or
  - 2. Mutual execution of an instrument terminating this Plan by and between Developer and HOST.

Upon such termination of this Plan, HOST agrees to execute an instrument in recordable form reasonably requested by Developer confirming termination of this Plan.

- B. Amendments and Modifications. This Plan may be amended or modified only pursuant to an amendment to the Development Agreement.
- C. Entire Agreement. This Plan, together with any exhibits, schedules, or documents referred to in, or supplied pursuant to the terms of this Plan, contains the entire agreement relative to affordable housing within the Project and supersedes all prior oral representations, covenants, understandings or other agreements between the parties or their agents.
- D. Covenants Running with the Land. All provisions of this Plan will be deemed to be covenants running with the land or equitable servitudes, as the case may be. The benefits, burdens and other provisions contained in this Plan will be binding upon and will inure to the benefit of Developer and the City and their respective successors and assigns. The City acknowledges that Developer may assign its rights and obligations hereunder to any affiliates of Developer, in whole or in part, to whom Developer has granted, or caused to be granted, the rights to develop all or any portion of the property within the Project, and that in the event of such assignment, the assignee with respect to the applicable parcel will become responsible for obligations under this Plan with respect to such parcel.
- E. Third Party Beneficiaries. Enforcement of the terms and conditions of this Plan, and all rights of action relating to such enforcement will be strictly reserved to the City and Developer and nothing contained in this Plan will give or allow any such

claim or right of action by any other or third person regarding the terms and conditions hereof. It is the express intention of the City and Developer that any person other than the City or Developer receiving services or benefits under this Plan will be deemed to be an incidental beneficiary only.

- F. Section Headings. The section headings are inserted only for convenient reference and do not define, limit or prescribe the scope of this Plan.
- G. Governing Law. This Plan will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the City Regulations. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Plan will be in the District Court of the State of Colorado, Second Judicial District.
- H. Severability. If any terms, covenants or provisions of this Plan will be illegal or unenforceable for any reason, the same will not invalidate any other term, covenants or provisions, and all of the remaining terms, covenants and provisions will remain in full force and effect.

*[signature pages to be inserted prior to execution]*

The foregoing High Impact Development Compliance Plan is APPROVED by the Executive Director of the Department of Housing Stability.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

The foregoing High Impact Development Compliance Plan is AGREED TO by the Developer.

**OLIVER BUCHANAN GROUP, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Schedule A  
Form of Rental Covenant**

**WHEN RECORDED MAIL TO:**

Department of Housing Stability  
Attention: Catalytic Projects Team  
201 W. Colfax Ave., Dept 615  
Denver CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

**RENTAL AND OCCUPANCY COVENANT**

THIS RENTAL AND OCCUPANCY COVENANT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ ("Owner), and enforceable by the City and County of Denver, Colorado ("City").

**RECITALS:**

WHEREAS, Owner owns the following described real property in the City and County of Denver, State of Colorado (the "Subject Property")  
[fill in]

WHEREAS, pursuant to the provisions of the Mandatory Affordable Housing Ordinance as set forth in Article X of Chapter 27 of the Denver Revised Municipal Code as amended from time to time (the "MAH Ordinance") and the Mandatory Affordable Housing Ordinance & Affordable Housing Permanent Funds Ordinance Administrative Rules and Regulations (the "Rules"), Owner shall provide that certain units within the Subject Property will be built as Income Restricted Units as defined in the Affordable Housing Plan (defined below), and this Covenant;

WHEREAS, in order to document compliance with the MAH Ordinance and a plan for construction of Income Restricted Units, the City approved the Affordable Housing Plan submitted by the Owner, dated \_\_\_\_\_ and recorded under Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver; and

WHEREAS, the MAH Ordinance and Rules require Owner to record a covenant that shall apply to the Subject Property and run with the land to ensure that certain rental and occupancy limitations, and administrative requirements for the Income Restricted Units are met and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, the following are established as covenants running with the Subject Property:

1. **Definitions**

- i. "Area Median Income" (AMI) means the area median income adjusted for household size, for the Denver metropolitan area as determined by the U.S. Department of Housing and Urban Development.
- ii. Income Restricted Units ("IRUs") means those [# of units] rental housing units located within the Subject Property as are designated from time to time by Owner. IRUs must be restricted as to the rent charged and resident income allowed pursuant to the Covenant.
- iii. "Compliance Report" means the annual reporting mechanism submitted to HOST. the form of which will be maintained on HOST's website or otherwise supplied by HOST, that Owner shall prepare and provide to the City pursuant to Section 5 of this Covenant.
- iv. "Eligible Household" means a natural person who, at the time of entering into the lease for an IRU or a renewal of such lease, verifies to Owner on the Income

Verification that the total gross income earned by such person is [XX]%, [YY]%, or [FILL IN AS NECESSARY]%) or less of the of AMI for the resident's household size.

