

## REQUEST FOR RESOLUTION FOR TIER III ENCROACHMENT PERMIT

**TO:** Caroline Martin, City Attorney's Office

**FROM:** Matt Bryner  
Director, Public Works, Right of Way Services

**ROW NO.:** 2018-ENCROACHMENT-0000037

**DATE:** April 29, 2019

**SUBJECT:** Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Platte Street Plaza Owners Association, their successors and assigns, to encroach into the right-of-way with: six (6) pedestrian lighting poles ranging in voltage from 120-227V, electrical receptacles ranging in voltage from 120-227V, brick paving, timber benches varying in length from 7' to 25' with a varying height from 14" to 24", site steps with accompanying handrails, ¾" irrigation lines and an existing ¾" tap for a subsurface system, and a 6'-8' masonry screen wall along the edge of property line at the I-25 edge. The encroachment items are located at 16th Street and Platte Street; variable width 80' public right-of-way.

**It is requested that the above subject item be placed on the next available Mayor Council Agenda.**

This office has investigated the request from Paul Stewart of DIG Studio, Inc. dated May 31, 2018, on behalf of Platte Street Plaza Owners Association c/o Unico Properties LLC for the granting of the above-subject permit.

This matter has been checked by this office and has been coordinated with Asset Management; Colorado Department of Transportation (if required); Comcast Corporation; Commission For People With Disabilities; Councilperson Espinoza; CPD: Building & Construction Services, Planning Services, and Zoning & Development Review; Denver Water Board; Environmental Services (if required); Fire Department (if required); Metro Wastewater Reclamation District; Office of Emergency Management; Office of Telecommunications; Parks and Recreation; Public Works: City Engineer, DES Construction Engineering, DES Engineering, DES Survey, IPP Infrastructure Engineering, and Street Maintenance; Qwest Corporation; Regional Transportation District; and Xcel Energy, all of whom have returned our questionnaires indicating their agreement.

As a result of the investigations, it has been determined that there is no objection to the granting of the revocable permit.

Therefore, you are requested to initiate Council action for the granting of a revocable permit, subject to certain terms and conditions, to Platte Street Plaza Owners Association c/o Unico Properties LLC, their successors and assigns, to encroach with approximately 15,000 SF pedestrian plaza located on the east end and at the foot of the Highlands Bridge over I-25 at 16th Street and Platte Street; variable width 80' public right-of-way.

**INSERT PARCEL DESCRIPTION ROW 2018-ENCROACHMENT-0000037-001 HERE**

## **STANDARD PROVISIONS**

The revocable permit ("Permit") granted by this resolution is expressly granted upon and subject to each and all of the following terms and conditions:

- (a) Permittee shall obtain a street occupancy permit from Public Works Permit Operations at 2000 West 3<sup>rd</sup> Avenue, 303.446.3759, and prior to commencing construction.
- (b) Permittee shall be responsible for obtaining all other permits and shall pay all costs that are necessary for installation and construction of items permitted herein.
- (c) If the Permittee intends to install any underground facilities in or near a public road, street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification Association of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of Colorado, 16361 Table Mountain Pkwy, Golden, Colorado, 80403 at 303.232.1991. Further, Permittee shall contact the Utility Notification Center, at 811 to locate underground facilities prior to commencing any work under this permit.
- (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver due to activities authorized by the permit. Should the relocation or replacement of any drainage facilities for water and sewage of the City and County of Denver become necessary as determined by the Manager of Public Works, in the Manager's sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the sewer affected by the permitted structure. The extent of the affected portion to be replaced and relocated by Permittee shall be determined by the Manager of Public Works. Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be made by the Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend, indemnify and save the City harmless and to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages resulting from the failure of the sewer to properly function as a result of the permitted structure.
- (e) Permittee shall comply with all requirements of affected utility companies and pay for all costs of removal, relocation, replacement or rearrangement of utility company facilities. Existing telephone facilities shall not be utilized, obstructed or disturbed.
- (f) All construction in, under, on or over the Encroachment Area shall be accomplished in accordance with the Building Code of the City and County of Denver. Plans and Specifications governing the

construction of the Encroachments shall be approved by the Manager of Public Works and the Director of the Building Inspection Division prior to construction. Upon completion, a reproducible copy of the exact location and dimensions of the Encroachments shall be filed with the Manager of Public Works.

- (g) The sidewalk and street/alley over the Encroachment Area shall be capable of withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The installations within the Encroachment Area shall be constructed so that the paved section of the street/alley can be widened without requiring additional structural modifications. The sidewalk shall be constructed so that it can be removed and replaced without affecting structures within the Encroachment Area.
- (h) Permittee shall pay all costs of construction and maintenance of the Encroachment. Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the Encroachment from the Encroachment Area, and return the Encroachment Area to its original condition under the supervision of the City Engineer.
- (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and curb and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become broken, damaged or unsightly during the course of construction. In the future, Permittee shall also remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that become broken or damaged when, in the opinion of the City Engineer, the damage has been caused by the activity of the Permittee within the Encroachment Area. All repair work shall be accomplished without cost to the City and under the supervision of the City Engineer.
- (j) The City reserves the right to make an inspection of the Encroachments contained within the Encroachment Area. An annual fee, subject to change, of \$200.00 shall be assessed.
- (k) This revocable permit shall not operate or be construed to abridge, limit or restrict the City and County of Denver in exercising its right to make full use of the Encroachment Area and adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in exercising their rights to construct, remove, operate and maintain their facilities within the Encroachment Area and adjacent rights-of-way.
- (l) During the existence of the Encroachments and this permit, Permittee, its successors and assigns, at its expense, and without cost to the City and County of Denver, shall procure and maintain a single limit comprehensive general liability insurance policy with a limit of not less than \$500,000.00. All coverage's are to be arranged on an occurrence basis and include coverage for those hazards normally identified as X.C.U. during construction. The insurance coverage required herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All insurance coverage required herein shall be written in a form and by a company or companies approved by the Risk Manager of the City and County of Denver and authorized to do

business in the State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of Public Works, and each such policy shall contain a statement therein or endorsement thereon that it will not be canceled or materially changed without written notice, by registered mail, to the Manager of Public Works at least thirty (30) days prior to the effective date of the cancellation or material change. All such insurance policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder and shall name the City and County of Denver as an additional insured.

- (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination in Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of the City and County of Denver. The failure to comply with any such provision shall be a proper basis for revocation of this permit.
- (n) The right to revoke this permit is expressly reserved to the City and County of Denver.
- (o) Permittee shall agree to indemnify and always save the City and County of Denver harmless from all costs, claims or damages arising, either directly or indirectly, out of the rights and privileges granted by this permit.

**SPECIAL CONDITIONS FOR THIS PERMIT**

- (p) NONE

A map of the area is attached hereto.

MB: kr

cc: Asset Management, Steve Wirth  
City Council Office, Zach Rothmier  
Councilperson Espinoza and Aides  
Department of Law, Bradley Beck  
Department of Law, Deanne Durfee  
Department of Law, Maureen McGuire  
Department of Law, Martin Plate  
Department of Law, Caroline Martin  
Public Works, Alba Castro  
Public Works, Jason Gallardo  
Project File

Property Owner:  
Platte Street Plaza  
Owners Association  
1660 Lincoln St,  
Ste 1820  
Denver, CO 80264

Agent:  
Unico Properties LLC  
1215 4<sup>th</sup> Ave, Ste 600  
Seattle, WA 98161

**ORDINANCE/RESOLUTION REQUEST**

Please email requests to Jason Gallardo at [Jason.Gallardo@denvergov.org](mailto:Jason.Gallardo@denvergov.org) by **12:00pm on Monday**. Contact her with questions.

Date of Request: April 29, 2019

Please mark one:  Bill Request or  Resolution Request

**1. Type of Request:**

- Contract/Grant Agreement     Intergovernmental Agreement (IGA)     Rezoning/Text Amendment
- Dedication/Vacation     Appropriation/Supplemental     DRMC Change
- Other: Tier III Encroachment

**2. Title:** (Start with *approves, amends, dedicates*, etc., include name of company or contractor and indicate the type of request: grant acceptance, contract execution, contract amendment, municipal code change, supplemental request, etc.)

