

**CITY AND COUNTY OF DENVER
ACCESS & USE PERMIT AGREEMENT**

This **ACCESS & USE PERMIT AGREEMENT** (“**Agreement**”) is entered, as of the date set forth on the City’s signature page below (the “**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation (the “**City**”) and **R.G. BRINKMANN COMPANY, dba BRINKMANN CONSTRUCTORS**, a foreign corporation qualified to conduct business in Colorado with an address of 16650 Chesterfield Grove Road, Suite 100, Chesterfield, Missouri 63005 (“**Permittee**”) (each a “**Party**,” and collectively, the “**Parties**”).

RECITALS

- A. Permittee is performing construction and other services for the construction of an eight-story mixed-use commercial, multi-family condominium, and affordable housing project (the “**Project**”), located at approximately 3575 Chestnut Place, Denver, Colorado 80216.
- B. The Project is planned to occur directly adjacent to Arkins Promenade (the “**Promenade**”), which is managed and operated by the City’s Department of Parks and Recreation (“**DPR**”), in accordance with City Charter § 2.4.4. The space within which work will be performed also contains rights-of-way.
- C. Permittee is requesting temporary access to DPR managed land, including aerial access for the use of a crane for itself and its contractors, subcontractors and consultants performing the work of the Project and other limited, related uses, which will result in the closure of the Promenade, park facilities, and City land, as provided in Section 1 of the Agreement below and in **Exhibit A**, attached hereto and incorporated by reference.
- D. The area within the Promenade to be used for the Project is depicted in **Exhibit A** and referred to herein as the “**Permit Area**”.
- E. By this Agreement, the City authorizes the temporary access and use of the Permit Area and the temporary access and use of the area in and through the Promenade as shown in **Exhibit A**. Other activities on other City property, if any, shall require separate authorization by the City or the appropriate City department or agency.
- F. Permittee acknowledges that the purpose and intended use of the Promenade is for pedestrian and other park and recreational purposes for the benefit of the general public, and for some right-of-way use, and that the full closure for the benefit of a private construction project provides no benefit to the Promenade as a DPR park facility, and adversely affects the function as a right-of-way. As a result, Permittee agrees to compensate DPR as set forth in this Agreement; to execute the work in a timely and diligent manner to avoid unreasonable delays to the Project; and to re-open the Promenade to its full and intended park and recreational use as expeditiously as is reasonable.

NOW, THEREFORE, in consideration of the above premises and the terms and conditions of this Agreement as set out below, the City and Permittee agree as follows:

1. **PERMIT.** Permittee and its officers, directors, employees, representatives, agents, consultants, contractors and subcontractors (hereinafter referred to collectively as “**Permittee**”) are hereby permitted temporary access onto, and the use of, the Permit Area, as described in **Exhibit A**, for the Project as described in the Recitals and herein below (the “**Permit**”). Permittee acknowledges and agrees that the exercise of this Permit by Permittee shall be in accordance with, and subject to, the terms and conditions set forth in this Agreement.

2. **COMPENSATION; COSTS.** There is no fee for the Permit. As compensation for access to and closure of the City park amenity, Permittee agrees to construct for the benefit of the City and the City property, a sidewalk connection as more fully described in Section 4.e., below. Permittee or such other responsible party as determined by Permittee, shall be liable and responsible for all costs and expenses associated with the Project, the Permittee’s performance of its work associated with the Project, and all of Permittee’s obligations resulting from City requirements, and this Permit and Agreement. City shall not be liable or responsible for any of Permittee’s costs.

3. **BASIC TERMS & CONDITIONS.**
 - a. The Permit is granted only to allow Permittee to perform the Project during the term of this Agreement and on the Permit Area depicted in **Exhibit A**. The City shall have the right to control, monitor and establish procedures applicable to Permittee’s access to and use of the Permit Area. Particular conditions and limitations upon Permittee’s access and use are provided in Section 4 below. The Permit does not authorize Permittee to enter upon, or make any use of, any City property other than the Permit Area.

 - b. Nothing in this Permit creates or recognizes a property interest on the part of Permittee in or to the Permit Area. The Permit is not transferable and is exclusive only to the extent provided in this Agreement.

 - c. The City shall have the right, at the City’s sole discretion, to revoke or suspend the Permit under this Agreement at any time. City shall provide seven (7) days written notice to Permittee prior to any revocation or suspension. If the reason for the notice is a result of Permittee’s failure to comply with this Agreement, but is otherwise curable, as reasonably determined by the City, upon receipt of such notice, Permittee shall have thirty (30) business days, or such longer time as agreed to between the Parties, to cure the violation and to demonstrate to the satisfaction of the City that the violation has been cured. Permittee agrees to act in good faith and cooperate with the City to reach a mutually acceptable resolution of the violation. The notice shall be null and void upon resolution of the violation. The City shall also have the right, at the City’s sole discretion, to impose and require additional terms or conditions, including charging costs or expenses incurred by the City, should Permittee fail to comply with this Agreement and the City does not elect to revoke the Agreement. Revocation shall not result in the reimbursement of any

costs or portion of cost related to the sidewalk connection if the revocation is for cause.

- d. Agreement Term. This Agreement shall commence on the Effective Date of this Agreement and shall expire on December 31, 2023 (“**Term**”). This Agreement shall terminate if Permittee’s work is completed prior to the end of the Term. Permittee is entitled to retain this Permit for no longer than the end of the Term. No time extensions are anticipated. However, if Permittee anticipates that its work will continue beyond the Term, then it must notify City in writing by no later than thirty (30) days prior to the end of the Term. The Parties acknowledge and agree that an extension of the Term may require formal execution of an amendment to this Agreement. Delays of thirty (30) days or fewer shall be allowed under this Agreement without amendment. For delays occurring longer than thirty (30) days after the end of the Term, the City in its discretion may require an amendment to this Permit or a new agreement for an additional permit. Unless other arrangements are agreed to by the DPR Executive Director, and an amendment or new agreement for a Permit is executed in the same manner as this Agreement and, in the City’s discretion, includes additional reasonable compensation, Permittee shall vacate the Permit Area and City property, in accordance with this Agreement, on or before the end of the Term. Failure to vacate the Permit Area or obtain DPR consent for another arrangement as provided in Section 3.n. and Section 4.i. below shall result in Permittee being liable for any actual damages directly caused by Permittee’s failure to vacate the Permit Area as provided herein.
- e. Permittee shall provide or obtain and maintain all notices, permits, licenses, or approvals required by any governmental or quasi-governmental entity prior to commencing its work for the Project or related activities within the Permit Area. Any required manifest, license or permit shall be issued in Permittee’s name. Any work for the Project or related activity conducted by Permittee pursuant to the terms of this Agreement shall be deemed to be taken only on Permittee’s behalf and not as agent for any other party.
- f. Upon the Agreement becoming effective, a City employee, project manager, representative or contractor (“**City Rep**”) will be assigned to be Permittee’s contact for coordination of the Project and related activities of Permittee under this Agreement, notifications under this Agreement, and in the event of an emergency. The City Rep may be changed or other City Rep’s added at any time. City shall provide written notice to Permittee of such changes. Permittee shall take all reasonable measures to keep the City Rep informed of the progress of the Project and related activities, and any emergencies, in accordance with this Agreement and to comply with the reasonable directions and requirements of the City Rep, including any order to suspend work or to cease and desist in any unauthorized activities.
- g. Permittee shall provide prior written notice to the City Rep before accessing the Permit Area to start the Project and identify by name, address, telephone number,

and email address a representative of Permittee who will be available and responsive to the City Rep.