- v. "Income Verification" means the process by which a household has been determined to be eligible to occupy or purchase an IRU.
- vi. "Initial Leasing Period" means the period commencing on the first date a certificate of occupancy is issued for any building within the Subject Property that contains IRUs and ending on the earlier of the date when all IRUs have been fully leased or six months after certificate of occupancy.
- vii. "Resident Income Certification" (RIC) means a certification, the form of which will be maintained on HOST's website or otherwise supplied by HOST, regarding resident eligibility to live in the Affordable Unit; and any successor certification, as required by HOST from time to time.

2. **Rent Limitations.** The rent limitation for the IRUs are as follows:

- i. (##) of the IRUs (the "XX% Units") will have rents not exceeding the amount posted on the website of the City and County of Denver's Department of Housing Stability ("HOST"), or any successor agency which is assigned responsibility for the City's MAHS Ordinance, for households earning [XX]% or less of AMI.
- ii. (##.) of the IRUs (the "YY% Units") will have rents not exceeding the amount posted on the website of HOST for households earning [YY]% or less of AMI.
- iii. [REPEAT AS NECESSARY]
- iv. The maximum allowable rents posted on HOST's website are based upon the AMI threshold published by the U.S. Department of Housing and Urban Development. Using these gross rental limits, HOST's maximum allowable net rents are calculated by subtracting the utility allowance published annually by the Colorado Department of Local Affairs (DOLA) and any other "non-optional" fees charged to residents.

3. **Occupancy/Income Limitations.** The occupancy and income limitations for the IRUs are as follows:

- i. The XX% Units shall be occupied by the Eligible Households whose incomes are at or below [XX]% of AMI.
- ii. The YY% Units shall be occupied by Eligible Households whose incomes are at or below [YY]% of AMI.
- iii. [REPEAT AS NECESSARY]
- iv. Owner shall have responsibility to assure that a household or individual is an Eligible Household before executing a lease contract, and shall complete an Income Verification for each Eligible Household. Owner shall also offer the IRUs to Eligible Households through a fair and equitable system and use good-faith efforts to enter into leases with and market to Eligible Households.

4. Amount of Income Restricted Units. Owner shall provide no less than ( ) IRUs on the Subject Property. All of the IRUs are floating and are designated as follows:

BEDROOMS	XX% Units	XX% Units	XX% Units	XX% Units	XX% Units	XX% Units
Studio						
1 Bedroom						
2 Bedroom						

3 Bedroom						
TOTAL						

5. **Compliance and Reporting.**

- i. At the end of the Initial Leasing Period, Owner shall submit a Compliance Report, indicating how many IRUs were made available and leased during the Initial Leasing Period and a copy of a signed Resident Income Certification (RIC) for each Eligible Household that entered into a lease during the Initial Leasing Period.
- ii. Owner shall demonstrate continued compliance with this Covenant after the Initial Leasing Period by submitting to the City a Compliance Report on an annual basis during the term of this Covenant. Reports are to be submitted within 30 days of HOST's request.
- iii. The Income Verifications for each Eligible Household shall be maintained by Owner at the management office at the Subject Property or such other place where Owner's books and records are kept in the Denver metropolitan area for so long as the Eligible Household occupies an IRU. HOST reserves the right to request Income Verification documentation as needed to verify compliance.
- iv. Upon reasonable notice and during the normal business hours maintained by Owner at the management office at the Subject Property or such other place where the requested books and records are kept in the Denver metropolitan area. Owner shall permit any duly authorized representative of the City to inspect any books or records of Owner pertaining to the project at the Subject Property containing IRUs which reasonably relate to Owner's compliance with the terms and conditions of this Covenant.
- v. Owner acknowledges that the City may, upon reasonable notice and during the normal business hours maintained by the Owner, perform housing quality standard inspections as necessary to ensure IRUs are maintained at minimum quality standards in accordance with the Rules. These inspections may take place during the Initial Leasing Period as well as throughout the term of affordability.
- vi. Owner acknowledges that the City may, at its election, hire a compliance agent, to monitor Owner's compliance with this Covenant. In such an event, Owner shall be authorized to rely upon any written representation made by the compliance agent on behalf of the City.

6. **Termination of Lease.** The form of lease to be used by Owner in renting any IRUs to Eligible Households shall also provide for termination of the lease and consent by such resident to immediate eviction if such resident subleases the IRU, attempts to sublease the IRU, or provides the IRU as a short-term rental as defined by Article III, Chapter 33 of the Denver Revised Municipal Code.

7. **Term.** This Covenant shall encumber the Subject Property for a period of ninety- nine (99) years from the date of recording hereof and shall not be amended or modified without the express written consent of the City and County of Denver.