Paul Stewart of DIG Studio, Inc. on behalf of Platte Street Plaza Owners Association, requests for a Resolution granting a revocable permit to encroach into the right-of-way with: six (6) pedestrian lighting poles ranging in voltage from 120-227V, electrical receptacles ranging in voltage from 120-227V, brick paving, timber benches varying in length from 7' to 25' with a varying height from 14" to 24", site steps with accompanying handrails, 3/4" irrigation lines and an existing 3/4" tap for a subsurface system, and a 6'-8' masonry screen wall along the edge of property line at the I-25 edge. The encroachment items are located at 16th Street and Platte Street; variable width 80' public right-of-way.

**3. Requesting Agency:** Public Works; Engineering and Regulatory Dept.

**4. Contact Person:**

|  |   |
|--|---|
| Contact person with knowledge of proposed ordinance/resolution | Contact person to present item at Mayor-Council and Council |
| Name: Katie Ragland  | Name: Jason Gallardo  |
| Email: Katie.Ragland@denvergov.org                             | Email: Jason.Gallardo@denvergov.org                         |

**5. General description or background of proposed request. Attach executive summary if more space needed:**

Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Platte Street Plaza Owners Association, their successors and assigns, to encroach into the right-of-way with: six (6) pedestrian lighting poles ranging in voltage from 120-227V, electrical receptacles ranging in voltage from 120-227V, brick paving, timber benches varying in length from 7' to 25' with a varying height from 14" to 24", site steps with accompanying handrails, 3/4" irrigation lines and an existing 3/4" tap for a subsurface system, and a 6'-8' masonry screen wall along the edge of property line at the I-25 edge. The encroachment items are located at 16th Street and Platte Street; variable width 80' public right-of-way.

**6. City Attorney assigned to this request (if applicable):** Martin Plate

**7. City Council District:** District 1; Councilman Espinoza of District 1

**8. \*\*For all contracts, fill out and submit accompanying Key Contract Terms worksheet\*\***

N/A

*To be completed by Mayor's Legislative Team:*

Resolution/Bill Number: \_\_\_\_\_

Date Entered: \_\_\_\_\_

## Key Contract Terms

Type of Contract: (e.g. Professional Services > \$500K; IGA/Grant Agreement, Sale or Lease of Real Property):

Vendor/Contractor Name:

Contract control number:

Location:

Is this a new contract?  Yes  No    Is this an Amendment?  Yes  No    If yes, how many? \_\_\_\_\_

Contract Term/Duration (for amended contracts, include existing term dates and amended dates):

Contract Amount (indicate existing amount, amended amount and new contract total):

| <i>Current Contract Amount</i><br>(A) | <i>Additional Funds</i><br>(B) | <i>Total Contract Amount</i><br>(A+B) |
|---------------------------------------|--------------------------------|---------------------------------------|
|                                       |                                |                                       |

| <i>Current Contract Term</i> | <i>Added Time</i> | <i>New Ending Date</i> |
|------------------------------|-------------------|------------------------|
|                              |                   |                        |

Scope of work:

Was this contractor selected by competitive process?

If not, why not?

Has this contractor provided these services to the City before?  Yes  No

Source of funds:

Is this contract subject to:  W/MBE  DBE  SBE  XO101  ACDBE  N/A

WBE/MBE/DBE commitments (construction, design, Airport concession contracts):

Who are the subcontractors to this contract?

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*To be completed by Mayor's Legislative Team:*

Resolution/Bill Number: \_\_\_\_\_

Date Entered: \_\_\_\_\_



## **TIER III ENCROACHMENT EXECUTIVE SUMMARY**

**What is an Encroachment:** A privately owned improvement that is located in, or project over or under the public Right-of-Way.

**Project Title:** 2018-ENCROACHMENT-0000037 Tier III Highlands Bridge Plaza Improvements at 16th St and Platte

**Business name:** Platte Street Plaza Owners Association

**Description of Encroachment:** Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Platte Street Plaza Owners Association, their successors and assigns, to encroach into the right-of-way with: six (6) pedestrian lighting poles ranging in voltage from 120-227V, electrical receptacles ranging in voltage from 120-227V, brick paving, timber benches varying in length from 7' to 25' with a varying height from 14" to 24", site steps with accompanying handrails, ¾" irrigation lines and an existing ¾" tap for a subsurface system, and a 6'-8' masonry screen wall along the edge of property line at the I-25 edge. The encroachment items are located at 16th Street and Platte Street; variable width 80' public right-of-way.

**Explanation of why the Public Right of Way must be utilized for a private improvement:** To create a more engaging use of public space at the end of Highlands Bridge.

**Duration of the Encroachment:** Permanent.

**Annual Fees:** \$200.00 per year.

**Additional Information:** Plaza will be owned and maintained by Platte Street Plaza Owners Association.

**Location Map:** Continued on next page.

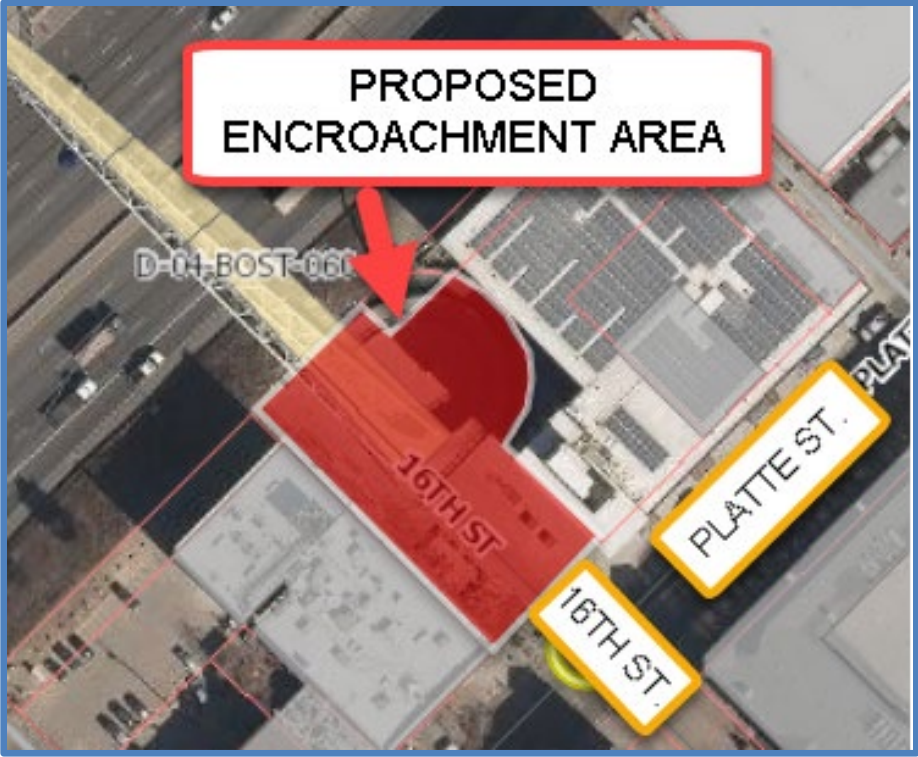




EXHIBIT A

A PARCEL OF LAND BEING A PORTION OF THE 16TH STREET RIGHT-OF-WAY AND PLATTE STREET RIGHT-OF-WAY BETWEEN BLOCK 8 AND BLOCK 9, KASSERMAN'S ADDITION TO DENVER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE 20' RANGE LINE IN CENTRAL STREET, AND THE 21' RANGE LINE IN 16TH STREET, BEING MONUMENTED BY AN ILLEGIBLE 3-1/4" ALUMINUM CAP IN RANGE BOX; THENCE S41°13'50"E A DISTANCE OF 285.90 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF 16TH STREET, SAID POINT BEING THE POINT OF BEGINNING;  
THENCE N44°33'26"E A DISTANCE OF 80.00 FEET;  
THENCE S45°26'34"E A DISTANCE OF 102.35 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF 16TH STREET;  
THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, S45°26'34"E A DISTANCE OF 70.53 FEET TO THE SOUTHERLY MOST CORNER OF SAID BLOCK 8;  
THENCE S45°26'34"E A DISTANCE OF 23.76 FEET;  
THENCE S44°41'49"W A DISTANCE OF 80.00 FEET;  
THENCE N45°26'34"W A DISTANCE OF 23.36 FEET TO THE EASTERLY MOST CORNER OF SAID BLOCK 9;  
THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE OF 16TH STREET, N45°26'34"W A DISTANCE OF 173.09 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 0.361 ACRES, 15,724 SQUARE FEET, MORE OR LESS.