- h. All contractors, subcontractors, consultants, suppliers, laborers and agents retained or utilized by Permittee to perform the Project or to undertake any activities on or within the Permit Area shall be regarded as being "Permittee" under this Agreement, shall be subject to the terms and conditions of this Agreement, and a designated representative of each shall be identified (by name, address, telephone number, and email address) in a prior written notice to the City Rep, and this contact list shall be updated as needed. At no time shall Permittee, its officials, employees, contractors, subcontractors, consultants, suppliers, laborers or agents be regarded as working for the City in any capacity nor shall they be regarded in any manner as being employees or contractors of the City.
- i. Permittee shall develop and implement appropriate schedules, plans and protocols necessary for the work and provide the City Rep with copies of said schedules, plans and protocols for the Project. Permittee shall conduct all aspects of the work performed within the Permit Area in accordance with all applicable federal, state, and local laws, regulations, and ordinances.
- j. Permittee shall be solely responsible for all compensation or restitution for injuries to persons or damage to or loss of property belonging to persons arising from, or related to, any of the Project work or other actions of Permittee. Persons shall include, without limitation, City officials, employees, appointed or elected officials, volunteers, consultants, contractors, and agents. All persons shall comply with all published site safety orientation and requirements prior to being admitted on site.
- k. Permittee shall not damage, destroy or harm any improvements or any other part of the Permit Area or other City property and shall promptly repair or replace any part of the Permit Area or City property damaged as the result of or in relation to the Project. In order to ensure pedestrian safety during the course of Project, Permittee shall promptly repair and restore any lighting damaged or destroyed as a result of Permittee's work. Permittee shall be solely responsible for locating and taking appropriate measures to protect all overhead, above ground and underground utilities, including without limitation gas, electrical, sewer, water, telephone, and cable, during the Project work and any related activities on or about the Permit Area or other City property. Permittee shall provide prompt notice of any damage that occurs within the Permit Area or on other City property. Permittee shall arrange for the timely and complete location of all utilities in accordance with law; shall take all necessary precautions to avoid damage to, or injury from, such utilities; and shall be liable for all damages resulting from any contact with or destruction of such utilities.
- l. If Permittee's work or related activities within the Permit Area disturbs other City-owned property, regardless of whether it is DPR property, Permittee shall restore, to the reasonable satisfaction of City Rep, the adversely affected property to the

same or similar condition, to DPR's satisfaction, compared to the condition prior to the commencement of the Project work under this Agreement.

- m. Written notice requirements are waived in the event of any emergency situation requiring immediate access or activities within the Permit Area, such as a major on-site accident, contamination exposure, utility damage, and security concerns. In the event of such an emergency, Permittee shall provide verbal notice to the City Rep as soon as feasible and then follow up with written notice to the City Rep within twenty-four (24) hours of such emergency. Permittee shall be responsible for timely notice and cooperation with the appropriate governmental authorities, as required by law, in the event of an emergency. The City shall have the right to direct Permittee's actions regarding the emergency response only to the extent the emergency involves use of the Permit Area under this Agreement.
- n. At the time of expiration or revocation of this Agreement, Permittee shall remove from the Permit Area all equipment, vehicles, temporary structures, chemicals, signs, barriers, materials, supplies, construction debris and any another debris, soil, or waste brought on site or generated by Permittee on site and from any part of the Permit Area including all equipment, vehicles, signs and barriers brought onto any part of the Permit Area or City property by Permittee ("Personal Property") and shall do so in compliance with federal, state and City regulatory requirements, standards, and guidelines. Alternatively, if Permittee should fail to remove the Personal Property as provided herein, the City may perform such removal and Permittee shall promptly reimburse the City for all costs incurred by the City.
- o. This Agreement is not effective until executed by the City's Mayor and all other City officials required by City Charter to sign binding contracts and by authorized officials of Permittee.

4. SPECIAL CONDITIONS OF ACCESS & USE. In addition to all other general terms and conditions set forth in this Agreement, the following terms and conditions are established.

- a. Aerial License. Permittee also intends to utilize a crane swing for its Project work as depicted in **Exhibit B**. The City hereby grants to Permittee a nonexclusive, temporary license ("Aerial License") to utilize its crane and the aerial space above the Permit Area, City property, and the associated land as needed to construct the Project in accordance with the terms and conditions in this Agreement. The approximate dimensions and heights of the Aerial License are depicted on **Exhibit B**. Live lifts shall be not conducted outside of the of the live lift zone as noted in Exhibit B. Protections and safety controls required under this Agreement, including but not limited to locked fencing to prevent pedestrian entry and access, shall be installed prior to any Project work. Any safety or control measures are subject to changes required by the City Rep if the City Rep finds any of them to be inadequate.

- b. The City will allow Permittee to remove lights and poles as depicted in **Exhibit A**, denoted as LP1 through LP5, for the duration of the Project work. Prior to light and pole removal, Permittee shall contact the City Rep to document the condition of the lights and poles. Lights and poles are to be removed and reinstalled by the City managed contractor Ventura Electric Inc. and shall be protected and stored by the Permittee when removed. Permittee may contact Ventura Electric Inc. directly to arrange for reinstallation. Upon reinstallation, to be completed prior to Permittee demobilization from the Permit Area, the Permittee shall call the City Rep to confirm the condition of the fixtures and verify operation. The lights shall be in working order and poles and bases shall be restored to their original condition. The Permittee shall obtain a warranty letter from Ventura Electric Inc. issued to and for the benefit of the City warranting their work for one (1) year from the date of reinstallation. While the lights are removed, the Permittee shall provide lighting with a similar lumen output in Permit Area or other City property requiring lighting to ensure this area within the Promenade remains lighted at the same capacity.
- c. Permittee shall take reasonable measures to secure or limit the Permit Area from public access or tampering and for the protection of public health and environment during the Project and related work and as set forth in this Agreement and **Exhibit A**. All construction fencing around the access area shall be placed on hardscape where no part of the fencing system is in vegetation or sod areas. Permittee shall provide for all trail closure and detour signage as noted in **Exhibit C**. Fencing, including locks on the fencing if needed, and other safety closures shall be sufficient to prevent pedestrian entry and any other access by the general public. Exclusive use of the Permit Area can only be assured by Permittee's strict compliance with this provision. The City assumes no liability for public misconduct, theft or vandalism.
- d. Trees or other vegetation located outside or on the edge of the Permit Area or other City property must be appropriately and sufficiently protected by Permittee from the Project work. Protection, which may include fencing or barriers around the trees, must be approved by the City Rep and installed prior to the start of any work in the Permit Area. Permittee shall be liable for the costs of replacing or restoring any protected trees or vegetation that it damages as the result of the work.
- e. Promenade Sidewalk Connection. As compensation to the City for closure and use of DPR land for Permittee's Project, and prior to the termination of this Agreement, Permittee agrees to design and construct a sidewalk connection ("**Promenade Sidewalk**"), which shall be adjacent to Permittee's completed building on the south side, and will connect with the existing walkways constructed with the Promenade. The Promenade Sidewalk will prevent walkway gaps between the Promenade and the completed building. A concept design of the Promenade Sidewalk is attached to this Agreement as **Exhibit D**. Permittee shall confer and mutually agree with the City with regard to the design, construction, final approval of both, and implementation of the Promenade Sidewalk. City and Permittee agree that the completed building provides a significant public benefit to the neighborhood and