8. **Run with the Land.** The Covenant shall run with the Subject Property and shall be binding on all persons having or acquiring an interest in title to the Subject Property, all upon terms, provisions, and conditions set forth in this Covenant.

9. **Seniority of Covenant.** The Covenant is senior to all instruments securing permanent financing.

10. **Survivability.** If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or enforceability shall not in any way be affected or impaired thereby.
11. **Enforcement.** This Covenant may be enforced by the City and County of Denver, or the Executive Director of HOST.
12. **Memorandum of Acceptance.** Upon any sale of the Subject Property, Owner shall require the grantee of the Subject Property to execute a Memorandum of Acceptance and shall deliver a copy of such Memorandum of Acceptance to the Executive Director of HOST not less than thirty (30) days after such sale is consummated.

IN WITNESS WHEREOF, Owner has caused this Covenant to be Executed on the date first written

above.

OWNER: \_\_\_\_\_,

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_)

)ss.

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
2025, \_\_\_\_\_,  
by \_\_\_\_\_  
as \_\_\_\_\_  
of \_\_\_\_\_, a  
\_\_\_\_\_  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

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

The foregoing Rental and Occupancy Covenant, and it's terms are hereby accepted by the City and County of Denver, Colorado.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The foregoing instrument was acknowledged before me this\_\_\_\_\_ day of \_\_\_\_\_, 2025, by\_\_\_\_\_, as \_\_\_\_\_ of the City and County of Denver, Colorado.

Notary Public

## **Schedule B**

### **Community Outreach Summary**

Since initiating the Large Development Review (LDR) and Framework process in December 2022, the Project team has held several meetings with a wide range of city, community and business leaders, and neighborhood organizations. This extensive outreach effort included presentations, listening sessions, open houses and issue-specific discussions.

Given the importance of the site, we have taken an expansive approach to meeting with Registered Neighborhood Organizations (RNOs) and other organizations in the area. We kicked off the Large Development Review (LDR) process in December 2022. We also created a website (<https://rockdrillrino.com>) where people from the public could view project information, learn about updates, sign up for more information, view answers to frequently asked questions (FAQs), and contact the project team.

We have had a wide variety of conversations with the extended community and have had a number of site tours with Cole Neighborhood residents to understand the community's needs and aspiration for the site. In addition to the required LDR community information meeting in November of 2023 (over 50 attendees), on September 19th, 2023, an open house was held on-site for the community. We provided food trucks and homemade hand pies and conducted several site tours for community members. More than 200 community members attended and provided in excess of 50 comments about the proposed plans. We have actively engaged interested residents, registered neighborhood organizations and City Council members through meetings, presentations and Rock Drill RiNo site tours. Our goal is to provide community members with multiple opportunities to learn about and provide feedback on project plans. Our outreach efforts have included, but are not limited to, the following organizations:

We held multiple meetings and presentations with the following organizations:

- Cole Neighborhood Association
- Curtis Park Neighbors
- Denver North Business Association
- Downtown Denver Partnership
- East Denver Residents Council
- Elyria and Swansea Neighborhood Association
- Globeville, Elyria-Swansea (GES) Coalition
- Historic Denver

- The Lofts at Denver Rock Drill Works
- Manuel High School
- Northeast Transportation Connections
- Opportunity Corridor Coalition of United Residents
- Reclaim the Eastside
- RiNo Art District
- Unite North Metro Denver
- United Community Action Network (UCAN)
- United Northeast Denver Residents

The commitment to include 50% AMI units and two-and three bedroom units was informed by community feedback, which voiced the need for more deeply affordable and family-sized units.



## EXHIBIT D HISTORIC BUILDINGS



### **Building and Feature Legend:**

#### **– Building 2: Office Building**

- The Developer will commit to designation of all of Building 2, however, Developer and City agree to emphasize in the language of the designation the front facade, roof shape and roof form as seen from the street; the City acknowledges that the current structural integrity of Building 2 may prevent preservation of the entire roof (non front façade).
- The Developer and City agree that the designation will not include the front entrance awning/porte cochere or the aluminum storefront entrance as they appear to be later alterations and are not character defining features of Building 2.

- The Developer and the City agree that the east side, west side and interior are open for continued discussion regarding future construction due to the limited visibility from the street.
- **Building 3: Saw Tooth**
  - No special notes or considerations.
- **Building 4: Saw Tooth**
  - No special notes or considerations.
- **Feature 5: Rail Spur**
  - The Developer will commit to preserving the shape and form of Feature 5, however, Developer and City agree that the local designation of Feature 5 will not extend to the buildings adjacent to Feature 5.
- **Building 8: Foundry**
  - No special notes or considerations.
- **Building 9: Foundry**
  - No special notes or considerations.
- **Building 10: Foundry**
  - No special notes or considerations.
- **Building 12: Boiler**
  - No special notes or considerations.
- **Building 40: Saw Tooth**
  - No special notes or considerations.