ALL LINEAR DIMENSIONS ARE IN U.S. SURVEY FEET.

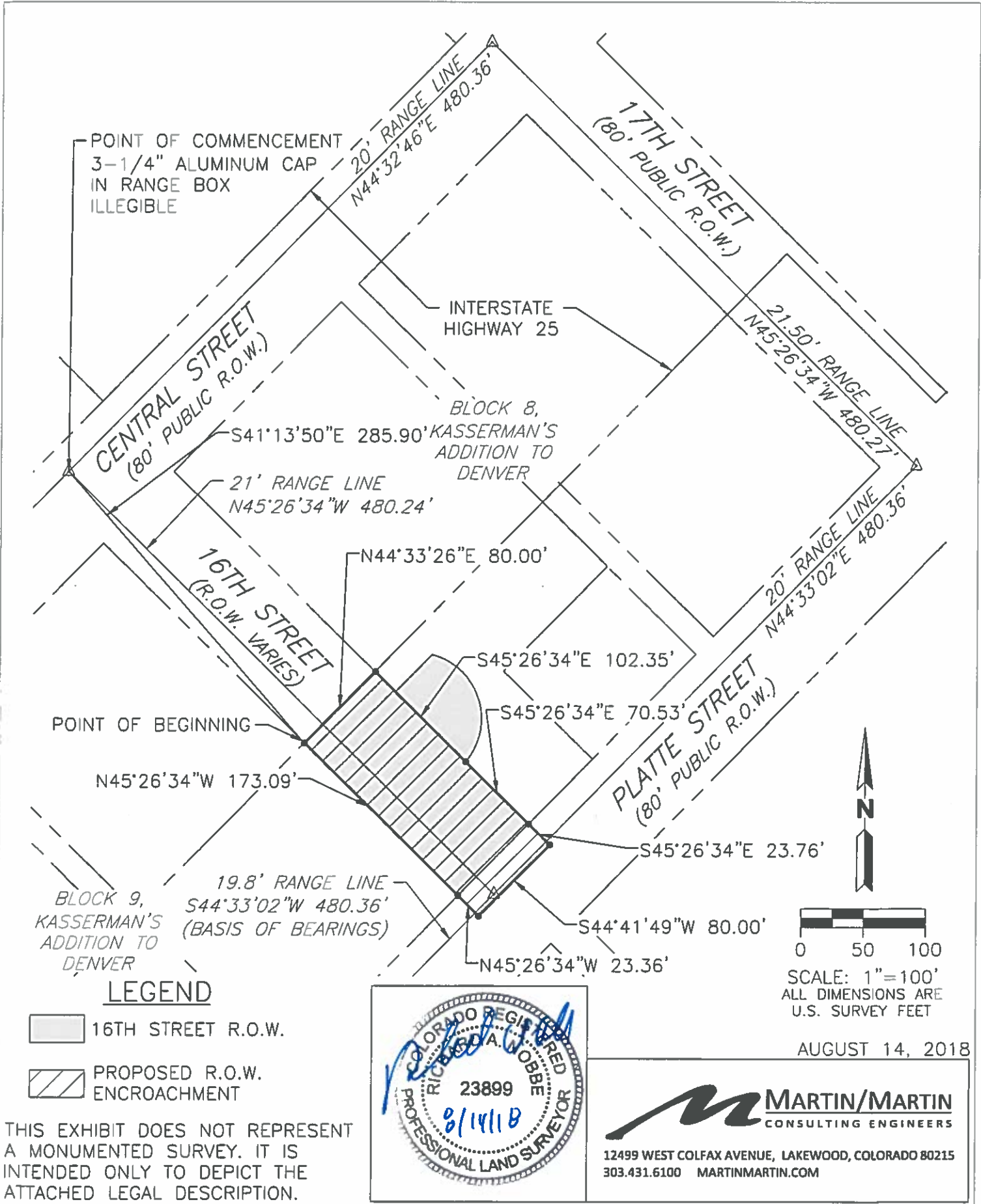
BASIS OF BEARINGS

BEARINGS ARE BASED ON THE 19.80' RANGE LINE IN PLATTE STREET ASSUMED TO BEAR N44°33'02"E AND BEING MONUMENTED BY A FOUND 3-1/4" ALUMINUM CAP STAMPED "CDOT RP" IN RANGE BOX AT THE INTERSECTION OF 15TH STREET AND PLATT STREET AND A FOUND ILLEGIBLE 3-1/4" ALUMINUM CAP IN HOLE IN ASPHALT AT THE INTERSECTION OF 17TH STREET AND PLATTE STREET.

PREPARED BY ERIN MACCARTHY  
REVIEWED BY RICHARD A. NOBBE, PLS #23899  
FOR AND ON BEHALF OF  
MARTIN/MARTIN, INC.  
12499 WEST COLFAX AVENUE  
LAKEWOOD, COLORADO 80215  
303-431-6100  
AUGUST 14, 2018



EXHIBIT A



DRAWING LOCATION: G:\SCHLAGETER\18.0660-16th and Platte\PLANS\EXHIBITS\Proposed Easement - ROW.dwg

THIS EXHIBIT DOES NOT REPRESENT  
A MONUMENTED SURVEY. IT IS  
INTENDED ONLY TO DEPICT THE  
ATTACHED LEGAL DESCRIPTION.



**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PLATTE STREET PLAZA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PLATTE STREET PLAZA (“Declaration”) is made effective on March 26, 2019, by WESTERN OFFICE PORTFOLIO PROPERTY OWNER LLC, a Delaware limited liability company (the “Declarant”).

**RECITALS**

A. Declarant is the owner of certain real property located in the City and County of Denver, State of Colorado, more particularly described on **Exhibit A** attached hereto (the “Initial Lots”). Additional real property may become subject to this Declaration by the recording of a Supplemental Declaration (as defined herein), and the Declarant hereby reserves the right to add additional real property to this Declaration pursuant to the terms hereof.

B. Declarant, as owner of the Initial Lots in Platte Street Plaza, has adopted and recorded this Declaration to provide a governance structure, assessment mechanism, and flexible system of standards and procedures for the administration, maintenance, improvement and preservation of the Highlands Bridge Plaza (as defined herein) located adjacent to the Initial Lots, and for such other purposes as may benefit owners of lots in the Project.

C. Declarant has caused the “Platte Street Plaza Owners Association”, a Colorado nonprofit corporation (the “Association”), to be incorporated under the laws of the State of Colorado as a property owners association for the purpose of performing the functions set forth in this Declaration.

D. The Project shall not be subject to the Colorado Common Interest Ownership Act, Colorado Revised Statutes § 38-33.3-101 et seq. (the “Act”). The Act does not apply to the Project because, based on Colorado Revised Statutes § 38-33.3-121, this Declaration does not (and does not intend) to make the statute applicable to the Project and because the Project contains only non-residential Lots.

Now, therefore, Declarant declares as follows:

**ARTICLE 1  
DECLARATION AND SUBMISSION**

Section 1.1 Declaration. Declarant hereby declares that the Lots shall be held, sold and conveyed subject to the following covenants, conditions and restrictions and such easements and licenses as Declarant may grant with respect to its Lots which covenants, conditions and restrictions shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Lots. Declarant submits the Initial Lots and such additional property as may subsequently be added, to the terms and conditions of this Declaration.

Section 1.2 Purpose and Intent. Declarant declares that this Declaration is made for the purposes set forth in the recitals of this Declaration. Declarant intends that this Declaration shall establish a general plan for the administration, maintenance, improvement and preservation of the Highlands Bridge Plaza including any encroachment permits granted by the City and County of Denver over the public right-of-way for the benefit of the Project, the City and County of Denver, owners, guests and the general public. An integral part of the plan is to bind the Lots to fund the creation and operation of a property owners association specifically to maintain the Highlands Bridge Plaza improvements, including but not limited to certain landscaped areas; monument signs; sidewalks; access areas, and thoroughfares, in a clean, secure and consistent condition, and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

Section 1.3 Binding Effect. Declarant hereby declares that all of the Lots shall be held, sold, and conveyed subject to the easements, restrictions, covenants and conditions of this Declaration. Declarant declares that this Declaration shall run with the Lots and shall be binding on all parties having any right, title or interest in the Lots or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each owner thereof.