the City, and that the Promenade Sidewalk will benefit the completed building as well as the City and the neighborhood. Permittee shall be required to obtain necessary and required authorization and permits from the City's Department of Transportation and Infrastructure ("**DOTI**"), or other City authorization as may be required, for access to the right-of-way to perform the construction of the connection. Acceptance of the connection by the City shall be subject to requirements established by DOTI or other applicable City agency. After acceptance, the City and DOTI shall be responsible for ongoing maintenance of the Crosswalk Improvements. If Permittee cannot obtain City approval, or otherwise fails to complete the Promenade Sidewalk, DPR is entitled to request other compensation mutually agreed upon by both Parties. Such alternative compensation may require amendment to this Agreement executed in the same manner as this Agreement.

- f. City Access to Sediment Vaults. The City, by and through DOTI, operates sediment and pump vaults ("**Vaults**") accessed by utility and maintenance entrances providing underground access. The access points are located within City property or the Permit Area. Permittee's work area interferes with DOTI's access to the Vaults, and DOTI's access may interrupt Permittee's work. Permittee shall provide access to the Vaults as DOTI requires and deems necessary. In the case DOTI or other City or regulatory agency requires access to the Vaults due to an emergency to prevent imminent or actual risk to the public's health, safety or welfare or the environment, Permittee shall provide immediate access to the Vaults. To the extent practical to minimize Permittee cost and disruption, City, DOTI or other City agency will provide at least twenty-four (24) hours' notice of emergency access, unless delay will cause imminent or actual risk to the public's health, safety or welfare or the environment, or unless otherwise required by law, statute, ordinance, rule, or regulation. City shall not be responsible for any costs, expenses or other liabilities incurred by Permittee as a result of City access to the Vaults.
- g. Permittee shall perform clean-up maintenance, debris removal, and snow removal within the Permit Area and other City property to allow access to DPR staff, DOTI staff, or any City official. Permittee at all times shall assure access to utilities, infrastructure and any appurtenances or other equipment needed to operate utilities or infrastructure.
- h. Permittee shall coordinate and cooperate with any other City projects that may be ongoing to address and avoid conflicts between the projects. Any request by Permittee to extend the expiration date of the Permit for Permittee's continued use of all or part of the Permit Area must be timely submitted in writing to the City Rep to allow the City to address conflicts. If the time extensions are approved, including approval with conditions and restrictions, Permittee understands and agrees that other City projects shall have priority over the Permittee's Project. Additionally, any actual and direct delay or acceleration costs incurred by other City projects due to such conflicts shall be paid for by Permittee.

- i. At the completion of the Project and prior to the end of the Term, the Permit Area shall be restored uniformly to substantially conform to the condition that existed within the Permit Area prior to the initiation of the Project work. The Permittee shall schedule a walkthrough with a DPR representative of the access and use area prior to the initiation of any Project work and upon termination of the Agreement to review site conditions and any restoration work. Any proposed alterations or changes to the Permit Area or other City property not in accord with the prior condition must be approved by the City Rep.

- j. Permittee accepts the property “as is,” with all existing physical and environmental conditions. Permittee shall be solely liable for all costs and expenses associated with any Hazardous Materials, as defined below, that Permittee brings onto the Permit Area or that are exposed or otherwise requiring remedial action as a consequence of the Project work. Permittee shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the Project and work to be performed under this Agreement (collectively “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “**Hazardous Materials**” shall mean asbestos, asbestos-contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. The obligations set out in this Section 4.i. shall survive the expiration or revocation of this Agreement.

- k. Permittee shall assume all liability for proper manifesting and management of all waste and, in particular, Hazardous Materials generated or uncovered by Permittee in the course of the Project work or related activities. Permittee shall use best efforts to minimize the volume of Hazardous Materials associated with the Project work or related activities on or about the Permit Area, and shall properly and lawfully handle, containerize, manage and lawfully dispose of all such Hazardous Materials and other waste. Permittee shall not take any action with respect to such Hazardous Materials that may cause any alteration in the chemical, physical or biologic nature or characteristics of the Hazardous Materials while the Hazardous Materials are on or about the Permit Area. Permittee shall remove all Hazardous Materials and other waste associated with the Project work or related activities from the Permit Area on or before the expiration or revocation of this Agreement or any subsequent extension thereof. City shall not own or be responsible for and does not take legal title to any of the Hazardous Materials and other waste associated with the Project work.

5. INSURANCE:

- a. General Conditions: Permittee agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Permittee shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period related to work performed for the City. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Permittee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Permittee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Permittee. Permittee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.
- b. Proof of Insurance: Permittee may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Permittee certifies that the certificate of insurance attached as **Exhibit E** preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Permittee's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- c. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Permittee and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

- d. Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability, Permittee's insurer shall waive subrogation rights against the City.
- e. Subcontractors and Subconsultants: Permittee shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Permittee and appropriate to their respective primary business risks considering the nature and scope of services provided.
- f. Workers' Compensation/Employer's Liability Insurance: Permittee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- g. Commercial General Liability: Permittee shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- h. Automobile Liability: Permittee shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- i. Professional Liability (Errors & Omissions): Permittee shall maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

6. DEFENSE & INDEMNIFICATION.

- a. Permittee shall defend, indemnify, and hold harmless the City, its appointed and elected officials, employees and agents, against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from or relating to the exercise of this Agreement, any work performed or activities undertaken, or financial liability incurred by Permittee in relation to this Agreement, and the occupancy or use of any portion of the Permit Area or any other City-owned property ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity and duty to defend shall be interpreted in the broadest possible manner to indemnify and protect the City for any acts or omissions of the Permittee, either passive or active, irrespective of fault, including