Section 1.4 Governing Documents. The Project's governing documents ("Governing Documents") consist of the following, as they may be adopted or amended from time to time: (a) Articles (as defined herein); (b) Bylaws (as defined herein); (c) this Declaration; (d) plats, maps, and deeds, as appropriate; (e) licenses and permits; (f) Supplemental Declarations, if any; (g) Rules and Regulations (as defined herein); and (h) Board Resolutions (as defined herein).

Section 1.5 Supplemental Declaration. The Initial Lots and any additional lots that may be subject to this Declaration may be subject to additional covenants, restrictions and easements, which may be administered by the Association. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, the Governing Documents shall control.

Section 1.6 Assignment to Special District. Any and all rights, powers, duties and/or obligations of the Association may be assigned by the Association to a special district which special district may assume any or all of the rights, powers, duties and obligations of the Association as may be permitted under applicable law. Upon the recording of a document in the records of the Clerk and Recorder of the City and County of Denver by which the Association assigns any such rights, powers, duties or obligations to the special district, the special district will assume all of such rights, powers, duties and obligations assigned to it, and the special district shall have the same rights and powers and be subject to the same obligations and duties as the Association, and the Association shall be relieved from all obligations and duties assumed by the special district.

## ARTICLE 2 DEFINED TERMS

Section 2.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified in this Declaration, unless the context requires otherwise, all as set forth below:

(a) “**Act**” shall mean the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time. As set forth in the Recitals, the Act is not applicable nor intended to be applicable to this Project.

(b) “**Allocated Interests**” shall mean the applicable Assessment liability together with the votes in the Association allocated to each Lot, which shall be based on the percentage share of the leasable square footage of a Lot, as it bears to the total leasable square footage of all of the Lots made subject to this Declaration, as determined from official county or other appropriate governmental entity records, which allocation for the Initial Lots is set forth in **Exhibit C**.

(c) “**Articles**” shall mean the Articles of Incorporation for the Association, as may be amended from time to time.

(d) “**Assessment(s)**” shall mean and include the amounts assessed to some or all of the Lots in the Project to pay for expenditures made or liability incurred by or on behalf of the Lot Owners, including Common Expenses which may include operational expenses, maintenance, repair, replacement and improvement of the Highlands Bridge Plaza, together with an allocation for reserves, all as set forth in a budget adopted by the Executive Board of the Association on not less than an annual basis.

(e) “**Board**” or “**Executive Board**” shall mean the body designated in this Declaration to act on behalf of the Association.

(f) “**Bylaws**” shall mean the Bylaws adopted by the Association, as may be amended from time to time.

(g) “**City**” shall mean the City and County of Denver, Colorado.

(h) “**Common Expenses**” shall mean some or all of the expenses associated with maintenance and upkeep of the Project, enforcement of the Governing Documents, and operation of the Association. Common Expense liability shall mean the liability for Common Expenses allocated to each Lot.

(i) “**Governing Documents**” shall mean those documents listed in Section 1.4 of this Declaration, as they may be amended from time to time.

(j) “**Highlands Bridge Plaza**” means the approximately 15,000 square feet pedestrian plaza located on the east end and at the foot of the Highlands Bridge over I-25 at 16<sup>th</sup> Street having a variable width of approximately 80 feet in the public right-of-way in the City and County of Denver as generally depicted by the illustration in **Exhibit B**. The Association may obtain an encroachment permit to enable the Association to beautify and amenitize the Highlands Bridge Plaza as a thoroughfare between the Central Platte Valley and Downtown Denver.

(k) “**Improvement(s)**” shall mean structures or improvements of any kind installed within or upon the Highlands Bridge Plaza and existing as of the recording of this

Declaration, or to be constructed, and for which the Association shall have primary maintenance responsibility.

(l) **“Lot”** shall mean a physical portion of the Project which is designated for separate ownership and is legally described in **Exhibit A**.

(m) **“Member”** shall mean the person, or if more than one, all persons collectively, who constitute the Owner of a Lot, as more fully provided for in the Articles and Bylaws.

(n) **“Membership”** shall mean the rights and obligations associated with being an Owner of a Lot and a Member of the Association.

(o) **“Owner”** shall mean any person or entity that owns a Lot.

(p) **“Person”** shall mean a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.

(q) **“Project”** shall initially include the Initial Lots and the Highlands Bridge Plaza. The Project shall also include any additional lands as may later become subject this Declaration by a Supplemental Declaration.

(r) **“Project Manager”** shall mean any one (1) or more persons or companies engaged or employed by the Association to perform any of the duties, powers or functions of the Association. The term “Project Manager” shall not include the Association itself.

(s) **“Rules and Regulations”** means all rules and regulations, as the same may be adopted and amended from time to time by the Board, pursuant to this Declaration and the Bylaws.

(t) **“Supplemental Declaration”** shall mean a written and recorded instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which affects any portion of the Project or real estate to be included in the Project, which has been approved, in writing, by the Executive Board of the Association.

### ARTICLE 3 THE ASSOCIATION OPERATIONS

Section 3.1 General Purposes and Powers of the Association. The Association, acting through the Executive Board, shall perform functions and manage the Project as provided for in the Governing Documents to meet the purposes of this Declaration.

Section 3.2 Deemed Assent, Ratification and Approval. All Owners and occupants in the Project shall be deemed to have assented to, ratified and approved the general purposes of this Declaration and the power, authority, management responsibility and designation to the Association, acting through the Board, as allowed for in this Declaration.

Section 3.3 Governing Statutes and Documents. The Association shall be governed by this Declaration, the Articles and Bylaws, and applicable law, as all of the same may be amended from time to time, and such other documents as may grant power and authority to the Association, to the extent those powers and authorities are accepted by the Association.

Section 3.4 Duty of the Board to Exercise Judgment and be Reasonable; Rights of Owners. In furtherance of the purposes of this Declaration, the Owners shall have the right to benefit from the administration of the Project by the Board, with the Board required to exercise judgment and reasonableness on behalf of the Association and Owners.

Section 3.5 Project Manager. The Board may, by written resolution, delegate authority to a Project Manager, provided no delegation shall relieve the Board of final responsibility.

Section 3.6 Appointment of the Board of the Association. The Owners shall have the right to appoint all or certain of the members of the Board as set forth in this Declaration and in accordance with the Bylaws.

Section 3.7 Duty to Provide Audit. The Association may, but is not required to, provide for an annual independent audit of the accounts of the Association. Copies of the audit obtained by the Association shall be made available to any Owner, on request, for a reasonable fee for the cost of copying the audit. To the extent that an annual audit is not obtained, any Owner may obtain an audit in its discretion and at its expense, and the Association shall cooperate in making all necessary information available to the Owner.

Section 3.8 Establishment of Funds. The Association may establish funds, including a reserve fund, as and when needed and nothing herein shall limit, preclude or impair the authority of the Association to establish funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Board shall designate an appropriate title for each fund to distinguish it from the other funds maintained by the Association.

Section 3.9 Authority for Disbursements. The Board shall have the authority to make or to authorize an agent to make disbursements of any moneys from the funds that may be established pursuant to this Declaration.

Section 3.10 Power to Provide Extraordinary, Additional or Special Association Services. The Association shall have the power to provide extraordinary, additional or special services to one (1) or more, but less than all, Owners at the benefitted Owners' expense. Any such service or services may also be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations. Any such agreement or Supplemental Declaration may provide for payment to the Association by such Owner or Owners of the costs and expenses that the Association incurs in providing such services, including a fair share of the overhead expenses of the Association. In addition, any supplemental agreement shall contain provisions assuring that the obligation to pay for such services shall be binding upon any successors and assigns of the Owner or Owners, and that the payment for such services shall be secured by a lien on the Lot or Lots of such Owners and may be collected in the same manner as an Assessment, or, if the written agreement so provides, in installments as may be agreed by the Board. Services may include

maintenance and repairs caused by, or insuring only to the benefit of, one or more but not all Owners.

Section 3.11 Power to Operate and Charge for Facilities and Services. The Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, without limitation, facilities for landscape maintenance, or any other similar or dissimilar function, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities or services of the Association. Such charges or fees shall be as determined from time to time by the Board.

Section 3.12 Bulk Service Agreements. The Association shall have the power and authority, but not the obligation, to enter into one (1) or more bulk service agreements for such terms and rates as it deems appropriate in order to provide the Owners with any of the following services: cable television, community satellite television, electronic entertainment, information or communication services, or any other service the Association believes to be in the best interests of the Owners or the Project. If such a bulk service agreement is executed, the costs shall be allocated as a part of the Assessment only to Owners who elect to participate and thereby opt-in to the service and payment obligation except that costs benefitting the Highlands Bridge Plaza shall be shared by all Owners according to their allocations of Common Expenses.

Section 3.13 Indemnification. To the full extent permitted by law, each officer and director of the Association shall be and hereby is indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon such officer or director in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not he or she is an officer or director of the Association at the time such expenses are incurred. This indemnification shall not apply in cases where an officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties. In the event of a settlement, the indemnification provided for in this Declaration shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

ARTICLE 4  
**MEMBERSHIP, VOTING AND ASSESSMENT ALLOCATIONS**

Section 4.1 Membership. Every Person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. There shall be one (1) Membership in the Association for each Lot within the Project. The Person or Persons who constitute the Owner shall automatically be the holder of the Membership appurtenant to the Owner's Lot, and the Membership shall automatically pass with fee simple title to the Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for Membership. Where more than one (1) Person holds an interest in any Lot, all those Persons shall be the Member. No Owner, whether one (1) or more Persons, shall have more than one (1) Membership per Lot owned, but all Persons owning each Lot shall be entitled to rights of Membership and use of enjoyment appurtenant to ownership.



Section 4.2 Voting Rights of Members.

(a) Generally. Each member shall have the voting rights set forth in **Exhibit C**, as amended from time to time (“Voting Right Allocation”), which Voting Right Allocation is determined based on their Allocated Interest, which voting rights shall include:

(i) the right to cast votes rejecting the annual budget recommended by the Executive Board; and

(ii) such other voting as provided for in this Declaration or the Bylaws. Except as expressly provided in this Declaration and the Bylaws, no other voting rights are created by this Declaration.

(b) Bylaws. Unless otherwise addressed in this Declaration or the Articles, the Bylaws shall provide the manner, time, place, conduct and voting procedures for Member meetings for the purpose of adopting a budget and other purposes which may come before the Members.

Section 4.3 Appointment of Directors. Each Member shall have the right to appoint one (1) Director to the Executive Board of the Association (to exercise the Voting Right Allocation of the Lot).

Section 4.4 Proxies of Members. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one (1) Person, any one (1) co-Owner of the Lot may vote the vote of that Lot or register a protest to the casting of the vote of that Lot by the other co-Owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association.

Section 4.5 Assessment Allocations. Assessments are allocated among the Lots as follows based on an annual budget adopted by the Board:

(a) Assessments. Assessments for Common Expenses shall be payable by all Lot Owners and are allocated pro rata based on the percentage share calculation set forth in Section 4.3 above and in **Exhibit D**. Assessments shall be imposed against each Lot to pay for Common Expenses of the Project which shall include expenses associated with the operation of and insurance for the Association for which all of the Owners receive similar benefit. Assessments for Common Expenses include the following expenses, and any other expenses to be shared in common as identified by the Board in its sole discretion: maintenance, upkeep, utilities and watering of landscaping in the Project; installation, maintenance and upkeep of the Highlands Bridge Plaza, including Improvements, sidewalks, access and thoroughfares (except as otherwise allocated as Individual Purpose Assessments); snow removal; and, installation and maintenance of monument signs.

(b) Individual Purpose Assessments. The Board shall allocate expenses that inherently relate to certain Lots only to those Lots. In making Individual Purpose Assessment (as defined below) allocations, the Board shall take into account certain

adjustments made to accommodate the specific circumstances of each Lot-type and the uses, benefits and exclusions applicable thereto.

The Individual Purpose Assessments may include other non-common charges incurred by the Association for the use or benefit of less than all of the Lots which can be provided more directly or more efficiently by the Association rather than by the individual Lot Owners.

(c) Assessments for Reserve Funds. Assessments for reserve funds, if any, shall be allocated and collected as determined by the Board and as provided in this Declaration.

(d) Other Assessments. Other Assessments may be imposed to cover shortages in the annual budget or as otherwise provided for in this Declaration or as reasonably determined by the Board.

Section 4.6 Re-Allocations. When Lots are added to or withdrawn from the Project pursuant to the provisions of this Declaration, the Allocated Interests for each Lot shall be revised accordingly.

## ARTICLE 5 LOT DESCRIPTIONS/COMMON ELEMENTS

Section 5.1 Identification of Lot Descriptions. The identification of each Lot subject to this Declaration shall be set forth in this Declaration or in a Supplemental Declaration. Reference to the Declaration, plat or map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration, map or plat, without specific references thereto.

Section 5.2 Project. The Declarant is not obligated to construct any particular type or kind of common elements in the Project. The Project as defined herein may include easements, permits and licenses reserved by or granted to the Declarant or the Association for purposes of general access and maintenance for the benefit of all Owners and their guests, and where applicable, the general public.

Section 5.3 Duty to Accept Property and Facilities Transferred to the Association. The Association may accept any property, including any Improvements thereon, and personal property transferred to the Association and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Any property or interest in property transferred to the Association shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and Assessments not then due and payable), but shall be subject to the terms of this Declaration and any Supplemental Declaration applicable thereto. The Improvements in the Project may be changed from time to time by the Board.

Section 5.4 Maintenance and Utility Map and Plat Easements. Easements for utilities, maintenance, and other purposes over and across the Lots and the Project may be shown upon a

recorded plat, map, license or separate document or granted by authority reserved in any recorded document.

Section 5.5 Encroachment Permit. The Association has applied to the City for a permit for the Highlands Bridge Plaza to document permitted access to areas in the Project and services that may be undertaken by the Association, including, but not limited to, administration, operation, maintenance, repair and improvement of the Highlands Bridge Plaza, landscaping installation and maintenance, snow removal, allocation of site lighting and other utility costs, security patrols, maintenance of shared ways and Improvements and installation and maintenance of monument signage (the "Encroachment Permit).

Section 5.6 Power to Grant Access. Subject to the prior written approval of the City and the terms of the Encroachment Permit, the Association shall have the power to grant access to utility, drainage, water facility and any other similar contractors in, on, over or under the Project for any lawful purpose, including without limitation, the provision of emergency services, utilities (including, without limitation, water, sanitary sewer, storm sewer, gas and other energy services), telephone, cable television, fiber optic and other telecommunication services, and other uses or services to benefit the Project and specifically for improvement and maintenance of the Highlands Bridge Plaza.

Section 5.7 Safety and Security. Each Owner and occupant, and their respective guests and invitees including tenants and employees, shall be responsible for their own personal safety and the security of their property in the Project. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Project, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing its tenants, employees and all occupants that the Association, its Board and committees, and Declarant, are not insurers or guarantors of security or safety and that each person within the Project assumes all risks of personal injury and loss or damage to property, including Lots and the contents of offices, resulting from acts of third parties.

## ARTICLE 6 ASSOCIATION MAINTENANCE RESPONSIBILITIES

Section 6.1 Duty to Manage and Care. The Association shall manage, operate, care for, maintain, improve and repair the Highlands Bridge Plaza and appurtenant streetscape improvements subject to the Encroachment Permit granted by the City, and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Owners, tenants, guests and the general public.

Section 6.2 Flexible Authority of the Board for Association Maintenance. The Board shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance, repair, replacement and improvement responsibilities.

Section 6.3 Generally Designated Areas of Maintenance. The Association shall generally be responsible for:

(a) Subject to the Encroachment Permit, the administration, operation, improvement, upkeep, maintenance and repair of the Highlands Bridge Plaza including but not limited including, but not limited to, administration, operation, maintenance, repair and improvement of the Highlands Bridge Plaza, landscaping installation and maintenance, snow removal, allocation of site lighting and other utility costs, security patrols, maintenance of shared ways and Improvements and installation and maintenance of monument signage.

(b) Such portions of the Project as may be agreed to with a local government, or as set forth in this Declaration or any Supplemental Declaration, or agreed to in any contract or agreement for maintenance thereof entered into by the Association.

(c) Real property within any portion of the Project either by agreement with the Owner or because, in the opinion of the Board, the level and quality of maintenance then being provided is not adequate. All costs of maintenance pursuant to this paragraph may be assessed as an Individual Purpose Assessment.