the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

- b. Permittee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Permittee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
 - c. Permittee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
 - d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Permittee under the terms of this indemnification obligation. Permittee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
 - e. This defense and indemnification obligation shall survive the expiration or revocation of this Agreement.
7. **COMPLIANCE WITH LAWS.** Permittee and all persons performing work by, through or under Permittee shall, while it is performing work under this Agreement, observe and comply with any applicable provisions of the Charter, ordinances, and rules and regulations of the City, and all Colorado and federal laws which in any manner limit, control or apply to the Project and work performed by Permittee.
8. **GOVERNMENTAL APPROVALS & CHARGES.** Permittee shall obtain and maintain, at its sole cost, and comply with all permits or licenses (federal, state, or local) required for the Project and work to be performed under this Agreement. Permittee shall pay promptly all taxes, excises, license fees, and permit fees and charges of whatever nature applicable to the Project and work to be performed under this Agreement and shall not permit any of said taxes, excises or license or permit fees to become delinquent or to fail to pay any penalties or fines assessed with respect to the Project and work to be performed under this Agreement. The City shall not be liable for the payment of fees, charges, taxes, late charges, penalties or fines of any nature related to the Project and work to be performed under this Agreement. Permittee hereby indemnifies and saves harmless the City for the extent of any and all liability for fees, charges, taxes, late charges, penalties or fines resulting from Permittee's failure to comply with this Section 8. This indemnification obligation shall survive the expiration or revocation of the Agreement.
9. **LIENS & OTHER ENCUMBRANCES.** Permittee shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon the Permit Area or any other

part of City property due any worker for labor performed or materials or equipment furnished by any person or legal entity to or on behalf of Permittee, either pursuant to C.R.S. § 38-26-107 or by any other authority, or due to any other claim with respect to the Project and work to be performed under this Agreement. Permittee shall promptly pay when due all bills, debts and obligations incurred in connection with the Project and work to be performed under this Agreement and shall not permit the same to become delinquent. Permittee shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City to the Permit Area. Permittee hereby indemnifies and saves harmless the City for the extent of any and all liability for payments, expenses, interests, and penalties resulting from Permittee's failure to comply with this Section 9. This indemnification obligation shall survive the expiration or revocation of the Agreement.

- 10. NOTICES.** All notices required to be given to the City or Permittee hereunder shall be in writing and provided by personal delivery or sent by certified mail, return receipt requested, to:

City: Executive Director
Department of Parks and Recreation
201 West Colfax Ave., Dept. 601
Denver, Colorado 80202

Director
Division of Real Estate, Department of Finance
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202

with copies to: City Attorney's Office
201 West Colfax Avenue, Department 1207
Denver, Colorado 80202

Permittee: as noted in the introductory paragraph of this Agreement above, with a copy to the representative appointed by Mark Nejad.

The effective date of service of any such notice shall be the date such notice is mailed or delivered to Permittee or the City. Daily communications and coordination between the City Rep, on the one hand, and the representative of Permittee and its contractor(s), on the other hand, may be telephone or email, if so allowed under this Agreement and as agreed by these representatives.

- 11. GOVERNMENTAL IMMUNITY.** Nothing in any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the City against third parties by law.

- 12. NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of the work under this Agreement, Permittee agrees 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, ethnicity, citizenship, immigration status, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, source of income, protective hairstyle, or disability; and Permittee further agrees to insert the foregoing provision in all approved contracts and subcontracts hereunder.
- 13. ENTIRE AGREEMENT.** This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.
- 14. AMENDMENT.** Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.
- 15. NO ASSIGNMENT.** Neither party shall not assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other party.
- 16. SEVERABILITY.** If any term or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or unenforceable or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid; provided, however, if the invalidated term or provision was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with Applicable Law and the judgment of the court.
- 17. AUTHORITY TO EXECUTE.** The person signing for Permittee warrants that he or she has the complete authority to sign on behalf of and bind Permittee. The City in accordance with City Charter §§ 2.2.3 and 2.2.4 is authorized to enter into and execute this agreement.
- 18. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the 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.

[SIGNATURE BLOCKS BEGIN ON NEXT PAGE.]

Contract Control Number: PARKS-202367527
Contractor Name: R.G. BRINKMANN COMPANY

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

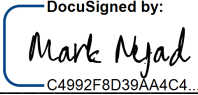
By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202367527
R.G. BRINKMANN COMPANY

By:  C4992F8D39AA4C4...

Name: Mark Nejad
(please print)

Title: Project Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

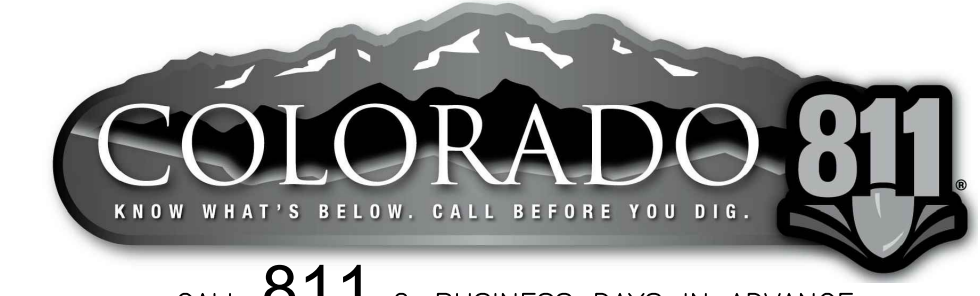
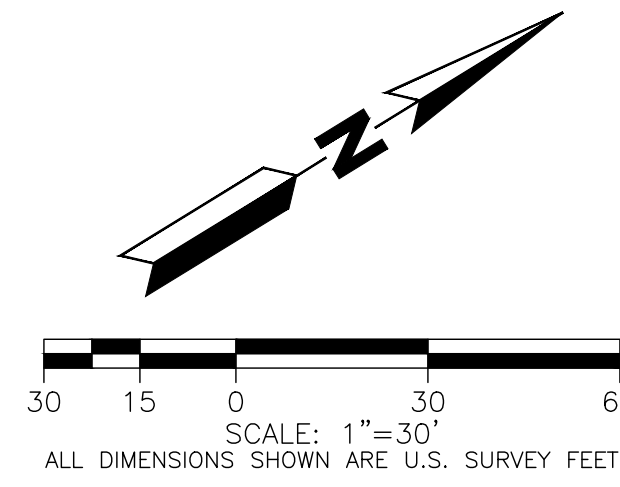
Title: _____
(please print)

EXHIBIT A



RINO PROMENADE PHASE 1

DENVER, COLORADO

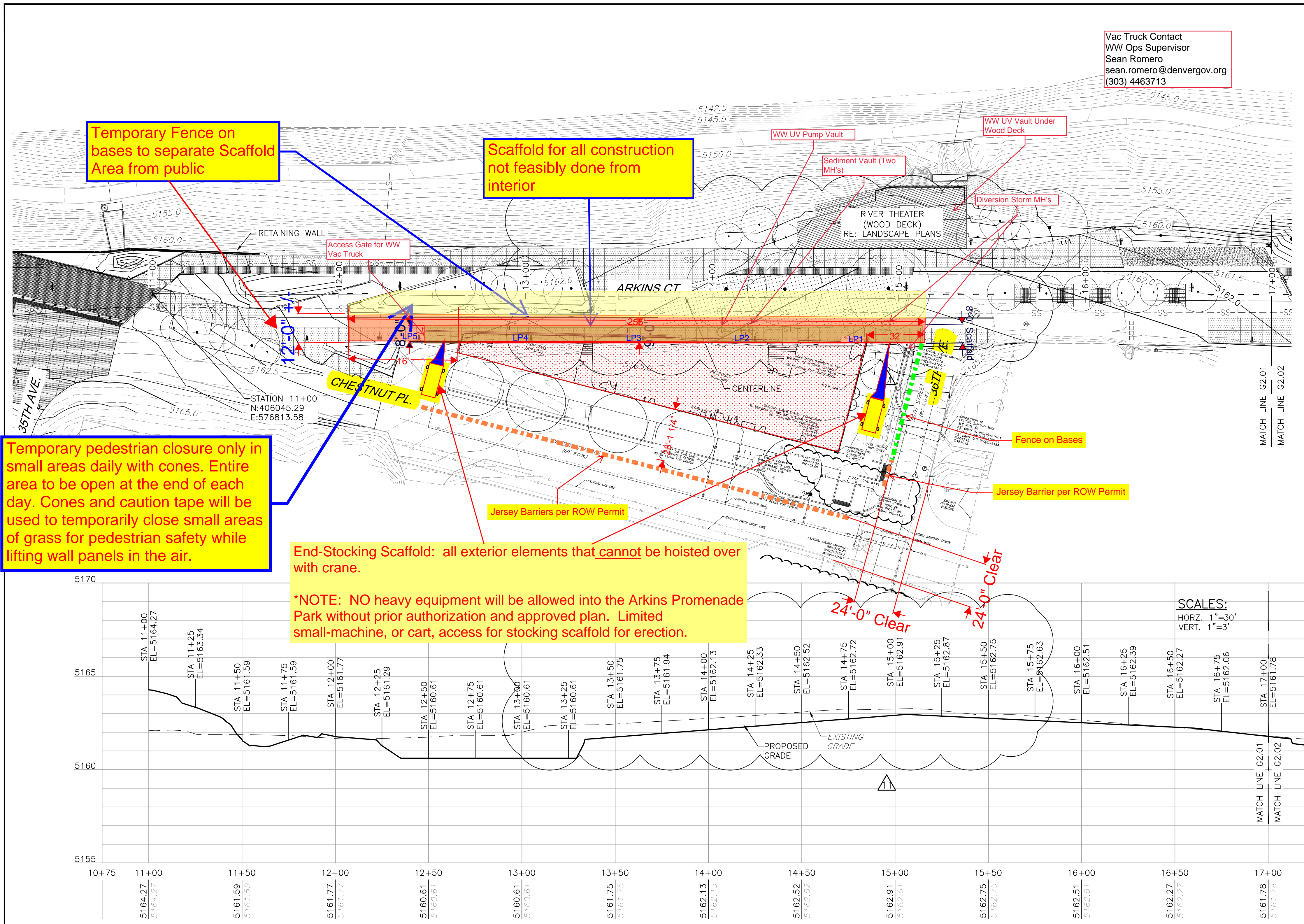


CALL 811 2-BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, GRADE OR EXCAVATE FOR MARKING OF UNDERGROUND MEMBER UTILITIES

MARTIN/MARTIN ASSUMES NO RESPONSIBILITY FOR UTILITY LOCATIONS. THE UTILITIES SHOWN ON THIS DRAWING HAVE BEEN PLOTTED FROM (PROVIDED) ASCE (38) UTILITY QUALITY LEVEL B (Q_B) AVAILABLE INFORMATION. IT IS, HOWEVER, THE CONTRACTORS RESPONSIBILITY TO FIELD VERIFY THE SIZE, MATERIAL, HORIZONTAL AND VERTICAL LOCATION OF ALL UTILITIES (DEPICTED OR NOT DEPICTED) PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION.

Key

- Permit Area
- Temporary Pedestrian Closure Area



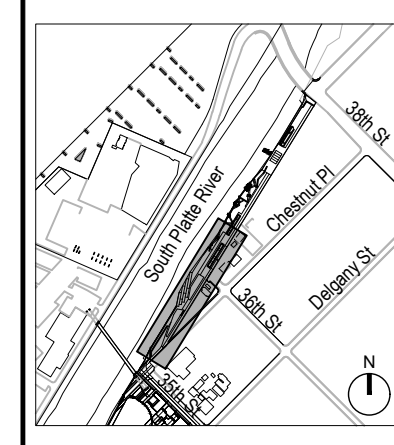
BENCHMARK:
CITY AND COUNTY OF DENVER BENCH MARK #377, BEING A BRASS CAP LOCATED AT THE SOUTHEAST CORNER OF DOWNING ST. AND 36TH ST. NAVD88 ELEVATION=5196.44

BASIS OF BEARINGS:
BASIS OF BEARING IS A RANGELINE BETWEEN DELGANY ST. AND ARKINS ST., SITUATED IN THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP SOUTH, RANGE 68 WEST OF THE 6TH P.M., WEST CORNER BEING A #5RB W 2" AC IN RANGE BOX, EAST CORNER BEING A 2.25" AC LS 33202 CCD IN RANGE BOX, ASSUMED BEARING OF N45°01'50"W A DISTANCE OF 345.97FT.

- NOTES:**
- SEE SHEET G1.01 FOR LEGEND AND ADDITIONAL NOTES.
 - SEE SHEETS G2.01 AND G2.02 FOR CENTERLINE PLAN & PROFILE.
 - SEE SHEETS EC1.01 THRU EC1.06 FOR EROSION & SEDIMENT CONTROL.
 - SEE SHEETS TE1.04 AND TE1.05 FOR ROADWAY INTERSECTION DETAILS.
 - SEE SHEETS SW1.01 THRU SW1.09 FOR WATER QUALITY AND STORM SEWER DETAILS.
 - PROPOSED CONTOURS SHOWN AT 0.5' INTERVALS.
 - SURVEY WAS PROVIDED BY JF SATO & ASSOCIATES ON 04/24/2019.
 - SITE PLAN WAS PROVIDED BY WENK ASSOCIATES, INC. ON 05/31/2019.

DRAWING LOCATION: G:\SCHLAPPE\18.1044-River North Promenade Phase 1\PLANS\CDS\PLAN & PROFILE.dwg