(d) Any property and facilities owned by a Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association, such property and facilities to be identified by written notice from the Declarant to the Association and to be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(e) Other property which it does not own, including, without limitation, other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable.

(f) Such other maintenance and repair as set forth below or elsewhere in this Declaration, including but not limited to snow removal, seasonal maintenance, and graffiti and trash removal.

Section 6.4 Enforcement of Obligations by the City. In the event that the City reasonably believes that the Association has failed to fulfill its obligations with respect to maintenance of the Highlands Bridge Plaza, the City, through its Manager of Public Works, may provide written notice (“Notice”) to the Association, which Notice shall describe what obligations the City believes are not being fulfilled. The Association shall have the right, within fifteen (15) days after receipt of the Notice, to schedule a meeting with the Manager of Public Works or its representative to discuss the contents of the Notice. The Association shall have thirty (30) days after receipt of the Notice, or, if the Association elects to schedule a meeting with the Manager of Public Works, thirty (30) days after such meeting, to fulfill the obligations described in the Notice, or if the obligations are of a type that require more than 30 days to fulfill, to commence such obligations. If the Association fails to timely or satisfactorily respond to the Notice, the City, through the Manager of Public Works, shall have the right to order the obligations fulfilled by or on behalf of the City and to bill the Association for the reasonable costs to fulfill the obligations.

ARTICLE 7  
COVENANT FOR ASSESSMENTS

Section 7.1 Creation of Association Lien and Personal Obligation to Pay. Each Lot shall be deemed to covenant and agree and each Owner shall be deemed to covenant and agree to pay all Assessments as imposed by the Association. Assessments provided for in this Declaration, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due.

Section 7.2 Continuing Lien. The personal obligation to pay any past due sums due the Association shall not pass to a transferee, unless the sums due are expressly assumed by the transferee. All Assessments and such other amounts imposed on an Owner by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made.

Section 7.3 No Exemptions, Offsets or Reductions. No Owner may become exempt from liability for payment of any Assessment to the Association by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Assessment is made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board or any other entity is not properly exercising its duties and powers under this Declaration.

Section 7.4 Assessment Allocations. Each of the Assessments provided for in this Article shall be allocated as provided for under Article 4 of this Declaration, unless otherwise determined by the Board in accordance with this Declaration.

Section 7.5 Assessments for Common Expenses. The Association may levy an Assessment for Common Expenses against Lots, effective upon the adoption of a budget by the Executive Board, allocated as provided for above in this Declaration. After any Assessment for Common Expenses has been levied by the Association, Common Expense Assessments shall be levied no less frequently than annually by the Association. Where the obligation to pay an Assessment for Common Expenses first arises after the commencement of the year or other period for which the Assessment for Common Expenses was levied, the Assessment for Common Expenses shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

(a) The Budget Process. Once begun, the Assessment for Common Expenses may be levied on an annual basis and must be levied based upon the Association's advance budget of the cash requirements for this Assessment. The budget for the Assessment for Common Expenses may be submitted to the Members for ratification as set forth in the Bylaws. The budget may be vetoed by votes of Members representing a majority of the votes in the Association. If not so vetoed, the budget proposed shall be deemed ratified.

(b) Due Dates. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board. Assessments for Common Expenses may begin on the first day of the month in which the budget has been ratified by the Owners. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or release of the Lot Owners from their obligation to pay.

Section 7.6 Individual Purpose Assessments. In addition to Assessments for Common Expenses and Special Assessments, the Board may at any time levy and collect Assessments against any one or more, but fewer than all, of the Lots, for any matters applicable only to such Lots (“Individual Purpose Assessments”). Such Individual Purpose Assessments may be levied against a Lot to pay or reimburse the Association for any costs, expenses, fees, reserves, and other charges, which specifically benefit some, but not all, Lots, or which may be incurred as a result of extraordinary wear and tear inflicted by some but not all Lot Owners on property maintained or repaired by the Association, or as a result of the negligence, tortious acts, or misconduct of Owner or Owner’s invitee or tenant.

Section 7.7 Special Assessments. In addition to the Assessments for Common Expenses, the Board may at any time, from time to time, determine, levy and assess a special Assessment (“Special Assessment”) for the purpose of defraying, in whole or in part, payments for any operating deficit, loss, or unbudgeted expense, and/or unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Project including, without limitation, any fixtures and personal property related thereto. Special Assessments shall be based on a budget adopted by the Board; provided that if necessary, the Association may adopt a new budget pursuant to Section 7.5(a) prior to levying a Special Assessment.

Section 7.8 Other Assessments. The Association shall also have the authority to assess Lots, pursuant to and as allocated under other provisions of this Declaration or as allowed by court order or law.

Section 7.9 Reserves. The Association shall establish an adequate reserve fund for the maintenance, repair, and replacement of the Project and for payment of insurance deductibles. The reserves shall be included in the budget and funded through Assessments for Common Expenses or Special Assessments.

Section 7.10 Statements of Account. The Association shall furnish to an Owner or such Owner’s designee (including, without limitation, a prospective purchaser from or lender of such Owner), upon written request, delivered personally or by certified mail, first class, postage prepaid, return receipt, to the Association’s registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner’s Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request.

Section 7.11 Effect of Non-Payment of Assessments. Any Assessment, charge, fine or fee provided for in this Declaration, or any installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board, shall bear interest at the rate of interest as may be determined, from time to time, by the Board, and the Association may assess a

reasonable late charge thereon as determined by the Board. Further, the Association may bring an action at law or in equity, or both, against the person(s) personally obligated to pay such overdue Assessments, charges, fines or fees, installments thereof, and may also proceed to foreclose its lien. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

Section 7.12 Lien Priority. Transfer of any Lot shall not affect the lien for said Assessments or charges except that transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

## ARTICLE 8 GENERAL RESTRICTIONS

Section 8.1 Purposes, Plan, Applicability, Effect. Declarant has created the Association to provide administration, operation, maintenance, improvement and preservation of the Project to enhance the Project, in furtherance of their and every other Owner's collective interests.

Section 8.2 Changes in Circumstances Anticipated. Declarant has promulgated a general plan for administration, maintenance, improvement and preservation of the Project for the purposes stated in the recitals of this Declaration; provided, however, that in all cases and events such general plan for administration, maintenance, improvement and preservation shall be subject to the Declarant's and the Association's ability to respond to changes in circumstances, conditions, needs, and desires within the Project, except as expressly provided for in this Declaration.

Section 8.3 Owner Acknowledgment. Each Owner is subject to this Declaration and the covenants, conditions and restrictions contained in this Declaration. By acceptance of a deed, or other instrument establishing title or ownership, each Owner acknowledges that such Owner has been given notice of this Declaration; that the Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents; that the use, enjoyment and marketability of the Lots can be affected by this Declaration; and that the restrictions and Rules and Regulations may change from time to time; provided, however, no action by the Board may invalidate a specific provision of this Declaration.

Section 8.4 Use Covenants and Restrictions Based on Zoning. Lots within the Project shall be used for purposes as allowed by zoning, planned lot development or other local governmental determination. Use of commercial, industrial and retail Lots for primary business, commercial, light industrial and/or retail uses shall not be unreasonably regulated or governed by the Association.

Section 8.5 Lots to be Maintained. Owners of a Lot are responsible for the maintenance, repair and replacement of the property located within their Lot boundaries. Each Lot and the Improvements on a Lot, shall, at all times, be kept in a clean, sightly, and wholesome condition.

Section 8.6 Right of Owners Regarding Rules and Regulations. In furtherance of the purposes of this Declaration, and subject to the Board's duty to exercise judgment and reasonableness on behalf of the Association and Members, the Board may adopt, amend or repeal Rules and Regulations concerning and governing the Project or any portion thereof. The Board may establish and enforce penalties for the infraction thereof.

Section 8.7 Reasonable Rights to Develop. None of the covenants and restrictions in this Declaration may unreasonably impede Owners' rights to maintain or develop their Lots. Additionally, the Board may not adopt any Rule or Regulation that unreasonably impedes Owners' rights to use or develop their Lots, or the exercise of any other ownership or use rights in accordance with this Declaration.

## ARTICLE 9 INSURANCE/CONDEMNATION

Section 9.1 Association Hazard Insurance on the Property. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to any property owned by, or for which the Owner's Association has the primary duty to maintain, and to any other property of the Association.