FOR AND ON BEHALF OF WENK ASSOCIATES NOT VALID WITHOUT ORIGINAL SIGNATURE

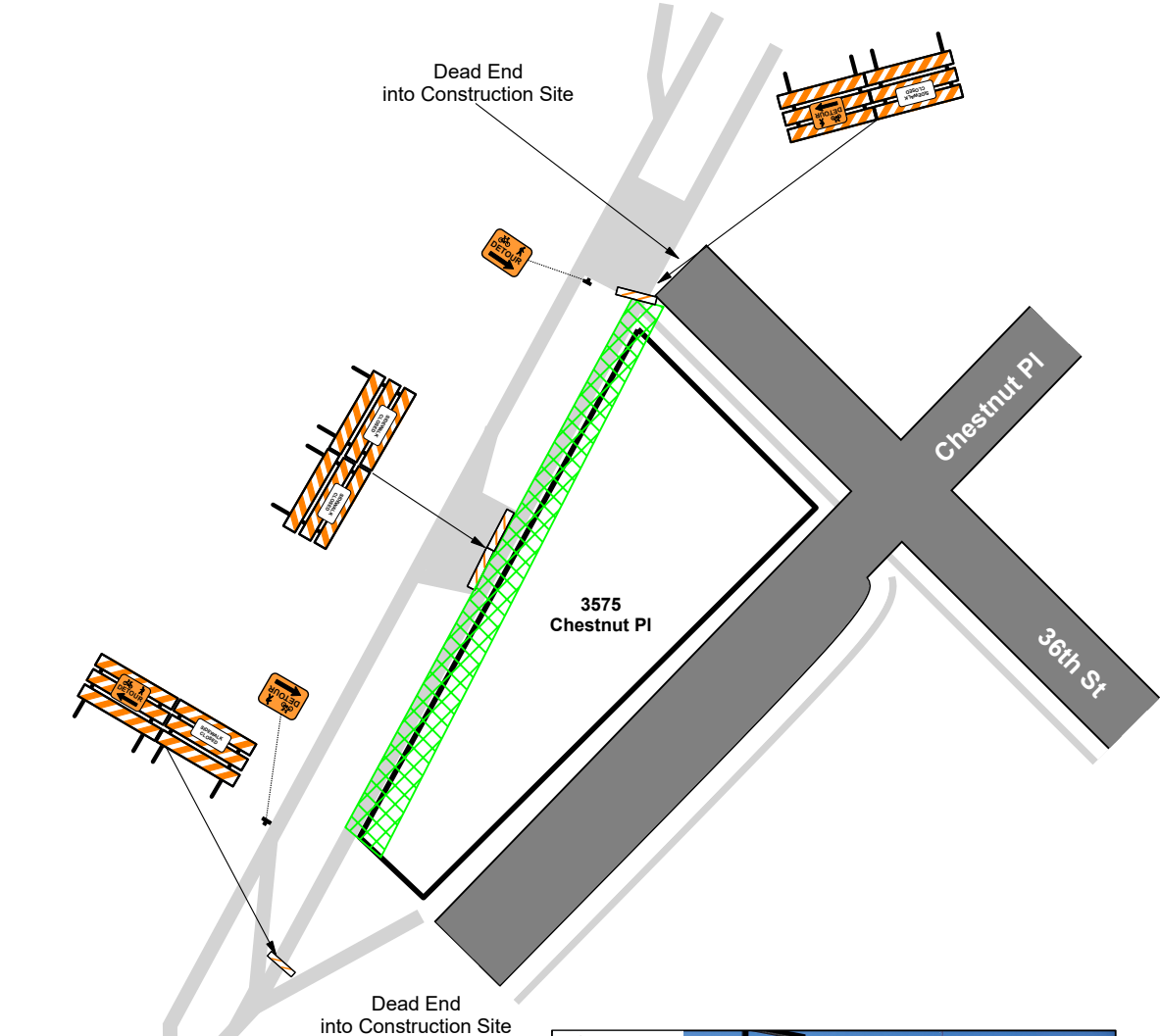


REVISIONS:

NO.	DATE	DESCRIPTION
1	01/15/21	AS1 9-GRADING REVISIONS

DRAWN BY: SC/RS
REVIEWED BY: PB
PROJECT NUMBER: 15014.01
DATE: JUNE 2020
ISSUE: FOR CONSTRUCTION
SHEET TITLE: PLAN & PROFILE
SHEET NUMBER: G2.01

3575 Chestnut Pl



Taper Length In Feet					CHANNELIZATION DEVICE SPACING			SIGN SPACING	
Speed (MPH)	Merging Taper	Shifting Taper	Shoulder Taper	Buffer Space	MPH	TAPER	TANGENT	MPH	DISTANCE
25 or less	125'	63'	42'	155'	25	25	50	25	100'
30	180'	90'	60'	200'	30	30	80	30	100'
35	245'	123'	82'	250'	35	35	70	35	100'
40	320'	160'	107'	305'	40	40	80	40	100'
45	540'	270'	180'	360'	45	40	90	45	120'
50	600'	300'	200'	425'	50	40	100	50	110'
55	660'	330'	220'	490'	55	40	110	60	120'
60	720'	360'	240'	570'	60	40	120	70	140'
65	780'	390'	260'	645'	65	40	130	75	150'
70	840'	420'	280'	730'	70	40	140		
75	900'	450'	300'	820'	75	40	150		

We make the road work for you

Summary of Devices	
2 - Trail Closed	
2 - Trail Closed Ahead	
6 - Ped Detour (3L, 3R)	

FOR:
Brinkmann Contractors

Location: 3575 Chestnut Pl
Denver, CO 80216

Name: Bradley Johnson-Dupre
Job#: **MHT# 1**
Date: March 31, 2022
Drawn By: Rich Royce
ATTSA Cert#: 864004

LEGEND	
	Flagger
	AFAC
	Uniformed Traffic Cop
	Handbook
	File
	Trailer Mounted Arrowhead
	Channelization Device 24"
	North Arrow

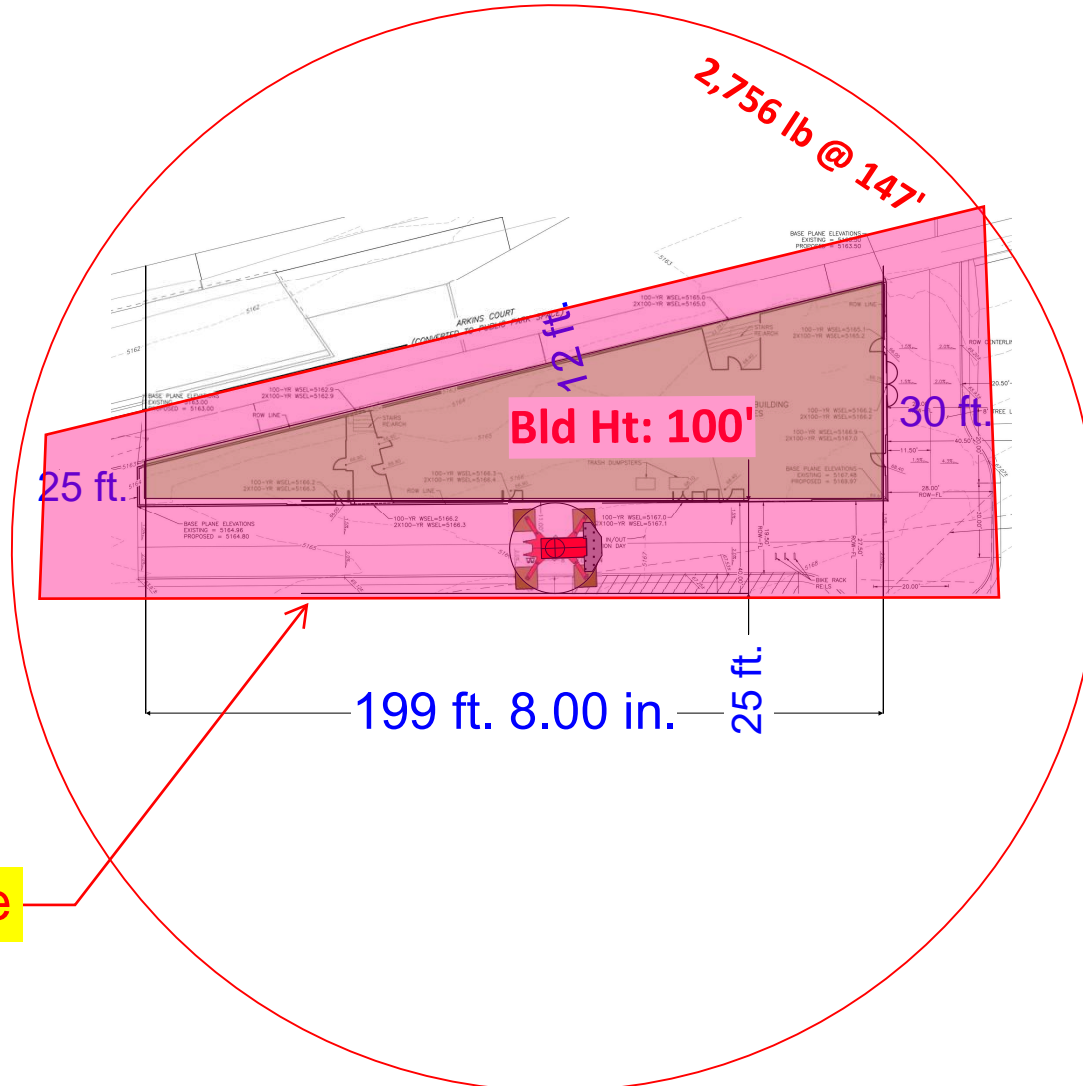
NOT TO SCALE

Sidewalk Closure

720-899-6126

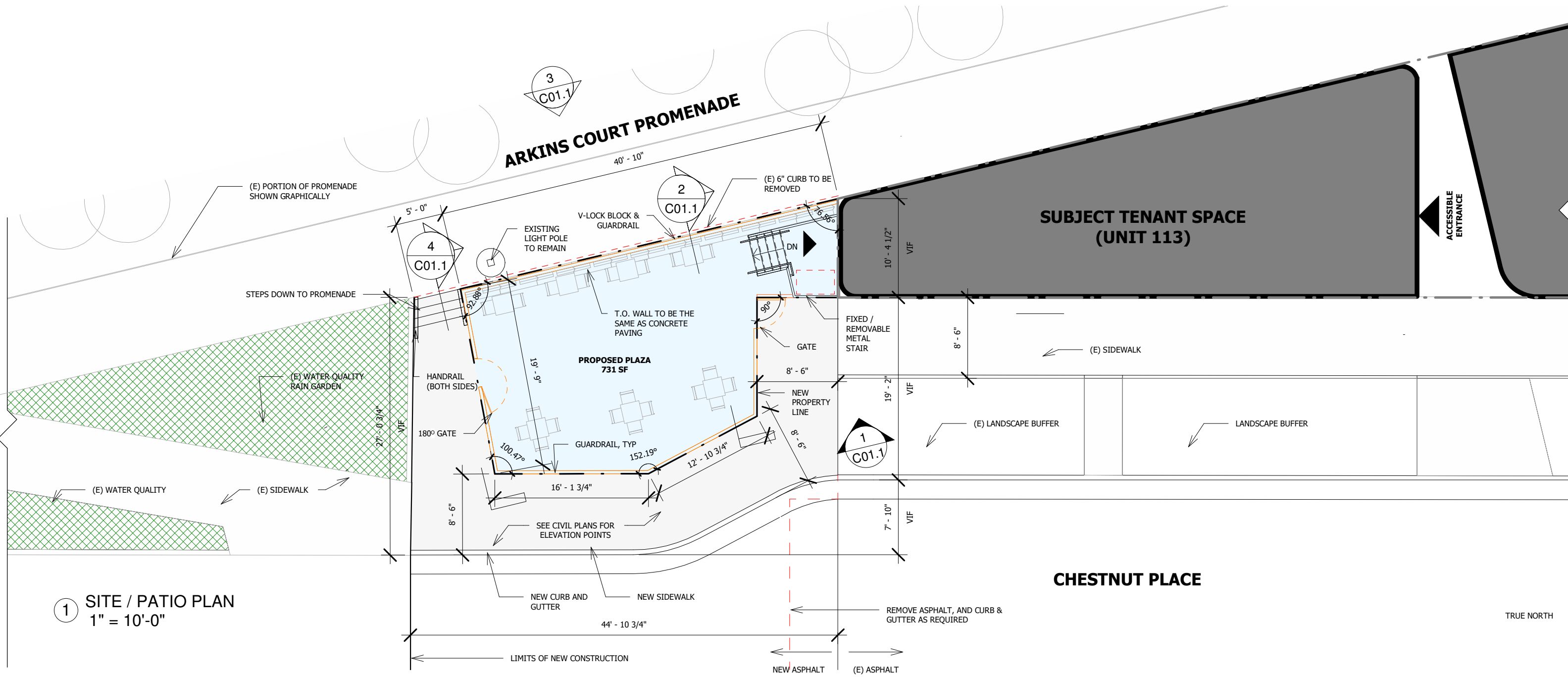
**** ALL DEVICES ****
****SHALL CONFORM TO****
****CURRENT MUTCD****