Section 9.2 Association Liability Insurance. The Association shall obtain an adequate comprehensive general liability policy and property damage liability insurance covering all of the property owned by, or for which the Owner's Association has the primary duty to maintain, and to any other property of the Association, in such limits as the Board may from time to time determine, but not in any amount less than Two Million Dollars (\$2,000,000) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of any property owned by, or for which the Owner's Association has the primary duty to maintain, and to any other property of the Association.

Section 9.3 Association Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its agents or employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 9.4 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.



Section 9.5 Association Officers' and Directors' Personal Liability Insurance. The Association shall obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 9.6 Other Insurance of the Association. The Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 9.7 Association Insurance and General Terms. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. Commencing not later than the effective date of this Declaration, the Association shall maintain, to the extent reasonably available, policies for the above insurance with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least twenty (20) days prior written notice to all of the Owners and the Association.

(b) All liability insurance shall be carried in blanket form naming the Association, the Board, the officers and directors of the Association, the Declarant, their successors and assigns, and Owners as insureds.

(c) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified property or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the property owned by, or for which the Owner's Association has the primary duty to maintain, and to any other property of the Association, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be affected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost.

Section 9.8 Association Insurance Premium. Except as assessed in proportion to risk, if permitted under the terms of this Declaration, insurance premiums for the above provided insurance shall be a part of the Assessment for Common Expenses.

Section 9.9 Project Manager Insurance. The Project Manager, if not an employee, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association.

Section 9.10 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another, the Board, and Declarant, to the extent of

the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 9.11 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association. The Association shall hold any insurance proceeds in trust for the Association and Owners.

Section 9.12 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by the Governing Documents.

Section 9.13 Deductibles. Except as otherwise provided in this Section 9.13, any loss falling within the deductible portion of an Association policy shall be a Common Expense allocated to all Owners as an Assessment. Notwithstanding the foregoing, after affording an Owner a reasonable opportunity to be heard, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner or Owners, and assess such loss as an Individual Purpose Assessment against such negligent Owner or Owners and their Lot, in such proportion as the Association in its reasonable discretion may determine, and subject to all provisions of this Declaration applicable to such Assessments.

## ARTICLE 10 EXPANSION RIGHTS

Section 10.1 Addition of Lots. Additions of Lots to the Project may be made by persons other than the Declarant, their successors and assigns or Owners, upon approval of the Association pursuant to a majority vote of the Board. Such approval shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, recorded in the real property records of the City and County of Denver.

Section 10.2 Supplemental Declarations. Before or after the effective date of this Declaration, a Supplemental Declaration may be recorded which may add Lots to the Project or supplement the covenants, conditions and restrictions contained in this Declaration, as provided for above. Upon recordation of a Supplemental Declaration, the property covered thereby shall be subject to all of the covenants, conditions and restrictions and other provisions set forth in this Declaration, except to the extent specifically stated in the Supplemental Declaration.

Section 10.3 Criteria Required for Supplemental Declaration. Supplemental Declarations must meet or include the following criteria:

- (a) The Supplemental Declaration must be executed and acknowledged by Declarant or by the Owner or Owners of that portion of the real property covered by the Supplemental Declaration;

(b) If the property described in the Supplemental Declaration is not then owned by Declarant, the Supplemental Declaration must contain the executed and acknowledged written consent of Declarant;

(c) The Supplemental Declaration must include a reference to this Declaration, which reference shall state the date of recordation and the book and page numbers or reception number for this Declaration;

(d) The Supplemental Declaration must contain an adequate legal description of the property subject thereto;

(e) The Supplemental Declaration must contain an allocation of the Allocated Interests based on the formulas contained in Article 4; and

(f) A statement that this Declaration shall apply to the added property as set forth therein.

A deed by which Declarant conveys a parcel of property to another person may constitute a Supplemental Declaration if it meets the foregoing requirements.

Section 10.4 Effect of Supplemental Declaration. Supplemental Declarations may impose, on the portion of the property affected thereby, covenants, conditions and restrictions, and other provisions in addition to those set forth in this Declaration, taking into account the unique and particular aspects of the property covered thereby. A Supplemental Declaration may create a common interest community pursuant to the Act; and, if so, shall provide for a Subassociation within the property described in the Supplemental Declaration, and for the right of the Subassociation to assess such Owners.

## ARTICLE 11 GENERAL PROVISIONS

### Section 11.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce applicable covenants in this Declaration.

(b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot;

(ii) suspending the right to vote;

(iii) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association; and

(iv) levying specific Assessments to cover costs incurred by the Association to bring the Project into compliance with the Governing Documents.

(c) In addition, the Association, acting through the Board, may take the following enforcement procedures to ensure compliance with the Governing Documents:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the removal of vehicles, including bicycles and scooters, that are in violation of any Rules and Regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Such a decision shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 11.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 11.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the Lots in perpetuity.

Section 11.4 Amendment of Declaration by Owners. Except as otherwise expressly provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, repealed, added to, and/or changed by the addition of new or different covenants, conditions or restrictions at any time and from time to time upon approval of not less than sixty-seven (67%) of the votes as allocated pursuant to Section 4.3. An amendment or repeal shall be effective upon the recordation in the real property records of the City and County of Denver, of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above.

Section 11.5 Intentionally deleted.

Section 11.6 Validity of Amendments. Any action to challenge the validity of an amendment of this Declaration must be brought within one year after the amendment is recorded in the real property records of the City and County of Denver.

Section 11.7 Interpretation and Governing Law. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration, maintenance, improvement and preservation of the Project and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 11.8 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Project, the physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 11.9 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 11.10 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 11.11 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purposes of this Declaration.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be effective this 26<sup>th</sup> day of March, 2019.

WESTERN OFFICE PORTFOLIO  
PROPERTY OWNER LLC,  
a Delaware limited liability company

By: [Signature]  
Name: Scott Brucher  
Title: Authorized Person

STATE OF Washington )  
COUNTY OF King ) ss.

The foregoing Declaration of Covenants, Conditions and Restrictions for Platte Street Plaza was acknowledged before me this 26 day of March, 2019, by Scott Brucher, as Authorized Person of WESTERN OFFICE PORTFOLIO PROPERTY OWNER LLC, a Delaware limited liability company.

Witness my hand and official seal.  
My commission expires: 6/29/21



[Signature]  
Notary Public  
Nicholas J. Cousino  
Everett, WA

## EXHIBIT A

### LOT:

Lots 1 through 6, inclusive,  
Block 9,  
Kasserman's Addition to Denver, recorded in Book 1 at Page 21 on February 22, 1871 in the  
County of Arapahoe Clerk and Recorder's Office,  
City and County of Denver,  
State of Colorado.

also known and numbered as 2401 15<sup>th</sup> Street, Denver, Colorado.

### LOT:

The rear or Southwesterly 87 feet 3 inches of Lots 29 through 32, inclusive, Block 9, Kasserman's  
Addition to Denver, recorded in Book 1 at Page 21 on February 22, 1871 in the County of  
Arapahoe Clerk and Recorder's Office, City and County of Denver, State of Colorado.

also known and numbered as 1537-1539 Platte Street, Denver, Colorado.

### LOT:

#### Parcel 1

A portion of Lot 26, Block 9, Kasserman's Addition to Denver, recorded in Book 1 at Page 21 on  
February 22, 1871 in the County of Arapahoe Clerk and Recorder's Office, lying the Southwest  
1/4 of Section 28, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and  
County of Denver, Colorado, being more particularly described as follows:

Beginning at the most Easterly corner of said Lot 26, Block 9;  
Thence South 44°29'07" West along the Southeasterly line of said Lot 26, a distance of 189.93  
feet;  
Thence North 45°28'09" West along the Southwesterly line of said Lot 26, a distance of 23.21 feet;  
Thence North 44°33'00" East along the Southeasterly line of Interstate 25, a distance of 189.93  
feet;  
Thence South 45°28'09" East along the Northeasterly line of said Lot 26, a distance of 23.00 feet  
to the point of beginning,

City and County of Denver, State of Colorado.

#### Parcel 2

Lots 27 and 28, and the Northeasterly 78 feet of Lots 29 through 32, inclusive, Block 9,  
Kasserman's Addition to Denver, recorded in Book 1 at Page 21 on February 22, 1871 in the  
County of Arapahoe Clerk and Recorder's Office,

City and County of Denver, State of Colorado.

Parcel 3

That part of Lots 29 through 32, Block 9, Kasserman's Addition to Denver, recorded in Book 1 at Page 21 on February 22, 1871 in the County of Arapahoe Clerk and Recorder's Office, more particularly described as follows:

Beginning at a point on the Southerly line of Lot 32, 102 feet and 9 inches from the Southeast corner of said Block 9 at 16th and Platte Street;  
Thence at right angles across said Lots 32 to 29 parallel with 16th Street to a point on the Northerly line of said Lot 29;  
Thence Easterly and parallel with Platte Street toward 16th Street, 24 feet and 9 inches on a line between Lots 29 and 28;  
Thence at right angles across said Lots 29 and 32 parallel with 16th Street, 100 feet to line of Platte Street;  
Thence West along Platte Street 24 feet and 9 inches along said Southerly line of Lot 32 to point of beginning,

City and County of Denver, State of Colorado.

also known and numbered as 1549-1553 Platte Street, Denver, Colorado.

**LOT:**

Parcel One:

The West 72 ½ feet of Lots 1, 2, 3 and 4, and all of Lots 5 and 6, Block 8, Kasserman's Addition to Denver, recorded in Book 1 at Page 21 on February 22, 1871 in the County of Arapahoe Clerk and Recorder's Office,

Excepting therefrom that parcel of land conveyed the City and County of Denver by Deed recorded December 9, 2003 at Reception No. 2003255354,  
City and County of Denver,  
State of Colorado.

Parcel Two:

A portion of Lot 7, Block 8, Kasserman's Addition to Denver, recorded in Book 1 at Page 21 on February 22, 1871 in the County of Arapahoe Clerk and Recorder's Office, lying in the Southwest Quarter of Section 28, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado being more particularly described as follows:



Commencing at the most southerly corner of said Lot 7, Block 8;  
Thence N44°33'00"E along the southeasterly line of said Lot 7, and non-tangent with the following described curve a distance of 41.91 feet to the Point of Beginning;  
Thence along the arc of a curve to the left, having a central angle of 39°17'51", a radius of 53.00 feet, a chord bearing of S84°44'14"W a distance of 35.64 feet, and an arc distance of 36.35 feet to the southeasterly line of Interstate 25;  
Thence N44°33'00"E along said southeasterly line of Interstate 25, and non-tangent with the last described curve a distance of 175.08 feet;  
Thence S45°28'09"E along the northeasterly line of said Lot 7 a distance of 23.00 feet,  
Thence S44°33'00"W along the southeasterly line of said Lot 7 a distance of 147.86 feet to the Point of Beginning,  
City and County of Denver,  
State of Colorado.

Parcel Three:

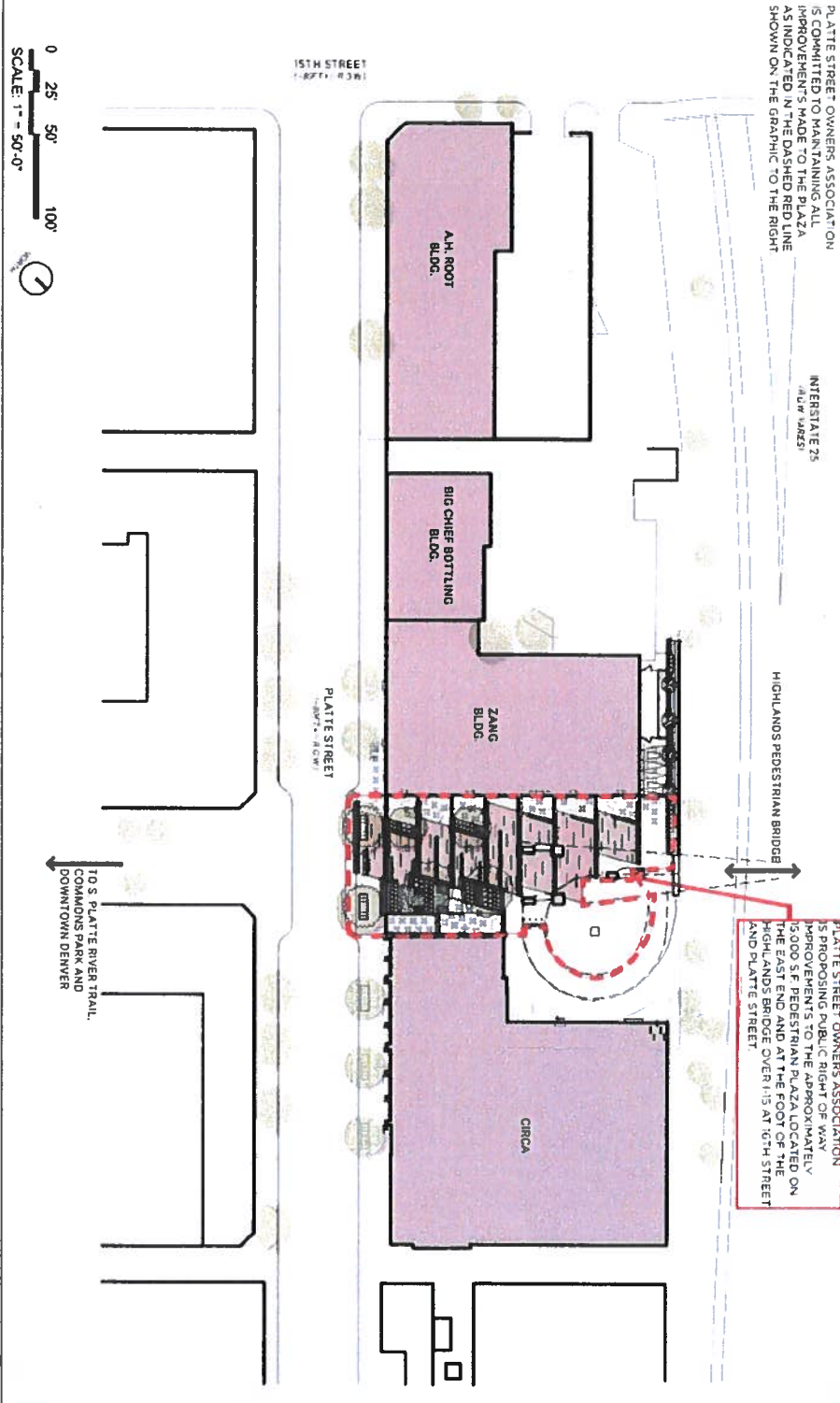
The Northeasterly 27.44 feet of Lots 1, 2, 3 and 4, Block 8, Kasserman's Addition to Denver, recorded in Book 1 at Page 21 on February 22, 1871 in the County of Arapahoe Clerk and Recorder's Office,  
City and County of Denver,  
State of Colorado.

Parcel Four:

Lots 1, 2, 3 and 4, Block 8, Kasserman's Addition to Denver, recorded in Book 1 at Page 21 on February 22, 1871 in the County of Arapahoe Clerk and Recorder's Office,  
Except the Northeasterly 27.44 feet thereof and  
Except the Southwesterly 72.50 feet thereof,  
City and County of Denver,  
State of Colorado..

also known and numbered as 1615 Platte Street, Denver, Colorado.

# EXHIBIT B



**EXHIBIT C**  
(Voting Right Allocations)

| LOT                          | VOTE ALLOCATION |
|------------------------------|-----------------|
| 2401 15 <sup>th</sup> Street | 24 votes        |
| 1537-1539 Platte Street      | 4 votes         |
| 1553 Platte Street           | 22 votes        |
| 1615 Platte Street           | 50 votes        |
| TOTAL                        | 100 votes       |

**EXHIBIT D**  
(Allocation of Common Expenses)

| LOT                          | LEASEABLE SQUARE<br>FOOTAGE | ALLOCATION OF<br>COMMON EXPENSES |
|------------------------------|-----------------------------|----------------------------------|
| 2401 15 <sup>th</sup> Street | 48,072                      | 24%                              |
| 1537-1539 Platte Street      | 13,400                      | 4%                               |
| 1553 Platte Street           | 44,214                      | 22%                              |
| 1615 Platte Street           | 98,000                      | 50%                              |
| TOTAL                        | 203,686                     | 100%                             |