EXHIBIT B



Live Lift Zone

Exhibit D



1 SITE / PATIO PLAN
1" = 10'-0"



3575 CHESTNUT SITE, PATIO PLAN

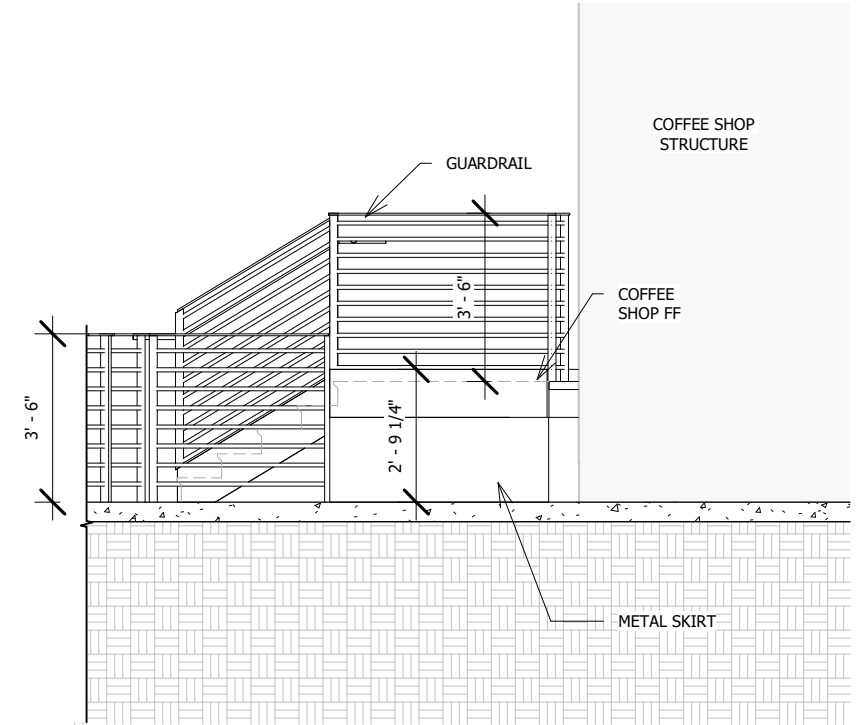
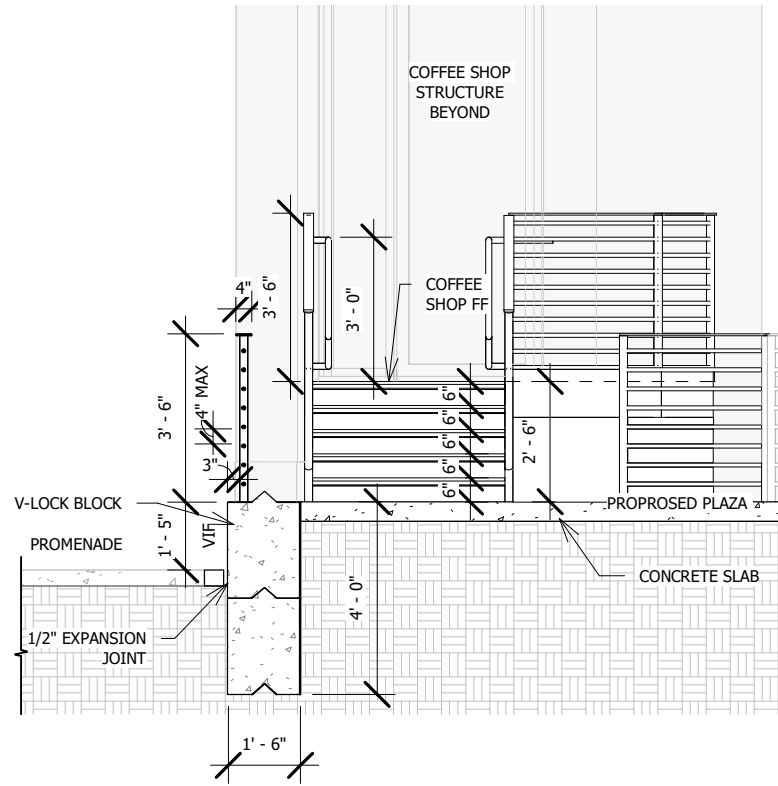
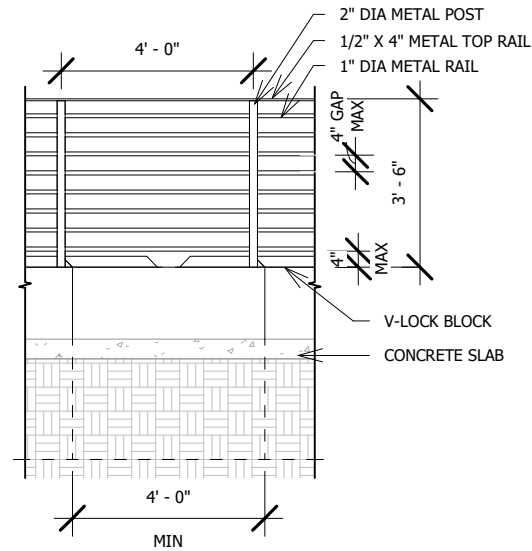
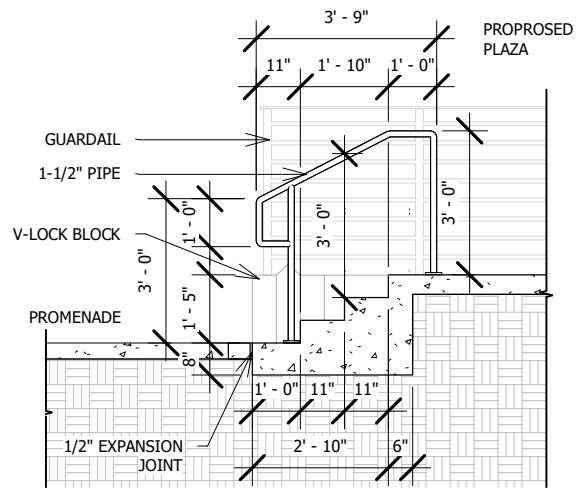
1" = 10'-0"

12/07/22

PROJECT NORTH

1" = 10'-0" SCALE FEET

C01 COFFEE SHOP T.I.



④ CONCRETE STAIR SECTION
1/4" = 1'-0"

③ GUARDRAIL ELEVATION
1/4" = 1'-0"

② GUARDRAIL SECTION / STAIR ELEV
1/4" = 1'-0"

① METAL STAIR ELEVATION
1/4" = 1'-0"

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AssuredPartners of MO, LLC 12645 Olive Blvd, Suite 300 St Louis, MO 63141 314 523-8800	CONTACT NAME: Emma McGinley PHONE (A/C, No, Ext): 314 523-8800 E-MAIL ADDRESS: Emma.McGinley@assuredpartners.com	FAX (A/C, No): 314 453-7555
	INSURER(S) AFFORDING COVERAGE	
INSURED R.G. Brinkmann Company Brinkmann Constructors 16650 Chesterfield Grove Road Chesterfield, MO 63005	INSURER A : Hartford Fire Insurance Co	NAIC # 19682
	INSURER B : Hartford Casualty Insurance Co	29424
	INSURER C : Twin City Fire Insurance Co	29459
	INSURER D : Pacific Insurance Company	10046
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER: All Lines + Prof

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI/PD SIR: \$100,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			84ECSQU3951	02/15/2023	02/15/2024	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			84UENQU3952	02/15/2023	02/15/2024	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			84RHUQU3953	02/15/2023	02/15/2024	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	84WEQU3950	02/15/2023	02/15/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liab			34CPIAC4655	02/15/2023	02/15/2024	Agg-\$10,000,000 Ded.(ea.claim)-\$50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Chestnut Lofts project, 3575 Chestnut Place, Denver, CO. Access & Use Permit Agreement.

As required by written contract, City & County of Denver, its elected & appointed officials, employees & volunteers are included as

Additional Insured for Commercial General Liability & Commercial Automobile Liability.

-Where permitted by law, Waiver of Subrogation is granted for Commercial General Liability per form

(See Attached Descriptions)


CERTIFICATE HOLDER

CANCELLATION

Executive Director, Department
 of Parks & Recreation
 201 West Colfax Ave., Dept. 601
 Denver, CO 80202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



DESCRIPTIONS (Continued from Page 1)

No.EH00020605

-Where permitted by law, Waiver of Subrogation is granted for Commercial Automobile Liability per form

No.HA99161221

-Where permitted by law, Waiver of Subrogation is granted for Umbrella Liability per form No.XL00030916

-30 day Notice of Cancellation required if Commercial General Liability, Auto Liability, Workers

Compensation, Umbrella Liability & Professional Liability coverage is cancelled before the expiration date per form No.IH03160611, IH03160611, IH03130611, WC990529 & CT0446